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RELATED CORRESPONDENCE

UCS - October 17, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD ⁸⁴ OCT 18 AM 11:34

OFFICE OF SECRETARY
DOCKETING & SERVICE
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In the Matter of)
METROPOLITAN EDISON COMPANY)
(Three Mile Island Nuclear)
Station, Unit No. 1))

Docket No. 50-289 SP
(Restart Remand on
Management)

UCS' MOTION TO COMPEL THE NRC STAFF
AND MOTION TO DELAY DEPOSITIONS
AND EXTEND DEADLINE FOR DISCOVERY OF THE NRC STAFF

As a result of the Staff's failure to respond fully or in a timely manner to UCS' discovery requests, UCS moves that the deadline for discovery of the NRC Staff be extended to November 15, 1984, and that the Board authorize UCS to take depositions of the Staff's witnesses either immediately before the Staff files its direct testimony, or soon thereafter.

Background

As set out in UCS' letter to the Board of October 12, 1984, the Staff has yet to respond to UCS' first set of interrogatories. In addition, although Staff counsel filed the Staff's answer to UCS' first set of document requests on October 4, 1984, stating that the documents would be available in the PDR, Public Document Room personnel informed UCS on October 16 that the documents could not be located in the PDR.

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UCS filed its first set of interrogatories and requests for production of documents with the NRC Staff by hand on September 4. Since delivery apparently was not possible in the late afternoon, the discovery requests were actually delivered the next day. But for the requirement of 10 C.F.R. § 2.720(h)(2)(ii) that the Presiding Officer determine whether the Staff should be required to respond, the rules of discovery would have required a response from the Staff no later than September 19, 1984.

On September 7, 1984, counsel for UCS and the NRC Staff discussed the Staff's view that most of UCS' requests were outside the scope of the proceeding. Counsel for UCS suggested that the NRC Staff consider proposing a compromise of some sort, perhaps in the form of a time limitation. On September 12, counsel for the NRC Staff responded that there would be no compromise, and that the Staff would respond on or before September 19. The Staff filed its response, consisting almost entirely of objections, on September 18, 1984.

As a result of this conflict, the Board held a pre-hearing conference on September 24, 1984. In essence, the Board directed the Staff to respond to most of the contested interrogatories, with various limitations. It has now been more than three weeks since the Board ordered the Staff to respond to UCS' interrogatories, and nearly a month since the Staff's answers were due. UCS has raised the question with the Staff, only to be met with the response that the Staff was trying to get the interrogatory response out.

The second interrogatory sought the identity of all Staff witnesses, their qualifications and related information, the documents that they intend to use to form their opinions, the topics that they intend to address, their conclusions, and the bases for their conclusions. For the purpose of this motion, that is probably the most significant information requested by UCS. In addition, UCS sought descriptions of the Staff's actions to review the GPU training program (Interrogatory 5), information on Staff interviews of TMI operators (Interrogatories 10-13), and other information concerning the TMI training program. (Interrogatories 14-21).

To date, with two minor exceptions, the Staff has answered none of these questions beyond referring UCS to NUREG-0680 and some other documents. On October 11, 1984, the Staff informed UCS of the identity of its witnesses, who have been noticed for deposition on October 26. The Staff has not yet, however, informed UCS of the topics that those witnesses will address, nor has it provided the other information called for in Interrogatory 2 of UCS' First Set of Interrogatories to the Staff. To date, with respect to the topics to be addressed by its witnesses, the Staff has said only that they will address the testimony of the Reconstituted OARP Committee and of Licensee witnesses. In addition, in its response to Interrogatory 19, the Staff has stated that it "is awaiting the pre-filed testimony of the Reconstituted OARP committee before conducting its review" of the Special Report that was prepared by that committee.

The deadline for filing further rounds of interrogatories against the Staff was Monday, October 15, 1984.

ARGUMENT

The purpose of UCS' interrogatories and document requests, in large part, was to provide UCS with the information necessary to prepare for depositions of the Staff's witnesses. UCS must know, for example, which witness has what expertise and will address what issues in order to know what issues to explore with that witness. Similarly, UCS is entitled to responses to its substantive interrogatories in order to prepare for depositions addressing the bases for the Staff's positions.

UCS was entitled to receive most of the requested information weeks ago. Although the Staff did not need to identify its witnesses until it reasonably knew who they were, once it knew that information, the Staff was required to inform UCS of the topics that they would address and the other information that UCS has sought. The Staff informed UCS of witness identities on October 11, 1984, but the Staff has yet to provide written supplementation of its interrogatory responses, and it has said only that its witnesses will address the testimony filed by the Licensee. Thus, although UCS has asked these specific questions and has long been entitled to answers, UCS still does not know anything whatsoever about these witnesses.

In addition, UCS has not yet been able to review the documents provided by the Staff in response to UCS' first set of

requests for production of documents because those documents are not yet available in the PDR. Again, UCS cannot prepare adequately for depositions of Staff witnesses without this material, which it should have received at least a week ago.

As a result of these delays and failures to respond, the Staff has not simply prevented UCS from preparing to depose the Staff's witnesses. The Staff, by delaying its responses until after October 15, has effectively prevented UCS from filing a second round of discovery requests to follow up on its first round. Had the Staff filed its responses on time, or even within a reasonable time after the Board's oral order of September 24, this would not have happened.

Accordingly, UCS seeks the following relief:

1. An order directing the Staff to respond immediately to UCS' first set of interrogatories.
2. Extension of the deadline for discovery against the Staff until November 15, 1984, or for three weeks after the Staff files the required responses, whichever is later;
3. Authorization for UCS to depose the Staff's witnesses either immediately before or shortly after the Staff files its direct testimony.

At this point, an order compelling an immediate response by the Staff is necessary if this litigation is to proceed.

Extension of the period for discovery against the Staff is necessary to allow UCS to take the second round of discovery that would have been permitted by the original schedule had the

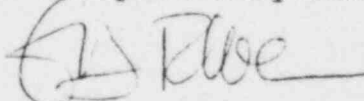
Staff not delayed its response past the deadline for UCS to file such discovery.

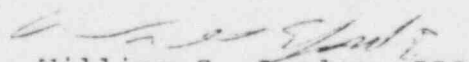
Authorization for UCS to depose Staff witnesses shortly before or after they file their testimony is necessary for two reasons. First, as a result of the Staff's failure to respond to discovery requests to date, UCS cannot prepare adequately for the depositions that are currently scheduled for Friday, October 26. Second, every Staff pronouncement to date has made it crystal clear that the Staff will simply review and comment upon the testimony filed by the Licensee. Thus, there is no point to depositions of the Staff's witnesses until after they have reviewed the Licensee's testimony. Consistent with the Staff's statements to date, they will have nothing to say.

CONCLUSION

For these reasons, UCS respectfully urges the Board to enter an order granting the relief requested above.

Respectfully submitted,


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Dated: October 17, 1984

October 17, 1984

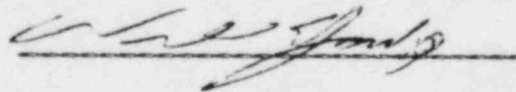
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CERTIFICATE OF SERVICE

I hereby certify that copies of the UNION OF CONCERNED SCIENTISTS' MOTION TO COMPEL THE NRC STAFF AND MOTION TO DELAY DEPOSITIONS AND EXTENT DEADLINE FOR DISCOVERY OF THE NRC STAFF, October 17, 1984, were served on the following by deposit in The United States mail, first class, postage prepaid, on October 17, 1984.

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