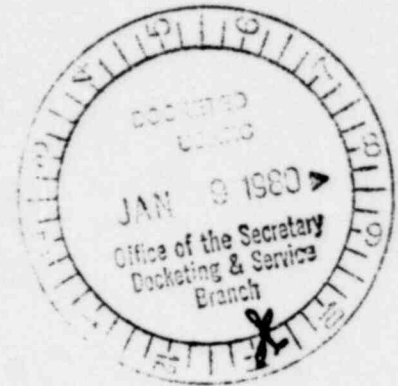


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Ivan W. Smith, Chairman
Dr. Walter H. Jordan
Dr. Linda W. Little



In the Matter of)
METROPOLITAN EDISON COMPANY)
(Three Mile Island Nuclear)
Station, Unit No. 1))

Docket No. 50-289
(Restart)

MEMORANDUM AND ORDER RULING ON INTERVENORS'
REQUESTS FOR EXTENSIONS OF TIME TO FILE
REVISED EMERGENCY PLANNING CONTENTIONS

(January 8, 1980)

ECNP's Request

Revised contentions on emergency planning were due on December 19, 1979. Tr. 864. On December 20, Intervenor Environmental Coalition on Nuclear Power (ECNP) mailed to the board a "request" (received by the board December 26) for an extension of time to file a revised emergency planning contention. The request was open-ended. The time requested would extend until counsel for licensee assures ECNP that ECNP has in its possession a complete up-to-date emergency plan and assures ECNP that there will be no further substantive changes in the plan prior to the hearing. ECNP proposed to serve its revised contention within ten days after being advised by counsel for licensee that ECNP's conditions

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were met. The board has received no further information from ECNP.^{1/}

There are several failures in ECNP's attempted procedure which, we believe, are obvious to any discerning party, especially to ECNP's representative who is an experienced NRC litigator. The request, even if mailed on December 19, would have been too late for timely board consideration. Even if ECNP had reason to believe that the board would grant some extension, prudently it should have proceeded to comply with the board's original order until a ruling on the request was made.

ECNP had no basis to assume that the board would grant the extension. The reasons for passing the due date without leave were manifestly unconvincing. ECNP purports to assume that the board, after the due date, would ratify ECNP's unilateral conditions for complying with the board's order. Functionally ECNP's filing was not a request. It was a notice to the board that it had not complied and would not comply with the board's order until its conditions were met. Granting ECNP's request would in effect transfer control of the matter from the board to ECNP's representatives who must

^{1/} Licensee responded to ECNP's request and reported that counsel had in fact advised a representative of ECNP on December 27 and December 28 that ECNP possesses the most up-to-date emergency plan and that licensee currently has no plans to substantially revise its emergency plan.

know well that the board cannot countenance such an unstructured approach to litigation.

During the special prehearing conference the board counseled the parties to this proceeding about the importance of meeting deadlines:

It is important that time limits be complied with, and so far in this case I think everyone has complied with the time limits, but Interveners should understand that they cannot simply -- that it would be at great risk to ignore a deadline. Do not ignore a deadline. You may find a ruling has been made before your point of view can be taken into account and you're going to be stuck with it.

If you ignore a deadline it is going to be at your risk. You don't have to. If you have a problem so that you can't meet a deadline, you can always ask for an extension and explain why, but don't ignore it. Talk to us about deadlines before you let one pass. Say something about it. I can't stress that too strongly.

Tr. 525-26.

ECNP's action here demonstrates why deadlines must be observed. The time and attention required for the board and the affected parties to address the problems created by ECNP's unorthodox procedure diverts attention from the important safety questions in issue in this proceeding.

ECNP has failed to justify its request for a blanket open-ended extension of time for the filing of its emergency plan contentions. As noted above, contrary to the implication of ECNP's request, it had received the licensee's most

up-to-date emergency plan and licensee currently has no plans to substantially revise it. ECNP's condition precedent that licensee assure there will be no further substantive changes is frivolous. As licensee correctly points out, if additional changes are needed to improve the plan, licensee has a responsibility to make those changes. See licensee's response of December 31, 1979. ECNP, and other intervenors, may revise emergency plan contentions for good cause shown if the revisions to the contentions justifiably are in response to new revisions to the licensee's emergency plan.

ECNP's "request" is denied. If ECNP should later file an emergency planning contention, it will be considered as a late filing under the standards of 10 CFR §2.714(a)(1).

Newberry Intervenors' Request

Newberry Township TMI Steering Committee, et al, (Newberry Intervenors) have also requested additional time to file revised emergency planning contentions. On December 21, 1979 Newberry Intervenors timely filed its Contention 3 on emergency planning, having been granted an earlier extension of time by the board. By letter also dated December 21, Newberry Intervenors requested another extension until January 28, 1980 to further revise contentions on emergency planning for reasons that were unclear to the board.

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On January 7, the chairman discussed the sequence of the licensee's emergency plan filings with its counsel, and, later, during a telephone conference call among the chairman, counsel for Newberry Intervenors and counsel for licensee, Newberry's request was clarified. Newberry Intervenors wish to revise their emergency planning contentions based upon new information contained in the licensee's Amendment No. 6 to its Restart Report which was received by Newberry approximately December 15, 1979. Newberry Intervenors' counsel and licensee's counsel agreed that Newberry may timely serve certain revised emergency planning contentions no later than January 14, 1980.^{2/} The board accepts this agreement and extends the time to January 14, 1980 during which Newberry Intervenors may serve revised emergency planning contentions based upon new information in licensee's Amendment No. 6 to its Restart Report.

Counsel for Newberry also stated that Newberry Intervenors are requesting an extension of time to file revised emergency planning contentions based upon older, but unspecified information previously available to Newberry. This request has not been justified and is denied.

^{2/} The chairman had suggested that filing amended contentions within 30 days from the receipt of the revised plan would be consistent with the board's earlier rulings on filing revised contentions based upon new information. However, the prehearing schedule may not always permit this much time.

Newberry Intervenors' approach to filing revised contentions differs from the procedure used by ECNP in that Newberry, in the first instance, timely received a short extension beyond December 19 to file its first revision to its emergency contention and they filed a revision within that time. When it became apparent to Newberry that it could not meet this extension with respect to new matter in licensee's Amendment No. 6, Newberry's counsel promptly and timely telephoned licensee's counsel who agreed to a reasonable extension. Unfortunately communication failed, and the length and nature of the requested extension was not understood by licensee.^{3/}

In other respects, however, Newberry's handling of its request for an extension paralleled that of ECNP. Newberry assumed that its request of December 21 would be granted and left it to the board to advise counsel if its requested extension was not granted. This is not acceptable procedure. As it turned out, the extension taken by Newberry was not acceptable to the board. The board later granted the extension until January 14 on certain revisions because of Newberry's timely efforts to comply with the board's ruling and because

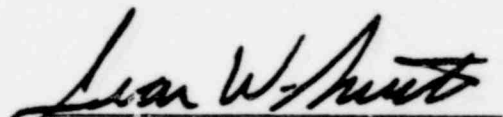
^{3/} Apparently counsel for Newberry failed to serve its letter to the board of December 21, 1979 on licensee and the other parties.

we believe that there is good cause for the extension as it relates to revised contentions based upon new material.

As to revised contentions based upon material previously available to Newberry Intervenors, a showing of good cause for late filing and justification under the other standards of 10 CFR §2.714(a)(1) will be required, if Newberry files such a revision.

Intervenors who file revisions to earlier contentions are directed to indicate on each revised contention where revisions have been made to the earlier contention. For example, new material may be underlined and deleted material may be placed in brackets. If the revised contention is entirely or substantially redrafted, this fact should be indicated.

The Atomic Safety and
Licensing Board


Ivan W. Smith, Chairman

Bethesda, Maryland
January 8, 1980

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