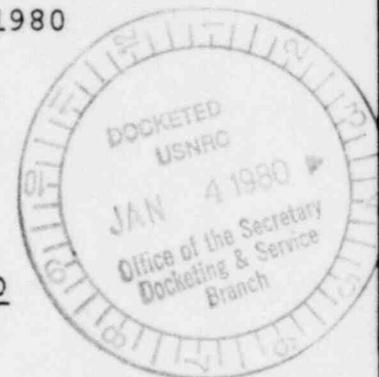


January 2, 1980

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of)	
)	
METROPOLITAN EDISON COMPANY)	Docket No. 50-289
)	(Restart)
(Three Mile Island Nuclear)	
Station, Unit No. 1))	

LICENSEE'S RESPONSE TO EMERGENCY
PLANNING CONTENTIONS

Eight of the petitioning parties in the above-captioned proceeding initially filed contentions relating to the adequacy of Licensee's emergency preparedness.^{1/} In response, Licensee noted that it was in the process of updating its Emergency Plan, that petitioners had not yet had an opportunity to review and comment on the updated Emergency Plan, and, therefore, petitioners should file more detailed objections to Licensee's Emergency Plan at a later date. This procedure was agreed to by petitioners, and December 19, 1979, was adopted by the Licensing Board as to the date on which more detailed emergency planning contentions were to be filed. Licensee has since received more detailed contentions from four intervenors: USC (filing dated December 18, 1979), Mr. Sholly (filing dated

1/

UCS Contention No. 16; Aamodt Contention Nos. 3-6; Sholly Contention Nos. 8-9; ANGRY Contention Nos 1-3; ECNP Contention Nos 2 & 17; CEA Contention Nos. 2-4; Newberry Township Contention No. 3; and PANE Contention No. 3.

1770 134
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December 17, 1979), ANGRY (filing dated December 18, 1979), and Newberry Township (filing dated December 21, 1979). One intervenor, ECNP, has requested an extension of time within which to file its detailed emergency planning contention, and Licensee has not objected to granting ECNP until January 7, 1980, within which to file.^{2/} Another petitioner, PANE, has withdrawn its emergency planning contention. Licensee has received no further specification of emergency planning contentions from either CEA or Mrs. Aamodt.

In general, the detailed emergency planning contentions that have been submitted provide the specificity originally lacking necessary to provide Licensee with adequate notice of intervenors' objections. In some instances, the detailed contentions still do not provide as much specificity as is desirable. Nonetheless, Licensee has determined not to object to such marginal contentions, intending instead to flesh out the full nature of the objection during discovery. However, in a few isolated cases, the contention still remains so broad as to prevent Licensee from responding adequately; in those instances, Licensee has interposed an objection.

With respect to basis, intervenors have for the most part not provided any specific basis for the numerous subparts

^{2/}

If necessary, Licensee will supplement this response after receiving ECNP's detailed emergency planning contentions.

of their various contentions. While the absence of such information is not to be encouraged, Licensee again has determined not to raise such a general objection. As a result, Licensee is not now objecting to some contentions which it believes are based on a clear misreading or misunderstanding of the updated Emergency Plan. To raise such objections now would involve the Licensing Board in substantive review of the Emergency Plan at what may be a premature stage of the proceeding. Rather, Licensee will address such contentions either following the discovery period or through its case-in-chief.

In two specific instances, however, the apparent bases for certain contentions are clearly inappropriate -- and Licensee believes inconsistent with the Licensing Board's First Special Prehearing Conference Order -- and the contentions should be rejected. Such contentions are those which seek to litigate the adequacy of Licensee's Emergency Plan in the face of an assumed core-melt followed by gross breach of the containment and those contentions which challenge the adequacy of the 10-mile Emergency Planning Zone ("EPZ") for the plume exposure pathway. Both groups of contentions involve essentially the same issue: a challenge to the Commission's present policy that design basis and less severe core-melt accidents should be considered during the emergency planning process, but that emergency plans need not assume the more severe core-melt accidents.

This policy had its genesis in a request received by the NRC from the Conference of Radiation Control Program

Directors (an organization of State officials) to "make a determination of the most severe accident basis for which radiological emergency response plans should be developed by offsite agencies." To answer this inquiry a joint NRC/EPA Task Force was established. This group prepared a report entitled: "Planning Basis for the Development of State and Local Government Radiological Emergency Response Plans in Support of Light Water Nuclear Power Plants" (December, 1978) (NUREG-0396; EPA 520/1-78-016). The NRC/EPA Task Force conclusion was that a "spectrum of accidents (not the source term from a single accident sequence) should be considered in developing a basis for emergency planning" (NUREG-0396 at 24). This spectrum of accidents was posited to include design basis accidents and less severe core-melt accidents, but not a severe core-melt accompanied by a breach of containment. On this basis the establishment of two EPZ's was recommended: a 10-mile radius for airborne exposure and a 50-mile radius for contaminated food. As noted by the NPC/EPA Task Force (NUREG-0396; emphasis added):

The establishment of Emergency Planning Zones of about 10 miles for the plume exposure pathway and about 50 miles for the ingestion pathway is sufficient to scope the areas in which planning for the initiation of predetermined protective action is warranted for any given nuclear power plant.

1770 137

This conclusion has been the subject of substantial public comments and review. Upon publication, notice of the availability of NUREG-0396 was given in the Federal Register and comments were requested (see 43 Fed. Reg. 58658 (December

15, 1978)).^{3/} Subsequently, the Commission published an advance notice of proposed rulemaking, requesting comments on nine specific emergency planning issues (see 44 Fed. Reg. 41483 (July 17, 1979)). One of those questions inquired as to "[w]hat actions should be taken in response to the recommendations of the joint NRC/EPA Task Force Report (NUREG-0396/EPA 520/1-78-016)?" Following the receipt of public comments, the Commission adopted a Policy Statement formally endorsing NUREG-0396 and the 10-mile and 50-mile EPZ's described therein (see 44 Fed. Reg. 61123 (October 23, 1979)). Most recently, the Commission published notice of its intent to amend its regulations to provide an interim upgrade of emergency planning regulations (see 44 Fed. Reg. 75167 (December 19, 1979)). Included in the notice of proposed rulemaking are revisions to 10 C.F.R. §§ 50.33(g), 50.47(b), 50.54(s) and Part 50, Appendix E, which specifically incorporate the 10-mile and 50-mile EPZ's. Public comments on this latest notice of proposed rulemaking are due by February 19, 1980.

Contentions which challenge the 10-mile and 50-mile EPZ should therefore be rejected as challenges to the formal NRC Policy Statement. Moreover, in view of the substantial public input already received by the Commission on the EPZ concept, and the further comment likely from the December 19, 1970 Federal Register notice, little useful purpose would be

1770 138

^{3/} See also 43 Fed. Reg. 37473 (August 23, 1978) (notice of proposed rulemaking to address emergency planning considerations that extend to areas outside the Low Population Zone ("LPZ")).

served by authorizing a duplicate investigation into the adequacy of the 10-mile and 50-mile EPZ's during this restart proceeding. If any intervenors desire to litigate the adequacy of those EPZ's, the appropriate forum is the ongoing rulemaking proceeding. What is appropriate for litigation here is the adequacy of Licensee's plans to implement the 10-mile and 50-mile EPZ. The proceeding will be more focused and the record more useful to the Commissioners if Licensee's approach to the new guidelines is evaluated, rather than providing the Commission with a mere rehash as to the adequacy of the guidelines themselves. For these reasons contentions requiring emergency planning on the basis of core-melt and breach of containment, or otherwise questioning the adequacy of the 10-mile and 50-mile EPZ's, should be rejected.

Licensee's objections to specific emergency planning contentions follow.

Union of Concerned Scientists

UCS Contention No. 16 -- Licensee objects to this contention which asserts that Licensee's Emergency Plan is inadequate "because it is not based on a weather-dependent worst case analysis of the potential consequences of a core melt with breach of containment." Although UCS claims that its amended contention is in response to the Licensing Board's direction that more detailed emergency planning contentions be submitted after review of Licensee's updated Emergency Plan, UCS' amended contention is in essence identical to its earlier

contention -- all that has been added is language reflecting the need for a weather-dependent analysis. As to the original contention, the Licensing Board already has ruled that "the assumption of such an unspecified Class 9 accident upon which the contention depends is too vague, of insufficient bases and lacks nexus to the accident at TMI-2" (First Special Prehearing Conference Order at 24). The modification submitted by UCS does not cure these defects. Therefore, UCS Contention No. 16 should be rejected as inconsistent with the Licensing Board's earlier ruling and as an inappropriate attack on the Commission's Policy Statement adopting the 10-mile EPZ.

Anti-Nuclear Group Representing York

ANGRY Contention No. 1 -- By order of the Licensing Board this contention already has been consolidated with ANGRY Contention No. 2 (First Special Prehearing Conference Order at 36).

ANGRY Contention No. 2 -- This contention was not modified or supplemented in ANGRY's filing detailing its emergency planning contentions.

Subpart A -- To the extent this subpart seeks as a precondition of TMI-1 restart formal NRC/FEMA concurrence in the emergency plan of the Commonwealth of Pennsylvania, Licensee objects to its admission. Currently, there is no requirement tying facility licensing to such a concurrence, although the proposed rulemaking published in the Federal Register

on December 19, 1979, addresses that issue. Until such time as the NRC amends its rules requiring concurrence as a condition to facility licensing, Licensee opposes any such requirement in this proceeding. However, if this subpart is intended only to imply that the adequacy of the State's emergency plan may be considered in this proceeding, Licensee does not object to such consideration. ANGRY's specific objections to Pennsylvania's emergency plan are detailed elsewhere, and this subpart provides no specification of the alleged inadequacies. Therefore, subpart A should be rejected.

Subpart B -- Licensee objects to this subpart as too vague. Use of phrases like "distance which defines the area within which [effective emergency response action] is deemed necessary in order to protect public health and safety" are totally inadequate to inform Licensee of the nature of ANGRY's objection. As described in the updated Emergency Plan, Licensee is adopting the 10-mile and 50-mile EPZ's as a basis for its emergency planning. If this subpart is intended to challenge those EPZ's, ANGRY has detailed that objection elsewhere. If this subpart is intended to mean something else, Licensee is unable to respond due to the vagueness of the contention. In either event, subpart B should be rejected.

Subpart C -- Licensee objects to this subpart which constitutes an attack on the Commission's Policy Statement adopting the 10-mile EPZ.

Subpart D -- This subpart parallels the concerns identified by ANGRY in subpart A, but focuses on the county emergency plans rather than the State plan. Licensee objects to this subpart for the reasons identified above with respect to subpart A.

Subpart E -- Licensee objects to this subpart which alleges that the Commission's requirements with respect to "test exercises" are inadequate. The updated Emergency Plan fully describes the joint nature of the exercises that are to be conducted and the provisions for monitoring, critique, and correction of deficiencies (see Licensee's Emergency Plan at § 4.8.0). In its supplemental filing ANGRY did not specify any alleged inadequacies in this aspect of the Emergency Plan. Therefore, subpart E should be rejected for lack of specificity.

Subpart F -- Licensee does not object to the specific aspects of subpart F which allege that Licensee's offsite monitoring capability is inadequate because it does not provide for permanent offsite monitoring devices which can be remotely read onsite and because Licensee's information analysis capability is not equal to that provided by the Atmospheric Release Advisory Capability System.

ANGRY Contention No. 3(A) -- ANGRY's filing of December 18, 1979, replaces in its entirety ANGRY's earlier Contention No. 3(A).

Subpart (a) -- Licensee objects to subpart (a) since it constitutes an attack on the Commission's Policy Statement adopting the 10-mile EPZ.^{4/}

Subparts (b) through (j) -- Licensee does not object to subparts (b) through (j).

ANGRY Contention No. 3(B) -- ANGRY's filing of December 18, 1979, replaces in its entirety ANGRY's earlier Contention No. 3(B).

Subpart (a) -- Licensee objects to subpart (a) since it constitutes an attack on the Commission's Policy Statement adopting the 10-mile EPZ.

Subparts (b) through (e) -- Licensee does not object to subparts (b) through (e).

ANGRY Contention No. 3(C) -- ANGRY's filing of December 18, 1979, did not amend or supplement its earlier Contention No. 3(C). Licensee does not object to this contention.

Newberry Township TMI Steering Committee

Newberry Township Contention No. 3(A) -- The various subparts of this contention raise challenges to Licensee's updated Emergency Plan.

Subpart (l) -- Licensee objects to this subpart since

^{4/} Licensee notes that the material cited by ANGRY from § 13.3.1 of Regulatory Guide 1.70 is potentially misleading in that the material deleted at the end of the quotation modifies "any other potentially affected sector of the environs" to include at a minimum the outer boundary of the proposed LPZ. The 10-mile EPZ extends significantly beyond the TMI LPZ (see Reg. Guide 1.70, rev. 3, December 1978 at p. 13-10).

it constitutes an attack on the Commission's Policy Statement adopting the 10-mile EPZ.

Subpart (2) -- Licensee objects to this subpart since it is based on a misunderstanding of the definition of Low Population Zone ("LPZ") contained in 10 C.F.R. §§ 100.3(b) and 100.11(a)(2), and, therefore, constitutes an attack on a valid Commission regulation.

Subparts (3) and (4) -- Licensee does not object to subparts (3) and (4).

Subpart (5) -- Licensee objects to subpart (5) in that it merely incorporates by reference other contentions.

Newberry Township Contention No. 3(B) -- The various subparts of this contention raise challenges to the York County Emergency Plan.

Subpart (1) -- Licensee does not object to subpart (1).

Subpart (2) -- To the extent this subpart challenges the 10-mile EPZ by objecting to public shelters outside of a 12-mile radius, Licensee objects for the reasons previously noted.

Subpart (3) -- Licensee objects to subpart (3) in that it merely incorporates by reference allegations found at subpart (15).

Subparts (4) through (20) -- Licensee does not object to subparts (4) through (20).

Subpart (21) -- Licensee objects to this subpart which asserts that an evacuation drill should be conducted in order

1770 144

to detect alleged deficiencies in the emergency plan. The issue of whether evacuation drills should be conducted was the subject of a petition for rulemaking filed on August 6, 1975, by the Public Interest Research Group and 30 other citizen groups. Notice of the petition was published in the Federal Register and comments on the petition were solicited by the Commission (see 40 Fed. Reg. 43778 (September 23, 1975)). Following review of the extensive comments received, the Commission issued on July 7, 1977, a decision denying the petition for rulemaking. Notice of the denial was published in the Federal Register (see 42 Fed. Reg. 36326 (July 14, 1977)). The issue of evacuation drills having been fully considered and rejected by the Commission in a rulemaking proceeding, it is now inappropriate to relitigate the matter in this restart proceeding. Subpart (21) should therefore be rejected.

Newberry Township Contention No. 3(C) -- The various subparts of this contention raise challenges to the Dauphin County Emergency Plan.

Subparts (1) through (7) -- Licensee does not object to subparts (1) through (7).

Subpart (8) -- For reasons previously identified, Licensee objects to that portion of this subpart which alleges that the "Dauphin County emergency plan is inadequate because it is not based on a weather-dependent worst case analysis of the potential consequences of a core melt down with breach of containment."

Subpart (9) -- For reasons previously identified, Licensee objects to that portion of this subpart which alleges that the Dauphin County emergency "does not indicate how long an evacuation outside of a 20-mile radius of the Three Mile Island Nuclear generating station would take."

Steven C. Sholly^{5/}

Sholly Contention Nos. 8(A) and (B) -- Licensee does not object to Contention Nos 8(A) and (B).

Sholly Contention No. 8(C) -- Licensee objects to this contention which constitutes an attack on the Commission's Statement of Policy adopting the 10-mile EPZ.

Sholly Contention No. 8(D) -- Licensee objects to this contention which asserts that an unspecified set of Class 9 accidents have not been considered. As previously noted, the 10-mile EPZ is based on both design basis accidents and less severe core melt accidents (i.e., some Class 9 accidents). To the extent this contention seeks consideration of the more severe Class 9 accidents it constitutes an impermissible attack on the 10-mile EPZ.

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Mr. Sholly argues at the beginning of his filing that the detailed implementing procedures are necessary to determine the adequacy of the updated Emergency Plan. Licensee does not agree. Detailed implementing procedures always have been reviewed by the Commission Staff. Assuming that the Licensing Board determines after a full hearing that the Emergency Plan is adequate, there is no reason why the adequacy of the detailed implementing procedures cannot be determined outside of the hearing process by the Staff.

Sholly Contention Nos. 8(E) through 8(P) -- Licensee does not object to Contention Nos. 8(E) through 8(P).

Sholly Contention No. 8(Q) -- Licensee objects to this contention as overly vague and broad.

Sholly Contention No. 8(R) -- Licensee does not object to Contention No. 8(R).

Sholly Contention No. 8(S) -- Licensee objects to this contention as overly vague. Mr. Sholly has not identified which of the letters of agreement and understanding are inadequate or in what manner those letters fail to provide sufficient information.

Sholly Contention No. 8(T) -- Licensee objects to this contention as overly vague and broad. It contains a short recitation of factors relevant to emergency planning but fails totally to describe how those very general factors have been ignored in Licensee's updated Emergency Plan.

Sholly Contention Nos. 8(U) through 8(Y) -- Licensee does not object to Contention Nos. 8(U) through 8(Y).

Sholly Contention No. 8(Z) -- Licensee objects to Contention No. 8(Z) as an impermissible attack on the Commission's regulations. The definition of Exclusion Area recognizes that the "area may be traversed by a * * * waterway * * * provided appropriate and effective arrangements are made to control traffic on the * * * waterway, in case of emergency, to protect the public health and safety" (10 C.F.R. § 100.3(a)). Thus, the regulation does not require that a licensee have "legal" (i.e., ownership) control as asserted by Mr. Sholly. The contention should therefore be rejected.

Sholly Contention Nos. 8(AA) through 8(DD) -- Licensee does not object to Contention Nos. 8(AA) through 8(DD).

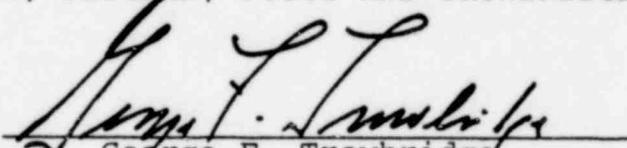
Sholly Contention No. 8(EE) -- Licensee objects to this contention which asserts that all events which may be hyopthesized for TMI-1 may not fall into one of the four classes of emergencies. In the absence of any specific event which Mr. Sholly asserts cannot properly be classified, the contention lacks the requisite specificity. In addition, Mr. Sholly has not provided any basis for the contention.

Sholly Contention Nos. 8(FF) and 8(GG) -- Licensee does not object to Contention Nos. 8(FF) and 8(GG).

Respectfully submitted,

SHAW, PITTMAN, POTTS AND TROWBRIDGE

By:


George F. Trowbridge

Dated: January 2, 1980

1770 148

January 2, 1980

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Response to Emergency Planning Contentions", were served upon those persons on the attached Service List by deposit in the United States mail, postage prepaid, this 2nd day of January, 1980.



Robert E. Zahler

Dated: January 2, 1980

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