

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)

METROPOLITAN EDISON COMPANY,)
et al.,)

(Three Mile Island Nuclear)
Station, Unit No. 1))
)

Docket No. 50-289
(Restart)



PEOPLE AGAINST NUCLEAR ENERGY
PROPOSED PROCEDURES

In response to the procedural suggestions submitted to the Board by Metropolitan Edison (Met. Ed.) on November 2, 1979, People Against Nuclear Energy (PANE) files the following proposed procedures, which are designed to allow orderly and expeditious handling of this case, while protecting the rights of all of the parties.

I. Contentions

A. Order of Consideration

The Board will hear argument on two issues arising from the contentions proposed by the intervenors: (1) whether the technical contentions are within the scope of this proceeding, and (2) whether the Commission is required to consider the issue of psychological distress. PANE agrees that considering first the contentions of the Union of Concerned Scientists will help serve to define the scope of the proceeding on the technical issues. PANE believes this should be followed by argument on the psychological distress contentions. These contentions

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have been the subject of almost all of the legal argument to date and may involve lengthy oral argument. Having addressed the two major categories of issues, the Board will then be able to consider the remaining contentions of the parties.

B. Argument on Contentions

Met. Ed. proposes that argument on each set of contentions be limited to itself, the NRC Staff, and the Intervenor advancing the contention. This would be extremely unfair to a number of the Intervenors. First, because many of the contentions are similar, Met. Ed. would have the opportunity to present its argument on a particular type of contention every time that type of contention is considered, while the Intervenors will have the opportunity to argue only once. Second, a decision by the Board with respect to a particular contention, or even tentative conclusions reached by Board members as the result of argument on a contention might prejudice later argument by other Intervenors on the same type of contention or on related contentions.

At the same time, PANE recognizes the need to proceed in an orderly and expeditious manner. PANE proposes, therefore, that the Board urge the parties to limit their responsive arguments to contentions that are the same or are related to contentions that they have proposed. PANE does not believe that the Board need take the drastic step of formally limiting argument unless it becomes clear at the pre-hearing conference that such an order is required. It should rely upon the good faith cooperation of the parties.

C. Schedule for Revised Contentions

PANE does not object to Met. Ed.'s proposal that revised or supplemental contentions be submitted thirty days after new information becomes available. However, in light of the limited resources of the Intervenors, PANE believes that the NRC Staff should be responsible for providing any such information to the Intervenors, including the Rogovin report and the Lessons Learned report, and that the thirty day period should run from the date the Intervenors receive the material.

II. Consolidation

Met. Ed. proposes that the Board consolidate the Intervenors according to major issue categories. PANE objects to this proposal for three reasons. First, as with limiting argument on the contentions, it is premature and may not be necessary. PANE does not believe that the Board should take any action that would restrict the rights of the parties unless it becomes apparent during the course of the proceedings that consolidation is appropriate to avoid repetitive presentations. The Board already has the authority to restrict irrelevant, duplicative, or repetitive cross examination, evidence and argument. 10 CFR 2.714(e)(1). The Board should make clear its concern that the hearing be conducted expeditiously and urge the parties to consolidate or coordinate voluntarily.

Forced consolidation might place an Intervenor in the untenable position of being responsible for presenting the case on behalf of several parties with which their Counsel

had no formal arrangement for either representation or compensation. Further, the fact that Counsel's obligation is to his or her particular client would inevitably mean that the interests of a non-client group would be slighted. The Board cannot require an Intervenor to permit its Counsel to represent another group, and it cannot require an unrepresented Intervenor to retain Counsel.

The proposal to consolidate Intervenors according to issues ignores the fact that consolidation is authorized only if the parties share the same interests. 10 CFR 2.714(e)(2). In PANE's case, for example, only the Newberry Township Steering Committee could be considered as having interests sufficiently in common to justify consolidation. PANE and Newberry Township are unique in that they represent people who live within five miles of the reactors, which is the population recognized by the Report of the President's Commission on the Accident at Three Mile Island as having suffered the highest levels of psychological distress. As such, their interests are not the same as those living farther from the reactors.

III. Discovery Schedule

PANE objects strenuously to the discovery schedule proposed by Met. Ed. Thirty days from the Board's order is simply not enough time for discovery in light of the massive amount of material that must be reviewed in preparing discovery requests. More importantly, for PANE and the other Intervenors raising psychological distress contentions, discovery cannot reasonably begin until the Commission decides whether the issue will be considered.

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Prior to that time PANE cannot commit its severely limited resources to preparing its case on psychological distress or to obtaining the information and expert assistance that will be necessary to file discovery requests. Met. Ed.'s discovery schedule would effectively eliminate PANE's discovery rights.

In addition, PANE will not know the extent of the effort it will be able to undertake until the Commission rules on a funding request which PANE will submit to the Board in the near future.

Accordingly, PANE proposes that the Board allow discovery to begin immediately and order that all discovery requests be made within sixty days of the Commission's ruling on the various funding requests. All responses would be due within thirty days following receipt of the request. The sixty day period is necessary to allow PANE the time to prepare its requests. It is also necessary to allow the parties time to undertake a second round of discovery based on the initial responses. Providing for a second round, which Met. Ed.'s schedule would preclude, would also serve in part to reduce the need for late discovery requests.

PANE also objects to the procedure proposed by Met. Ed. in its Notice of Discovery Reading Room filed on October 26, 1979, under which parties would be required to search for documents in Met. Ed.'s facility and to pay 10 cents per page for any copies. This procedure creates unjustifiable burdens that would seriously hamper the Intervenor's discovery. PANE's

major concern is the cost of duplication. Met. Ed. knows that many of the Intervenors are citizens groups that cannot afford substantial copying costs. Normally, Met. Ed. would provide copies of the requested material, and there is no justification for placing the financial burden of copying costs on the Intervenors in this case.

In addition, requiring the parties to use the discovery reading room rather than providing them with copies would pose a substantial burden. First, the Intervenors would have to search through the masses of material in order to find what they need. Second, there would inevitably be confusion and conflicts among the Intervenors using the discovery room at the same time.

At the very least, Met. Ed.'s proposal must be substantially refined. PANE proposes a compromise solution. First, Met. Ed. may respond to discovery requests by providing the precise identification of documents in its reading room so that Intervenors will have no difficulty finding them. The documents must be identified by date, author, recipient (if any), subject matter, and exact file location, and the description must include a brief synopsis of the information on the document. Second, Met. Ed. must have enough copies of documents available to assure that all Intervenors will be able to review them without interfering with each other. Third, Met. Ed. must provide copies free of charge, the copying to be done by Met. Ed.'s employees. Fourth, the Intervenors will agree to follow this procedure

rather than normal discovery procedures, and they will also agree to limit their copying requests as far as possible.

IV. Duplication and Filing

PANE proposes that duplication and filing costs and procedures be drastically simplified by providing that all Intervenor shall serve any filings, other than discovery requests, only on the NRC Staff, and that the Staff shall then serve Met. Ed. and all of the other Intervenors. The Staff shall also provide the twenty copies that parties are normally required to file with Docketing and Service.

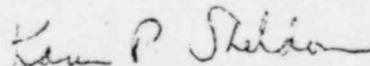
Met. Ed. proposes procedures under which Intervenors would not receive copies of all of the filings, interrogatories, and other documents. This would leave the Intervenors at a severe disadvantage and seriously prejudice their rights. It would also lead Intervenors to file duplicative or repetitive discovery requests since they would not know what other parties had requested. Under PANE's proposal, all of the parties would receive copies of everything at the same time at minimal cost.

PANE believes that its proposals will serve to streamline the handling of this proceeding while protecting the rights of all of the parties.

Respectfully submitted,



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