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	)	Docket No. 50-289
	)	(Restart)
(Three Mile Island Nuclear Station, Unit No. 1)	)	

THIRD SPECIAL PREHEARING CONFERENCE ORDER

(January 25, 1980)

In this order the board continues to rule on revised contentions and requests for reconsideration of earlier rulings made pursuant to 10 CFR 2.751a.

Emergency Planning Contentions -- Criteria

Timely revisions to emergency planning contentions have been filed by Union of Concerned Scientists (UCS), Mr. Sholly, Newberry Intervenors, and Anti-Nuclear Group Representing York (ANGRY).[1/] Several of the revisions challenge the adequacy of the 10-mile emergency planning zone (EPZ)

1/ Late revisions to emergency planning contentions have been filed by Environmental Coalition for Nuclear Power (ECNP), Newberry Intervenors, and Mrs. Aamodt. The board will rule upon these revisions in a future order.

for the plume exposure pathway employed by the licensee in its emergency plan. In Licensee's Response to Emergency Planning Contentions dated January 2, 1980, the licensee describes the history behind the Commission's proposed rule for emergency planning (44 Fed. Reg. 75167, published December 19, 1979). The history includes a formal NRC policy statement which endorses the 10-mile plume and 50-mile ingestion zones and endorses NUREG-0396.[2/] This statement was published on October 23, 1979, 44 Fed. Reg. 61123. The proposed rule itself incorporates 10-mile plume and 50-mile ingestion zones.

Pointing to the policy statement and the proposed rule, licensee asserts that all contentions challenging the 10-mile and 50-mile EPZs in licensee's emergency plan should be barred as challenges to formal NRC policy. Licensee's Response, pp. 3-6.

The staff in NRC Staff Response to Revised Contentions, dated January 8, 1980, takes a different position. The Staff does not regard the Commission's policy statement endorsing the 10-mile plume EPZ as a bar to contentions challenging the licensee's 10-mile evacuation plan. The staff refers to the Commission's order of August 9, 1979, at page 8 where it is recommended that the licensee have the capability to take appropriate emergency actions for the population around the site for a distance of 10 miles

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[2/] Planning Basis for the Development of State and Local Government Radiological Emergency Response Plans in Support of Light Water Nuclear Power Plants, December 1978.

as a long-term action. The staff argues further that the sufficiency of that recommendation may be raised as an issue. Staff Response, p. 2. The staff's view is consistent with our ruling in the First Special Prehearing Conference Order, December 18, 1979 (p. 7, 8), where we held that the Commission, at page 12 of its order, authorized an inquiry into the sufficiency of the short- and long-term actions recommended for the licensee. By this reasoning, staff urges a standard by which we would accept contentions challenging the sufficiency of the licensee's 10-mile plume EPZ, but such contentions must specify why the 10-mile radius is inadequate in terms of the scope of this proceeding. Staff Response, p. 3. The staff would be guided by the Commission's August 9 order, not the policy statement or proposed rule.

Mr. Sholly, responding to the licensee's objection to his EPZ contentions, accepts rulemaking as the proper forum in which to pursue the Commission's policy on the EPZ concept, but challenges licensee's interpretations of NUREG-0396.[3/] Mr. Sholly correctly observes that NUREG-0396, which was embodied in the policy statement and is referenced in the proposed emergency planning rule, would not impose an absolute 10-mile plume EPZ; that considerable judgment is required based upon consideration of local conditions. Mr. Sholly's Response, pp. 2-6.

[3/] Intervenor Steven C. Sholly Response to Licensee Objections to Revised Emergency Planning Contentions, January 7, 1980. There are no express provisions for responding to objections to contentions in the Rules of Practice, but such responses are appropriate. See the discussion on p. 21, n. 12, infra.

Our rulings on the EPZs are based upon consideration of both the staff's analysis and Mr. Sholly's observations. First, we view the recommendation in the order that licensee plan to take emergency actions for the population 10 miles around the site to be a rebuttable presumption that 10 miles for a plume EPZ is adequate. The sufficiency of the 10-mile radius may be challenged for the reasons we stated in the First Special Prehearing Conference Order, supra.

The Commission, in discussing the rationale for the proposed changes in emergency planning rules, stated that the proposed rule is an interim upgrade of NRC emergency planning regulations. 44 Fed. Reg. 75169, 75170. Even though the proposed rule may not have the force of an interim rule, its use in measuring the reasonableness and sufficiency of licensee's emergency plan is appropriate and is authorized by the Commission's rationale.[4/] For our purposes, the following description of the EPZs, discussed under both alternatives of the proposed rule, is relevant:

> Generally, the plume exposure pathway EPZ for nuclear power reactors shall consist of an area about 10 miles in radius and the ingestion pathway EPZ shall consist of an area about 50 miles in radius. The exact size and configuration of the EPZs surrounding a particular nuclear power reactor shall be determined in relation to the emergency response needs and capabilities as they are affected by such local conditions as demography, topography, land characteristics, access routes, and local jurisdictional boundaries. The plans for the

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[4/] No party asserts the pendency of the rulemaking proceeding as a bar to adjudication of emergency plans because, as we noted, emergency planning is a mandatory issue under the August 9 order.

> ingestion pathway shall focus on such less immediate actions as are appropriate to protect the food ingestion pathway. 44 Fed Reg. 75170 and 75171.

Accordingly, we will accept emergency planning contentions which specify local circumstances raising questions about the adequacy of the licensee's EPZs, but reject unspecified contentions which challenge the basic concept of the 10-mile and 50-mile EPZs. We will look to the proposed rule and its referenced documents for guidance during this phase of the proceeding. We will, of course, adjust to changes appearing in the final rule which will probably be in effect before the hearing is concluded.

UCS Revised Contention 16

In our First Special Prehearing Conference Order we rejected USC's emergency planning contention, No. 16, which asserted that emergency planning should be based on "a worst case analysis of the potential accident consequences of a core melt with breach of containment." We viewed the contention to be too vague, insufficient in bases and without nexus to the TMI-2 accident. Now UCS resubmits basically the same contention, but adds a requirement that emergency planning also be based upon a "weather-dependent worst case analysis". The board agrees with the licensee and the staff that the revision fails to correct the original defects. It provides no ground to reverse our earlier ruling.

We feel, however, that UCS is entitled to have its new arguments supporting the revised contention addressed by the board.[5/] It is true, as UCS reminds us, we stated that evidence may have to be presented on the question of whether evacuation plans adequately consider the credible consequences of an accident. First Special Prehearing Conference Order, p. 24. We have planned for this eventuality by requiring the staff to report to us and to the Commission:

> ... whether or not (and the reasons therefor) any specific accident sequence, which has a reasonable nexus to the TMI-2 accident and which heretofore may have been regarded as a Class 9 accident, should be considered in the analyses of the acceptability of returning TMI Unit 1 to operation.

Id., p. 17.

In addition the board has admitted specific Class 9 accident contentions having a reasonable nexus to the TMI-2 accident. We anticipated further analysis of the subject in connection with the evidentiary showing under UCS's Contention 13 and evidence to be presented under the long-term issues included in the Commission order incorporating Recommendation 2.1.9.3 (transients and accidents) of NUREG-0578.

While UCS may be correct (so far as we know) in that the licensee and the staff have not posited a design basis accident for emergency planning, it is a non sequitor, we believe, to try to justify accepting UCS's

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[5/] Union of Concerned Scientists Reply to Licensee's and Staff's Objection to Emergency Planning Contention, January 14, 1980.

Contention 16 on that account. Until the record is more fully developed, the board must retain a selection of options in accepting accident bases for emergency planning.[6/]

UCS also addressed the due process considerations in using a Commission policy statement endorsing a 10-mile plume EPZ. Reply, pp. 5-7. We believe that UCS has recited generally accepted administrative law in citing Pacific Gas & Electric Co. v. FPC, 506 F.2d, 33, 38 (D.C. Cir. 1974). However, UCS has not anticipated the manner in which this board will apply the Commission's policy statement and proposed rule. This board is not an agency seeking to bootstrap a policy statement or proposed rule up to a properly adopted substantive rule. We are a component of the Commission working toward an initial decision. The proposed rule and policy statement are useful to us only to construe the order and notice of hearing, which hearing, it must be recalled, is entirely within the Commission's discretion.

Sholly's Emergency Planning Contentions

There are no objections to Mr. Sholly's revised emergency planning contentions 8 A-B, 8 E-P, 8 R, 8 U-Y, 8 AA-DD and 8 FF-GG, which are accepted as issues in controversy.

[6/] We recommend that the parties with emergency planning issues become familiar with the discussion of accident considerations in NUREG-0396, pp. 4-6, and Appendix III where the Task Force declines to attempt to define a specific accident sequence for emergency planning.

Mr. Sholly's Contention 8 C challenges licensee's failure to consider local contentions in adopting the 10-mile plume EPZ. We accept the contention over licensee's objection, but we agree with the staff that the contention should be made more specific in the course of discovery.

Mr. Sholly's Contention 8 D faults the licensee's emergency plan because there is no evidence that Class 9 accidents are considered. We reject the contention, but not for the reason advanced by licensee (that it is an impermissible attack of the 10-mile EPZ) but because it lacks specificity. The contention as worded is not litigable. This defect remains even after Mr. Sholly explains his contention in his response (p. 5, 6). However, Mr. Sholly has raised a question which needs to be answered.

Licensee stated in its objection to Contention 8 D that the 10-mile EPZ is in fact based upon both design basis and less severe core melt accidents (i.e., some Class 9 accidents). Licensee's Response, p. 13. Mr. Sholly, in his response to the objection, explains that he is not attacking the consideration of Class 9 accidents assumed in NUREG-0396. He wishes to know if the licensee's emergency plan has in fact incorporated the Class 9 considerations of NUREG-0396 into its emergency plan. The question needs answering. Perhaps the licensee, by adopting 10-mile and 50-mile EPZs into its emergency plan, believes that it has thereby implicitly assumed the same Class 9 considerations embodied in NUREG-0396; we do not know. As the licensee points out, it may be premature to involve the board in a substantive review of its emergency plan (Response, p. 3) so we, as well as the intervenors, need guidance through the plan. Therefore, licensee is

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directed to provide further explanation of its position on this issue. The explanation may require a reconsideration of our ruling on Mr. Sholly's Contention 8 D.

Mr. Sholly's Contention 8 Q is accepted. His explanation of the contention in his response (p. 6) is satisfactory.

Mr. Sholly's Contention 8 S is also accepted for the reasons set forth in his response (pp. 6, 7).

Mr. Sholly's Contention 8 T is, as he acknowledges in his response, "somewhat vague". But the board believes the subject matter is important and, over the licensee's objection, we accept the contention. Mr. Sholly offers to provide greater detail and specificity. This is required and should be provided as soon as practicable before the close of discovery.

Mr. Sholly's Contention 8 Z asserted that the licensee has no "legal means" to control access to the exclusion area on the Susquehanna River. Both the staff and licensee equated "legal means" with "ownership" of the affected portions of the waterway. This meaning, they assert, is an attack upon 10 CFR 100.2(a) which does not require ownership of the exclusion area. Mr. Sholly has offered to delete the word "legal" in the contention, but we see no need for the deletion; "legal means" does not mean "ownership". The board accepts the contention with the explanation offered by Mr. Sholly in his response, but we modify the contention to read "... Licensee has no reliable and legal means to control access; ... ."

Mr. Sholly's Contention EE is withdrawn in his response to the objections. His emergency planning contentions should not be redesignated as he attempts to do. The board prefers to have a void in the alphabetical scheme rather than to risk confusion in the identity of contentions.

Newberry Intervenor Emergency Planning Contentions

There are no objections to Newberry Intervenor's Contentions 3(a) (3) & (4), 3(b) (1) & (4) through (20), and 3(c) (1) through (7). Contentions 3(a) (3) & (4) are discussed and limited below, however.

Newberry Contention 3(a) (1) is an unspecified challenge to the 10-mile plume EPZ and is rejected because it lacks specificity.

Newberry Contention 3(a) (2) appears to be based upon the meaning of "low population zone" in 10 CFR 100.3(b) and 100.11(a)(2). As used in the contention, which related to all of Newberry Township, "low population zone" is meaningless. The contention fails for that reason.

Newberry Contentions 3(a) (3) & (4), as noted above, are accepted without objection. However, the staff correctly observes that if these contentions seek to raise siting issues, they are beyond the scope of the proceeding. We do not read them as raising siting issues.

Newberry Contention 3(a) (5) is not actually a contention under the 3(a) series, but appears to be a summary introduction to the 3(b) series and is rejected as redundant.

Newberry Contention 3(b) (2) would, without explanation or evident justification, arbitrarily extend the 10-mile plume EPZ to a distance of more than 12 miles. Apparently, the contention would require that all of York County be included in the plume EPZ. The contention is rejected.

Newberry Contention 3(b) (3) is functionally indistinguishable from its Contention 3(b) (15). For that reason it is rejected in favor of 3(b) (15) which has been accepted above.

Newberry Contention 3(b) (21) alleges that the licensee's emergency plan is deficient in that it does not provide for mock evacuation drills. Staff does not object but the licensee objects on the ground that the Commission considered and rejected evacuation drills in an earlier petition for rulemaking. Licensee's Response, pp. 11, 12. We do not regard the previous disposition to be binding upon this particular proceeding. To accept it as an issue now would not be to "relitigate the matter" as licensee asserts. Id. The contention is accepted.

Newberry's Contention 3(c) 8 is acceptable to the licensee and staff except for the sentence "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." We agree that the sentence is not suitable, and for the reasons discussed in relation to UCS Contention 16, we delete the sentence from the contention which is otherwise accepted as an issue.

Newberry Contention 3(c) (9) assails the Dauphin County emergency plan because it does not indicate how long evacuation outside a 20-mile radius of TMI would take. The contention is unspecific and is rejected for the reason stated in the general discussion of the EPZ criteria above.

ANGRY's Emergency Planning Contentions

ANGRY's emergency planning contentions revision filed on December 18, 1979, does not affect their original emergency planning Contentions II or III(C). The board had already ruled in the First Special Prehearing Conference Order that Angry's Contention I was not acceptable. There are no objections to ANGRY's Contentions II(F), III(A) (b) through (j), III(B) (b) through (e), and III(C). These contentions are accepted.

ANGRY's Contention II(A) faults the licensee's emergency plan because the emergency response plan of the Commonwealth of Pennsylvania does not have the concurrence of federal agencies, NRC and FEMA. Licensee acknowledges that the proposed emergency plan rule addresses the issue. However, licensee states that, until the NRC amends its rules requiring concurrence as a condition to facility licensing, it opposes any such requirement in this proceeding. The licensee's position, we believe, is sharply inconsistent with its position that the very same proposed rule permits a plume EPZ limited to 10 miles in this proceeding. The contention raises a litigable issue and is accepted.

ANGRY's Contention II(B) is too vague and is therefore rejected.

ANGRY's Contention II(C) asserts that the 10-mile EPZ is too limited because a 20-mile evacuation was given serious consideration during the TMI 2 accident. ANGRY would have the EPZ extend as far as 100 miles to include all areas adversely affected by the consequences of a nuclear accident. The underlying premise of the contention (20-mile evacuation considered during the accident) is illogical. The balance of the contention is so unbounded as to render it unacceptable for litigation.

ANGRY's Contention II(D) is parallel to Contention II(A) but it relates to county emergency plans rather than to Pennsylvania's plan. Licensee objects on the same inconsistent ground. We accept the contentions for the same reasons.

ANGRY's Contention II(E) is accepted. Licensee's objection to the contention is overruled in part because its reference to Section 4.8.0 of its emergency plan appears to the board to be inaccurate.

ANGRY's Revised Contentions III(A) & (B) supersede entirely its original Contentions III(A) and (B).

ANGRY's Contention III(A) (a) asserts that the licensee's 10-mile EPZ lacks substantial basis in logic or fact, citing Regulatory Guide 1.70, Section 13.3.1. ANGRY ignores the 10-mile reference in the Commission's order, the policy statement and the proposed rule. The contention is denied because it is without basis and specificity.

ANGRY's Contention III(B) (a) again challenges without explanation or elaboration the use of a 10-mile plume EPZ. The contention is rejected.

Other Considerations

ANGRY Revised Contention VI

On December 18, 1979, ANGRY filed a revised Contention VI apparently in response to the board's rejection of its previously filed Contention 6 in the First Special Prehearing Conference Order at p. 37.[7/] However, notwithstanding a new lengthy bases section, ANGRY presents no refinement or elaboration in support of the contention which cures the defects previously noted by the board. If anything, the slight revisions (there are deletions and additions beyond those pointed out in the licensee's response of January 2, 1980) are in the direction of broadening the contention and making it less specific. For example, insertion of the word "reasonably" does not assist to specify better "... all conceivable combinations of human and mechanical failure". The requirement for operator training broadens instead of specifies the contentions.

The bases advanced by ANGRY, which includes extensive quotations from NUREG-0578 (TMI-2 Lessons Learned Status Report) and the President's

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7/ There is no procedure permitting the filing of a modified contention without good cause or other leave after the denial of the original contention. However, in this instance, we construe ANGRY's filing to be in the nature of an objection seeking reconsideration of the First Special Prehearing Conference Order pursuant to 10 CFR 2.751a(d)

(Kemeny) Commission Report, support the proposition that the overall broad topic of methodology of determining and analyzing design bases accidents is important and of great current concern. There is no dispute on this. This does not mean that any vague unbounded contention on the subject is admissible.

ANGRY states at the end of its Contention 6: "The measures specified in the NRC's August 9 order fail to impose these essential conditions to the restart of TMI-1." Thus it can be seen that ANGRY, recognizing its contention falls outside the scope of the Commission's order, is quarreling with the Commission's judgment on the scope of the proceeding, not with our interpretation of it.[8/]

It is also important to note that in denying its contention, the board permitted ANGRY to adopt UCS Contention 13. As noted in our First

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[8/] ANGRY's extensive quotes from NUREG-0578 come from Section 3 of that report entitled, "Future Work by the Lessons Learned Task Force." The particular subsection relied upon is §3.1, "General Safety Criteria." This broad topic is not included in the short-term recommendations of Section 2 of NUREG-0578 nor in the Category A or B recommendations of Table B-1 of NUREG-0578, referenced by the Commission Order of August 9, 1979 (at pp. 7 and 8) in connection with its delineation of the scope of issues within this proceeding. Accordingly, ANGRY's reliance upon Section 3 of NUREG-0578 does not support admission of its proposed Contention 6 in this proceeding.

Special Prehearing Conference Order (at pp. 21-23), ANGRY can utilize discovery on that contention, along with the staff's response to our directive (at p. 17) to specify whether any specific "Class 9" accident sequence should now be considered, to focus on specific accident sequences within the overall broad concern expressed in ANGRY's rejected Contention 6.

UCS Request for Reconsideration or Certification

UCS, by an out-of-time filing of January 4, 1980, requests that we reconsider, or in the alternative certify to the Commission, the denial of UCS Contentions 17, 18 and 20 in our First Special Prehearing Conference Order. We decline to do either.

We need not rehearse the reasons given in our prior order denying UCS Contentions 17, 18 and 20. We stand by those reasons. In addition, we decline to certify the questions to the Commission. Interlocutory review is sparingly exercised. See, e.g., Puget Sound Power and Light Company, et al. (Skagit, Units 1 and 2), ALAB-572, 10 NRC ____ (November 20, 1979); Public Service Co. of Indiana, et al. (Marble Hill, Units 1 and 2), ALAB-405, 5 NRC 1190, 1192 (1977); and cases cited in the two cases. Nothing in our rulings either: threatens UCS with immediate and serious irreparable impact which, as a practical matter, could not be alleviated by a later appeal (especially here where there will be a mandatory review by

the Commission itself prior to any restart of the reactor);[9/] or affects the basic structure of the proceeding in a pervasive or unusual manner. Marble Hill, supra.

With respect to Contention 20, it may be usefully noted that neither the staff nor the board has yet passed upon the question of whether an environmental impact statement (EIS) is required in this proceeding, and, if so, what the scope of it should be. We will consider radiological health and safety aspects of accidents, including those previously thought of as "Class 9", under several contentions, including UCS Contention 13. This examination may ultimately affect the correctness of any prior decision on the need for and scope of an EIS. However, this is a far cry from the assertion by UCS that Contentions 13 and 20 are in "lockstep" such that our admission of Contention 13 (with a carefully charted approach to greater specificity) perforce requires admission of Contention 20.

There is a great difference between a contention which brings into question the staff's methods of determining which potential accidents fall within the design basis and a requirement for an environmental impact statement to consider the consequences (see UCS request for reconsideration, at

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[9/] In the special circumstances of this proceeding, a denial by us of an intervenor's request for certification is at bottom a risk for the licensee, since the Commission will be reviewing the correctness of our actions prior to any restart of the reactor.

p. 2) of "so-called Class 9 accidents, particularly core meltdown with breach of containment." Even putting this distinction aside, as admitted for discovery by the board, UCS Contention 13 requires UCS, through discovery, to identify specific accident sequences with a reasonable nexus to the TMI-2 accident as a prerequisite to litigation of the safety analysis of such accidents.[10/] UCS correctly concedes in its request for reconsideration (at p. 2) that Contention 20 does not do this. The contention therefore lacks specificity and is broader than the scope of this proceeding.

As we have previously stated, actions by the Commission on the subject of Class 9 accidents, whether with regard to the question of rulemaking currently before it, or in responses to requests for guidance in other cases,[11/] will be factored into our consideration of Class 9 accidents in this proceeding.

10/ If UCS and the intervenors who have been permitted to adopt UCS Contention 13 do not do this, all that will remain of Contention 13 will be evidence addressing the general method by which the staff has determined whether accidents within the scope of this proceeding fall within or outside the design basis.

11/ See the staff's request to the Commission for further guidance in the Black Fox proceeding in the "Staff Statement of Position on Need to Consider Class 9 Events Pursuant to Direction in ALAB-573", January 7, 1980 (at p. 3).

Clarification of Admission of
Sholly Contention 16

By its motion of January 21, 1980, licensee requests that we clarify or modify our Second Special Prehearing Conference Order of January 11 with respect to our admission of Sholly Contention 16. Licensee believes that the contention should be limited to the threat to internal security as it could affect safe operation of Unit 1 from the ongoing decontamination and restoration activities at Unit 2, as opposed to a broad issue of the adequacy of internal security at Unit 1 independent of the impact of the activities at Unit 2. The limitation suggested by licensee, with one modification, is the limitation we have placed on the contention. The prior order states (at p. 2):

> ... we interpret the contention to be limited to industrial security with respect to "insiders" at the Unit 2 and Unit 1 facilities as it could affect safe operation of Unit 1. [Emphasis added]

The order points out that this interpretation is consistent with the scope of the proceeding, the interpretation suggested by the staff, the thrust of Mr. Sholly's concern (this was reemphasized in Mr. Sholly's response of January 3, 1980), and with the Kemeny Commission staff report which provides both the justification for lateness of the contention and part of the basis for the contention. Licensee is correct that the broad interpretation it seeks to avoid would be inconsistent with part of our rationale (lack of nexus between the contention and the TMI-2 accident) for rejecting TMIA Contention 4 regarding external threats to security in

the same order (at pp. 10-11) in which we admitted Sholly Contention 16.

It may be that the underlined reference to the threat from insiders at Unit 1 in the above excerpt from our prior order is confusing. It was simply our intent to not preclude the possible factual showing that personnel engaged in decontamination and restoration work in connection with Unit 2 may utilize Unit 1 facilities as part of their work for Unit 2. Therefore, licensee's request for clarification is accepted. But it shall not be construed to mean that the Unit 2 activities are limited necessarily to those activities physically located at Unit 2. The scope of the contention as admitted includes activities in connection with the decontamination and restoration of Unit 2 allegedly posing an internal security threat to safe operation of Unit 1.

Licensee's Response to Sholly's Response to Licensee's Response to Sholly's Emergency Planning Contentions

As the board was preparing to file this memorandum and order on January 24, we received the Licensee's Supplemental Response to Emergency Planning Contentions dated January 22, 1979, in which (at pp. 10-12) the licensee addresses some of the points raised by Mr. Sholly's response to the licensee's objections to Mr. Sholly's emergency planning contentions.

The authority for such a filing is questionable, and it is very late.[12/] Nothing in the licensee's late response materially changes our view of the rulings on Mr. Sholly's emergency planning contentions, but some comments are appropriate.

Above (pp. 8, 9), the board rejects Sholly Contention 8 D but directs the licensee to provide information concerning Class 9 assumptions. In its late response, licensee now provides an explanation and references NUREG-0610 as its source. This is helpful, but more information is needed.

Sholly Contention 8 Z was accepted by the board (p. 9). In its late response, licensee objects on the ground that the contention is outside the scope of the proceeding. This is an entirely new objection and it is not responsive to Mr. Sholly's response to the licensee's original objection. Even if the objection were timely made, it would not prevail

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12/ In a future order, the board will provide guidance for responding to filings on newly filed contentions. In the meantime, any party intending to file papers of this nature would be well advised to promptly seek leave from the board for such filing (perhaps by telephone) so that we may be forewarned that the party wishes to comment.

because licensee itself has placed control of the waterway into issue in its emergency plan as noted in Mr. Sholly's response (p. 9).

THE ATOMIC SAFETY AND
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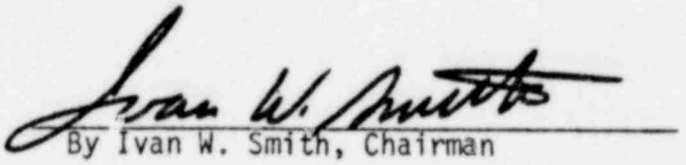

By Ivan W. Smith, Chairman

Bethesda, Maryland

January 25, 1980