UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

10/31/79

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF BRIEF IN RESPONSE TO CONTENTIONS

INTRODUCTION

The Licensing Board's Memorandum and Order of September 21, 1979 provided that petitioners would file on October 5, 1979 drafts of contentions they desire to have litigated and would, on October 22, file amendments to their petitions to intervene which set forth in final form their contentions. During the period between October 5 and October 22, negotiations among petitioners, Staff, and Licensee were conducted. NRC Staff and Licensee are to respond on October 31. This brief constitutes the NRC Staff response to the contentions submitted in final form.

Our positions regarding the various contentions can be roughly divided into four categories: (1) contentions we find wholly acceptable in their present form; (2) contentions which appear acceptable for the present, but which are sufficiently vague or imprecise that further specification will be necessary before the contention is litigated; (3) contentions which presently require modification before they are acceptable; and (4) contentions which are clearly objectionable. With respect to contentions in category (2), we

take the position that they can be admitted and that the greater specificity necessary to make litigation of the contentions meaningful can be developed through the discovery process as more information is developed. However, we believe that dismissal of these contentions would be proper at a later stage of the proceedings prior to actual litigation if the necessary specificity is not provided. Through the negotiation process, we have attempted to minimize the problems which place contentions in category (3), i.e., problems of form, vagueness, and the like. Partly because the period for negotiation was so short and the petitioners so numerous, there remain a number of contentions which fall into this category. Because of the Commission's requirement that this proceeding be expedited where consistent with fairness, we have taken the somewhat extraordinary step of suggesting alternative form and identified specific areas for amplification when we are readily able to do so.

Our complete response to the contentions is contained in the body of this Brief. We provide our full analysis of each type of contention only once, and thereafter refer to it.

Union of Concerned Scientists (UCS)

We have no objection to UCS Contentions 1, 2, 3, 4, 5, 7, 8, 9, 10, 12, 14. Our position on the remainder of UCS's contentions is discussed below.

(6) We have no objection to Contention 6 at the present time. However, we expect that UCS will provide clarification of the phrase "appropriate qualification testing "during the course of discovery, and we regard such specificity as necessary for eventual litigation of this contention.

(11) Contention 11 represents a challenge to 10 C.F.R. §50.44 and does not contain a showing pursuant to 10 C.F.R. §2.758(b) that the application of the regulation would not serve the purposes for which it was adopted with respect to the subject matter of this proceeding. We recognize that UCS refers to the March 28 accident at TMI-2 as "demonstrating that this assumption /regarding the amount of fuel cladding that could react chemically to produce hydrogen/ is not justified," but this discussion does not conform to the form or substance of the showing required by §2.758(b).

(13) Contention 13 asserts that TMI-1 must be designed to "provide protection against so-called 'Class 9' accidents" and that "there is no basis for concluding that such accidents are not credible." We are unable to determine from the contention what events or sequence of

events UCS contends should be designed against. Current Commission policy has determined that the consequences of "Class 9" accidents need not ordinarily be considered in environmental analyses pursuant to NEPA. Proposed Annex to Appendix D to 10 C.F.R. Part 50 (now Part 51), 36 Fed. Reg. 22851-52 (Dec. 1, 1971); Offshore Power Systems (Floating Nuclear Power Plants), CLI- - (September 14, 1979). This determination is that such consequences need not be analyzed because of the low probability of their occurrence, although the issue may be litigated upon an affirmative showing that this conclusion /of low probability/ is incorrect, or that other assumptions are more appropriate. Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-123, 6 AEC 331, 348 (1973); Wisconsin Electric Power Co. (Point Beach Nuclear Plant Unit 2), ALAB-137, 6 AEC 491, 502 (1973). The "Class 9" accident is essentially one which exceeds the design basis of the facility;[1/] therefore, facilities cannot, by definition, be designed against such accidents. It is precisely because of this definitional problem that the contention cannot be litigated unless USC describes events, circumstances, or a scenario which it asserts must be designed against. Further, the failure to provide such specificity also makes it impossible to determine whether this contention falls within the scope of the Commission's August 9 Order.

(15) UCS Contention 15 is impermissably vague because the phrase "all safety problems identified by the accident" provides no notice of what is

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1/ "Class 9" accidents represent "an indefinable number of conceivable types of accidents that are more severe than the design basis accidents of Class 8." Long Island Lighting Co. (Shoreham Nuclear Power Station, ALAB-156, 6 AEC 831, 834-35 (1973).

sought to be litigated. Insofar as this contention asserts that implementation of all of the measures recommended by the Staff in NUREG-0578 and the Commission's August 9 Order must be implemented prior to restart in order to satisfactorily resolve the bases for suspension of the facility, we would find the contention presently admissible. However, we would expect that the link between the recommendations and the bases for suspension would be demonstrated by UCS prior to litigation of this contention or that failure to do so would result in dismissal of the contention as outside the scope of the proceeding.

(16) Contention 16 asserts that emergency planning should take into account the consequences of "a core melt with breach of containment." We understand this to assert that the consequences of so-called "Class 9" accidents must be considered in emergency planning. For the reasons we explain in response to Contention 13, persons seeking to litigate the consequences of Class 9 accidents for NEPA purposes must make a showing why these accidents are not so improbable that consideration is unwarranted. Based upon this authority, we argue that persons wishing to assert that emergency planning must account for such accidents must identify particular accidents in a manner which reveals their credibility. In other words, if UCS will identify a credible potential series of events leading to a core melt and breach of containment, along with the credible potential consequences from such an

accident, then the subject of emergency planning for such consequences would be litigable.

(17) UCS argues in Contention 17 that the "generic unresolved safety issues" must be resolved prior to restart of TMI-1. The Commission's Order of August 9 did not identify any generic unresolved safety issues as the basis for suspension of operation of this facility. Further, operation of no other facility (including those of similar design) has been suspended pending resolution of these issues. Consequently, resolution of these issues in outside the scope of this proceeding. The Appeal Board's holding in North Anna,[2/] cited by UCS, is inapposite. It deals with the question of what issues must be resolved prior to initial licensing of a facility and not with what issues form the basis for suspension of an operating facility. UCS does identify two unresolved safety issues which it asserts are related to the accident at TMI-2. We believe that these statements provide a sufficient link between these issues and the bases upon which operation was suspended. A contention relating to these particular issues would be appropriate in this proceeding.

(18) UCS Contention 18 asserts that certain Regulatory Guides relate to the accident at TMI-2 and gives an example. We have no objection to a a contention which would identify specific recommendations in Regulatory

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2/ In the Matter of Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-491, 8 NRC 248 (1978).

Guides and supply the nexus for those recommendations and the bases for suspension of operation of this facility. However, UCS's present contention goes beyond the scope of this proceeding to include "each Regulatory Guide applicable to plants of the same type as TMI-1."

(19) UCS Contention 19 argues that certain modifications of TMI-1 for fire protection reasons must be completed prior to restart. Nothing in the Commission's August 9 Order indicates that inadequate fire protection was related in any way to the suspension of operation and no attempt is made by UCS to describe such a relationship. Accordingly, this contention is outside the scope of this proceeding.

(20) UCS Contention 20 argues that the Commission's NEPA regulations require consideration of the consequences of "Class 9" accidents which might be associated with operation of this facility. Our general position on the requirements of NEPA as it relates to this facility is described in our Brief on Psychological Distress Issues. As we discuss in connection with Contentions 13 and 16, persons wishing to litigate the consequences of Class 9 accidents as a NEPA issue must make a showing of special circumstances.[3/] This position has been upheld by the Courts. Porter County Chapter v. AEC, 533 F.2d 1011, 1017-18 (7th Cir. 1976), cert. denied 429 U.S. 945 (1976); Hodder v. NRC, Nos. 76-1709 and 78-1149 (D.C. Cir. December 26, 1978) cert. denied 48 LW 3218 (October 2, 1979). In order for this contention to be

3/ See also In the Matter of Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 397, 415-16 (1976); Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 212-14 (1978).

appropriate in this proceeding, UCS must demonstrate the legal requirement to consider environmental consequences in this proceeding and must make the kind of showing required under NRC case law for contentions seeking to raise "Class 9" accident consequences.

Steven Sholly

We have no objection to Contentions 1, 2, 3, 4, 5, 7, 8, 9, 10, 13, 15. The remaining contentions are discussed below.

6. Contention 6 asserts that "until the design and procedures at Unit 1 are modified to [respond to off-normal transient conditions] . . . permission to restart must be denied" and that "the short-term actions identified in the Commission's Order . . . are insufficient." In his discussion of basis for this contention, Mr. Sholly identifies certain actions he feels must be undertaken prior to restart, namely a failure mode and effects analysis of the ICS and the Category "B" recommendations of NUREG-0578. We would have no objection to a contention stating that these particular actions described in the basis discussion should be completed prior to restart.

11. Mr. Sholly's Contention 11 is similar to UCS Contention 11 and our response there applies here. We note that Mr. Sholly includes a substantial and detailed discussion of the events of the March 28, 1979 accident which form the basis for this contention, and that this discussion approaches the kind of substantive showing contemplated by §2.758(b) for contentions attacking Commission regulations in particular proceedings. However, the discussion is not presently in the form required by that regulation and does not invoke it. We would not object to Mr. Sholly's amending his contention to attempt to make the kind of showing contemplated by §2.758(b)

12. In Contention 12, Mr. Sholly argues that the federal action involved in this proceeding is a "major federal action" and that certain environmental analyses, including analysis of psychological distress, must be undertaken. Our position on these questions is set forth in our Brief on Psychological Distress Issues filed today. The NRC Staff has determined, as a discretionary matter, to undertake an environmental impact appraisal of the action involved here.

14. We do not object to the admission of Contention 14 at this time, but we note that a number of the specific examples contained in the basis for this contention do not appear linked to managerial and administrative capabilities as we understand those terms. Therefore, we would expect that these terms will be clarified in the course of discovery and that it will be clear precisely what is meant by the contention prior to its being litigated.

Newberry Township T.M.I. Steering Committee, et al.

1. Our position on contentions asserting psychological distress as an issue in this proceeding is contained in our Brief on Psychological Distress Issues.

2. This contention asserts certain socio-economic impacts associated with psychological distress issues. We regard these impacts as linked to the psychological distress claims and, in addition, as clearly "indirect," "socio-economic" issues as discussed in our Brief.

3. The NRC Staff does not object to this contention although it presently lacks specificity. We feel that after the discovery process the Newberry Township T.M.I. Steering Committee, et al., should be able to state precisely why such evacuation plans are inadequate and what plans should be implemented.

People Against Nuclear Energy (PANE)

1. This contention is essentially identical to Newberry Township T.M.I. Steering Committee, et al.'s Contention No. 1, and our position regarding it is the same.

2. Our position on this contention is the same as our position on Newberry Township T.M.I. Steering Committee, et al.'s Contention No. 2.

3. Our position on this contention is the same as our position on Newberry Township T.M.I. Steering Committee, et al.'s Contention No. 3.

Three Mile Island Alert (TMI-Alert)

1. This contention appears to be an impermissible challenge to 10 C.F.R. Part 20, since it appears to challenge authorization to restart Unit 1 even if it complies with Part 20 limits for normal operation. Although there is some discussion of the interaction between the accidental doses already received and routine doses from further operation of Unit 1, no showing of special circumstances of the sort required by 10 C.F.R. §2.758(b) has been attempted which would permit a contention which attacks a regulation.

2. Like Contention 1, this contention appears to attack the regulations governing permissible levels of release through liquid effluents which are found in Part 20. To the extent that it seeks to litigate issues relating to disposal of wastes at Unit 2, it is beyond the scope of this proceeding. In addition, if this contention seeks to assert a requirement to consider the consequences of such releases pursuant to NEPA, TMI-Alert must explain why there is any legal requirement to do so beyond the analysis already contained in the FES on operation of this facility.

3. This contention deals with psycological effects of the TMI-2 accident. Our discussion of the legal posture of contentions raising this issue is found in our Brief on Psychological Distress Issues filed today. The allegations of consequences upon the local economy are linked to the psychological distress issue and are, in any event, "indirect," socio-economic impacts of the sort discussed in Section IID(1) of that Brief.

4. This contention deals with civil disruption in the area around, but apparently not including, the TMI-1 facility. It therefore appears to be a contention which alleges an impact from operation of the facility. TMI-Alert offers no argument whereby an environmental analysis is required. As we developed in our Brief on Psychological Distress Issues, no such analysis is required and, even if conducted, would not consider "social" impacts like this one absent an impact on the physical environment. The Staff has determined, as a discretionary matter, to conduct an EIA for this action.

5. This contention is generally proper. However, the recommended remedy at the conclusion of the contention should be changed to continued suspension rather than revocation, since the Commission's Order did not include within the scope of this proceeding the issue of revocation of the license.

6. The subject matter and the wording of this contention are generally acceptable to the Staff. We would expect that certain matters would be defined or specified before the contention is proper for litigation, although these clarifications can, we believe, be accomplished during the course of discovery. For example, the Staff would expect TMIA to define what future changes in 10 C.F.R. Part 140 it is referring to in Part (2) of this contention, to define what it means by "energy balance" in the last paragraph, and the relationship of this term to the short-term debt referred to in the same paragraph. Finally, in accordance with the Commission's August 9, 1979 Order at 12, TMIA must show the nexus between the financial concerns raised in the contention and the ability of the licensee to safely operate TMI-1 prior to any final decision that this contention is litigable.

7. The Staff has no objection to this contention.

8. This contention asserts a conclusion without argument that the action involved in this proceeding is a major federal action requiring an environmental analysis and identifies certain non-physical-environmental issues which TMIA seeks to have considered. We disagree that there is any legal requirement for an environmental analysis for the reasons set forth in our Brief on Psychological Distress Issues. However, the Staff has decided, on a wholly discretionary basis, to conduct an environmental appraisal of this action. This analysis will focus on the physical environmental impacts of the action and only if such impacts are present and significant will consideration of secondary or indirect impacts be undertaken.

Anti-Nuclear Group Representing York (ANGRY)

I. We do not understand Contention I to put anything into controversy which is not also contained in ANGRY's Contentions II and III. Therefore, we object to it as nonspecific and redundant.

II. We have no objection to Contention II, except for two aspects of II(C). If by the phrase "TMI-2-type (Class 9)" ANGRY means that planning must provide adequate protection in the event of a credible accident and offers the March 28 events at TMI-2 as a credible accident, we do not object. If, in that phrase and in the phrase "consequences of a nuclear accident" found later in II(C), ANGRY seeks to litigate the adequacy of emergency planning in light of postulated consequences of the entire category of "Class 9" accidents, our position on the admissability of this part of the contention is the same as our position on UCS Contention No. 16. In addition, we believe that the issues can be more clearly litigated of ANGRY Contention II(F) is identified as a separate contention.

III. Contention III(A) and (B) do not identify issues in controversy. Instead, they appear to assert a position that petitioner can amend contentions if subsequent events provide good cause for doing so. We understand the Board's authority under §2.752(c) to modify its order identifying contentions "for good cause" to provide a basis for amendments of the sort contemplated by ANGRY. We believe that III(C) is an admissible contention.

IV. We believe that Contention IV is admissible at the present time, but that petitioner must provide greater specificity regarding what management capabilities should be present or what characteristics of management capabilities are inadequate before this contention is suitable for litigation. We perceive no clear link offered by ANGRY between the events described in (a)-(c) and the issue of management capability.

V. We have no objection to Contention V.

VI. ANGRY's contention that "all safety-related systems" must undergo "analysis and modification" to assure they can withstand all "accident scenarios that reflect all conceivable combinations of human and mechanical failures" is too broad and non-specific to identify what is sought. It also appears to go beyond the scope of this proceeding, i.e., the bases for suspension of the operating license for TMI-1.

Marvin I. Lewis

Marvin I. Lewis submitted his final contentions in a document dated October 22, 1979. Although some contentions are identified in lettered paragraphs, most are unnumbered and we, therefore, had some difficulty in determining whether certain statements were intended to constitute contentions. Further, it was sometimes less than clear to us when one contention ended and a new one began. We discuss below what we think are Mr. Lewis' contentions and reference them to specific page numbers of his submittal.

Contention 1 (pp. 1-3) generally alleges that NRC implementation and interpretation of its regulations and general treatment of the participating public inhibit full disclosure and consideration of dangers of nuclear power and reduce the participation and effectiveness of intervenors. We oppose this contention as clearly beyond the scope of this proceeding.

Contention 2 (pp. 4-7) alleges that NRC violated the Pennsylvania Equal Rights Amendment because only pregnant women and small children were asked to evacuate from TMI vicinity during the accident at TMI-2. The alleged applicability of the Pennsylvania Equal Rights Amendment to NRC is beyond the scope of this enforcement proceeding. We see no basis in our emergency planning regulations, and Mr. Lewis points to none, for consideration of this issue in this proceeding.

Contention 3 (pp. 5-6) alleges that NRC has violated the Pennsylvania murder statute since a future Class 9 accident will kill people. We object to this contention as argumentative, totally lacking in basis and beyond the scope of this proceeding.

Contention 4 (p. 8) alleges that the control room at TMI-1 is improperly designed from a human engineering perspective. Although we will require more specifics during discovery if Mr. Lewis is made a party to this proceeding, we have no objection to this contention at this time.

Contention 5 (p. 8) relates to filters and preheaters for filters in the Unit 1 auxiliary building. We have no objection to this contention.

Contention 6 (p. 8) refers to the possible need to use the storage tanks at Unit 1 to hold contaminated water from Unit 2. We have no objection to this contention.

Contention 7 (p. 8) refers to the front end of the fuel cycle. We object to this contention on the basis that it is not at all related to the TMI-2 accident and the bases for suspension of operation at TMI-1, and is therefore beyond the scope of this proceeding.

Contention 8 (p. 9) alleges that TMI-1 is managed in a manner which would invite a Class 9 accident if operations were resumed. We object to the contention as vague and lacking basis as written.

Contention 9 (p. 9) alleges that TMI-1 is regulated in a manner which would invite a Class 9 accident if operations were resumed. We object to the contention as vague and lacking basis.

Contention 10 (p. 9) refers to material failures which produce pipe cracks and flawed fuel rods and pellets. We object to the contention as beyond the scope of this proceeding and lacking basis. Mr. Lewis has made no showing

that failures of these components are in any way related to the TMI-2 accident and bases for suspension of operation of TMI-2.

Contention 11 (p. 9) incorporates by reference a contention previously submitted by Mr. Lewis by letter dated October 11, 1979 concerning waste management. We read the contention as raising two distinct issues. The contention first raises the issue of the availability of storage capacity at TMI-1 in the event it is needed to hold the liquid wastes produced in the wake of the accident at TMI-2 (p. 2 of the October 11 submittal). We do not object to this aspect of the contention but suggest that it be combined with Contention 6 which raises the same issue. The second issue raised by Contention 11 concerns ultimate waste disposal (p. 3 of the October 11 submittal). We object to this aspect of the contention as raising issues beyond the scope of this proceeding.

Aamodts

We have no objection to Aamodts' Contentions 2, 4 or 6. Our position on the remaining contentions is described below.

1. We object to Aamodts' Contention 1. It does not appear tied to the events which occurred at TMI-2 and the bases for suspension of the TMI-1 license. The contention calls for psychological testing and counseling of licensee personnel to observe and alleviate symptoms of possible "fatigue, boredom, hostility, etc." However, the contention fails to allege in reasonably specific terms whether, and if so, how "fatigue, boredom, hostility, etc.", related or contributed to the accident at TMI-2.

3. We do not object to the present admission of Aamodts' Contention 3, but expect that more specificity regarding the desired provision of "monitoring plans" will be provided during the course of discovery. To the extent that the basis for this contention may intend to raise the question of monitoring at the other nuclear facilities identified there, that question is clearly beyond the scope of this proceeding.

5. It is unclear whether Contention 5 reflects a concern for protection of ingestion pathways of radiation to humans or for animals as property. If the former, it lacks definition and clarity. If the latter, it would appear proper. Our regulations require licensee emergency plans to contain "criteria for determing when protective measures should be considered . . . outside the site boundary to . . . prevent damage to property (emphasis supplied). 10 C.F.R. Part 50, Appendix E - Emergency Plans

for Production and Utilization Facilities, Paragraph 4.D. Further, the NRC Staff Regulatory Guide on this subject provides as follows:

> Emergency plans should be directed toward mitigating the consequences of emergencies and should provide reasonable assurance that appropriate measures can and will be taken to protect health and safety and prevent damage to property in the event of an emergency (emphasis supplied).

Regulatory Guide 1.101, Emergency Planning for Nuclear Power Plants, Revision 1, March 1977.

7. Contention 7 is beyond the scope of this proceeding as it bears no discernable relationship to the bases upon which the Commission suspended the operating license for TMI-1.

8. Our response to Contention 8 is the same as for Contention 7.

9. Despite the Aamodts' disclaimer that this contention raises the issue of "psychological distress," we perceive no analytical distinction between this contention and that issue. Accordingly, our Brief on Psychological Distress Issues contains our position on this Contention.

10. Contention 10 raises issues which are beyond the scope of this or any other NRC adjudicatory proceeding.

11 and 12. These contentions assert that the TMI-1 license should be revoked. This Board is empowered to conduct the proceeding pursuant to the Commission's Order to suspend the license and does not have authority to institute an enforcement proceeding revoking the license. Petitioner's avenue to seek this remedy is through 10 C.F.R. §2.206.

Chesapeake Energy Alliance (CEA)

1. CEA's Contention 1 argues that the action involved in this proceeding requires an environmental analysis pursuant to NEPA and that certain primarily non-physical-environmental issues must be analyzed, including psychological distress. Our response to this contention is identical to that for Steven Sholly's Contention 12.

2(a) This contention relates to emergency planning for the consequences of a "Class 9" accident and our response to it is identical to our response to UCS Contention 16.

2(b) Insofar as Contention 2(b) is linked to the consequences identified in Contention 2(a), our response applies here as well. We would not object to a properly framed contention with adequate basis alleging inadequacy of medical facilities and their capacity to handle the requirements necessary to effective emergency plans.

2(c) We do not object to the substance of this contention, although we find the phrase "adequate emergency measures" at the outset to be confusing.

2(d) Our response to this contention is the same as our response to Aamodt Contention 5.

3. We do not object to the present admission of this contention, but we would expect that CEA will be able to specify during the discovery

period what is meant by "adequate" monitoring and to supply a basis for contending that alpha and gamma particles must be measured directly. In the event that such specificity and bases are not provided prior to hearing on the contention, it should be dismissed.

4. Contention 4 appears to be an attack on 10 C.F.R. §20.201 which states that "each licensee shall make or cause to be made such surveys as may be necessary for him to comply with the regulations of this part (emphasis added). 10 C.F.R. Part 50, Appendix E, relating to emergency plans, does not specifically state that the licensee may control the "means for determining the magnitude of the release of radioactive materials," Appendix E, §IV C, but does not prohibit such control. We would not object to a properly worded contention that licensee's conduct of its monitoring program is inadequate for specific and defined reasons.

5. CEA's Contention 5, to the extent that it deals with the safe operation of TMI-1 while decontamination is conducted for Unit 2, is acceptable. We understand CEA's discussion of the acceptability of EPICOR-II, of litigation relating to it, and of applicability of NEPA to TMI-2 decontamination to be offered solely as basis for the contention regarding safe operation of Unit 1 during the allegedly prolonged (from these causes) decontamination process. If CEA seeks to litigate those matters here as issues rather than using them as bases for its contention, CEA is clearly in the wrong forum.

6. Contention 6 is too vague to place into controversy anything regarding safe operation of TMI-1 as it relates to the conditions at Unit 2. "Posing potentially severe conflict" does not provide enough content to expect that this contention can be meaningfully understood as a result of the discovery process.

7. We have no objection to Contention 7.

8. We do not object to the present admission of the substance of Contention 8, i.e., challenging the adequacy of management practices and capability. We expect that CEA will provide greater specificity and definition prior to hearing, consistent with our response to Mr. Sholly's Contention 14 referenced by CEA. The contention by CEA that demonstration of management capability must be by "clear and convincing" evidence appears to challenge the Commission's Order establishing "reasonable assurance" as the standard of proof to be met by the licensee. We also perceive no basis for the contention that the licensee must complete the cleanup of the waste from the March 28 accident as a necessary element of its demonstration of management competence. The contention that the license should be suspended because of the March 28 accident appears to add no content to the contention and to be moot in light of the present immediately effective suspension.

9. Except for the last sentence, we have no objection to the form of CEA Contention 9. However, absent a showing why the licensee's financial

condition might undermine its ability to operate TMI-1 safely, this contention is not properly brought under the terms of the Commission's August 9 Order at 12. The last sentence also appears to attack the Commission's regulations in 10 C.F.R. §50.33(f) concerning the required showing of available funds (or reasonable assurance of obtaining the funds) to "cover the estimated costs of operation for the period of the license or for 5 years, whichever is greater, plus the estimated costs of permanently shutting the facility down and maintaining it in in a safe condition."

10. We object to CEA Contention 10 as beyond the scope of this proceeding.

11. Contention 11 is beyond the scope of this proceeding.

12. CEA, in this contention, raises a matter which is perhaps unlimited in scope. There is no basis given by CEA that it is necessary to consider "all possible sequences of events that could occur at TMI-1," nor is it clear what is meant by the phrase. CEA fails to present that any reasonable scenario supporting a conclusion that any specific accidents it is concerned with could, in fact, occur. The contention is objectionable in that it is vague and not supported by a reasonable basis.

13. We have no objection to CEA Contention 13.

Contentions of Frieda Berryhill/Coalition for Nuclear Power Plant Postponement

Frieda Berryhill has failed to file what we consider to be final contentions in accordance with the September 21, 1979 Memorandum and Order of the Atomic Safety and Licensing Board. However, her original and amended petitions for leave to intervene contain at least some seeds of possible contentions. We provide our response to the admissibility of these contentions below. We conclude that Ms. Berryhill has failed to identify any litigable contention.

Contentions from letter dockted September 27, 1979 by NRC, Office of the Secretary:

1. Contention 1 relates to radon emissions and Table S-3. We object to the contention as beyond the scope of this proceeding.

2. Contention 2 relates to TMI-2 safety hearings scheduled after TMI-2 had been licensed to operate and the perceived uselessness of intervenor participation in NRC proceedings. We object to the contention as lacking specificity and basis. Further, the contention is objectionable because its subject matter appears to bear no relationship to the scope of the present proceeding.

3. Contention 3 alleges a violation of NEPA based on radon emission and Table S-3. We object to the contention as beyond the scope of the proceeding.

4. Contention 4 calls for consideration of Class 9 accidents in this proceeding. Our response to this issue is contained in our response to UCS Contentions 13 and 20.

Ms. Berryhill refers to her original petition (letter dated September 3, 1979) for leave to intervene for her additional contentions. The additional contentions therein consist only of the following phrases:

> Violation of rules concerning notification of intervenors of granting operating license
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> Emergency evacuation
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> Waste
>
> Radiation monitoring

We object to each contention as overly vague and totally lacking in basis and specificity. Indeed, as the Licensing Boaqd ruled in its September 21, 1979 Memorandum and Order, such phrases fail even to satisfy the "specific aspects" requirement of 10 C.F.R. §2.714(a).

Environmental Coalition on Nuclear Power (ECNP)

Because ECNP served its Final Contentions only upon the Board Chairman and Docketing and Service, we did not receive their final contentions until October 26. The submittal, in addition to setting forth 10 numbered contentions, incorporates by reference the contentions contained in Additional Draft Contentions of the Environmental Coalition on Nuclear Power, filed October 5, 1979. We provide below our position on each ECNP contention, beginning with the October 5 submittal. However, our position on all of these contentions is necessarily tentative because of the limited time we have had to examine them (or to examine them knowing that petitioner seeks to submit them as final contentions).

October 5, 1979 submittal:

1. Contention 1 relates to the value of radon-222 emissions in Table S-3. We object to the contention as raising issues beyond the scope of this proceeding.

2. Contention 2 relates to technetium-99 and Table S-3. We object to this contention as raising issues beyond the scope of this proceeding.

3. Contention 3 relates to conversion factors for calculating exposures to humans of various radioactive isotopes set forth in Regulatory Guide 1.109. We object to this contention as raising issues beyond the scope of this proceeding.

4. Contention 4 calls for the consideration of Class 9 accidents. Our position on this contention is contained in our response to UCS Contentions 13 and 20.

5. Contention 5 alleges that perjury was committed by the witnesses for the Licensee, the Commonwealth of Pennsylvania and NRC during the licensing proceedings of TMI-1 and TMI-2 and calls for an investigation. The contention is clearly beyond the scope of this proceeding and, additionally, provides no basis for the claims. There were no evidentiary hearings in the licensing of TMI-1 for operation. We explain that history in our Brief on Psychological Distress Issues.

6. Contention 6 relates to the effect of routine emissions from TMI-1 on the reproductive success of animals. We object to the contention as beyond the scope of the present proceeding. It also appears to be an attack upon the Commission's regulations regarding permissable levels of effluents, as we discuss in our response to TMI-Alert Contentions 1 and 2.

7. Contention 7 alleges that timely evacuation in the event of emergencies is not possible. We have no objection to this contention but intend to request specification during discovery once the emergency preparedness plans are available.

8. Contention 8 alleges that officials of Metropolitan Edison lack credibility because of the events that took place at TMI. We do not view this as a contention. The Atomic Safety and Licensing Board will consider the credibility of all witnesses in this proceeding.

9. Contention 9 concerns the adequacy of measures which will be undertaken during the decontamination of TMI-2 and the possible need to use TMI-1 facilities. We have no objection to this contention.

10. Contention 10 relates to the vulnerability of TMI-1 and EPICOR-II to aircraft crashes. We object to the contention as outside the scope of this proceeding.

11. Contention 11 alleges deficiencies in the construction methods and concrete used for the TMI-1 containment building. We object to the contention as outside the scope of this proceeding and lacking basis.

12. Contention 12 calls for revocation of the operating license of Metropolitan Edison. We object to the contention as outside the scope of this proceeding and beyond the jurisdiction of the Licensing Board, as we state in our response to the Aamodts' Contentions Nos. 11 and 12.

Final Contentions Filed October 22, 1979:

1(a)(b)(c) We have no objection to these contentions.

1(d) We do not object to this contention except for the assertion that monitoring equipment must be capable of recording the releases in the event of a Class 9 accident. Our position regarding this aspect of the contention is developed in our response to UCS Contentions 13, 16, and 20.

1(e) We do not object to the basic subject matter of this contention, but some of the language is overly broad and therefore inadequate to provide clear notice of what is to be litigated. If it were limited, for example, to the subject matter of UCS Contention 8, we would not find it objectionable.

1(f) We do not object to the present admission of this contention with the omission of the last sentence, which appears to broaden the contention impermissably. We expect that clearer delineation of the phrase "many vital instruments, instrument controls, and other components" will be provided during discovery so that this contention is sufficiently specific prior to litigation.

1(g) The wording of this contention is admissible with one exception. To the extent that ECNP suggests that "more than reasonable assurance" must be demonstrated by the licensee to prove that adequate instrumentation exists at Unit 1, the contention is objectionable as an impermissible challenge to the standard of proof set forth in the Commission's Order establishing "reasonable assurance" as the required showing.

1(h) This contention does not provide any link between the issue raised and the scope of this proceeding, i.e. the bases upon which operation of the facility was suspended.

1(i) We do not object to the present admission of this contention. However, if adequate specificity is not provided during the course of the discovery period, it will not be litigable because of lack of adequate notice regarding what is contended.

2. We do not object to this contention. However, the discussion of the unacceptability of the determination by "public officials" of when protective measures should be considered may be an attack on 10 C.F.R. Part 50, Appendix E, IVC and therefore improper as a part of this contention. We expect to explore this question further by determining, through discovery, precisely what is contemplated by those statements. The contention also contains other vague and unsupported statements which, unless acceptably amplified through discovery, should be struck prior to hearing on the contention.

3. We have no objection to Contention 3.

4. We do not object to the basic thrust of Contention 4, which we understand to be that there should be an analysis of credible variations on the events at TMI-2 on March 28 which are applicable to TMI-1. We do not, however, find adequate demonstration in the contention that items (a)-(d) completely fulfill this concept. For example, in item (a): what more serious errors? Similarly, in item (d): by what mechanism could there have been a core meltdown on, say, March 30, 1979? If this kind of linkage is shown, we will not object to litigation of these issues. We do not understand the last sentence to be a factual contention, but rather to present legal argument improper for inclusion in the contention itself.

5. This contention, like TMI-A Contention 1, appears to be an impermissiable attack on the Commission's regulations. To the extent that it seeks to litigate the health effects of continued releases from TMI-1, no analytical basis for requiring this kind of NEPA analysis is provided. Our basic position regarding the applicability of NEPA to this action is contained in our brief on Psychological Distress Issues and our intention to prepare an environmental impact appraisal is described above.

6. This contention raises psychological distress issues and is addressed in our brief on that subject.

7. We do not object to a contention stating the basic issue contained in the second paragraph of this contention and the first six and one half lines of the following paragraph. The remainder of the discussion is either totally vague (first paragraph) or essentially a restatement of the issues in Contention 5 (last paragraph).

8. Our response to this contention is the same as our response to the Aamodts' Contentions 11 and 12. In addition, it raises a constitutional issue which we believe to be wholly unsupportable legally.

9 and 10. We do not understand these contentions to raise any issues which can be litigated in this proceeding.

CONCLUSION

The foregoing discussion represents our position on the final contentions filed by petitioners to this proceeding.

Respectfully submitted,

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Dated at Bethesda, Maryland
this 31st day of October, 1979.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF BRIEF IN RESPONSE TO CONTENTIONS" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 31st day of October, 1979.

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