Staff 07/21/80

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 (Restart)
	)	
(Three Mile Island Nuclear Station, Unit 1)	)	

NRC STAFF'S RESPONSE TO ANGRY MOTION FOR RECONSIDERATION

I. Introduction

By motion dated June 30, 1980 (Motion for Reconsideration), Intervenor Anti-Nuclear Group Representing York (ANGRY) requested that the Licensing Board reconsider its previous determinations that ANGRY contention II(C)[1/] was inadmissible and, presumably, admit that contention as an issue in the captioned proceeding. The basis for ANGRY's request is a Commission Order, issued on May 30, 1980, in Consolidated Edison Company of New York, Inc.

1/ ANGRY contention II(C) reads:

> II. The conditions set forth in the NRC's August 9 Order (44 F.R. 47821-25) for TMI-1's resumption of operation are insufficient to provide reasonable assurance that such resumption can occur without endangering the public health and safety for the reason that they fail to require the development and effectuation of adequate and effective Radiological Emergency Response Plans to protect the population surrounding TMI-1 from the consequences of any future nuclear accident. Such insufficiency is in particular demonstrated by the following flaws:

(CONTINUED)

(Indian Point, Unit 2) and Power Authority of the State of New York (Indian Point, Unit 3) raising a question on emergency planning with regard to the Indian Point facilities.

For the reasons set forth below, the NRC Staff (Staff) opposes ANGRY's motion.

II. NRC Staff's Position

A. Background

The Licensing Board initially ruled on ANGRY contention II(C) in its Third Special Prehearing Conference Order of January 25, 1980. Therein the Board determined that it would "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".[2/] The Board went on to reject ANGRY

1/ (CONTINUED)

> (C) The distance to which the NRC Order requires the licensee to extend its emergency planning capability ten (10) miles is insufficient to provide adequate protection of the public health and safety in the event of a TMI-2-type (Class 9) accident. Such insufficiency is clearly demonstrated by the fact that evacuation of the entire population living within twenty (20) miles of the TMI-2 reactor was given serious consideration during the March, 1979 accident. (H.R. Rept. 96-413, p. 5). As a matter of general principle, ANGRY contends that emergency planning capability should exist for all areas which could be adversely affected by the consequences of a nuclear accident. Such areas exist at distances up to one hundred (100) miles from the reactor site (Beyea-Von Hippel report).

2/ Third Special Prehearing Conference Order, January 25, 1980, p. 5.

contention II(C) on the ground that the underlying premise of that part of the contention referring to a 10-mile planning zone is illogical and that the balance of the contention is so unbounded as to be unacceptable for litigation.[3/]

ANGRY subsequently objected to the Board's actions with regard to contention II(C) in its first request for reconsideration wherein it attempted to justify litigation of the adequacy of a 10-mile planning zone by specifying local circumstances which would bring into question the adequacy of such a zone.[4/] The Board dealt with ANGRY's request for reconsideration at length in its Fourth Special Prehearing Conference Order issued on February 29, 1980. Therein, the Board found that the additional bases and statements of local circumstances presented by ANGRY still did not support contention II(C) and that the additional specification was untimely. However, the Licensing Board afforded ANGRY the opportunity to demonstrate the merits of its allegations that there are local conditions which would require a different emergency planning zone by consolidating ANGRY and Intervenor Sholly on Sholly contention 8(C) and authorizing these Intervenors to jointly advance a final contention setting forth specific local conditions that must be taken into account.[5/]

3/ Id. at p. 13.

4/ Anti-Nuclear Group Representing York Request for Reconsideration of Portions of Third Special Prehearing Conference Order, February 4, 1980.

5/ Fourth Special Prehearing Conference Order, p. 31; Memorandum and Order on Pending Motions for Reconsideration of ANGRY, Lewis and Aamodt, May 8, 1980, p. 2.

B. Present Motion

Despite this opportunity, ANGRY, once again, in the instant motion seeks to have the Board reconsider its prior rulings on contention II(C). The basis for this request is the Commission's Order in Indian Point soliciting public comments on, and tentatively establishing as an issue for hearing, the question as to

> what is the current status and acceptability of state and local emergency planning within a 10-mile radius of the site and, to the extent that it is relevant to risks posed by the two plants, beyond a 10-mile radius? Consolidated Edison Company of New York (Indian Point, Unit 2) and Power Authority of the State of New York (Indian Point, Unit 3), Commission Order (May 30, 1980), pp. 4 and 5.

ANGRY argues that the Commission's establishment of this question as an issue in Indian Point conclusively demonstrates that the Commission did not intend by its October 23, 1979 Policy Statement on emergency planning (44 Fed. Reg. 61123) and its December 19, 1979 Notice of Proposed Rulemaking on emergency planning (44 Fed. Reg. 75167) to preclude consideration by a licensing board of the adequacy of emergency planning beyond a 10-mile radius where such evidence is demonstrably related to risks posed by the facility in question.

The Commission's action in Indian Point was a specific action directed to specific facilities in response to a petition to shut down those facilities. The Commission's tentative establishment of the quoted issue as a matter to be considered in Indian Point does not mean that the Licensing Board can or should adopt an identical standard in this proceeding as requested by ANGRY or reverse its prior rulings and admit contention II(C).

Moreover, contrary to ANGRY's implication in its motion, the Licensing Board in the instant proceeding has not ruled that the Policy Statement and ongoing rulemaking on emergency planning preclude the taking of evidence on the adequacy of emergency planning beyond a 10-mile radius. Rather, the Board had emphasized that the use of a 10-mile radius plume exposure emergency planning zone would be flexibly applied, that the area for which evacuation planning is required is not inflexibly an exact 10-mile radius and that the exact size of the required planning zone would be dependent upon emergency response considerations affected by local conditions.[6/] Accordingly, the Board made it clear that it would accept emergency planning contentions which specify local circumstances raising questions about the adequacy of the licensee's planning zone but would reject unspecified contentions which are simply challenges to the basic concept of 10-mile and 50-mile planning zones.[7/] We do not believe that this is at odds with the quoted issue tentatively established by the Commission in Indian Point. Nothing in ANGRY's motion for reconsideration indicates that a requirement for further specification of relevant risks posed by the TMI-1 facility beyond the planning zone provided for by the Licensee is improper or that further specification of local conditions and relevant risks is unnecessary before a contention which on its face is simply an unspecified and unbounded challenge to the basic concept of a 10-mile evacuation planning zone may be admitted. The Licensing Board expressly gave ANGRY the opportunity, as recounted previously, to advance, jointly with Intervenor Sholly, a final contention

6/ Fourth Special Prehearing Conference Order, February 29, 1980, p. 27.

7/ Id.

setting forth such specific local conditions and relevant risks that raise questions about the adequacy of the Licensee's emergency planning zones. By this means, ANGRY may have its concerns addressed through a properly framed and specified contention wi'hout the need to resurrect contention II(C)[8/] which has been considered, rejected, reconsidered and rejected again. Further reconsideration of the admissibility of contention II(C) is not warranted.

III. Conclusion

For the foregoing reasons, ANGRY's motion for reconsideration should be denied.

Respectfully submitted,

Joseph R. Gray
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 21st day of July, 1980

8/ On June 5, 1980, Intervenor Sholly filed "Intervenor Steven C. Sholly Reconsideration of Contentions" in which he submitted a revised contention 8(C) which includes specification of local conditions raising questions about the adequacy of a 10-mile emergency planning zone. Pursuant to the Licensing Board's Fourth Special Prehearing Conference Order, ANGRY may, in consolidation with Mr. Sholly, participate in the litigation of such contention if it is admitted as an issue.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO ANGRY MOTION FOR RECONSIDERATION" 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 21st day of July, 1980:

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