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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)	)	

ECNP Intervenor's Answer to a Board Question

At the May 13, 1980, Prehearing Conference, the Licensing Board offered ECNP the opportunity to answer the question posed by the Board as to whether or not ECNP could have answered the interrogatories requested by the Suspended Licensee in the time allotted.

The answer to this question is no; the ECNP Intervenor's were committed, as we believe this Board had been well advised, in the TMI-2 Appeal Board proceedings. In the aircraft crash portion of the original TMI-2 licensing proceeding, which the Commission chose to defer resolution so as to permit operation of TMI-2, the NRC Staff requested an extension of time to file its after-hearing memorandum. This had been due April 15, 1980. An extension was granted until April 28, 1980. ECNP also faced unanticipated problems in this area, and now is largely consumed with the still unresolved radon-222 memorandum.

We observe that this is yet another filing which consumes our time and resources, but which does not move ECNP one inch closer to its yet unfulfilled discovery requests. ECNP strenuously objects to the continuing pattern of procedural harassment by the NRC Staff, the Suspended Licensee, and this Licensing Board in this proceeding. Every possible advantage is being taken of ECNP to ensure that ECNP (a) does not get any relevant discovery materials requested, (b) that ECNP will be required to file enough papers to totally occupy all of the time of ECNP, and (c) deadlines will continue to be set which are physically impossible for ECNP to meet. The obvious intent is to drive ECNP out of this and every other proceeding to which ECNP is a party.

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The initial ECNP discovery requests were given to Staff counsel Marcia Mulkey on November 14, 1979. These materials (nine in number) were delivered in January, 1980, but only after all materials pertaining to the TMI-2 accident had been selectively deleted and withheld. A second list was mailed to Ms. Jona Souder on January 22, 1980, on the advice of Staff Counsel Lucinda Low Swartz. Not a single piece of paper of that request was ever delivered, even though Staff counsel had made repeated commitments to fill such requests. We observe that the Staff has never made any objection to any ECNP discovery requests. We also observe that this Board at the February 13, 1980, Prehearing Conference set deadlines for making motions to compel discovery which, as the Board was then advised, ECNP could not meet because of the necessary preparations for the TMI-2 Appeal Board Hearings. Furthermore, on top of these burdens, the Suspended Licensee has refused the one simple request made of them for a copy of Appendix 2A of the FSAR. In addition, the Suspended Licensee would require ECNP to expend countless hours of driving and procurement of lodging away from home to use the "reading room." On top of that, if ECNP needed to take out materials, they were available at outrageous prices, allowing the Suspended Licensee to profit from the discovery process. Similarly, transcripts of this proceeding are available to ECNP only at an enormous cost in time, travel, and expense.

These burdens of extra travel, extra time, and extra expense are not burdens ECNP voluntarily accepted. These burdens were imposed by ECNP's adversaries. In a similar vein, most of the proceedings to which ECNP is a party are products of the NRC policy of permitting the operation of nuclear power plants with unresolved environmental and safety issues. Thus, the TMI-1 Restart Hearings and the TMI-2 Technical Specifications Hearings are artifacts of NRC policy. As a result, the need for ECNP to act to protect its members and their interests from the Suspended Licensee and the NRC have grown, but not as a result of our actions.

ECNP has not been fined by the NRC for violating NRC regulations. ECNP is not accused of having caused from 200 to 400 infant mortalities. ECNP is not being investigated by the Justice Department for possible criminal prosecution, nor is ECNP the subject of any Grand Jury investigations. Nor has ECNP been ever criticized by any investigative body for its role in any NRC proceeding.

Both the President's Commission on the Accident at Three Mile Island and the Special Inquiry Group of the NRC itself found serious flaws in the attitudes of the Suspended Licensee and the NRC Staff (See the Main Report of the President's Commission, pp. 7-25, 43-56; see the "Report to the Commissioners and to the Public" of the Special Inquiry Group of the NRC, pp. 97-108, 112-114, 117-119).

Furthermore, in the "Report of the Office of Chief Counsel on the Nuclear Regulatory Commission" of the President's Commission, a thorough discussion is given concerning the various ways the Commission and its Licensing and Appeal Boards have swept safety concerns aside so that nuclear power plants could be allowed to operate (see pp. 49-140), as happened at TMI-2. ECNP hereby incorporates all of these materials by reference into this filing.

Since the TMI-2 accident began, ECNP is not aware of any single change in attitude among any party (utility or NRC Staff) or any Board (Licensing or Appeal in any proceeding) to which ECNP is a party which would benefit the health and safety of the public. What ECNP has seen is a concerted drive to drive ECNP from every such proceeding, initially, by withholding information any by the unprecedented demands to answer up to 2,700 interrogatories. The next tactic, when requests for protective orders are dutifully denied, is to move for the expulsion of ECNP from the proceeding or to otherwise curtail the participation of ECNP. None of these actions has ever been construed so as to increase the level of protection of the health and safety of the public. Quite to the contrary, there have been few procedural rights of ECNP which have not been sacrificed in this proceeding (and in Susquehanna and the TMI-2 remanded proceedings) so as to protect the utility and the NRC Staff from ECNP.

Because ECNP does not have large quantities of resources available to it in terms of money or persons capable of substantially contributing to its legal endeavors, such legal efforts, as in the case of this proceeding, are necessarily fragile. The efforts of ECNP are very dependent on free access to information and the time to view, review, and weigh the information. We sadly observe that it is only since the TMI-2 accident that the Suspended Licensee (or Applicant, as the case may be), the NRC Staff, and appropriate Board in every proceeding to which ECNP is a party, have taken every effort to (a) ensure that ECNP gets no needed information or (b) ensure that ECNP does not have time to develop its own case. The Commission's own rules state that

Every party to a proceeding shall have the right to present such oral and documentary evidence and rebuttal evidence and conduct such cross-examination as may be required for the full and true disclosure of the facts. (10 C.F.R. 2.743(a))

Yet, with this Board's assistance, the Suspended Licensee and the NRC Staff continue to withhold from ECNP the very information ECNP needs for its case. In addition, every procedural harrassment has been thrown in the way of ECNP. Whatever the purpose of such harrassments may have been, the effect has been to totally

deny ECNP all rights of preparation of its case. Time goes by, the level of over-work continues, yet ECNP is no closer to being ready for trial now in either the TMI-1 Restart Proceedings or Susquehanna 1 and 2 than it was nine months ago. ECNP, as a result of the procedural harrassment in these two proceedings, was unable, due to the lack of human and financial resources, to offer witnesses in the radon-222 proceeding. In addition, the preparation of even cross-examination for that proceeding had to be severely curtailed for lack of resources. ECNP sees no reason to believe other than the Suspended Licensee (and the Applicant in Susquehanna), the NRC Staff, and the Licensing Board (and the Licensing Board in Susquehanna) do not want the full, informed participation of ECNP in this or any other proceeding. ECNP is not aware of any evidence whatsoever to the contrary. We have not seen this Board ask the Staff why the ECNP discovery requests have not, or could not, or will not be completely fulfilled, as the Staff promised repeatedly.\* We do see that this Board is actively protecting the NRC Staff and the Suspended Licensee from a fully informed ECNP. There seems little other explanation for the extraordinary burdens which the unfunded ECNP is required to bear, while the well-funded parties, the NRC Staff and the Suspended Licensee, are protected from having to fulfill discovery requests and (as noted in our January 24, 1980, filing) the need to answer interrogatories.

The problems ECNP faces in this proceeding are not of the making of ECNP. The applications of sanctions against ECNP will not contribute to "the full and true disclosure of the facts," nor will any further required filings. Quite the contrary, if there is any real intent for the "full and true disclosure of the facts," ECNP should be made whole by (a) the receipt of all requested documents, (b) the granting of time to develop interrogatories, and (c) the granting of time to review and analyze the information and interrogatories.

It is the Staff and Suspended Licensee which are the root of any problems. If indeed the proceeding is delayed as ECNP hereby requests, such a delay is absolutely necessary "for the full and true disclosure of the facts." It is, after all, the Staff and Applicant who took that risk in their selective treatment of ECNP.

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\* Here we must thank Staff Counsel James Tourtellote for at least one small piece of information that ECNP is not under surveillance. At the May 13, 1980, Prehearing Conference, he suggested that (paraphrased) -- as Dr. Kepford well knows -- a considerable body of information on the TMI-2 accident is on microfiche at the Penn State Library. Had Mr. Tourtellote been aware of the activities of the ECNP intervenors, he would not have made the false reference to Dr. Kepford's knowledge of the Penn State Library. But material on microfiche is of no assistance, unless there is available years for use. Neither Drs. Kepford nor Johnsrud can withstand the glare of a microfiche reader. Thus, extra time would be needed, not less, as has been demanded in this and all other proceedings to which ECNP is a party.

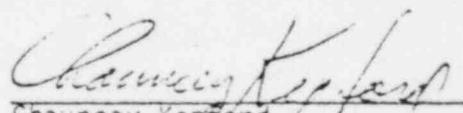
Lastly, as this Board has observed, the contentions of ECNP "raise important questions...concerning the public health and safety..." (Memorandum and Order, April 11, 1980, p. 2). We agree. In the case of Vermont Yankee vs. NRDC, the Supreme Court stated that

The Commission's prime area of concern in the licensing context... is public health and safety. (Slip Opinion, p. 28)

ECNP submits that the protection of the health and safety is the prime concern of any Licensing Board, and as a result, any predetermined schedule must take a subordinate role to the Board's prime area of concern. ECNP has raised valid contentions concerning the public health and safety, but has been denied access to the very information absolutely necessary to ask interrogatoires, ask follow-up discovery requests, follow-up interrogatories, and, indeed, even to properly answer interrogatories. For this Board to impose any sanctions upon ECNP, or even to permit the continued withholding of properly requested information from the Staff to meet an arbitrary schedule would be a travesty of justice.

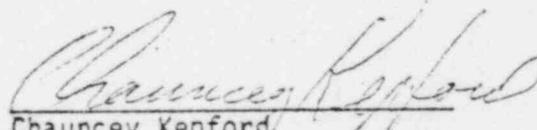
Respectfully submitted,

June 3, 1980.

  
Chauncey Keppord  
Representative of the  
ECNP Intervenors

CERTIFICATE OF SERVICE

I hereby certify that copies of ECNP INTERVENORS ANSWER TO A BOARD QUESTION have been served on the following by deposit in the U.S. Mail, first class, postage paid, on this ~~30~~ 2 day of June, 1980:

  
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