

UNITED STATES OF AMERICA  
 NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
 )  
 METROPOLITAN EDISON COMPANY, )  
 )  
 (Three Mile Island Nuclear )  
 Station, Unit No. 1) )

Docket No. 50-289  
 (Restart)



COMMONWEALTH OF PENNSYLVANIA'S REPORT  
 ON POSITIONS FORMULATED BASED ON INFORMATION  
 AVAILABLE AS OF JULY 25, 1980

The Atomic Safety and Licensing Board has requested Commonwealth agencies participating in the above-captioned proceeding to serve by July 31, 1980 a report on those positions they have adopted "based on information then available."<sup>1</sup> This report responds to that request, and is divided into two parts. The first outlines the general nature of the role the Commonwealth has elected to play at this stage of the proceeding. The second part of this report enumerates those specific issues on which Pennsylvania has elected to take a position at this time. In adopting this posture, Pennsylvania in no way implies a waiver of its additional rights to participate as set forth in 10 C.F.R. §2.715(c).

I. COMMONWEALTH OF PENNSYLVANIA'S GENERAL PLAN OF PARTICIPATION.

Failure to adopt a concrete position on some issues does not preclude active participation by Commonwealth attorneys with respect to all issues in the proceeding. 10 C.F.R. §2.715(c) allows the representatives of state agencies:

a reasonable opportunity to participate and to introduce evidence, interrogate witnesses, and advise the Commission without requiring the representative to take a position with respect to the issue. Such participants may also file proposed findings and exceptions pursuant to §§2.754 and 2.762 and petitions for review by the Commission pursuant to §2.786.

1. Memorandum and Order on Pre-hearing Conference on May 13, 1980 (May 22, 1980), at 8.

8008060 276

G D503  
 S 0/1

This general participation will take the following forms:

(1) Independent of the substantive issues involved in the proceeding, Pennsylvania desires that the Board's decisions be made on the basis of a full, fair and accurate record. Therefore, Pennsylvania intends to introduce evidence in areas of state expertise, including evidence on issues on which Pennsylvania has not taken a position.

(2) Pennsylvania will exercise freely its right to cross-examine witnesses in an effort to improve the quality and credibility of the record.

(3) Pennsylvania reserves its right to take positions on critical procedural issues. Again, this posture is based on the Commonwealth's interest in the fairness and completeness of the record. For instance, although Pennsylvania acknowledges the limited jurisdiction of the Board and the requirement that evidence be relevant, material, and reliable, it hopes that 10 C.F.R. §2.743 will be construed liberally so that all pertinent information will be weighed.<sup>2</sup>

(4) Pennsylvania will adopt a strong position on all questions of burden of proof. The general rule established by 10 C.F.R. §2.732 is that "the applicant or the proponent of an order has the burden of proof." Essentially, Metropolitan Edison is seeking an order permitting it to restart the Unit 1 reactor.<sup>3</sup> The burden of proof thus is clearly on the licensee to demonstrate that such an order would be consistent

---

2. 10 C.F.R. §2.743(a) provides: "Every party to a proceeding shall have the right to present such oral or documentary evidence and conduct such cross-examination as may be required for full and true disclosure of the facts." (emphasis added). The NRC's August 9, 1979 Order and Notice of Hearing instructed that "the Licensing Board should exercise its authority to seek to ensure that it receives all information necessary to a thorough investigation and resolution of the questions before it." (p. 11).

3. August 9, 1979 Order and Notice of Hearing at 8, 15.

with the public health, safety, and interest. Specifically, the August 9 NRC order expressly imposes upon the licensee the burden of demonstrating that a number of conditions are met prior to restart.<sup>4</sup> As to the specific actions required by the NRC order, the Office of Nuclear Reactor Regulation renders the initial decision regarding the completion of "short-term" actions and the achievement of reasonable progress toward the completion of "long-term" actions. Nevertheless, Pennsylvania believes that the burden of proof is ultimately on the licensee to demonstrate that such actions have been satisfactorily completed.

(5) The unique status afforded to state agencies by §274 of the Atomic Energy Act and 10 C.F.R. §2.715(c) enables Pennsylvania to reserve judgment on any question of fact or issue of law on which it currently elects not to adopt a position. Pennsylvania hereby reserves its right to file proposed findings of fact and exceptions and to participate actively in the Commission review regardless of the position it adopts on a particular issue at this stage of the proceeding.<sup>5</sup> Pennsylvania adopts this position due to its status as a representative of the public interest<sup>6</sup> and its desire to reserve judgment regarding issues on which there currently exists insufficient evidence to render a rational decision.

II. SPECIFIC POSITIONS OF THE COMMONWEALTH OF PENNSYLVANIA BASED ON INFORMATION AVAILABLE AT THIS TIME.

For the purpose of issue identification, this report follows the organization suggested in "Intervenor Steven C. Sholly Recommendations on

4. Id. at 6-7.

5. See In re Gulf States Utilities Co., ALAB-317, March 4, 1976, reprinted in 2 NUC. REG. REP. (CCH) ¶30, 053.02.

6. See In re EXXON Nuclear Co., Inc., ALAB-447, Dec. 13, 1977, reprinted in 2 NUC. REG. REP. (CCH) ¶30, 255 (concurring opinion of Salzman, Member, ASLAB).

Contention Grouping" (May 19, 1980), with the addition of one category entitled "Emergency Planning."

Pennsylvania agrees with a number of the contentions raised by the intervenors. Pennsylvania's extent of agreement with these contentions, however, fits into two categories: Group A: The contention is valid and has not been addressed adequately by the August 9, 1979 NRC Order or subsequent staff review; both the licensee and the NRC staff bear a heavy burden of demonstrating that these concerns are adequately addressed prior to restart; Group B: The contention states a valid and necessary prerequisite to restart, but has been addressed adequately by a required NRC action; however, the licensee still bears the burden of proving full compliance with this condition prior to restart.

The omission of a contention from one of these two categories does not imply disagreement with that contention at this time. Rather, failure to adopt a position simply means that the Commonwealth currently has no opinion with respect to that contention. As stated earlier, Pennsylvania reserves its right to take a position on these issues as more information becomes available.

#### Class 9 Accidents.

Pennsylvania believes that the accident scenarios set forth in Sholly Contention 17 and ECNP Contention 4 are possible and should be addressed. However, since other possible scenarios may lead to a Class 9 accident, this concern cannot be addressed fully by merely litigating these scenarios. Therefore, a reevaluation in light of the TMI-2 accident of the NRC's method of determining which possible accidents fall within the design basis is necessary to provide a reasonable assurance that a Class 9 accident will not occur at TMI-1.

Group A Contentions - Sholly 17  
 ECNP 4  
 UCS 13

Human Factors.

The NRC Order addresses these concerns as they relate to a TMI-2 type accident.

Group B Contentions - Sholly 15  
 ANGRY 5c

Radiation Monitoring.

It must be demonstrated that the inadequacies in Licensee's management of radiation monitoring during the TMI-2 accident will not be repeated at TMI-1. The Licensee should be required to finalize its detailed environmental monitoring program and to give it wide public dissemination as a means of alleviating psychological stress.

Group A Contention - Sholly 9  
Group B Contention - Sholly 5

Qualification of Components and Controls.

Since certain essential instruments failed due to flooded areas after the TMI-2 accident, this type of accident-induced environmental conditions must be evaluated for essential safety-related instruments prior to TMI-1 restart.

Group A Contentions - UCS 12  
Group B Contentions - UCS 3  
 UCS 4  
 UCS 5

Financial Issues.

It is critical that the Licensee demonstrate its financial ability to operate TMI-1 simultaneously with the TMI-2 cleanup. It should be noted, however, that TMI-1 restart, absent another accident, would probably improve rather than impair Licensee's financial health.

Group A Contentions - CEA 9  
 TMIA 6

NEPA.

Pennsylvania urges the Board to decide the question of whether an EIS is required as early as possible in this proceeding to avoid potential further delay in final resolution of the restart petition.

LOCA Analysis.

The Licensee must demonstrate that it has made appropriate changes at TMI-1 in accordance with the generic evaluation of small break LOCA's for Babcock and Wilcox-designed reactors (NUREG-0565).

Group B Contentions - UCS 8  
ECNP 1e

Hydrogen Gas Control.

The Licensee has demonstrated that hydrogen control is manageable for a design basis LOCA but not for potential Class 9 accidents.

Group A Contentions - Sholly 11  
UCS 11  
Group B Contentions - ANGRY 5a

Operator Training.

The accelerated operator training program appears to satisfy the concerns generated by the TMI-2 accident.

Group B Contentions - Aamodt 2

TMI-1/TMI-2 Separation.

Although waste storage separation issues appear to have been addressed adequately by NRC requirements imposed thus far, the Licensee must demonstrate that absolute compliance can be and will be reached.

Group B Contentions - CEA 5  
CEA 6  
TMIA 7

Pennsylvania is also extremely concerned that the issue of the cumulative offsite radiation doses from the simultaneous operation of TMI-1 and decontamination of TMI-2 will not be addressed adequately in

light of the withdrawal of TMI-A contentions 1 and 2 and the removal of ECNP Contention 5. It should be adequately demonstrated that the probability of accidents at TMI-2 cleanup which may exceed the 10 C.F.R. 50 Appendix I limits is low compared to the probability of an accident at TMI-1 which could exceed these limits. It should be noted that TMI-2 cleanup is an essential activity while TMI-1 restart is optional.

Containment Isolation.

It is not clear whether the reactor building sump line receives a containment isolation signal.

Group A Contentions - Sholly 1, point 2  
Group B Contentions - Sholly 1, point 1

Plant Computer System.

It must be demonstrated that the computer-related difficulties that occurred during the TMI-2 accident are not repeated at TMI-1, although the computer should remain a supplemental information system rather than a primary safety-related system.

Group A Contentions - Sholly 13  
 ECNP 1a

ECCS Bypass.

Procedural changes rather than technical modifications are most appropriate to prevent an operator ECCS Bypass.

Group B Contentions - Sholly 3  
 UCS 10

Instrumentation.

The licensee has not committed itself to a design that will provide an unambiguous indication of the degree of inadequate core cooling.

Group B Contentions - ANGRY 5b  
 UCS 7  
 ECNP 1c, d  
 Sholly 6b

Emergency Planning.

Because of the recent revision of the emergency plans (distributed to the parties in June), the consequent suspension by the Board of the schedule as it applies to emergency planning issues, and the setting of a new deadline for final contentions, the Commonwealth understands that it is not required to take a position on emergency planning issues at this time. However, even in the absence of final contentions, the Commonwealth can address two important points.

First, although Pennsylvania agrees that expediency is desirable, it also views the adequacy of federal, state and local emergency planning and response capabilities as an essential prerequisite to the restart of TMI-1. Therefore, consideration of the emergency planning issues should be extended so that all relevant information can be analyzed thoroughly. The pending promulgation of the final NRC emergency planning regulations (44 Fed. Reg. 75167 (1979)) argues in favor of postponement until the regulatory structure is clarified. Moreover, the lack of NRC staff analysis of Licensee's Revised Emergency Plan makes a complete analysis of the Plan's adequacy impossible. Although the September 8, 1980 deadline for contentions<sup>7</sup> appears adequate at this time, additional discovery periods should be provided as new information becomes available. In any case, Pennsylvania intends to request additional time to formulate its positions on the revised contentions after the September 8 deadline, as it has received with respect to the other issues in the proceeding.

Second, Pennsylvania is concerned that the record will be incomplete unless the NRC staff presents evidence to demonstrate that federal emergency response capabilities have been improved since the TMI-2

---

7. Memorandum and Order Resuming Schedule For Discovery and Contentions on Emergency Planning (July 15, 1980).



accident. This is not a generic concern but one which was stimulated by specific federal actions during the TMI-2 accident. For example, throughout the accident NRC officials experienced difficulty in receiving and communicating accurate information to and from the Licensee and the appropriate state agencies. As a result, a number of incorrect and conflicting recommendations were received by state officials. This confusion may be compounded by the continuing presence at the site of NRC officials monitoring TMI-2 cleanup operations. The opinions of these on-site officials may conflict with information or instructions received from NRC headquarters. No documents or plans have been produced to demonstrate that such potential conflicts will be corrected prior to restart and to analyze whether or how these changes will affect the state's emergency response. Pennsylvania expects that federal witnesses and other evidence will be presented to prove that the TMI-2 mishaps will not be repeated at a potential TMI-1 accident.

*Karin W. Carter*

---

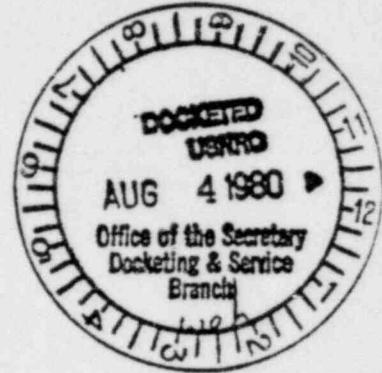
KARIN W. CARTER  
Assistant Attorney General  
Commonwealth of Pennsylvania

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
 )  
METROPOLITAN EDISON COMPANY, )  
 )  
(Three Mile Island Nuclear )  
Station, Unit No. 1) )

Docket No. 50-289  
(Res art)



CERTIFICATE OF SERVICE

I hereby certify that the attached Commonwealth of Pennsylvania's Report on Positions Formulated Based on Information Available as of July 25, 1980 was mailed, postage prepaid, this 31st day of July, 1980, to the persons on the attached Service List.

*Karin W. Carter*

KARIN W. CARTER  
Assistant Attorney General

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

SERVICE LIST

George F. Trowbridge, Esquire  
Shaw, Pittman, Potts & Trowbridge  
1800 M Street, N.W.  
Washington, D.C. 20006

Ms. Marjorie M. Aamodt  
R.D. #5  
Coatesville, Pennsylvania 19320

Ms. Holly S. Keck, Leg. Chairman  
Anti-Nuclear Group Representing  
York (ANGRY)  
245 W. Philadelphia Street  
York, Pennsylvania 17404

Ms. Frieda Berryhill, Chairman  
Coalition for Nuclear Power  
Plant Postponement  
2610 Grendon Drive  
Wilmington, Delaware 19808

Mr. Robert Q. Pollard  
609 Montpelier Street  
Baltimore, Maryland 21218

Walter W. Cohen, Esquire  
Consumer Advocate  
Department of Justice  
Strawberry Square, 14th Floor  
Harrisburg, Pennsylvania 17127

Dr. Chauncey Kepford  
Judith H. Johnsrud  
Environmental Coalition on Nuclear  
Power  
433 Orlando Avenue  
State College, Pennsylvania 16801

Mr. Steven C. Sholly  
304 South Market Street  
Mechanicsburg, Pennsylvania 17055

Theodore A. Adler, Esquire  
Widoff, Reager, Selkowitz & Adler  
P. O. Box 1547  
Harrisburg, Pennsylvania 17105

Ivan W. Smith, Esquire  
Chairman  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dr. Walter H. Jordan  
Atomic Safety and Licensing Board Panel  
881 West Outer Drive  
Oak Ridge, Tennessee 37830

Dr. Linda W. Little  
Atomic Safety and Licensing Board Panel  
5000 Hermitage Drive  
Raleigh, North Carolina 27612

Docketing and Service Section  
Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Ellyn R. Weiss  
Sheldon, Harmon, Roisman & Weiss  
1725 I Street, N.W.  
Suite 506  
Washington, D.C. 20006

Karin P. Sheldon, Esq. (PANE)  
Sheldon, Harmon, Roisman & Weiss  
1725 I Street, N.W., Suite 506  
Washington, D.C. 20006

James A. Tourtellotte, Esquire  
Office of the Executive Legal  
Director  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

John A. Levin, Esquire  
Assistant Counsel  
Pennsylvania Public Utility  
Commission  
P.O. Box 3265  
Harrisburg, Pennsylvania 17120

Robert L. Knupp, Esquire  
Assistant Solicitor  
County of Dauphin  
P.O. Box P  
407 North Front Street  
Harrisburg, PA 17108

John E. Mirnich  
Chairman, Dauphin County Board of  
Commissioners  
Dauphin County Courthouse  
Front and Market Streets  
Harrisburg, Pennsylvania 17101

Jordan D. Cunningham, Esquire  
Attorney for Newberry Township  
T.M.I. Steering Committee  
2320 North Second Street  
Harrisburg, Pennsylvania 17110

Marvin I. Lewis  
6504 Bradford Terrace  
Philadelphia, Pennsylvania 19149

Jane Lee  
R.D. 3, Box 3521  
Etters, Pennsylvania 17319