

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF'S ANSWER TO INTERVENOR NEWBERRY TOWNSHIP
TMI STEERING COMMITTEE REVISED EMERGENCY PLANNING
CONTENTIONS AND STAFF REQUEST FOR STATEMENT OF
STATUS OF INTERVENOR'S PREVIOUSLY ADMITTED CONTENTIONS

I. Introduction

By filings dated September 8 and September 11, 1980, Intervenor Newberry Township TMI Steering Committee (Intervenor or Newberry) submitted revised, amended and new proposed contentions on emergency planning in the captioned proceeding.^{1/} These submissions were made pursuant to the Licensing Board's (Board) "Memorandum and Order Resuming Schedule for Discovery and Contentions on Emergency Planning," issued July 15, 1980, in which the Board directed that expanded, specified or new proposed contentions based upon revision 2 to the Licensee's emergency plan^{2/} were to be filed by September 8.^{3/}

^{1/} "Second Final Amended Contentions of Newberry Township TMI Steering Committee, Et Al. to the Metropolitan Edison Emergency Plan; York County Protective Action Plan for the Three Mile Island Nuclear Power Plant; and Dauphin County Fixed Nuclear Facility Incident Response Plan," September 8, 1980 (September 8 Revised Contentions); "Second Final Amended Contentions of Newberry Township TMI Steering Committee, Et Al. to the Metropolitan Edison Emergency Plan; York County Protective Action Plan for the Three Mile Island Nuclear Power Plant; and Dauphin County Fixed Nuclear Facility Incident Response Plan - Additional Contentions," September 11, 1980 (September 11 Additional Contentions).

^{2/} Note that revision 2 of the Licensee's plan contains or incorporates revised updated versions of State and county plans which were not available in previous revisions of the Licensee's plan. Consequently, revision 2 to the Licensee's plan can appropriately give rise to new or amended contentions directed to the adequacy of the revised and updated State and county plans as well as to contentions directed to the Licensee's revised plan.

^{3/} Because of transcription and clerical errors, certain of Newberry's revised contentions intended for filing on September 8 were omitted from the September 8 Revised Contentions. Those omitted contentions were submitted in the September 11 Additional Contentions.

The NRC Staff's (Staff) answers to Newberry's revised, specified and new proposed contentions^{4/} as well as the Staff's request for an indication of the status of Newberry's previously admitted contentions are set forth below.

II. NRC Staff's Response to Revised Contentions

While Newberry's revised, specified and newly proposed contentions contain legal argument, raise unrelated concerns and issues within the same contention and in many instances replicate issues raised in other new contentions, the Staff does not object on those grounds. Apart from those exceptions discussed infra, it is the Staff's view that Newberry's revised, specified and new proposed contentions are appropriately based upon new information in revision 2 to the Licensee's plan, are adequately specific, and raise issues appropriate for consideration in this proceeding.

In Contention 3 on the York County Plan, Newberry asserts that ". . . the Plan is still deficient in [the training exercise] area unless and until the Commonwealth of Pennsylvania through its police powers provides that those who are considered to be emergency service forces within the local boroughs and townships are given non-prejudicial paid leave time by their employees in order to participate in such an exercise." The NRC has the authority to ". . . make a finding as to whether the state of onsite and offsite emergency preparedness provides reasonable assurance that adequate protective measures can

^{4/} At the Staff's request, the Licensing Board extended the time within which the Staff could file this answer to September 23, 1980. Memorandum and Order, September 17, 1980.

and will be taken in the event of a radiological emergency."^{5/} Nevertheless, the NRC does not have the authority to require the Commonwealth of Pennsylvania to exercise its police powers by issuing a mandate requiring that employers whose businesses are located in Pennsylvania allow employees, who are also volunteers in the emergency service forces, to participate in training exercises during working hours without forfeiting a portion of their salary. Since the NRC lacks jurisdiction to require what Newberry seeks in the quoted portion of Contention 3, this part of Newberry Contention 3 does not fall within the scope of this proceeding and is inappropriate for hearing. Accordingly, the Staff objects to the admission of the quoted portion of Contention 3 on the York County Plan.

In Contention 12 on the York County Plan, Newberry makes the conclusory assertion that the requirements that police assist in notification of residents and also provide for traffic control and security are mutually exclusive and that the police cannot do both. No reasons for this assertion are provided and, indeed, there appears to be no reason why police cannot both assist in notification of residents and provide for traffic control and security. Accordingly, it is the Staff's view that there is no basis for this contention and the Staff objects to the contention on that ground.

Contention 13 on the York County Plan raises an issue about the distribution of thyroid blocking agents and other radiological health materials. The issue raised in this contention is identical to the issue raised in the third paragraph of Contention 3 on the York County Plan. Because Contention 13 is

^{5/} See Emergency Planning: Final Rule, 45 Fed. Reg. 55402 (August 19, 1980).

simply a repetition of assertions made in Contention 3, the Staff objects to the admission of Contention 13.^{6/}

In Contention 29 on the York County Plan, Newberry asserts that a catalog of tow trucks available for use in York County must be attached to the plan. The reasons why such a catalog is necessary or why its absence renders the plan deficient is not stated. Such reasons are not apparent and, thus, it appears that this contention is wholly lacking in basis. Accordingly, the Staff objects to the admission of this contention on that ground.

In Contention 15 on the Dauphin County Plan, Newberry raises concerns about the number of ambulances available for evacuation and then states "that there are other deficiencies, conflicts as to the number of ambulances required within the plan . . ." The other deficiencies and conflicts are not identified or in any way particularized. Without specification, this part of the contention is unacceptably vague. Accordingly, the Staff objects to the inclusion of the quoted statement in Newberry's Contention 15 on the Dauphin County Plan.

In Contention 18 on the Dauphin County Plan, Newberry asserts that the number of staging areas set aside for mass transportation vehicles is inadequate. Newberry also asserts in this contention that security must be provided for

^{6/} As previously mentioned, many of Newberry's revised and new proposed contentions repeat allegations made in other Newberry contentions. The Staff has generally not objected to such repetitive and cumulative assertions because the repetition could only be corrected by substantial redrafting of a large number of new contentions - an effort which, at this stage of the proceeding, is not warranted. The Staff has objected to Contention 13 on the York County Plan, however, since the repetition problem inherent in this contention can be eliminated by rejecting that contention.

buses and mass transportation vehicles. No basis is set forth for either of these assertions and the assertions appear to be unfounded. Thus, Newberry has not indicated why the two staging areas provided for mass transportation vehicles are not enough or why some sort of protection for the vehicles is required. Accordingly, the Staff objects to the admission of this contention on the ground that there is no basis for it.

Finally, in Contention 28 on the York County Plan, "Intervenors reallege and incorporate by reference . . . contentions 3B(4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (15), (16), (17), (18), and (21)." These contentions were previously admitted as issues in the restart proceeding and the Staff has no objection to Newberry's present reaffirmation of its intent to have these contentions litigated. Newberry's reaffirmation of these contentions does, however, raise a question as to its intent with regard to its other emergency planning contentions which had previously been admitted as issues. Specifically, Newberry has not, to the Staff's knowledge, formally indicated to the Licensing Board whether it intends to withdraw admitted Contentions 3A(3), 3A(4), 3B(1), 3B(14), 3B(19), 3B(20), 3C(1)-(8), 3D(1)-(5), 3D(7) and 3D(10)-(12). While many of the revised and new proposed contentions appear to encompass the matters raised in some of these previously admitted contentions,^{7/} Newberry's intent with regard to the previously admitted contentions, other than those it has realleged, should be made

^{7/} Compare, for example, previously admitted Contention 3D(9) to new Contention 4 on the Licensee's Plan wherein Newberry has essentially repeated the allegations of the previously admitted contention with the exception of the assertion that local municipalities are unaware of their responsibilities to develop emergency plans (which has been deleted from the new contention).

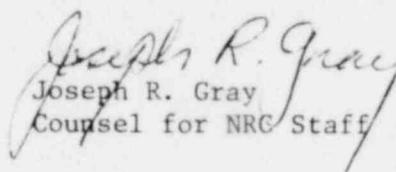
clear. To this end, the Staff requests that Newberry be directed to indicate formally, in writing, its intent with regard to its previously-admitted contentions on emergency planning.

III. Conclusion

Based on the foregoing, the Staff

- (1) objects to the admission of a portion of Contention 3 and all of Contention 12, 13 and 29 on the York County Plan and to a portion of Contention 15 and all of Contention 18 on the Dauphin County Plan but does not object to the admission of the remainder of Newberry's revised and new proposed contentions of September 8 and 11;
- (2) requests that Newberry be required to advise the Licensing Board and parties, formally in writing, of its intent with regard to previously admitted contentions on emergency planning.

Respectfully submitted,


Joseph R. Gray
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 23rd day of September, 1980