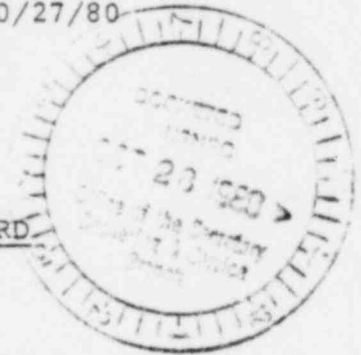


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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



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

STATEMENT OF LICENSEE ON THE SCHEDULING  
OF EMERGENCY PLANNING ISSUES

The Board's October 17, 1980 Memorandum and Order gave notice that a hearing session to consider prehearing matters relating to emergency planning would be held on October 30, 1980. At that hearing session Licensee intends to discuss with the Board and the parties a schedule leading to the filing of testimony on emergency planning issues. The purpose of this Statement is to propose a schedule which Licensee believes is realistic and can be met by all parties, and to explain the basis for Licensee's proposed schedule.

Licensee believes that much of the apparent difference between itself and the Staff over schedule results from a subtle, although potentially significant, disagreement as to the scope of emergency planning issues in this proceeding. Prior to issuance of the Commission's new emergency planning rule and NUREG-0654, the guidelines governing emergency planning issues were straightforward. In its August 9, 1979 Order and Notice of Hearing, the Commission specified

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both short-term and long-term actions that Licensee should undertake to upgrade emergency preparedness at TMI-1.

The five short-term items identified by the Commission are (slip op. at 6):

- (a) Upgrade emergency plans to satisfy Regulatory Guide 1.101 with special attention to action level criteria based on plant parameters.<sup>1/</sup>
- (b) Establish an Emergency Operations Center for Federal, State and Local Officials and designate a location and an alternate location and provide communications to plant.
- (c) Upgrade offsite monitoring capability, including additional thermoluminescent dosimeters or equivalent.
- (d) Assess the relationship of State/Local plans to the licensee plans so as to assure the capability to take emergency actions.
- (e) Conduct a test exercise of its emergency plan.

With respect to these items, the Staff reported in its June 1980 "Evaluation of Licensee's Compliance with the Short and Long Term Items of Section II of NRC Order Dated August 9, 1979", NUREG-0680 (hereinafter cited as "Staff SER") that (page C3-5):

[T]he licensee is in compliance with Items 3a, b, c, and d of the Order. We will require that a test exercise of the emergency plan be made prior to restart of the facility to meet the requirements of Item 3e of the Order.

Based on this conclusion it is apparent that, at least as to the

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<sup>1/</sup> The Commission recently has given notice that it has withdrawn Reg. Guide 1.101. See 45 Fed. Reg. 69610 (October 21, 1980).

five short-term action items, the Staff now is in a position to go to hearing on those matters. This is consistent with the prognosis of Staff counsel at the May 1980 prehearing conference that the Staff would be ready on emergency planning in time for the first evidentiary hearing session.

The two long-term emergency planning items identified by the Commission are (slip op. at 8):

- (a) modify emergency plans to address changing capabilities of plant instrumentation,
- (b) extend the capability to take appropriate emergency actions for the population around the site to a distance of ten miles.

With respect to these items, the Staff reported in its SER that (page D4-1):

Based on our review of the licensee's upgraded emergency plan, we conclude that the licensee has demonstrated reasonable progress toward completion of this item of the Order. [Emphasis added.]

Thus, also as to the two long-term action items, the Staff was of the view in June 1980 that it was in a position to go to hearing on those matters.

Significantly, the Staff recognized in its June 1980 SER that further work in the emergency planning area by both the Staff and Licensee would be ongoing in order to satisfy the recently released guidance set forth in NUREG-0654. On this matter, the Staff SER stated (page D4-1):

By letter dated March 10, 1980, all power reactor licensees were sent the "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants (For Interim Use and Comment)." NUREG-0654. The Emergency Plan for TMI-1 was developed before the issuance of NUREG-0654 and therefore did not address many of the new evaluation criteria. Accordingly, by letter dated April 28, 1980 the licensee was requested to revise the proposed Emergency Plan by June 2, 1980 to meet the planning objectives of NUREG-0654. We are reviewing the revised emergency plan against the planning objectives of NUREG-0654 and will report on the review in an Emergency Plan Evaluation Report.

It is apparent from this statement that the Staff, at least in June 1980, viewed Licensee's progress towards compliance with NUREG-0654 as essentially outside the scope of the restart proceeding. This is evidenced by three factors: (1) the Staff's failure to indicate that it would require compliance with NUREG-0654 as a condition to restart (see also Staff SER at pp. B-7 and B-10); (2) the Staff's failure to analyze compliance with NUREG-0654 in terms of whether Licensee had or had not demonstrated reasonable progress towards that goal -- had such an analysis been included it might have indicated a Staff view that such compliance was a long-term action item; and (3) the Staff's statement that its review of compliance with NUREG-0654 would be reported in an "Emergency Plan Evaluation Report" -- that is, in an entirely independent document and not as a supplement to the June 1980 Staff SER.

Notwithstanding all of this, Licensee recognizes that positions can change, and the Staff's current position on emergency planning now seems to be slightly different than the formulation adopted in the June 1980 Staff SER. Based on the October 10,

1980 affidavit of Thomas M. Novak, the Staff now views Licensee's compliance with NUREG-0654 and the new emergency planning rule as within the scope of this restart proceeding. While Licensee believes that view to be in error, Licensee does not oppose consideration of its compliance with the new emergency planning requirements in this proceeding. The important issue is how such consideration should be factored into this proceeding.

Licensee submits that the relevant inquiry for this Board is whether Licensee's emergency plan, and that of the affected state and county governments, demonstrate reasonable progress towards compliance with the April 1 and July 1, 1981 dates specified in the new emergency planning rule. The significance of this standard is that the Staff should now be able to state its position as to the presence, or lack thereof, of reasonable progress being made in emergency preparedness around TMI-1. Specifically, the Staff now should be able to assess Revision 2 of Licensee's Emergency Plan. Similarly, FEMA now should be able to assess the adequacy of current state and county emergency plans. Even if FEMA anticipates changes to the state and county plans, and further reviews by the Regional Assistance Committee ("RAC"), FEMA now can state whether the state and county governments are making reasonable progress towards acceptable plans.<sup>2/</sup>

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<sup>2/</sup> Licensee recognizes, of course, that in addition to the Staff and FEMA positions, there are a number of intervenor contentions as to both onsite and offsite planning which need to be addressed at the hearings. Resolution of these contentions need not await completion of FEMA's final review of state and county plans.

This approach would treat the new emergency planning requirements in a manner similar to the long-term action items of the Commission's Order and Notice of Hearing. Such a result is fully consistent with the Commission Order itself. It would amplify long-term action item 4(b) to include compliance with the new emergency planning requirements. This result also is consistent with the prefiled testimony of Robert W. Reid on the Staff's position as to the applicability of NUREG-0694 and/or NUREG-0660. That testimony does not identify compliance with NUREG-0654 as a precondition to restart.

Moreover, even if the Staff were of the view that Licensee must comply with NUREG-0654 before restart, and, therefore, that its SER should address completion of the requirements rather than reasonable progress towards that goal, the Commission's Order and Notice of Hearing permits Licensee to challenge that view by arguing that such requirements are not necessary for restart (see slip op. at 12). Similarly, any intervening party may within the scope of its admitted contentions argue that compliance with NUREG-0654 be a condition for restart. The point is that the parties be able to urge their respective positions to the Board on the basis of an evidentiary record. If the Staff delays presentation of its case until full compliance with the new requirements -- rather than reasonable progress towards compliance with those requirements -- such delay itself will deny Licensee its right to challenge the Staff position in this proceeding.

The potential for delay is especially acute with respect to

the FEMA review of state and county emergency plans. Under proposed rules published at 45 Fed. Reg. 42341-47 (June 24, 1980) -- and, pending adoption, currently being used by FEMA -- the review and approval by FEMA of state and county emergency plans is a long and complicated process. The Commission's new emergency planning rule requires completion of that process only by April 1, 1981. However, it appears to Licensee that FEMA (and the NRC Staff) may be taking the position that most, if not all, of the FEMA review process be completed before the FEMA-related testimony is prepared. This position creates a de facto requirement that review of the state and county plans be completed well prior to April 1, 1981. Such a view is contrary to the requirements of the new emergency planning rule and inconsistent with Licensee's right under the Commission's Order and Notice of Hearing to urge that it need demonstrate only reasonable progress towards the April 1, 1981 completion date.

Therefore, the schedule proposed below is premised on the view that FEMA will provide testimony on the extent of progress being made in the area of offsite emergency planning, and whether that progress is sufficient to demonstrate reasonable progress towards the April 1, 1981 completion date, rather than whether the state and county plans are in complete compliance with the new requirements. Obviously, if FEMA later makes a finding as to complete compliance prior to the close of these hearings, that can be considered. But, commencement of hearings on emergency planning should not await such a FEMA finding.

Another characteristic of the schedule proposed below that

merits discussion is the recommendation that a two-stage process for filing emergency planning testimony be adopted. As Mr. Novak's affidavit makes clear, the NRC Staff has divided between itself and FEMA responsibility for drafting the initial version of testimony. Presumably this division of responsibility is based on whether contentions address Licensee's onsite emergency plan or the state and county emergency plans for offsite areas.<sup>3/</sup> In the present circumstances, Licensee believes such a division of contentions to be reasonable. The contentions submitted by ANGRY, Newberry and Mr. Sholly explicitly distinguish between whether they address Licensee's plan or the plans of the state and county governments. Making such a division for the limited number of emergency planning contentions submitted by the Aamodts and ECNP should not be difficult. Given the substantial differences in the extent of Staff preparation remaining to be completed for onsite versus off-site emergency planning issues, Licensee suggests that the filing of testimony on the adequacy of onsite emergency planning not be delayed pending the filing of testimony on offsite emergency planning.

With these considerations in mind Licensee proposes the following schedule:

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<sup>3/</sup> Licensee notes that both Mr. Sholly and the Commonwealth of Pennsylvania have filed interrogatories requesting the Staff to identify which contentions they initially are responding to and which FEMA is initially responding to.



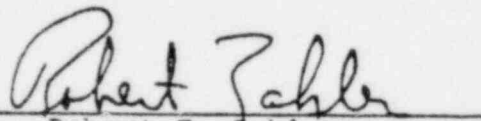
<u>Date</u>	<u>Description of Event</u>
October 30, 1980	Hearing session on outstanding emergency planning matters
November 7, 1980	Board rulings on outstanding emergency planning matters, including new contentions in dispute and scheduling of SER, supplemental discovery and testimony
December 1, 1980	Staff SER on compliance of onsite emergency planning with the new emergency planning rule and NUREG-0654
December 8, 1980	Discovery requests on new information included in the Staff SER
December 22, 1980	Response to discovery requests
January 9, 1981	Filing of testimony on the adequacy of onsite emergency planning
January 12, 1981	FEMA progress report on the adequacy of state and county emergency plans for off-site areas
January 19, 1981	Discovery requests on new information included in FEMA progress report
February 2, 1981	Response to discovery requests
February 16, 1981	Filing of testimony on the adequacy of offsite emergency planning

The above schedule for filing of testimony would, if necessitated by hearing schedules on other restart issues, permit separate scheduling of hearing sessions on the adequacy of onsite and offsite emergency planning.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By:

  
Robert E. Zahler

Dated: October 27, 1980

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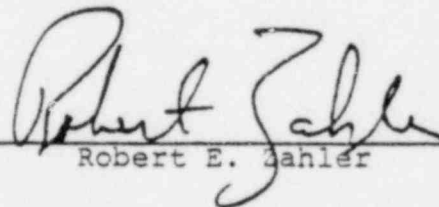
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Statement of Licensee on the Scheduling of Emergency Planning Issues", were served upon those persons on the attached Service List by deposit in the United States mail, postage prepaid, this 27th day of October, 1980.

  
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Robert E. Zahler

Dated: October 27, 1980

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