



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 )

LICENSEE'S POSITION TO ECNP REQUEST  
FOR ADDITIONAL RESPONSE TIME,  
RENEWED MOTION TO DISMISS ECNP CONTENTIONS,  
AND MOTION FOR SANCTIONS AGAINST ECNP

I. Introduction

The Board's "Memorandum And Order On Schedule For Responses On Emergency Plan Matters" (September 24, 1980) extended until October 16, 1980 the time for ECNP's response to Licensee's interrogatories of July 29, 1980 on Revision 2 of the Emergency Plan. The September 24 Order further directed ECNP to respond by October 16 to Licensee's September 18 motion to dismiss ECNP Contentions 2-2 and 2-4, and to the Staff's September 23 answer to Licensee's motion.

By "ECNP Intervenors' Statement Of Need And Request For Additional Response Time" (dated October 16, postmarked October 17 P.M.), ECNP asks the Board to further extend until

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October 30, 1980 the time for response to Licensee's July 29 interrogatories, Licensee's September 18 motion, and the Staff's September 23 answer to Licensee's motion. Licensee herein opposes ECNP's request for further extensions of time, renews its September 18 motion to dismiss Contentions 2-2 and 2-4, and moves to dismiss those emergency planning contentions which are the subject of its July 29 interrogatories.

## II. Argument

### A. Licensee's July 29 Interrogatories

Licensee's seven interrogatories to ECNP on Revision 2 of the Emergency Plan were filed July 29, 1980. Each of the interrogatories refers to a different emergency planning subcontention, focuses upon information which is relevant to the referenced subcontention and has been revised or included for the first time in Revision 2 of the Emergency Plan, asks whether the new information resolves the concerns expressed in the contention, and -- if the information does not resolve the concerns -- seeks the basis for that conclusion.

Licensee should have received substantive responses to its July 29 interrogatories by August 18. ECNP filed neither objections nor responses to Licensee's interrogatories; nor did ECNP seek an extension of time from Licensee. On August 25, 1980, Licensee filed its "Motion To Compel Response Of ECNP To Emergency Planning Interrogatories." That motion included a contingent

request that, upon ECNP's failure to timely comply with any such Board order, the Board dismiss the subject contentions for default. Through that contingent request, Licensee sought to avoid this instant round of filings and put ECNP on notice of the relief which Licensee would seek upon ECNP's failure to comply with any Board order that might issue. The "NRC Staff's Response To Licensee's Contingent Request For Sanctions Against ECNP Contained In Licensee's Motion For Order Compelling Response Of ECNP To Interrogatories," dated September 12, 1980, supported Licensee's contingent request for relief.

The Board observed, at page 2 of its "Memorandum And Order Granting Licensee's Motion To Compel ECNP Response To Emergency Planning Interrogatories" (September 12, 1980):

ECNP did not timely respond to the motion to compel. \* \* \*  
In the course of filing proposed revisions to Contentions 2-2 and 2-4 on September 8, 1980, ECNP for the first time asks that we deny the motion to compel. ECNP merely states that it cannot now find the interrogatories, and implies that it would be burdensome to require ECNP to respond. We disagree. \* \* \* [T]he interrogatories are very direct and concise and properly request information to which the licensee, and indeed the Board, is entitled.

The Board directed ECNP to respond to Licensee's interrogatories by September 29, and attached a copy of the interrogatories to

the order. The Board deemed it premature to provide for ECNP's failure to comply with the order, but invited Licensee to move for the dismissal of the affected contentions in such event.

In "ECNP Intervenors' Request For An Extension Of Time," dated September 17, 1980, ECNP's representative requested an extension of time until October 16 for responding to Licensee's interrogatories. By a filing dated September 23, Licensee opposed ECNP's request. The Board, however, granted ECNP's requested extension to October 16 in its "Memorandum And Order On Schedule For Responses To Emergency Plan Matters" (September 24, 1980).

By October 16, ECNP had neither complied with the Board's September 24 Order nor requested an extension of time from Licensee. However, ECNP has filed a "Statement Of Need And Request For Additional Response Time," requesting a further extension of time to October 30. In support of its "Request For Additional Response Time," ECNP cites (1) "the Licensee's and Staff's failures to meet filing deadlines" and (2) "the uncertainties of the hearing schedule and various changes in deadlines which have caused substantial inconvenience to intervenors."

Licensee knows of no instance in which it has failed to meet an emergency planning filing deadline, and certainly has not failed to meet any which would impact upon ECNP's ability to respond to Licensee's July 29 interrogatories. ECNP has not specified which schedule and deadline changes have adversely affected its ability to respond to Licensee's interrogatories. There have been no changes in emergency planning schedules which would affect ECNP's response to Licensee's interrogatories, other than the extension for responses to October 16, which ECNP itself sought.

Moreover, Licensee served the interrogatories on ECNP on July 29, 1980, and the Board served them on September 12, 1980. ECNP acknowledged the interrogatories in its September 8 filing. Thus, ECNP has known of its obligation to answer the interrogatories for at least five and a half weeks, and was served with a copy of the interrogatories at its official filing address in this proceeding more than twelve weeks ago. Accordingly, ECNP has had ample opportunity in that period to adjust to any schedule and deadline changes while meeting its obligation to comply with the Board's order and respond to Licensee's interrogatories.

In its "Request For Additional Response Time," ECNP states that an extension to October 30 for response to Licensee's

interrogatories "would not significantly prejudice" Licensee. To the contrary, Licensee needs ECNP's responses not only to prepare its testimony on emergency planning, but also to prepare for the October 30 hearing session to discuss emergency planning matters, which the Board noticed in its October 17, 1980 "Memorandum and Order Scheduling Emergency Planning Session." Thus any additional extensions to ECNP would both further delay Licensee's preparation of its emergency planning testimony and preclude resolution of the ECNP - related emergency planning matters at the October 30 hearing session. Such a result is prejudicial to Licensee, and, in view of the time extensions already granted to ECNP, totally unwarranted.

ECNP attempts to analogize its latest request for an extension of time to "that [extension] granted to Mrs. Aamodt." The characterization is inapposite. Mrs. Aamodt long ago responded to Licensee's interrogatories on Revision 2 of the Emergency Plan. The Board recently granted Mrs. Aamodt a four day extension to further specify a single contention. This latest request of ECNP seeks an additional two week extension to provide initial answers to interrogatories on seven contentions served almost three months ago.

Finally, ECNP has not demonstrated good faith and reasonable effort in responding to Licensee's July 29 interrogatories. The July 29 filing included only seven interrogatories (with subparts). The interrogatories themselves direct ECNP to specific sections of Revision 2 of the Emergency Plan. Nonetheless, ECNP has not filed even partial responses to any of the interrogatories.

lurther, as discussed above, ECNP has repeatedly either failed to respond or has responded belatedly to filings related to the July 29 interrogatories. It matters little whether ECNP's latest request for an extension was filed October 16, as the Certificate of Service states, or October 17, as the postmark suggests. At best, the request was filed by mail on the due date of the responses, in contravention of the Board's repeated admonitions to all parties (and especially to ECNP) not to assume that an extension will be granted and to give early notice of any inability to timely file. ECNP apparently anticipated this specific objection to its request for an extension of time:

Had the ECNP representative realized how much still remained to be completed, this request would have been tendered to the Board at the hearing on October 15.

Though ECNP's use of the word "still" implies that ECNP has completed some of its responses, as noted above, none have yet been filed. ECNP's candid admission that it did not realize "how much still remained to be completed" suggests that even as late as October 15, ECNP had not seriously reviewed the interrogatories which Licensee had served almost three months before.

In the Board's invitation to Licensee to move for the dismissal of the affected contentions should ECNP fail to comply with the Board's order respond to Licensee's emergency planning interrogatories, the Board asked that Licensee "discuss which other contentions, if any, cover the same emergency planning issues as the

ECNP contentions for which dismissal is sought." "Memorandum And Order Granting Licensee's Motion To Compel ECNP Response To Emergency Planning Interrogatories" (September 12, 1980), at p.2. Licensee is uncertain of the precise thrust of several of ECNP's contentions, since they have not been focused to date through either discovery or further specification, as the emergency planning contentions of some intervenors have been. Licensee nevertheless notes here, for the convenience of the Board, those emergency planning contentions of other intervenors which address the issues covered by the ECNP contentions which Licensee here moves to dismiss.

ECNP Contention 2-4 alleges that Licensee's incident classification scheme differs from those of the Commonwealth and five counties. However, the state and county classification schemes have been changed since the contention was drafted. As noted in "Licensee's Motion To Dismiss Emergency Planning Contentions For Failure To Specify," filed September 18, 1980:

Mr. Sholly's old Contention No. 8(E) was similar to ECNP Contention No. 2-4. However, following review of the revised Emergency Plan, Mr. Sholly withdrew his contention. \* \* \* That Mr. Sholly was willing to withdraw a contention satisfactorily answered in the revised Emergency Plan, while ECNP is not, provides no reason for not dismissing the ECNP contention.

"Licensee's Motion To Dismiss Emergency Planning Contentions For Failure To Specify," at p.10, n.4.

ECNP Contention 2-7 was accepted by the Board "limited to ECNP's assertion that Licensee's plan for informing the public of possible releases is inadequate." See "Interim Order On Late Filed Emergency Planning Contentions" (February 15, 1980), at p.3, and "Fourth Special Prehearing Conference Order" (February 29, 1980), at p.8. So limited, ECNP's Contention 2-7 parallels Aamodt Contention 4. Further, other intervenors have raised numerous contentions which allege particular specific defects in Licensee's notification systems.

ECNP Contention 2-11 asserts that Licensee's radiation monitoring devices are not of sufficient range to prevent registering off-scale high in the event of an accident. Sholly Contention 5 has the same thrust.

ECNP Contention 2-13 alleges a need for "an extensive array of live, real time, offsite radiation detectors" which could be remotely read. Such detectors are also the subject of Board Question 4, ANGRY Contention II(F)(1) and proposed Sholly Contention 8(I)(L). Licensee has objected to the proposed Sholly contention. See "Licensee's Response To Contentions Based Upon Revision 2 Of The Emergency Plan" (September 18, 1980), at pp.7-8.

ECNP's consolidated Contention 2-20/2-30 challenges Licensee's REMP. Sholly Contention 9 addresses the same issue.

ECNP Contention 2-26 addresses the relationship between notification time and selection of appropriate protective actions. ANGRY Contention III(B)(E) also addresses that issue; in fact, both contentions refer to the same language from the Commonwealth plan.

ECNP Contention 2-28 addresses plans for the decontamination of individuals, which is also the subject of ANGRY Contention III(C)(7), although the ECNP contention relates to the Commonwealth plan while the ANGRY contention relates to the York County plan.

Thus, dismissal of ECNP's Contentions 2-4, 2-7, 2-11, 2-13, 2-20/2-30, 2-26 and 2-28 will not preclude the development of a full record by other parties on the issues raised in those contentions.

B. Specification of ECNP 2-2 and 2-4

The history of the requirement for further specification of ECNP Contentions 2-2 and 2-4 is succinctly set forth in "Licensee's Motion To Dismiss Emergency Planning Contentions For

Failure To Specify," filed September 18, 1980. In that motion, Licensee sought dismissal of ECNP Contentions 2-2 and 2-4 on the grounds that the "further specification" of those contentions filed by ECNP on September 8, 1980 is not a further specification but rather an expansion of those contentions to include new unrelated allegations not based on new information, which are themselves without basis and requisite specificity.

Under § 2.730(c) of the Commission's Rules of Practice, ECNP's response to Licensee's motion was due by October 3, unless the Board prescribed some other date for response. In granting ECNP's September 17 "Request For An Extension Of Time" to respond to Licensee's July 29 interrogatories, the Board also granted ECNP until October 16, 1980 to respond "to licensee's September 18 motion to dismiss ECNP's Contentions 2-2 and 2-4, and to the staff's September 23 answer to licensee's motion on the same issue." "Memorandum And Order On Schedule For Responses On Emergency Plan Matters" (September 24, 1980).

By October 16, ECNP had not responded either to Licensee's motion to dismiss ECNP's Contentions 2-2 and 2-4, or to the Staff's answer to that motion. Nor had ECNP notified Licensee that it was seeking an extension of time to comply with the controlling Board order. However, ECNP's "Statement Of Need And Request For Additional Response Time," discussed above at page 4 ff., seeks a further extension of time to October 30 to respond to Licensee's motion and the Staff's answer to that motion.

The argument above on ECNP's failure to respond to Licensee's July 29 interrogatories is also generally relevant to ECNP's failure to comply with the Board's order to respond by October 16 to Licensee's motion to dismiss Contentions 2-2 and 2-4 and to the Staff's answer. By requesting to delay its response until October 30, ECNP will preclude considered discussion of the issues raised in Licensee's motion at the October 30 hearing on emergency planning matters.

"Licensee's Motion To Dismiss Emergency Planning Contentions For Failure To Specify," filed September 18, 1980, discusses the extent to which the contentions of other intervenors address the issues raised by ECNP Contentions 2-2 and 2-4. ECNP Contention 2-2 is discussed in footnote 3 at page 8 of Licensee's motion; Contention 2-4 is discussed in footnote 4 at page 10.

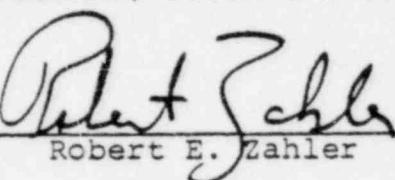
### III. Conclusion

For the foregoing reasons, Licensee opposes ECNP's request for an extension of time to comply with the Board's orders by responding to Licensee's seven July 29 interrogatories, Licensee's motion to dismiss ECNP Contentions 2-2 and 2-4, and the Staff's answer to that motion. In light of ECNP's failure to comply with the Board's controlling orders, Licensee renews

its September 18, 1980 motion to dismiss ECNP Contentions 2-2 and 2-4, and further moves to dismiss ECNP Contentions 2-4, 2-7, 2-11, 2-13, 2-20/2-20, 2-26 and 2-28, which are the subject of Licensee's July 29 interrogatories.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By:   
Robert E. Zahler

Dated: October 23, 1980

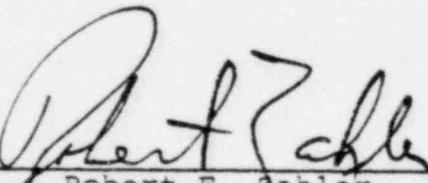
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Opposition To ECNP Request For Additional Response Time, Renewed Motion To Dismiss ECNP Contentions, And Motion For Sanctions Against ECNP" were served upon those persons on the attached Service List by deposit in the United States mail, postage prepaid this 23rd day of October, 1980.



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Robert E. Zahler

Dated: October 23, 1980

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