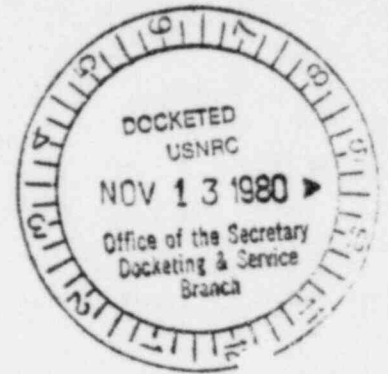


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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Ivan W. Smith, Chairman
Dr. Walter H. Jordan
Dr. Linda W. Little



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

MEMORANDUM AND ORDER ON
REVISED EMERGENCY PLANNING CONTENTIONS
(November 12, 1980)

Pursuant to a series of previous rulings, intervenors were required to reconsider whether, and if so the extent to which, they wished to pursue their previously filed contentions on emergency planning. In addition, intervenors were permitted to advance emergency planning contentions based on new information, particularly revision 2 of licensee's emergency plan. In addition to the written filings (which included contention proposals by intervenors, responses by the NRC staff and by the licensee, and an opportunity for replies thereto by the intervenors), oral argument on the contentions was held in Harrisburg, Pennsylvania on October 30 and 31. This special session on emergency planning

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had been previously scheduled and confirmed by written order issued on October 17, 1980, directing all parties interested in emergency planning issues to attend.

This order summarizes our rulings on emergency planning contentions made on the record during the October 30 and 31 sessions. In addition, we below make some rulings on which we had reserved decision during the oral arguments on emergency planning issues. We refer to the contentions by the current numbering system.

Aamodt Contention 5

No representative of the Aamodt family attended the October 30-31 hearing session. The Aamodt family had previously been directed to specify their Contention 5 which alleges that evacuation plans do not provide for care and/or relocation of livestock. On October 18, 1980 the Aamodt family filed a five-page specification of their concerns. Without passing on whether each and every aspect of the Aamodt's specification is litigable in this proceeding, the board ruled, without objection, that the October 18 filing provides the needed specification of the original Contention 5. Accordingly, Aamodt Contention 5 as originally proposed is accepted as a contention, and the October 18 document provides the additional specification by which the parties can now be guided in preparing their testimony. Tr. 4363-67.

ANGRY

By its filing of June 30, 1980, ANGRY withdrew the following Contentions: IIE, IIIA(C), IIIB(B), IIIB(C), and IIIC(1)-(6).

In addition, ANGRY's filing revised some of its contentions and advanced new ones. With two exceptions, ANGRY's revisions and new contentions are admitted without objection. ANGRY's adoption of Sholly Contention 8(C) was clarified to be an adoption of Sholly Contention 8(I)(B). Tr. 4368-69.

ANGRY Contention IIIA(L) was objected to by licensee as being untimely because it was not based on new information. The board deemed the contention as being not litigible in its present form because it basically expressed the value and/or legal judgment that a more localized government than a county government must be responsible for emergency planning. However the board explained that ANGRY will have an opportunity to litigate the essential point of the contention on a factual basis -- whether the emergency plans are inadequate because of the way in which the plans rely or fail to rely on local emergency planning. Tr. 4370-77.

Mr. Sholly

Mr. Sholly, on September 8, 1980, filed all of the emergency planning contentions he now seeks to advance in the format of subparts of Sholly Contention 8. This filing includes revisions of previous contentions and new contentions.

Emergency planning contentions which Mr. Sholly withdrew were omitted from his revised Contention 8. Except as discussed to the contrary below, the subparts of Mr. Sholly's Contention 8 as set forth in his September 8 filing are admitted.

As alluded to in his September 8 filing, Mr. Sholly has withdrawn his Contention 4, which was concerned with a lack of on-site TLD processing capability, because he feels the thrust of that contention is no longer valid. Tr. 4413-14. Although Contention 4 was not directly an emergency planning contention, its subject matter was related to Sholly Contention 8(I)(L). 8(I)(L) was objected to by licensee and staff as untimely because it is not based on new information as evidenced by the fact that essentially the same contention was previously admitted, inter alia, as ANGRY Contention IIF(1). Mr. Sholly agreed it was acceptable for him to adopt ANGRY IIF(1) and board question 4 (related to the placing of dose rate meters with telemetry capability), and the board so ruled. Tr. 4408-13.

8(I)(Q) and 8(I)(R): Licensee's objections were resolved by agreement between Mr. Sholly and licensee that Mr. Sholly substitute the revisions of these two contentions as contained in his September 23, 1980 response to licensee's objections. As pointed out by licensee, the compliance date of January 3, 1981 set forth in 8(I)(R) is incorrect and is corrected to April 1, 1981. Tr. 4414-16.

8II(B)(1) and (4): Mr. Sholly withdrew these contentions on the basis that contention 8(I)(B) will satisfy his purpose to litigate the issue involved -- his allegation that the fixed planning zone distance assumptions of 10 and 50 miles in emergency plans ignore the local factors specified in the rule (demography, topography, etc.). Tr. 4416-20; 4463-65. The second and third sentences of the concluding paragraph of contention 8II(B) are also deleted to conform to the withdrawal of subparts (1) and (4).

8II(F) and 8III(I): These contentions were withdrawn by Mr. Sholly as being legal argument rather than factual issues which can be litigated. However, as stated by the board, Mr. Sholly is free to make his legal argument that restart should be denied until the emergency plans of Pennsylvania and of the five counties are approved by NRC, FEMA and RAC. Tr. 4465-71.

8(III)(A): Staff and licensee objected that this contention, involving the relationship of local government emergency plans to the county plans, is untimely as not being based on new information. The board declined to grant the objection, because we are interested in testimony, including testimony by FEMA, on the municipal resources and planning relied upon in county emergency plans. It was also held by the board that the contention was not litigible in its present

form. A revision was agreed to on the record,^{1/} and it was further agreed that Mr. Sholly will supply specific alleged inadequacies in support of the contention by November 24, 1980. Tr. 4471-85.

8(III)(B)(C) and (D): These contentions relate to the plan of Cumberland County in which Mr. Sholly resides. Licensee objects on grounds of timeliness and in oral argument, on the apparent grounds that Cumberland County only includes a small portion of the EPZ. The board admitted the contention over licensee's objections. Tr. 4485-90; 4498-4500.

8(III)(E)(F) and (G): Licensee withdrew its objections at the oral argument, and these contentions are admitted. Tr. 4500.

8(I)(B)(4): The staff's objection was withdrawn at the oral argument. Although the language of the contention will serve as notice of Mr. Sholly's position, the contention does not appear to be one which can be litigated factually. Tr. 4501-09.

8(I)(G)(14) through (23): In light of Mr. Sholly's October 7, 1980 response to the staff's objection that these contentions (regarding the need for letters of agreement) lacked basis, the staff withdrew its objection at the oral

^{1/} "The county plans are inadequate due to the inadequacy of municipal resources and services needed for effectuation of the county plans." Tr. 4481.

argument. These contentions are admitted. The reference "4" is added after (G)(15) "EPA", and (G)(16) "Babcock and Wilcox." Tr. 4509-11.

Newberry

Newberry Township TMI Steering Committee filed its "Second Final Amended Contentions" on September 8, 1980 (with corrections to this filing supplied on September 11). In the course of the written exchanges and at the oral argument on October 30, 1980, Newberry stated that although the subject matter of its earlier contentions was largely covered by the September, 1980 amended contentions, it did not withdraw the earlier ones because a careful check had not been made by Newberry to assure that none of its concerns would be dropped out inadvertently. The board stated that this confusion and redundancy was unacceptable, and that all Newberry's prior contentions would be considered withdrawn unless Newberry specified those it wished to continue to pursue. Tr. 4423-41. Newberry did this at the oral argument on October 31, and we rule on these below following our rulings on Newberry's latest contentions.

All of Newberry's September 8 and 11, 1980 emergency planning contentions which are not discussed below are admitted.

("Preamble") Contention 3: This was clarified to be only a preamble not intended to be an admitted litigible contention. Tr. 4441-42.

York 3: The staff withdrew its objection and the contention is admitted. Tr. 4443-46.

York 12: The contention is admitted over the staff's objection, but the board warned that the specificity of the testimony may be shaped by the lack of specificity of the contention. Tr. 4446-49.

York 13: This contention was withdrawn. Newberry agreed with the staff's objection that it was repetitive of Newberry Contention York 3: Tr. 4449.

York 28: This contention incorporates some of Newberry's previous contentions, and is rejected since Newberry has reconsidered which of its previous contentions it wishes to continue to pursue, as discussed below. Tr. 4449.

York 29-39: The board has overruled the staff's objection to 29 (no bases) since we wish to hear the issue. Licensee objected to 29 through 39 on the ground that the contentions are untimely because the information alleged to be lacking has always been lacking in the emergency plans and therefore the contentions are not based on new information. The board overruled licensee's objection because, with several versions of the

emergency plan, errors of omission were difficult to assess, particularly before aspects of the plan became more specific. These contentions are admitted. Tr. 4450-53.

Dauphin 16: We make the same ruling as on licensee's objection to York 29 through 39. The contention is admitted. Tr. 4454.

Met Ed 2 and Dauphin 12: Newberry withdrew these two contentions in agreement with licensee's objections.

Dauphin 15: In agreement with the staff's objection to a portion of the contention, Newberry struck the last part of the last sentence, after the word "plan". The remaining portion of the contention is admitted. Tr. 4454-55.

Dauphin 18: The staff withdrew part of its objection, but maintained its objection that there was no basis for providing security for the evacuation buses. The board admitted the contention over this objection. Tr. 4457-58.

Newberry Prior Contentions:

On the record of the October 31, 1980 oral argument, Newberry stated that it wished to continue to advance some of its prior emergency planning contentions, as follows (Tr. 4490-96):

3(b)(12): Newberry asked to retain this contention with the exception of the first sentence beginning with: "Because of the experiences of the past, [etc.]".

3(b)(13): Newberry asked to retain the last portion, beginning with: "it is not clear that [etc.]".

3(b)(16) and 3(b)(21): Newberry asked to retain these contentions in their entirety.

3(c)(5): Newberry asked to retain the last portion, beginning with: "Moreover, the plan does not envision [etc.]".

3(c)(7): Newberry asked to retain this contention, except for the end of the first sentence thus deleting: "... with the exception [etc.]" and deleting the second sentence.

The board ruled it would await the responses of the licensee and staff, who would consult with Newberry, before ruling on whether these contentions should remain. Accordingly, the licensee subsequently filed its report, dated November 6, 1980, on the status of these six contentions as a result of discussion among Newberry, the licensee and the staff. Newberry now withdraws Contention 3(b)(13), 3(b)(16) and 3(c)(7). The portions of 3(b)(12) and 3(c)(5) which Newberry asked to retain are admitted without objection.

Contention 3(b)(21) alleges that mock evacuation drills are needed to detect deficiencies in the emergency plan. We admitted 3(b)(21) in our Third Special Prehearing Conference Order, 11 NRC 136, 142 (January 25, 1980), over licensee's objection. The staff had not objected. This of course was prior to adoption of the new emergency planning regulation.

Licensee concedes that 3(b)(21) is not replaced by any of Newberry's new contentions, but "renews" its objection (which in essence is a request for reconsideration), joined by the staff, on the basis that the new emergency planning rule, at Appendix E, Section IV.F.1, states:

A full-scale exercise which tests as much of the licensee, State, and local emergency plans as is reasonably achievable without mandatory public participation shall be conducted; * * * * [Emphasis supplied by licensee]

We find that the new rule, which outlines the scope required in emergency plan exercises in some detail, does expressly exclude an actual evacuation of the public by the language quoted above. Accordingly, on reconsideration in light of the new emergency planning rule, we rule that Newberry 3(b)(21) is a challenge to the regulations, and therefore is not admissible in the absence of the showing of special circumstances required by 10 CFR § 2.758.

ECNP

ECNP 2-2 and 2-4: These contentions were extensively discussed on the record of the oral argument (Tr. 4377-92), and have been the subject of numerous written pleadings and board orders. The contentions as originally filed back on January 7, 1980 alleged a lack of coordination between the TMI emergency plan and the county emergency plans. We ruled that greater specificity would be required after discovery. Fourth

Special Prehearing Conference Order, at p.8, February 29, 1980. In our "Memorandum and Order Resuming Schedule for Discovery and Contentions on Emergency Planning", dated July 15, 1980, we implemented the prior order and required ECNP to specify these contentions by September 8, 1980. Further, in our August 20, 1980 prehearing conference order (at pp. 13-14), we informed ECNP of our view that the specific suggestions by the staff (in its filing of July 14, 1980) of how these contentions could be specified would be a desirable means of complying with the requirement for further specification.

ECNP filed its "specification" of these contentions on September 8. On September 18 and 23 respectively, the staff and licensee objected to the contentions as revised, essentially on the ground that, although there was more verbiage, the contentions if anything were now even less clear and less specific, and therefore should be dismissed. In our order of September 24, 1980 we directed ECNP to respond by October 16 to these objections and the request for dismissal. ECNP did not do so. However, at the oral argument on October 30, we gave ECNP an opportunity to respond. As may be discerned from the transcript, ECNP's position was confusing. At several points, ECNP appeared to be stating that the revision did supply specificity, yet at other points ECNP appeared to be conceding that there are substantially different matters in the revised

contention and they should be accepted, at least in part, as new contentions (see e.g. Tr. 4384).

The board ruled that: 1) ECNP had not supplied the required specification of the original contentions, notwithstanding clear guidance as to how this might be accomplished; 2) ECNP had failed to provide any justification for accepting the revised contentions as new contentions based on the criteria for late contentions; and 3) in any event, the revised contentions are too vague to litigate. Tr. 4391-92. Accordingly, the contentions are dismissed.

There are other contentions of other parties dealing with the relationship of local, county and state emergency plans to each other and to the licensee's emergency plan. The board observed that this subject would therefore survive for litigation in the proceeding. Tr. 4392.

ECNP 2-7, 2-11, 2-13, 2-20/30, 2-26 and 2-28:

These contentions are those concerning which ECNP failed to respond to licensee's interrogatories, notwithstanding a board order to do so. ECNP's default was discussed at length. Tr. 4392-4407. We are at a loss to understand ECNP's series of abject failures on this matter. These interrogatories date back to July 29, 1980. They were simply ignored by ECNP, which failed to file either answers or objections to the interrogatories. As we stated in our September 12, 1980 order directing ECNP to answer the interrogatories (at p.2):

"... the interrogatories are very direct and concise and properly request information to which the licensee, and indeed the board, is entitled."

We further granted, over licensee's objection, ECNP's request to extend its time to answer the interrogatories from September 29, to October 16. By a filing dated October 16, but postmarked October 17, ECNP requested a further extension until October 30. This procedure by ECNP was in direct disregard of a board admonition to ECNP on a prior occasion not to file a request for extension of time so late and in such a manner as to assume that it is granted. As it turned out, October 30 was the day for which the board had scheduled (on October 17) to hear argument and rule on outstanding emergency planning contentions and related matters. Therefore, the board would have denied ECNP's requested extension, particularly since it was not supported by good cause. See Tr. 4400. Finally, ECNP did not bring answers to the interrogatories to the October 30 hearing session, but asked, after all this time, for time to prepare the answers that evening. The board ruled that ECNP was in default, but that we would dismiss contentions only when we believe the record will be adequately covered without them. Tr. 4401-02. We now make that analysis based on the comparison which licensee provided in response to our request.

ECNP 2-7: We agree with licensee that ECNP 2-7 (accepted as limited to the assertion that licensee's plan for informing the public of possible releases is inadequate) parallels Aamodt 4. ECNP 2-7 is dismissed.

ECNP 2-11: We agree that Sholly 5 covers the concern that radiation monitors be of sufficient range so as not to go off-scale during an accident. ECNP 2-11 is dismissed.

ECNP 2-13: We agree that the concern about real time, off-site radiation detectors which can be remotely read is covered by ANGRY IIF(1) and board question 4 (see p.4, supra). Sholly 8(I)(K) is also related to this subject. ECNP 2-13 is dismissed.

ECNP 2-20/30: We agree that the concern over the adequacy of the radiation environmental monitoring program ("REMP") is covered by Sholly 9. The combined contention, ECNP 2-20/30 is dismissed.

ECNP 2-26: We agree that the concern for the relationship between notification time (and lead time available to onset of release) and the time it would take to implement protective actions is covered by ANGRY III(B)(E). Sholly 8(I)(J) is also related to this subject. ECNP 2-26 is, therefore, dismissed.

ECNP 2-28: As stated by the licensee, this contention and ANGRY IIIC(7) both address the plans for decontamination

of people and radiation injury treatment. However, ECNP 2-28 relates to the Commonwealth plan while the ANGRY contention relates to the York County plan. It appears to us that defects in a particular emergency plan, whether they be in the Commonwealth's plan or in a county or other local plan, are defects in the overall emergency planning for TMI unless they are resolved in other emergency plans. Consistent with this, we anticipate that the staff and licensee would address the overall emergency plans for decontamination and treatment of people with radiation injuries, regardless of which particular authority (state and/or county, and/or other) is charged with responsibility for this matter. In any event, to assure that this matter is covered in the context of more than just the York County plan, we will permit ECNP to retain this contention in the proceeding.

Prehearing Emergency Planning Meetings

The board has expressed its concern that the intervention process in this proceeding has not been the best forum for intervenors to influence for the first time the emergency plans affecting their interests. Tr. 4511-14, 4519. Our rulings have produced a very long and disorganized list of

emergency planning contentions. Many of these contentions raise questions about the fine details of local situations.^{2/} Many more questions could have been raised considering the five counties and many local governments involved in emergency planning.

The NRC intervention rules place no limits on the number of valid contentions which may be litigated nor do the rules bar contentions solely because the intervenor's particular interest lies in a relatively narrow and detailed portion of a much larger scheme. Indeed the intervention rules require specificity, and emergency planning, no less than any other subject within the Commission's jurisdiction, should take into account the information uniquely available to the intervenors residing in the affected communities.

^{2/} E.g. Newberry York 1: It is questionable whether the notification siren can be heard throughout Newberry Township and surrounding communities.

Newberry York 3: There is no assurance that the Chamber of Commerce will be capable of providing general evacuation information to business and industry.

Newberry York 35: There is no assurance that the American Red Cross will be capable of providing food, cots, clothing and other personal articles to evacuees.

We sense that some of the contentions have been advanced not so much as issues upon which informed intervenors wish to prevail, but as a means of seeking information and satisfying concerns. As far as we can determine, no appropriate opportunity has been provided for intervenors to have a voice in the formulation of emergency planning except in the discovery and hearing phases of this adjudicatory proceeding.

The evidentiary hearing, we believe, is a poor place initially to seek information of this nature and is a poor place to first raise issues concerning the details of emergency planning. The licensing board has limited emergency planning expertise. Even though administrative hearings are expected to be more informal than purely adversary court trials, the fact remains that our proceedings are quasi-judicial, and some formality must control the process. Emergency plans cannot easily be drafted by adjudication. Moreover, hearing time is precious; many issues can be decided no other way.

Therefore we have requested the staff (and the staff has agreed, Tr. 4515) to convene meetings among the intervenors, the licensee, the Commonwealth and other interested state agencies for the purpose of directly addressing and responding to intervenors' concerns and providing information required to fully inform the intervenors. We strongly urge FEMA to participate in these meetings. The board will require the

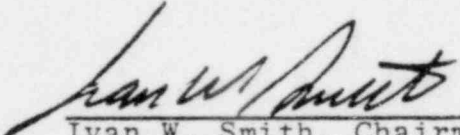
affected parties in this proceeding to participate. The Commonwealth of Pennsylvania agrees with the concerns raised by the board and the need for a prehearing input by the public. Tr. 4518.

This is consistent with traditional NRC practice where the staff conducts scoping meetings and where draft environmental statements are circulated for comment before final staff positions are determined. We expect that the staff, FEMA and the licensee will be reasonable in accepting emergency planning recommendations from the intervenors. We expect intervenors to withdraw or limit contentions when a particular issue no longer interests them. Only those emergency planning issues which can be better decided in an adjudicatory context, or upon which the parties simply cannot agree, should survive for litigation.^{3/}

^{3/} We note that the process we have set in motion on a schedule consistent with this hearing is apparently being contemplated for the future by FEMA. FEMA has published for comment a proposed new rule, 44 CFR Part 350, "Review and Approval of State and Local Radiological Emergency Plans and Preparedness", 45 Fed.Reg. 42341, June 24, 1980. Section 350.10 of the proposal requires that FEMA, with NRC, State, county and local, and utility personnel in attendance, hold at least one public meeting in the local area prior to approving the State and related local plans. The purposes of the meetings are to describe the plan to the public and to receive suggestions from the public of changes or improvements that may be necessary.

After this process the board will expect the intervenors to organize in the presentation of their emergency planning issues at the hearing. Mr. Sholly has recognized the need for a broader view of the emergency planning issues and the need for better organization and he has agreed to initiate an intervenor response to the problem. Tr. 4512, 4516. We would expect Mr. Sholly or Newberry Township intervenors to be lead intervenors on emergency planning issues. At the appropriate time the board will schedule a conference at the hearing room to consider and schedule emergency planning issues.

THE ATOMIC SAFETY AND
LICENSING BOARD


Ivan W. Smith, Chairman

Bethesda, Maryland

November 12, 1980