

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
METROPOLITAN EDISON COMPANY, ET AL.)
(Three Mile Island Nuclear Station,)
Unit 1))

Docket No. 50-289
(Restart)



NRC STAFF'S RESPONSE TO ANGRY CONTENTION VII

I. INTRODUCTION

By a filing dated January 27, 1981, the Anti-Nuclear Group Representing York (ANGRY) seeks to have admitted, as a new emergency planning contention in this proceeding, a contention designated as ANGRY Contention VII. This proposed contention states:

Intervenor Anti-Nuclear Group Representing York contends that Three Mile Island Unit One should not be permitted to restart until and unless it is demonstrated that the National Radiological Emergency Response Plan, the Nuclear Regulatory Commission Incident Response Plan (NUREG 0728) and other Federal Radiological Emergency Response Plans, including all NRC Incident Response Planning guidelines, meet the criteria of NUREG 0654/FEMA Rep 1 (Rev. 1) and until it is demonstrated that Federal-level radiological emergency response planning is adequate to protect the public health and safety.

The contention is alleged to be based on new information contained in a January 5, 1981 report to the President by the Nuclear Safety Oversight Committee (NSOC) which is critical of federal emergency response planning. As set forth more fully below, the NRC Staff opposes admission of this contention on the grounds that it is inexcusably late and that it appears to be beyond the scope of issues for this proceeding set out in the Commission's August 9, 1979 Order.

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II. NRC STAFF'S RESPONSE

A. Timeliness

In its January 27, 1981 filing, ANGRY asserts that its proposed Contention VII is based on "new information", in the form of the January 5, 1981 report to the President, which apparently would justify the filing of this new contention at this late date. An examination of the NSOC report reveals, however, that the information on which the conclusions of the report are based was available long before the NSOC report was issued. ANGRY itself cites the criticism of the NRC's "poor planning and poor management of the emergency response" at TMI in the Rogovin Report, published more than one year ago, as part of the basis for this new contention. The contention itself references NUREG-0728, "Report to Congress: NRC Incident Response Plan", which was issued in September 1980.^{1/}

In short, while the NSOC report sets forth conclusions of the NSOC which were not available prior to issuance of the report, the information on federal emergency preparedness and response on which ANGRY Contention VII is based has been available for some time and long before issuance of the NSOC report. In these circumstances, it is the Staff's view that the NSOC report provides no justification for the filing of this new contention at this late date and that, in fact, this new contention is untimely.

As indicated by the Licensing Board in its January 8, 1980 "Memorandum and Order Ruling on Intervenors' Request for Extensions of Time to File

^{1/} In "NRC Staff's Responses to Commonwealth of Pennsylvania's First Set of Interrogatories to NRC Staff", copies of which were served on all parties on November 3, 1980, reference was made to NUREG-0728 and the parties were notified that such document was being placed in the Local Public Document Room for the parties' use.

Revised Emergency Planning Contentions", late-filed contentions are to be judged against the standards of 10 CFR § 2.714(a)(1) for non-timely filings. Specifically, Section 2.714(a)(1) provides that non-timely filings are not to be entertained absent a determination that the untimely request should be granted based on a balancing of considerations of:

- (i) good cause, if any, for failure to file on time;
- (ii) the availability of other means whereby the petitioner's interest will be protected;
- (iii) the extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record;
- (iv) the extent to which the petitioner's interest will be represented by existing parties; and
- (v) the extent to which the petitioner's participation will broaden the issues or delay the proceeding.

ANGRY has failed to address any of these factors with regard to its proposed Contention VII.

Thus, for example, ANGRY has failed to address the matter of good cause for its delay in raising this contention. The information upon which the contention appears to be based did not become available for the first time with the issuance of the January 5, 1981 NSOC report but, as previously indicated, has been available for from four months to over a year. In the Staff's view, no explanation for the lateness of this contention has been presented and good cause has not been shown.

Although good cause for the untimely filing is only one of the factors to be considered, Long Island Lighting Company (Jamesport Nuclear Power Station, Units 1&2), ALAB-292, 2 NRC 631 (1975), the Intervenor's burden with regard to the other factors increases when good cause has not been shown.

Nuclear Fuel Services, Inc. et al. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273 (1975); USERDA (Clinch River Breeder Reactor Plant), ALAB-354, 4 NRC 383 (1976). As to those other factors, a strong showing of justification for admission of ANGRY's new contention has not been made and cannot be inferred. While it appears that there is no other means by which the subject matter of this contention might be addressed if the contention is not admitted as an issue in this proceeding, there is no indication as to how ANGRY's participation in the litigation of such an issue might reasonably assist in developing a sound record. In the same vein, while ANGRY's interests in this regard would not be protected by other parties since no other contentions dealing with federal emergency response have been admitted, this factor is balanced, at the other extreme, by the likelihood that some further delay in the proceeding will result if the contention is admitted at this late stage of the proceeding.^{2/}

In summary, while two of the factors (absence of other means to protect Intervenor's interests and the lack of admitted contentions whereby Intervenor's interest in federal emergency response would be represented by existing parties) weigh in favor of admitting ANGRY Contention VII if it were relevant, two factors (lack of any indication of Intervenor's ability

^{2/} In fairness to the parties, particularly those who would be required to address ANGRY Contention VII, some discovery would be necessary to more clearly define and specify the contention which, as presently written, is fairly broad and non-specific. Such discovery would result in some period of delay before the contention could be fully addressed. In addition, a large part of the burden of addressing the contention would fall on FEMA personnel who are currently laboring to address offsite emergency planning issues and would likely find it necessary to defer addressing ANGRY Contention VII until their work on offsite issues is completed.

to contribute to the record and the potential for delay) weigh against admission. In view of the lack of good cause for the untimeliness, it appears that, on balance, the five factors weigh against admission of this late-filed contention, even if it were relevant to the scope of this proceeding, and that, under the provisions of 10 CFR § 2.714(a), the contention should not be admitted.

B. Scope of the Proceeding

Even if ANGRY Contention VII were not inexcuseably late, it appears that the issue raised by the contention - federal emergency response - is not within the scope of the issues for this proceeding established by the Commission in its August 9, 1979 Order. In that Order, the Commission directed that, with regard to emergency planning, certain short-term and long-term actions were to be taken. Specifically, in the short term,

3. The licensee shall improve his emergency preparedness in accordance with the following:

(a) Upgrade emergency plans to satisfy Regulatory Guide 1.101 with special attention to action level criteria based on plant parameters.

(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. Commission Order and Notice of Hearing, CLI-79-8, 10 NRC 141 (August 9, 1979) (emphasis added).

In the long-term, the Commission provided that:

[t]he Commission's Director of Nuclear Reactor Regulation (NRR) has recommended that the following actions (the "long-term actions") be required of the licensee to resolve these concerns and permit a finding of reasonable assurance of the safety of long-term operation. These are . . .

4. improve emergency preparedness in accordance with the following:

(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. Commission Order and Notice of Hearing, CLI-79-8, 10 NRC 141, 145 (August 9, 1979) (emphasis added).

These provisions of the August 9, 1979 Order define the general boundaries of the issues to be considered with regard to emergency planning. While it is to be determined whether these provisions are "necessary and sufficient" to allow restart of TMI-1, this does not mean that contentions outside these boundaries and having no reasonable relationship to these broadly defined issues may be raised and litigated. Clearly, these provisions of the Commission's August 9 Order are directed to the emergency preparedness of the licensee and State and Local emergency response organizations. There is no reference to or mention of federal emergency response and no implication in the Commission's August 9 Order that federal emergency response was to be an issue in the restart proceeding. No relationship has been shown and, since federal emergency response

is unrelated to the issues specified for the restart proceeding, such a matter falls outside the scope of the proceeding.^{3/}

^{3/} In its January 27, 1981 filing, ANGRY quotes a statement from the Statements of Consideration accompanying the new emergency planning rules in support of its argument that a "lack of overall emergency preparedness might prevent the operation of a reactor". Specifically, the Statements of Consideration at 45 Fed. Reg. 55403 indicate that "(a) An operating license will not be issued unless a favorable NRC overall finding can be made". The quoted statement was taken out of context in ANGRY's argument. The full statement from the Statements of Consideration is:

The regulation contains the following three major changes from past practices:

1. In order to continue operations or to receive an operating license, an applicant/licensee will be required to submit its emergency plans, as well as State and local government emergency response plans, to NRC. The NRC will then make a finding as to whether the state of onsite and offsite emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

The NRC will base its finding on a review of the FEMA findings and determinations as to whether State and local emergency plans are adequate and capable of being implemented and on the NRC assessment as to whether the applicant's/ licensee's emergency plans are adequate and capable of being implemented. In any NRC licensing proceeding, a FEMA finding will constitute a rebuttable presumption on the question of adequacy. Specifically:

a. An operating license will not be issued unless a favorable NRC overall finding can be made.

b. After April 1, 1981, an operating plant may be required to shut down if it is determined that there are deficiencies such that a favorable NRC finding cannot be made or is no longer warranted and the deficiencies are not corrected within 4 months of that determination.

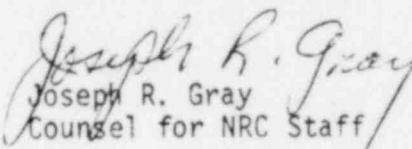
2. Emergency planning considerations must be extended to "Emergency Planning Zones", and

(FOOTNOTE CONTINUED ON NEXT PAGE)

III. CONCLUSION

Based on the foregoing, it is the Staff's view that ANGRY Contention VII is inexcuseably late, raises an issue which is outside the scope of the restart proceeding and should, therefore, not be admitted as an issue in the proceeding.

Respectfully submitted,


Joseph R. Gray
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 13th day of February, 1981

^{3/} (FOOTNOTE CONTINUED FROM PREVIOUS PAGE)

3. Detailed emergency planning implementing procedures of both licensees and applicants for operating licenses must be submitted to NRC for review. (emphasis added).

It is clear from this full statement that the "overall emergency preparedness" referred to is the overall preparedness of licensee, State and local emergency response organizations.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO ANGRY CONTENTION VII" in the above captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 13th day of February, 1981:

Ivan W. Smith, Esq., Chairman*
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. Walter H. Jordan*
Administrative Judge
881 W. Outer Drive
Oak Ridge, TN 37830

Dr. Linda W. Little*
Administrative Judge
5000 Hermitage Drive
Raleigh, NC 27612

George F. Trowbridge, Esq.
Shaw, Pittman, Potts & Trowbridge
1800 M Street, N.W.
Washington, DC 20006

Karin W. Carter, Esq.
505 Executive House
P.O. Box 2357
Harrisburg, PA 17120

Honorable Mark Cohen
512 E-3 Main Capital Building
Harrisburg, PA 17120

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

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

Mr. Thomas Gerusky
Bureau of Radiation Protection
Department of Environmental
Resources
P.O. Box 2063
Harrisburg, PA 17120

Mr. Marvin I. Lewis
6504 Bradford Terrace
Philadelphia, PA 19149

Metropolitan Edison Company
ATTN: J.G. Herbein, Vice
President
P.O. Box 542
Reading, PA 19603

Ms. Jane Lee
R.D. #3, Box 3521
Etters, PA 17319

Ms. Gail P. Bradford
ANGRY
245 West Philadelphia Street
York, PA 17401

John E. Minnich, Chairman
Dauphin Co. Board of Commissioners
Dauphin County Courthouse
Front and Market Streets
Harrisburg, PA 17101

Robert Q. Pollard
609 Montpelier Street
Baltimore, MD 21218

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

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

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

Senator Allen R. Carter, Chairman
Joint Legislative Committee on
Energy
Post Office Box 142
Suite 513 Senate Gressette Bldg.
Columbia, SC 29202

John Levin, Esq.
PA Public Utilities Commission
Box 3265
Harrisburg, PA 17120

Jordan D. Cunningham, Esq.
Fox, Farr and Cunningham
2320 North 2nd Street
Harrisburg, PA 17110

Ms. Louise Bradford
TMI ALERT
1011 Green Street
Harrisburg, PA 17102

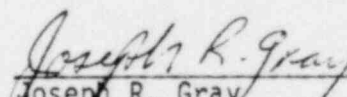
Ms. Ellyn R. Weiss
Sheldon, Harmon & Weiss
1725 I Street, N.W.
Suite 506
Washington, DC 20006

Thomas J. Germaine, Deputy
Attorney General
Division of Law - Room 316
1100 Raymond Boulevard
Newark, N.J. 07102

Atomic Safety and Licensing Board
Panel*
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Atomic Safety and Licensing Appeal
Panel (5)*
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Docketing and Service Section (7)
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555



Joseph R. Gray
Counsel for NRC Staff