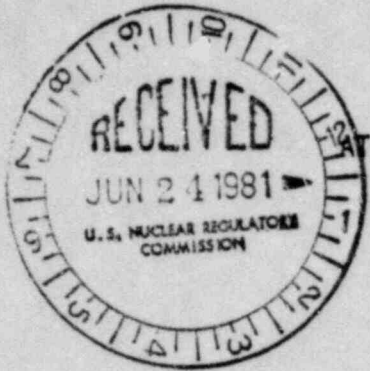
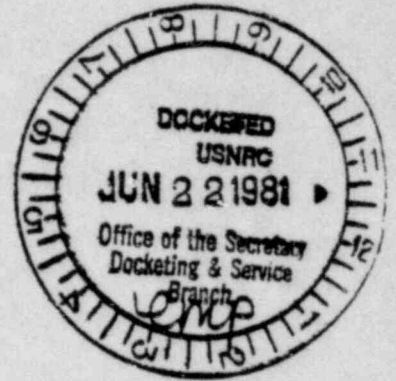


Bd 6/19/81



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judges:
Ivan W. Smith, Chairman
Dr. Walter H. Jordan
Dr. Linda W. Little



SERVED JUN 22 1981

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

Docket No. 50-289
(Restart)
June 19, 1981

MEMORANDUM AND ORDER DENYING NEWBERRY PETITION
TO RECONSIDER ADMISSIBILITY OF TESTIMONY OF GOLDSTEEN

On May 1, 1981, the board ruled on the April 24, 1981 oral motion of ANGRY (Tr. 20,162-80), on behalf of itself and other intervenors, to add rebuttal witnesses on the effect of community stress and mistrust on the ability and willingness of people to respond properly in an emergency situation. Tr. 20,984-99. Part of our ruling rejected the proffered rebuttal testimony of Mr. Raymond Goldsteen. Rejected Newberry Ex. 1. Mr. Goldsteen's written testimony was proffered at the hearing of April 29, 1981, at which time it was discussed in the course of further oral argument. Tr. 20,423-87. Counsel for Newberry Township TMI Steering Committee ("Newberry"), one of the intervenors with emergency planning contentions, participated in the oral argument along with ANGRY's representative.

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By motion mailed on June 3, 1981, which we received at the board's Bethesda office on June 8, Newberry asks us to reconsider our ruling and admit Mr. Goldsteen's rebuttal testimony.^{1/}

Timeliness

In the circumstances of this proceeding, Newberry's petition for reconsideration is untimely. As we explained in our ruling of May 1, the initial request to present rebuttal witnesses on this subject was already very late when made on April 24.^{2/} At the time of our May 1 ruling the possibilities of modifying the Goldsteen testimony to overcome the board's reasons for excluding it and/or filing motions for reconsideration based on mistake were discussed. It was noted by ANGRY that such actions would have to be taken very soon by intervenors, and the board agreed that the timeliness of such future efforts would have to be addressed. We could not supply specific time guidelines in the abstract. Tr. 20,995, 20,997-99. Intervenor's other rebuttal testimony on this subject by Dr. Erikson was proffered in mid-May. We ruled it to be admissible over licensee's objections on May 15 (Tr. 21,488-95), and heard the testimony on June 4 pursuant to a schedule agreed upon by the parties. Tr. 21,680 et seq.

^{1/} During a conference call which included licensee, the staff and the Commonwealth, the board advised the parties that responses to Newberry's motion are not required.

^{2/} However, in the exercise of our discretion, we did not hold that the untimeliness per se would bar such rebuttal testimony. The timing did underscore the fact that in deciding whether to hear such rebuttal testimony we would examine the testimony in advance to determine whether it was properly focused within the permissible scope of the issue and would add to the record.

In disregard of the above schedule, Newberry waited from May 1 until June 3 to file its petition for reconsideration. Newberry has supplied no explanation for its long delay, nor has it acknowledged that its delay precluded any possibility of hearing the testimony on June 4 and 5, the days scheduled for related rebuttal testimony. It did not even mention at the hearing session held May 13-15, when Dr. Erikson's testimony and related scheduling was extensively discussed, that it was at that late date still contemplating the possibility of seeking further relief from us with respect to Mr. Goldsteen's testimony. To add to Newberry's disregard of the schedule of this proceeding, it mailed its petition to the board's Bethesda office on June 3 knowing we would be in session in Harrisburg on June 4 to hear intervenors' other rebuttal testimony. We were not aware of the petition until it was received in Bethesda on June 8.

In all of the above circumstances, Newberry's petition for reconsideration is untimely and we reject it on that basis.

Substance

Alternatively and independently, Newberry's petition would be denied even if it had been timely filed. Newberry believes we have misunderstood the testimony in some of our criticisms relating to the possible biased unscientific nature of the survey upon which it is based, and how the survey scale was designed. We do not necessarily agree that Newberry has understood and properly characterized the nature and context of our remarks. However, such a debate would not be material for the reasons explained below.

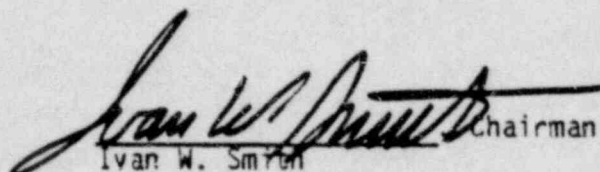
For the purpose of examining Newberry's petition for reconsideration, we arguendo retract our criticisms of the survey about which Newberry complains. Newberry's petition, however, fails to address the two main bases for our May 1 ruling rejecting Mr. Goldsteen's testimony. One was that the testimony contained generally relevant material dealing with trust in officials, and material too remote to be relevant to the issue purportedly being rebutted, dealing with demoralization and the perceived threat to health of the TMI-2 accident. We stated we would not attempt on our own to separate intertwined permissible and impermissible matters from proffered rebuttal testimony. Tr. 20,991, 993. Newberry has made no attempt since our ruling to modify the proffered testimony.

More significantly, we further ruled that even the arguably generally relevant aspect of the testimony dealing with trust in authorities was too unfocused. It was not even remotely presented in the context of response to emergency planning instructions. Tr. 20,991, 20,996-97. There were no questions about emergency planning in the survey. Indeed, the only mention of emergency planning reactions in the survey is the data provided by the interviewees on whether, and if so, how far, they evacuated during the TMI-2 accident. No discussion of this data in the context of whether people will respond to emergency planning instructions in the event of a future TMI accident is presented. We note that as contemplated at the time of our ruling on Mr. Goldsteen's testimony, Dr. Ziegler's rebuttal testimony on behalf of intervenors subsequently was admitted by stipulation. Ff. Tr. 21,818. It deals much more extensively and directly with the distances and times of evacuation during the TMI-2 accident.

Accordingly, the responses by the sample surveyed by Mr. Goldsteen on how far they evacuated adds nothing to the record.

Given the Commission's ruling that the general subject of psychological stress is not admissible (CLI-80-39, 12 NRC 607 (1980)), it was particularly incumbent upon us to assure that the rebuttal testimony was limited to and focused on the specific area which we deemed permissible -- the effect of mistrust and stress on emergency planning. Dr. Erikson's rebuttal testimony was so focused, and therefore it was allowed in our discretion even though it was late. Mr. Goldsteen's rebuttal testimony was not at all focused on the permissible issue and it therefore was not permitted. We adhere to that ruling.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


Ivan W. Smyth Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland

June 19, 1981