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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))	

LICENSEE'S RESPONSE TO CONTENTION VII OF THE
ANTI-NUCLEAR GROUP REPRESENTING YORK

By a filing dated January 27, 1981, ANGRY has submitted a new contention, numbered VII, purportedly based upon its review of a January 5, 1981 letter to the President from the Nuclear Safety Oversight Committee, reporting on the Committee's review of NRC and Federal Emergency Management Agency ("FEMA") emergency response planning. ANGRY's proposed Contention VII asserts that TMI-1 should not be permitted to restart until it is demonstrated that "the National Radiological Emergency Response Plan, the Nuclear Regulatory Commission Incident Response Plan * * * 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 that "Federal-level radiological emergency response planning is adequate to protect the public health and safety." Licensee opposes the admission of ANGRY's proposed Contention VII.

Much earlier in this proceeding, the Board consistently took the position that new or revised contentions based upon "new information" were due within thirty days of the availability of the information. See, e.g., "Memorandum and Order Ruling On Intervenors' Requests For Extensions of Time To File Revised Emergency Planning Contentions" (January 8, 1980), at p. 5 n.2. Apparently relying on this policy, ANGRY now seeks the admission of a very general contention on federal emergency planning, pursuant to its review of the January 5, 1981 letter from the Nuclear Safety Oversight Committee (NSOC) to the President.

Though the NSOC letter does provide a general basis for ANGRY's proposed Contention VII, the contention has ample basis in information available long before the date of the NSOC letter. Accordingly, since the 30-day rule described above applies to the availability of "new information" and not mere synthesis and analysis in a new publication of information previously available,^{1/} ANGRY's proposed Contention VII is not timely filed, and

^{1/} As noted in "Licensee's Response to CEA Contentions (Draft) Pursuant To Review of NUREG/CR-1270" (2/22/80), at p. 2 n.1, any other interpretation of the 30-day policy would lead to absurd results, particularly in the context of this proceeding. The TMI-2 accident and the response to that accident has been and will continue to be the subject of a continuing stream of reports. These reports are often based upon general information which has long been available to the public. However, the mere repetition and analysis of such general information in a new publication should not serve to revive a petitioner's right to raise an issue, where that right has previously been extinguished by the passage of time. An adjudicatory proceeding should not be repeatedly interrupted for the admission and litigation of new contentions based only on the repetition by republication of general information which has been widely available to the public at large for months.

must be rejected under the criteria of 10 C.F.R. § 2.714(a)(1).

ANGRY candidly admits, on the first page of its January 27, 1981 filing, that its concern about the nature of the federal response to the TMI-2 accident was raised in Three Mile Island: A Report To The Commissioners And To The Public ("the Rogovin Report"), Volume 1, at pages 134-36 (see also, p. 131), released more than one year ago. The federal response to the TMI-2 accident was also the subject of discussion in the technical staff reports supporting the Rogovin Report.^{2/} The federal response to the TMI-2 accident was even earlier raised, in the Report of The President's Commission on the Accident at Three Mile Island ("the Kemeny Report"), released on October 30, 1979 and served on the intervenors in this proceeding on November 26, 1979, as well as in the technical staff reports supporting the Kemeny

^{2/}

In Volume II, Part 3 of the Rogovin Report, the NRC response to the TMI-2 accident is extensively detailed at pages 933-92, with findings -- many highly critical of NRC response -- at pages 977-78 and 985-86, and recommendations regarding NRC response at pages 986-89.

In Volume II, Part 3 of the Rogovin Report, the response of federal agencies other than the NRC is discussed at pages 993-1056, with findings -- many critical of federal response -- and recommendations regarding coordination among the federal agencies at pages 1007-09 (particularly Findings 1, 2 and 3, and Recommendations 1, 2, 3 and 4), at pages 1024-27 (particularly Finding 2 and Recommendation 1), at pages 1033-34 (particularly Recommendation 1), and at pages 1038-39 (particularly Findings 3 and 5, and Recommendations 1, 2 and 3), very generally summarized at pages 1046-51.

Report.^{3/} In the "Overview" section of the Report, at page 21, the Kemeny Commission observed:

In addition to all the other problems with the NRC, we are extremely critical of the role the organization played in the response to the accident. There was a serious lack of communication among the commissioners, those who were attempting to make the decisions about the accident in Bethesda, the field offices, and those actually on site. This lack of communication contributed to the confusion of the accident.

The Kemeny Commission's general observations on federal emergency planning and response were the subject of well-publicized Commission Findings and Recommendations. See, e.g., Findings D.8, D.9, and D.13, as well as Recommendations F.1 and F.6.

^{3/} See, e.g., "Staff Report to the President's Commission on the Accident at Three Mile Island: Report of the Emergency Preparedness and Response Task Force," particularly pp. 84-89, and pp. 135-36 (stating that "overall federal planning for nuclear emergencies is very weak," and describing the need for an interagency national emergency response plan, to include the NRC, FEMA, the Environmental Protection Agency, the Department of Defense, the Department of Energy, and the Department of Health, Education and Welfare).

See also, "Staff Report to the President's Commission on the Accident at Three Mile Island: Report of the Office of Chief Counsel on Emergency Preparedness," at p. 5 ("a federal response plan * * * has spent years in bureaucratic limbo"), and at pp. 22-25.

See also, "Staff Report to the President's Commission on the Accident at Three Mile Island: Report of the Office of Chief Counsel on Emergency Response," particularly pp. 81-84, pp. 126-34, pp. 147-55, pp. 176-77, pp. 187-90, and pp. 192-93.

See also, "Staff Report to the President's Commission on the Accident at Three Mile Island: Report of the Office of Chief Counsel on the Nuclear Regulatory Commission," at pp. 32-34, and pp. 132-39.

Even the various plans and guidelines which NSOC reviewed as a basis for its January 5, 1981 letter were available more than thirty days before ANGRY's January 27, 1981 filing of its proposed Contention VII. For example, the NRC Incident Response Plan (NUREG-0728) was released in September 1980; NUREG-0730, "Report to Congress on the Acquisition of Reactor Data for the Nuclear Regulatory Commission Operations Center", was published in September 1980; NUREG-0610, "Draft Emergency Action Level Guidelines" was released in September 1979; FEMA's "preliminary master plan" is dated September 30, 1980; and the emergency exercise at North Anna Unit 2 was conducted in August 1980.

Only NSOC's six-page letter to the President -- based on its review of documents which were themselves prepared in response to concerns such as those expressed in the findings and recommendations of groups such as the Kemeny Commission and the Rogovin Group -- became "available" to ANGRY within the thirty days prior to its January 27, 1981 filing.^{4/} Therefore, because the information on which ANGRY's proposed Contention VII was available to ANGRY much more than 30 days prior to the filing of the contention, the contention must be considered as a late filed contention.

^{4/}

Assuming, arguendo, that ANGRY had timely raised, with its other emergency planning contentions, an admissible contention generally alleging the inadequacy of federal emergency planning, the NSOC letter might have served as a basis for revising or further specifying that contention. However, ANGRY raised no such contention, and should not at this late date be permitted to do so.

Late filed contentions are to be treated as late filings to which the standards of 10 C.F.R. § 2.714(a)(1) must be applied. "Memorandum and Order Ruling on Intervenors' Requests for Extensions of Time to File Revised Emergency Planning Contentions" (January 8, 1980), at p. 7. Section 2.714(a)(1) provides that nontimely filings will not be entertained unless it is determined that the petition or request should be granted based upon a balancing of five factors:

- (1) Good cause, if any, for failure to file on time.
- (2) The availability of other means whereby the petitioner's interest will be protected.
- (3) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (4) The extent to which the petitioner's interest will be represented by existing parties.
- (5) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

The first criterion, good cause for failure to file on time, is generally the most important factor, though the others must also be considered. Duke Power Co. (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-431, 6 N.R.C. 460, 462 (1977). In its January 27 filing, ANGRY offered no explanation whatsoever for its failure to timely file the proffered general contention on federal emergency planning. ANGRY's failure to show good cause for its late filing requires ANGRY to shoulder a heavier burden with respect to the other factors. See, e.g., Virginia Electric & Power Co. (North Anna Station, Units 1 & 2), ALAB-289, 7 N.R.C.

395, 398 (1975).

Though no other intervenors have raised contentions directly challenging the adequacy of federal emergency planning, ANGRY has demonstrated no particular technical expertise in federal emergency planning. Rather, ANGRY relies upon its knowledge of local conditions as its basis for intervention on state and local emergency planning issues. Further, the very general language of the proposed contention and the fact that ANGRY has apparently only recently become aware of the alleged inadequacy of federal emergency planning revealed by the federal response to the TMI-2 accident undermine -- to some extent -- any claim that ANGRY's litigation of its proposed Contention VII would be a significant factor in developing a sound record on the issue in this proceeding.

Moreover, admission of ANGRY's proposed Contention VII would necessarily result in delay in the already protracted emergency planning phase of the hearings in this proceeding. The contention is broadly framed, includes a sweeping reference to "all NRC Incident Response Planning guidelines" (without specifying what those "guidelines" are), and completely fails to indicate the specific inadequacies which ANGRY alleges exist. Such a general contention is wholly inappropriate at this late date in the proceeding, long after the discovery period has ended. If the contention were admitted, the parties would be entitled to at least one round of discovery on the contention, though ANGRY's broad brush approach to its contention does not suggest a familiarity with the federal plans. After discovery, a period

would be required for the preparation of testimony -- long after the bulk of licensee's testimony on emergency planning is submitted on February 9, 1981. Where, as here, a contention is extremely late, the most important factor in weighing its admissibility is the extent to which it will delay the proceeding. Detroit Edison Co. (Greenwood Energy Center, Units 2 & 3), ALAB-476, 7 N.R.C. 759, 761-62 (1978).

Finally, the rejection of ANGRY's proposed Contention VII in this proceeding will not leave ANGRY without a forum for the presentation of its concerns. FEMA has published, at 45 Federal Register 84910, its Master Plan "for interim use and public comment." According to that Plan:

The promulgation of this Master Plan is the first step in developing an integrated National Radiological Emergency Preparedness/Response Plan For Commercial Nuclear Power Plant Accidents. The second step is the preparation of detailed agency implementation plans describing the procedures, organizations, capabilities and interfaces each Federal agency intends to use to fulfill its responsibilities assigned by this Master Plan. The completed agency implementation plans will be submitted to the Federal Emergency Management Agency (FEMA) within four months from the date of promulgation of this Master Plan. FEMA will review the agency implementation plans and, working with each agency, will integrate them and this Master Plan into a comprehensive National Radiological Emergency Preparedness/Response Plan for Commercial Nuclear Power Plant Accidents.

Thus, ANGRY may -- if it desires -- properly address its generic planning through comments on those plans, in the course of their review by FEMA -- the agency which has lead responsibility for

all federal nuclear emergency planning and response (except the NRC onsite operational response), including responsibility for coordination of NRC onsite response with offsite response.

Accordingly, since ANGRY's proposed contention is not based upon "new information" which became available within the thirty day period immediately preceding its filing with the Board, and since ANGRY has failed to meet the requirements of 10 C.F.R. § 2.714(a)(1) applicable to late filings, ANGRY's proposed Contention VII should be rejected.^{5/}

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By: 

Robert E. Zahler

Dated: February 6, 1981

^{5/} Licensee also has strong reservations as to whether ANGRY's proposed Contention VII is within the scope of this proceeding. The concern raised is obviously generic to all operating nuclear plants and to all ongoing licensing proceedings; the status of federal emergency planning clearly was not a basis upon which the Commission ordered the shutdown of TMI-1.

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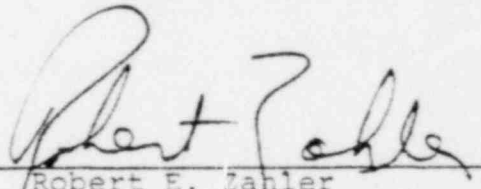
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Response to Contentions VII of the Anti-Nuclear Group Representing York" were served upon those persons on the attached Service List by deposit in the United States mail, postage prepaid, this 6th day of February, 1981.



Robert E. Zahler

Dated: February 6, 1981

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SERVICE LIST

Ivan W. Smith, Esquire
Chairman
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Walter H. Jordan
Atomic Safety and Licensing
Board Panel
881 West Outer Drive
Oak Ridge, Tennessee 37830

Dr. Linda W. Little
Atomic Safety and Licensing
Board Panel
5000 Hermitage Drive
Raleigh, North Carolina 27612

James R. Tourtellotte, Esquire
Office of the Executive Legal Director
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Docketing and Service Section
Office of the Secretary
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

John A. Levin, Esquire
Assistant Counsel
Pennsylvania Public Utility Comm'n
Post Office Box 3265
Harrisburg, Pennsylvania 17120

Karin W. Carter, Esquire
Assistant Attorney General
505 Executive House
Post Office Box 2357
Harrisburg, Pennsylvania 17120

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

Walter W. Cohen, Esquire
Consumer Advocate
Office of Consumer Advocate
14th Floor, Strawberry Square
Harrisburg, Pennsylvania 17127

Jordan D. Cunningham, Esquire
Attorney for Newberry Township
T.M.I. Steering Committee
Fox, Farr & Cunningham
2320 North Second Street
Harrisburg, Pennsylvania 17110

Ms. Louise Bradford
TMI ALERT
315 Peffer Street
Harrisburg, Pennsylvania 17102

Attorney General of New Jersey
Attn: Thomas J. Germino, Esquire
Deputy Attorney General
Division of Law - Room 316
1100 Raymond Boulevard
Newark, New Jersey 07102

Ellyn R. Weiss, Esquire
Attorney for the Union of Concerned
Scientists
Harmon & Weiss
1725 Eye Street, N.W., Suite 506
Washington, D.C. 20006

Steven C. Sholly
304 South Market Street
Mechanicsburg, Pennsylvania 17055

Gail Bradford
Anti-Nuclear Group Representing York
245 West Philadelphia Street
York, Pennsylvania 17404

William S. Jordan, III, Esquire
Attorney for People Against Nuclear
Energy
Harmon & Weiss
1725 Eye Street, N.W., Suite 506
Washington, D.C. 20006

Robert Q. Pollard
609 Montpelier Street
Baltimore, Maryland 21218

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

Marvin I. Lewis
6504 Bradford Terrace
Philadelphia, Pennsylvania 19149

Marjorie M. Aamodt
R. D. 5
Coatesville, Pennsylvania 19320