

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 BRIEF IN RESPONSE TO LICENSING  
BOARD'S MEMORANDUM AND ORDER OF FEBRUARY 9, 1981

I. INTRODUCTION

In a Memorandum and Order on Emergency Planning Issues issued on February 9, 1981, the Licensing Board in the captioned proceeding set forth four questions regarding emergency planning issues in the restart proceeding and directed the parties and those agencies of the State of Pennsylvania with interests in emergency planning to submit briefs reflecting their views on the questions. Specifically, the Board asked:

- (a) How should the new emergency planning regulations and NUREG-0654 be applied to TMI-1?
- (b) Is full FEMA approval considered to be a restart requirement or is a "reasonable progress" standard more appropriate?
- (c) What is meant by the requirement to "Assess the relationship of State/Local plans to the Licensee plans so as to assure the capability to take emergency actions." (Short-term item 3(d), August 9, 1979 Order).

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- (d) Clarify the distinction in the August 9, 1979 Order between short-term item 3(d) and long-term item 4(b) (capability for emergency actions to a distance of 10 miles around the site).

The Licensing Board also stated that the briefs should contain an outline of the status of negotiations and agreement, if any, among the parties and the State of Pennsylvania and recommendations for receiving evidence on emergency planning contentions.

The NRC Staff's response to the Licensing Board's Memorandum and Order is set forth below.

## II. NRC STAFF'S VIEWS ON LICENSING BOARD'S QUESTIONS

### A. Applicability of the New Emergency Planning Regulations and NUREG-0654

As to the Licensing Board's inquiry on how the new emergency planning regulations and NUREG-0654 should be applied to TMI-1, it is the Staff's position that those new regulations and the criteria of NUREG-0654 should be applied in this proceeding according to the explicit terms of the regulations for an operating plant. TMI-1, though under an NRC Order to shut down, is in fact a plant with an operating license and not a facility for which an operating license is yet to be issued. The new regulations make distinctions in certain instances between facilities possessing an operating license and those for which an operating license is yet to be issued.<sup>1/</sup> The distinction arises primarily from deadlines by which certain actions are to be taken. Thus, facilities with operating licenses, such as TMI-1, were to submit revised and upgraded licensee emergency plans and State and local plans by January 2, 1981 (10 CFR § 50.54(s)(1) and (u)), are

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<sup>1/</sup> Compare, e.g., 10 CFR § 50.47(a) and (c) with 10 CFR § 50.54(g) and (s).

to submit implementing procedures for licensees' plans by March 1, 1981 (10 CFR Part 50, Appendix E, § V) and are to implement the revised licensees' plans, except for the prompt notification for the plume exposure pathway EPZ, by April 1, 1981 (10 CFR § 50.54(s)(2)).

The new emergency planning regulations provide that if, after April 1, 1981, the NRC finds that the state of emergency preparedness for a facility with an operating license does not provide reasonable assurance that protective measures can and will be taken and the identified deficiencies in planning are not corrected within four months of such a finding, the NRC may order shutdown or take other enforcement action (10 CFR § 50.54(s)(2)). In determining whether shutdown or other enforcement action is appropriate, the Commission will account for whether the licensee can satisfactorily demonstrate that planning deficiencies are not significant or that compensating measures have been or will be taken. TMI-1 is already under a shutdown order, although not necessarily because of a finding of inadequate emergency preparedness. Nevertheless, in present circumstances, it is the Staff's view that authorization for restart and full power operation for TMI-1 should be permitted only after a finding that onsite and offsite emergency plans address the planning standards of the new emergency planning rules and comply with the new regulations for facilities with operating licenses.

Application of the new emergency planning rules and the criteria of NUREG-0654 as standards for the restart of TMI-1 is an application of standards which, in some respects, go beyond the express requirements of the Commission's August 9, 1979 Order. For example, as one of the short-term items of the Commission's August 9, 1979 Order, the licensee was to improve its emergency preparedness by, among other things, "upgrading

emergency plans to satisfy Regulatory Guide 1.101...." Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 1), CLI-79-8, 10 NRC 141, 144 (1979). However, Regulatory Guide 1.101 has been superceded with the upgraded criteria of NUREG-0654 to be used for emergency planning purposes generally. Similarly, the new emergency planning rules extend emergency planning requirements out to plume exposure and ingestion exposure pathway emergency planning zones whereas the Commission's August 9, 1979 Order provided for only a long-term action of extending "the capability to take appropriate emergency actions for the population around the site to a distance of ten miles." CLI-79-8, 10 NRC 141, 145 (Order item 4(b)).

At the same time, the Commission has clearly indicated that the upgrading and revision of the NRC's emergency planning regulations was done in recognition of the need for more effective emergency planning and in response to the TMI-2 accident.<sup>2/</sup> It would be illogical to argue that new upgraded emergency planning regulations and criteria resulting from the accident at TMI-2 should not set the standards for the restart of TMI-1 which is on the same site as TMI-2 and which was shutdown by the Commission as a result of the accident at TMI-2. TMI-1 is given no special treatment under the new emergency planning rules. It is neither exempted from the new rules nor required to comply with the new rules on an accelerated basis. In the Staff's view, the new emergency planning rules and the criteria of NUREG-0654 should be applied in the restart proceeding in accordance with the terms of those regulations and criteria. The emergency preparedness

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<sup>2/</sup> See the Commission's Statements of Consideration accompanying the new emergency planning rules, 45 Fed. Reg. 55402 (August 19, 1980).

improvements required generally of all facilities as a result of the TMI-2 accident are phased or dated requirements. "Reasonable progress" toward the ultimate goal of complete upgrading of preparedness is accomplished by meeting these phased or dated requirements in accordance with the terms of the new rules.

B. Need for FEMA's "Full Approval" for Restart

As to whether FEMA's "full approval" is a restart requirement or a "reasonable progress" standard is more appropriate, it is the Staff's view that "full" FEMA approval should not be required prior to restart.

Under the NRC's new emergency planning rules, FEMA is responsible for making findings and determinations on the adequacy of State and local (off-site) emergency plans and on the implementation of such plans.<sup>3/</sup> The NRC determines the adequacy of licensee (onsite) planning and, based on that determination and FEMA's findings and determinations on offsite planning, makes a determination as to the overall, integrated state of emergency preparedness.<sup>4/</sup> For facilities with operating licenses, the NRC is to base its findings on (1) the adequacy of preparedness, and on (2) whether shutdown of the plant is warranted on FEMA's findings and determinations on the adequacy of offsite planning and the NRC's own determinations on the adequacy of onsite preparedness. 10 CFR § 50.47(s)(3).

On June 24, 1980, FEMA published proposed rules (44 CFR Part 350) establishing the formal FEMA process for evaluation and approval of State

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<sup>3/</sup> See the Commission's Statements of Consideration accompanying the NRC's new emergency planning rules, 45 Fed. Reg. 55402, 55406-07 (August 19, 1980).

<sup>4/</sup> 45 Fed. Reg. 55407.

and local emergency plans.<sup>5/</sup> The process established under the proposed rules requires a number of formal steps,<sup>6/</sup> initiated by a State for FEMA review and approval of State and local emergency plans<sup>7/</sup> and culminating in FEMA's formal approval or disapproval of State and local plans.

This formal FEMA process and ultimate "full approval" of State and local plans is independent of any NRC regulations regarding NRC's licensing proceedings,<sup>8/</sup> and there is nothing in the NRC's emergency planning regulations requiring FEMA's "full approval" of State and local plans. Accordingly, it is the Staff's view that such "full FEMA approval" is not, and should not be, a restart requirement. Nor should "reasonable progress" of State and local plan review through the formal FEMA process be a requirement.

Under a Memorandum of Understanding Between FEMA and NRC<sup>9/</sup> executed on November 4, 1980, FEMA has agreed that, notwithstanding the formal procedures in FEMA's proposed rule for formal approval of State and local plans, 44 CFR Part 350, findings and determinations on the current status of emergency preparedness around any site, based on plans currently available to FEMA, will be provided by FEMA for use in the NRC's licensing process upon request.<sup>10/</sup> These might be characterized as informal findings by FEMA. It is the Staff's view that what should be required for the

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5/ 45 Fed. Reg. 42341.

6/ See §§ 350.8-350.12 at 45 Fed. Reg. 42345-46.

7/ Section 350.7(d), 45 Fed. Reg. 42345.

8/ 45 Fed. Reg. 42341 at 42343.

9/ 45 Fed. Reg. 82713 (December 16, 1980).

10/ 45 Fed. Reg. 82714, § II.4.

restart proceeding, consistent with the NRC's new emergency planning regulations and as provided for in the Memorandum of Understanding, is FEMA's informal findings and determinations on the current status of offsite planning around TMI, including an evaluation of a joint licensee, State and local exercise.

C. Meaning of Short-Term Item 3(d) of Commission's August 9, 1979 Order

The Licensing Board has inquired as to the parties' views on the meaning of short-term item 3(d) in the Commission's August 9, 1979 Order. Specifically, short-term item 3(d) provides that the licensee is to improve its emergency preparedness through "assess[ing] the relationship of State/Local plans to the licensee plans so as to assure the capability to take emergency actions."

The Staff views this order item as requiring an evaluation of the licensee's emergency plan and the emergency plans of the State and the five counties surrounding TMI to ascertain whether those plans are coordinated in such a manner that, upon the occurrence of an accident, State and local governments will be promptly notified and given the information needed to make decisions on emergency actions that have to be taken. Such an assessment involves:

- (1) an evaluation of licensee's provisions for recognizing and classifying an accident and a determination that the emergency classification scheme used by the licensee is consistent with that provided for in State/Local plans;
- (2) an evaluation of the licensee's provisions for notifying State/Local emergency response organizations of the declaration of an emergency and a determination that adequate

communication links between the licensee and State/Local emergency response organizations are established, maintained and continuously staffed on both ends;

- (3) an assessment of the licensee's provisions for supplying, on a continuous basis, information on plant status, projected releases and recommended protective actions to State/Local emergency response organizations and a determination that State/Local response organizations have provided for receiving and utilizing such information in determining what emergency actions to take;
- (4) an assessment of the provisions in each of the plans for prompt and continuous communications among the licensee, State and local response organizations and a determination that the provisions of the plans are consistent in this regard;
- (5) an assessment of each of the plans with regard to the interfaces among onsite response activities and offsite support and response activities to determine consistency among the plans and to assure that support and actions from State/Local response organizations relied upon by the licensee are provided for by the State/Local plans and that support and actions from the licensee relied upon by State/Local response organizations are provided for by the licensee's plan.

While the Commission's Order item 3(d) is phrased in terms of "assessing" the relationship of licensee plans to State/Local plans, obviously any inadequacies in plan coordination and consistency identified in such an assessment should be corrected since "assessment" alone would be of only limited value.

D. Distinction Between Short-Term Item 3(d) and Long-Term Item 4(b)

The Licensing Board has inquired as to the parties' views on the distinction between short-term item 3(d) and long-term item 4(b) of the Commission's August 9, 1979 Order. Long-term item 4(b) requires "reasonable progress" on "extend[ing] the capability to take emergency actions for the population around the site to a distance of ten miles." CLI-79-8, 10 NRC at 145.

In the Staff's view, the distinction between short-term item 3(d) and long-term item 4(b) is that short-term item 3(d) focuses on interfaces, coordination and consistency between the licensee's plan and State/Local plans in order to assure that the plans are sufficiently coordinated that emergency actions can be taken but without reference to how far from the site the capability to take emergency actions should extend. In this regard, short-term item 3(d) appears to be directed toward curing inconsistencies and coordination problems in notification, communications and support service provisions of the various plans that would preclude or impair the taking of prompt emergency actions from the start. Long-term item 4(b), on the other hand, goes beyond this and, based on the premise that the plans are sufficiently coordinated that emergency actions can be taken, requires that the capability to take such actions be extended to a distance of ten miles from the site.<sup>11/</sup>

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<sup>11/</sup> Extension of emergency action capability to a distance of ten miles from the site is, in fact, required by the new emergency planning rules. See, e.g., 10 CFR §§ 50.47(b)(5), (10); 10 CFR Part 50, App. E, §§ III, IVD(2), IVD(3). See also the Commission's Statements of Consideration accompanying the new emergency planning rules, 45 Fed. Reg. 55402, 55403, 55406.

E. Status of Negotiation on Emergency Planning Issues

With the hearing sessions on emergency planning issues rapidly approaching and substantial portions of written testimony already filed or about to be filed, negotiations among the parties regarding emergency planning issues have ceased. During the several meetings among the parties, the Commonwealth of Pennsylvania and FEMA, the Staff attempted to informally provide information that might alleviate Intervenor's concerns and allow certain contentions to be withdrawn. The State of Pennsylvania also provided information which caused ANGRY to consider withdrawing two contentions. Such efforts, however, have not resulted in the withdrawal of any other contentions.

During the negotiations, both the Staff and the licensee suggested the categorization of emergency planning contentions, the consolidation of contentions and intervenors in particular categories and the designation of lead intervenors for particular categories of contentions. Mrs. Aamodt indicated that she did not wish to consolidate or act as lead intervenor. The representative of ECNP indicated the difficulty in ECNP's consolidation because of the distance of ECNP from the other intervenors and problems with coordinating their efforts. This left ANGRY, Mr. Sholly and Newberry. Mr. Sholly took the lead in efforts to consolidate, eliminate duplicative contentions and designate lead intervenors for particular categories of contentions. With Mr. Sholly's withdrawal from the proceeding, ANGRY attempted to take the lead. However, little further work was done in this regard so that, at this time, there have been no agreements on consolidation of intervenors with emergency planning contentions or designation of lead intervenors.

The licensee had suggested to the intervenors that a substantial number of contentions could be eliminated because they were duplicative of other contentions, were subsumed in other broader contentions, or appeared to raise issues or details that ought not to be litigated in the restart proceeding. The licensee presented the reasoning behind its suggestions in this regard. While representatives of ANGRY and Newberry indicated at the December 19, 1979 meeting among the parties that they would consider the licensee's suggestions, they have apparently determined not to follow any such suggestions.

In summary, while a number of meetings and negotiation sessions have been held, no agreements on paring down or simplifying the emergency planning issues or on consolidating issues and parties have resulted.

F. Recommendations for Receipt of Evidence on Emergency Planning Contentions

At the emergency planning hearing sessions on October 30 and 31, 1980, it was suggested that emergency planning contentions be taken up in two parts, the first dealing with contentions related to onsite emergency planning and the second dealing with contentions related to offsite emergency planning. Consistent with this suggestion, the licensee and Staff filed written testimony dealing primarily with onsite emergency planning matters on February 9, 1981.

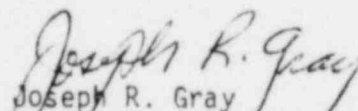
Similarly, the Commonwealth of Pennsylvania, the other parties with interests in emergency planning and FEMA, through the NRC Staff, are to file written testimony on offsite emergency planning contentions during the week of February 23, 1981. FEMA has indicated to the Staff that it is able to address only part of the contentions on offsite planning (approximately

one-third of the offsite contentions) in its written testimony to be filed on February 23 and that it will attempt to submit written testimony on the remaining offsite contentions by March 16, 1981.<sup>12/</sup>

With these dates for the filing of written testimony in mind and allowing approximately three weeks between the time on which written testimony is filed and the commencement of hearing sessions, the Staff suggests the following schedule for the receipt of evidence on emergency planning contentions:<sup>13/</sup>

Onsite emergency planning contentions	Hearing commences March 3, 1981
Offsite emergency planning testimony filed the week of February 23, 1981	Hearing commences March 16, 1981
Offsite emergency planning testimony of FEMA filed March 16, 1981	Hearing commences April 6, 1981

Respectfully submitted,

  
Joseph R. Gray  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 24th day of February, 1981

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<sup>12/</sup> The Commonwealth and the parties with interests in emergency planning contentions, with the exception of ECNP, were informed of this on February 17 and 18, 1981. Despite repeated efforts, representatives of ECNP could not be reached.

<sup>13/</sup> The Staff notes that outstanding issues on plant design and modification as well as management may need to be worked into this schedule.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S BRIEF IN RESPONSE TO LICENSING BOARD'S MEMORANDUM AND ORDER OF FEBRUARY 9, 1981" 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 24th day of February, 1981:

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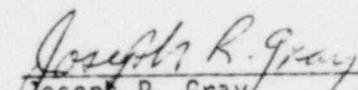
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