

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

Docket No. 50-289
(Restart)

NRC STAFF PETITION FOR REVIEW

Richard J. Rawson
Counsel for NRC Staff

November 12, 1982

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The NRC Staff hereby petitions the Commission pursuant to 10 CFR § 2.786 for review of the decision of the Atomic Safety and Licensing Appeal Board (ALAB-698) reversing the Atomic Safety and Licensing Board's decision (LBP-81-59) as it related to Licensee's staffing plans for its Emergency Operations Facility. ALAB-698 is erroneous with respect to an important question of policy which could significantly affect the public health and safety. 10 CFR § 2.786(b)(1) and (b)(4)(i). Further, the Atomic Safety and Licensing Appeal Board has resolved a factual issue necessary to the decision in a clearly erroneous manner contrary to the resolution of that same issue by the Atomic Safety and Licensing Board. 10 CFR § 2.786(b)(4)(ii).

I. SUMMARY OF THE DECISION BELOW

On October 22, 1982, the Appeal Board issued two decisions (ALAB-697 and ALAB-698) examining various aspects of the emergency response planning for the Three Mile Island Nuclear Station. One issue resolved in the latter decision involved the adequacy of the Licensee's plans for emergency staffing and the assignment of emergency response functions.^{1/}

^{1/} The decision of the Appeal Board on this issue was the majority opinion of Dr. Buck and Dr. Gotchy. Mr. Edles wrote a separate opinion dissenting from the majority's reversal of the Licensing Board's decision on this issue of emergency staffing and the assignment of emergency response functions.

NRC regulations require that "adequate emergency facilities and equipment to support the emergency response [be] provided and maintained. . ." (10 CFR § 50.47(b)(8)) and that "[a]dequate provisions shall be made and described for emergency facilities and equipment, including * * * a licensee near-site emergency operations facility from which effective direction can be given and effective control can be exercised during an emergency" (10 CFR Part 50, Appendix E, § IV.E.8). The question of the appropriate staffing and assignment of emergency response functions to the TMI Emergency Operations Facility (EOF) was contested between the NRC Staff and the Commonwealth of Pennsylvania on the one hand and the Licensee on the other. The Staff and the Commonwealth took the position that Licensee should be required to man its EOF with a senior Licensee manager and to transfer to that manager from the Emergency Director in the control room the responsibilities for radiological assessment and protective action recommendations within one hour of declaration of a Site or General Emergency. Staff regulatory guidance documents (NUREG-0654 and NUREG-0696)^{2/} on emergency planning and procedures embody this position.^{3/} The Licensee, in contrast, was of the view that the transfer of responsibility for radiological assessment and protective action recommendations to a senior manager in the EOF need not occur until some four hours after

^{2/} NUREG-0654 (Criteria for Preparation and Evaluation of Radiological Emergency Response and Preparedness in Support of Nuclear Power Plants) and NUREG-0696 (Functional Criteria for Emergency Response Facilities) were admitted into evidence as Staff Exhibits 7 and 8, respectively.

^{3/} Contrary to the suggestion of the Appeal Board majority (ALAB-698, slip op. at 33), the Staff and the Licensing Board did not arbitrarily apply generic criteria but rather evaluated the facts of Licensee's particular emergency staffing plans and decided that these criteria were appropriate in this specific case. See Tr. 22939-40 (Chesnut).

declaration of a Site or General Emergency, at which time Licensee's Emergency Support Director would arrive from offsite. LBP-81-59, 14 NRC 1211 at 1475.

The Licensing Board resolved this issue in a manner consistent with that urged by the Staff and the Commonwealth. A license condition was imposed as a prerequisite to restart of TMI-1 which would require early manning of the EOF and transfer of specific emergency response functions to the Emergency Support Director. Licensee appealed, asserting that the Licensing Board had erred because it had relied on generic guidance on EOF staffing (NUREG-0654 and NUREG-0696) and allegedly ignored the unique emergency management organization of the Licensee, thereby improperly disregarding internal management decisions properly vested with the Licensee.

The Appeal Board majority reversed the decision of the Licensing Board on this issue. New evidence submitted by Licensee relating to proposed modifications in the emergency staffing plan was found by the Appeal Board to have ameliorated "the more important problems that led to the Licensing Board's result . . ." ALAB-698, slip op. at 24. Specifically, managerial responsibility for the EOF has been assigned to a specific position, the Emergency Support Staff Member, until the Emergency Support Director arrives. As to the question of which official will make protective action recommendations, the Appeal Board reversed the Licensing Board's determination that it must be the Emergency Support Director in the EOF within one hour of declaration of a Site or General Emergency and adopted Licensee's proposal that such recommendations be the responsibility of the Emergency Director in the control room pending arrival of the Emergency Support Director within four hours of an emergency declaration.

II. ISSUE PRESENTED FOR REVIEW

The issue presented for review is:

Whether the Appeal Board erroneously reversed the Licensing Board by ruling that responsibility for radiological assessment and protective action recommendations should reside in the Emergency Director in the control room during the first four hours after declaration of a Site or General Emergency rather than the Emergency Support Director in the Emergency Operations Facility.

III. WHERE THE MATTER WAS RAISED BELOW

The matter was raised below by Licensee's Exception No. 3^{4/} to the Licensing Board's Partial Initial Decision of December 14, 1981. The Licensee argued in its March 10, 1982 brief^{5/} in support of exceptions that the Licensing Board erred in imposing the condition on EOF staffing. The Staff argued in its May 20, 1982 brief to the Appeal Board in response to the exceptions of the other parties that the Licensing Board had ruled properly on the emergency staffing issue after considering the staffing of Licensee's emergency management organization as well as evidence of potential problems with Licensee's specific EOF staffing proposal.^{6/} The Staff elaborated on its position in its June 17, 1982 response to the Appeal Board's order of June 1, 1982.^{7/}

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- ^{4/} Licensee's Exceptions to the Atomic Safety and Licensing Board's Partial Initial Decision of December 14, 1981, dated February 8, 1982, at 2.
- ^{5/} Licensee's Brief in Support of its Exceptions to the Atomic Safety and Licensing Board's Partial Initial Decision on Plant Design and Procedures, Separation, and Emergency Planning issues, dated March 10, 1982, at 45-64.
- ^{6/} NRC Staff's Brief in Response to the Exceptions of Others to the Atomic Safety and Licensing Board's Partial Initial Decision on Plant Design and Procedures, Separation, and Emergency Planning Issues, dated May 20, 1982, at 81-93.
- ^{7/} NRC Staff Response to Appeal Board's June 1, 1982 Order Requesting Elaboration on Certain Emergency Planning Issues, dated June 17, 1982, at 3-12.

IV. WHY THE DECISION BELOW IS ERRONEOUS

The Appeal Board has overruled the best judgment of the Licensing Board and the Staff in deciding that it is acceptable for Licensee to retain the functions of radiological assessment and protective action recommendations in the Emergency Director in the control room until the arrival of the Emergency Support Director some four hours after declaration of a Site or General Emergency. In so doing, the Appeal Board discards procedures which have been shown to be successful in emergency response exercises at other facilities in favor of a scheme which is untested and deficient in important respects. The Appeal Board has erred in this ruling and this error, if uncorrected, could significantly affect the public health and safety.

The principal regulatory guidance in the area of emergency response is contained in NUREG-0654 and NUREG-0696. Those documents were the result of careful consideration of emergency planning issues in light of the TMI-2 accident and subsequent inquiries and findings. Applying the criteria contained in NUREG-0654 and NUREG-0696, the Staff concluded under the specific facts of this case that it is important that the radiological assessment and protective action recommendation functions be transferred to a senior Licensee manager in the EOF early in the course of an emergency so as to relieve the in-plant Emergency Director of those responsibilities and allow him to concentrate on plant operational matters and mitigation of the accident. Licensee's opposition to the Staff's position was based principally on its preference that the Emergency Support Director be one of two named individuals, either of whom would have to travel from Parsippany, New Jersey to TMI (a distance of some 150 miles) to act in that capacity. The Licensing Board found this an insufficient basis for Licensee's position:

"After prolonged deliberation, accompanied by our initial reluctance to overrule the personnel management judgment of the Licensee, the Board finds that the Licensee must have available to it qualified individuals who could act as Emergency Support Director in the EOF in the interim (up to four hours) period prior to the arrival of the full off-site Emergency Support Organization without the need to transfer the Emergency Director from the control room to the EOF. Further, we are troubled at the extent of the implied reliance of the Licensee during emergency conditions on persons located so far from the site. It raises the issue of whether Licensee perceives, contrary to its stated position, that it has onsite only one or two persons it can entrust with the responsibilities of the Emergency Director and the Emergency Support Director."

14 NRC at 1479 (¶ 1396).

The Appeal Board rejected the Licensing Board's careful balancing of the competing factors involved and struck its own balance. The Appeal Board held that modifications initiated by Licensee will reduce the potential for confusion in the control room caused by the assignment of too many functions to the Emergency Director located there. ALAB-698, slip op. at 25-29.^{8/} The Appeal Board also found it preferable that protective action recommendations come from within the control room during the early hours of an accident (Id. at 33-34) and weighed this consideration more heavily than the need for face-to-face contact between state officials and the Licensee decisionmaker responsible for protective action recommendations (Id. at 32-34). Finally, the Appeal Board accepted Licensee's argument that politically sensitive protective action recommendations should be made by a senior GPU Nuclear official rather than "another, more junior employee." Id. at 34-35.

Early staffing of the EOF and early transfer of the protective action recommendation function to the EOF is important to an effective emergency

^{8/} The Appeal Board misconstrued Staff testimony which expressed a primary concern with the assignment of too many functions in the control room and a secondary concern with overcrowding of the control room as a recognition by Staff witnesses that "[t]he control room will not be crowded in an emergency. . . ." ALAB-698, slip op. at 27 (emphasis added). See Tr. 15472-15482 (Grimes and Chesnut).

response in that the Emergency Director in the control room is thereby allowed to concentrate more directly on accident mitigation and operational matters and a better interface is provided between the Licensee and state officials for the communication of protective action recommendations and the bases therefor. These important factors were too lightly dismissed by the Appeal Board and its decision is in error for this reason.

The Emergency Director in the control room should be relieved of the responsibility for performing emergency functions which can reasonably be performed elsewhere by other personnel. NRC Staff guidance in NUREG-0696 and the requirement in 10 CFR Part 50, Appendix E to establish an EOF separate from the control room was specifically designed to avoid the performance of too many functions in the control room. Tr. 15035-36 (Grimes). Licensee's emergency plan lists 12 separate actions which the Emergency Director is to take, as appropriate (Licensee Ex. 30, pp. 5-7, 5-8), and five separate responsibilities which the Emergency Director may not delegate (Licensee Ex. 30, pp. 5-8). In view of this myriad of responsibilities placed on the Emergency Director, and despite (and in part because of) the large staff provided to assist him,^{9/} it is prudent to remove the burden of translating plant conditions and projected effluent releases into protective action recommendations for offsite authorities from the Emergency Director, who must at the same time try to solve the accident problem and mitigate the accident from the plant systems standpoint. Tr. 15025-26 (Grimes). Under the scheme approved by the Appeal Board, the Emergency Director may

^{9/} The modifications detailed in the June 16, 1982 Rogan affidavit, relied upon by the Appeal Board, do not ameliorate the fundamental problem with Licensee's emergency plans: the imposition of ultimate responsibility for a large number of functions on the Emergency Director during the critical early hours of an emergency. This problem is exacerbated by locating the Emergency Director and other support functions in the control room rather than the Technical Support Center.

be unable to devote sufficient attention to formulating protective action recommendations and communicating them, as well as the bases therefor, in a timely manner to offsite authorities. The likelihood of this is reduced if the time-consuming and effort-consuming burden of formulating protective action recommendations is shifted to the Emergency Support Director in the EOF as early as practicable, thereby relieving the Emergency Director in the control room of one major responsibility and allowing him to devote all his efforts, oversight and direction to plant-related functions.^{10/}

Finally, Licensee's position (accepted by the Appeal Board) that protective action recommendations are politically sensitive and should be made by a senior GPU Nuclear official, while understandable, is not a sufficient reason to overturn the Licensing Board's rejection of this aspect of Licensee's emergency response plan. Licensee's preference must give way to the greater importance of ensuring that the Emergency Director is not overburdened with responsibility for too many functions while trying

^{10/} The Appeal Board's comment (slip op. at 36) that "it is not at all clear to us that the presence of the Emergency Support Director in the EOF was really critical" is made in the context of the need for direct contact between Licensee and State officials concerning protective action recommendations. While the State position concerning face-to-face contact is supportive of the Staff, a clear need for the early transfer of responsibility to the EOF exists irrespective of whether the State is afforded the opportunity for face-to-face contact with the Emergency Support Director. The Staff submits that the presence of the Emergency Support Director in the EOF is certainly critical insofar as it permits the Emergency Director to focus his efforts on plant operations and accident mitigation, reduces potential overcrowding and disruption in the control room, and allows protective action decisions to be made (by the Emergency Support Director in the EOF) in an environment more conducive to the weighing and balancing of all the factors (e.g., plant conditions, projected doses, evacuation time estimates, weather conditions) involved in protective action decisionmaking. Knowledge of the condition of the reactor, the point emphasized by the Appeal Board to justify its preference that the Emergency Director in the control room maintain responsibility for formulating protective action recommendations (slip op. at 33), is adequately communicated by the information and data links provided to the EOF. See Staff Ex. 8, at pp. 4, 16, 22.

to oversee the plant response to an accident. As the Licensing Board pointed out, the extent of the implied reliance of the Licensee during an emergency on persons located so far from the site is troubling.^{11/} 14 NRC at 1479 (¶ 1396).

In sum, the Licensing Board carefully balanced the competing considerations and properly decided that Licensee must have an Emergency Support Director available in the EOF within one hour of declaration of a Site or General Emergency and must transfer to that official the responsibility for radiological assessment and protective action recommendations. The Appeal Board's reversal of this decision is erroneous and unwise. If uncorrected, it will result in the impairment of the Emergency Director's ability adequately to perform all of the functions under his charge during the first, critical hours of an emergency.

V. WHY COMMISSION REVIEW SHOULD BE EXERCISED

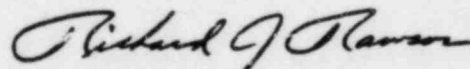
The precedent established by the decision of the Appeal Board as it relates to Licensee's emergency staffing and the assignment of emergency response functions will significantly weaken the protection which the Commission sought to provide for the public health and safety in its emergency planning regulations. Failure to uphold the decision of the Licensing Board in this matter will adversely affect the Staff's ability to assure that the Commission's necessarily general emergency planning regulations are effectively implemented. The Appeal Board's erroneous

^{11/} The Staff does not believe that the condition imposed by the Appeal Board -- that the Emergency Support Director be notified upon declaration of an Alert and that he immediately begin preparations to arrive at the EOF as soon as practicable but not later than four hours after declaration of a Site Emergency -- is an adequate response to this problem.

resolution of this issue in ALAB-698 thus presents an important question of policy which could significantly affect the public health and safety.

ALAB-698 resolves the issue of the adequacy of Licensee's staffing plans for its Emergency Operations Facility in a clearly erroneous manner contrary to the resolution of that same issue by the Licensing Board. The Appeal Board's decision goes too far in accommodating Licensee's desire to station four hours from TMI those individuals upon whom it intends to rely for performance of important safety functions in an emergency. The additional burdens imposed on the Emergency Director under ALAB-698 are likely to impair his ability either to respond to the needs of the plant in an accident situation or to make and explain proper protective action recommendations. In either case, the degree of protection of the public health and safety is needlessly diminished.

Respectfully submitted,



Richard J. Rawson
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 12th day of November, 1982

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF PETITION FOR REVIEW" 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, by deposit in the Nuclear Regulatory Commission's internal mail system, this 12th day of November, 1982:

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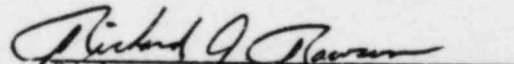
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