

8/24/81

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of
BOSTON EDISON COMPANY et al.
(Pilgrim Nuclear Generating
Station, Unit 2)

Docket No. 50-471

REQUEST OF THE COMMONWEALTH
OF MASSACHUSETTS FOR
CLARIFICATION/MOTIONS FOR
EXTENSION OF TIME FOR
FILING DIRECT TESTIMONY ON
EMERGENCY PLANNING AND FOR
RULING RE REBUTTAL TESTIMONY



The Commonwealth of Massachusetts learned for the first time during the course of telephone conversations on August 20, 1981 with Mrs. Cleeton and NRC Staff Counsel, that the Board had cancelled the September 1, 1981 prehearing conference on emergency planning matters. The Commonwealth has never received formal notice from the Board to this effect and is in need of clarification as to the nature and ramifications of the Board's action.

There are several matters which were to be the subject of arguments and orders at the September 1 prehearing conference. The Commonwealth has filed Motions to Compel discovery against

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both the Applicants and the NRC Staff. While the Commonwealth and Staff have managed to resolve their conflicts over the Commonwealth's interrogatories to it in an informal manner (with the possible exception of interrogatories 6 and 7 regarding the results of accident consequence analyses for the Pilgrim site), there remain unresolved disputes over the Commonwealth's document requests to the Staff and interrogatories and document requests to the Applicants.

In addition to these discovery matters, there are a number of procedural issues which the Commonwealth had intended to raise for resolution at the September 1 conference, including questions as to which parties are entitled to file rebuttal testimony and whether parties may do so who do not file direct testimony.^{1/} And, based on prior representations by counsel for the Applicants, the Commonwealth believes that the Applicants may have intended to challenge the Detailed Statement of the Commonwealth's Emergency Planning Contentions at that conference.

With these fundamental issues still outstanding, the Commonwealth is unable properly to prepare its direct testimony on emergency planning. It lacks all of the information and

^{1/} It is the Commonwealth's position that all parties should be entitled to file rebuttal testimony, but that no party should be allowed to do so if it does not file direct testimony. This will prevent any party from waiting to present its case on rebuttal, thereby effectively nullifying the other parties' right to rebuttal.

documents which it believes it is entitled to use in preparing its testimony and, indeed, even lacks assurance regarding the specific issues which it is entitled to address or the rules which apply. The Commonwealth assumes that the Board is aware of these facts and intends that its cancellation of the prehearing conference be interpreted as postponing the deadline for filing emergency planning testimony, pending rescheduling of the prehearing conference or other action on the matters identified above. The Commonwealth requests clarification on this point and, to the extent it is viewed as necessary, moves that the deadline for filing direct testimony be postponed pending resolution of these matters. The Commonwealth also moves that all parties be entitled to file rebuttal testimony, but that no party be allowed to do so who does not file direct testimony.

In further support of its request that the deadline for filing direct testimony be extended, the Commonwealth states as follows:

1. The Commonwealth filed its interrogatories and document requests to the NRC Staff on July 1, the first day of the emergency planning discovery period.^{2/} The NRC Staff filed its answers thereto in each case on the last day allowed by the Commission's rules (in the case of the

^{2/} The Staff, on the other hand, filed its interrogatories to the Commonwealth on emergency planning on August 14, the last day of the emergency planning discovery period.

document requests, 36 days after those requests were filed, and only 9 days before the close of the discovery period on emergency planning.)^{3/} The Commonwealth has not yet received a response to its FOIA request for documents from the NRC, despite the fact that the deadline therefor has passed.^{4/} The Commonwealth finds all of this in conflict with the Board's request at the July 1 prehearing conference that responses to discovery requests be made as soon as possible and that particular documents and answers be provided as identified or prepared.

2. In the NRC Staff's Responses to the Commonwealth's First Set of Interrogatories to it Relative to Emergency Planning, the Staff objected to nearly every aspect of every question and provided "voluntary answers" to only a few questions. Those answers provided were in most cases incomplete and/or unresponsive. Upon receiving these responses, counsel for the Commonwealth offered to meet with NRC

^{3/} In fact, the Commonwealth did not receive the Staff's response and the documents which were produced in response thereto until August 10, four days before the close of the discovery period.

^{4/} Since the Staff has waited to supply some documents responsive to the Commonwealth's document request by way of its response to the FOIA request (see NRC Staff's Response to the Commonwealth of Massachusetts' First Set of Requests for Documents from the NRC Staff Relative to Emergency Planning, at p. 1, n. 1) the Commonwealth has not yet even received all documents which the Staff has agreed to produce in response to the Commonwealth's document request.

Staff members during the week of July 27 to discuss emergency planning (and TMI) matters informally. Counsel for the NRC Staff declined this offer, stating that NRC Staff members responsible for Pilgrim II emergency planning (and TMI matters) would be away on vacation or otherwise unavailable at that time. Mr. Goldberg, counsel for the NRC Staff, then represented to counsel for the Commonwealth that, because of his own vacation plans, further negotiations seeking resolution of the Staff's and Commonwealth's discovery disputes would have to await review of the situation by another Staff attorney, Michael Blume. Mr. Blume did not contact counsel for the Commonwealth regarding this matter until the end of the week of August 17. Mr. Blume and Ms. Shotwell did agree, in the course of ensuing conversations, to attempt to resolve the dispute over the Commonwealth's interrogatories by means of a conference call to which NRC Staff members and other representatives, counsel for both parties, and one of the Commonwealth's expert witnesses would be a party. That call took place on Thursday, July 20, 1981.

Thus, because of the problems outlined above (some of which appear to have been unavoidable), the Commonwealth did not obtain even informal answers to

its emergency planning interrogatories until August 27, thirteen days following the close of the period designated by the Board for completion of discovery on such matters. Because the NRC Staff did not waive its objections to the Commonwealth's document requests in agreeing to hold the conference call described above, the Commonwealth still as of this writing has no assurance as to whether and when it will receive documents relevant to its emergency planning contentions.^{5/} Without knowing whether the Staff will agree to produce such documents or whether the Board will order that it do so, the Commonwealth is unable to determine the parameters of its direct testimony.

3. Because of the late date of the conference call discussed above, the Commonwealth has had to file its Detailed Statement of Emergency Planning Contentions without the benefit of even informal answers to its

^{5/} Those documents include the following: (1) several NRC documents on the significance, in the case of Pilgrim II, of releases to the liquid pathway (documents which the Commonwealth believes will support its contention that such releases are particularly critical in the case of Pilgrim II and merit more attention than they have received thus far); and (2) documents evidencing the results of the NRC's recent accident consequences analysis for the Pilgrim site, which results are highly relevant to the Commonwealth's contentions that there is insufficient evidence of the feasibility of protective action in the event of a PWR-1 to PWR-7 release at Pilgrim II and that there has been insufficient consideration of local emergency response needs and capabilities in the establishment of EP2 boundaries for Pilgrim II.

interrogatories to the Staff. This is in conflict with the spirit of the Board's schedule, which provided the opportunity for discovery prior to submission of that detailed statement. In the interests of expediting this proceeding as much as possible without jeopardizing its right to full and fair participation therein, the Commonwealth has not requested an extension of the deadline for filing the detailed bases for its contentions.^{6/} However, the Commonwealth cannot begin to prepare its direct testimony on many of the matters covered by its contentions before assessing the implications of the information provided during the August 20 conference call. Because of the vacation plans of the Commonwealth's counsel and its experts, review and assessment of that information cannot begin until September 1. (Indeed, the Commonwealth will not have the assistance of one of its experts, Mr. Herr, in conducting that review until September 9.) In light of these facts alone, a deadline of September 11 for filing direct testimony is clearly unreasonable.

4. The NRC Staff has failed to provide accurate and timely answers to even those interrogatories to which it purported to respond "voluntarily." The Staff

^{6/} If it appears necessary at a later point, the Commonwealth will move to modify that Statement on the basis of information learned during the August 20 conference call or documents ultimately produced.

indicated, in response to interrogatories 6 and 7 of the Commonwealth's First Set of Interrogatories to the NRC Staff Relative to Emergency Planning, that it had conducted no site-specific accident consequence analysis for Pilgrim II. The Commonwealth subsequently learned of a presentation made by an NRC Staff member in the course of a public meeting on the Commission's safety goal project which proved that answer to be untrue. Upon being so informed by the Commonwealth, the Staff apparently supplemented its written answer to interrogatories 6 and 7^{7/} and agreed to allow the Commonwealth to speak with an individual familiar with that study during the August 20 conference call. The Staff has still not decided whether it will produce the documents which evidence the results of that study for Pilgrim II to the Commonwealth. Thus, the Commonwealth still does not have the information which it requested in interrogatories 6 and 7 and to which the Staff supposedly provided a voluntary response.

Even more egregious is the fact that the Staff did not object to the Commonwealth's interrogatories 65-67 on releases to the liquid pathway and purported to provide complete and honest answers thereto, but then failed to identify in those answers NRC studies

^{7/} The Commonwealth has never yet received that supplemental response, but understands from NRC Counsel that it was filed.

which specifically address the liquid pathway problem at Pilgrim II. Again, the Commonwealth learned of the existence of such studies through other means and so advised the Staff. As was stated above, the Staff has not yet determined whether it will produce such documents.^{8/}

In sum, then, the Commonwealth has had to spend time which it could otherwise have devoted to the preparation of its case helping the Staff comply with its obligation to provide complete and honest answers to interrogatories. And the Commonwealth has been, and is still being, deprived of data which it needs to address in its direct testimony.

5. The Applicants have also refused to provide information responsive to the Commonwealth's discovery requests. See Motion of the Commonwealth of Massachusetts to Compel Answers to its First Set of Interrogatories to Boston Edison Company Relative to Emergency Planning; Commonwealth's Answer to Applicants' Motion for a Protective Order; and Commonwealth's Motion to Compel Production of Documents by Applicants. In particular, the

^{8/} It is not clear to the Commonwealth what possible basis the Staff could have for refusing to provide this information, since it did not object to these interrogatories.

Applicants have failed to produce the results of an, accident consequence studies which they have performed and any evacuation studies which relate to areas outside their proposed EPZ's. The Commonwealth needs to address any such information which exists in its direct testimony.

6. By letter dated July 24, 1981, the Staff formally advised the Applicants that they must supply population and evacuation time estimates for the first year of operation of Pilgrim II and evacuation time estimates assuming a summer rainfall. The Staff expressly indicated that the basis for the population projection should incorporate 1980 census data. The letter reflects the Applicants' agreement to provide the updated population data by August 1, 1981 and the revised evacuation time estimates by August 24, 1981.

While Applicants have provided, and the Commonwealth's population and evacuation time expert has reviewed, updated population data which purports to be responsive to this request, Applicants have not even committed to provide the revised evacuation time estimates until the date of this writing. As was stated above, the Commonwealth's expert will be unable, due to vacation plans, to begin reviewing these revised estimates until September 9, two days before direct testimony is currently due.

The Commonwealth is advised by its expert that, according to the new population data, the population base used by the Applicants in calculating their old evacuation time estimates was low by factors of 3.5 and higher in the areas to the south and southwest of the site, the areas which are of most concern to the Commonwealth. This certainly suggests that the Applicants' revised evacuation times will be much higher for these areas than their prior estimates. Without having the new estimates before it, and the methodology employed in their calculation subjected to its expert's review, the Commonwealth is unable to prepare the testimony which it plans to present regarding deficiencies in the Applicants' methodology and the implications of their results.

The Staff has apparently not yet determined whether it will in fact be preparing its own revised population and evacuation time estimates, as was represented at the July 1 prehearing conference. If the Staff will itself be preparing such estimates (or if someone will be doing so on the Staff's behalf), the Commonwealth also needs to address that data in its direct testimony.^{9/}

^{9/} As the Commonwealth's Detailed Statement of Contentions reveals, it is challenging the methodology and results of the Staff's evacuation time study, as well as that of the Applicants.

The Commonwealth also notes that the Applicants have not complied with the Staff's explicit request that the population projections for the year 1990 (and, hence, the evacuation time estimates for that year) be based on now available 1980 census data. The Commonwealth is advised by its expert that the new 1990 forecasts use available 1980 census data in only two very minor (and questionable) ways, affecting only a small part of the proposed EPZ, and otherwise rely on pre-census data!^{10/} The Commonwealth has advised the Staff of this failure to comply with its request and assumes that the Applicants will be requested to prepare new projections making use of the available 1980 census information. Therefore, it is unknown at this point by what date the population data and evacuation time estimates which will form the starting point for the Commonwealth's testimony in this hearing will be available.

For these reasons, the Commonwealth moves that the date for filing direct testimony on emergency planning be extended and that the Commonwealth be provided a minimum of three weeks to prepare its direct testimony following resolution of the matters outlined above and provision of all information upon

^{10/} If the Board would like the Commonwealth to submit an affidavit of its expert regarding these matters, it will be pleased to do so upon Mr. Herr's return from vacation on September 9.

which its testimony must be based. The Commonwealth believes that this request is consistent with the Board's intent in setting the original schedule, since it had provided a four-week period for preparation of direct testimony following what was supposed to be the close of the discovery period.

Respectfully submitted,

By:

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Dated: *August 24, 1981*

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BOSTON EDISON COMPANY et al.
(Pilgrim Nuclear Generating
Station, Unit 2)

CERTIFICATE OF SERVICE

I hereby certify that the within Request/Motion has been served on the following by deposit of copies thereof in the United States Mail, first class mail, postage prepaid this 24th day of August, 1981:

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