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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of)	
)	
THE DETROIT EDISON COMPANY,)	Docket No. 50-341
<u>et al.</u>)	(Operating License)
)	
(Enrico Fermi Atomic Power)	
Plant, Unit No. 2))	

APPLICANTS' BRIEF IN OPPOSITION TO APPEAL

Introduction

On November 8, 1982, Monroe County, Michigan ("Monroe County") sent to the Nuclear Regulatory Commission ("Commission") a letter which appeals the denial of late intervention contained in the Initial Decision issued October 29, 1982 by the Atomic Safety and Licensing Board (the "Licensing Board") in this proceeding. Monroe County sought to intervene on August 27, 1982, five months after the conclusion of the evidentiary hearing in this case, in order to "reopen and supplement the record" with respect to a number of concerns Monroe County expressed for the first time to the NRC in its petition regarding the offsite emergency plans for the Emergency Planning Zone ("EPZ") surrounding the Enrico Fermi Atomic Power Plant, Unit No. 2 ("Fermi 2").

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In addition to denying the petition to intervene and to reopen the record, the Initial Decision (1) found that the two contentions previously put in issue by Citizens for Employment and Energy ("CEE"), the only intervenor, had no merit, and (2) authorized the issuance of an operating license for Fermi 2.

The Detroit Edison Company ("Edison"), Northern Michigan Electric Cooperative, Inc., and Wolverine Electric Cooperative, Inc. (collectively, the "Applicants") submit that the Licensing Board properly applied § 2.714(a)(1) of the Commission's Rules of Practice and Procedure and correctly denied Monroe County's late request for intervention. The petition to intervene was filed nearly four years after the time specified for such intervention in the September 1, 1978 notice of hearing in this proceeding, and five months after the end of the hearing held on March 31 - April 2, 1982. Monroe County demonstrated no excuse for its tardiness. The issues it seeks to raise concern its own emergency response planning, and it is clear that Monroe County possessed sufficient knowledge of these matters to intervene long before the hearing last spring. Monroe County did not show why the review of emergency planning by the Commission and the Federal Emergency Management Agency ("FEMA") pursuant to § 50.47 will not be

adequate to protect its interests. Nor did Monroe County offer any evidence to show that it would assist in "developing a sound record." Finally, reopening the record unquestionably would delay this proceeding and would seriously prejudice Applicants' interest in receiving a full-power operating license presently scheduled to be issued by August 1, 1983. NUREG-0580, "Regulatory Licensing Status Summary Report" Vol. 11, No. 10 at 2-9 (Oct. 15, 1982).

Factual Background

A detailed description of Monroe County's early involvement in the development of the Commission's emergency planning rules following the TMI-2 accident and its own planning efforts is contained in the Initial Decision (at 39-44) and in Applicants' September 20, 1982 "Answer to Late Petition for Leave to Intervene and to Reopen and Supplement Record and to CEE's Response" at pages 3-6. Accordingly, we recount here only the most significant facts in that chronology.

Following the accident at TMI-2, the Commission began a formal reconsideration of the role of emergency planning in assuring the continued protection of the public health and safety in areas around nuclear power facilities. See 44 Fed. Reg. 75167, 75168 (proposed Dec. 19, 1979). Monroe County participated in that proceeding almost from the very beginning.

Monroe County filed two early letters with the Commission commenting on the proposed emergency plan rule changes. One of the letters, dated January 25, 1980 and signed by Mr. Arden T. Westover, states that "Monroe County is already deeply involved in the planning process to cope with a nuclear accident."^{1/} Moreover, Monroe County representatives attended a regional workshop conducted by the Commission in Chicago on January 22, 1980 on emergency planning.^{2/} Clearly, at least as early as January 1980, more than two years before the hearing, Monroe County was aware that the adequacy of its emergency response plan could be an issue in the Fermi 2 licensing proceeding, and that if Monroe County was desirous of raising such an issue, it should act in a timely fashion to protect its interests.

Before the issuance of the Commission's final emergency planning rule in August 1980, Edison undertook a program to assure the development of adequate offsite

^{1/} Copies of these letters were attached as Appendix A to Applicants' September 20 Answer to Monroe County's petition to intervene.

^{2/} A summary of the workshops is presented in NUREG/CP-0011, "Proceedings of Workshops on Proposed Rulemaking on Emergency Planning for Nuclear Power Plants, held at New York City, San Francisco, Chicago and Atlanta -- January 1980" (April, 1980).

emergency plans at the county level. Edison retained a consultant in January 1980 to assist Monroe County in preparing a plan. In May 1980 Monroe County received a State grant specifically to hire additional staff to assist in preparation of the County's emergency plan. On May 22, 1980, the Monroe County Enrico Fermi 2 Emergency Planning Committee, a group of about 60 political and administrative officials from the various governmental units within the County, met to begin the County's formal planning process.^{3/}

Mr. Frank Kuron, who has been the sole continuous member of CEE since 1978 and its only witness at the hearing in this proceeding, took office as a Commissioner of Monroe County in January 1981, a position he still holds. His knowledge of the issues or potential issues in this proceeding can be imputed to Monroe County from January 1981.

A working draft of the Monroe County plan was produced in March 1981 and was released for public comment in April 1981. This version was the subject of extensive

^{3/} Monroe County's development of an emergency plan beginning in late 1979 is summarized in the statement of Jon L. Eckert, Director of Civil Preparedness, Monroe County at the February 3, 1982 public hearing on the emergency response exercise. An excerpt from the transcript of that hearing, including Mr. Eckert's statement, is attached hereto as Appendix A.

review both by Monroe County officials and by responsible State planning representatives. A completed version of the Monroe County plan was produced in November 1981. Michigan officials forwarded the state and county plans (Monroe and Wayne Counties) to the FEMA Regional Assistance Committee for informal review and comment on November 19, 1981.^{4/}

A full-scale exercise of emergency response capabilities around Fermi 2, involving Edison, the State of Michigan, and Monroe and Wayne Counties, was held on February 2, 1982. The following day FEMA and the NRC Staff held a public critique of the exercise in Monroe County. On the evening of February 3, 1982, the State of Michigan conducted a public hearing on the adequacy of offsite emergency planning around Fermi 2. Participating on the panel were representatives from Michigan, Monroe and Wayne Counties, Edison and FEMA. See Appendix B. FEMA's written critique of the exercise was released on February 22, 1982.

In its November 8 letter, Monroe County advances a new argument why it could not have been expected to intervene

^{4/} Monroe County asserts that the Licensing Board's finding that Monroe County had a "completed version of the plan" (ID at 40) was erroneous because the Board of Commissioners "never adopted any document." Letter of November at ¶4. However, Monroe County cannot deny that its officials forwarded its completed plan to the FEMA Regional Committee on November 19, 1981 in conjunction with submission of the Michigan State plan and the Wayne County plan.

even as late as February 1982. Monroe County now sees its role as bringing to the Commission's attention "public input" on emergency planning which it says was not completed until after the operating license hearing. Monroe County contends that the weather on February 3, 1982 was poor and limited the public's participation in the critique of the previous day's response exercise. For that reason, Monroe County contends, further hearings were needed on April 28 and June 16, 1982.

The State of Michigan, FEMA, and the Commission's Staff considered the February 3, 1982 public critique of the exercise to be adequate, and did not sanction the two later public hearings. Moreover, Monroe County fails to explain why a second public hearing in better weather could not have been scheduled in the nearly eight weeks between the response exercise and the operating license hearing. Most important, however, it is perfectly obvious that the list of "contentions" contained in Monroe County's August 27 petition all are matters peculiarly within the knowledge of its planning officials and are not matters on which the general public could be expected to have any particular insight. Certainly, neither the August 27 petition nor the November 8 letter identify any specific contribution that the two later public meetings made to an understanding of possible flaws in Monroe County's plan.

Argument

THE LICENSING BOARD PROPERLY DETERMINED
THAT MONROE COUNTY'S LATE PETITION TO
INTERVENE FAILED TO SATISFY THE
APPLICABLE REQUIREMENTS.

Section 2.174(a)(1) of the Commission's Rules of Practice provides that nontimely filings will not be entertained unless it is determined that the petition to intervene 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 Licensing Board properly weighed each of these factors and determined that the lack of good cause (Factor 1) and the inevitable delay in the proceeding (Factor 5) "outweigh[ed] by a considerable margin" the fact that no other party arguably would represent Monroe County's asserted interest (Factor 4). Initial Decision ("ID") at 48.

The Licensing Board held that Monroe County had made no showing on the second (availability of other means) and third (assisting in development of record) factors. Therefore, the Licensing Board, giving Monroe County the benefit of the doubt, held that these two factors at best would be a neutral element in the analysis under § 2.714(a).

A. The Licensing Board Properly Found That Monroe County Did Not Show Good Cause For Its Failure To File A Timely Petition.

The decisions of the Appeal Board uniformly stress that timely compliance with the rules is required and that late petitions to intervene may not be granted without a strong showing of good cause. Duke Power Company (Cherokee Nuclear Station, Units 1, 2 and 3), ALAB-440, 6 NRC 642, 643 (1977); Duke Power Company (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-431, 6 NRC 460, 462 (1977); Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 2), ALAB-384, 5 NRC 612, 615 (1977).

More recently, the Appeal Board has reiterated that a late petitioner must "affirmatively demonstrate" good cause for its tardiness. Duke Power Company (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-615, 12 NRC 350, 352 (1980). Where contentions had been filed a mere two weeks late, the Appeal Board sustained the denial of a

petition to intervene, noting that the petitioner had "offered no coherent or plausible excuse for the delay and thus has failed to establish the requisite 'good cause' and other factors set forth in 10 C.F.R. § 2.714." Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-624, 12 NRC 680, 682 (1980).

The Licensing Board correctly recognized (ID at 39) that the "good cause" determination "depends wholly upon the substantiality of the reasons assigned for not having filed at an earlier date", not the alleged significance of the subject sought to be litigated. South Carolina Electric & Gas Company (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 887 n.5 (1981) (emphasis in original), aff'd without opinion sub nom. Fairfield United Action v. NRC, No. 81-2042 (D.C. Cir. Apr. 28, 1982); see also Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 and 2), ALAB-675 (May 17, 1982), 15 NRC 1105, 1113 n.9. In its Summer decision the Appeal Board explained the rationale of this position by noting the destructive impact of the anticipated delay caused by the late intervention. The Appeal Board stated:

[Prior to the filing of the late petition], the applicants and the staff had every right to assume that both the issues to be litigated and the participants had been established with finality. Simple

fairness to them -- to say nothing of the public interest requirement that NRC licensing proceedings be conducted in an orderly fashion -- demanded that the Board be very chary in allowing one who had slept on its rights to inject itself and new claims into the case as last-minute trial preparations were underway.

. . .

By instead remaining on the sidelines while the proceeding moved closer and closer to trial, it voluntarily assumed the precise risk which has now materialized: that its participation in the proceeding could no longer be sanctioned without destructive damage to both the rights of other parties and the integrity of the adjudicatory process itself. 13 NRC at 886, 895.

Judged against this standard, it is apparent that Monroe County had no excuse--let alone good cause--for its delay in seeking intervention in this proceeding.

By its own admission, Monroe County has been working for some time with FEMA and Michigan State officials in formulating an emergency response plan. As noted above, this effort began even before the FEMA guidelines to which Monroe County referred in its Petition (at 2) were published on June 24, 1980. 45 Fed. Reg. 42341. A working draft of Monroe County's emergency plan was released for public comment in April 1981. This plan was the subject of discussions among Edison, Monroe County officials, and responsible State planning officials through 1981. Michigan

officials forwarded the state and county plans (Monroe and Wayne Counties) to the FEMA Regional Assistance Committee for informal review and comment on November 19, 1981. Finally, state and local emergency preparedness authorities (including those from Monroe County) staged a full-scale emergency response drill with Edison and FEMA and NRC officials in early February 1982, eight weeks before the hearing in this proceeding commenced on March 31, 1982.

Given these facts, Applicants argued that Monroe County was in a position to file its intervention petition at least as early as January 1980. By that time Monroe County had begun its own planning process, was aware of the Commission's proposed emergency planning rule changes, had attended a workshop on the proposed rule changes, and had submitted two comment letters to the Commission on the rule changes. By August 1980 Monroe County was aware that the Commission had adopted the proposed rule changes, knew that NUREG-0654 provided guidance against which to assess the adequacy of offsite plans, and should have concluded that, if its legal interests required active participation in this operating license proceeding, it was time to seek intervention. Even as late as April 1981, when the first version of the Monroe County emergency plan was released, the county could have sought to intervene on the basis of that document.

The Licensing Board gave Monroe County the benefit of the doubt in finding that at the very latest, by February 1982 Monroe County not only was aware of what its emergency plan contained, but was aware of how the plan fared in the full-scale response exercise. This was eight weeks before the beginning of the evidentiary hearing in this proceeding and represents the very latest date that Monroe County reasonably should have acted.

In paragraphs 7 and 9 of its November 8 appeal, Monroe County refers to "the Commission response to the proposed amendment of 10 CFR 50.47." Presumably, Appellant is referring to a petition for rulemaking filed by the Union of Concerned Scientists in Docket No. PRM-50-35 and noticed for public comment on November 12, 1982.^{5/} 47 Fed. Reg. 51889 (Nov. 18, 1982). The Commission's notice states that the UCS alleges "that the Commission has provided no rational basis, nor is there one, for treating offsite emergency planning contentions any differently than other licensing issues." Id. Here, of course, the Licensing Board treated Monroe County's emergency planning contentions exactly like other licensing issues. It refused to entertain

^{5/} How Monroe County learned the contents of the Commission's notice before it was issued is an interesting question, but one that need not detain resolution of the instant appeal.

them because they were asserted too late, not because of their subject matter.

The USC proposal to require licensing boards to retain jurisdiction over contested emergency planning issues and keep the hearing record open has not yet been accepted by the Commission, and it may--in our view, should--never be. Even if it were already part of the Commission's regulations, it would not aid Appellant, because no emergency planning issues were seasonably put in controversy. In short, Docket No. PRM-50-35 provides no support for Monroe County's appeal.

Monroe County does not deny that it was aware of this Commission's hearing process and of its right to raise contentions in a timely fashion before the Licensing Board. One of the Monroe County Commissioners is Mr. Frank Kuron. Since 1978 Mr. Kuron has been an active participant in CEE, the sole intervenor in this proceeding. Indeed, Mr. Kuron was CEE's only witness at the hearing, and its only ostensibly continuous member through the course of this proceeding. He has been a Commissioner since January 1981. In 1978, CEE filed contentions concerning offsite radiological monitoring, emergency planning, and radiological hospital facilities. These matters were the subject of CEE's Contentions 5, 8, and 9. See Opposition at 20-24. Thus,

Mr. Kuron had long been aware that issues concerning emergency planning could be raised as contentions. His knowledge of, and personal involvement in, the hearing process, properly was imputed to Monroe County not later than the time that he assumed public office in January 1981. ID at 42.

Despite the numerous opportunities available to it, Monroe County allowed the operating license proceeding to continue its course and never made any effort to protect its rights or to alert the Licensing Board to its concerns.^{6/} Monroe County, with a professional staff and long-standing direct involvement in the matters which it is now seeking to put in contention, simply was not entitled to any latitude that the Licensing Board might have given to an individual at an earlier stage of the proceeding. See Public Service Electric & Gas Co. (Hope Creek Generating Station, Units 1 and 2), LBP-77-9, 5 NRC 474 (1977) (denying a two-year-late petition by a private organization); cf. Florida Power & Light Co. (St. Lucie

^{6/} Even a brief review of the contentions suggests that the concerns identified by Monroe County were, or should have been, well-known to Monroe County long before it sought intervention. In Appendix B hereto we demonstrate that each contention is not, and could not be, of recent vintage.

Nuclear Power Plant, Unit No. 2), ALAB-420, 6 NRC 8, 14 (1977) (substantial doubt that any petitioner 31 months late could justify intervention).

We recognize that the Chairman of the Atomic Safety and Licensing Appeal Board indicated, in his dissent in Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), ALAB-263, 1 NRC 208, 217 (1975), that a county government filing a late petition may be entitled to greater consideration than a private organization. The Commission's decision in that proceeding, however, did not rely upon the identity of the petitioner in granting intervention to the county, but rather upon the fact that the intervention would not delay the proceeding, which had not yet reached the hearing stage. Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273, 276 (1975).^{7/}

An important policy consideration underlying the intervention rule is the public interest in the orderly conduct of licensing proceedings. To provide that order,

^{7/} We note also that the licensing board in Mississippi Power and Light Company, et al. (Grand Gulf Nuclear Station, Units 1 and 2), Docket Nos. 50-416/417, ASLBP No. 82-476-04-02 (Memorandum and Order issued October 20, 1982), recently denied the State of Louisiana's unexcused late intervention, holding that its governmental status did not outweigh the other factors under § 2.714(a).

Commission rules must, at some point, be enforced or they will lose all meaning. Overlooking the lateness of Monroe County's intervention petition, as demonstrated by the Initial Decision, would have rendered meaningless the "good cause" requirement in § 2.714(a). Accordingly, the Licensing Board properly found that no good cause had been shown.

B. The Licensing Board Properly Found That the Other Factors Set Forth in § 2.714(a) Did Not Outweigh Monroe County's Unexcused Tardiness.

Applicants believe that Monroe County's unexcused tardiness in seeking intervention required denial of its petition regardless of the showing made on the four additional factors set forth in § 2.714(a). However, the Licensing Board did review the showing made relative to those four factors, and nevertheless concluded that the intervention petition should not be granted. The Licensing Board's ultimate conclusion clearly was proper.

Late petitioners, to qualify for discretionary intervention, bear a heavy burden. The Commission has stressed that:

"Late petitioners properly have a substantial burden in justifying their tardiness. And the burden of justifying intervention on the basis of the other factors in the rule is considerably greater where the latecomer has no good excuse."

Nuclear Fuel Service, Inc. (West Valley Reprocessing Plant, 1 N.R.C. 273, 275 (1976). See also Duke Power Co. (Perkins Nuclear Station, Units 1, 2, and 3) ALAB-431, 6 NRC 460 (1977); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 2), ALAB-384, 5 NRC 612, 613 (1977). The later the attempted untimely intervention, the stronger the showing must be on the four remaining factors. Given that principle, the Licensing Board was forced to deny Monroe County's intervention.

To the extent there are legitimate concerns underlying the contentions included in Monroe County's petition, they can and should be addressed by the State of Michigan and FEMA. The Commission's rules provide that

"No [full-power] operating license for a nuclear power reactor will be issued unless a finding is made by NRC that [there is] reasonable assurance that . . . adequate protective measures can and will be taken in the event of a radiological emergency." 10 C.F.R. § 50.47(a)(1) (1982).

It is further provided that the

"The NRC will base its finding on a review of . . . [FEMA] findings and determinations as to whether State and local emergency plans are adequate and capable of being implemented. . . . FEMA finding will constitute a rebuttable presumption on a question of adequacy." 10 C.F.R. § 50.47(a)(2).

Thus, in the absence of a contested hearing, the NRC Staff already is charged with responsibility to seek out FEMA, obtain FEMA's assessment of the offsite plans, and based on that information render a judgment as to whether "adequate protective measures can and will be taken in the event of a radiological emergency."

At the operating license stage, a contested adjudicatory hearing is not the sole, or necessarily the primary, means for assuring the public health and safety. Cincinnati Gas & Electric Company (Wm. H. Zimmer Nuclear Power Station, Unit No. 1), CLI-82-20, 16 NRC _____ (July 30, 1982) (petition for reconsideration pending); Metropolitan Edison Company, (Three Mile Island Nuclear Station, Unit No. 1), CLI-82-12, 16 NRC _____ (July 16, 1982). What the Commission has recently concluded with respect to Zimmer and TMI-1--that the NRC Staff can and should be relied upon to review those matters not properly before a licensing board--is equally applicable here.

Since Appellant is the very county whose plan is alleged to be inadequate, Monroe County is in the unique position to having easy access to both FEMA and to NRC Staff to assure full attention to its concerns. Monroe County has provided no reason why either the NRC Staff, or

FEMA, or both, do not provide an adequate forum for resolving its concerns. As the Licensing Board noted, Monroe County bears the burden of making a showing on this factor. Since Monroe County did not, the factor did not support its intervention.

Monroe County has blandly asserted that its participation would assist in developing a sound record (Factor 3). However, as the Licensing Board observed, that assertion was the extent of Monroe County's effort to address this factor. ID at 46. On appeal, Monroe County has done no better. It simply claims that at its two public hearings "dangerous conditions . . . [were] brought to light." Again, no specific insights from the public are identified. The burden is on the tardy intervenor to supply particulars to support its claim that it will assist in developing a sound record. The Detroit Edison Company (Greenwood Energy Center, Units 2 and 3), ALAB-476, 7 NRC 759, 764 (1978). Monroe County therefore failed to satisfy § 2.714(a)(1)(iii).

Many of Monroe County's interests already were represented by CEE. To the extent that the contentions in Monroe County's petition raised emergency planning issues not previously advanced by CEE, Applicants conceded that no

existing party could adequately represent them. § 2.714(a)(1)(iv). (However, as we pointed out, there is a more appropriate forum in which to protect any such interests.) The Licensing Board found that Monroe County had interests not represented by others, but that this factor alone could not tip the balance against the weight of the other factors. ID at 46.

In confronting a petition as tardy as Monroe County's, it was natural for the Licensing Board to focus on the final factor in § 2.714(a)(1): delay. Greenwood, supra, 7 NRC at 762. In this case, it is beyond cavil that granting intervention would have "broaden[ed] the issues" and "delay[ed] the proceeding." § 2.714(a)(1)(v). With respect to broadening the issues, the Licensing Board had already ruled that the sufficiency of offsite emergency planning for Fermi 2 was not a matter in controversy. Tr. 207-208. Admitting contentions on that subject after hearing clearly would have broadened the issues. Similarly, to reopen the record and start a new round of discovery, prehearing conferences, and finally hearings by definition would have substantially delayed the proceedings.

Monroe County attempted to distract the Licensing Board from this obvious fact by arguing that no party would be prejudiced since full power operation is not scheduled

until sometime next year. However, the Licensing Board correctly reasoned that the late intervention would "delay the proceeding" and therefore, prejudice Applicants. ID at 47. The Licensing Board's analysis is consistent with the Appeal Board's decisions. As the Appeal Board observed in its Summer decision, supra, 13 NRC at 886, the parties to a proceeding have the right to assume that, well prior to the start of evidentiary hearings, both the issues to be litigated and the participants to the proceeding are established with finality. When that is not done, the proceeding is delayed and the existing parties are damaged.

If Monroe County's intervention petition had been granted, Edison would have been faced with a "Hobson's Choice" with which it otherwise would not have been presented. In order to ensure timely completion of the proceeding, Edison might well have been forced to forego the full range of discovery otherwise available to it, or to refrain from filing summary disposition motions if the likelihood of delay were high. Cf. Summer, supra, 13 NRC at 888-89. Even then, there would have been no assurance that the proceeding would not drag on.

Moreover, as the party seeking to reopen the record, Monroe County bears a heavy burden. Its motion to reopen must be both timely presented and addressed to a

significant issue. Kansas Gas & Electric Company (Wolf Creek Generating Station, Unit No. 1), ALAB-462, 7 NRC 320, 338 (1978).^{7/} Where, as here, the motion is untimely without good cause the movant has an even greater burden: it must demonstrate not merely that the issue is significant but, as well, that the matter is of such gravity that the public interest demands further exploration. Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 2), ALAB-486, 8 NRC 9, 21 (1978). In addition, Monroe County was required to establish that the evidence it wished to proffer was of such magnitude that it could cause the Licensing Board to alter the result that it otherwise would reach on the then-pending operating license application. Northern Indiana Public Service Company (Bailey Generating Station, Nuclear-1), ALAB-227, 8 AEC 416, 418 (1974).

Monroe County's request to reopen the record failed to address any of the relevant concerns. Above we discussed at length the tardy nature of Monroe County's petition. It bears noting, however,⁸ that Monroe County did

^{7/} The Wolf Creek standard was approved by the Commission in Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), 13 NRC 361, 363 (1981).

not present the usual claim of "new" evidence in its petition, i.e., some fact or change in circumstance occurring after the close of the evidentiary record, as grounds for reopening the record. On appeal it now attempts that showing with a claim of possessing "public input". Without any specificity, that assertion on appeal is entitled to no weight.

It seems clear that the facts underlying the intervention petition were all known well long prior to the commencement of evidentiary hearings in this proceeding. Nor, given the fact that both FEMA and the NRC Staff must pass on the adequacy of the offsite emergency plans, did Monroe County establish that its concerns were of such gravity that the public interest demanded further exploration.

Conclusion

For the foregoing reasons, the Initial Decision denying Monroe County's petition should be summarily affirmed.

Respectfully submitted,

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November 23, 1982

STATE OF MICHIGAN

COUNTY OF MONROE

PUBLIC MEETING FOR THE PURPOSE OF REVIEWING)
 STATE AND LOCAL OFF-SITE EMERGENCY PLANS AS)
 IT RELATES TO ENRICO FERMI ATOMIC POWER)
 PLANT UNIT II AS REQUIRED BY FEMA PROPOSED)
 RULES PART 350 CODE OF FEDERAL REGULATIONS)

Monroe, Michigan
 City/County Chambers
 120 E. First Street

February 3, 1982

PANEL PRESENT:

WAYNE H. JENS, Vice President Nuclear Operations,
 Detroit Edison Company;

DAN BEMENT, Federal Emergency Management Agency;

LT. RAYMOND A. COOK, Chairman, Michigan State Police,
 Assistant Deputy Director of Emergency
 Preparedness;

DUANE TROMBLY, Professional State Planner, State
 Police Emergency Services Division;

JON ECKERT, Director of Civil Preparedness, Monroe
 County;

DIANE OGREN, Community Planning Specialist

Patricia Schmidt, Stenographer

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Monroe, Michigan

February 3, 1982

At or about 7:05 o'clock p.m.

- - -
LT. COOK: Ladies and gentlemen, we are going to wait just a few minutes longer, about five more minutes; and then we will begin.

(Whereupon there was a five-minute pause.)

LT. COOK: I call this public meeting to order. This public meeting is for the purpose of reviewing the state and the local off-site emergency plan as it relates to Enrico Fermi Power Plant in Monroe County. First, I will identify myself. I am Raymond A. Cook. I am a First Lieutenant in the Michigan State Police assigned to the Emergency Services Division in Lansing, and my title is Assistant Deputy Director of Emergency Preparedness. To my right is Mrs. Patricia Schmidt, who is the stenographer, and to my extreme right at the table is Dr. Wayne Jens, Vice President of Nuclear Operations for Detroit Edison. Next is Mr. Dan Bement, from the Federal Emergency Management Agency, also chairman of the Regional Assistance Committee. On my left is Mr. Duane Trombly of the Emergency Services Division of the Department of State Police, a professional planner and chief planner for the Michigan Emergency Preparedness Plan.

To Mr. Trombly's left is Mr. Jon Eckert, who is the Director of Emergency Preparedness for the County of Monroe. To his left is Mrs. Diane Ogren, a professional planner in the Emergency Services Division of the State Police, who will review the Wayne County local plans.

Let me state that the purpose of this meeting is to acquaint the public with the contents of the state and local plans as it relates to off-site emergency planning. In addition to that, it is for the purpose of answering questions relative to the FEMA review process. Mr. Bement will address that process. Also, and probably most importantly, the meeting is called to order for the benefit of the public to have any input, suggestions or comments, giving you an opportunity to ask and questions that you may have.

The agenda this evening will be, first, to ask the State of Michigan to review the off-site plans. Next I will call on Monroe County to review the County plans, and then Wayne County. I will then ask for any comments from Dr. Jens from the utility company, and then I will have a period of time for public review.

MR. ECKERT: Mr. Chairman, if I could at this time, I have two things I would like to state for the record.

LT. COOK: Okay. Go ahead.

MR. ECKERT: First of all, I would like to state at this time the Monroe City-County Office of Civil Preparedness and the chairman of the Board of Commissioners expressed concern to Lt. Cook of the Michigan State Police Emergency Services about holding tonight's public hearing due to severe weather conditions of Monroe County. A decision was reached that the meeting would continue as planned. We would like to have that a matter of record, if we could.

LT. COOK: I would like as a matter of record to respond to that by saying it was not possible to cancel a meeting and contact all of the people who had previously been notified of this meeting in the greater Detroit area and Windsor, Ontario, and the State of Ohio; and that also that people will have an opportunity in addition to this meeting to submit any transcript or comments as well as review the state and Monroe County and Wayne County plans at the three locations designated in the public notice.

We add, ladies and gentlemen, to that statement that we will also entertain the possibility of scheduling another meeting so that other people, if the hue and cry is there for an additional public meeting, that that will be done. But for those people that have come out into this storm this evening and made it here, I feel that we are obligated to give you the opportunity of this review. Thank you, Mr. Eckert.

Continuing with the rules of this public meeting, I would ask that the public hold all questions and comments until after the presentations have been completed. Then at that time anyone wishing to speak or offer any comments, we will ask that you come to the front microphone, state your name, give your address, and then hold your comments to ten minutes. If you have any transcripts that you would like to submit, we would be happy to take them and take them for review and consideration. Unless there is reason to shorten the period, the meeting is scheduled from 7:00 p.m. to 9:00 p.m.

Are there any other comments at this time before we begin the agenda? If not, I will call on Mr. Duane Trombly to give an overview of Act 390 of the Public Acts of 1976, the Michigan Preparedness Act, Emergency Preparedness Act, and the Michigan Emergency Preparedness Plan. Mr. Trombly..

MR. TROMBLY: As Lt. Cook mentioned, I will concentrate on a thumbnail sketch or a short overview of the disaster statute and the plans that are applicable to disaster in the State of Michigan.

Michigan does have a state disaster plan, and copies have been made available at local emergency services offices for review, if so desired; and if that is not sufficient, we can provide other copies.

State and local governments through these

plans have prepared for disasters of all types, including a nuclear accident at a power plant. These cover natural disasters, technological disasters or hazardous materials. Needless to say, in Michigan, since 1974, we have had eight presidential disaster declarations. For budgeting purposes we figure on an average of one presidential declaration and two governor's declarations each year. So you may be in an area that may not be affected by disaster, but other areas of the state are affected; so that is a significant activity.

We found that these disasters necessitate written plans and procedures. The day-to-day operations of state departments and local agencies do not suffice. The street department and the sheriff's department, state police, what have you, on a day-to-day basis can pretty much handle their activities almost in-house, but when you have a disaster it requires much more extensive coordination between many different agencies and functions of government, and that in turn necessitates strongly written procedures and plans.

Now, the basic legislation that is available in the State of Michigan for disaster response and recovery is Act 390 of the Public Acts of 1976. There are copies of this statute that is available on the table to my left for those who may want to take a copy and review it. But this statute provides for the protection and recovery from disaster. It spells out, as we all know, the governor

is responsible for disaster recovery. It provides the governor to declare a state of disaster if a disaster has occurred or an imminent threat thereof.

Now, let's take a look at the definition of a disaster. That means, in accordance with the statute, widespread or severe damage, injury, loss of life or property, and/or the imminent threat thereof. Now, this includes peacetime radiological incidents, and that is why that particular statute is applicable to a nuclear power plant accident.

Now, furthermore, in the statute the Director of the Department of State Police is designated State Director of Emergency Services. As such he is charged with coordinating all disaster prevention, relief, recovery operations.

And what kind of organization do we have to provide for the Director of the Department to accomplish those tasks? Well, on a state level each department of the nineteen state agencies is required to designate a departmental emergency services coordinator to provide liaison to the Director of the Department of State Police for disaster recovery purposes. That is why those of you who had the opportunity to visit the state E.O.C., Emergency Operations Center, at Northville, or the on-scene E.O.C. at Flat Rock saw several agencies represented.

Actually, there are eight state departments

that have responsibilities that are immediately applicable to an accident at a nuclear power plant. Those state agencies were each represented in those E.O.C.'s with designated personnel. On the local level each county is required to appoint an emergency services coordinator, and Jon Eckert, to my left, is one of those designees; and so each of the eighty-three counties have a designated emergency services coordinator to provide for the same type of disaster recovery services that we have at the state level.

As a side note here, municipalities over ten thousand population may appoint a similar type coordinator. Now we have state-wide about twenty-five municipalities in addition to the eighty-three counties that have so designated coordinators and emergency organizations.

The Michigan Emergency Preparedness Plan is the document, as I have held up here earlier, and, as mentioned, that is available for review. It is the responsibility of the Director of State Police to prepare and update it. Now, that responsibility has been delegated to the Emergency Services Division within that department.

Each department of state government is required to prepare an annex to that plan which governs their responsibilities and procedures to accomplish effective disaster recovery. Now, local government plans are required to be compatible with that state plan. Local governments are

not required by statute to prepare local emergency operation plans, it is permissive legislation; however, we found just about all our counties and those municipalities who have been active have developed those emergency operations plans to support the disaster recovery that we are addressing here.

Now, the state plan itself is organized in a basic plan in each of those nineteen departmental annexes. The department annexes, being that we have one disaster plan in the State of Michigan, is broken down into a minimum of four appendices; one dealing with nuclear accident procedures at a power plant, another enemy attack, another natural disasters such as tornadoes and floods, and a fourth, the technological disasters, such as hazardous materials and things of that nature.

Now, specifically the radiological emergency response procedures, which is appendix one in each of the departmental annexes, has some basic operational concepts that may be unique in Michigan or may not. First, it is a joint partnership venture between the utility, the local government and state government; and there have been responsibilities that have been assigned in the state plan to recognize the capabilities of each in that partnership.

We also have a basic concept Early State Involvement. This may be somewhat different than possibly other states, and we could even have the governor declare a

state of disaster in the very early classification of an unusual event.

Now, those of you who may not be aware, there are four classifications in the Nuclear Regulatory Commission NURG0654, criteria of a nuclear accident. The very early classification, notification of an unusual event. Then the site emergency or site area emergency -- the alert, the site area emergency, and then the general emergency.

As I mentioned, the governor could declare a state of disaster in any one of those classifications or very early. Now, this is kind of the opposite procedure that we operate with the natural disaster, such as the Kalamazoo tornado or the wind storms that struck this area in July of 1980. The natural disaster procedures reflect early local government involvement and has to reach the point where it is beyond local control, and then they petition the governor to declare a state if disaster and provide whatever state assistance is necessary. But with a nuclear power plant accident we have kind of reverse that procedure and have state government involved at the onset, and there is some reason for that.

Nuclear power plants are regional in scope, regional in effect. There is the need for technical advice and assistance very early, and the significance of the news media on the scene. Those are some of the basic reasons why

we have written into the plan that we would have very early governor's proclamations..

We also have the concept of an on-scene state emergency operations center, and for the particular exercise that took place yesterday that on-scene state emergency operations center was located at Flat Rock. That is not a concept that is involved with a natural disaster operation. So that is unique to the nuclear power plant accident.

Also, we have the concept of the Joint Public Information Center, which you may have heard referred to as JPIC. That is due to the significance of the news media on the scene associated with such an event, and we divided the responsibilities up in the state plan so that state government provides overall coordination and technical advice and control. The local government has been assigned the responsibility of warning the population or securing the area and accomplishing the evacuation or in-place shelter, whichever is appropriate.

Again, that is kind of a division of responsibility that has seemed to work out effectively in previous exercises we have had and which was utilized here in the drill that we just had. We require or encourage emergency operation centers at all levels of government and emergency operations plans at all levels of government.

The nuclear accident procedures are kind of divided up between the type of emergency planning zones that we have. We have a primary emergency planning zone, which consists of all local governments, who are counties or municipalities, that touch on the ten-mile radius. There is a secondary emergency planning zone which includes all counties that touch on a fifty-mile radius. Now, that ten-mile or primary emergency planning zone is placed on the plume exposure pathway, and we have the utility people here that could get into the technical aspects of the situation; but we are talking about a gaseous or the probability of a gaseous-type release. That is where the plume pathway becomes significant, and that has been determined to be significant out to that possible ten-mile radius.

Now, the fifty-mile radius is based on the ingestion pathway. That is dealing with the food supply system and water, surface areas; and procedures are different related to both of those types of emergency planning zones, and they are, in turn, incorporated into the resulting emergency operations plans.

Now, we have a type of scenario that is, again, in a hand-out here on the table, that reflects the method of activating these state and local emergency operation plans and how the governor declares a state of disaster based on recommendations from the plant and evaluation by the

radiological health personnel and Department of Public Health and reflects the mobilization of the state and local emergency organization along the lines that I have described earlier. I am not going to go into any detail in that particular scenario, but it is there for you to review.

On the back side of that hand-out there is a little drawing that shows the organization of the emergency facilities that were established for the exercise yesterday in which we have also established for the three previous exercises that we conducted at the other nuclear operating plants, and that reflects our mobilized emergency command and control system and the intercommunications that exist between those facilities.

That particular mobilization process is, the end result is, the reason why we have these written plans that describe those particular responsibilities and how they are established and how they are activated.

That is a quick thumbnail sketch of the State Disaster Act and the Michigan Emergency Preparedness Plan. Now I will turn it back to Lt. Cook.

LT. COOK: Thank you, Duane. Next we will ask Mr. Eckert to review the Monroe County contingency emergency plans.

MR. ECKERT: Thank you. Monroe County's planning process began in late 1979. The chairman of the

Monroe County Board of Commissioners directed and authorized the Monroe County Office of Civil Preparedness to begin laying the groundwork for planning for the nuclear facility. With Detroit Edison's assistance in planning we formed a county executive committee which consists of the County Board Chairman, Mayor of the City of Monroe, Director Coordinator of the Office of Civil Preparedness, Director of the Monroe County Planning Department, Frenchtown Township Supervisor, and the Planning Consultant.

The next step was the formulation of Enrico Fermi II Task Force Committee consisting of approximately sixty agencies involved in a ten-mile area. This task force was broken down into numerous committees: direct control, accident assessment, warning, shelter, communications, health, medical and law enforcement. At that time we felt we had the input from the local people into our plan, or at least we were attempting to acquire this, which we feel we did. Each agency represented helped to formulate portions of the plan applicable to his or her agency involved, and also on how they would function and operate inside the emergency operations center in Monroe County.

We had extensive cooperation with the Michigan State Police, which all department heads in Monroe County. The plan was drafted, extensive review sessions took place with the Michigan State Police to finalize in accordance

with the requirements of NURG0654.

In preparation for yesterday's exercise the State of Michigan conducted on January 5th a training session. Again on January 9th at the Joint Public Information Center. On the 20th and 26th further exercises were conducted consisting of working with Monroe County's E.O.C., Monroe County and Wayne County utilities emergency operation facility located at

THE STENOGRAPHER (Interposing): I am sorry, but I am having trouble hearing you, Mr. Eckert.

MR. ECKERT: In other words, our training drills consisted of on the 20th and 26th of working with the Joint Public Information Center, Wayne County, Monroe County on-site E.O.C., and the facility located at the plant site.

Final full scale exercise was conducted on February 2nd with members of the Regulatory Commission, N.R.C., and State and FEMA people as observers. This afternoon we held a critique here at this particular building, and the results of the meeting were favorable in regard to the state and FEMA, N.R.C. observers.

Tonight's public review meeting is designed to attain public comment on these preparations for a nuclear emergency. We feel the total cooperative efforts of the numerous persons and agencies has resulted in a plan that is workable and will serve the needs of the

citizens in Monroe County in the event of emergency. We know, of course, that the plan will be updated in order to meet any changing Federal criterion to be certain that the emergency needs of Monroe County are met in regard to the protection of its citizens. Thank you.

LT. COOK: Thank you, Mr. Eckert. Next I will call on Mrs. Diane Ogren to review the Wayne County plan.

MRS. OGREN: Thank you. I am speaking for the Wayne County Emergency Preparedness Coordinator, who is unable to be with us tonight. I assisted in developing the Wayne County emergency operations plan. The Wayne County emergency operations plan is similar to other plans in the state, as Mr. Trombly identified. It is the general plan covering all types of emergencies. It has been in existence for some time in Wayne County. Recently, though, we have included a nuclear facilities procedures portion to that plan to identify responsibilities and tasks for the Enrico Fermi Atomic Power Plant.

A chairman of the Wayne County Board of Commissioners has responsibility for this plan, as identified in Act 390. He has delegated this authority to the Wayne County Emergency Preparedness Coordinator, who takes direct responsibility for developing this plan along with several other Wayne County departments.

APPENDIX B

COMMENTS ON SPECIFIC ISSUES ASSERTED BY MONROE COUNTY

1. Bus Availability. (Intervention Petition at ¶ 13). This contention questions whether there are sufficient buses to transport school children and those without automobiles. The Monroe County Emergency Plan at page M-1-12 indicates that the procedures for public evacuation transportation are based on a study done by the PRC Voorhees Company in October 1980. Thus, at least by that date Monroe County was in a position to know if bus availability was a concern. No explanation is offered why the county delayed almost two years in raising this matter.

2. Dependence on Volunteer Firefighters and Conflicting Priorities of Emergency Personnel. (Intervention Petition at ¶¶ 14 and 22). Both of these contentions allege that adequate numbers of emergency workers may not be available due to an alleged conflict in priorities and demands. Such claims are generic to the entire issue of emergency planning. Certainly, concern over adequate numbers of emergency personnel must have been an issue from the very start of Monroe County's planning in late 1979. Again no reason is advanced why the county has only recently become aware of this concern.

3. County Responsibilities for Recovery and Reentry. (Intervention Petition at ¶ 15). While this contention alleges that the county is unable to carry out certain specified responsibilities,^{*}/ it does not claim that those responsibilities are new or ones that the county had not previously been aware it would be expected to fulfill. If there were concerns with respect to the functions to be discharged at the county level, Monroe County should have been aware of them at least as early as January 1980, when NUREG-0654 was initially released,^{**}/ and no later than April 1981 when the first version of the Monroe County plan was published. In such circumstances a cogent explanation should be forthcoming from the county explaining the delay of from one to two and one-half years in raising this concern.

^{*}/ We would note in passing that Monroe County identifies a number of functions allegedly assigned to the county which, according to the responsibility matrices in the state, county, and Edison plans, are in fact not the county's responsibility.

^{**}/ NUREG-0654 includes a column listing those functions which are to be performed at the "local" level, i.e., by county governments or by some entity specifically accepting the function.

4. Geography of Beach Areas. (Intervention Petition at ¶ 16). This claim, that certain geographical areas create obstacles to successful evacuation, at least as it relates to Stony Point, was specifically litigated during the evidentiary phase of the hearing. More significantly, intervenor CEE was in a position as early as December 1978 to identify concerns in this area. While Monroe County's contention does not appear to be limited solely to the Stony Point area, presumably any concerns that may have existed with respect to other areas were as valid and obvious in December 1978 as they are today. Absent some reason from Monroe County for not raising this matter almost four years ago, there is no "good cause" for now accepting such a late contention.

5. Inadequate Personnel Training and Coordination. (Intervention Petition at ¶ 17). This contention asserts that the county emergency personnel have been inadequately trained. This claim is especially surprising since Mr. Eckert's statement at the February 3, 1982 public meeting is rather specific about the training made available to county personnel. See Appendix B at 14-17. In addition, the Monroe County Emergency Plan includes sections describing worker training and periodic drills and exercises. See

pages BP-1-11 to BP-1-12. Moreover, each of the numerous annexes to the county plan includes a separate section on "Maintenance of Preparedness Capability" that contains information on training drills and exercises and other relevant information. Thus, Monroe County was in a position at least as early as April 1981, when the first version of the plan was released, to identify whatever concerns it might have about training. The county provides no explanation for its delay in raising this matter.

6. Decontamination/Reception Centers. (Intervention Petition at ¶ 18). This contention claims that there are inadequate personnel to staff the five decontamination/reception centers. The Monroe County Emergency Plan identifies the Department of Social Services as primarily responsible for staffing these centers, with assistance from the Red Cross, Health Department, RADEF Officer, and voluntary personnel. See, e.g., pages G-1-2, J-1-2 to J-1-3, L-1-2, and M-1-2. If there were concerns about the numbers of personnel to perform these functions, the county should have known that as early as May 1981 when the first version of the plan was published.

7. Vehicle Decontamination. (Intervention Petition at ¶¶ 19 and 23). Both these contentions claim that the procedures to monitor and decontaminate evacuating vehicles are inadequate. According to the Monroe County Emergency Plan, fire personnel are responsible for decontaminating vehicles at the reception/decontamination centers operated for the general public. Procedures for such decontamination are specifically described in the plan and are to be performed under the direction of the county's RADEF Officer who is to ensure that such operations do not result in the spread of contamination. It is anticipated that the decontamination operations will be performed in nearby fields to allow for the containment of material in a single area and to facilitate its removal at a later time, if necessary. See, e.g., G-1-3, G-1-9, I-1-3, I-1-6. Concerns that Monroe County may have had about this concept of operations should have been raised no later than May 1981 when the plans were developed.

8. Potassium Iodide Distribution. (Intervention Petition at ¶ 20). This contention questions the efficacy of centrally storing potassium iodide and distributing the drug only after an emergency is underway. This approach is described in the Monroe County Emergency Plan at pages J-1-1 to J-1-2. Concerns in this area thus could have been

formulated at least as early as May 1981 when the first version of the plan was published.

9. Emergency Detection. (Intervention Petition at ¶ 21). This contention alleges that the existing means to detect unusual releases of radiation into air and water are inadequate. As such, the claim is very similar to CEE Contention 5 (filed back in December 1978) that was dismissed by the Licensing Board on January 27, 1982, pursuant to the NRC Staff's summary disposition motion. It is thus apparent that with the exercise of proper diligence Monroe County could have raised its concern in a timely manner. Moreover, it would be particularly inequitable to accept this contention now after a very similar contention, timely filed, was summarily dismissed by the Licensing Board.

10. Mobilization Time. (Intervention at ¶ 24). This contention seems to claim that Monroe County will be unable to mobilize its emergency response officials quickly. It would appear that such a concern is wholly independent of the emergency plan and is little more than an unsupported claim that the county cannot perform as promptly as is necessary to respond to a radiological emergency. Such a concern should have been obvious to Monroe County when it began its emergency planning in late 1979, or at least by January 1980 when NUREG-0654 was initially released. That

document required local governments to provide for 24-hour per day emergency response, continuous 24-hour operations for protracted periods, and procedures for notifying, alerting and mobilizing its response personnel. See NUREG-0654, at criteria A(1)(e), A(4) and E(2). If Monroe County had concerns about its ability to discharge these responsibilities, it should have said so at that time. Significantly, the annotation to NUREG-0654 that appears at the back of the Monroe County Emergency Plan contains numerous references to those sections of the plan which are intended to fulfill these functions. If Monroe County believed the referenced sections of its plan were inadequate to meet the NUREG-0654 guidance, it should have said so in April 1981 when the first version of its plan was released.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
THE DETROIT EDISON COMPANY,) Docket No. 50-341
 et al.) (Operating License)
(Enrico Fermi Atomic Power)
 Plant, Unit No. 2))

CERTIFICATE OF SERVICE

I hereby certify that I have this 23rd day of November, 1982, served the foregoing document, entitled Applicants' Brief in Opposition to Appeal, by mailing copies thereof, first class mail, postage prepaid, and properly addressed, or by personal delivery where indicated, to the following persons:

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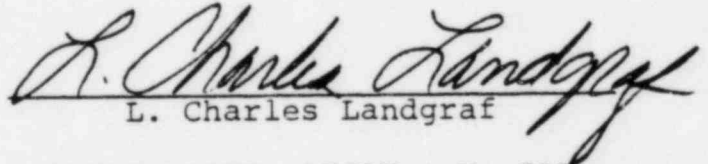
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