

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of

METROPOLITAN EDISON COMPANY, ET AL. )

(Three Mile Island Nuclear Station, )  
Unit No. 1)

Docket No. 50-289  
(Restart)

NRC STAFF ANSWER OPPOSING AAMODT PETITION FOR  
COMMISSION REVIEW OF APPEAL BOARD DECISION  
(ALAB-697) ON EMERGENCY PLANNING FOR FARMERS

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November 30, 1982

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In a petition filed on November 15, 1982,<sup>1/</sup> Marjorie M. Aamodt, an Intervenor in the captioned proceeding, requests that the Commission review, pursuant to 10 CFR § 2.786, the decision of the Atomic Safety and Licensing Appeal Board on emergency planning for farmers in the TMI-1 area.<sup>2/</sup> In that decision, the Appeal Board affirmed the Licensing Board's findings that emergency planning for farmers in the TMI area is adequate, rejecting Intervenor's appeal in this regard.<sup>3/</sup> Intervenor takes issue with, and claims that the Appeal Board erred in its decision in, ALAB-697, asserts that ALAB-697 will have serious ramifications for future licensing and serious consequences for TMI area farmers, and requests that the Commission review that decision. The NRC Staff herewith opposes Intervenor's petition for Commission review of ALAB-697.

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<sup>1/</sup> Aamodt Petition for Review of Appeal Board Decision (ALAB-697), dated November 12, 1982 (Petition).

<sup>2/</sup> Metropolitan Edison Co., Et Al. (Three Mile Island Nuclear Station, Unit 1), ALAB-697, \_\_\_ NRC \_\_\_ (October 22, 1982).

<sup>3/</sup> Id., Slip Op. at 19, 29.

I. SUMMARY OF DECISION BELOW

On October 22, 1982, the Appeal Board issued two decisions (ALAB-697 and ALAB-698) examining various aspects of emergency planning for the Three Mile Island Nuclear Station. One issue resolved in the former decision involved the adequacy of emergency planning for farmers in the TMI area. On appeal, Intervenor Aamodt asserted that offsite emergency planning does not properly take account of the unique circumstances faced by farmers, particularly farmers with livestock, and that farmers are not adequately protected by the radiological emergency planning currently in existence. In ALAB-697, the Appeal Board addressed in detail each of the assertions of Intervenor Aamodt involving emergency planning for farmers<sup>4/</sup> and determined, based on the record made at hearing before the Licensing Board, that, although emergency planning provisions for the care of livestock could be improved,<sup>5/</sup> planning is adequate to protect farmers and there is reasonable assurance of adequate protective measures for the health and safety of farmers.<sup>6/</sup>

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4/ See generally, ALAB-697, Slip Op. at 19-30, 32-35.

5/ The Appeal Board did recommend that, in further planning, the Commonwealth solicit the suggestions of farmers on the protection of livestock (ALAB-697, Slip Op. at 30) and that the Commonwealth advise farmers who choose to remain on their farms when a general evacuation is in effect of specific measures they could take to protect themselves (ALAB-697, Slip Op. at 26, n. 29; 28, n. 31; and 29). The Appeal Board did not, however, find it necessary to impose its recommendations as conditions of restart. The Appeal Board did impose a condition requiring the Commonwealth to distribute its agricultural brochures on protective actions for livestock and food to all farmers in the plume exposure pathway emergency planning zone (plume EPZ) (ALAB-697, Slip Op. at 34, 49).

6/ ALAB-697, Slip Op. at 19, 29.

## II. WHERE THE MATTER WAS RAISED BELOW

The matter of, the adequacy of offsite emergency planning for farmers was raised below by Intervenor Aamodt's Exceptions 15-51<sup>7/</sup> to the Licensing Board's Partial Initial Decision of December 14, 1981. Intervenor argued in its brief<sup>8/</sup> in support of exceptions that farmers, among all those persons who could be affected by a radiological emergency at TMI-1, are unique because their investment in, and relationship to, their livestock will lead them to eschew protective measures available to the population in general and because farmers produce and consume homegrown foodstuffs and milk potentially subject to contamination in a radiological emergency, that offsite emergency plans for farmers fail to recognize the unique problems of farmers, and that the Licensing Board erred in finding that planning is adequate and protective measures are sufficient for farmers. The Staff argued in its responsive brief that adequate protective measures are planned for, and available to, farmers, that the Commonwealth of Pennsylvania has recognized the farmer's unique problems and provided options in its planning to cope with such problems, and that the Licensing Board's findings with regard to protection for farmers are correct.<sup>9/</sup> The

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<sup>7/</sup> Aamodt Exceptions to Partial Initial Decision of December 14, 1981 - Emergency Planning Issues, January 26, 1982; Additional Aamodt Exceptions to Partial Initial Decision of December 14, 1981 - Emergency Planning Issues, February 5, 1982.

<sup>8/</sup> Aamodt Brief for Appeal of Board's Decision Concerning Emergency Plans for Farmers, March 9, 1982.

<sup>9/</sup> 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, May 20, 1982, at 56-66.

Licensee presented arguments similar to those of the Staff in opposing the Aamodt's appeal on emergency planning for farmers.<sup>10/</sup>

### III. WHY THE DECISION BELOW IS CORRECT

Intervenor Aamodt's principal argument in seeking Commission review is that the farmer's unique circumstances make planned protective actions inappropriate and inadequate for the farmer. Specifically, Intervenor asserts that the protective actions of sheltering and evacuation in a radiological emergency are unavailable to the farmer with livestock because of the farmer's need to care for his animals.<sup>11/</sup> In so arguing, Intervenor either ignores, or refuses to accept, both the applicable legal requirements for emergency planning and the record evidence of planning for TMI developed in this proceeding.

The Commission's emergency planning regulations are directed to the protection of the public health and safety. They require, among other things, the development and availability of a range of protective actions for emergency workers and the public in the plume EPZ and protective actions appropriate to the locale for the ingestion exposure pathway emergency planning zone (ingestion EPZ). 10 CFR § 50.47(b)(10). As the Commission has made clear, and as the Appeal Board properly found,<sup>12/</sup> the emergency planning regulations focus on the protection of persons, rather than property (such as livestock), and the protection of property per se during

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<sup>10/</sup> Licensee's Brief in Opposition to the Exceptions of Other Parties to the Atomic Safety and Licensing Board's Partial Initial Decision on Plant Design and Procedures, Separation, and Emergency Planning Issues, May 10, 1982, at 140-150.

<sup>11/</sup> Petition at 3, 4, 7.

<sup>12/</sup> ALAB-697, Slip Op. at 20.



a radiological emergency is left to ad hoc measures that may be taken as resources become available after an accident.<sup>13/</sup> Thus, emergency planning which would guarantee the protection of livestock in a radiological emergency is neither required nor appropriate under NRC regulations.

What is required under the regulations is planning that will make protective actions available for the public in an emergency. 10 CFR § 50.47(b)(10). The record in this proceeding clearly establishes that such planning has been done for TMI.<sup>14/</sup> Through the Commonwealth's public education and emergency information brochures which have been distributed to the general public (including farmers), residents of the plume EPZ have been instructed on how to shelter in a radiological emergency and on how to evacuate, pursuant to the Commonwealth and county planning for evacuation, in the event that a general evacuation is ordered.<sup>15/</sup> Planning for the protective actions of sheltering and evacuation is in place, the resident population (including farmers) of the TMI plume EPZ has been instructed on how to implement such protective actions, and, in accordance with the requirements of the emergency planning regulations, those protective actions are available. Those protective actions are available to farmers no less than they are available to any other residents of the TMI plume EPZ, and farmers are not physically prevented in any way from sheltering or evacuating in the

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<sup>13/</sup> Emergency Planning - Final Rule, 45 Fed. Reg. 55402, 55407 (August 19, 1980).

<sup>14/</sup> See Metropolitan Edison Company, et al. (Three Mile Island Nuclear Station, Unit 1), LBP-81-59, 14 NRC 1211, 1704 at ¶ 2007.d.2, e (1981). (PID).

<sup>15/</sup> See PID, 14 NRC at 1522-1526. See also, ALAB-697, Slip Op. at 12-15.

event that either of these protective actions is warranted.<sup>16/</sup> This is all that is required under the Commission's emergency planning regulations and this requirement has been met.

Despite the fact that the Commission's regulations are satisfied by the Commonwealth of Pennsylvania's emergency planning which makes protective actions available, in fact, to the general public (including farmers) in the TMI plume EPZ, the Commonwealth has gone further in its planning for farmers than the regulations require.<sup>17/</sup> Recognizing that, although the protective actions of sheltering and evacuation are physically available to farmers, farmers with livestock may be less inclined to avail themselves of such protections because of their desire to care for their animals in a radiological emergency, the Commonwealth

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<sup>16/</sup> This is not to say that farmers with livestock will be as readily willing to evacuate or even to shelter themselves in a radiological emergency as will other members of the general public. As the Appeal Board observed, however, Intervenor Aamodt overstates the record in claiming that farmers with livestock will refuse to take actions to protect themselves. The record shows that, in fact, farmers will not generally refuse to take protective actions if circumstances are such as to make such actions necessary. ALAB-697, Slip Op. at 22 and n. 26. In any event, the fact that a farmer with livestock may be reluctant to take protective actions does not mean that such actions are unavailable to him or that he is physically precluded from taking such actions.

<sup>17/</sup> Intervenor appears to assert in her petition for Commission review that the Commonwealth is developing a "new emergency plan for farmers," that the "new plan" has not been revealed to the parties to the restart proceeding nor properly reviewed, and that the "new plan" cannot be found to be adequate. Petition at 2, 6, 8. There is absolutely no basis for Intervenor's claim that a "new emergency plan for farmers" is being developed and, to the Staff's knowledge, no such "new plan" has been formulated. The only changes in planning related to farmers of which the Staff is aware is a modification to the existing state and county emergency plans to provide for the distribution of dosimeters and radioprotective drugs to farmers with livestock (see ALAB-697, p. 26) and the Commonwealth's formulation and distribution to farmers of agricultural emergency information brochures discussed infra.



devotes considerable attention to the special needs of farmers. Specifically, the Commonwealth will provide to all farmers in the TMI plume EPZ<sup>18/</sup> agricultural emergency information brochures containing rather detailed information and instructions to the farmer on methods by which he may shelter and care for his animals in a radiological emergency. Although implementation of all of the livestock sheltering instructions is not practical for all farmers in the TMI plume EPZ, the livestock sheltering information will permit farmers to provide a measure of protection for at least some livestock in the TMI area.<sup>19/</sup>

In addition, the Commonwealth will permit farmers to remain on their farms or return to their farms periodically to care for livestock when a general evacuation is in effect.<sup>20/</sup> The Commonwealth will treat farmers with livestock who choose either of these options as "emergency workers," providing them with dosimetry and the radioprotective drug potassium iodide-the same protections that are provided to all emergency workers. This greatly improves the safety and feasibility of allowing farmers to remain with or return to their livestock in the event of a general evacuation.<sup>21/</sup>

The Commonwealth also recognizes that special circumstances exist for farmers with regard to ingestion of contaminated foodstuffs in that farmers are more likely than other members of the general public to produce and consume their own foodstuffs and milk which are potentially

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<sup>18/</sup> See ALAB-697, Slip Op. at 34, 49.

<sup>19/</sup> ALAB-697, Slip Op. at 23-24.

<sup>20/</sup> See PID, 14 NRC at 1674, ¶ 1925; 1676, ¶ 1929.

<sup>21/</sup> ALAB-697, Slip Op. at 34.

subject to contamination in a radiological emergency. Accordingly, the Commonwealth will advise farmers, in the agricultural emergency information brochures to be distributed to them, of precautions that must be taken in using homegrown foodstuffs and milk.<sup>22/</sup> Beyond this, under the Commonwealth's emergency plan, the State will sample milk at individual farms, contact dairy farmers directly to provide information on the possible contamination of milk, and confiscate contaminated milk and foodstuffs if necessary. See ALAB-697, Slip Op. at 33, 21.<sup>23/</sup>

In summary, the Commonwealth's emergency planning not only assures that protective actions are available for, and can be taken by, farmers in accordance with the NRC's emergency planning regulations, but also goes beyond the regulations to provide additional information and

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<sup>22/</sup> ALAB-597, Slip Op. at 34.

<sup>23/</sup> Intervenor, in her petition for Commission review, baldly asserts that farmers are relied upon to protect the food supply in the ingestion EPZ, that the Commonwealth has specifically assigned the responsibility for protecting the food supply in the ingestion EPZ to farmers, and that farmers are unprotected and will be put at risk in carrying out such assignment. Petition at 2-3, 9. Intervenor's claims are simply incorrect. The Commonwealth's emergency plan clearly and unequivocally assigns the responsibility for identifying contaminated foodstuffs and for protecting, controlling and interdicting agricultural, dairy and food products in the ingestion EPZ to the Pennsylvania Department of Agriculture. Commonwealth Ex. 2A, pp. 12-13. Counties are assigned the responsibility for disseminating, to the public, Department of Agriculture recommendations on the use and control of agricultural, dairy and food products. Commonwealth Ex. 2A, p. 27. While farmers will be advised by State and county governments on such matters as the use of stored feed for livestock and the use and control of farm products potentially subject to contamination, neither the State nor the county emergency plans assign responsibilities to farmers for protecting the public food supply, require farmers to protect the food supply or require farmers to remain on their farms or otherwise be placed at risk in order to carry out the governmental responsibilities for protective actions in the ingestion EPZ. Intervenor's assertions to the contrary must be rejected.

protection to the farmer to assist him in coping with problems (care and protection of livestock, use of farm-produced food and dairy products) which are not shared in common with other members of the general public. Although these additional planning measures do not guarantee the absolute safety of the farmer's livestock in all circumstances, that is not required.<sup>24/</sup> They do provide additional assurance that the health and safety of the farmer is adequately protected and the Appeal Board so found based on a proper analysis of the Commission's emergency planning regulations, a rigorous evaluation of the evidence of record, and due consideration of the positions and arguments of the parties on Intervenor's appeal on emergency planning for farmers. The Appeal Board's specific determinations that there is reasonable assurance of adequate protective measures for the health and safety of farmers and that the Commonwealth's emergency plan for farmers is adequate<sup>25/</sup> are compelled by the regulations and the facts of record in this proceeding and are entirely correct.

#### IV. WHY COMMISSION REVIEW SHOULD NOT BE UNDERTAKEN

Intervenor does not explicitly present a concise statement as to why Commission review should be exercised, as required by 10 CFR § 2.786(b)(2), although Intervenor does express the view that the Appeal Board's affirmance of the Licensing Board's decision on emergency planning for farmers will have "serious" (although unidentified) "ramifications in future licensing

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<sup>24/</sup> ALAB-697, Slip Op. at 23.

<sup>25/</sup> ALAB-697, Slip Op. at 29. These explicit findings by the Appeal Board after its detailed analysis of the record evidence and the Commonwealth's emergency planning belie the Intervenor's assertion (Petition at 1) that the Appeal Board affirmed the Licensing Board's decision on emergency planning for farmers simply because the Appeal Board found that "the Commonwealth has made a reasonable effort." The Appeal Board applied no such "reasonable effort" standard.

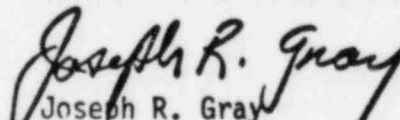
proceedings" and "serious consequences in the event of an accident at TMI-1." Petition at 2.

In view of the fact that the Appeal Board's decision on emergency planning for farmers was based on a straightforward interpretation of the Commission's emergency planning regulations and a thorough and detailed analysis of the record evidence of TMI site-specific planning to determine whether the regulations are met, the Appeal Board's decision does not appear to involve a novel interpretation of regulatory requirements, establish new policy, or necessarily have substantial ramifications for future licensing actions. Moreover, the Appeal Board decision, should it stand, should not have significant adverse consequences for farmers in the TMI area since the Appeal Board's finding of adequate protective measures for the health and safety of farmers is firmly based on the evidence which does, in fact, establish that adequate protection will be afforded to farmers. In these circumstances, Commission review of the Appeal Board's decision on emergency planning for farmers is neither justified nor warranted.

V. CONCLUSION

Emergency planning for farmers in the TMI area not only meets, but exceeds the requirements of the emergency planning regulations. The Appeal Board was entirely correct in so finding and Commission review of the Appeal Board's decision on emergency planning for farmers is not warranted. Intervenor's petition for review should be denied.

Respectfully submitted,

  
Joseph R. Gray  
Counsel for I.R.C Staff

Dated at Bethesda, Maryland  
this 30th day of November, 1982

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF ANSWER OPPOSING AAMODT PETITION FOR COMMISSION REVIEW OF APPEAL BOARD DECISION (ALAB-697) ON EMERGENCY PLANNING FOR FARMERS" 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 30th day of November, 1982:

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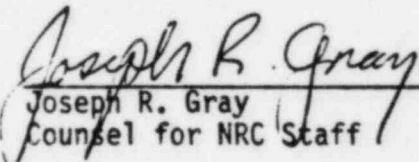
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