

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

'82 SEP 20 P3:20

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

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

APPLICANTS' ANSWER TO LATE PETITION  
FOR LEAVE TO INTERVENE  
AND TO REOPEN AND SUPPLEMENT RECORD  
AND TO CEE'S RESPONSE

Introduction

In a petition dated August 27, 1982, the Monroe County Commissioners ("Monroe County") requested leave to intervene in this operating license proceeding for the Enrico Fermi Atomic Power Plant, Unit No. 2 ("Fermi 2") and also requested that the record in this proceeding be reopened to permit Monroe County to "supplement" the record with respect to a number of concerns they now express for the first time regarding the offsite emergency plans for the Emergency Planning Zone ("EPZ") surrounding Fermi 2.<sup>1/</sup>

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<sup>1/</sup> The petition was not accompanied by a certificate of service. A copy of the petition was received by The Detroit Edison Company on August 30, 1982. Counsel for Applicants was served by Monroe County with a copy in an envelope postmarked September 3, 1982. The ambiguity thus created as to when an answer to the petition is due was resolved by the Licensing Board's Order of September 15, setting Applicants' time to answer at September 20, 1982.

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Citizens for Employment and Energy ("CEE"), which previously was granted intervention in this proceeding, filed an answer dated September 4, 1982 in support of Monroe County's petition.<sup>2/</sup>

The Detroit Edison Company ("Edison"), Northern Michigan Electric Cooperative, Inc., and Wolverine Electric Cooperative, Inc. ("Applicants") submit that, in accordance with § 2.714(a)(1) of the Commission's Rules of Practice and Procedure, this Atomic Safety and Licensing Board must deny Monroe County's late request for intervention, which comes nearly four years after the time specified for such intervention in the September 11, 1978 notice of hearing in this proceeding, and five months after the end of the hearing. As shown below, Monroe County has not made a showing on any of the factors under § 2.714(a)(1) sufficient to justify the late request. Monroe County has not carried the heavy burden it must shoulder in seeking to have the record reopened at this late date. The delay which would be caused by reopening of the record would materially prejudice

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<sup>2/</sup> The copy of CEE's response served on counsel for Applicants was postmarked September 6, 1982. Considering the fact that the response was prepared by a new lawyer for CEE, such a prompt response can only lead one to conclude that CEE was in consultation with Monroe County prior to the filing of the petition.

Applicants' interest in receiving a full-power operating license presently scheduled to be issued in June 1983. NUREG-0580, Vol. 11, No. 8 at 2-9. Such delay would result in higher costs to Applicants' customers.

#### Statement

In June 1979, 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 (December 19, 1979). By undertaking this effort, the Commission committed itself to an extensive and lengthy public review of a broad range of emergency planning concerns. This undertaking took various forms. Initially the Commission published in the Federal Register an advance notice of proposed rulemaking requesting comments on 14 specific emergency planning issues. See 44 Fed. Reg. 41483 (July 17, 1979). The Commission gave public notice of additional matters relating to emergency planning on September 19, October 23, and November 8, 1979. See 44 Fed. Reg. 54308-10, 61123 and 64929. On December 19, 1979, the Commission published notice of a proposed rule setting forth wide-ranging changes in the Commission's regulations. See 44 Fed. Reg. 75167-74.

These notices were more than sufficient to put any party seeking to question the adequacy of emergency planning around Fermi 2 on notice that the Commission would entertain such inquiries. Indeed, Monroe County itself filed two letters with the Commission commenting on the proposed emergency plan rule changes.<sup>3/</sup> Thus, there can be no doubt that at least as early as January 1980 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.

In January 1980, the Commission, together with the Federal Emergency Management Agency ("FEMA"), issued for interim use and comment the initial version of NUREG-0654, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants."<sup>4/</sup> Contemporaneously, the Commission conducted four regional workshops in which public comment on the proposed rule was sought. State and local emergency planning officials were specifically

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<sup>3/</sup> Copies of these letters are attached hereto as Appendix A.

<sup>4/</sup> Notice of the availability of NUREG-0654 was published in the Federal Register on February 13, 1980. See 45 Fed. Reg. 9768; see also 45 Fed. Reg. 85862 (December 30, 1980). Public comment on the document was solicited.



invited to attend and participate. Monroe County representatives attended the workshop in Chicago on January 22, 1980.<sup>5/</sup> On August 19, 1980, the Commission published its final rule on emergency preparedness. See 45 Fed. Reg. 55402-13.

Before the issuance of the Commission's final rule, Edison undertook a program to assure the development of adequate offsite 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 grant under the State's Coastal Energy Impact Program specifically to hire additional Office of Civil Preparedness staff to assist in preparation of the County's plan. On May 22, 1980, the Monroe County Enrico Fermi 2 Emergency Planning Committee, a group of 62 political and administrative officials from the various governmental units within the County, met to begin the County's formal planning process.<sup>6/</sup>

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<sup>5/</sup> A summary of the workshops is presented in NUREG/CF-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).

<sup>6/</sup> 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 B.

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 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.

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. 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. The comments and suggestions for improvement contained therein are currently being worked on by state and county planning officials.

Argument

I.

MONROE COUNTY'S LATE PETITION TO  
INTERVENE FAILS 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 be reasonably 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 Monroe County petition does not even purport to address each of these factors. As we discuss below, a consideration of the relevant factors can only lead to the conclusion that the Monroe County petition should be denied.

A. Monroe County Has Not Shown 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 admitted without a strong showing of good cause. Duke Power Company (Cherokee Nuclear Station, Units 1, 2 and 3), ALAB-440, 6 N.R.C. 642, 643 (1977); Duke Power Company (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-431, 6 N.R.C. 460, 462 (1977), Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 2), ALAB-384, 5 N.R.C. 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 N.R.C. 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 N.R.C. 680, 682 (1980).

It must be emphasized 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. Sumner Nuclear Station, Unit 1), ALAB-642, 13 N.R.C. 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. April 28, 1982); see also Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 and 2), ALAB-675 (May 17, 1982) (slip op. at 14 n.19). In its Sumner 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 (13 N.R.C. at 895):

[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.

Strict observance of filing deadlines also is mandated by the Commission's Statement of Policy on Conduct of Licensing Proceedings. See 46 Fed. Reg. 28533 (May 27, 1981). The Commission there directed that all reasonable measures should be taken to expedite the conclusion of hearings on reactor operating licenses, including "those management methods already contained in Part 2 of the Commission's Rules and Regulations." Id. at 28534. By reemphasizing the use of such tools, the Commission "intended to reduce the time for completing licensing proceedings." Id.

Judged against this standard, it is apparent that Monroe County has 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 refers (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 throughout 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 submit that Monroe County was in a position to file its intervention petition at least as early as January 1980. By that time the 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 off-site 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.

Nor can Monroe County assert that it was unaware of this Commission's hearing process and of its right to raise contentions in a timely fashion before this Licensing Board. As the Licensing Board knows, one of the Monroe County Commissioners is Mr. Frank Kuron. Mr. Kuron has been an active participant in CEE since 1978. 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 infra at 20-24. Thus, Mr. Kuron has long been aware that issues concerning emergency planning could be raised as contentions. His knowledge of, and personal involvement in, the hearing process, should be imputed to Monroe County not later than the time that he assumed public office in January 1981.

Yet, despite the numerous opportunities available to it during 1980 and early 1981, Monroe County sat back, allowed this operating license proceeding to continue its course, and never once made any effort to protect its rights or to alert this Licensing Board to the concerns it now presents. Significantly, the intervention petition does not explain why an official governmental body has until now remained silent so long.<sup>7/</sup> Monroe County, with a professional staff, access to legal counsel, a multi-million dollar budget, and long-standing direct involvement in the matters which it now seeks to put in contention, simply is not entitled to any latitude the Licensing Board might have given to an individual at an earlier stage of the proceeding. Simply put, Monroe County's "tardiness" is inexcusable. See Public Service Electric & Gas Co. (Hope Creek Generating Station, Units 1 and 2), LBP-77-9, 5 N.R.C. 474 (1977) (denying a two-year-late petition by a private organization); cf. Florida Power & Light Co. (St. Lucie Nuclear Power Plant), ALAB-420, 6 N.R.C. 8, 14 (1977)

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<sup>7/</sup> 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 now. In Appendix C hereto we comment on each contention, not to consider whether they meet the Commission's requirements as properly framed contentions, but to demonstrate that the concerns are not, and could not, be of recent vintage.

(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 N.R.C. 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), 5 N.R.C. 273, 276 (1975).

An important policy consideration underlying the intervention rule is the public interest in the orderly conduct of licensing proceedings. To provide that order, Commission rules must, at some point, be enforced or they will lose all meaning. Overlooking the extreme and unexcused lateness of this intervention petition would render meaningless the "good cause" requirement in § 2.714(a).

B. The Other Factors Set Forth in § 2.714(a) Do Not Outweigh Monroe County's Unexcused Tardiness.

Monroe County's extreme and unexcused tardiness in seeking intervention requires denial of its petition regardless of the showing made on the four additional factors set forth in § 2.714(a). Nevertheless, a review of the showing made relative to those four factors supports the conclusion that the intervention petition should not be granted.

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

"[l]ate 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 when the latecomer has no good excuse."<sup>8/</sup>

It seems clear that the later the attempted untimely intervention, the stronger the showing must be on all four factors. Given that principle, Monroe County's intervention request must be denied.

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8/ Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant, 5 N.R.C. 273, 278 (1976)). See also Duke Power Co. (Perkins Nuclear Station) ALAB-431, 6 N.R.C. 460 (1977); Metropolitan Edison Co. (Three Mile Island Nuclear Station), ALAB-384, 5 N.R.C. 612, 613 (1977).

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 the 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). It is further provided that the "NRC will base its finding on a review of the Federal Emergency Management Agency (FEMA) findings and determinations as to whether State and local emergency plans are adequate and whether there is reasonable assurance that they can be implemented . . . A FEMA finding will primarily be based on a review of the plans." 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 N.R.C. \_\_\_\_\_ (July 30, 1982) (petition for reconsideration pending); Metropolitan Edison Company, (Three Mile Island Nuclear Station, Unit No. 1), CLI-82-12, 16 N.R.C. \_\_\_\_\_ (July 16, 1982). What the Commission has recently concluded with respect to Zimmer and TMI-1 -- i.e., 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 the petitioner is itself 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. In this regard, the Monroe County intervention petition provides no reason why either the NRC Staff, or FEMA, or both, do not provide an adequate forum for resolving its concerns. Thus, the second of the § 2.714(a) factors also argues against granting the Monroe County petition.

Although Monroe County has blandly asserted that its participation will assist in developing a sound

record, it has offered no factual support for that assertion. The burden is on the tardy intervenor to supply particulars in support of such a claim. The Detroit Edison Company (Greenwood Energy Center, Units 2 and 3), ALAB-476, 7 N.R.C. 759, 764 (1978). Monroe County therefore fails to satisfy § 2.714(a)(1)(iii).

Many of Monroe County's interests have already been represented by CEE. To the extent that the contentions in the petition raise emergency planning issues not previously advanced by CEE, we concede that no existing party can adequately represent them. § 2.714(a)(1)(iv). However, as pointed out above, there is a more appropriate forum in which to protect any such interests.

In confronting a petition as tardy as this one, it is natural to focus on the final factor in § 2.714(a)(1): delay. Greenwood, supra, 7 N.R.C. at 762. In this case, it is beyond cavil that granting intervention will "broaden the issues" and "delay the proceeding". § 2.714(a)(1)(v). With respect to broadening the issues, the Licensing Board has already ruled that the sufficiency of offsite emergency planning for Fermi 2 is not a matter in controversy. See infra at 26. Admitting contentions on that subject now clearly broadens the issues. Similarly, to reopen the record and start a new round of discovery, prehearing conferences, and finally hearings by definition will substantially delay the proceedings.

Monroe County attempts to distract the Licensing Board from this obvious fact by arguing that no party will be prejudiced since full power operation is not scheduled until sometime next year. That observation, however, is beside the point. The rule directs the Licensing Board to determine if the late intervention will "delay the proceeding." As the Appeal Board observed in its Sumner decision, supra, 13 N.R.C. 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 is granted, Edison will face a "Hobson's Choice" with which it otherwise would not have been presented. In order to ensure timely completion of the proceeding, Edison may well be 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 is high. Cf. Sumner, supra, 13 N.R.C. at 888-89. Even then, there can be no assurance that the proceeding will not drag on. The short of the matter is that the extreme lateness of the Monroe County petition guarantees that its grant will delay the proceeding.

In conclusion, Monroe County has not made a showing on any of the five factors in § 2.714(a) that would justify its untimely intervention or a reopening of the record. Numerous opportunities were available to Monroe County to intervene or speak up during 1980 and early 1981. Although Monroe County asserts without particularization that it has "only recently become aware" of defects in emergency planning, in every instance the "contentions" now asserted by Monroe County relate to matters that were known to it when its draft plan was issued in early 1981 or earlier. See Appendix C. Moreover, Monroe County has easy access to both FEMA and to the NRC Staff through which any remaining concerns can be aired. Monroe County has made no showing that its participation can be expected to assist in developing a sound record. Finally, there is no doubt that the belated participation here sought would cause significant and prejudicial delay. Under all these circumstances, the Licensing Board must deny Monroe County's petition.

## II.

MONROE COUNTY HAS NOT MET ITS  
HEAVY BURDEN IN REQUESTING THAT  
THE RECORD BE REOPENED.

Because the Monroe County intervention petition comes so late in the proceeding, it also requests that the evidentiary record be reopened so that the county can

"supplement" the record on the issues it now seeks to litigate. Obviously, it would be an idle gesture for the Licensing Board merely to grant Monroe County party status but not permit a reopening of the record. Since reopening the record is a necessary step to granting the relief sought, Monroe County must also satisfy the Commission's requirements for reopening the record. This it has not done.

As the party seeking to reopen the record, Monroe County bears a heavy burden. Its motion 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 N.R.C. 320, 338 (1978).<sup>9/</sup> Where 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 N.R.C. 9, 21 (1978). In addition, Monroe County must establish that the evidence it wishes to proffer is of such magnitude that

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9/ The Wolf Creek standard was approved by the Commission in Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), 13 N.R.C. 361, 363 (1981).

it could cause the Licensing Board to alter the result that it would otherwise reach on the pending operating license application. Northern Indiana Public Service Company (Bailey Generating Station, Nuclear-1), ALAB-227, 8 A.E.C. 416, 418 (1974).

Monroe County's request to reopen the record fails to address any of the relevant concerns. We previously have discussed at length the tardy nature of Monroe County's petition. It bears noting, however, that Monroe County has not presented the usual claim of "new" evidence, i.e., some fact or change in circumstance occurring after the close of the evidentiary record, as grounds for reopening the record. It seems clear that the facts underlying the intervention petition were all known well 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, can Monroe County establish that its concerns are of such gravity that the public interest demands further exploration. Finally, we believe it highly problematical whether the evidence Monroe County seeks to proffer is of such magnitude as to alter this Licensing Board's findings on the pending operating license application for Fermi 2. At a minimum, it is apparent that Monroe County has not



satisfied its burden in this regard since its late intervention petition contains no hint of the evidence it seeks to offer.

In summary, Monroe County has failed to justify a reopening of the evidentiary record at this late date.

### III.

#### CEE IS ESTOPPED FROM RAISING THE ISSUES ASSERTED IN ITS ANSWER.

The role of CEE in this proceeding can be fairly characterized as a facade for the personal opposition to Fermi 2 of Mr. Kuron, a former construction worker at the site and, as noted, a Monroe County Commissioner. CEE's answer in support of Monroe County's petition is most charitably described as revealing a serious lack of continuity with the prior proceedings in this docket. This is not surprising since CEE has had no less than four different counsel during the operating license phase of this proceeding.

CEE's Answer seeks to resurrect Contention 8 ("emergency planning") and Contention 9 ("radiological hospital facilities") of CEE's December 4, 1978 Amended Petition to Intervene. In fact, CEE has long since irrevocably waived its rights to pursue those contentions.

CEE relies on the Licensing Board's January 2, 1979 Prehearing Order, which ruled on CEE's intervention and original contentions. CEE points out that in that Order the Board rejected Contention 9 "subject to reconsideration", and asserts that in rejecting the major part of Contention 8 (allowing only the Stony Point evacuation route issue) the Licensing Board relied on emergency planning regulations, 10 C.F.R. § 50.47, which have since been modified. Neither argument has merit.

Following the January 2, 1979 Prehearing Order, the issues in this proceeding were firmly defined by a March 5, 1979 Stipulation of Contentions signed by the parties, including then-counsel for CEE, and approved by the Board by order dated March 21, 1979. In that Stipulation, CEE voluntarily withdrew all parts of Contention 8 except the issue of the Stony Point evacuation route. At the July 22, 1981 prehearing conference, CEE's counsel reaffirmed the scope of Contention 8, as stated in the Stipulation as relating only to "evacuation of residents toward the plant from one particular geographic area." Tr. 193 (emphasis added). Moreover, CEE expressly waived any claim of right to assert emergency planning issues, as is shown by the following dialogue among counsel for Applicants, Staff counsel, counsel for CEE, and the Board (Tr. 207-208):

MR. VOIGT: And it is the position of the Applicants that the validity of the emergency plan is not a matter in controversy. The sole matter in controversy is the evacuation route from Stoney Point. As to that, there will be prepared testimony and findings by the Board, and it would be our position that you can and should issue a final initial decision with findings on the matters in controversy, and it would be up to the Director of Nuclear Regulation, then, to assure that the final federal review of the emergency plan is completed before operation is actually authorized.

CHAIRMAN MILHOLLIN: Thank you.

Does staff have a position on this subject?

MS. WOODHEAD: I would support the Applicant's position with emphasis on the fact that the entire findings necessary to issue the license, of course, could not be made by the Board until final review and approval of the emergency plan requirements by the staff. But in an operating license case, it is entirely complete after the issues in controversy are decided, and that beyond that, all issues which are uncontested are to be reviewed and determined by the Director of Nuclear Reactor Regulation.

MR. SIEGFRIED: Speaking on behalf of the Intervenor, the contention that was submitted is very specific. We are not going to attempt to expand the contention in this proceeding. We have major reservations about the Applicant's emergency evacuation plans. We can deal with that in other forums. We are not going to try to expand our contentions.

I have no problems with what Mr. Voigt and counsel for the NRC are saying.

(Board conferring.)

CHAIRMAN MILHOLLIN: Very well. Are there any further matters?

That final prehearing conference, of course, took place long after the present reformulation of the emergency planning regulations, 10 C.F.R. § 50.47, which was made effective on November 3, 1980. 45 Fed. Reg. 55402. Thus, CEE cannot argue that a change in law justifies its attempt to reopen the record.

The right to "reconsideration" of CEE's original Contention 9 similarly was extinguished voluntarily by CEE's counsel at the July 22, 1981 prehearing conference. That is shown in the following dialogue among counsel for CEE, counsel for Applicants, and the Chairman of this Board:

MR. SIEGFRIED: [Contention 9] is actually the hospital contention, and that there is clearly no problem with. And No. 10 is the generic safety problems for BWRs.

Now, our position is we want to withdraw 10 also.

CHAIRMAN MILHOLLIN: Very well. So you are withdrawing 9 and 10 in their entirety.

MR. SIEGFRIED: Yes, again on the basis, not that we do not have these concerns, but if we are not going to be able to provide expert witnesses and we

are not going to be able to proceed, I do not see any sense in keeping them on the table.

CHAIRMAN MILHOLLIN: So we are left with No. 8, No. 5 and No. 4.

MR. SIEGFRIED: Yes.

CHAIRMAN MILHOLLIN: In light of that, perhaps, unless there is -- is there any discussion about the contentions, their form, refinement and so forth?

MR. VOIGT: We had previously stipulated to the statements of the contentions 4, 5, and 8, and the Board had approved that statement in the stipulation. We have no desire or intent to depart from the stipulation. We have agreed that they are suitably framed for hearing, and we are prepared to go forward on that basis.

CHAIRMAN MILHOLLIN: Very well. So that takes care of another item on our agenda.

Tr. 195-196.

In short, CEE's September 6, 1982 answer in support of Monroe County's petition is a flagrant attempt to reopen and delay this proceeding, in contravention of the agreement that the parties reached on the scope of this proceeding. CEE has cited no change in facts or law since it finally agreed to the hearing agenda that would justify its attempt to abandon the stipulation of the issues. CEE's Answer should be disregarded.

Conclusion

For the foregoing reasons, the Licensing Board should deny the untimely petition of Monroe County to intervene and to reopen and supplement the record in this proceeding.

Respectfully submitted,

LeBOEUF, LAMB, LEIBY & MacRAE

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BOARD OF COMMISSIONERS  
MONROE COUNTY, MICHIGAN



January 17, 1980

DOCUMENT NUMBER

PROPOSED RULE **PR-50 (44 FR 75167)** <sup>9</sup>



Dr. John Ahearne, Chairman  
U.S. Nuclear Regulatory Commission  
Washington, D. C. 20555

Dear Dr. Ahearne:

The Nuclear Regulatory Commission recently issued a Proposed Rule that would require utility companies, in order to be licensed, to submit acceptable State and local government emergency plans to deal with a nuclear reactor accident.

The Proposed Rule (10CFR Part 50, Federal Register, Vol. 44, No. 245, Wednesday, December 19, 1979, Pages 75167-75174) acknowledges that while the NRC lacks authority to compel State and local governments to do this planning, it nonetheless feels that the public safety demands such plans in the area of a nuclear plant. Thus, the utilities find themselves under pressure to seek local government planning efforts in order to satisfy this NRC condition for a license to operate the plant.

As an elected official and Chairman of the Monroe County Board of Commissioners, I bear direct responsibility for the safety of the citizens of this County under applicable Michigan law defining a State of Emergency. I am writing to support this approach by the Nuclear Regulatory Commission to assure that the utility companies must work cooperatively with local government in preparing for the possibility of an accident.

I cannot emphasize too strongly that I want the assurance that Monroe County can cope with a nuclear incident before our nuclear plant becomes operational. The planning process required by the NRC will place a heavy burden on Monroe County, and I believe this burden must be shared by our utility, the Detroit Edison Company.

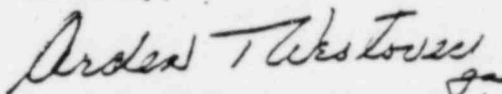
For this reason, I am asking you to take an active personal interest in this situation. I hope that you will contact NRC and express your strong support for such a rule, and that you will encourage the NRC to resist utility pressure to eliminate or relax the "condition of licensing" aspect of the Proposed Rule.

January 17, 1980

Monroe County is already deeply involved in the planning process to cope with a nuclear incident. I have initiated this effort even though the Enrico Fermi II plant is still two years away from operational status. Further, I am meeting with Dr. Wayne Jens, Vice-President of the Detroit Edison Company, to formally seek a commitment from that Company to provide Monroe County both financial and technical assistance in our effort to develop the best possible emergency plan. If you wish, I shall advise you of the Edison response.

In closing, May I again urge you to become familiar with this situation. It is my firm conviction that after the NRC standards for reactor design and operations, this Proposed Rule is probably among the most important standards ever established by the NRC to assure public protection in the event of a nuclear incident.

Sincerely,



Arden T. Westover, Chairman  
MONROE COUNTY BOARD OF COMMISSIONERS

ATW/ga

# Monroe City-County Office of Civil Preparedness

MONROE COUNTY COURTHOUSE  
106 E. FIRST STREET TELEPHONE (313) 241-6400  
MONROE, MICHIGAN 48161



"Community Teamwork  
for Survival"

JON R. ECKERT  
DIRECTOR

DOCKET NUMBER  
PROPOSED RULE PR-50(44FR75167)

(31)

January 21, 1980

OFFICE OF THE SECRETARY  
D.C.  
1980 MAR 12 PM 12:12

RECEIVED

Secretary of the Commission  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dear Sir:

I am writing to endorse the adoption by the Nuclear Regulatory Commission of Proposed Rule 10 CFR Part 50 requiring utilities seeking licenses to operate a nuclear reactor to submit detailed State and local government emergency plans as a condition of licensing.

Such a rule, once adopted, would compel a utility to work cooperatively with local and State governments in preparing such plans. It would assure a dimension of cooperation that currently is not available from many utilities.

As the public official responsible for coordinating the emergency planning for the 140,000 people of Monroe County, Michigan, I wish to go on record as strongly supporting the proposed rule. My position on this matter has the concurrence of the Chairman, of the Monroe County Board of Commissioners and the Mayor, of the City of Monroe, our principal urban area.

A detailed letter commenting upon the Proposed Rule will be addressed to the NRC following my participation in the Chicago Workshop on the Proposed Rule January 22nd.

Again, may I stress the importance the people of Monroe County attach to the Proposed Rule as a result of the Detroit Edison Company's Enrico Fermi II, nuclear power plant now under construction in this county.

Sincerely,

Jon R. Eckert, Director  
Office of Civil Preparedness

JRE/jrm



Acknowledged by card. 2/1

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141

## 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

*This page was blank.*

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 of 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 operations 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 C

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,<sup>\*/</sup> 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,<sup>\*\*/</sup> 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.

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<sup>\*/</sup> 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.

<sup>\*\*/</sup> 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 EDISION 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 20th day of  
September, 1982, served the foregoing document, entitled  
Applicants' Answer to Late Petition for Leave to Intervene and to  
Reopen and Supplement Record and to CEE's Response,  
by mailing copies thereof, first class mail, postage prepaid, and  
properly addressed, or by personal delivery where indicated, to  
the following persons:

Gary L. Milhollin, Esq.,  
Chairman  
Atomic Safety and Licensing  
Board  
1815 Jefferson Street  
Madison, WI 53711

Dr. Peter A. Morris,  
Administrative Judge  
Atomic Safety and Licensing  
Board  
U.S. Nuclear Regulatory  
Commission  
Washington, DC 20555  
(personal delivery)

Dr. David R. Schink  
Administrative Judge  
Department of Oceanography  
Texas A & M University  
College Station, TX 77840

Chairman, Atomic Safety and  
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U.S. Nuclear Regulatory  
Commission  
Washington, DC 20555



Chairman, Atomic Safety and  
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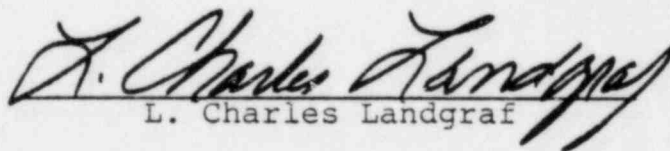
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Secretary  
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Attorneys for Applicants