

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	}	
DETROIT EDISON COMPANY		Docket No. 50-341
(Enrico Fermi Atomic Power Plant,		
Unit 2)		

NRC STAFF RESPONSE IN OPPOSITION TO  
REQUEST TO REOPEN THE RECORD  
FILED BY JOHN MINOCK ESQ. ON BEHALF OF CEE

I. INTRODUCTION

By Certificate of Service, dated September 6, 1982, John Minock, Esq. served the Applicant, the Board, CEE's Attorney of record and counsel for Monroe County, Michigan, but not Staff counsel, a notice of his appearance as attorney for Citizens for Employment and Energy (CEE) along with a document entitled "Answer of Intervenor CEE in Support of County of Monroe's Petition for Leave to Intervene and to Reopen and Supplement Record" (Answer)<sup>1/</sup>. Contained within this Answer is a "request" or motion to reopen the record in this proceeding to allow the litigation of contentions submitted by Monroe County (County) in its recently filed petition, and also "Amended Contentions 8 and 9" [of CEE] or alternatively, "a full exploration of the issues raised in said contentions." The Staff opposes the motion of Mr. Minock on behalf of CEE for the following reasons.

1/ Staff counsel received a copy of the documents from NRC Docketing and Service Section on September 20, 1982. The Staff views this document as a motion as described in 10 C.F.R. § 2.730.

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## II. BACKGROUND

By Board Order of January 2, 1979 CEE was admitted as a party to this proceeding. On January 25, 1979 representatives for CEE, Detroit Edison Co. (DECo or Applicant) and NRC Staff met to discuss clarification of contentions. On March 5, 1979 a Stipulation of Contentions signed by representatives of CEE; NRC Staff and Applicants was submitted to the Board.<sup>2/</sup>

Among the stipulated contentions was one concerning the evacuation route for persons living in a residential area near the Fermi-2 plant (Contention 8) which was a modification of CEE's original (amended) Contention 8. The Stipulation provided that CEE was to be allowed 21 days following receipt of the Staff's SER to identify specific issues pursuant to paragraphs 9 and 10 of the CEE petition containing contentions.<sup>3/</sup> The Board admitted the stipulated contentions on March 21, 1979.<sup>4/</sup>

Subsequently, on July 22, 1981 a prehearing conference was held in this proceeding in Detroit, Michigan. Appearing for CEE were Kim Siegfried, Esq. and David Howell, Esq. (Tr. 183, 204). During the conference, counsel for CEE withdrew several contentions, one of which was Contention (paragraph) 9. (Tr. 195)

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<sup>2/</sup> Forwarded by letter from Richard Black to Board, March 5, 1979.

<sup>3/</sup> Stipulation, p. 1, para. II. Since the Applicants' emergency plan had not been submitted at that time, it was agreed that CEE could not be expected to provide a proper basis and specificity for the subjects of these paragraphs of the petition until the emergency plan and Staff evaluation had been received.

<sup>4/</sup> Order Adopting Contentions as Issues and Setting Preliminary Schedule for Proceeding, March 21, 1979.

On March 31 to April 2 a hearing was held in Monroe, Michigan. Testimony concerning Contention 8, as modified by stipulation, was presented by witnesses for CEE, NRC Staff and Applicants. The hearing record was closed by Board Order of April 19, 1982. On August 27, 1982 the County of Monroe, Michigan filed a petition to intervene. The Answer of CEE followed on September 6, 1982.

### III. DISCUSSION

In addition to supporting the untimely intervention petition of Monroe County, the Answer filed on behalf of CEE also asks that the record be reopened in this proceeding to admit "amended" Contention 8 and "Contention 9" as well as the contentions submitted by the County, on the grounds that a new regulation has been issued (citing 10 C.F.R. § 50.47) since the Board ruled on contentions in 1979;<sup>5/</sup> and that the County's petition presents new information concerning emergency planning not previously available to the parties. Answer, pp. 1-2

The Answer refers to "Amended Contention 8" which was submitted by CEE in its Amended Contentions in 1978. As previously indicated, this "Amended Contention" was modified by written stipulation of all parties; admitted by Board Order as stipulated; and litigated April 1-2, 1982. This contention will be decided on the basis of the evidence presented at hearing by the Board decision, expected to issue soon.

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<sup>5/</sup> Prehearing Conference Order Ruling Upon Intervention Petitions, January 2, 1979.

The Answer alleges that the County's petition contains new facts not previously available. The Staff provided lengthy explanation contradicting this allegation in its response to the County's petition<sup>6/</sup> which demonstrates that the assertion is baseless.

The Answer further states that the record should be reopened since a new emergency plan regulation has been promulgated by the Commission since CEE submitted contentions for the Board's consideration. This proposal is without merit since in the very Board Order cited by the Answer, the Board explains that it considered all proposed emergency plan contentions in relation to the Commission's proposed emergency plan regulations.<sup>7/</sup> In addition, the "new" emergency plan regulation referenced by the Answer was issued long before the hearing.<sup>8/</sup>

A. Legal Standards for Reopening the Record

Under the Commission's rules, the movant to reopen the record has a heavy burden to meet and must show that there is new and significant

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<sup>6/</sup> NRC Staff Response to Untimely Petition to Intervene by Monroe County, Michigan, September 16, 1982.

<sup>7/</sup> Prehearing Conference Order Ruling Upon Intervention Petitions, January 2, 1979 at 12. The Board references 43 Fed. Reg. 37473 (August 23, 1978) which is entitled "Appendix E - Emergency Plans for Production and Utilization Facilities."

<sup>8/</sup> 10 C.F.R. § 50.47 issued August 8, 1980; Appendix E issued August 19, 1980.

information which, if available to the Board and parties would require a different result. Bare allegations or a simple submission of new contentions is not sufficient. Only significant new evidence requires reopening.<sup>9/</sup>

In Applying the Commission's standards to CEE's motion, it is clear that no facts which were unknown to the parties prior to hearing have been presented by the Answer, which references the Monroe County petition. This was demonstrated fully in Staff's response to the County's petition. Further, as explained in the Staff's response, the facts set out in the County's petition, if presented, would not have affected the result of the proceeding. Beyond this, the request to reopen the record on the basis that a new emergency plan regulation has been issued by the Commission since contentions were submitted in 1979 is of no significance since the Board considered the proposed emergency plan regulation at that time, and also because the new emergency plan regulations (10 C.F.R. § 50.47 and Appendix E) were issued nearly two years prior to hearing.<sup>10/</sup> Finally, the request made in the Answer, that contentions submitted in 1979, which have since been changed, withdrawn, and/or litigated by CEE itself, should now be litigated is insupportable. It is abundantly clear that no valid reason has been given in this pleading for reopening

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<sup>9/</sup> Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-5, 13 NRC 361, 362-3 (1981); Kansas Gas and Electric Co. et al. (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 338 (1978), reconsideration denied, ALAB-477, 7 NRC 765 (1978); Northern States Power Co. (Tyronne Energy Park, Unit 1), ALAB-464, 7 NRC 372, 374 at n. 4 (1978).

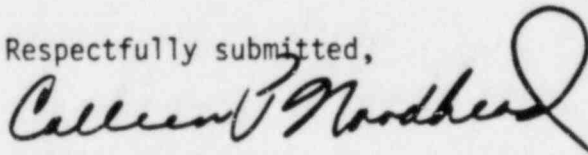
<sup>10/</sup> 45 Fed. Reg. 55409, August 3, 1980; 45 Fed. Reg. 55410, August 19, 1980.

the record in this proceeding and that the basis proffered falls far short of the showing required by the Commission, i.e., that the movant could provide significant new evidence which would cause a different result.

IV. CONCLUSION

For the reasons stated above, the Staff submits that the request to reopen the record filed on behalf of CEE must be denied.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Colleen P. Woodhead". The signature is written in black ink and is positioned above the typed name.

Colleen P. Woodhead  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 27th day of September, 1982

