

BOARD OF COMMISSIONERS

MONROE COUNTY, MICHIGAN



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DOCKET NUMBER
50-341

November 8, 1982

United States of America
Nuclear Regulatory Commission
Atomic Safety and Licensing Board
Washington, D.C. 20555

Dear Gentlemen:

In the Matter of THE DETROIT EDISON COMPANY, et al. (Enrico Fermi Atomic Power Plant, Unit 2), Docket No. 50-341. On August 27, 1982, the County of Monroe filed a petition to intervene in these proceedings after the record was closed but prior to the issuances of the Initial Decision. Within the Initial Decision issued October 29, 1982, the petition was denied at paragraphs 58-78.

Monroe County now appeals that portion of the decision pursuant to 10 CFR 2.714(a). Because the denial of the petition is included in the Initial Decision, it is unclear to what extent Monroe County also has appeal rights pursuant to 10 CFR 2.762. To the extent that any such rights exist under that section, Monroe County reserves those rights and requests that these documents also be treated as exceptions to the Initial Decision.

1. Offsite emergency planning issues are appropriately within the scope of licensing adjudications before the Atomic Safety and Licensing Board. 10 CFR 50.47; 10 CFR 50.54(s); Commission response to comments received to proposed amendment of 10 CFR 50.47, 47 F.R. at 30233, July 13, 1982. The burden of showing compliance on these issues is upon the Applicant, without regard to which entity has the principal responsibility. 10 CFR 2.733; paragraph 72, Initial Decision.

2. The Initial Decision, paragraphs 58-78, denies the County's petition to intervene to litigate these planning issues after evaluating the petition in light of the criteria for late filing under 10 CFR 2.714(a). For the following reasons, the Board's conclusions on the first three criteria are erroneous.

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3. The decision concludes that the timeliness of filing, and not the merits of the contentions, is the operative question for decision on this criteria. Procedure should not smother substance where the health and safety of the public is at issue. The decision is erroneous in deciding that the County did not have good cause for filing late.

4. The decision states that the County has a "completed version of the plan." This finding is erroneous, because the Monroe County Board of Commissioners have never adopted any document as the County's plan.

5. The decision states that on February 3, 1982, the State of Michigan conducted a public hearing on the plan and on the exercise conducted on February 2, 1982. The County does not concede that the public hearing on February 3, 1982, is the sole source of public response. On the evening of February 3, 1982, there was a blizzard in southeastern Michigan, and the Michigan State Police issued a "red alert", ordering all residents to stay at home. Nonetheless, the so-called "public hearing" was conducted that night, with very few members of the public in attendance. Further public meetings were conducted on April 28, 1982 and June 16, 1982. It was at those meetings, and not the meeting of February 3, 1982, that the County became aware, through public response, of the problems with the emergency plan. The County requested that the record of these proceedings be reopened to include the public comments received in those meetings in letters to FEMA and the Commission, dated July 16, and July 19, 1982, respectively.

6. The decision points out that Jon Eckert, a county official, made some limited comments on the record at the hearing concerning emergency preparedness. Neither his comments there nor the emergency planning issues litigated in the hearing dealt with anything but narrow planning issues. The fact that Mr. Eckert made a limited appearance does not lead to the inference that the County should have intervened then, because the process of citizen input on emergency planning was not yet complete. Furthermore, as noted in the petition, Mr. Eckert in his testimony sought to reserve for the County the right to present further testimony on the subject of offsite emergency planning.

7. The County pointed out in its petition that the County sought to cooperate with other authorities to produce a plan. It is disingenuous on the one hand to expect a local unit of government to cooperate in good faith in the formulation of a plan and on the other hand to hold it against them for not seeking adversarial status prior to the conclusion of that process.

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As the Commission response to the proposed amendment of 10 CFR 50.47 points out, compliance with that section is an appropriate issue for adjudicatory hearings. As the response points out further, a party can seek to reopen a concluded hearing where the exercise and public hearings indicate flaws, which is exactly what the County has done here. Furthermore, as was pointed out in the County's petition the flaws in the plan are not within the County's authority to remedy. In light of that, the fact that they were not discovered prior to public input is not at all surprising.

8. The County should not be held at fault because the emergency planning process lagged behind the adjudicatory hearing process. The decision erroneously concludes that public critique of the plan was completed before the adjudicatory hearing. It was only through the public hearings that the dangerous situation outlined in the County's conditions was brought to light. That was pointed out in the County's petition but ignored in the decision. The County has shown good cause for delay.

9. The decision erroneously concludes that this criteria boils down to a question of whether FEMA and Staff review of emergency preparedness is adequate. Instead, the County maintains that as applied to these particular proceedings, the question is whether the licensing rules should be read in such a way that the right of the public to litigate emergency planning issues is eliminated or seriously weakened. As noted, the Commission still considers these issues appropriate for the adjudicatory process.

10. The adequacy of offsite emergency planning is a safety issue of paramount significance to the public.

11. To limit the review of emergency planning to administrative review alone also obviates the purpose of the exercise and public hearings. As the Commission itself said, their purpose is to "identify fundamental defects in the way that the emergency plan is conceived such that it calls into question whether 10 CFR 50.47 can or will be met...". Local governmental units upon whom the responsibility falls for implementing a plan in case of a disaster are much better prepared to evaluate a particular emergency plan, because they are aware of local factors which one cannot safely assume a purely administrative review process would recognize.

12. Furthermore, throughout its petition the County showed why its participation would assist in developing a sound record. The petition pointed out the lag in the public hearing process. The petition pointed out that the results of those hearings were not in the record before the ASLB. The petition pointed out in detail in the contentions what the results of those hearing were. This factor should have weighed in the County's favor.

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In conclusion I would like to submit the following suggestions and/or requests:

A. Require that offsite emergency plans be approved and in place prior to a 5% fuel load or low power license.

B. The adjudicatory licensing proceedings be kept open during that period of time, for a full and formal review prior to obtaining a full power operating license.

C. No license be issued for low power fuel supply and/or full power fuel supply until such time as all necessary emergency plans are in place and have been exercised and any and all deficiencies have been corrected or resolved.

D. FEMA and Boards of Commissioners have both approved of the "Radiological Emergency Response Plan" prior to the hearings, closing and planning process.

F. The recovery and reentry be coordinated by the County, but the responsibility be that of the Federal and State Government.

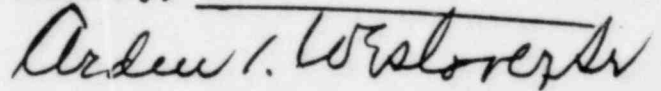
G. That all of the above be incorporated and made part of the Federal Rule

I would also like to request that the Initial Decision denying the County's petition be reserved; and admit each of their contentions and to reopen the record in this proceeding to take evidence on issues related to off-site emergency planning.

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The County is requesting at this time that we be shown the courtesy of an extension of a period not less than fourteen (14) days for the filing of an exception to the Initial Decision. Monroe County has completed all of its statutory commitments as required by law and we will take no further steps in regard to finalizing the "Radiological Emergency Response Plan" for the County of Monroe.

Sincerely,



Arden T. Westover, Sr.
Chairman, Monroe County
Board of Commissioners

ATW/JRE

cc: Honorable John Dingell
Honorable Carl Pursell
Senator Donald Riegle
Senator Carl Levin
Colleen Woodhead, N.R.C. Legal Staff