

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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'82 DEC -1 A11:42

BEFORE THE COMMISSION

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)
)
METROPOLITAN EDISON COMPANY) Docket No. 50-289
) (Restart)
(Three Mile Island Nuclear)
Station, Unit No. 1))

LICENSEE'S OPPOSITION TO AAMODT PETITION
FOR REVIEW OF ALAB-697

On October 22, 1982, the Atomic Safety and Licensing Appeal Board ("Appeal Board") issued ALAB-697 in the above captioned proceeding. The Appeal Board there considered and resolved adversely to the Aamodts, inter alia, claims that emergency planning provisions for farmers are inadequate. See ALAB-697 at 18-30. Pursuant to Section 2.786(b)(1) of the Commission's Rules of Practice, 10 C.F.R. § 2.786(b)(1), on November 15, 1982, the Aamodts filed a petition for review of the parts of ALAB-697 addressing emergency planning for farmers. Licensee opposes the Aamodt petition for review.

I. THE AAMODT PETITION RAISES NEITHER FACTUAL
ISSUES RESOLVED INCONSISTENTLY BY THE APPEAL
AND LICENSING BOARDS NOR IMPORTANT QUESTIONS
OF PUBLIC POLICY

The Aamodts do not object to the Appeal Board's interpretation of the Commission's emergency planning regulations; rather, the Aamodts disagree with the Appeal Board's application of those requirements to the specific facts of this case. And although, as discussed below, the Aamodts have repeatedly mischaracterized or cited out of context the decisions of the Appeal Board and the Atomic Safety and

Licensing Board ("Licensing Board"), it is nevertheless apparent from the face of the review petition that the relevant facts underlying the petition were considered both by the Appeal Board and the Licensing Board, and that both bodies resolved the facts in a consistent manner. Thus, the second of the four factors identified by the Commission as necessary to support a review petition is lacking here. See 10 C.F.R. § 2.786(b)(4)(ii) (review petition not granted unless Appeal Board resolved necessary factual issue contrary to Licensing Board's resolution of same issue).

Further, while the Aamodts strain to frame their petition in terms of important public policy issues relating to emergency planning (see e.g., Review Pet. at 2), there is no dispute between Licensee and the Aamodts over the policy issues. We agree that the regulations require planning for a range of protective actions, see 10 C.F.R. § 50.47(b)(10), and where, as here, a significant proportion of the risk population is farmers, that planning must take into consideration the relationship between farmers and their livestock. See Review Pet. at 7-8. What is in dispute are the methods to be used for satisfying these policy concerns in the TMI-1 area. This raises pure evidentiary matters, based on highly specific, site-related facts, which have been resolved adversely to the Aamodts' interests twice before. Thus, the first of the four factors identified by the Commission as necessary to support a review petition also is lacking here. See 10 C.F.R. § 2.786(b)(4)(i) (review petition not ordinarily granted unless important public policy question raised).^{1/}

^{1/} The third and fourth factors listed in 10 C.F.R. § 2.786(b)(4) are not relevant to the Aamodt petition.

In these circumstances, Licensee does not believe that the Aamodt petition for review raises matters requiring yet a third level of Commission consideration. Accordingly, the petition for review should be denied.

II. THE AAMODT PETITION IS PREMISED ON
NUMEROUS ERRONEOUS VIEWS OF THE RECORD

In attempting to make a case for Commission review of ALAB-697, the Aamodts have at points mischaracterized or cited out of context the findings of the Appeal Board and the Licensing Board. While it is plain from the face of the Aamodt petition alone that consideration of the factors set forth at 10 C.F.R. § 2.786(b) (4) contraindicates Commission review of the Appeal Board's decision, a brief discussion of the some of the Aamodts' more pervasive mischaracterizations and misconceptions further compels rejection of the Aamodt petition.

The major misconception advanced in the Aamodt petition is the idea that the emergency planning provisions for farmers litigated in the TMI-1 hearings have been "preempted," and that a new agricultural plan is to be developed outside normal federal review processes and without opportunity for comment by the parties to this proceeding. See Review Pet. at 1-2, 5-6, 8. The Aamodts are actually referring to the agricultural information brochure being developed for distribution to farmers in the TMI-1 area, setting forth guidance on the protection of livestock and foodstuffs grown on the farm. See ALAB-697 at 27-28, 34. That brochure will reflect the Commonwealth's emergency planning for farmers as litigated in the hearings in this

proceeding; thus, the underlying plan remains the same as that reviewed by the Staff and FEMA, and subjected to the scrutiny of both the Licensing Board and the Appeal Board. Contrary to the Aamodts' claims, there simply is no "new plan" for farmers.

Similarly, the Aamodts appear to believe that the Commonwealth's plan places primary responsibility for the protection of the ingestion pathway on individual farmers. See Review Pet. at 2-3, 9. The Aamodts have never before raised this claim -- not in the extensive evidentiary hearings in this proceeding, nor in their proposed findings to the Licensing Board, nor in their exceptions or brief before the Appeal Board. And while it is far too late in this proceeding for the Aamodts to advance such novel contentions, the Commonwealth's plan on its face disproves the Aamodts' allegation. The Pennsylvania Department of Environmental Resources, Bureau of Radiation Protection is expressly charged with responsibility for protective actions associated with the ingestion pathway. See, e.g., Pa. Ex. 2a, at Appendix 7, p.20, and Appendix 8, pp.IX-1 ff.

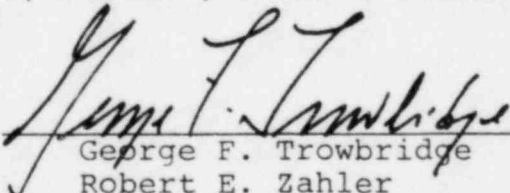
The Aamodts have also mischaracterized the conclusions of the Appeal Board by excerpting portions of its decision out of context. The Aamodts catalog in some detail the areas in which the Appeal Board found that emergency planning could be improved, and discuss the recommendations for improvement which the Appeal Board offered. See, e.g., Review Pet. at 4. The selective references cited by the Aamodts appear calculated to give the misimpression that the Appeal Board agreed with the fundamental

contentions of the Aamodts, found numerous inadequacies in emergency planning for farmers and simply failed to fashion an appropriate remedy. To the contrary, although the Appeal Board was skeptical of some of the provisions of the Commonwealth's agricultural plan, the Appeal Board expressly concluded that it was "fully convinced of the correctness of the Board's overall conclusion that the plan is adequate to protect the farmers," and that it was unnecessary to impose its suggestions as a condition for restart. See ALAB-697 at 19, 29-30. Thus, the Appeal Board's ultimate factual conclusion is consonant with that of the Licensing Board, both of which are adverse to the Aamodts. Clearly, Commission review of these conclusions is unwarranted.

III. CONCLUSION

For the foregoing reasons the Aamodt petition for review of ALAB-697 should be denied. In the event the Aamodt petition is granted, Licensee requests that the Commission establish a schedule for the filing of briefs, pursuant to 10 C.F.R. § 2.786(b)(6), providing for the filing of a substantive brief by the Aamodts, with an opportunity for reply by Licensee and other interested parties.

Respectfully submitted,
SHAW, PITTMAN, POTTS & TROWBRIDGE

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Dated: November 30, 1982

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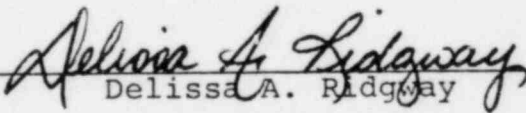
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SERVICE LIST

I hereby certify that copies of "Licensee's Opposition To Aamodt Petition For Review of ALAB-697" were served upon those persons on the attached Service List by deposit in the United States mail, postage prepaid, this 30th day of November, 1982.


Delissa A. Ridgway

Dated: November 30, 1982

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