

COMMISSION LEVEL
DISTRIBUTION ONLY



ADJUDICATORY ISSUE

(NEGATIVE CONSENT)

FOR: The Commissioners

From: Sheldon L. Trubatch
Acting Assistant General Counsel

Subject: REVIEW OF ALAB-707
(IN THE MATTER OF THE DETROIT
EDISON COMPANY)

Facility: Enrico Fermi Atomic Power Plant,
Unit 2

50-341 F

Petition For Review: None.

Review Time Expires: February 18, 1983 (as extended).

Purpose: To inform the Commission of an Appeal Board decision [which in our opinion,

1/

Discussion: Summary

In ALAB-707, the Appeal Board affirmed the Licensing Board's dismissal of Monroe County's late filed petition to intervene and to reopen the record on emergency planning in the Fermi 2 operating license proceeding. LBP-82-96, 16 NRC (October 29, 1982). ("Slip op."). Although the Appeal Board disagreed with some of the

EX 5

Information in this record was deleted in accordance with the Freedom of Information Act, exemptions 5
FOIA- 92-936

Contact:
Juan L. Rodriguez, OGC
634-1465

9501300244 940509
PDR FOIA
GILINSK92-436 PDR

244

HH 18

Licensing Board's findings on the lateness criteria in 10 CFR 2.714(a), the Appeal Board concluded that where the lack of good cause for filing late and the extent of delay and broadening of the issues pointed decisively against admission, it was plainly not an abuse of discretion for the Licensing Board to deny the County's late intervention petition. ALAB-707 at 11-12.

Nonetheless, the Appeal Board found Monroe County's emergency planning concerns to be real and forwarded the petition to the Director of Nuclear Reactor Regulation with the request that he treat it as a petition under 10 CFR § 2.206. ALAB-707 at 14.

In our view, the Appeal Board's decision does not fully comport with Commission practice on reopening of the record and on the institution of proceedings under 10 CFR 2.206. Neither the Licensing Board nor the Appeal Board explicitly balanced the significance of the County's contentions against the lateness of its petition, as is required under the reopening criteria. The Appeal Board's referral of the County's petition to NRR for consideration under 10 CFR 2.206 appears contrary to the thrust of Commission practice not to initiate a show cause proceeding when an alternative forum already exists. However, we believe that this decision does not warrant review because the Appeal Board decision indicates to us that the Board would not have reopened the record even on a fuller consideration of the significance of the County's contentions; the Commission has recently reiterated that the reopening criteria apply to late-filed contentions filed after the record has been closed; and the County could have initiated a 2.206 proceeding immediately after the license was issued.

Procedural Background

On August 27, 1982, more than four months after the evidentiary record was closed, the Monroe County Commissioners petitioned for leave to intervene in

this operating license proceeding and for the record to be reopened to receive Monroe County's concerns regarding defects in their emergency plan for a radiological emergency at Fermi 2. 2/ The County contended that good cause for its untimely filing was provided by recent developments which had only recently made the County aware that significant defects in its emergency plan are not remediable by the County Commissioners themselves. These developments included the County's active efforts in devising a plan, endeavors to work closely with FEMA, and information provided by County residents at formal public hearings held on February 3, 1982, April 28, 1982 and June 16, 1982.

2/ The 12 contentions proposed in the petition alleged that: (1) the bus capacity within the EPZ is inadequate to transport persons without automobiles; (2) that it would be unrealistic to consider the private vehicles of volunteer fire-fighters as available for the transportation of the institutionalized or handicapped because these vehicles may be unsuitable for transporting people with special physical needs; (3) that local fire-fighters, because of their volunteer status and state tort laws, are extremely unlikely to be willing or able to handle their assigned tasks; (4) that it lacks the expertise, equipment, sophistication or funds to carry out its responsibilities for the recovery and reentry operations; (5) questions whether an evacuation can be successfully accomplished given the length of time needed to mobilize command officials, the inadequacy of existing roads, their susceptibility of flooding and the frequent impassability of the roads in winter; (6) that it lacks the needed funds, expertise or sophistication to provide training to personnel that will be needed to carry out emergency response functions; (7) that there is inadequate staff for decontamination and reception centers; (8) that distribution of potassium iodine is unlikely to be timely or effective; (9) that radiological monitoring is inadequate; (10) that since law enforcement, fire, health, school and hospital personnel would also have families in need of evacuation without means of transportation, they might opt to evacuate their families instead of performing emergency work and; (11) that the available methods of decontaminating vehicles would be inadequate.

The two Applicants and the NRC Staff opposed the Monroe County's petition contending that the County failed to satisfy the late-filing criteria of 10 CFR § 2.714(a). Neither Applicants nor the NRC Staff addressed the significance of the alleged defects.

Licensing Board Decision

The Licensing Board denied the County's petition finding that it failed to satisfy the late-filing criteria. LBP-82-96, supra, Slip op. at 48.

The Board began by defining the scope of its analysis as follows:

"Because we are concerned with the County's excuse for delay rather than importance of its contentions, the crucial part of the County's statement is that it has "only recently become aware of the inadequacies." (emphasis supplied.)

Slip op. at 39.

The Board then found that the County lacked good cause to file late because it must have been aware of the inadequacies raised by the proposed contentions no later than November 19, 1981, when it submitted for review and comment to the FEMA Regional Assistance Committee a completed version of its emergency plan. Slip opinion at 42-43. The Board further noted that these deficiencies should have nevertheless become evident to the County during the full scale exercise of the emergency plan held February 2-3, 1982. In the Board's views "it is impossible to believe that the County did not possess sufficient knowledge to intervene at that time."

As for the other lateness factors, the Board found that the County had not shown why review by FEMA and the NRC Staff would be inadequate to protect its interests; that the County failed to present factual support for its assertion that it could assist in developing a sound record; and that

admitting the County to the proceeding after the evidentiary record had closed would be tantamount to beginning a new case, thereby broadening the issues and delaying the proceeding. Slip op. at 44-48). According to the Licensing Board, the only one factor favoring the County's petition was the lack of existing parties to represent its interests. On balancing these findings, the Board found that "the lack of good cause and other delay in the proceeding outweighed this factor favoring the grant of intervention by "a considerable margin." Slip op. at 48.

Appeal Board Decision

Although not agreeing completely with the Licensing Board's analysis, the Appeal Board affirmed the Licensing Board's decision, finding that where the County failed to provide good cause for filing late and the contentions would broaden the issues, it was plainly not an abuse of discretion for the Licensing Board to deny the County's late intervention petition. ALAB-707 at 11-12. 3/ In finding lack of good cause, the Appeal Board rejected the County's proposed "subjective test of good cause" -- that lateness is excusable whenever a prospective intervenor has been unaware of the issues it seeks to raise. Thus, the Appeal Board found unpersuasive

3/ The Appeal Board disagreed with the Licensing Board on the availability of other means to protect petitioner's interests and the extent to which petitioner's participation may assist in developing a sound record, finding that these favored the grant of intervention. In particular, the Appeal Board found that the specificity of the County's petition showed that it could make a useful contribution to the record on the issue of the County's ability to implement its emergency plan, and that there were no other means available to protect the County's interest because absent admission to this licensing proceeding, the County would not be assured of an adjudicatory hearing on the claims it seeks to raise. However, the Appeal Board deemed "plainly correct" the Licensing Board's determination that no other party could represent the County's interest in the proceeding.

Monroe County's claim of new information based on the concerns expressed by the County residents at a June 16, 1982, public meeting. Instead, relying on Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523 (1973), the Appeal Board held that the petitioners were required to meet "an objective test of good cause" which requires among other things that the party seeking to reopen the record must show that the issue "could not have been raised earlier." ALAB 707 at 7. It then dismissed the County's petition for lack of good cause, finding that all of the emergency planning issues raised by Monroe County could have, and should have been raised earlier. Id.

The Appeal Board also found "there is no doubt that the grant of Monroe County's intervention petition would have broadened the issues and delayed the conclusion of the proceeding." ALAB-707 at 8, and rejected the County's claim that the delay caused by reopening would not prejudice applicants because they do not propose to begin full power operation until November 1983. In the Appeal Board's view, this argument:

ignores the words of the regulation, which refer to delay of the proceeding, not to delay of operation of the facility. The Applicants and NRC staff are entitled to assume, after the hearing has reached the stage this one has, that both the issues to be litigated and the parties to the hearing have been established with finality. This is simply a matter of fairness to them as parties. ALAB 707 at 9.

Finally, the Appeal Board likened the County's position to that of a party that seeks to reopen the record and noted that "the movant in that position must demonstrate that its issues are significant, are susceptible of altering the result previously reached, and could not have been raised earlier." Id. The

Appeal Board found that the County failed to carry this burden, if for no other reason than that the County could have raised these issues "far earlier."

Although finding that the County's claims could not be easily fit into the adjudicatory process because they were inexcusably late, the Appeal Board also found it obvious that the claims could not be ignored. Accordingly, the Appeal Board forwarded the petition to the Director of NRR with the request that it be treated as a petition under 10 CFR § 2.206.

Analysis of Appeal Board Decision

✓ We believe that

7EX.5

Sheldon L. Trubatch
Sheldon L. Trubatch
Acting Assistant General Counsel

Attachment: ALAB-707

SECY NOTE: In the absence of instructions to the contrary, SECY will notify OGC on Wednesday, February 16, 1983 that the Commission, by negative consent, assents to the action proposed in this paper.

DISTRIBUTION:
Commissioners
OGC
OPE
OIA
SECY

Release

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING APPEAL BOARD

'82 DEC 22 10:45

Administrative Judges:

Stephen F. Eilperin, Chairman
Thomas S. Moore
Dr. Reginald L. Gotchy

SERVED DEC 22 1982

In the Matter of)

THE DETROIT EDISON COMPANY)

(Enrico Fermi Atomic Power Plant,)
Unit 2))

Docket No. 50-341 OL

Arden T. Westover, Sr., Monroe County, Michigan, for
the petitioner, the Monroe County Board of
Commissioners.

John R. Minock, Ann Arbor, Michigan, for the intervenor
Citizens for Employment and Energy.

Harry H. Voigt, Washington, D.C., for the applicants,
Detroit Edison Company, et al.

Colleen P. Woodhead for the Nuclear Regulatory
Commission staff.

DECISION

December 21, 1982

(ALAB-707)

This is an appeal by Monroe County from a Licensing Board decision that denied its late-filed petition to intervene and reopen the record in the Fermi 2 operating license proceeding. See LEP-82-96, 16 NRC __ (Oct. 29, 1982) (slip opinion at 37-48). Fermi 2 is located in Monroe

County, Michigan, in Frenchtown Township, on the western shore of Lake Erie. The County, through its Board of Commissioners, seeks to intervene in the operating license proceeding to raise questions about the workability of specific aspects of the emergency plan for the facility. 1/

In particular, the County asserts that it (1) lacks the bus capacity to evacuate people who are without transportation, (2) doubts the willingness and training of volunteer emergency workers to carry out all of their assigned tasks, (3) lacks sufficient funds or expertise to undertake recovery and reentry operations, (4) questions whether an evacuation can be successfully accomplished given the length of time needed to mobilize command officials, the inadequacy of existing roads, and the frequent impassability of the roads in winter, (5) lacks sufficient personnel to staff decontamination/reception centers, (6) questions whether

1/ The Commission's emergency planning requirements are principally found at 10 CFR § 50.47 and 10 CFR Part 50, Appendix E. Guidance implementing those standards is provided by NUREG-0654, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants," Rev. 1 (November 1980). See generally Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-680, 16 NRC ___ (July 16, 1982).

potassium iodide supplies can be made available quickly, (7) believes the monitoring systems now in place to detect radiological releases are inadequate, and (8) doubts that the method chosen for decontamination of cars and trucks is adequate. Monroe County Petition at 3-7.

The County filed its petition on August 27, 1982, nearly four years after the opportunity for timely intervention had expired, and after the close of evidentiary hearings. ^{2/} Both the applicants and the NRC staff opposed the County's late-filed request. The Licensing Board reviewed the arguments of the petitioner and the parties according to the criteria for late intervention specified in 10 CFR § 2.714(a) and denied the County's petition. LBP-82-96, supra, 16 NRC at ___ (slip opinion at 48). We affirm.

I

We begin by summarizing the Licensing Board's evaluation of the five factors governing late intervention

^{2/} The notice of opportunity for hearing was published September 11, 1978. 43 Fed. Reg. 40327. Evidentiary hearings were held from March 31 to April 2, 1982.

requests. ^{3/} It is settled that we will not overturn the Board's determination unless that analysis reveals that it has abused its discretion. South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 885 (1981), aff'd sub ncm. Fairfield United Action v. Nuclear Regulatory Commission, 679 F.2d 261 (D.C. Cir. 1982).

The Licensing Board found that the County had been involved in the emergency planning process since early 1980. The Board thought that the County must have been aware of the issues it now seeks to raise no later than November, 1981 (nine months before its intervention request), when Monroe County submitted its emergency plan to the Federal Emergency Management Agency (FEMA) for review and comment. 16 NRC at ___ (slip opinion at 42-43). The Board also noted

^{3/} The factors a board must consider are as follows (10 CFR § 2.714(a)(1)):

(i) Good cause, if any, for failure to file on time.

(ii) The availability of other means whereby the petitioner's interest will be protected.

(iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.

(iv) The extent to which the petitioner's interest will be represented by existing parties.

(v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

that a full-scale exercise of the emergency plan was carried out on February 2-3, 1982, eight weeks before the beginning of the evidentiary hearing; yet the County did not seek to intervene for some seven months after the exercise. Id. at __, __ (slip opinion at 41, 42-43). In the Board's view, Monroe County did not show "good cause" why its intervention request was delayed to such an extent. Id. at __, __ (slip opinion at 42-44).

As to the remaining 10 CFR § 2.714(a)(1) factors, the Board found that the County had not satisfied its burden of showing why means other than intervention -- such as review by FEMA and the NRC staff -- were inadequate to protect its interest; that the County had presented no factual support for its assertion that it could assist in developing a sound record; and that admitting the County to the proceeding after the evidentiary record had closed would be tantamount to beginning a new case, thereby broadening the issues and delaying the proceeding. Id. at __ (slip opinion at 44-48). While no other party represented the County's interest (the one factor favoring the grant of intervention), on balance, the Board found

that the lack of good cause (factor one) and the delay in the proceeding (factor five) outweigh by a considerable margin the fact that no other party will represent the County's asserted interest (factor four). For this reason, we deny the County's petition.

Id. at __ (slip opinion at 48). This appeal followed.

II

The spur to Monroe County's late intervention petition was a June 16, 1982 public meeting held by the County Board of Commissioners. The concerns expressed by the County residents at that meeting formed the basis of the intervention petition filed some two months later. Monroe County (supported by intervenor Citizens for Employment and Energy) argues that because it became aware of the issues it now seeks to raise only at that meeting, it had good cause for not filing earlier.

The difficulty with the County's position is its subjective test for good cause -- that lateness is excusable whenever a prospective intervenor has been unaware of the issues it belatedly seeks to raise. A subjective test of this kind provides an incentive for remaining uninformed and creates the prospect of collateral factual contests aimed at ascertaining the state of mind of the prospective intervenor. We would not allow a party to the proceeding to press a newly recognized contention after the evidentiary hearing was concluded unless the party could satisfy an objective test of good cause. Among other things, our standard requires that the party seeking to reopen must show that the issue it now seeks to raise could not have been raised earlier. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523

(1973). ^{4/} We see no reason to employ a different and more lenient good cause standard for the late petitioner for intervention than for a party who is already in the proceeding and seeks to raise new issues.

Our review of the Licensing Board's application of that standard leaves no question that the Board's findings bearing on good cause are fully supported. All of the emergency planning issues Monroe County now presses are matters of which it should have been aware probably years earlier and, in any event, certainly no later than February 3, 1982, the date the emergency planning exercise for Fermi 2 was completed. The condition of the roads in the vicinity of the plant, the effect of winter weather, the number of buses available for transportation, the availability of emergency workers and the adequacy of their training -- these, and the other issues, are well within the understanding of a local governmental body. They could have, and should have, been raised earlier.

^{4/} A participant that seeks to reopen a proceeding must show that the matter it wishes to have considered is (1) timely presented, (2) addressed to a significant issue, and (3) susceptible of altering the result previously reached. See Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-5, 13 NRC 361, 364-65 (1981); Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit No. 1), ALAB-462, 7 NRC 320, 338 (1978).

While we recognize that "good cause", or its absence, is but one of five factors to be considered and not necessarily decisive, it nevertheless is one of the dominant criteria. In the absence of good cause, a petitioner must make a "compelling showing" on the other four factors in order to justify late intervention. Summer, supra, 13 NRC at 886. See Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC ___, ___ (Dec. 8, 1982) (slip opinion at 8-9). Here, the Licensing Board found that such a showing was not made. 16 NRC at ___ (slip opinion at 44-48). We turn to the Board's analysis of these other factors.

There is no doubt that the grant of Monroe County's intervention petition would have broadened the issues and delayed the conclusion of the proceeding (factor five). As the licensing board rightly remarked (16 NRC at ___ (slip opinion at 47)):

If the County were admitted now, it would be necessary for us to begin what would amount to a new case. The County's contentions would have to be screened for admissibility at a new prehearing conference, a new round of discovery would begin, another prehearing conference would occur before another evidentiary hearing, and the parties would file a new set of proposed findings. Only then would we be able to reach a decision. It is obvious that the proceeding would be delayed if the County were admitted now.

Monroe County argues that the delay would be inconsequential because applicants do not propose to begin full power operation of Fermi 2 until November 1983. The Board correctly rejected that argument:

[It] ignores the words of the regulation, which refer to delay of the proceeding, not to delay of operation of the facility. The Applicants and NRC staff are entitled to assume, after the hearing has reached the stage this one has, that both the issues to be litigated and the parties to the hearing have been established with finality. This is simply a matter of fairness to them as parties.

Ibid. (emphasis in original). See generally Houston Lighting and Power Co. (Allens Creek Generating Station, Unit 1), ALAB-671, 15 NRC 508, 511 (1982); Summer, supra, 13 NRC at 886.^{5/} In essence, the County is in the same sort of position as a party that seeks to reopen the record. As we have noted, the movant in that position must demonstrate that its issues are significant, are susceptible of altering the result previously reached, and could not have been raised earlier. See n. 4, supra. Monroe County's petition does not satisfy that test, if for no other reason than that its emergency planning issues could have been raised far earlier.

The extent to which a petitioner can assist in developing a sound record -- factor three -- is also an

^{5/} The board also noted that it was by no means clear, as a factual matter, that the County's participation would not delay the projected fuel loading date of June, 1983. 16 NRC at ___ (slip opinion at 47).

important criterion. We have previously explained that when a petitioner addresses this factor

it should set out with as much particularity as possible the precise issues it plans to cover, identify its prospective witnesses, and summarize their proposed testimony. Vague assertions regarding petitioner's ability or resources . . . are insufficient.

Grand Gulf, supra, 16 NRC at ___ (citations omitted) (slip opinion at 10). Here, the Licensing Board found that the County offered no factual support for its assertion that it could make a useful contribution to the Fermi 2 proceeding. 16 NRC at ___ (slip opinion at 45-46).

We do not view the County's presentation with as cold an eye. The issues Monroe County seeks to raise are set out with reasonable specificity in its petition, and the transcript of the June 1982 public meeting offers some limited additional detail. While the public comments at the meeting are not nearly as extensive as a summary of proposed testimony, and the County has not identified its prospective witnesses, nevertheless the nature of the subject matter -- the County's ability to implement its own emergency plan -- provides reason to believe that the County could present witnesses whose testimony would be useful. Thus, we do not fully share the Licensing Board's evaluation of this criterion. However, even weighing this factor more in the County's favor does little to offset the unexcused lateness of the filing, and the impact it would have, if granted, on the proceeding.

The Board found that factor four weighed in the County's favor because no existing party could adequately represent the County's interest. 16 NRC at ___ (slip opinion at 46). It was plainly correct. When the County's intervention petition was filed the evidentiary record was already closed. In these circumstances, it is apparent that no other party could take up the County's issues. The adequacy of existing representation factor, however, is probably the least important of the five late intervention criteria. See Summer, supra, 13 NRC at 894-95.

Similarly weighing in the County's favor, but again of relatively minor importance, is the lack of availability of other means to protect its interest (factor two) -- the fact that absent admission to this licensing proceeding it is not assured of an adjudicatory hearing on the claims it seeks to raise. ^{6/} On balance, however, the first and fifth factors

^{6/} See Grand Gulf, supra, 16 NRC at ___ (slip opinion at 10); Summer, supra, 13 NRC at 894-95; Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 and 2), ALAB-292, 2 NRC 631, 648 (1975).

We disagree with the Licensing Board's conclusion that the County failed to carry its burden of showing the lack of availability of other means to protect its interest. This wrongly places on the petitioner the obligation of proving a universal negative. At least until the parties opposing intervention suggest a forum that appears to promise a full hearing, the petitioner need not identify and particularize other remedies as inadequate.

(good cause, and the extent of delay and broadening of issues) point decisively against the grant of the County's petition. In the circumstances, it was plainly not an abuse of discretion for the Board to deny the County's late intervention petition.

What then is to be done with potentially significant issues that are raised in an inexcusably late-filed intervention petition? At bottom, Monroe County claims that the Fermi 2 emergency plan cannot work. The claim is obviously one that must not be ignored, but it is pressed so late that it cannot easily fit into the adjudicatory process. 7/

As we have noted, the second late intervention criterion calls upon NRC adjudicatory boards to weigh the availability of other means whereby the petitioner's interest will be protected. In every case, a party that for some reason cannot gain admittance to a construction permit or operating license hearing, but wishes to raise health, safety, or environmental concerns before the agency may file

7/ We reject the argument of Citizens for Employment and Energy (CEE) that an intervention petition can not be denied consistent with the adjudicatory hearing provisions of the Atomic Energy Act and Administrative Procedure Act. CEE Response to Appeal (Dec. 10, 1982) at 8-9. The Commission is entitled to establish reasonable procedural rules for participation in its proceedings. BPI v. Atomic Energy Commission, 502 F.2d 424 (D.C. Cir. 1974). Its late intervention rules are of that kind. See generally Summer, supra.

a request with the Director of Nuclear Reactor Regulation under 10 CFR § 2.206 asking the Director to institute a proceeding to address those concerns. The 10 CFR § 2.206 remedy is a real one. The Commission has recently explained:

The invocation of this procedure . . . requires that the NRC staff give serious consideration to requests for regulatory action concerning a licensed facility so long as the request specifies the action sought and sets forth the facts that constitute the basis of the request. The staff must analyze the technical, legal, and factual basis for the relief requested and respond either by undertaking some regulatory activity or, if it believes no show-cause proceeding or other action is necessary, by advising the requestor in writing with a statement of reasons explaining that determination. Further, the Commission reviews each of these decisions sua sponte to insure that the staff's decision is not an abuse of discretion. Past practice clearly indicates that, as the Appeal Board in [Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear 1), ALAB-619, 12 NRC 558 (1980)] concluded, the agency has "faithfully discharged" its responsibility to give full consideration to petitions seeking relief under section 2.206. See, e.g., Virginia Electric Power Co. (Surry Nuclear Power Station, Units 1 and 2), CLI-80-4, 11 NRC 405 (1980) (granted by the Commission requiring EIS on repair of steam generators at Surry 1); Dairyland Power Cooperative (La Crosse Boiling Water Reactor), DD-80-9, 11 NRC 392 (1980) (granted in part by the staff by issuing order to show cause to resolve issue of whether certain measures were required to preclude liquefaction at the site); Consolidated Edison Company of New York, Inc. (Indian Point Units 1-3), DD-80-5, 11 NRC 351 (1980) (granted by the staff with respect to Unit 1 by issuing order to show cause why operating license should not be revoked and why decommissioning plan should not be submitted).

Washington Public Power Supply System (WPPSS Nuclear Project Nos. 1 & 2), CLI-82-29, 16 NRC __, __ (Oct. 8, 1982) (slip

opinion at 12-13). See also Porter County Chapter of the Izaak Walton League of America, Inc. v. Nuclear Regulatory Commission, 606 F.2d 1363, 1369-70 (D.C. Cir. 1979).

The availability of a remedy under 10 CFR § 2.206 provides us with what we believe is a proper disposition of Monroe County's late intervention petition. Given the extreme lateness of the County's filing -- after the evidentiary record has been closed -- the Licensing Board's denial of the petition was plainly within its discretion. But Monroe County's emergency planning concerns are real and should be addressed. Recognizing this, we are forwarding its petition, together with the transcript of the June 16, 1982 public meeting, to the Director of Nuclear Reactor Regulation. We request that he treat the papers as a 10 CFR § 2.206 petition. The County may, of course, promptly supplement its petition (to include, for example, affidavits of county officials and other concerned citizens) to document its claims further. So too, the Director, if he deems it advisable, can call upon the good offices of FEMA to provide a further evaluation of offsite emergency planning. ^{8/} The Director can then either institute a


^{8/} See generally "Memorandum of Understanding between FEMA and NRC" 45 Fed. Reg. 82715-16 (Dec. 16, 1980). FEMA's evaluation of the February 1982 emergency planning exercise covered only a few of the issues Monroe County now raises. See generally FEMA Final Report on the Fermi 2 Full Scale Joint Emergency Exercise February 1-2, 1982 (February 22, 1982), attached as Enclosure 1 to Board Notification 82-50 (May 19, 1982), at 8, 11-12.

show cause proceeding if he believes one is warranted, or issue a written statement of reasons explaining why no regulatory action is necessary. See WPPS, supra. While this disposition does not guarantee Monroe County an adjudicatory hearing, it will assure, we believe, that the County's concerns are addressed.

Accordingly, the Licensing Board's October 29, 1982 decision denying Monroe County's intervention petition and request to reopen is affirmed. The petition and accompanying public meeting transcript are forwarded to the Director of Nuclear Reactor Regulation with our request that they be treated as a 10 CFR § 2.206 petition.

It is so ORDERED.

FOR THE APPEAL BOARD


C. Jean Shoemaker
Secretary to the
Appeal Board