

UNITED STATES OF AMERICA  
BEFORE THE NUCLEAR REGULATORY COMMISSION

In The Matter of METROPOLITAN :  
EDISON COMPANY, et al. : Docket No. 50-289  
(Three Mile Island, Unit 1) : (Restart)



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BRIEF OF CONSUMER ADVOCATE OF PENNSYLVANIA  
ON IMPACT AND FORM OF PSYCHOLOGICAL DISTRESS EVIDENCE

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Walter W. Cohen  
Consumer Advocate

Jerome K. Blask  
Assistant Consumer Advocate

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## I. INTRODUCTION

This brief addresses two related issues concerning the introduction of psychological distress evidence in this proceeding. These issues were raised during the first session of the special prehearing conference held on November 8, 1979. On that occasion, this Honorable Board and the NRC Staff expressed concerns as to the type of record that would be developed and the type of cross-examination that would occur if non-expert witnesses were allowed to testify as to their own psychological experiences arising from the Three Mile Island accident, which we will refer to here as the non-expert witness vulnerability issue. A related issue that was also mentioned at the special prehearing conference concerns how this Honorable Board should evaluate and weigh psychological distress evidence adduced through lay witnesses, assuming this Board should admit such evidence.

The Office of Consumer Advocate does not anticipate presenting evidence on psychological distress and it has not submitted contentions on this issue. We do believe, however, that psychological distress is legally relevant to this proceeding and that psychological distress evidence should be admitted and evaluated by this Board subject to the legal considerations concerning witness vulnerability and evidentiary evaluation presented in this brief. We will discuss both the potential impact of the testimony on the lay witnesses who would be offering it and the form that psychological distress evidence could take.

## II. VULNERABILITY OF NON-EXPERT WITNESSES TESTIFYING ON PSYCHOLOGICAL DISTRESS

### A. Background

Two intervenors in this proceeding, Newberry Township T.M.I. Steering Committee (hereinafter Newberry Township) and People Against Nuclear Energy (PANE), have indicated in their Preliminary Plan For Presentation Of Evidence On Psychological Distress that they intend to present testimony of individuals concerning their particular psychological experiences and mental disorders arising from the Three Mile Island accident and its continuing impact. (See both Preliminary Plans at Page 1.) At the first session of the special prehearing conference, counsel for NRC staff, in response to PANE's Preliminary Plan, stated: "...this raises with us the spectre of this hearing being devoted to probing of what may turn out to be intimate details of people's lives and experiences." (Record at 105). The Board further stated that this type of subject matter might raise problems on cross-examination. (Record at 106).

We assume that possible problems of witness embarrassment, humiliation, etc., will not arise through direct questioning by the party calling the witness but rather that the central concern raised by this Board and the NRC staff involves the intimate personal revelations that could occur by cross-examining individuals as to their own psychological experiences alleged to have resulted from the Three Mile Island accident and/or the continuing threat of recurrence. After an examination of relevant statutes and case law, this brief proposes and evaluates three alternative evidentiary procedures that the Board could follow to resolve this concern, namely: (1) allow non-expert individuals

to testify as to their own psychological experiences but limit cross-examination so as to minimize the likelihood that intimate personal details will be revealed--(limited cross-examination); (2) allow unlimited cross-examination of non-expert individuals provided that witnesses are advised beforehand by the Board as to the scope and ramifications of cross-examination and are then allowed to refuse to testify--(unlimited cross-examination plus warning); and (3) prohibit testimony of non-expert individuals, restricting psychological distress evidence to written or oral testimony by experts and unlimited cross examination--(expert testimony only). On the basis of our evaluation of the relevant statutory and case law, and for the reasons posited below, we recommend that the Board adopt the third alternative and limit psychological distress evidence to that which can be adduced solely through expert testimony.

B. Relevant Statutory and Case Law

Any analysis of the problem we have termed "witness vulnerability" must begin with the Administrative Procedure Act (APA) which controls admission of evidence and, in particular, cross-examination in a Nuclear Regulatory Commission hearing.<sup>1</sup> With regard to an administrative adjudication,<sup>2</sup> the APA states in part that:

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<sup>1</sup> The Atomic Energy Act of 1954 as amended, 42 U.S.C. 2231, made the provisions of the APA applicable to the Atomic Energy Commission, whose duties were subsequently assumed by the Nuclear Regulatory Commission.

<sup>2</sup> Because the instant Three Mile Island, Unit 1 proceeding involves adjudication rather than rule-making, we limit our analysis to the evidentiary requirements imposed by the APA on the former.

1743 076

A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

Administrative Procedure Act as amended, 5 U.S.C. §556(d) (emphasis added).

The NRC Rules of Practice for Domestic Licensing Proceedings, 10 C.F.R. §2.100 et. seq. (hereinafter NRC Rules), closely follow the APA language:<sup>3</sup>

§2.743 Evidence.

- (a) General. Every party to a proceeding shall have the right to present such oral or documentary evidence and rebuttal evidence and conduct such cross-examination as may be required for full and true disclosure of the facts. (emphasis added).

The APA and the NRC Rules specifically limit cross-examination to that which may be required for a "full and true disclosure of the facts." The meaning of this phrase, as derived from legislative history and case law, is thus essential to determining the extent to which cross-examination can be limited in accordance with the APA and corresponding NRC rules.

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3 Admittedly, minor differences in language and construction between the APA and NRC Rules suggest that the latter, in contrast to the former, makes "full and true disclosure of the facts" unambiguously applicable to presenting oral or documentary or rebuttal evidence, in addition to conducting cross-examination. Our analysis, however, is concerned only with cross-examination in an NRC proceeding and, on this point, the two texts are identical.



The APA's legislative history indicates that 5 U.S.C. §556(d) represents an attempt by Congress to allow parties to administrative adjudications a reasonable opportunity to test adverse evidence without providing for an unlimited right of unnecessary cross-examination. (See Sen. Doc. No. 248, 79th Cong. 2d Sess. 208-09, 271 (1946).) The intent of Congress in this regard is reflected not only in the language in §556(d) referring to cross-examination but also in the more general language of that section which instructs an agency to exclude irrelevant, immaterial, or unduly repetitious evidence as a matter of policy.<sup>4</sup> One commentator has suggested that these considerations are best expressed by the rule that cross-examination must be permitted when necessary to determine the truth. McCormick on Evidence 857 (2d ed. 1972).

As a truth-eliciting tool, however, cross-examination is useful in only certain situations:

Yet unless credibility is directly in issue -- and then only on occasion -- cross-examination usually does no more than demonstrate forensic talent or score trial points irrelevant to the final decision. ... If witness veracity and demeanor are not critical, there is no requirement for cross-examination so long as sufficient opportunity for rebuttal exists.<sup>5</sup>

Id. at 856, 857.

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<sup>4</sup> The equivalent language in the NRC Rules is found in 10 C.F.R. §2.743(c).

<sup>5</sup> We take the liberty of suggesting that the word "statutory" was either omitted or implied before the word "requirement" in this sentence. See discussion of due process considerations on pages 7-13 of this brief.

Precedent in this area emphasizes that the power to exclude cross-examination is within the discretion of the presiding hearing officer or administrator, a principle recently expressed in Seacoast Anti-Pollution League v. Costle, 572 F.2d 872 (1st Cir. 1978). This case involved a license request before the Environmental Protection Agency (EPA), which conducted both non-adjudicatory and adjudicatory hearings on the matter. Finding the record developed by both proceedings to be inadequate, the EPA Administrator asked the applicant to submit additional information on the subject and gave other parties the opportunity to comment, although no further hearings were held. Responding to the petitioner's argument, the Court ruled that additional hearings were required by the Federal Water Pollution Control Act, but that the need for cross-examination should be determined by the Administrator on remand. 572 F.2d at 880. The Court found the presiding officer's control over cross-examination to be implied by 5 U.S.C. § 556(c)(5) and (7), which gives the officer the power to control the course of the hearing and dispose of procedural matters, and 5 U.S.C. § 556(d), which explicitly limits cross-examination. The same result was reached in Delaware River Port Authority v. Tiemann, 403 F.Supp. 1117 (D.N.J. 1975), vacated on other grounds, 531 F.2d 699 (3d Cir. 1976), which held that cross-examination in an administrative hearing depends on the unique circumstance of the case, a determination which is properly left to agency discretion.

As established above, 5 U.S.C. §556(d) and 10 C.F.R. §2.743(a) have been interpreted as providing for a right of cross-examination where the presiding officer has determined that the credibility of a

1743 079

witness is in issue. This statement, however, does not exhaust the law regarding cross-examination rights in agency adjudications. The relationship between cross-examination in agency adjudications and due process must also be examined.

Several Supreme Court decisions have emphasized that due process in agency adjudications requires a right to be heard which, in turn, may imply the right to confront and cross-examine adverse witnesses. Significant in this regard is Morrissey v. Brewer, 408 U.S. 471 (1972), which held that, when parole is revoked by an administrative board, minimum due process requires, inter alia, that the parolee have an opportunity to be heard and to confront and cross-examine adverse witnesses. 408 U.S. at 489. Morrissey thus reflects Justice Frankfurter's concurrence in Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123 (1957), where Frankfurter argued that the extent to which due process rights must be accorded a party or witness depends on the extent of the potential loss faced by that party; the more "grievous" the loss, the more extensive the due process protections that are available. 341 U.S. at 168.<sup>6</sup> Recognizing the "grievous" nature of revoking parole, the Morrissey court specifies five other protections that must be accorded the putative parole violator in addition to cross-examination.<sup>7</sup>

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<sup>6</sup> See also: Hannah v. Larche, 363 U.S. 420 (1960), and Cafeteria & Restaurant Workers Union v. McEhoy, 367 U.S. 886 (1970).

<sup>7</sup> These protections are: written notice, disclosure of adverse evidence, opportunity to present favorable evidence, an impartial hearing body, and a written statement as to the reasons for revocation. 408 U.S. at 489.



Even in Morrissey, however, the Court is clear in indicating that confrontation and cross-examination are unique among the protections required by minimal due process. As the Court states:

Our task is limited to deciding the minimum requirements of due process. They include. . . (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation.)

408 U.S. at 488-489 (emphasis added). A "good cause" finding can eliminate the need for confrontation and cross-examination without violating due process. In the next major decision on the issue, Wolff v. McDonnell, 418 U.S. 539 (1974), the Court held that confrontation and cross-examination are not constitutionally required in prison disciplinary proceedings even though the outcome could result in a deprivation of privileges or a reduction in "good-time" credit for the defendant prisoner. Despite the "grievous" nature of the loss confronting the prisoner, the Court found that, due to the high risk that confrontation and cross-examination would encourage reprisal and disruption within the prison and increase the likelihood of extenuated and unmanageable proceedings, there was "good cause" for dispensing with both.<sup>8</sup>

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<sup>8</sup> In McNeill v. Butz, 480 F.2d 314 (4th Cir. 1973), however, the Fourth Circuit held that a mere desire for efficiency in agency operations or protection of identity of government informers where no threat of harm existed failed to constitute "good cause."

Commenting on the Wolff decision, a noted authority has stated:

While prisoner cases are doubtless the strongest ones for dispensing with an absolute requirement of confrontation and cross-examination, similar arguments (fear of witnesses in coming forward, undue exacerbation, and polarization of what in some instances remain ongoing relationships) exist in other situations as well--eviction of tenants from public housing, discipline of students, or assignment of students to a school for retarded or disturbed children.

Friendly, Some Kind of Hearing, 123 U. Penn. L. Rev. 1267 (1975) at 1286.

The author goes on to argue, however, that the Wolff remedy, which sanctions eliminating confrontation so that an anonymous witness can testify in secret against the defendant, is overly drastic and should be extended to these other situations only if the potential deprivation to the party seeking confrontation is small (rather than "grievous"). Id.

Despite the complexity of the law regarding confrontation and cross-examination in administrative adjudications, we believe that it can be summarized by the following principles: 1) where the presiding officer determines that the credibility of a witness, who has testified on direct examination, is directly in issue, then the APA and NRC Rules provide for a right of cross-examination; 2) where the presiding officer determines that witness credibility is not directly in issue or where the witness has yet to be examined (on direct) in the presence of all parties, then due process requires a specific finding of "good cause" for disallowing cross-examination in the former case or confrontation in the latter.

C. Application Of Law To Non-Expert Witness Vulnerability Problem

As an initial impression, it appears that the witness vulnerability problem may be answered by the first principle stated above. If Newberry Township and PANE present non-expert witnesses who testify as to their particular psychological experiences arising from the Three Mile Island accident, it is probable that their credibility will be found to be directly in issue. Assuming such a finding, we conclude from our reading of the APA and NRC Rules, as indicated by the first principle mentioned above, that a right to cross-examine would exist.

This result does nothing to allay the concerns expressed by this Board and the NRC Staff at the first session of the special prehearing conference in this proceeding. Allowing cross-examination leaves open the prospect that intimate details of witnesses' lives and experiences will indeed be probed, not necessarily because such details are relevant to testing credibility (which is usually accomplished through questions dealing with bias, reputation and prior inconsistent statements), but because such details may establish alternative causes for the psychological distress allegedly suffered by the Newberry Township and PANE witnesses. It is likely that the licensee would seek to prove such alternative causes.

Turning to the second principle stated above, we must consider whether a specific finding of "good cause" can be made that confrontation of the non-expert Newberry Township and PANE witnesses can be disallowed without violating the due process rights of any party. We conclude that, although the concerns raised by this Board and the NRC Staff regarding witness vulnerability are serious and valid, they are

insufficient to constitute the specific "good cause" finding required to disallow confrontation. Unlike the situation in Wolff, the testimony in issue in this proceeding does not raise the prospect of violent disruptions within a public institution or physical or other reprisals against the in-hearing declarant. Although the concerns of this Board and the NRC Staff regarding the subject testimony are analogous to those stated in the article by Judge Friendly, recall that the Judge's ultimate recommendation, echoing the Frankfurter concurrence in Joint Anti-Fascist Refugee Comm., justifies application of the Wolff decision only in cases where the potential deprivation to the party seeking confrontation is small. The licensee in this proceeding will certainly argue that the potential deprivation it faces is "grievous" and that application of Wolff cannot be sustained.

Thus, the issue of witness vulnerability presents the following dilemma. Applying the law regarding confrontation and cross-examination rights in an adjudicatory proceeding to the facts in this case leads us to conclude that, if Newberry Township and PANE present lay witnesses who testify as to their own psychological distress experiences in the aftermath of the Three Mile Island accident, then confrontation and cross-examination must be allowed. This raises the prospect that intimate details of these witnesses' personal experiences will be revealed.

In an effort to resolve this dilemma in a way that respects the controlling law while mitigating the concerns raised by this Board and the NRC Staff, we propose and evaluate three alternative solutions to the problem of non-expert witness vulnerability. We assert that a general basis for implementing any one of these proposals is given to

1743 084



the presiding officer by virtue of the NRC Rules at 10 C.F.R. §§2.718(e), 2.752(a)(4) and 2.759, which accord the presiding officer wide discretion in regulating the hearing process to expedite the presentation of evidence and avoid an unnecessarily large record. An additional basis for implementing our proposals is provided by the Nuclear Regulatory Commission which, in its Order and Notice of Hearing of August 9, 1979, urged this Board "...to use its authority under 10 C.F.R. §2.757 to prevent any undue delay to the proceeding resulting from any cross-examination not required for the full and true disclosure of the facts or from other sources mentioned in that section." Order at 11.

D. Possible Solutions To The Non-Expert Witness Vulnerability Problem

Recognizing the conflict between the controlling law and the concerns raised by this Board and the NRC Staff, we suggest here three approaches to the problem and assess the merits of each. The three alternative solutions are: 1) allow Newberry Township and PANE to examine non-expert witnesses on the issue of psychological distress but limit the scope of cross-examination to matters affecting credibility, specifically excluding examination into alternative causes for the psychological distress that the witness experienced--(limited cross-examination); 2) allow Newberry Township and PANE non-expert witnesses to face unlimited cross-examination provided that the Board advise these witnesses beforehand as to the scope and ramifications of possible cross-examination and then permit the witnesses the opportunity to decline to testify--(unlimited cross-examination plus warning); and 3) prohibit testimony of non-expert individuals and thus limit

1743 085



psychological distress evidence to that which is adduced by unlimited direct and cross-examination of experts in the field--(expert testimony only).

1. Limited Cross-Examination

This solution would appear initially to achieve the twin objectives of allowing such cross-examination ". . . as may be required for a full and true disclosure of the facts"<sup>9</sup> while excluding the exposure of intimate details of personal experiences that concern this Board and the NRC Staff. For the reasons developed below, however, we believe that this is the least preferable of the three options. First, we question whether strictly limiting cross-examination to matters affecting credibility would really allow for elucidation of the truth regarding a subject as complex as psychological distress. Rather, we argue that either all possible causes of the distress experienced must be probed through cross-examination, in which case intimate personal details are likely to be exposed, or we should recognize that the problems involved with lay witness testimony in this situation outweigh the probative value of any evidence that is likely to be adduced.

Even assuming that limiting cross-examination to matters affecting credibility would be sufficient to elicit the truth as required by the APA and the NRC Rules, we doubt whether it would be effective in keeping from the record the intimate personal details that concern the NRC Staff and this Board. Cross-examination as to credibility is often a provocative and unpleasant experience for the

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9 5 U.S.C. §556(d).

novice witness. Further, there is no requirement that the witness be protected from credibility questions probing material or relevant matter solely because the answer tends to disgrace the witness, subject the witness to infamy, or bring the witness into disrepute. U.S. v. Franscone, 299 F.2d 824 (2d Cir. 1962), cert. den. 570 U.S. 910 (1963).

Thus, the limited cross-examination option, though superficially attractive, fails on the two grounds that concern us most: (1) potential inadequacy as a method for testing the truth of the non-expert's testimony regarding his or her own psychological distress experiences, and (2) ineffectiveness in excluding from the record intimate details of the witnesses' personal lives and experiences.

## 2. Unlimited Cross-Examination Plus Warning

This option provides for an unrestricted opportunity to test the truth of the non-expert witness's direct testimony by allowing cross-examination into both credibility and potential causes of the individual's psychological distress other than the Three Mile Island accident. Admittedly, the concerns raised by the Board and the NRC Staff dealing with non-expert witness vulnerability are not completely allayed by this option, although we think they are substantially mitigated by permitting non-expert witnesses to testify only after the Board has informed them of the scope of any ensuing cross-examination and has provided them with the opportunity to excuse themselves. Ultimately, however, only this Board can determine whether it is satisfied that a record containing the intimate details of people's lives and experiences is acceptable solely because the witnesses providing those details did so on a voluntary basis, with prior knowledge as to the scope and ramifications of cross-examination.

While clearly preferable to the first option discussed above, allowing unlimited cross-examination of the non-expert Newberry Township and PANE witnesses implies that the truth regarding psychological distress can be determined by examining lay witnesses. In light of the complexity and controversy that characterizes this topic, we doubt the validity of this assertion. As a result, we propose a third option which we recommend to this Board as the optimal solution to the problem of non-expert witness vulnerability.

### 3. Expert Testimony Only

This option would prohibit Newberry Township and PANE from calling non-expert witnesses to testify as to their own psychological distress experiences. Instead, psychological distress testimony would be presented only by medical and other experts who had examined residents of the area surrounding Three Mile Island after the accident and who had conducted scientific surveys into the effects of the accident. According to the Staff, at least 16 such studies are now being conducted. NRC Staff Brief at 53. We believe that, due to the availability of these and other studies as well as expert medical witnesses, the Board will be able to evaluate the psychological distress issue without having to rely on the non-expert witnesses who allege that they have suffered such distress. We also note that most of the psychological distress evidence that Newberry Township and PANE intend to present will involve scientific studies and expert witnesses.

Provided that the experts are available for cross-examination,

we feel this option provides for an adequate determination of truth, in accordance with the APA, while satisfying due process.<sup>10</sup> On cross-examination the licensee could probe the survey and examination techniques used to see if adequate provisions were made for determining whether there were alternative causes for the distress uncovered, thus making it unnecessary to delve into the intimate personal details of individual survey participants or patients. If such a line of cross-examination were pursued nonetheless, there is precedent supporting the expert's refusal to answer if the party posing the cross-examination had had opportunity to investigate independently the accuracy of the raw data on which the expert's testimony is based. See Carter-Wallace, Inc. v. Gardner, 417 F.2d 1086 (4th Cir. 1969). Alternatively, the expert may be able to answer in a way that avoids discussing intimate details of an individual's life.

Even if we did not feel that evidence relating to psychological distress was best adduced by expert witnesses or that the "expert-only" option eliminates the problem of non-expert witness vulnerability without violating the APA or due process principles, there are sound practical reasons for encouraging its implementation. First,

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10 5 U.S.C. § 556(d) and 10 C.F.R. § 2.743(a)(b) have been read as authorizing submission of written testimony provided the opportunity for cross-examination exists. McCormick, in applying this principle to surveys, etc., has contended that:

Statistical compilation and surveys are admissible only if the person responsible for--and having full knowledge of--the exhibit is available. In addition, raw data upon which the exhibit is based should be available to the opposing party. McCormick, supra at 857.

both Newberry Township and PANE in their Preliminary Plan For Presentation of Evidence on Psychological Distress state their intention to offer expert testimony similar to the kind described above. In fact, of the seven different types of psychological distress evidence that Newberry Township and PANE intend to present, five would involve scientific studies and/or expert witnesses and thus avoid the non-expert witness vulnerability problem. If this testimony were to precede the testimony of individual non-expert witnesses, it is possible, even likely, that the latter could be excluded as being "unduly repetitious" of the former.<sup>11</sup> In addition, it is likely that the testimony of the Newberry Township and PANE non-experts will repeat the views expressed by those persons who made limited appearance statements in connection with this proceeding. Although those statements do not constitute evidence, "[t]hey can suggest avenues where the evidence should follow." (Record of Special Prehearing Conference at 907). Finally, we are uncertain that "reliable evidence" on the question of psychological distress can be adequately adduced from the testimony of the non-expert individuals that Newberry Township and PANE intend to call.

E. Recommendation

For the reasons discussed above, the Office of Consumer Advocate recommends that this Board limit the testimony on psychological distress in this proceeding to that which can be adduced by scientific studies and by examining and cross-examining medical and other expert witnesses.

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<sup>11</sup> "Only relevant, material, and reliable evidence which is not unduly repetitious will be admitted." 10 C.F.R. §2.743(c) (emphasis added).



### III. EVALUATING AND WEIGHING PSYCHOLOGICAL DISTRESS EVIDENCE.

By limiting psychological distress evidence to that which can be adduced by scientific studies and expert witnesses, the second issue raised during the first session of the special prehearing conference in this proceeding becomes moot. That issue arose when counsel for the NRC Staff asked:

And as a secondary matter we believe that (it) would be helpful if these reply briefs addressed more completely the issue which the Board just raised, which it put in the form of 'what would the Board do with such evidence once it were adduced,'...

Record at 106 (emphasis added).

We interpret the phrase "such evidence" to refer to the testimony of non-expert individuals regarding their own psychological distress experiences which was discussed during the conference immediately before the above-cited question from NRC Staff counsel. If this evidence were to be excluded, as we recommend above, the problems associated with weighing and evaluating this evidence would be eliminated.

There are several reasons for believing that the evidentiary evaluation problems raised by this Board and the NRC Staff are unique to evidence brought forward by lay witnesses and that if such testimony were to be excluded these concerns would vanish. First, it is important to note that hearings conducted pursuant to 10 C.F.R. Part 2, Subpart G tend to rely predominantly on expert testimony with respect to highly technical and complex issues. This tendency is recognized by 10 C.F.R. §2.733, which allows a party, with the presiding officer's permission, to have a scientifically-trained individual participate in the examination and cross-examination of expert witnesses. As a result, it

can be assumed that this and other Atomic Safety and Licensing Boards have little experience in weighing and evaluating lay witness testimony, but considerable experience in dealing with expert testimony. Thus, if two experts give completely contradictory testimony on an issue, this Board is familiar with the techniques for assessing and resolving the dispute. The testimony of both experts can be weighed on the basis of their credentials, prior experience in the specific field, analytical methods used, etc. No such process is available for evaluating contradictory testimony of lay witnesses, especially when they are testifying on a highly complex, technical issue like psychological distress.

Thus, it is our opinion that psychological distress is too specialized and technical an issue to allow the person allegedly suffering the distress to prove it by his or her own word. The skills and training of a qualified expert are necessary to observe and evaluate the distressed individual and interpret these observations for the Board. As a court would not declare a person insane on the basis of that person's own testimony, we believe the evidentiary evaluation problems raised by this Board and the NRC Staff reflect their reluctance to admit testimony of individuals whose psychological distress--its cause, extent and duration--may be directly in issue in this proceeding.

In conclusion, we reiterate our view that the problems raised by this Board and the NRC Staff with respect to weighing and evaluating psychological distress are relevant only to evidence adduced by non-expert testimony. By excluding such testimony and relying solely on scientific studies and expert witnesses to provide evidence on the issue of psychological distress, the problems become moot.

1743 092

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Docket No. 50-289 (Restart)

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CERTIFICATE OF SERVICE

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I, Walter W. Cohen, hereby certify that I have this 26th day of December, 1979 served copies of the attached Pennsylvania Office of Consumer Advocate's Brief on Impact and Form of Psychological Distress Evidence on each of the persons named in the attached service list by causing the same to be deposited in envelopes addressed to said persons, first class, postage prepaid, and deposited with the United States Postal Service at 813 Market Street, Harrisburg, Pennsylvania 17105.

Respectfully submitted,



Walter W. Cohen  
Consumer Advocate

1743 093

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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(Three Mile Island, Unit 1) :

Ivan W. Smith, Esq.  
Atomic Safety & Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 10555

Dr. Walter H. Jordan  
Atomic Safety & Licensing Board  
881 W. Outer Drive  
Oak Ridge, TN 37830

Dr. Linda W. Little  
5000 Hermitage Drive  
Raleigh, NC 27612

Secretary  
Nuclear Regulatory Commission  
Washington, DC 20555

George F. Trowbridge, Esq.  
Shaw, Pittman, Potts & Trowbridge  
1800 M Street, N.W.  
Washington, D.C.

Counsel for NRC Staff  
Office of Executive Legal Director  
U. S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Ms. Marjorie M. Aamodt  
R.D. #5  
Coatesville, PA 19320

Ms. Holly S. Keck, Leg. Chairman  
Anti-Nuclear Group Representing  
York (ANGRY)  
245 W. Philadelphia Street  
York, PA 17404

Ms. Frieda Berryhill, Chairman  
Coalition for Nuclear Power  
Plant Postponement  
2610 Grendon Drive  
Wilmington, DE 19808

Mr. Robert Q. Pollard  
Chesapeake Energy Alliance  
609 Montpelier Street  
Baltimore, MD 21218

Karin W. Carter, Esq.  
Assistant Attorney General  
505 Executive House  
P.O. Box 2357  
Harrisburg, PA 17120

Ellyn P. Weiss, Esq. (UCS)  
Sheldon, Harmon, Roisman & Weiss  
1725 I Street, NW, Suite 506  
Washington, DC 20006

Chauncey Kepford, Esq.  
Environmental Coalition on  
Nuclear Power  
433 Orlando Avenue  
State College, PA 16801

Robert L. Knupp, Esq.  
Assistant Solicitor  
County of Dauphin  
P.O. Box P, 407 N. Front Street  
Harrisburg, PA 17108

Mr. Marvin I. Lewis  
605 Bradford Terrace  
Philadelphia, PA 19149

Jordan D. Cunningham, Esq.  
Fox, Farr & Cunningham  
2320 North Second Street  
Harrisburg, PA 17110

Karin P. Sheldon, Esq. (PANE)  
Sheldon, Harmon, Roisman & Weiss  
1725 I Street, NW, Suite 506  
Washington, DC 20006

John A. Levin, Esq.  
Assistant Counsel  
Pa. Public Utility Commission  
Room G-28, North Office Building  
Harrisburg, PA 17120

Mr. Steven C. Sholly  
304 South Market Street  
Mechanicsburg, PA 17055

Theodore Adler, Esq.  
Attorney for Three Mile Island  
Alert, Inc. (TMIA)  
P.O. Box 1547  
Harrisburg, PA 17105

Hon. Mark Cohen  
512 E-3, Main Capitol Building  
Harrisburg, PA 17120

Mr. Thomas Gerusky  
Bureau of Radiation Protection  
Department of Environmental Resources  
P.O. Box 2063  
Harrisburg, PA 17120

J. G. Herbein, Vice President  
Metropolitan Edison Company  
P.O. Box 542  
Reading, PA 19603