

October 31, 1979

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

LICENSEE'S RESPONSE TO AMENDED PETITION FOR INTERVENTION
AND FINAL CONTENTIONS OF MARJORIE M. AAMODT

In its September 21 Memorandum and Order Ruling On Petitions and Setting Special Prehearing Conference, the Board deferred ruling on Mrs. Aamodt's standing to intervene, noting that it considered her interest, as presented, to be "inadequate but only barely so." Order, p. 16. At the time the Board ruled on Mrs. Aamodt's standing, it had only her September 14 submission, a one-page letter, before it. She has now submitted two additional documents which set forth in much greater detail her interest in the proceeding. Licensee first addresses Mrs. Aamodt's standing to intervene in this proceeding, in light of her later submissions, then turns to the contentions which she has proposed.

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I. Petitioner's Standing To Intervene

Licensee originally questioned Petitioner's interest in the proceeding and proposed, for this and other reasons, that Petitioner be denied intervenor status in this proceeding but be allowed to make a limited appearance. See Licensee's Answer to Petition To Intervene By Marjorie M. Aamodt. However, Licensee now believes that Mrs. Aamodt has, by her October 4 and October 22 submissions, established the interest in the proceeding required for standing to intervene.

In her October 22 Petition For Intervention, Mrs. Aamodt requests that her husband and her daughter be permitted to serve with her as "co-intervenors." Licensee has no objection to their service with Petitioner provided that their interests are presented in the proceeding by a single spokesperson, pursuant to the provisions of 10 C.F.R. § 2.714(e).

II. Petitioner's Contentions

Contention No. 1. It is contended that TMI-1 should not open until a program of psychological testing and counseling of operator personnel and management be instituted and routinely maintained to observe and/or alleviate or ameliorate fatigue, boredom, hostility, confusion, substance abuse, and/or other characteristics deemed inconsistent or contrary to the safe operation of said nuclear plant.

Licensee's Response

Licensee objects to this contention on the grounds that it is not within the scope of this proceeding, since it is

unrelated to either the bases for the suspension or the actions recommended by the Director of Nuclear Reactor Regulation.

There is no indication in the Commission's August 9 Order, nor is there a basis for reasonable contention, that the issue of "management capabilities and technical resources" encompasses "a program of psychological testing and counseling" such as Petitioner here urges.

Contention No. 2. It is contended that TMI-1 should not open until the performance of licensee technicians and management can be demonstrated to be upgraded as certified by an independent engineering firm. This upgrading should include 100% test performance of job description with provision for retraining and retest, or discharge of those who cannot consistently and confidently master all necessary information for safe conduct of their job description under all anticipated critical situations as well as routine situations.

Licensee's Response

Licensee does not object to this contention, which is reasonably related to the bases for the suspension, namely management capabilities and technical resources generally, as well as items 1(e) and 6 of the recommendations of the Director of Nuclear Reactor Regulation, as set forth at pages 5 through 7 of the Commission's August 9 Order.

*Contention No. 3. It is contended that the licensee has not made adequate provision for assessing the potential risk to humans and animals from accidental discharge of airborne radioactive gases or particulates. It is contended that existing environmental monitoring plans do not call for

1. monitoring several important radioactive substances,
2. quantifying total emissions from a given discharge,
3. defining danger to health and safety as a function of distance, direction and time.

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It is further contended that these capabilities must be provided by licensee before restart of TMI-1.

Licensee's Response

Licensee recognizes the right of Petitioner to raise contentions relating to emergency planning. In accordance with the position at section B of Licensee's covering memorandum, it is requested that the Board require Petitioner to revise and resubmit this contention with specific objections to Licensee's emergency preparedness following Petitioner's receipt of the updated Emergency Plan.

*Contention No. 4. It is contended that licensee has not made provision for timely dissemination of information in the event of accidental release of airborne radioactive gases or particulates. It is contended that licensee must make information available to the public which will allow appropriate action to be taken to protect persons, livestock, foodstuff and feed in the event of a discharge of significant proportions. It is further contended that licensee must provide this capability before restart of TMI-1.

Licensee's Response

Licensee has no objection to this contention for the reasons stated in response to Contention 3. Licensee requests that the Board require Petitioner to revise and resubmit this contention with specific objections to Licensee's emergency preparedness following Petitioner's receipt of the updated Emergency Plan.

*Contention No. 5. It is contended that present evacuation plans do not provide for care and/or relocation of livestock. It is further contended that such provision should be made before restart of TMI-1.

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Licensee's Response

Licensee has no objection to this contention for the reasons stated in response to Contention 3. Licensee requests that the Board require Petitioner to revise and resubmit this contention with specific objections to Licensee's emergency preparedness following Petitioner's receipt of the updated Emergency Plan.

*Contention No. 6. It is contended that present emergency plans do not adequately provide for the health and safety of persons living more than 10 miles from TMI-1. Radioactive plumes pose substantial risk for distances far in excess of 10 miles. Adequate detection and monitoring capability is not presently planned to assess or predict risk to health and safety of persons in the path of plumes, nor is a mechanism available to inform them of the danger to which they would be exposed. It is further contended that emergency plans must be upgraded accordingly before restart of TMI-1.

Licensee's Response

Licensee objects to this contention to the extent that it relates to airborne contamination, on the grounds that it constitutes a challenge to the NRC Policy Statement issued by the Commission on October 18, 1979, and published in the Federal Register on October 23, 1979. 44 Fed. Reg. 61123. In that statement, the Commission has endorsed, as a planning basis for emergency response, NUREG-0396 (EPA 520/1-78-016), dated December 1978, which was prepared by a joint NRC/EPA Task Force. This report calls for the establishment of two Emergency Planning Zones (EPZs). The EPZ for airborne exposure is to have a radius of about 10 miles. Petitioner's contention thus challenges the NRC Policy Statement insofar as the

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contention seeks to have an EPZ of more than 10 miles established for airborne radiation. However, the Commission-endorsed EPZ for food contamination is to have a radius of about 50 miles. Therefore, Licensee would not object to a more narrowly drawn contention focusing upon the adequacy of emergency plan provisions relating to food contamination within a 50 mile radius of the site. For the reasons stated in response to Contention 3, Licensee requests that the Board require Petitioner to revise and resubmit any such contention with specific objections to Licensee's emergency preparedness following Petitioner's receipt of the updated Emergency Plan.

Contention No. 7. It is contended that TMI-1 should not open until an assessment is made of the "nuclear environment" of the petitioner and family, their domestic animals and livestock. TMI-1 is included in that environment as well as reactors at Peach Bottom and Salem.

Licensee's Response

Licensee objects to this contention on the grounds that it bears no discernible relation to the bases for suspension of Unit 1 operations or the issues for consideration in this proceeding, particularly to the extent that Petitioner seeks to raise the issue of the effect of the Peach Bottom and Salem reactors on the "nuclear environment" of Petitioner and her family, their domestic animals and livestock.

Contention No. 8. It is contended that TMI-1 should not reopen until the management of radwaste has been totally resolved.

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Licensee's Response

Licensee objects to this contention on the grounds that it is not within the scope of this proceeding, since it is unrelated to either the bases for the suspension or the actions recommended by the Director of Nuclear Reactor Regulation.

Contention No. 9. It is contended that TMI-1 should not open because the perception of the hazard of so-generating electric power has threatened the health and safety of petitioner and family.

Licensee's Response

Notwithstanding Petitioner's own characterization of this contention (see last paragraph of her statement of the basis for this contention), Licensee views this contention as referring to the alleged primary and secondary psychological distress resulting from the Unit 2 accident and the proposed restart of Unit 1. Licensee notes that Petitioner has not briefed the admissibility of psychological distress issues, as required by the Commission at page 13 of its August 9 Order. For the reasons set forth in Licensee's accompanying brief on this issue (see Licensee's Brief Opposing Admission of Psychological Distress Contentions), such a contention is not cognizable under either the Atomic Energy Act of 1954 or the National Environmental Policy Act of 1969. Licensee further objects to this contention on the grounds that the stated bases (the unpredictability of the perception of the restart of Unit 1 by customers of the family farm, the physical characteristics of members of Petitioner's family which increase their

susceptibility to "radiation hazard," the restriction of the family's diet, and the "burden of intervention") do not explain or otherwise support the contention.

Contention No. 10. It is contended that no basis exists to assume that NRC and licensee will expeditiously and honestly inform the public of the existence of radiation releases or impending crises which endanger the health and safety of the petitioner and family. It is contended that representatives of licensee and NRC who interface with the public must be subject to criminal prosecution for speaking falsely if the truth is to be expected. It is further contended that until imprisonment and fines can be imposed on representatives who deceive, distort, lie or are negligent in their responsibility to keep the public informed of potential danger to their health and safety, restart of TMI-1 cannot begin.

Licensee's Response

Licensee objects to this contention primarily on the grounds that it is beyond the scope of this proceeding, since it is unrelated to either the bases for the suspension or the actions recommended by the Director of Nuclear Reactor Regulation. Licensee also has two secondary objections to this contention. First, to the extent the contention calls for the enactment of legislation imposing criminal penalties, it calls for action beyond the power of the agency, and represents an attack on the Atomic Energy Act of 1954, which defines the conditions for the granting of licenses. Second, the bases for the contention ("[t]he public record of TMI-2 accident," the "[o]perating history of all other commercial nuclear reactors and the public record of related information flow to the public," "[p]ersonal experience with NRC Reg. 1 staff," and "NUREG 0578") are so vague that they provide no explanation or support for the contention.

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Contention Nos. 11 and 12. It is contended that licensee should have its license to operate TMI-1 revoked permanently.

Licensee's Response

Licensee objects to this contention (asserted as Contentions 11 and 12, with different bases for each) primarily on the grounds that it is beyond the scope of this proceeding. The permanent revocation of Licensee's license is not at issue in this proceeding. Licensee also has secondary objections to this contention. The first statement of basis for Contention 11 seeks to raise issues which are cognizable under Pennsylvania law governing public utilities, not the Atomic Energy Act of 1954. Such issues cannot be adjudicated in this forum. The second statement of basis for Contention 11 constitutes an attack on existing Commission regulations. Appendix I to 10 C.F.R. 50 sets forth the numerical guides on design objectives for reactor operation to meet the "as low as is reasonably achievable" criterion for radioactive effluents. Petitioner's challenge to the provisions of Appendix I should be addressed to a rulemaking forum. Licensee also objects to the statement of basis for Contention 12. The alleged basis is only a recitation of ultimate legal conclusions, which are so general that Licensee cannot respond to the contention. Moreover, virtually all of the ultimate conclusions which are here asserted as bases for Contention 12 have been raised by Petitioner in other contentions.

Dated: October 31, 1979

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