

8/13/81

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of  
Metropolitan Edison Co., et al.  
(Three Mile Island, Unit T)

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)  
)

Docket No. 50-289  
(Restart)

ENVIRONMENTAL COALITION ON NUCLEAR POWER'S  
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW  
ON EMERGENCY PLANNING ISSUES

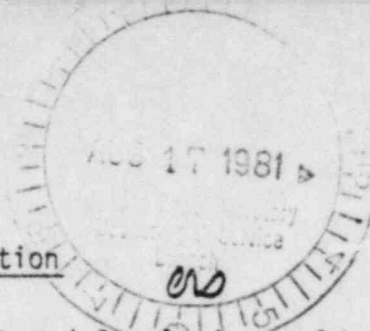


Table of Contents

	page
I Introduction . . . . .	1
II Findings of Fact . . . . .	2
III Conclusions of Law . . . . .	5



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I Introduction

1. The Proposed Findings of Fact and Conclusions of Law here submitted on behalf of Intervenor Environmental Coalition on Nuclear Power (ECNP) are brief and, in the view of these Intervenor, inadequate to the need in consequence of 1) the refusal of the Nuclear Regulatory Commission (NRC) to provide transcripts, other procedural assistance, of funding to public interest citizen intervenors; 2) the lengthy delay in and incomplete delivery of transcripts of this proceeding to the Local Public Documents Room; and 3) insufficient availability of private funding or time for the ECNP Legal Representative to prepare complete Findings of Fact and Conclusions of Law on Emergency Planning Issues.

2. The Environmental Coalition on Nuclear Power adopts the Proposed Findings of Fact and Conclusions of Law on Emergency Planning issues which are being submitted on behalf of several intervening parties by Lead Intervenor Newberry Township TMI Steering Committee (Newberry) and Anti-Nuclear Group Representing York, (ANGRY) except where such Findings may contradict Findings submitted here by ECNP, in which instance ECNP adopts the latter.

3. ECNP also adopts here the portion of the Proposed Findings of Fact and Conclusions of Law entitled "Legal Standards on Emergency Planning Issues" submitted by the Commonwealth of Pennsylvania, except in any instances which contradict the Conclusions of Law submitted by Newberry, ANGRY, or ECNP, in which cases ECNP adopts the latter positions, or except in any other instances noted herein.

4. With this filing, in part, ECNP preserves its rights to participate as a full party in any appeals relating to emergency planning issues raised in this proceeding.

## II Findings of Fact

5. These brief findings supplement the findings adopted by ECNP.

6. Basic to the protection of the public in the event of a radiological emergency is avoidance of exposure to radiation. NRC Staff witness Brian Grimes stated that it is reasonable to conclude from discussion of acceptable and unacceptable doses to the public. (Tr. 15, 187-15, 193, Grimes) that the NRC draws no numerical distinction between that which is an acceptable dose under accident conditions and that which is an unacceptable dose. (Tr. 15, 19 at 14. See correction of error in the record, Tr. 18, 630 at 16-20). Since there is, as the witness here testified, no numerical dose level or cutoff at which NRC would require evacuation, as opposed to sheltering, there is no assurance that the statutory requirement for the protection of the public health and safety can or will be met.

7. In the emergency planning guidance document, "Criteria for the Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants," NUREG-0654/FEMA-REP-1, Rev. 1, 1980 (NUREG-0654)(identified as Staff Exhibit 7 admitted into evidencce), Appendix 1, at p. 1 states, in describing the four Emergency Action Levels:

The general emergency class involves actual or imminent substantial core degradation or melting with the potential for loss of containment. The immediate action for this class is sheltering (staying inside) rather than evacuation until an assessment can be made that (1) an evacuation is indicated and (2) an evacuation, if indicated, can be completed prior to significant release and transport of radioactive material to the affected areas.

8. NRC Staff witness Grimes stated that "any amount of radiation is damaging. (Tr. 15, 191 at 14).

9. Thus, in the absence of a specification by NRC witness Grimes or others of a maximum dose which members of the public are permitted by NRC to receive before being evacuated in the course of a general emergency, the

guidance which is required by the NRC Final Rule to be used in Licensee emergency response preparedness in fact gives a reasonable expectation that emergency plans will not provide adequate protection of the public health and safety as is required by law. The Board therefore must find that reasonable assurance of compliance with the law as well as the NRC regulations and the Commission's August 9, 1979, Order has not been demonstrated by the Suspended Licensee.

10. The NRC does not set time limitations upon the licensee for recognition and determination of any given level of accident severity. (Tr. 15, 175 at 15, 16, Chesnut). Adequately prompt notification of State and Local authorities to initiate emergency protective actions is therefore contingent upon the capability of and integrity of licensee plant operators to recognize and properly evaluate the standard initiating conditions for each Emergency Action Level (Tr. 15, 174-80, Grimes and Chesnut)(Also NUREG-0654, Appendix 1).

11. The Environmental Protection Agency's Protective Action Guides are designed for the assessment of projected dose to the public rather than potential dose commitment during the course of an accident. (Tr. 15, 184, 187-8), Chesnut and Grimes). A recent communication has brought to the attention of ECNP an NRC Staff memo that was quoted as recommending for TMI and other reactors that the Protective Action Guidelines should in fact be based upon potential dose commitments, relative to potential radiation release levels, rather than upon projected dose to the public based upon a release source term. (NRC Staff memorandum dated September 28, 1979, from the Deputy Director of NRC Region 1 Office to Mr. James H. Snieszek, NRC Office of Inspection and Enforcement, entitled "TMI Radiological Investigation Team Recommendation for Long-term TMI Improvements and/or Other Power Reactor Sites.") The record of this proceeding should be reopened to introduce testimony and this document into evidence with respect to the adequacy of the EPA PAG's to provide adequate protection of the health and safety of the public. NRC Staff

recommendations for additional emergency response capability must be but has not been, introduced into this record before a finding of adequacy of emergency response planning can be reached by this Board. (See also Molholt testimony 1-3, ff Tr. 19, 690).



### III Conclusions of Law

12. The fundamental laws governing this Board's decision are the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, which require the Commission to protect the public health and safety, and the National Environmental Policy Act of 1969, which requires consideration of all environmental effects for the full period of toxicity of any pollutants in taking of a Federal action.

13. Even more fundamental to this Board's decision-making authority under the Atomic Energy, Energy Reorganization, and National Environmental Policy Acts are Constitutional guarantees of all citizens.

14. Specific governance of the Board's decision lies in the Commission's August 9, 1979, Order and Notice of Hearing (CLI-79-8; 10 NRC 141) and the Commission's August 19, 1980, Final Rule on Emergency Planning (45 FR55, 402) wherein are established that the Board must consider both the necessity and the sufficiency of the short-term and long-term requirements and that the Licensee must comply fully with the requirements of the Final Rule prior to being granted permission by the Commission to operate TMI Unit 1.

15. This Board's consideration of the issues and evidence in this proceeding is based upon 10 CFR 2.732 that the Suspended Licensee bears the full burden of proof that all requirements have been fully and properly met.

16. Under the Final Rule on Emergency Planning, this Board is required to base its findings and conclusions on unequivocal demonstration by the Suspended Licensee that there is reasonable assurance that protective measures adequate to protect the health and safety of the public not only can but will be carried out in the event of a radiological emergency at Three Mile Island.

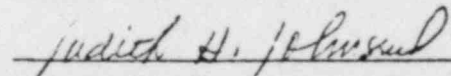
17. The Board bases its decision with respect to emergency response issues on an understanding that the Commission does not in its Final Rule,

and cannot under the Atomic Energy Act and Energy Reorganization Act, delegate its statutory authority and responsibility to evaluate and ultimately determine the adequacy of Licensee, State, and Local emergency response capability to the Federal Emergency Management Agency; the Memorandum of Understanding between NRC and FEMA recognizes that the ultimate locus of responsibility lies with the Commission.

18. The Board concludes that the Suspended Licensee has not met fully its burden of proof to demonstrate that emergency response planning for TMI-1 can and will provide a reasonable degree of assurance that the public health and safety will be properly protected in the event of a radiological emergency at Three Mile Island.

19. The Board finds that all deficiencies and inadequate demonstrations of the workability must be corrected and proof of correction supplied before approval for restart of TMI 1 by the Commission can be granted. The Board recommends that the Commission deny the Suspended Licensee's request to operate TMI-1.

Respectfully submitted,

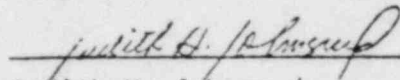


Dr. Judith H. Johnsrud,  
Co-Director, ECNP

Dated this 13<sup>th</sup> day  
of August, 1981

CERTIFICATE OF SERVICE

I certify that copies of ENVIRONMENTAL COALITION ON NUCLEAR POWER'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW ON EMERGENCY PLANNING ISSUES have been served on the following parties by deposit in the U.S. Mails, first class, postage paid, this 13<sup>th</sup> day of August, 1981.

  
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