

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

'82 MAY 12 10:49

In the Matter of:

METROPOLITAN EDISON COMPANY,

(Three Mile Island Nuclear
Station, Unit No. 1)

:
:
:
:

Docket No. 50-289
(Restart)

COMMONWEALTH OF PENNSYLVANIA'S REPLY TO
LICENSEE'S BRIEF IN SUPPORT OF EXCEPTIONS
TO THE ASLB PARTIAL INITIAL DECISION ON
EMERGENCY PLANNING ISSUES (EXCEPTION NO. 3)



DS03
s
11/1

ROBERT W. ADLER
Assistant Counsel
Commonwealth of Pennsylvania
505 Executive House, P.O. Box 2357
Harrisburg, Pennsylvania 17120

Telephone: (717) 787-7060

May 10, 1982

8203140444 820510
PDR ADOCK 05000289
G PDR

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	ii
COUNTERSTATEMENT OF QUESTIONS PRESENTED.....	1
COUNTERSTATEMENT OF THE CASE.....	2
ARGUMENT.....	8
I. THE LICENSING BOARD RULING IS SUPPORTED BY RELIABLE AND PROBATIVE EVIDENCE, INCLUDING BOTH GENERIC GUIDANCE DOCUMENTS AND EXPERT TESTIMONY ON LICENSEE'S EMERGENCY RESPONSE ORGANIZATION.....	8
A. The Licensing Board Did Not Place Undue Reliance On Generic Regulatory Guidance.....	9
B. The Weight Of The Evidence Supports The Licensing Board's Ruling.....	11
II. THE LICENSING BOARD'S DECISION IS AN APPROPRIATE EXERCISE OF REGULATORY CONTROL OVER LICENSEE'S EMERGENCY RESPONSE ORGANIZATION IN A MATTER WHICH IS CRITICAL TO PUBLIC HEALTH AND SAFETY.....	21
III. CONCLUSION.....	23

TABLE OF AUTHORITIES

<u>Judicial Proceedings</u>	<u>Page(s)</u>
<u>California Bankers Assn. v. Shultz</u> , 416 U.S. 21 (1974).....	8
<u>Jaffke v. Dunham</u> , 352 U.S. 280 (1957).....	8
<u>Nuclear Regulatory Commission Proceedings</u>	
<u>Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-452</u> (December 30, 1977), 2 NUC. REG. REP. (CCH) ¶30,263.....	9
<u>Duke Power Co. (Catawba Nuclear Stations, Units 1 & 2),</u> ALAB-355 (October 29, 1976), 2 NUC. REG. REP. (CCH) ¶30,116.....	9
<u>Duke Power Co. (Perkins Nuclear Station, Units 1, 2 & 3),</u> ALAB-302 (December 10, 1975), 2 NUC. REG. REP. (CCH) ¶30,031.....	9
<u>Final Rule on Emergency Planning</u> , CLI-80-40, (December 5, 1980), 2 NUC. REG. REP. (CCH) ¶30,558.....	10
<u>Gulf States Utilities Co. (River Bend Station,</u> Units 1 & 2), ALAB-444, 6 NRC 760 (1977).....	10
<u>Metropolitan Edison Co. (Three Mile Island Nuclear Station,</u> Unit No. 1), LBP-81-____, 14 NRC ____ (Partial Initial Decision).....	8, 9, 10, 11
<u>Public Service Co. of Indiana, Inc. (Marble Hill Nuclear</u> Generating Station, Units 1 & 2), ALAB 549 (February 16, 1978), 2 NUC. REG. REP. (CCH) ¶30,272.....	8
<u>Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear</u> Power Station), CLI-74-40, 8 AEC 809 (1974).....	10
<u>Regulations</u>	
10 C.F.R. §50.47(b)(1) n. 1.....	11
10 C.F.R. §50.47(b)(2).....	4
10 C.F.R. §50.47(b)(8).....	3
10 C.F.R. §50.54(S)(2).....	15
10 C.F.R. Part 50, App. E.....	5, 18

<u>Other Authorities</u>	<u>Page(s)</u>
NUREG-0654; FEMA-REP-1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants".....	3, 4, 8, 10, 11, 16
NUREG-0696, Rev. 1, "Functional Criteria for Emergency Response Facilities".....	4, 16
NUREG-0746, Supp. 1, "Emergency Preparedness Evaluation for TMI-1".....	6, 16

COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Whether the Licensing Board was correct in ruling, on the basis of direct testimony presented by the NRC Staff and the Commonwealth of Pennsylvania, as well as two generic NRC Staff regulatory guidance documents, that Licensee's failure to staff its offsite Emergency Operations Facility (EOF) with an Emergency Support Director within one hour of declaration of a site emergency, violates the requirements of the NRC emergency planning rule?
2. Whether Licensee met its burden of proof to demonstrate that its offsite emergency response organization meets the requirements of the NRC emergency planning rule, despite contrary direct evidence presented by the NRC Staff and the Commonwealth of Pennsylvania, as well as generic NRC regulatory guidance documents?
3. Whether a Licensing Board ruling regarding the interface during a nuclear emergency between Licensee's emergency response organization and the emergency response organizations of federal, state and local agencies, and affecting protective action decisions for members of the general public, constitutes an unwarranted intrusion into an "internal" Licensee management decision?

COUNTERSTATEMENT OF THE CASE

The issue addressed in Licensee's Exception No. 3 arose out of a finding by the NRC Staff that Licensee's offsite emergency response organization is deficient due to insufficient staffing of the offsite Emergency Operations Facility (EOF) during the early hours of an accident. This finding generated a controversy between the Licensee on one side and the staff and the Commonwealth of Pennsylvania on the other. All three parties produced direct evidence on this issue, although Licensee's brief ignores entirely the evidence presented by the Commonwealth.

No party to this proceeding underestimates the importance of either the EOF or the Emergency Support Director. Licensee's testimony refers to the EOF as the "central point for: (a) providing overall corporate management and direction in responding to an emergency, (b) coordinating administrative and logistical support, (c) interfacing with state and county representatives, and (d) establishing the basis for long-term recovery efforts." Rogan, et al., ff. Tr. 13, 756, at 21-22; see also, Licensee Ex. 30, at 7-3; Staff Ex. 8, at 16-24. The importance of the Emergency Support Director is set forth in Licensee's emergency plan:

1. The Emergency Support Director will be responsible for activating and directing the offsite emergency support organization and ensuring that the functional groups provide a coordinated response in support of the on-site emergency organization. The Emergency Support Director will serve as the senior management representative at or in the vicinity of the TMI site. As such, during emergency operations, the Emergency Support Director will direct all emergency efforts and policies; the Emergency Director, however, will maintain responsibility for the operation and control of the plant. In the absence of the Emergency Support Director, the senior most TMI-1 operations person will

assume his responsibilities. As emergency situations tend to stabilize, the Emergency Support Director may relieve the Emergency Director of more and more accident management responsibilities. This will provide a controlled means of shifting to a recovery organization should that type of organizational arrangement be deemed necessary.

Licensee Ex. 30, at 5-16 to 5-17. Once the emergency support director arrives at the EOF, he assumes the responsibility for making protective action recommendations to the Commonwealth's Bureau of Radiation Protection (BRP). Tr. 14, 779 (Rogan); 14, 781 (Giangi).

The Licensee correctly observes that the NRC emergency planning rule itself does not require a facility called an EOF or a position entitled an Emergency Support Director. This analysis, however, exalts form over substance. As demonstrated below, the regulations clearly envision that the functions served by both the EOF and the Emergency Support Director are required to be in place during an emergency. This interpretation is supported by the NRC Staff's applicable regulatory guidance.

First, planning standard 8 of the regulation reads: "Adequate emergency facilities and equipment to support the emergency response are provided and maintained." 10 C.F.R. §50.47(b)(8). As interpreted by NUREG-0654, there are two pertinent EOF requirements:

2. Each licensee shall establish an Emergency Operations Facility from which evaluation and coordination of all licensee activities related to an emergency is to be carried out and from which the licensee shall provide information to Federal, State and local authorities responding to radiological emergencies in accordance with NUREG-0696; Revision 1.

* * *

4. Each organization shall provide for timely activation and staffing of the facilities and centers described in the plan.

Staff Ex. 7, at 52 (emphasis added). NUREG-0696, Revision 1, states, in pertinent part:

The EOF shall be staffed to provide the overall management of licensee resources and the continuous evaluation and coordination of licensee activities during and after an accident. Upon EOF activation, designated personnel shall report directly to the EOF to achieve full functional operation within one hour. A senior management person designated by the licensee shall be in charge of all licensee activities in the EOF. The EOF staff will include personnel to manage the licensee onsite and offsite radiological monitoring, to perform radiological evaluations, and to interface with offsite officials. The EOF staff assignments shall be part of the licensee's emergency plan. The specific number and type of personnel assigned to the EOF may vary according to the emergency class. The staffing for each emergency class shall be fully detailed in the licensee's emergency plan. Operating procedures and staff training in the use of data systems and instrumentation shall contain guidance on the limitations of instrumentation including whether the information can be relied upon following serious accidents.

Staff Ex. 8, at 19 (emphasis added).

Second, planning standard 2 states:

On-shift facility Licensee responsibilities for emergency response are unambiguously defined, adequate staffing to provide initial facility accident response in key functional areas is maintained at all times, timely augmentation of response capabilities is available, and the interfaces among various onsite response activities and offsite support and response activities are specified.

10 C.F.R. §50.47(b)(2) (emphasis added). Compliance with the timeliness elements of this standard are defined by Table B-1 of NUREG-0654, which requires a senior manager to serve as EOF Director within 60 minutes.

Staff Ex. 7, at 37.

Third, Appendix E to 10 C.F.R. Part 50 requires that:

"Adequate provisions shall be made and described for emergency facilities and equipment, including ... 8. A licensee onsite technical support center and a licensee near-site emergency operations facility from which effective direction can be given and effective control can be exercised during an emergency." (emphasis added).

It is difficult to interpret "during an emergency" as precluding the first four hours of an emergency. Licensee attempts to avoid this result by arguing that "emergency", according to the NRC Staff, does not include the two lowest classes of emergency (unusual event and alert), nor does it include the first hour of a site emergency. Licensee Brief at 46-47 n.23. From a functional perspective, there is a tremendous difference between the lowest two classes of emergency and a site emergency. No actual recommended protective actions are envisioned during the unusual event or alert stages. Thus, the interface between onsite and offsite organizations becomes most critical (from the standpoint of EOF staffing) during a site emergency. Compare Staff Ex. 7 at 1-4, 1-6 with id. at 1-12, 1-16. The one hour activation time recognizes that it is impossible to achieve immediate activation of the EOF on declaration of site emergency.

Contrary to the implications in Licensee's brief, the need to staff the EOF fully is supported by sound evidence in addition to generic NRC regulatory guidance. The NRC Staff testified from the outset that Licensee must staff the Emergency Operations Facility (EOF) with a senior manager acting as EOF Director within one hour of declaration of an emergency. Although many of the discrete functions performed by the Emergency Support Director (Licensee's EOF director) can be performed by

other personnel on Licensee's emergency staff, the NRC Staff's position is based on the need to have "a senior manager who can speak with authority to other emergency organizations on radiological or operational matters ..." Chesnut, ff. Tr. 15, 007, at 23-24. Mr. Chesnut testified with knowledge of all applicable site-specific emergency plans. The NRC Staff maintained this position with documentary and testimonial evidence throughout the proceeding. See, e.g., Tr. 22, 971 (Chesnut); Staff Ex. 27, at II-13 to II-14. (Emergency Preparedness Evaluation for TMI-1, NUREG-0746, Supp. 1).

Moreover, the NRC Staff's position was supported by reliable and probative evidence presented by the Commonwealth. Mr. William Dornsife, Supervising Nuclear Engineer for the Pennsylvania Department of Environmental Resources' Bureau of Radiation Protection, testified as to the need to transfer the Emergency Support Director functions to the EOF as soon as possible following declaration of a site emergency. Tr. 23, 012-16 (Dornsife). This testimony is explained more fully below. Licensee's brief focuses on the Licensee/state interface as the primary reason for providing an Emergency Support Director within one hour of declaration of a site emergency. In light of this realization, it is difficult to understand how Licensee's brief could have ignored the Commonwealth's expert testimony on this point. Notably, Mr. Dornsife is the state official responsible for reporting to the EOF once the EOF is fully manned. Tr. 23, 012; 23, 014 (Dornsife).

Licensee, of course, presented witnesses who testified that full staffing of the EOF within one hour of declaration of a site emergency is not necessary to comply with the emergency planning regulation. The question before this Appeal Board is whether Licensee met its burden of

proof on this issue, in light of the evidence to the contrary presented by the NRC Staff and the Commonwealth, in addition to the NRC Staff's generic regulatory guidance documents. The Commonwealth submits that this burden was not met, and that the Licensing Board's ruling should be upheld.

ARGUMENT

- I. THE LICENSING BOARD RULING IS SUPPORTED BY RELIABLE AND PROBATIVE EVIDENCE, INCLUDING BOTH GENERIC GUIDANCE DOCUMENTS AND EXPERT TESTIMONY ON LICENSEE'S EMERGENCY RESPONSE ORGANIZATION.

Licensee urges the Appeal Board to reverse the judgment of the Licensing Board on the ground that "undue reliance" was placed on generic guidance documents that do not consider Licensee's site-specific emergency response organization. First, Licensee ignores the presumptive validity given to NRC regulatory guidance, and particularly to NUREG-0654, as discussed below. Second, the ASLB decision was based on reliable and probative record evidence in addition to the NRC guidance documents. See, e.g., Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1) (Partial Initial Decision on Plant Design and Procedures, Plant Separation, and Emergency Planning Issues), LBP-81-____, 14 N.R.C. ____ (December 14, 1981), ¶¶1386-88 [hereinafter cited as P.I.D. ¶____]. Licensee appears to ignore this evidence. In addition, it must be noted that the Appeal Board is not limited to consideration of the reasons articulated by the ASLB. Successful parties before the ASLB may argue that the decision be sustained for any reason which finds support in the record. Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), Docket No. STN. 50-546, 547, ALAB 549 (February 16, 1978), 2 NUC. REG. REP. (CCH) ¶30,272.13, citing Jaffke v. Dunham, 352 U.S. 280 (1957), and California Bankers Assn. v. Shultz, 416 U.S. 21 (1974).

If the evidence is viewed in Licensee's perspective, the Board ignored Licensee's site-specific evidence and based its ruling solely on generic regulatory guidance. When viewed in the proper perspective, i.e. considering the direct site-specific evidence presented by all of

the parties in addition to the regulatory guidance, the Board weighed the evidence on both sides of the issue and determined that the evidence and arguments presented by the NRC Staff and the Commonwealth were more persuasive than the evidence and arguments presented by the Licensee. PID ¶¶1367, 1392. This was a perfectly appropriate exercise of judgment which should be upheld by the Appeal Board. While the Appeal Board may substitute its judgment for that of an ASLB, it should not do so lightly. Duke Power Co. (Catawba Nuclear Stations, Units 1 & 2), Docket Nos. 50-413, 414, ALAB-355 (October 29, 1976), 2 NUC. REG. REP. (CCH) ¶30,116.03. Duke Power Co. (Perkins Nuclear Station, Units 1, 2 & 3), Docket Nos. STN. 50,488, 489, 490, ALAB-302 (December 10, 1975), 2 NUC. REG. REP. ¶30,031.04. In short, presumptive validity should be given to the ASLB's findings and conclusions, Consumers Power Co. (Midland Plant, Units 1 & 2), Docket No. 50-329A, 330A, ALAB-452 (December 30, 1977), 2 NUC. REG. REP. (CCH) ¶30,263.15, as long as the ASLB considered the appropriate evidence and factors, and made no errors of law. Licensee attempts to evade this result by accusing the Board of ignoring Licensee's evidence, while Licensee itself ignores the evidence presented by the NRC Staff and the Commonwealth.

A. The Licensing Board Did Not Place Undue Reliance On Generic Regulatory Guidance.

Licensee acknowledges that it clearly bears the burden of proving compliance with the applicable emergency planning regulations. Licensee Brief at 51, citing PID ¶1391. What Licensee fails to recognize is the presumptive validity of NRC regulatory guidance as an appropriate means of complying with the emergency planning rule. In this context, the Licensing Board was correct in using first the regulation, and then the

regulatory guidance, as the starting point for its analysis. See PID ¶¶1377-80. Following its discussion of these sources of authority, the ASLB states:

1380. We bear in mind in our subsequent findings these roles of the EOF and of the Emergency Support Director.

1381. We next present Licensee's case, as set forth in its proposed findings.

* * * * *

It is clear from this language that the Board used the regulatory guidance only as a starting point. It then provided Licensee with the opportunity to rebut the presumptive validity of the regulatory guidance.

The nature and legal effect of regulatory guidance in NRC proceedings was discussed in the Commonwealth's Brief on Exceptions to the ASLB Partial Initial Decision on Plant Design and Emergency Planning, at 8-10. Briefly, regulatory guides represent one possible means of meeting the planning standards in the emergency planning rule. While alternative means of compliance are permissible, such compliance must be demonstrated on the record on the basis of reliable and probative evidence. Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-444, 6 NRC 760, 772 (1977). In conducting this analysis, the accepted standard is that regulatory guides are entitled to "considerable prima facie weight." Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), CLI-74-40, 8 AEC 809, 811 (1974). This concept was recently applied by the Commission with respect to NUREG-0654. In re Final Rule on Emergency Planning, CLI-80-40 (December 5, 1980), 2 NUC. REG. REP. (CCH) ¶130,558 (Commission stated its intent to be guided by FEMA's judgment in NUREG-0654 as to how to comply with the emergency planning rule). Notably, NUREG-0654 is unique among regulatory guidance in that it is footnoted

in the regulation. 10 C.F.R. §50.47(b)(1) n.l.

The Licensing Board gave the relevant regulatory guidance appropriate, but not undue, weight in resolving this issue. The very language quoted by the Licensee (Licensee Brief at 52) is indicative of this fact: "In light of the Staff and Commonwealth having come forward with this evidence, including [but not limited to] the guidance of NUREG-0654 ..." PID ¶1392 (emphasis added). The only remaining question, therefore, is whether the Licensing Board erred in its judgment that Licensee failed to meet its burden of proving that its alternative method of compliance with the emergency planning rule is adequate, in light of the evidence to the contrary presented by the NRC Staff and the Commonwealth.

B. The Weight Of The Evidence Supports The Licensing Board's Ruling.

The Board's ruling is supported by direct testimony from NRC Staff and Commonwealth witnesses, all of whom were familiar with the applicable site-specific emergency plans.

Mr. William Dornsife testified on this issue on behalf of the Commonwealth of Pennsylvania.¹ Mr. Dornsife is responsible for communicating with Licensee to determine the operational status of the facility during an emergency, in order to provide insight into protective action recommendations based on operational factors. The Commonwealth has determined, through drills at TMI and at other plants, as well as during the TMI-2 accident, that operational information is a critical input into the protective action recommendation. In order to perform this function, Mr. Dornsife will report initially to the state Bureau of

1. Mr. Dornsife is the supervising nuclear engineer for the Commonwealth of Pennsylvania. Biographic Information of William P. Dornsife, P.E., ff. Tr. 23,011.

Radiation Protection (BRP) headquarters in Harrisburg, and to the EOF as soon as the EOF is manned. Tr. 23,012; 23,014 (Dornsife).

Originally, it was envisioned that Mr. Dornsife could satisfactorily obtain the necessary operational information by remaining at BRP headquarters. During drills conducted in preparation for the June 2, 1981 comprehensive emergency planning exercise at TMI-1, however, the Commonwealth determined that it was difficult to obtain the necessary operational information through dedicated telephone lines. Significantly, based on this deficiency in information flow, it was Licensee who recommended that Mr. Dornsife be dispatched to the EOF as soon as possible. Tr. 23, 013-14 (Dornsife). The NRC Staff witness also agreed with this conclusion due to his observation of the June 2 exercise. Tr. 23, 062 (Chesnut).² Another alternative would have been to provide for direct telephone conversations between the BRP nuclear engineer and the emergency director in the control room. See Licensee Brief at 60 n.28. Licensee chose the EOF alternative, however, since the emergency director's workload might prevent immediate communications with the BRP representative. Tr. 23, 035 (Dornsife). The Commonwealth continues to believe that adequate operational information cannot be obtained through the use of dedicated telephone lines.

-
2. The Staff's views regarding interface with offsite agencies was based, in part, on the assumption that the state nuclear engineer would report to the EOF. Tr. 15, 523 (Chesnut). Mr. Chesnut stated:

... one function the staff considers important is that of interface in coordination with other offsite agencies as well, and some coordination of the overall emergency offsite response.

Several other agencies will be responding to an emergency at Three Mile Island Unit 1, and they in many cases will report to the emergency operations facility. Staff believes that this function should be available within one hour of the declaration of an emergency.

Tr. 15, 013 (Chesnut). See also Tr. 15, 036 (Grimes).

Mr. Dornsife explained further that, during drills conducted prior to the June 2 exercise, the status boards and other technical and radiological information available at the EOF was behind real time, and was not necessarily consistent with information actually used to formulate protective action recommendations. Critical real time information was obtained through direct communications between the emergency director and the emergency support director. Mr. Dornsife expressed doubts as to whether such information would necessarily be transmitted to the EOF without the presence of the Emergency Support Director. Tr. 23, 014-15 (Dornsife). Moreover, Mr. Dornsife opined that face-to-face contact between the state and the emergency support director was "very important not only for us directly understanding what the protective action considerations were, but for us being able to provide our input into that protective action recommendation prior to it being made by the Licensee." Id. at 23, 016; 23, 045-35.

Mr. Dornsife's view that the attention devoted to the EOF staff will diminish in the absence of the Emergency Support Director also appears to be supported by Licensee's emergency plan:

2. The Emergency Staff Support located at the EOF will assist the Emergency Support Director by interfacing with the offsite emergency support organization leaders and providing status reports to the Emergency Support Director. In the absence of the Emergency Support Director the Emergency Staff Support will not assume emergency responsibilities rather it will be the most senior TMI-1 operations person (i.e.: VP-TMI-1).

Licensee Ex. 30, at 5-17 (emphasis added).

The Commonwealth's view is also supported by the manner in which the June 2, 1981 comprehensive exercise was conducted. When Mr. Dornsife

arrived at Licensee's EOF, approximately one half-hour after declaration of site emergency, the EOF was fully manned, including the emergency support director. Tr. 23, 015 (Dornsife). Thus, the exercise can be used only as evidence that Licensee's emergency response organization can function efficiently, including adequate interface with BRP, with the EOF manned and the emergency support director present early into the accident sequence. By contrast, Licensee's witness, Mr. Rogan, was not aware of any drills conducted at TMI-1 that did not involve activation of the EOF when the exercise was carried through to making protective action recommendations to the state.³ Thus, there is no demonstrated capability to interface with the state in terms of transmitting protective action recommendations absent full activation of the EOF. Clearly, Licensee has failed to meet its burden of proof on this critical point.

Mr. Dornsife also demonstrated, by using an example from the June 2 exercise, that some types of operational status information are not available through the normal display panels available at the EOF. Tr. 23, 022-24 (Dornsife). Indeed, numerical parameters alone could not possibly convey a complete and accurate depiction of the operational status of a facility as complex as a commercial nuclear power plant. Again, Mr. Dornsife expressed doubt as to whether such information would be conveyed to the EOF without the presence of the emergency support director. Id. at 23, 023-25. The burden of proof is on Licensee to demonstrate the workability of its emergency plan. Since Licensee conducted the June 2 drill with the EOF manned as envisioned by the NRC Staff and the Commonwealth, the Licensee demonstrated the workability of the NRC Staff's and the Commonwealth's concept of operations, rather than their own.

3. Mr. Rogan is the Manager-Emergency Preparedness for GPU Nuclear. Rogan, et al., ff. Tr. 13,756, at 1.

The Commonwealth's position, moreover, transcends the need to obtain raw operational data. The Commonwealth's preference is to communicate directly with the official actually responsible for making protective action recommendations. Tr. 23, 053-56. As explained by counsel for the Commonwealth, the Commonwealth views the interface between Licensee and the state for the purpose of conveying protective action recommendations as an overriding consideration in emergency planning. Tr. 22, 982-83; 23, 063 (R. Adler). The focus of the emergency planning rule is "reasonable assurance that appropriate protective measures can and will be taken ..." 10 C.F.R. §50.54(S)(2). The transmission of protection action recommendations from Licensee to the state is the initial, and hence a critical step in the process of taking appropriate protective measures to safeguard the health and safety of the public in the event of a radiological emergency. The importance of this initial interface, therefore, cannot be understated.

Licensee, apparently, does not disagree completely with the Commonwealth's reasoning. On cross-examination, Mr. Rogan agreed with Mr. Dornsife that the adequacy of communication of protective action recommendations is a valid concern. Mr. Rogan stated that:

"The mechanical process of communicating is an essential element of making the recommendation to the state. In terms of communicating the basis for that recommendation certainly the more information that was made available to the state the more of an appreciation they would have of the licensee's reasons for making the recommendations and, therefore, I presume, would be in a better posture to determine whether to accept or reject that recommendation.

Tr. 23, 086-87 (Rogan).

In fact, earlier in the hearing, Mr. Rogan recognized the benefit

of face-to-face contact between the BRP representative and the emergency support director:

upon activation of the emergency offsite facility, a representative of the BRP is stationed in that facility and will be aware both of the identification of the emergency support director and will have access to the same information that the emergency support director has, so that in effect that representative could serve as the verifying process within his own agency should there be any question as to whether or not the person who picked up the phone as designated emergency support director and made a protective action recommendation was doing so properly.

Tr. 14, 783 (Rogan).

Mr. Rogan also agreed that deficiencies in the use of dedicated phone lines, particularly in terms of receiving operational information, hampered communications between Licensee and the Commonwealth. Mr. Rogan apparently feels that such communication problems can be resolved through amended procedures. Tr. 23, 083-89 (Rogan). Licensee has in no way demonstrated that this problem has been corrected, however, and therefore has not met its burden of proof.

As noted repeatedly above, the Commonwealth's position was supported by NRC Staff testimony. The NRC Staff submitted documentary evidence on this point as well. In Supplement 1 to the NRC Staff's Emergency Preparedness Evaluation for TMI-1 (NUREG-0746), the NRC Staff indicated that full staffing of the EOF within about one hour of an emergency declaration was necessary for compliance with both NUREG-0654 and NUREG-0696. This document further indicated that "staffing falling below the minimum staffing guidelines of Table B-1 to NUREG-0654 should, by September 1, 1981, be capable of being augmented within 30 minutes and that deficiencies should be fully removed by July 1, 1982." Staff Ex. 27, at

II-13 to II-14. The NRC Staff's view is essentially that there is a:

need to have a separate individual responsible for making protective action recommendations and performing some of those nonplant related functions, and that he should be removed from the control room to eliminate some of the confusion that exists ...

Tr. 22, 971 (Chesnut). Thus, the NRC Staff suggests a separation of functions between operation tasks to be performed in the control room and non-operational tasks, such as protective action recommendations.

Licensee accuses the Board of misunderstanding or misrepresenting Licensee's position and testimony on this issue. Even as presented in Licensee's brief, however, Licensee's arguments fall far short of rebutting the testimony presented by the NRC Staff and the Commonwealth and the applicable regulatory guidance.

Licensee argues first that it balanced the need to minimize the number of people and functions performed within the control room with the need to station the person making the protective action recommendation inside the control room so as to improve the accuracy of information on which the recommendation is based. Licensee Brief at 54-56. Licensee does not explain how the information flow between the control room and the EOF is improved between one and four hours after declaration of a site emergency. If the information available in the EOF is inadequate for purposes of formulating protective action recommendations at hour one, it will be similarly inadequate at hour four. Second, and more importantly, Licensee's argument fails even to consider, much less overcome, the basic thrust of the Commonwealth's position. Protective action recommendations are made by the Licensee (as well as the NRC). Protective action decisions are made entirely by the state (ultimately by the Governor). It is critical that such decisions be based on

timely, accurate, and complete information, including an understanding of the subtleties of the overall plant status. The Commonwealth learned through direct experience that this information cannot be obtained unless the protective action recommendations are formulated at the place of interface with the state liaison official, so that the state will understand not only the recommendation, but also the reasons for and the information underlying the recommendation. Incredibly, Licensee's analysis focuses entirely on Licensee's functions, and ignores the interface with the state offsite response organization and the manner in which the information conveyed from the Licensee to the state is used.⁴

Next, Licensee launches into a long, self-serving but irrelevant, discussion of the adequacy of staffing of the control room during an emergency. The Commonwealth does not question the adequacy of the current control room organization during an emergency to perform the functions that should be handled in the control room. This discussion simply misses the point. The question is whether protective action recommendations should be (rather than "can be") made in the control room. Licensee fails to address the Commonwealth's concern in this regard.

Licensee's real concern, as represented by Licensee's counsel, is that the separation of functions between the EOF and the control room may result in a less senior corporate official in the EOF than in the control room. Tr. 22, 972-73 (Zahler). See also, Tr. 23, 074-75 (Rogan);

4. Licensee lamely argues in a footnote that adequate coordination and control can be achieved by sending six individual representatives from six segments of Licensee's organization to the EOF. Licensee Brief at 56 n.26. Surely this control by Committee is not what the Commission had in mind in requiring a "near-site emergency operations facility from which effective direction and effective control can be exercised during an emergency." 10 C.F.R., Part 50, App. E, §IV.E.8.

Licensee's Brief at 62. Licensee's concern is contradicted, however, by Licensee's own testimony throughout the record that a multitude of TMI-1 officials are trained and qualified to make protective action recommendations, down to the level of shift foreman. E.g., Rogan, et al., ff. Tr. 13, 756, at 26-27; Licensee Ex. 30, at 5-6 to 5-7.

Licensee's first two choices for emergency support director are Mr. Arnold and Mr. Clark.⁵ Both of these officials are located at GPU's corporate offices in Parsippany, New Jersey, and therefore may not be available during the early phases of an emergency. Licensee acknowledges, however, that there are other officials who would be well-qualified to serve as emergency support director until the arrival of Mr. Arnold or Mr. Clark. Tr. 23, 039-40 (Rogan). The Commonwealth would not object to such substitution. Tr. 23, 016 (Dornsife). Nor would the NRC Staff, Tr. 22, 973-74 (Chesnut).

Previously, Mr. Rogan had identified four possible candidates for Emergency Support Director. These individuals all will receive the same training in making protective action recommendations as all of the emergency directors. Tr. 14, 784-85 (Rogan). Mr. Chesnut had also testified earlier that the EOF Director function could be filled by any "senior site or corporate manager who could arrive and who had knowledge of the plant's procedures." Tr. 15, 022 (Chesnut). See also, Tr. 15, 024 (Grimes); Tr. 22, 969 (Chesnut); Tr. 22, 974 (Chesnut) (acceptability of Emergency Directors as Emergency Support Directors). It is not clear why the insertion of one of these officials as an interim emergency support director for purposes of making protective action recommendations during a three-hour period early into an accident would be detrimental to public health and safety.

5. Mr. Arnold is the Chief Executive Officer of GPU Nuclear Corporation; Mr. Clark is his deputy. Arnold, ff. Tr. 11, 434, at 7-10, Figure 1.

In sum, Licensee has not met its burden of proof to demonstrate that its proposed alternative method of compliance with the requirements of the emergency planning rule will provide an adequate interface for the formulation and transmittal of protective action recommendations to the state. The workability of Licensee's plan was not proven on the record of this proceeding; nor was it proven in a single drill or exercise. Consequently, the Board's ruling that Licensee failed to meet its burden of proof on this issue should be upheld.

II. THE LICENSING BOARD'S DECISION IS AN APPROPRIATE EXERCISE OF REGULATORY CONTROL OVER LICENSEE'S EMERGENCY RESPONSE ORGANIZATION IN A MATTER WHICH IS CRITICAL TO PUBLIC HEALTH AND SAFETY.

Licensee argues in Part C of (and implies throughout) its brief that the Board's action is an impermissible, unwarranted, and unprecedented intrusion upon Licensee's "internal" management decisions. Underlying this argument is the premise that only Licensee is substantially affected by, and hence has a right to determine the outcome of, the question of where protective action recommendations are made, and by whom. The very fact that the parties litigated this issue so extensively belies this assumption. In fact, the outcome of this question has a potentially significant effect on the approximately 135,000 individuals in the TMI-1 plume exposure pathway emergency planning zone. Labelling the key decisionmaking process to determine the appropriate manner of protecting the general population during a nuclear power plant emergency as an "internal" decision, affecting no one but the Licensee, borders on the absurd.

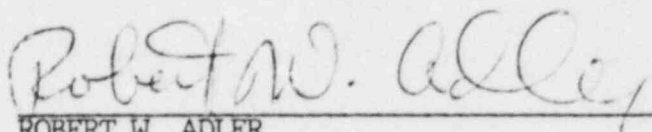
It should be noted that the inadequacy of information flow to offsite response organizations, including BRP, was one of the major lessons learned from the TMI-2 accident. An investigation into information flow during the TMI-2 accident, conducted by the NRC Office of Inspection and Enforcement, concluded that "information was not adequately transmitted to the Nuclear Regulatory Commission or the Bureau of Radiation Protection (BRP) ... The predominant factor was the absence of an effective onsite system to accumulate, evaluate and disseminate information." Staff Ex. 5, at 10; see also id. at 10-11 (Conclusions 1, 2, 4, and 8). In light of these conclusions, the Commonwealth's concerns cannot be taken lightly.

The Commonwealth does not imply that either the NRC or the Commonwealth should intrude in Licensee's internal management decisions lightly. Where the management decision in question, however, bears a direct and substantial relationship to the Commonwealth's ability to provide for the protection of public health and safety in the vicinity of a nuclear power plant, the intrusion is appropriate. Nor does the Commonwealth believe that the intrusion here is particularly onerous. Therefore, the Licensing Board's judgment constituted a necessary and appropriate exercise of the NRC's regulatory authority.

III. CONCLUSION

For the foregoing reasons, Licensee's Exception No. 3 should be denied, and the Licensing Board's decision on this issue should be upheld.

Respectfully submitted,

A handwritten signature in cursive script that reads "Robert W. Adler". The signature is written in dark ink and is positioned above a horizontal line.

ROBERT W. ADLER
Assistant Counsel
Commonwealth of Pennsylvania

May 10, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

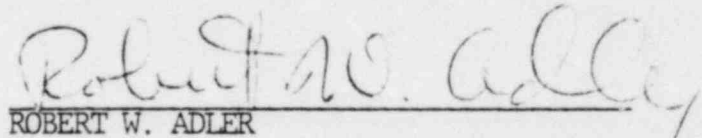
BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of:

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

CERTIFICATE OF SERVICE

This is to certify that the foregoing "Commonwealth of Pennsylvania's Reply to Licensee's Brief in Support of Exceptions to the ASLB Partial Initial Decision on Emergency Planning Issues (Exception No. 3)" was mailed to the persons on the attached service list this 10th day of May, 1982, by deposit in the U.S. mail, first class postage prepaid.


ROBERT W. ADLER
Assistant Counsel
Commonwealth of Pennsylvania

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))	

SERVICE LIST

Docketing and Service Section Office of the Secretary U.S. Nuclear Regulatory Commission Washington, D.C. 20555	Mr. Steven C. Sholly Union of Concerned Scientists 1346 Connecticut Avenue, N.W. Dupont Circle Building, Suite 1101 Washington, D.C. 20036
Ivan W. Smith, Esquire, Chairman Atomic Safety and Licensing Board Panel U.S. Nuclear Regulatory Commission Washington, D.C. 20555	Ms. Louise Bradford TMI Alert 315 Peffer Street Harrisburg, Pennsylvania 17102
Dr. Walter H. Jordan Atomic Safety and Licensing Board Panel 881 West Outer Drive Oak Ridge, Tennessee 37830	John A. Levin, Esquire Assistant Counsel Pennsylvania Public Utility Commission P.O. Box 3265 Harrisburg, Pennsylvania 17120
Dr. Linda W. Little Atomic Safety and Licensing Board Panel 5000 Hermitage Drive Raleigh, North Carolina 27612	Jordan D. Cunningham, Esquire Attorney for Newberry Township T.M.I. Steering Committee 2320 North Second Street Harrisburg, Pennsylvania 17110
George F. Trowbridge, Esquire Shaw, Pittman, Potts & Trowbridge 1800 M Street, N.W. Washington, D.C. 20006	Marvin I. Lewis 6504 Bradford Terrace Philadelphia, Pennsylvania 19149
James A. Tourtellotte, Esquire Office of the Executive Legal Director U.S. Nuclear Regulatory Commission Washington, D.C. 20555	Thomas J. Germaine, Esquire Deputy Attorney General, Division of Law Room 316, 1100 Raymond Boulevard Newark, New Jersey 07102
Ellyn R. Weiss Harmon & Weiss 1725 Eye Street, N.W., Suite 506 Washington, D.C. 20006	Judge Gary J. Edles, Chairman Atomic Safety & Licensing Appeal Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555
Karin P. Sheldon, Esquire (PANE) Harmon & Weiss 1725 Eye Street, N.W., Suite 506 Washington, D.C. 20006	Judge John H. Buck Atomic Safety & Licensing Appeal Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555
Ms. Marjorie M. Aamodt R.D. #5 Coatesville, Pennsylvania 19320	Judge Christine H. Kohl Atomic Safety & Licensing Appeal Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555
Ms. Gail Bradford Anti-Nuclear Group Representing York 245 West Philadelphia Street York, Pennsylvania 17404	Judge Reginald L. Gotchy Atomic Safety and Licensing Appeal Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555
Walter W. Cohen, Esquire Consumer Advocate, Dept. of Justice Strawberry Square, 14th Floor Harrisburg, Pennsylvania 17127	
Dr. Chauncey Kepford & Judith Johnsrud Environmental Coalition on Nuclear Power 433 Orlando Avenue State College, Pennsylvania 16801	