July 26, 1979

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

LICENSEES' RESPONSE TO NRC STAFF MEMO AND REPLY OF JULY 25, 1979

Were it not for the importance to the National and public interest of the question presented, we would not burden the Commission with another submittal relating to the procedures to be employed in connection with the resolution of the issues relating to restart of TMI-1.

But this is not a $64 or $64,000 question. It is a question involving:

(a) the National interest in reducing fuel imports by as much as 14 million barrels of oil;

(b) the National interest in reducing foreign balance of trade deficits by as much as $350 million;

(c) the public interest of the four million residents in half of the land areas of New Jersey and Pennsylvania in not being

subjected to unnecessary costs of electric service by as much as $350 million.

Clearly, stakes of this magnitude justify a further effort to determine whether the joint objectives of the Commission and the Licensees can be achieved, but within a time frame that does not impair these National and public interests.

Let us first examine the areas in which there is no disagreement.

1. The Commission cannot permit restart of TMI-1 unless and until it is satisfied that the public health and safety no longer require suspension; indeed, the Licensees do not wish the Commission to lift the suspension unless and until it is so satisfied;

2. The Commission determined, in its July 2, 1979, order, that it wished to have public hearings before reaching a determination as to whether it is so satisfied; the Licensees do not object to such a public hearing and, under the circumstances, believe that such a public hearing is desirable;

3. The proceeding relating to restart is not governed by Section 189a of the Atomic Energy Act or the Administrative Procedure Act. The July 25, 1979, reply of the NRC staff points out (at page 3) that the proceeding to be held prior to restart does not necessarily entail a formal hearing, even when one has been requested.

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4. Assuming arguendo that the Staff is correct in its view that Section 189a would require adjudicatory hearings in compliance with Section 189a and the Administrative Procedure Act in a proceeding for the suspension of the license if requested by someone other than the licensee*, the Staff explicitly recognizes that the Commission could elect to separate the proceedings to be held prior to reactor start-up from the hearing on the suspension of the license.

The reasons cited by the Staff (at page 3 of its reply) for not separating the two proceedings are stated in terms of possible confusion, by a series of rhetorical questions which we are repeating, together with our responses.

A. "Would members of the public clearly understand the nature of the two proceedings?"

We have little doubt that it is feasible to make clear the different nature of the two proceedings. The Commission could make this clear in its Order (or Orders) setting the hearings for the two proceedings, and the different nature of the two proceedings could be set forth at the outset of each of the two proceedings, in any notices relating thereto and in press releases announcing the respective proceedings.

*For the reasons stated in our Answer, filed July 20, 1979, we do not agree with this view of the Staff but we are accepting it for the purpose of this submission.

We are willing to assume that it would require some effort on the part of the Staff and the Licensees to communicate to the public the different nature of the two proceedings. However, we respectfully submit that the enormous stakes involved warrant whatever effort may be required.

B. "Would the record of the 'informal'* hearing held prior to start-up be included in the record of the formal hearing on the license suspension?"

It would be the Licensees' view that in the interest of avoiding duplication of effort the record of the hearing prior to start-up would be included in the record of hearing of the suspension proceeding unless a party to the latter proceeding objected for reasons which the licensing board or the Commission determined were valid. If the record of the hearing prior to start-up were excluded from the record of the hearing on suspension, no great harm would be done. For their part, the Licensees would not object either to inclusion or exclusion.

*The Licensees do not regard the hearing to be held prior to start-up as "informal." Instead, they would regard such hearing as "formal" but as one not subject to the constraints which the NRC Staff urge are indispensable in the suspension. But this terminology is not controlling.

C. "Could the Commission decide whether the reactor could restart without appearing to prejudge similar or related safety issues in the formal proceeding?"

The Licensees believe that there is no reason why the Commission could not make entirely clear that the National and public interest requires a preliminary determination on restart at the earliest time consistent with an opportunity for public participation, and that any determination made in the restart proceeding would be subject to reversal or modification in the suspension proceeding. The Commission could also make clear that its decision in the suspension hearing would be based solely on the record of that hearing.

We respectfully suggest that the Commission should be able to establish much more readily in the TMI-1 restart proceeding where a hearing on restart is being held that it was not prejudging the outcome of the licensing proceeding than in a case such as Rancho Seco or Davis-Besse where no hearing prior to restart was held.

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D. "Is it reasonable to expect citizens, public interest groups and others to participate effectively in two proceedings on the same reactor at essentially the same time?"

We do not believe that it would be necessary to conduct the two proceedings at essentially the same time if this would be a barrier to effective participation by citizens, public interest groups and others. Indeed, the separation of the two proceedings might well make for more effective participation, since some public participants may well be interested in only one of the two proceedings.

We suggest that it is also appropriate to inquire whether the way in which this question is posed does not imply that the National and public interests in reducing fuel oil imports, foreign exchange expenditures and costs of electricity to the four million residents of the Licensees' service area are of no significance as against meeting the procedural convenience or preference of potential participants in the hearings.

In short, we believe that the rhetorical questions about possible confusion have a straw-man or red-hearring

quality. If the Commission is concerned - as we Believe it is - about the adverse impact on the National and public interest of a long delay in resolving the issues relating to restart, the Staff's suggestion that the two proceedings could be separated and thereby meet the Staff's views concerning the legal requirements would provide an appropriate solution.

In its Conclusion, the Staff has - perhaps unwittingly - misstated the Licensees' position. Contrary to the Staff's assertion, the Licensees are not asking the Commission to treat TMI-1 like other B&W reactors, permitting resumption of operation upon the Director of NRR's finding that the required corrective actions had been taken. The Licensees have accepted and endorsed the Commission's decision to have a hearing precede restart.

What is here involved is whether the Commission should mold its procedures to be employed in connection with resolution of the issues relating to restart of TMI-1 so as to permit an early resolution of those issues. The Staff's suggestion that the Commission can elect to separate the proceeding relating to restart from the proceeding relating to suspension provides a means of doing so. We believe that the National and public interest strongly support the view that the Commission should adopt that suggestion.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By George F. Trowbridge

George F. Trowbridge

July 26, 1979

July 27, 1979

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CERTIFICATE OF SERVICE

This is to certify that a copy of "Licensees' Response to NRC Staff Memo and Reply of July 25, 1979," dated July 26, 1979, has been served this 27th day of July, 1979, upon Mr. Howard Shapar, Executive Legal Director, Nuclear Regulatory Commission, by United States mail, first class, postage prepaid, and that copies of said Response have on the same day been delivered by hand to the following:

Chairman Joseph M. Hendrie
Commissioner Richard Kennedy
Commissioner Peter Bradford
Commissioner Victor Gilinsky
Commissioner John Ahearne
Samuel J. Chilk, Secretary
Leonard Bickwit, General Counsel
Docketing & Service Section (21)

SHAW, PITTMAN, POTTS & TROWBRIDGE

By George F. Trowbridge
George F. Trowbridge

July 27, 1979

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