

UNITED STATES OF AMERICA  
 NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION



\_\_\_\_\_)  
 In the Matter of )  
 )  
 METROPOLITAN EDISON )  
 COMPANY, et al., )  
 )  
 (Three Mile Island )  
 Nuclear Station, Unit )  
 No. 1) )  
 \_\_\_\_\_)

Docket No. 50-289  
 (Restart)

PEOPLE AGAINST NUCLEAR ENERGY REQUEST  
 FOR COMMISSION DECISION ON PSYCHOLOGICAL  
 DISTRESS ISSUES

I. Introduction

Nearly one year ago, on August 9, 1979, the Commission issued the Order and Notice of Hearing that governs the Three Mile Island Unit 1 Restart proceedings. At that time, the Commission stated that it had not yet been able to determine whether issues such as the psychological distress arising from the TMI Unit 2 accident could be considered in the Restart case, and it directed the Licensing Board to certify the matter to the Commission before the Board's prehearing conference order.

Accordingly, the Board requested briefs from all interested parties on the question of the admissibility of psychological distress contentions. People Against Nuclear Energy (PANE) filed its main brief on October 23, 1979, and its reply brief

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on November 7, 1979. Other parties, including the Licensee and the NRC Staff, filed their briefs during the same period.

On February 22, 1980, almost six months ago, the Licensing Board filed its Certification to the Commission on Psychological Distress Issues. There has, as yet, been no response from the Commission, and no indication that the Commission is considering the issue.

## II. Request For Commission Decision

The lack of a decision by the Commission concerning whether psychological distress is cognizable in this proceeding has left PANE in an uncertain limbo that becomes increasingly difficult to withstand with each passing day. A response from the Commission is essential both to relieve a growing feeling of isolation and sense of Commission indifference to the public's concerns and to their psychological health and to allow PANE and the other parties to participate in and prepare for this litigation in a practical manner.

In recommending that the Commission should undertake some degree of consideration of psychological distress, the Board stated in its Certification that,

[T]o conclude summarily that these fears are baseless and therefore beyond NRC jurisdiction, as urged by the licensee, may produce additional stress in that the public may perceive an attitude that their fears are of no consequence, and that, therefore, they have no control over or voice in the events affecting them.

Board Certification at 21-22. From discussions with members of PANE, it appears that the additional stress predicted by

Board is now developing as a result of the fact that the Commission has yet to address the admissability of psychological distress contentions in this proceeding. As litigation on other contentions proceeds apace, and political pressure to reopen TMI Unit 1 appears to be growing, PANE's members feel forgotten and have begun to express substantial anger at the Commission and fear that they are being ignored. For these reasons alone, the Commission should attempt to reach a decision as soon as possible.

In addition to engendering feelings of anger, insignificance, and helplessness on the part of PANE's members, the lack of a Commission decision severely hampers and confuses PANE's efforts to prepare for this litigation. An organization of ordinary citizens of the Middletown area, PANE has minimal resources with which to undertake this litigation. It has been able to obtain some limited financial assistance, but the Commission itself rejected PANE's request that it provide the funding necessary to litigate these issues effectively. As a result, PANE must shepherd every penny and must allow no unnecessary expenditures.

Despite its lack of resources and despite the absence of a Commission ruling, PANE has proceeded with the development of its case. It has contacted and consulted at length with recognized experts. It has gathered together and reviewed all of the relevant studies, and is now on the verge of undertaking in-depth psychological and psychiatric testing. To date this effort has been successful. It has so great that it could

not be sustained in view of the likelihood that the Commission would reach a decision before the major investment was made. However, that groundwork has now been completed, and the extremely expensive psychological and psychiatric interviews are about to begin. Yet there has been no Commission decision.

PANE now finds itself in the difficult situation of being forced to choose between expending its resources for the most expensive and essential aspect of its trial preparation or protecting those resources to allow for an appeal of the Commission's decision, if that is necessary. If PANE prepares its case, it may produce important information, but then be unable to appeal an adverse Commission decision. If PANE holds back so that it can appeal if necessary, it may not have time to prepare adequately in the event of a favorable decision. The situation is intolerable.

On June 30, 1980, PANE sought guidance from the Board concerning its expectations. (Attachment 1) Although sympathetic to PANE's plight, the Board found itself in a similar quandary. In the absence of a Commission decision, it could be of little help in indicating what sort of schedule PANE could reasonably expect. (Attachment 2) A ruling on the psychological distress issues is necessary not only to address PANE's concerns, but to allow the Board to direct this litigation in an orderly and efficient manner.

### III. Comments On The Board's Justification

Without repeating the issues PANE offers several comments on the Board's justification. It does not believe that the Commission

should not have great difficulty in reaching a conclusion in this case. First, the Board correctly noted that this is a case of first impression under the Atomic Energy Act. Board Certification at 5. The health hazard that PANE has alleged is damage to mental health that was originally caused by a radiological accident at TMI Unit 2 and that would be made permanent by the reopening of TMI Unit 1. Although the psychological distress that is present in the TMI area is similar to that caused by other disasters, PANE alleges and expects to prove that it is unique in that it is specifically related to the radiation threats of nuclear power. All parties agree that the Atomic Energy Act extends at least to health effects caused by radiation hazards. This is one such effect.

Second, the Board's discussion of whether the psychological distress alleged here is cognizable under NEPA reveals a primary concern with whether the psychological distress is quantifiable in a way that will allow a cost-benefit balancing in an Environmental Impact Statement. Otherwise, the Board appears to have no doubt that psychological distress must be considered, at least as a "social effect," given that there is a "direct physical impact" from the operation of TMI Unit 1. Board Certification at 7-8.

Although PANE's approach is different from that taken by the Board, the result is similar. PANE submits that psychological distress itself is a direct impact that triggers the operation of NEPA in the same way that any other health impact of reactor operation would. Board Certification at 7-8.

PANE's analysis in its main brief demonstrates, the term "health" is universally acknowledged to encompass mental health, PANE Brief at 3-4, 7-13, Board Certification at A-92, A-96-102, and there is no question that significant health impacts require NEPA analysis.

In any case, the question that the Board has left open is not whether the psychological distress evidence should be heard under NEPA, which it should, but whether the distress is quantifiable in such a way that it can be considered in a cost-benefit analysis. Board Certification at 15-16. PANE's response is twofold. First, the psychological distress is at least as quantifiable as the aesthetic impacts that apparently eliminated the proposed site for the Greene County Nuclear Plant. Board Certification at 10-11. Second, NEPA establishes that it is the NRC's responsibility to

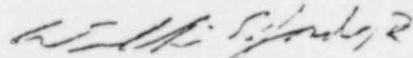
. . . insure that presently unquantifiable environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations.

42 USC 4332(2)(B). PANE has shown that psychological distress must be considered under NEPA in this case and that it is recognized as measurable for legal purposes in many forums. PANE Brief at 7-13, Board Certification at A-96-102. Once that threshold has been reached, it is the Staff's responsibility to quantify the impact so that it can be considered in the Commission's ultimate decision. Where the Board suggested that this is the case but made no recommendation, the Staff submits that the Commission must direct the Staff to undertake the "quantification" effort.

Conclusion

For the reasons stated above, PANE requests that the Commission consider and reach a favorable decision in the near future on the cognizability of psychological distress issues. We suggest that this be the first item of business for the new Chairman, unless the issue can be resolved by a majority of the Commission before he is confirmed.

Respectfully submitted,



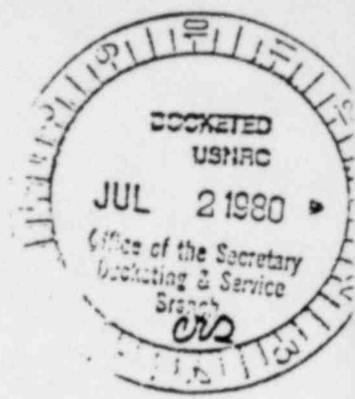
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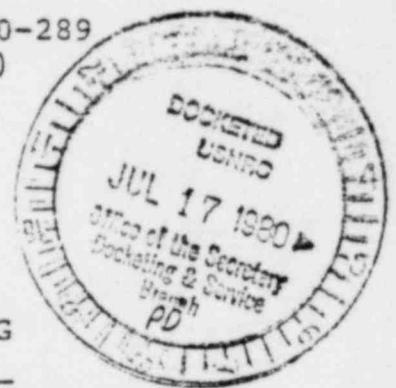
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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



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REQUEST FOR BOARD GUIDANCE ON SCHEDULING  
OF PSYCHOLOGICAL DISTRESS ISSUES

People Against Nuclear Energy (PANE) requests guidance from the Board concerning preparation for and scheduling of consideration of psychological distress issues in this proceeding. As indicated to the Board during the prehearing conference on May 13, 1980, PANE has begun to prepare its case. However, it has been and remains reluctant to commit the full resources that will be necessary until the Commission has ruled on whether and how psychological distress will be considered. With the issuance of a firm schedule through the final prehearing conference, PANE now seeks guidance concerning what the Board expects from PANE and the other parties in terms of preparation in the absence of a Commis-

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prehearing conference, PANE  
and the relevant litera-  
ture assistance from