UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

February 20, 1980

Joseph Marrone, Esquire
American Nuclear Insurers
The Exchange
Suite 245
270 Farmington Avenue
Farmington, CT 06032

IN RESPONSE REFER
TO FOIA-80-51

Dear Mr. Marrone:

This is in response to your letter dated January 24, 1980 in which you requested, pursuant to the Freedom of Information Act, a copy of all documents used to reach the NRC decision that the amount of primary financial protection for the public required for TMI Unit 2 will be $160 million.

The documents listed on Appendix A are enclosed.

Document 1 of Appendix B is being released with two small deletions, a paragraph on page 3 and a sentence on page 5. These deletions are being made pursuant to Exemption (5) of the Freedom of Information Act because they contain frank legal opinions the disclosure of which would inhibit the ability of the General Counsel to provide confidential advice to the Commission prior to a decision. Documents 2 through 5 of Appendix B are memoranda to individual Commissioners from members of their personal staffs which contain predecisional advice and recommendations. These documents are also being withheld pursuant to Exemption (5) of the Freedom of Information Act (5 U.S.C. 552(b)(5)) and 10 CFR 9.5(a)(5).

Pursuant to 10 CFR 9.9 and 9.15 of the Commission's regulations, it has been determined that the information withheld is exempt from production or disclosure, and that its production or disclosure is contrary to the public interest. The person responsible for the denial of document 1, Appendix B, is Mr. Leonard Bickwit, Jr., General Counsel. The person responsible for the denial of documents 2 through 5 of Appendix B is Mr. Samuel J. Chilk, Secretary of the Commission.

This denial may be appealed to the Commission within 30 days from the receipt of this letter. Any such appeal must be in writing, addressed to the Secretary of the Commission, U. S. Nuclear Regulatory Commission, Washington, DC 20555, and should clearly state on the envelope and in the letter that it is an "Appeal from an Initial FOIA Decision."

Sincerely,

J. M. Felton, Director
Division of Rules and Records
Office of Administration

APPENDIX A

1.	SECY 79-617	Financial Protection For Three Mile Island Unit Nos. 1 and 2.
2.	December 3, 1979	Memo to the General Counsel from Commissioner Ahearne re: SECY 79-617.
3.	January 22, 1980	Memo to L. Gossick from S. Chilk re: SECY 79-617.

APPENDIX B

1.	January 15, 1980	Memo to Chairman Ahearne from L. Bickwit, General Counsel.
2.	December 4, 1979	Memo to Commissioner Gilinsky from W. Manning.
3.	December 6, 1979	Memo to Commissioner Bradford from W. Clements.
4.	January 18, 1980	Memo to Commissioner Hendrie from H. Fontecilla
5.	January 18, 1980	Memo to Chairman Ahearne from V. Harding.

November 15, 1979 SECY-79-617

COMMISSIONER ACTION

For: The Commissioners

From: Harold R. Denton, Director
Office of Nuclear Reactor Regulation

Thru: Executive Director for Operations

Subject: FINANCIAL PROTECTION FOR THREE MILE ISLAND UNIT NOS. 1 AND 2

Purpose: To inform the Commission about the need for implementing the increased financial protection* requirements at Three Mile Island and reinstating the primary insurance amounts and to recommend actions to accomplish this.

Category: This paper covers a minor policy question.

Decision Criteria: (1) Necessity of implementing increased financial protection requirements at Three Mile Island.

(2) Necessity of requiring reinstatement of amounts paid out for claims resulting from the Three Mile Island accident.

Issues: (1) Should the Commission require the licensee of the Three Mile Island facility, in the interim period until such time as the NRC might permit Unit 2 to resume operation, to provide increased financial protection of $160 million for Unit 2?

* The subject of this paper is financial protection provided pursuant to the Price-Anderson Act through nuclear insurance. This paper does not address matters of nuclear property insurance that a utility would purchase to compensate for losses to its own (reactor) property. This paper also does not address the separate Commission financial qualifications review which considers whether the licensee can demonstrate that it possesses or has reasonable assurance of obtaining the funds necessary to cover, among other things, the estimated cost of shutting down the facility and maintaining it in a safe condition. While the requirement for financial qualifications is covered by Section 182 of the Atomic Energy Act, that section is not part of the Price-Anderson provisions (Section 170) and neither the financial qualifications review nor the maintenance of property insurance is required by Section 170.

[redacted] Contact:
[redacted] Ira Dinitz
[redacted] 52-8[redacted]

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8011080064

(2) Should the Commission require the licensee to reinstate as primary financial protection the amount paid out for claims and claims expenses resulting from the Three Mile Island accident?

Discussion: Issue 1:

Section 170 of the Atomic Energy Act of 1954, as amended. (the Act) requires reactor licensees to have and maintain financial protection to cover public liability claims resulting from a nuclear incident. Subsection 170b. of the Act requires that for facilities designed for producing substantial amounts of electricity and having a rated capacity of 100 electrical megawatts or more, the amount of financial protection required shall be the maximum amount available from private sources. Primary financial protection may be in the form of private insurance, private contractual indemnities, self-insurance or other proof of financial responsibility, or combination of such measures but is subject to such terms and conditions as the Commission may by rule, regulation, or order, prescribe. Since the inception of the Price-Anderson system, all licensees of reactors with a rated capacity of 100 MWe or more have provided their financial protection through nuclear liability insurance at the maximum amount made available by the two nuclear liability insurance pools.

The Metropolitan Edison Company, Jersey Central Power & Light Company, and Pennsylvania Electric Company (Licensee) are the holders of Facility Operating Licenses Nos. DPR-50 and DPR-73.

In January 1979, American Nuclear Insurers (ANI) and Mutual Atomic Energy Liability Underwriters (MAELU), the insurers who provide the nuclear liability insurance used by licensees as primary financial protection, informed the Commission that they were increasing the amount of nuclear liability insurance. available from $140 million to $160 million. In accordance with the provisions of subsection 170b. of the Act, the Commission increased the amount of primary financial protection required for facilities having a rated capacity of 100 electrical megawatts or more from $140 million to $160 million. This change was published by the Commission in the Federal Register on April 6, 1979 (44 FR 20632) and became effective May 1, 1979.

Subsection 140.11(a)(4) of the Commission's regulations was amended to require that each power reactor licensee maintain financial protection in an amount equal to the sum of $160,000,000 and the amount available as secondary financial protection for each nuclear reactor licensed to operate at a rated capacity of 100 MWe or more. The Commission's regulations further provide in §140.19 that in any case where the Commission finds that the financial protection maintained by a licensee is not adequate to meet the requirements of the Commission's financial protection regulations, the Commission may suspend or revoke the license or may issue such order with respect to licensed activities as the Commission determines to be appropriate or necessary in order to carry out the provisions of Part 140 of its regulations and Section 170 of the Act.

On May 1, 1979, ANI and MAELU informed the Commission and the licensee that because of the March 28, 1979 accident at Three Mile Island Nuclear Station, Unit 2, ANI and MAELU were unwilling at that time to make $160 million in nuclear liability insurance available for the Three Mile Island site despite the licensee's request for such increased coverage.

The pools' principal reason for not increasing the primary insurance available (from $140 million to $160 million) for the units at the Three Mile Island site was their desire to limit clearly to $140 million their potential liability for claims and claims expenses arising out of the March 28 accident. The pools are opposed to increasing the primary insurance layer to $160 million for the units at the Three Mile Island site without the assurance that the additional $20 million would not be used to satisfy public liability claims associated with the March 28 accident. While it seems clear to the staff (and the pools) that such an increase would apply only prospectively (i.e. to a new incident), it is not possible to state absolutely that a court might not regard the increase as available for claims arising out of the March 28 accident. Hence, the pools' reluctance to increase coverage at TMI to $160 million. The pools emphasized to the staff that once TMI-2 was restored to the point of being permitted by the NRC to resume operation they expected that

the coverage afforded the TMI site, Units 1 and 2, would be exactly the same as that afforded all other sites.

Following an emergency session, the pools instructed their lawyers to draft an endorsement that would make the distinction between the $140 million coverage for TMI Unit 2 and the $160 million coverage for TMI Unit 1. Such an endorsement has now been approved by the pools. It provides $140 million in primary insurance to both TMI Units 1 and 2 with an additional $20 million to Unit 1.

The endorsement submitted by the insurance pools to the NRC would enable Three Mile Island Unit 1 to comply with the financial protection requirements of §140.11(a)(4) while leaving the compliance of Unit 2 in doubt. Although the staff approves of the endorsement for providing financial protection for Unit 1, the matter of whether Unit 2 should be required to comply fully with our regulations or be granted an exemption from the regulations still needs to be resolved.

Since May 1, the staff has been in continuous contact with representatives of the licensee and the pools on this question. The focus of the licensee and its insurance broker is directed at obtaining, somewhere on the insurance market, additional insurance coverage of $20 million apart from the present policy maintained by the licensee with the insurance pools. If the licensee is successful in obtaining this additional capacity, either from some companies presently participating in the insurance pools or other nonparticipating companies, the staff would review the terms of the insurance to ensure that it would mesh with the present policy and indemnity agreement. Further, the staff may find it necessary to review the financial status of the companies writing this increased insurance to assure that there exists a comparable degree of certainty for payment of claims presented years after a nuclear accident under the alternate policy as exists under the present pool policy.

Although the licensee is presently pursuing an insurance approach for obtaining the additional $20 million for Unit 2 and is guardedly optimistic of

success, the question of whether the licensee should be required to provide this increased insurance must first be decided by the Commission. This question is especially important if the licensee is ultimately unsuccessful in obtaining $20 million in financial protection through other insurance.

Before the nuclear accident at TMI Unit 2, subsection 170b. of the Atomic Energy Act had been generally interpreted to require the same amount of (primary) financial protection for all large nuclear power plants, i.e., the maximum amount of liability insurance available from private sources. Under this interpretation, TMI would need to provide $160 million in primary financial protection for Unit 2 to retain its operating license for this unit. The assumption was that the maximum amount of insurance would always be offered for sale to the utilities through the pools and all that was necessary for the NRC to do in this regard was to require the utilities to buy what was being offered. However, the precise language of the applicable statutory provision is, in relevant part, as follows:

> The amount of financial protection shall be the amount of liability insurance available from private sources, except that the Commission may establish a lesser amount on the basis of criteria set forth in writing, ...: Provided, that for facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the amount of financial protection required shall be the maximum amount available at reasonable cost and on reasonable terms from private sources. Such financial protection ... shall be subject to such terms and conditions as the Commission may, by rule, regulation, or order, prescribe. In prescribing such terms and conditions for licensees required to have and maintain financial protection equal to the maximum amount of liability insurance available from private sources, the Commission shall ... include, in determining such maximum amount, private liability insurance available under an industry retrospective rating plan ... (Subsection 170b. of the Atomic Energy Act. Emphasis added.)

For all large nuclear power plants other than the TMI units, the maximum amount (of funds) available from private sources equals the maximum amount of liability insurance available from private sources (i.e., $160 million from the two nuclear liability insurance pools). Since the TMI licensee has made a reasonable effort to obtain $160 million in financial protection from the liability insurance pools but has been denied the $20 million increase from $140 million to $160 million by the pools, one could argue that for TMI Unit 2, $140 million is the maximum liability insurance available. Hence, the maintenance of $140 million in liability insurance for Unit 2 arguably satisfies the provisions of subsection 170b.

From a practical standpoint, the effect of permitting TMI Unit 2 to have an operating license with less than $160 million of liability insurance will be of significance only if another nuclear accident at that unit alone combined with the March 28 accident results in damages exceeding $140 million. If damages in a new accident exceed $140 million and the secondary financial protection layer comes into play, then other power reactor licensees will make up the $20 million difference through the retrospective premium assessment by contributing at an earlier point to their share of the damages than would be the case if the accident had occurred at some other site with $160 million in primary insurance. If the damages exceed both primary and secondary financial protection layers, then government indemnity would make up for the increment of $20 million and would be a maximum of $85 million instead of $65 million. The limitation of liability would remain at $560 million. Total protection for the public would be unchanged.

Issue 2:

In addition to the issue of whether the licensee would be required to obtain the additional $20 million for Unit 2, there is the issue of whether the licensee must replenish the funds paid out in satisfaction of public liability claims resulting from the TMI accident. Article II, paragraph 2 of the Standard Form of indemnity agreement executed by the Commission with its nuclear power reactor licensees

(10 CFR 140.92), requires that in the event of payments made by the insurers under an insurance policy used as financial protection which reduces the aggregate limit of the policy, the licensee must apply to its insurers for reinstatement of the amount of these payments. If the licensee is not successful in obtaining reinstatement by the insurance pools of the claims payments paid out in connection with the accident within ninety days, the Commission may require the licensee, in the absence of good cause to the contrary, to furnish financial protection for this amount in another form. While the regulations are ambiguous as to the start and end of the ninety day period, with respect to TMI Unit 2 we believe that the period continues in effect since claims continue to be paid and claims expenses incurred. The licensee has requested reinstatement of the funds paid out for claims and claims expenses arising out of that accident which are approximately $1.29 million. Pool representatives have informed Commission staff that they have decided not to reinstate these funds for Unit 2 based on the same concern regarding retroactive application by a court of such reinstated funds as they had with respect to the $20 million increase in financial protection. A smaller pool of participating companies anticipates reinstating the $1.29 million for Unit 1. This reinstatement will be accomplished through a separate supplementary insurance policy that would allow claims and expenses paid out through the existing financial protection policies to be reinstated through the new policy. For example, the new policy would start out equal to the $1.29 million paid out so far. If payments from the financial protection increased, say to $2 million, the new policy's capacity would increase to $2 million. Such increases could continue up to some overall limit of capacity of the new policy.

As with the increase to $160 million, the licensee and its insurance broker are canvassing the insurance market in the hope of obtaining an additional insurance policy to offset these claims expenses and bring its coverage for TMI Unit 2 up to the required primary financial protection. The practical effect of not reinstating the funds paid out for the TMI accident is that if there were another nuclear accident at the TMI Unit 2, there would not be $140 million in liability insurance to pay public liability claims

resulting from such an accident. The base amount available would be $140 million less the $1.29 million expended as a result of the Unit 2 accident. As was discussed earlier in a different context, if damages in a new accident exceed this base amount and the secondary financial protection layer is utilized, other power reactor licensees will make up the shortfall in claims expenses through the retrospective premium assessment by contributing at an earlier point with an increased share of the damages. If the damages exceed both primary and secondary financial protection layers, then government indemnity would be utilized to meet this shortfall resulting from the payment of claims expenses. It should be mentioned that the nuclear liability insurance pools are under no obligation to offer to replenish any of the funds paid out pursuant to the terms of the policy.

Alternatives: Issue 1:

Alternative A: The licensee is only required to maintain $140 million, the maximum liability insurance available from private sources, i.e., the nuclear liability insurance pools.

Under this alternative, one could argue that because the licensee has tried unsuccessfully to purchase $160 million in nuclear liability insurance from the pools, the maximum amount available to this licensee from private sources is $140 million. The staff believes that notwithstanding the fact that both the Price-Anderson Act and the legislative history are not clear specifically as to whether a large power reactor licensee not able to obtain the same level of financial protection as all other power reactor licensees could be permitted to obtain a lesser amount, Commission policy has been to require all large power reactor licensees to have the same financial protection requirements placed upon them. If the Commission disagrees with the staff, however, and believes that licensees should only be required to maintain the maximum amount available to them, the licensee could be so informed. Inasmuch as the regulations in 10 CFR 140.11(a)(4) reflect the long-standing Commission view that large power reactor licensees are all required to maintain the same amount, for the Commission to now change its view, an amendment of that regulation or a grant of an exemption on a case-by-case basis would be in order.

Alternative B: Until such time as NRC were to permit Unit 2 to resume operation, grant this licensee an exemption from §140.11(a)(4) so that only $140 million in primary financial protection would be required for Unit 2.

Alternative C: Grant no exemption and require the licensee to provide an additional insurance policy, a bank instrument such as a letter of credit or a segregated $20 million portion of an existing line of credit so that when added to the $140 million in liability insurance, the total primary financial protection would be $160 million.

Alternative D: Grant no exemption and require the licensee to provide a guarantee equal to $20 million in the form of its own financial resources.

Evaluation of Remaining Alternatives : (if Alternative A is not selected)

Alternative B: Until such time as NRC were to permit Unit 2 to resume operation, grant this licensee an exemption from §140.11(a)(4) so that only $140 million in primary financial protection would be required.

Pro: (a) Three Mile Island Unit 2 is presently not operating nor will it be operated for the next few years.

(b) The licensee has tried to purchase $160 million in nuclear liability insurance from the pools but has not been successful. The maximum insurance available to the licensee therefore is only $140 million. Even if Alternative A above is rejected and the Commission does not wish to change its regulation as to its general effect, some weight might be given, nevertheless to the argument that under the provisions of subsection 170b. of the Act (but not under the more specific provisions of subsection 140.11(a)(4) of the regulations) that for this licensee $140 million is the "maximum amount from private sources," i.e., the nuclear liability insurance pools. Thus without subscribing completely to this argument but in recognition that

it has some validity in the present case, this licensee in this situation could be granted an exemption from our regulations.

Con: (a) Even though the licensee cannot purchase $160 million in insurance, §140.11(a)(4) does not require that it provide this amount through the purchase of nuclear liability insurance alone. The licensee should attempt to meet this requirement by some alternative method.

(b) Although certainly not clear, the Price-Anderson Act has been implemented by the Commission to require that all large power reactors have the same amount of primary financial protection.

Alternative C: Do not grant the licensee an exemption from the regulations and require the licensee to provide an additional insurance policy, a bank instrument such as a letter of credit or a segregated $20 million portion of an existing line of credit so that when added to the $140 million in liability insurance, the total primary financial protection would be $160 million.

Pro: (a) A third party guarantee that is not dependent on the resources of the licensee, such as a line of credit, would provide an assurance that the funds would be available if required.

(b) This licensee, as with all other licensees operating reactors of 100 MWe or more, will be providing the full amount of financial protection available from private sources.

Con: (a) A requirement to purchase additional financial protection beyond that available through insurance may place an unnecessary burden on the licensee since funds critically needed for other expenses involved in the accident would be diverted to this use with respect to a reactor that will not be operated in the foreseeable future.

(b) It is possible that whatever new method of financial protection for $20 million is obtained, the licensee may not be able to obtain certain

vital elements found in the present insurance policy (e.g., omnibus coverage, continuous rather than annual coverage, waivers of defenses), or that insurance coverage will be obtainable only from sources whose financial status may require close scrutiny by the Commission to the extent allowed under the Atomic Energy Act of 1954, as amended.

Alternative D: Do not grant an exemption but allow the licensee to provide a guarantee equal to $20 million in the form of its own financial resources as provided in §140.11 and §140.15.

Pro: (a) The licensee can provide that any guarantee it gives through its own resources will be as broad as the nuclear insurance policies.

(b) No unnecessary diversion of critically needed funds would be involved, unless another accident occurred.

Con: (a) Even if the licensee were able at this time to maintain adequate resources to provide the required financial protection, its precarious financial condition may not provide the certainty of availability in the event of another incident that the financial protection layer must provide.

(b) Other methods of providing financial protection for the $20 million difference, while more expensive, could provide greater assurance of availability and should at least be explored before this method is accepted.

Issue 2:

Alternative A: Require the licensee to provide new financial protection equal to the amounts expended to pay claims and claims expenses arising out of the TMI accident.

Alternative B: Do not require the licensee to provide these amounts.

Evaluation of Alternatives

Alternative A: Require the licensee to provide new financial protection equal to the amounts expended to pay TMI accident claims.

Pro: (a) If there were another nuclear accident at TMI Unit 2, there would be the full $140 million in liability insurance to pay claims.

(b) The need would cease for government indemnity to "drop down" to meet the gap caused by the payments.

Con: (a) The Commission is not mandated to require the licensee to provide reinstatement of these funds if there is good cause that prevents the licensee from fulfilling this requirement.

(b) A requirement for the licensee to purchase additional financial protection equal to the amounts expended to pay TMI claims beyond that available through the insurance pools may place an unnecessary burden on the licensee since funds needed for other expenses would be diverted to meet our requirements.

(c) It is possible that any new method of financial protection for the $1.29 million expended to pay claims may not include certain vital elements found in the present policy or that insurance coverage will be obtainable only from sources whose financial status will require close Commission scrutiny.

Alternative B: Do not require the licensee to provide new financial protection equal to the funds for the claims and claims expense payments made arising out of the TMI accident.

Pro: (a) The licensee has requested the insurance pools to reinstate for Unit 2 the amounts expended to pay claims and claims expenses, but has been unsuccessful in its attempts.

(b) Even if another nuclear accident occurred at the Unit 2 protection to the public would not be lessened because the secondary retrospective premium and government indemnity layer would be utilized to

pay claims above the licensee's reduced primary financial protection layer.

(c) The regulations do not require the Commission to have the licensee provide reinstatement of these funds when good cause prevents the licensee from fulfilling this requirement.

Con: (a) The licensee will not be providing the same level of primary financial insurance as all other large power reactor licensees.

(b) A failure by the licensee to obtain reinstatement of the funds from the insurance pools by itself is not good reason to exempt the licensee from providing these funds in some other manner.

Summary: The first issue is whether the licensee should be required to maintain the same primary financial protection level of $160 million for Unit 2 as for Unit 1 or whether the licensee should be permitted to maintain only $140 million in financial protection for Unit 2. On one hand, because Unit 2 is not operating, one could argue that the possibility of another nuclear accident occurring at TMI Unit 2 is reduced. Hence, under this circumstance the licensee should be granted the exemption from §140.11(a)(4), described above, during the period before it might be determined by NRC that it will license TMI Unit 2 for resumption of operation. Public protection, it may further be argued, is not diminished by having the licensee maintain less than the maximum available amount of $160 million in primary financial protection since the government indemnity layer would fill the $20 million gap if the primary insurance and secondary retrospective premium layers were exhausted. If Unit 2 were to operate again, the licensee could at that time be required to provide the maximum primary financial protection that is available to all other power reactor licensees. As indicated earlier, the pools would expect to be able to make full coverage available to the entire TMI site at that time.

Finally, the argument could be made that the licensee, by providing $140 million in insurance, is furnishing the maximum amount of liability insurance available

to it from private sources, i.e., nuclear liability insurance pools, as required by the Price-Anderson Act.

Balanced against these arguments, however, is the argument that while Unit 2 is not operating and the possibility of a nuclear accident is reduced, the possibility cannot be completely eliminated. In fact, as a result of the March 28 accident, there will be extensive decontamination activities and increased transportation from the Unit 2 reactor which may offer an increased risk of a nuclear accident either at the site or arising during transportation of radioactive waste and contaminated equipment away from TMI. While it is true that the protection to the public is not diminished by having the licensee provide less than $160 million, government indemnity would then be relied on to fill a gap in financial protection, something that it was not intended to do for other than a short interim period. Further, at any one time there are reactors that are either not operating for relatively short periods, such as for refueling or scheduled maintenance, or for much longer periods extending into years (e.g., Indian Point Unit 1). These power reactor operators are nevertheless still required to provide the maximum financial protection as long as they maintain their operating licenses (although in the case of Indian Point Unit 1, the maximum level of financial protection would be maintained anyway since the protection covers Units 2 and 3 on the site). There has never before been a situation, however, where a utility wanted to purchase the full amount of nuclear liability insurance that was on the market but the pools were unwilling to sell it the full coverage.

Concerning the issue of reinstatement of the funds expended to pay claims from the TMI accident, it could be argued that because the licensee has tried unsuccessfully to obtain reinstatment of these funds the Commission has good cause not to require the licensee to arrange for another method of providing for these funds. On the other hand, if there were another accident at the Unit 2, less than the full amount of primary financial protection would be available to pay these claims. Further, if a second accident were also to exhaust the secondary layer of

financial protection it would be the government indemnity layer that would ultimately have to meet this gap.

On balance, the staff's judgment is that the licensee should be directed within a reasonable time, such as sixty days, to demonstrate to the NRC that it is in compliance with the regulations by providing evidence of coverage for $160 million in primary financial protection for Unit 2 as well as for Unit 1. The evidence of coverage for $160 million should include reinstatement of the funds utilized to pay claims and claims expenses arising out of the March 28 accident. The staff would continue working directly with the licensee and its insurance broker to assist in reviewing any alternatives the licensee proposes.

If the licensee is unable or unwilling to provide $160 million in primary financial protection in a form satisfactory to the Commission, the Commission may take the following actions pursuant to 10 CFR 140.19: suspend, or revoke the license or issue such order as it deems appropriate or necessary in order to carry out the provisions of 10 CFR Part 140 and Section 170 of the Act. In view of the present status of the facility it is not clear to what extent any of these sanctions would be efficacious.

Recommendations: That the Commission

1. Notify the licensee that it must demonstrate compliance with §140.11(a)(4) by providing the maximum financial protection for both units at Three Mile Island and require the licensee to provide to the staff within sixty days, an evidence of coverage for aggregate amount of primary financial protection equal to $160 million through insurance or some other form of third party guarantee, or a combination thereof.

2. Notify the licensee that such financial protection for TMI Units 1 and 2 must include an amount equal to the total of financial protection claims and claims expenses expended by the pools to date and not reinstated by the pools. This amount of additional financial protection should be supplemented every thirty days if the total amount not reinstated by the pools continues to rise.

3. Note that the letter enclosed as Appendix A will be dispatched to the licensee by the Director, Office of Nuclear Reactor Regulation to accomplish these notifications.

4. Note the endorsement for Unit 1 increasing the primary insurance to $160 million for Unit 1 will be published in the Federal Register and the licensee and pools will be notified by staff of (a) NRC's acceptance of the endorsement for Unit 1 and (b) our understanding that payments are being reinstated by the pools for Unit 1 through a separate supplemental insurance policy that should be furnished to Commission for review and publication in the Federal Register.

5. Note that the appropriate subcommittees of Congress will be notified of the Commission's actions.

Coordination: The Executive Legal Director concurs in the recommendations of this paper. The Office of Congressional Affairs concurs in the notice to the various Congressional subcommittees.

Harold R. Denton

Harold R. Denton, Director 11/3/79
Office of Nuclear Reactor Regulation

Enclosures:
1. Appendix A - Letter to Licensee
2. Appendix B - Letter to Congressional Subcommittees

Commissioners' comments should be provided directly to the Office of the Secretary by c.o.b. Friday, November 30, 1979.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT November 26, 1979, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

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APPENDIX A

Appendix "A"

Draft letter to Licensee

Metropolitan Edison Company
Jersey Central Power and Light Company
Pennsylvania Electric Company

Gentlemen:

As you are aware, the provisions of Section 170 of the Atomic Energy Act of 1954, as amended, (the Act) require production and utilization facility licensees to have and maintain financial protection to cover public liability claims resulting from a nuclear incident. Subsection 170b further requires that for facilities designed for producing substantial amounts of electricity and having a rated capacity of 100 electrical megawatts or more, the amount of financial protection required would be the maximum amount available from private sources.

In January 1979, American Nuclear Insurers (ANI) and Mutual Atomic Energy Liability Underwriters (MAELU), the insurers who provide the nuclear liability insurance provided by licensees as primary financial protection, informed the Commission that they were increasing the amount of nuclear liability insurance available from $140 million to $160 million.

In accordance with the provisions of subsection 170b of the Act, the Commission increased the amount of primary financial protection required for facilities having a rated capacity of 100 electrical megawatts or

more from $140 to $160 million. This change was published by the Commission in the Federal Register on April 6, 1979 (44 FR 20632) and became effective May 1, 1979. Subsection 140.11(a)(4) of the Commission's regulations was amended to require that each power reactor licensee maintain financial protection in an amount equal to the sum of $160 million, and the amount available as secondary financial protection for each nuclear reactor licensed to operate at a rated capacity of 100 MW(e) or more. The Commission's regulations further provide in § 140.19 that in any case where the Commission finds that the financial protection maintained by a licensee is not adequate to meet the requirements of the Commission's financial protection regulations, the Commission may suspend or revoke the license or may issue such order with respect to licensed activities as the Commission determines to be appropriate or in order to carry out provisions of Part 140 of its regulations and Section 170 of the Act.

At present, the primary financial protection being provided for the Three Mile Island site is $140 million. The insurance pools have proposed an endorsement, which the staff has reviewed and finds to be acceptable, that would provide $140 million in primary insurance to both Three Mile Island Units 1 and 2 with an additional $20 million for Unit 1.

On a related matter, Article II, paragraph 2 of Indemnity Agreement B-64 that you have executed with the Commission requires that in the event of payments made by the insurers under an insurance policy used as financial protection which reduces the aggregate limit of the policy, the licensee

must apply to its insurers for reinstatement of the amount of these payments. We understand that you have requested reinstatement of the approximately $1.3 million paid out for claims and claims expenses arising out of the March 28 accident. Insurance pools representatives have informed the Commission staff that they have decided not to reinstate these funds for Unit 2 although they will reinstate them for Unit 1 through a separate supplementary insurance policy. The practical effect of not reinstating the funds paid out for the March 28 accident is that if there were another accident at Unit 2, there would not be the full amount of primary liability insurance to pay public liability claims resulting from such an accident.

Therefore, with respect to Units 1 and Unit 2 it will be necessary for you to demonstrate that you are in compliance with our regulations by providing evidence to the NRC that $160 million in primary insurance is in place as of May 1, 1979. This evidence should include a copy of the separate supplementary policy reinstating the $1.3 million in claims and claims expenses for both units, and providing for necessary increases in coverage every thirty days for increased amounts beyond the $1.3 million if the total amount not reinstated by the pools rises beyond that figure. This evidence of primary financial protection equal to a total of $160 million can be through insurance or some other form of third party guarantee, or a combination thereof which provides all of the operable provisions of the facility form of nuclear liability insurance.

Appendix "A"

APPENDIX B

Draft letter to Congressional subcommittees

The Honorable Morris K. Udall, Chairman
Subcommittee on Energy and the Environment
Committee on Interior and Insular Affairs
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The provisions of Section 170 of the Atomic Energy Act of 1954, as amended, (the Act) require production and utilization facility licensees to have and maintain financial protection to cover public liability claims resulting from a nuclear incident. Subsection 170b further requires that for facilities designed for producing substantial amounts of electricity and having a rated capacity of 100 electrical megawatts or more, the amount of financial protection required would be the maximum amount available from private sources.

In January 1979, American Nuclear Insurers (ANI) and Mutual Atomic Energy Liability Underwriters (MAELU), the insurers who provide the nuclear liability insurance provided by licensees as primary financial protection, informed the Commission that they were increasing the amount of nuclear liability insurance available from $140 million to $160 million.

In accordance with the provisions of subsection 170b of the Act, the Commission increased the amount of primary financial protection required

for facilities having a rated capacity of 100 electrical megawatts or more from $140 to $160 million. This change was published by the Commission in the Federal Register on April 6, 1979 (44 FR 20632) and became effective May 1, 1979. Subsection 140.11(a)(4) of the Commission's regulations was amended to require that each power reactor licensee maintain financial protection in an amount equal to the sum of $160 million, and the amount available as secondary financial protection for each nuclear reactor licensed to operate at a rated capacity of 100 MW(e) or more.

On May 1, 1979, ANI and MAELU informed the Comission and Metropolitan Edison Company, Jersey Central Power and Light Company and Pennsylvania Electric Company, the holders of licenses authorizing operation of the Three Mile Island Nuclear Station, Units 1 and 2 that because of the March 28, 1979 accident at TMI, the pools were unwilling at that time to make $160 million in nuclear liability insurance available for the TMI site despite the licensee's request for such increased coverage. The pools' principal reason for not increasing the primary insurance available (from $140 million to $160 million) for TMI was their desire to limit clearly to $140 million their potential liability for claims and claims expenses arising out of the March 28 accident. The pools were opposed to increasing the primary insurance layer to $160 million without the assurance that the additional $20 million would not be used to satisfy

public liability claims associated with the March 28 accident which arise either prior to or subsequent to May 1, 1979.

At present, the primary financial protection being provided for the Three Mile Island site is $140 million. The insurance pools have proposed an endorsement, which the Commission staff has reviewed and finds to be acceptable, that would provide $140 million in primary insurance to both Three Mile Island Units 1 and 2 with an additional $20 million for Unit 1. The focus of the licensee is presently directed at obtaining additional insurance coverage of $20 million apart from the present policy maintained by the licensee with the insurance pools. If the licensee is unsuccessful in obtaining additional insurance of $20 million, the licensee will be required to provide $20 million through a third party grarantee such as a bank line of credit.

On a related matter, the indemnity agreement executed by the licensee and the Commission requires that in the event of payments made by the insurers under and insurance policy used as financial protection which reduces the aggregate limit of the policy, the licensee must apply to its insurers for reinstatement of the amount of these payments. The licensee has requested reinstatement of the approximately $1.3 million paid out for claims and claims expenses arising out of the March 28

accident. Insurance pools representatives have informed the Commission staff that they have decided not to reinstate these funds for Unit 2 although they will reinstate them for Unit 1 through a separate supplementary insurance policy. The practical effect of not reinstating the funds paid out for the March 28 accident is that if there were another accident at Unit 2, there would not be the full amount of primary liability insurance to pay public liability claims resulting from such an accident. If damages in a new accident exceed $140 million and the secondary financial protection layer is utilized, then other power reactor licensees will make up the $20 million difference through the retrospective premium assessment by contributing at an earlier point to their share of the damages than would be the case if the acccident had occurred at some other site with $160 million in primary insurance. If the damages exceed primary and secondary fianancial protection layers, then government indemnity would make up for the increment of $20 million and would be a maximum of $85 million instead of $65 million. The limitation of liability would remain at $560 million. Total protection for the public would be unchanged.

Therefore, with respect to Units 1 and Unit 2 the Commission has required that the licensee demonstrate that it is in compliance with our regulations by providing evidence to the NRC that $160 million in primary insurance

is in place as of May 1, 1979. This evidence should include a copy of the separate supplementary policy reinstating the $1.3 million in claims and claims expenses for both units, and should provide for necessary increases in coverage every thirty days for increased amounts beyond the $1.3 million if the total amount not reinstated by the pools rises beyond that figure.

Sincerely,

Identical letters to be sent to:

The Honorable Gary Hart, Chairman
Subcommittee on Nuclear Regulation
Committee on Environment and Public Works

The Honorable John D. Dingell, Chairman
Subcommittee on Energy and Power
Committee on Interstate and Foreign Commerce

The Honorable Toby Moffett, Chairman
Subcommittee on Environment, Energy and
Natural Resources
Committee on Government Operations

Appendix "B"