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January 6, 1981

The Honorable John F. Ahearne, Chairman
Nuclear Regulatory Commission
Washington, D. C. 20555

Dear Mr. Chairman:

Our letter of December 1, 1980, requested the Commission to reconsider and modify its Orders of July 2 and August 9, 1979, and to restructure and expedite the administrative proceeding specified for the restart of TMI-1 based on the long delays which have already occurred in the hearing, the potential for further delay, and the information developed since the Orders on the causes of the accident. On December 18, 1980, a group of Intervenorors in the proceeding filed a joint response in opposition to my request. The substance of the Intervenorors comments vividly underscores the major point of my letter to you, namely, that the TMI-1 restart hearings have not proceeded in accordance with the Commission's expectations at the time of the Orders.

This letter is not intended to be a point-by-point reply to each of the Intervenorors' arguments. It is addressed only to those allegations that Metropolitan Edison Company (Met Ed) has not been diligent in the pursuit of its legal and procedural remedies and in furnishing to the NRC Staff information in support of the restart of TMI-1. It also deals with Intervenorors' allegation that the relief requested in our letter of December 1, 1980, would not significantly impact on Met Ed's ability to restart TMI-1.

Intervenorors' first complaint is that the basic economic and public interest arguments in favor of expediting the proceeding had been made to and presumably considered by the Commission at the time of its July 2 and August 9, 1979 Orders. Intervenorors make the further claim that Met Ed has been aware for some time of the incremental slippages relative to the Commission's target schedule for the restart hearing but has not heretofore formally requested relief from these delays. Intervenorors' claims totally ignore the dramatic difference between the schedule implied in the Order and the subsequent reality.

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Our request for reconsideration of the Commission's Orders was based on the slippages which have occurred in the hearing schedule. Intervenor's suggestion that Met Ed should have immediately sought reconsideration of the July 2 and August 9 Orders* neglects the simple fact that the delays occurred only as the hearing process proceeded and therefore could not have provided a basis for an immediate motion for reconsideration. As to Met Ed's failure to seek from the Atomic Safety and Licensing Board redress from the incremental slippages in the hearing schedule as they occurred, the slippages have largely been outside the control of the Board and beyond their ability to afford relief. As in other NRC licensing proceedings, the controlling element in the hearing schedule has been the submission of data and the preparation of the Staff's Safety Evaluation Report and the readiness of the Staff to present testimony. The availability of design criteria with respect to the "lessons learned" has been particularly limiting to the accomplishment of the plant modifications required for restart. Indicative of this condition is the major rescheduling of these modifications in the September 5, 1980 Eisenhower letter. The Licensing Board has emphasized on several occasions its lack of authority to dictate Staff priorities and schedules. At the same time the Board has, in oral instructions to the Staff and in Memoranda and Orders issued by the Board, strongly urged the Staff to bring to the Commission's attention the fact that the Staff has not given to the proceeding the priorities implicit in the Commission's August 9, 1979 Order and target schedule. It had been Met Ed's hope that the Commission would on its own initiative take cognizance of the hearing delays and act to expedite the proceeding. It is in large part the absence of any Commission follow-up or action that occasioned our December 1, 1980 letter.

Intervenor's further claim that it is Licensee's own suggested sequencing of the hearing issues that is to blame for any delay in the restart of TMI-1. Intervenor's apparently refer to the fact that under the Commission's August 9, 1979 Order not all requirements need be implemented prior to restart (although by far and away the majority of the requirements are classified as pre-restart requirements) and that certain requirements were

*Intervenor's also make the legal claim that any motion for reconsideration of the Commission's Orders should have been made within ten days of the Orders pursuant to § 2.771 of the Commission's Rules of Practice. I am informed by Met Ed counsel that § 2.771 deals only with motions to reconsider decisions following licensing proceedings and that neither this section nor any other section of the Commission's Rules of Practice prescribes time limits for motions to reconsider Commission orders of the kind involved in the TMI-1 proceeding.

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long-term requirements on which only reasonable progress need be shown and which could perhaps have been deferred by the Board as hearing issues. They point, for example, to the fact that the issues of management and financial capability (both pre-restart requirements) were proposed by Met Ed to be addressed as the final issues in the hearing. The sequence of hearing issues proposed by Met Ed was in fact geared primarily to Met Ed's perception of the timetable on which the Staff appeared likely to be ready for hearing, i.e. the time it would take the Staff to define the criteria by which the Staff would judge Met Ed's compliance with the requirements of the Order and to complete its Safety Evaluation Report and testimony. More importantly, the Commission's August 9, 1979 Order expressly permits Intervenor to contend that requirements designated as long-term by the Commission Order be reclassified as pre-restart requirements. This is in fact what several Intervenor have done, thus necessitating present Licensing Board consideration of these issues as well as a number of other Intervenor contentions seeking to add new pre-restart requirements.

Intervenor next allege that much of the delay in the proceeding is "due to the Licensee's delays in providing the Staff with materials which the Staff requested, and to the habit of the Licensee to repeatedly and significantly revise such information months after it is submitted." The allegation ignores the realities of the Staff review process and in particular the problem emphasized in our December 1, 1980 letter of having to satisfy undefined criteria and of having to cope with moving targets. As to the successive revisions in materials supplied by Met Ed to the Staff in support of the restart of TMI-1, Intervenor cite principally revisions pertaining to management structure, financial data and emergency plans. Again, all three areas are examples of uncertain criteria and of moving targets. The three versions of site emergency plans cited by Intervenor are a prime example. The major cause of these revisions was the continuing redefinition by the Staff of its emergency planning requirements, exacerbated in this case by the Commission's withdrawal of Regulatory Guide 1.101 cited in the Commission's August 9, 1979 Order, the substitution of subsequently prepared guidelines, and the adoption of the Commission's new emergency plan regulation.

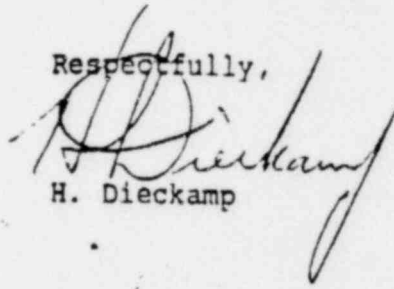
Finally, Intervenor claim that because of changes in hardware and procedures remaining to be accomplished and the necessity for NRC Staff inspections the restructuring of the proceeding proposed in our December 1, 1980 letter could not in any event result

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in restart "significantly before the end of the adjudicatory hearing." The claim ignores the slow pace of the current hearings and the potential for further major slippages in the hearing schedule. More importantly, the claim ignores the fact that under the procedures established by the Commission in its August 9, 1979 Order restart of TMI-1 may not be authorized until months after the close of the adjudicatory hearing. Were the Commission to adopt the procedures recommended in our December 1, 1980 letter, authorization to restart TMI-1 could be advanced by a number of months and I am confident that TMI-1 could, in the light of such an expectation, be ready at that time to restart.

We continue to urge the Commission to establish and stabilize criteria, assign staff priority, afford TMI-1 treatment consistent with all other B&W plants, and take what other actions you deem appropriate to provide assurance of the ability to safely operate TMI-1 at the earliest date.

Respectfully,


H. Dieckamp

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cc: Governor Brendan T. Byrne
Governor Richard Thornburgh
George H. Barbour, Pres. NJBPU
Susan M. Shanaman, Chmn. PaPUC
Commissioner Peter A. Bradford
Commissioner Victor Gilinsky
Commissioner Joseph M. Hendrie