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USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

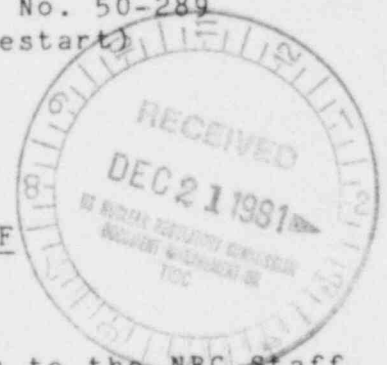
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BEFORE THE COMMISSION

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

Docket No. 50-289
(Restart)

OFFICE OF SECRETARY
REGULATORY & SERVICE
BRANCH



UCS OBJECTION TO STAFF BRIEFING OF
THE COMMISSION AND MOTION FOR RELIEF

The Union of Concerned Scientists (UCS) objects to the NRC Staff "briefing" the Commission on the restart of Three Mile Island Nuclear Station, Unit No. 1 (TMI-1). Two Commission meetings have been scheduled for this purpose. The first is scheduled for 10:30 a.m. on December 21, 1981, and the matters to be considered are a "Staff Briefing on TMI-1 Restart." (NRC Sunshine Federal Register Notice, December 10, 1981) The second is scheduled for 11:30 a.m. the same day and the matters to be considered are a "Briefing on Contested Matters in TMI-1 Restart Proceeding." (Id.) Current plans are that the first meeting will be open to public attendance (but apparently not to participation) and the second will be closed.

UCS objects to the Commission holding both of these meetings on the grounds, developed more fully below, that such "briefings" by the Staff seriously prejudice UCS' right to a fair, impartial decision by the Commission. Therefore, UCS moves that these meetings be cancelled and that the Commission grant the additional relief discussed below.

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The principal objection to the proposed "briefing" of the Commission by the Staff at the open meeting is that it is prejudicial to UCS' interests. The Staff is a party to the TMI-1 restart proceeding, as is UCS. It is beyond dispute that the Staff and UCS have opposing views on many substantive, complex, safety issues being litigated in this proceeding. Furthermore, the Staff has marched in lockstep with the Licensee on many of those safety issues. To allow the Staff to present its views to the Commission with no opportunity for UCS to present its views at the same time will prejudice UCS' right to a fair impartial decision. Therefore UCS moves that the Commission meeting now scheduled for 10:30 a.m. on December 21, 1981 be cancelled.

UCS is requesting that the meeting be cancelled rather than postponed and expanded to allow all parties an opportunity to participate on equal footing with the Staff. Our primary purpose in requesting cancellation is to avoid delaying the present schedule^{*/} for filing comments and reply comments on the Licensing Board's Partial Initial Decision dated December 14, 1981. We believe that the most effective use of the Commission's and the parties' time is to continue with the planned filings on whether that partial initial decision should be made immediately effective. The Commission could then decide whether oral argument would be beneficial, with the opportunity for all parties to participate rather than only the Staff.

^{*/} - UCS was informed by telephone that the schedule set forth in the Commission's Order dated November 30, 1981, has been changed, but no written notification of the new schedule has been received.

If the Commission decides not to cancel the Staff "briefing", UCS requests that we (and all other parties) be given the opportunity to participate on equal footing with the Staff. If the Commission decides on this alternative procedure, UCS requests that the "briefing" be delayed to afford UCS adequate preparation time and that the deadlines for filing of comments and reply comments on immediate effectiveness be delayed an equal amount of time. We cannot now estimate the amount of delay required because the Commission has not provided UCS with any information concerning the specific questions or subject matter the Commission wants to discuss. We assume that the Staff has previously been provided such information by ex parte communications from the Commission so that the Staff could prepare for the meeting. If this is the case, UCS requests prompt service of all such communications. If the communications were oral, UCS requests prompt service of sworn affidavits setting forth the content of the oral communications in as much detail as the affiant(s) can recall.

If the Commission does not grant either of the alternative reliefs requested above, UCS requests that the transcript of the Staff "briefing" be served the next day by hand delivery or express mail without charge to UCS and that the Commission waive its usual prohibition against the citing of Commission meeting transcripts in subsequent filings before the Commission. In that event, however, the Commission will have violated the fundamental due process rights of UCS and other participants by excluding their participation, and we will seek appropriate relief.

We anticipate that arguments may be advanced that the scheduled Staff briefing will be limited to uncontested issues and, therefore, that the relief requested above is unnecessary. We disagree for two reasons.

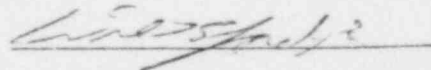
First, as noted above, UCS has no information concerning the specific subject matter to be discussed. Therefore, we are placed in the position of having to rely on the Staff to decide whether an issue is an uncontested issue. In this proceeding, we have experienced the Staff's tortured parsing of the meaning of the word "dissent" to exclude "disagree" from its meaning. As a result, we are unwilling to rely on the Staff's definition of "uncontested issue" or to rely on the Staff not to "inadvertently" stray beyond the Commission's definition.

Second, as a practical matter, we see no value to the Staff "briefing" if it were truly limited to uncontested issues. If the Staff, Union of Concerned Scientists, Commonwealth, Steven C. Sholly, Three Mile Island Alert, Newberry Township Steering Committee, the Aamodts, Environmental Coalition on Nuclear Power, Marvin I. Lewis, Chesapeake Energy Alliance, and Anti-Nuclear Group Representing York all agree on an issue (and that is the appropriate definition of an uncontested issue in this proceeding), then it is hard to imagine a greater waste of the Commission's time than to be "briefed" on such an issue. UCS respectfully submits that the Commissioners' time could be better spent becoming familiar with the Licensing Board's partial initial decision and the underlying record on the contested issues.

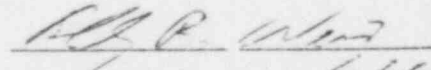
With respect to the closed Commission meeting now scheduled for 11:30 a.m. on December 21, 1981, UCS objects to the holding of such a meeting as a violation of the ex parte rule unless all members of the Staff and their counsel, who collectively are a party to this proceeding, are excluded from the meeting. We request either that the "briefing" be cancelled or that the Commission's personal staff be restricted to relying only on the facts in the record below and instructed not to introduce new facts without opportunity for UCS to address the validity, significance, and relevance of those alleged facts. Furthermore, we request that the individuals who are permitted to attend the closed meeting be instructed that no information concerning the meeting be given to those individuals on the Staff who collectively are a party to this proceeding. Finally, we caution that the Commission appears to be in danger of violating the strictures on extra-record actions set out in Seacoast Anti-Pollution League v. Costle, 572 F. 2nd 872 (1st Cir. 1978), which would invalidate any decision it might make in this proceeding.

Individual Commissioners have made public statements to the effect that the NRC must earn the confidence of the public it is responsible for protecting. Granting the relief requested herein would be a step in that direction.

Respectfully submitted,



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Dated December 18, 1981

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "UCS Objection to Staff Briefing of the Commission and Motion for Relief" have been served on the following persons by deposit in the United States mail, first class postage prepaid or, as indicated by an asterisk, by hand delivery this 18th day of December, 1981:

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