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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION



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

Docket No. 50-289  
(Restart)

LICENSEE'S REPLY TO UCS MOTION TO  
EXTEND DEADLINE FOR  
IMMEDIATE EFFECTIVENESS COMMENTS

By motion dated December 29, 1981, UCS requests an extension of time for filing comments with the Commission on immediate effectiveness of the Licensing Board's Partial Initial Decision on Plant Design and Procedures, Separation and Emergency Planning. The Commission has already on its own motion extended the comment period to January 13, 1982. UCS seeks a further extension of time for the filing of comments to February 15, 1982, with reply comments due 7 days after receipt of the comments. For the reasons set forth below, Licensee opposes UCS' request.

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UCS does not base its request on the time needed to prepare comments on immediate effectiveness<sup>1/</sup> but on the interference during the comment period of UCS' other involvements in the TMI-1 proceeding. These involvements, as explained below, are mostly involvements of UCS' own choice and in any event do not justify a delay in the period for comment on immediate effectiveness.

Licensee addresses below each of the grounds asserted by UCS for delaying the immediate effectiveness comment period.

Development of License Conditions. In its partial initial decision the Board directed the NRC Staff (and no other party) to submit within 45 days a Staff report as to which of the Licensee commitments, Staff requirements and Board-required conditions the Staff intends to impose as technical specifications or other forms of license conditions and how the Staff will assure compliance with any other such items. (P.I.D. ¶ 1217) Licensee is directed to respond to the Staff report within 15 days; other parties may do so at their election. (Id.) The basis for the Board's requirement is not (as the UCS motion may suggest)

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<sup>1/</sup> UCS does emphasize the length and detailed nature of the Board's decision. Licensee observes, however, that well over a half of the decision deals with emergency planning and separation of Units 1 and 2--issues on which UCS did not participate in the hearing. Further UCS either did not participate or withdrew its contentions on a number of design issues covered in the Board's decision. Finally, as to those design issues in which UCS did participate, there are few surprises in the Board's decision which for the most part adopts positions taken by the Staff and Licensee to which UCS has previously filed its own and reply findings.

any problem in identifying the relevant Licensee commitments, Staff requirements and Board conditions. The Board was simply following up on its interest as to the Staff's proposed mechanism for enforcing actions on which the Board relied.

UCS' position that it cannot wait for the Staff report but must begin now (at the expense of time devoted to comments on immediate effectiveness) an independent compilation of commitments, requirements and conditions stretches credulity. At a minimum UCS' priorities are misplaced and ignore two important aspects of the Board's decision.

First, the Board expressly stated that it had no problem with the enforcement of pre-restart requirements, either as to compliance with short-term requirements or reasonable progress on long-term requirements. It expressed confidence that as to these items the Staff will enforce the Board's findings if accepted by the Commission. (P.I.D. ¶ 1210) The Board was solely concerned with the continued enforcement of these requirements after restart.

Second, the Board itself did not consider that the matter of license conditions versus other methods of enforcement need be resolved prior to restart. The Board expressly stated: "Compliance with this order by the Staff and the Licensee is not a condition precedent to restart. However, if restart otherwise is permitted before the report and response, continued

operation of TMI-1 is conditioned upon compliance with this order." (P.I.D. ¶ 1217) Thus the UCS "assumption" that the Commission would not render a decision permitting restart without receiving information on the disposition of the matter of license conditions is at odds both with the Licensing Board's decision and the practical necessities in this proceeding.

UCS Motion to Reopen. UCS has filed with the Licensing Board a motion to reopen the hearing on one of the plant design issues (UCS Contention 10) to receive in evidence certain answers by Licensee's candidates for operator licenses to examination questions administered by NRC in April and October, 1981, relating to the conditions for throttling or terminating High Pressure Injection (HPI). Licensee and the NRC Staff have opposed reopening. UCS argues that the time spent in pursuing its motion justifies an extension of time for preparing comments on immediate effectiveness. It further argues that it cannot proceed to develop its comments on the Board's disposition of its Contention 10 until the Board decides whether to reopen the record and, if so, to reevaluate its decision.

Licensee notes as a practical matter that UCS has already completed the filings contemplated by the Licensing Board on this subject and will not have to expend further efforts unless the Board grants its motion. UCS urges, however, that the comment period for immediate effectiveness be deferred against the possibility that UCS' motion might be granted. Such

a bootstrap operation should not be allowed in the absence of the strongest kind of showing on the importance and likelihood of success of the UCS motion, and no such showing has even been attempted by UCS.

Extension of Date for Exceptions. UCS would have the Commission extend the period for comments on immediate effectiveness because of UCS' need to request from the Appeal Board an extension of time for filing exceptions to the Board's decision and UCS' uncertainty that an extension would be granted. As acknowledged by UCS the request for extension was suggested by the Licensing Board. Similar requests for extension had already been granted by the Appeal Board for exceptions to the Licensing Board's partial initial decision on management issues. There could not have been a reasonable doubt in UCS' mind that the time for exceptions would be extended beyond the comment period.

UCS complains that it filed its motion for extension of the exceptions due date on December 18, 1981, (a Friday) but did not have Licensee's "final position" until the middle of the following week. UCS has only itself to blame for not contacting Licensee's counsel at the time it filed its motion but instead waiting until after the Secretary of the Appeal Board had instructed it to do so. Licensee's counsel was first contacted by UCS' counsel on the afternoon on Monday, December 21, 1981, at which time he informed UCS' counsel that he was on his way to Three Mile Island and would call UCS' counsel on Wednesday

after his return to Washington. After reviewing UCS' motion, Licensee's counsel did call UCS' counsel on Wednesday to state that he could not agree to an open-ended request for an extension until ten days after an unspecified date for completion of written comments, reply comments and oral argument on immediate effectiveness, particularly since no provision for oral argument had been made by the Commission. Licensee's counsel did agree to an extension until ten days after the date then established by the Commission for reply comments, which is the date subsequently approved by the Appeal Board.<sup>2/</sup>

Water Level Indicator Issue. By Memorandum from the Secretary of the Commission dated December 23, 1981, UCS and other parties have been invited (not as UCS states "asked") to comment on certain NRC documents relating to the water level indicator issue and have been notified of a generic public meeting scheduled by the Commission with reactor vendors to inform the Commission of their efforts to develop a water level indicator --an issue characterized by the UCS motion as "of major concern to UCS." The fact is that UCS abandoned its contention on this

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<sup>2/</sup> As matters have turned out, Licensee's prudence in tying the date for exceptions to the schedule then fixed by the Commission for written comments was well justified. Under the UCS proposal the time for exceptions would automatically have been extended by any delay in the comment period. UCS' counsel did not alert Licensee's counsel (nor to the best of Licensee's counsel's knowledge, either the Appeal Board or the NRC Staff) to the possibility that UCS might later seek an extension in the comment period itself.

issue before the Licensing Board, did not participate in any of the testimony or argument on the issue before the Licensing Board, and filed no proposed findings on the issue. If UCS now chooses at this late date to reenter the fray on this issue by way of comments and attendance at the Commission meeting, it cannot justifiably complain of the interference of this effort with the time allotted for preparing comments on immediate effectiveness.

Commission Meetings on December 21, 1981. UCS objected to two Commission meetings with the NRR Staff on December 21, 1981. The first dealt with the matter of information flow after the TMI-2 accident--a subject which was considered in the TMI-1 restart hearing but in which UCS took no interest at all. The second involved only a status report by the NRR Staff on various plant modifications, including some the sufficiency of which was the subject of UCS contentions in the hearing. Without identifying in any way the substance of its complaints, UCS asserts that both hearings involved contested issues "on which some comment may be necessary." UCS proposes to expend "a substantial amount of time considering and developing both legal and technical comments." UCS' proposal to divert time from the preparation of comments on immediate effectiveness to "considering and developing" an undefined procedural wrangle with the Commission is not a reasonable basis for delay in the comment period.

Effect on Restart. UCS argues that a one month delay in the comment period will have no effect on the restart of TMI-1. It bases its argument on the Staff's estimate at the Commission's December 21, 1981 meeting that TMI-1 will not be ready for criticality until March of 1982 and its own conjecture that the date may be even later.

Two preliminary comments are in order. First, UCS ignores Licensee's own estimate of readiness for restart, correctly reported by the Staff to be February 1, 1982. Licensee concedes that this is a target date and agrees on the basis of present information that a slippage of 2 to 4 weeks could occur due to a variety of reasons, including measures to address the steam generator leakage problem. Licensee strongly urges, however, that everyone's efforts including those of the Commission should be geared to the earliest possible restart date. Second, even based on the Staff's estimate, the UCS schedule, which calls for comments on immediate effectiveness on February 15 and reply comments toward the end of the month, allows almost no time for Commission consideration of those comments and for reaching a decision on restart.

Moreover, it is unreasonable to assume that waiting for a last-minute Commission decision on restart would not impact unfavorably on other actions which must fall into place prior to restart.

1. Restart cannot occur under the Commission's August 9, 1979 Order until the Director of Nuclear Reactor Regulation has certified to the Commission that all short-term requirements

imposed by the Licensing Board and Commission have been completed and that reasonable progress has been made on long-term requirements. This action by the Director involves a sign-off on hundreds of individual items and intense efforts by the Regional Office of Inspection and Enforcement comparable to those associated with completing the punch list for any new operating power plant. It is unreasonable to expect that the intensity of effort required of both plant and NRC personnel, and which normally occurs once plant start-up is clearly in sight, can be sustained while uncertainty remains as to whether, and on what terms, the Commission will authorize restart.

2. A portion of the restart requirements relating to emergency planning involves actions by local political entities of the Commonwealth of Pennsylvania over which Licensee has no direct control. For example, the Licensing Board's decision requires that emergency plans for each School District within the plume emergency planning zone be completed and reviewed for adequacy prior to restart--a requirement that has not been imposed on the start-up of new operating plants or required on the same schedule for existing licensees. Licensee will bend every effort to assist School Districts in preparing their plans and in persuading School Boards to act promptly on them. Commission authorization to restart, contingent on the completion and Staff review of those plans, is needed to assure timely action by the School Districts.

3. While the Commission has decided that the issue of psychological distress need not be considered in the restart

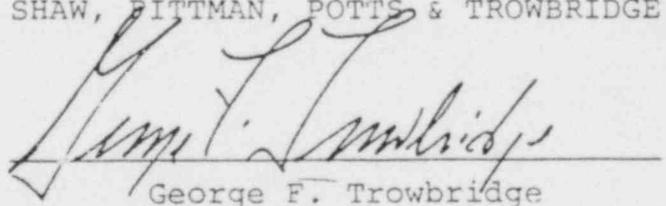
proceeding, that question is presently before the U.S. Court of Appeals for the District of Columbia Circuit and has been briefed and argued before the Court. The Court has instructed the Commission to keep it informed on the schedule for the Commission's decision on restart, presumably in connection with the timing of its own decision. Since the Court's decision, if adverse to the Commission and Licensee, could result in delaying restart, the importance of a prompt Commission decision is apparent.

4. The Commission must anticipate further immediate court challenges to any decision authorizing restart, commencing with requests for emergency stay of such a decision. While Licensee is confident that stay requests would not prevail, it is less confident about the time which may be involved in deciding the requests. Thus the potential for court challenges and delay is another important reason for a prompt Commission decision on restart.

For the above reasons, Licensee requests the Commission to deny UCS' request for a delay in the comment period on immediate effectiveness.

Respectfully submitted,

SHAW, BITTMAN, POTTS & TROWBRIDGE



George F. Trowbridge

Dated: January 5, 1982

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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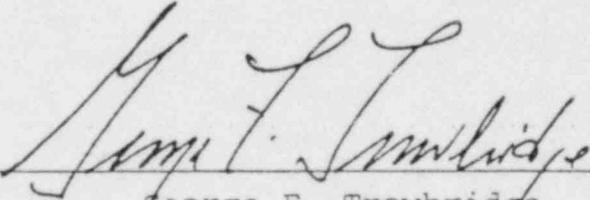
BEFORE THE COMMISSION

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Reply to UCS Motion to Extend Deadline for Immediate Effectiveness Comments," dated January 5, 1982, have been served on the persons on the attached Service List by deposit in the United States mail, postage prepaid, or as indicated by an asterisk, by hand delivery this 5th day of January, 1982.

  
George F. Trowbridge

Dated: January 5, 1982

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