

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)

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Docket No. 50-289
(Restart)

NRC STAFF REPLY TO PARTIES' COMMENTS
ON IMMEDIATE EFFECTIVENESS

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I. INTRODUCTION

In its Order dated November 30, 1981, as modified by its Orders dated December 23, 1981 and January 11, 1982, the Commission invited comments, inter alia, with regard to the continued immediate effectiveness of the Commission's TMI-1 shutdown order in light of the Atomic Safety and Licensing Board's (Licensing Board) decision on hardware/design issues, TMI unit separation and emergency planning. Pursuant to those orders, comments on immediate effectiveness were filed by the NRC Staff,^{1/} Intervenor Aamodt,^{2/} Anti-Nuclear Group Representing York (ANGRY)^{3/} and

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- ^{1/} "NRC Staff Comments on Immediate Effectiveness with Respect to Licensing Board Decision on Hardware/Design Issues, Unit Separation and Emergency Planning," January 28, 1982 (Staff Comments).
- ^{2/} "Aamodt Comments Relative to the Immediate Effectiveness of Partial Initial Decision of December 14, 1981 - Emergency Planning Issues," January 26, 1982 (Aamodt Comments).
- ^{3/} "Comments of Intervenor Anti-Nuclear Group Representing York on Immediate Effectiveness of the ASLB Partial Initial Decision," January 27, 1982 (ANGRY Comments).

Union of Concerned Scientists (UCS),^{4/} the Commonwealth of Pennsylvania^{5/} and the Licensee.^{6/}

Under the Commission's Order of January 11, 1982, replies to the parties' comments on immediate effectiveness are to be filed on February 4, 1982. In accordance with that Order, the Staff's responses to those comments submitted by the Aamodts, ANGRY, the Commonwealth of Pennsylvania and UCS are set forth below.^{7/}

II. NRC STAFF'S REPLY COMMENTS

Intervenors Aamodt and ANGRY and the Commonwealth of Pennsylvania urge that the Commission not lift its immediately effective shutdown order, arguing, in essence, that there are deficiencies in the Licensing Board's December 14 Partial Initial Decision (PID) with regard to emergency planning or that certain emergency planning concerns have not been adequately resolved. Intervenor UCS also urges that the Commission not lift its immediately effective shutdown order, arguing, in essence,

^{4/} "Union of Concerned Scientists' Comments on Immediate Effectiveness," January 28, 1982 (UCS Comments).

^{5/} "Commonwealth of Pennsylvania's Comments on the Immediate Effectiveness of the ASLB Partial Initial Decision Dated December 14, 1981," January 26, 1982 (Commonwealth's Comments).

^{6/} "Licensee's Comments on Immediate Effectiveness of the Licensing Board's Partial Initial Decision Dated December 14, 1981 (Plant Design and Procedures, Separation and Emergency Planning Issues)," January 28, 1982 (Licensee's Comments).

^{7/} The Staff does not disagree with the basic conclusions of Licensee and will submit no reply to the Licensee's comments.

that the Licensing Board, in its December 14 PID, used an improper standard to determine those actions necessary to protect the public, failed to confront issues raised by UCS, and did not properly resolve a number of issues critical to public safety. The positions of these parties are addressed seriatim.

A. Position of Intervenor Aamodt

Intervenor Aamodt's bases for urging that the Commission not lift its immediately effective shutdown order are the Intervenor's claims that certain parts of the Licensing Board's December 14 PID relating to emergency planning are deficient and that the deficiencies are substantial. Specifically, Intervenor Aamodt argues that, contrary to the Licensing Board's findings:

- (1) the Licensee improperly relies on ordinary telephone communications to notify and provide data to risk counties in the event of an emergency;
- (2) the public education programs are deficient because of a lack of guidance on the content of such programs, a lack of accountability for implementing the programs, a failure to provide accurate information on the effects of radiation, and inadequacies in public information brochures; and
- (3) plans for the protection of farmers are inadequate.

1. Aamodt Arguments Regarding Emergency Notification and Data Transmission

Intervenor argues that the Licensing Board erred in finding that the Licensee has provided for prompt notification of the risk counties around TMI in the event of a radiological emergency. The basis for this assertion of error is the claim that the Licensee relies on ordinary

telephone communciations for notifying the counties at a time when telephone communications may be inadequate (Aamodt Comments, p.1). In so arguing, Intervenor cites no evidence for the proposition that, at an early stage of an accident when initial Licensee notification to counties would be made, telephone lines would be overloaded.^{8/} Apart from the lack of evidentiary support for Intervenor's claim of overloaded telephone circuits, Intervenor ignores or downplays the fact that Licensee has provisions for direct radio contact with Dauphin County (Tr. 14596 (Rogan)), and established contingency procedures whereby Dauphin County will notify other risk counties if necessary in the event of an emergency at TMI-1. (Chesnut ff. Tr. 15007 at 38). From this evidence the Licensing Board found the Licensee's provisions for notification of the risk counties in a timely manner to be adequate. (PID, ¶ 1518). Intervenor has pointed to nothing that would cast doubt on such a finding.

Intervenor Aamodt also argues that the Licensing Board erred in finding adequate Licensee provisions for the transmission of accident data to the risk counties. Again the claim is that normal telephone lines are inadequate for this purpose. In this regard, Intervenor overlooks the fact that provision has been made for the coordinated transmission of accident information to the counties by the Pennsylvania Emergency Management Agency (PEMA) as is done normally during all

^{8/} Contrary to Intervenor's assertion, Licensee witness Giangi did not testify at Tr. 14123 or elsewhere that telephone circuits are likely to be "busy."

emergencies (PID ¶ 1518). PEMA itself receives such information from the Commonwealth's Bureau of Radiation Protection (BRP) which has a dedicated "Radiological Line" to TMI-1. (Chesnut ff. Tr. 15007 at 29-31).

Again, Intervenor cites no evidence that would cast doubt on the Licensing Board's finding that adequate provisions have been made for timely transmission of accident data to risk counties. Intervenor's arguments regarding emergency notification and data transmission are, quite simply, unsupported and without merit.

2. Aamodt's Arguments Regarding Public Education

Intervenor Aamodt alleges that there are no criteria against which the content of the public education program may be judged. (Aamodt's Comments, pp. 3-4). Intervenor cites no evidence to support this allegation^{9/} and ignores the Licensing Board's discussion of the criteria to be applied to public education programs. (PID, ¶ 1527). Similarly, Intervenor provides no support for its conclusory assertion of inadequacy in the Board's finding that the responsibility for public education is shared jointly by the Licensee, the Commonwealth and the risk counties. No basis for determining that such shared responsibility is inappropriate has been presented and there is no indication as to why such shared responsibility for public education is inadequate. In short, Intervenor has provided no basis for finding that the Licensing Board

^{9/} Contrary to Intervenor's assertion, Licensee witness Rogan did not testify at Tr. 14134 that no criteria exist. Rather, witness Rogan testified that the NRC has established minimum criteria. (Tr. 14134 (Rogan)).

erred in its determinations as to the criteria for the public education program and the assignment of responsibility for implementing such a program.

Intervenor Aamodt also argues that the portion of the public education program involving the Commonwealth's pamphlet on the effects of radiation (Commonwealth Ex. 3) is deficient in that the Commonwealth's analogy of radiation to sunlight is allegedly misleading and the Commonwealth's pamphlet fails to provide information on the special sensitivity to radiation of certain segments of the population (Aamodt Comments, pp. 3, 4). The evidence cited by Intervenor for the proposition that the Commonwealth's pamphlet is misleading does not support such a position.^{10/} In fact, the Commonwealth pamphlet's description of the effects of radiation was addressed extensively at hearing. Only a single witness, a physician testifying on behalf of Intervenor ANGRY, expressed the view that the radiation - sunlight analogy was misleading (Tr. 21639 (Ryscavage)) and even that witness acknowledged that there is additional information in the Commonwealth's pamphlet that would put the reader on notice that radiation presents dangers different from those presented by the sun. (Tr. 21653-54 (Ryscavage)). Similarly, Intervenor Aamodt presents no basis for the

^{10/} Commonwealth's witness Comey did not testify that the Commonwealth's pamphlet is misleading, despite Intervenor's claim to the contrary. Tr. 18078-80 (Comey). Similarly, FEMA witness Adler did not testify that the Commonwealth's pamphlet is misleading, as asserted by Intervenor, but, in fact, testified that the Commonwealth's pamphlet, used in conjunction with emergency information pamphlets for the TMI risk counties, was adequate. Tr. 18980-81 (Adler).

assertion that segments of the population with special sensitivities to radiation are not considered in the public education program.^{11/} The Commonwealth's pamphlet does, in fact, discuss the greater radiation-sensitivity of certain segments of the population (Commonwealth Ex. 3). The Licensing Board has considered all of the evidence regarding the adequacy of the Commonwealth and county public education pamphlets and has found the pamphlets to be adequate for their intended purpose. (PID, ¶1534).^{12/} The Licensing Board's determination in this regard is well reasoned and Intervenor Aamodt has presented nothing that would cast doubt on that determination.

3. Aamodt's Arguments Regarding Emergency Planning for Farmers

Finally, Intervenor Aamodt asserts that the Licensing Board erred in finding that emergency planning for TMI provides adequate protection for farmers. In essence, Intervenor argues that, because no provision is made for the evacuation of livestock and because farmers with livestock will feel constrained to remain on their farms to care for their livestock, farmers are not protected from the effects of an

^{11/} In contrast to Intervenor's claim, Licensee witness Rogan testified that the public education pamphlets do provide information on the more radiation-sensitive segments of the population. Tr. 14137 (Rogan).

^{12/} Intervenor Aamodt also alleges that the Licensing Board erred in refusing to follow the Commonwealth's suggestion that distribution of State and county pamphlets be withheld until those pamphlets are revised. (Aamodt Comments, p. 4). In fact, the Licensing Board recommended conditions for restart which would require revised public education pamphlets to be reviewed (PID, ¶2010b) and then distributed (PID, ¶2010c and d) prior to restart.

emergency at TMI (Aamodt Comments, pp. 5, 6, 7, 9, and 10). The evidence cited by Intervenor does not support these arguments however.

Thus, although emergency plans do not make provisions for the evacuation of livestock, livestock evacuation is not prohibited and the means exist for at least the limited evacuation of the most valuable livestock, even on short notice (PID, ¶ 1928, n. 217). No farmer who testified at the hearing indicated that he would not evacuate himself and his family in the event of a need to evacuate. Rather, the farmers indicated that they would determine whether to abandon their livestock and evacuate themselves and their families based on the situation at the time and the availability of means to care for their livestock. (PID, ¶ 1926, n. 215). In the event that a farmer chooses to remain on his farm to care for his livestock, adequate guidance on measures he can take to protect himself has been or will be provided. (PID, ¶1932). The Commonwealth has made the commitment to treat farmers who decide to remain on their farms as emergency workers and to provide them with dosimetry and radioprotective drugs. (PID, ¶ 1925, n. 214). In this regard, Intervenor is simply wrong in alleging that no options are available to the farmer in the event of a radiological emergency and that no protective measures can be taken for farmers.

Intervenor Aamodt also alleges that the Commonwealth depends on farmers to protect the food supply in the ingestion exposure pathway emergency planning zone (EPZ). (Aamodt Comments, p. 8). Intervenor's allegations in this regard simply do not comport with the facts. The evidence clearly establishes that it is the Commonwealth that is responsible, and has provided, for the protection of foodstuffs and

the interdiction of contaminated foodstuffs in the ingestion EPZ.
(Commonwealth Ex. 2A, Annex E, pp. 12-13).

In summary, the Licensing Board found, based on the evidence of record, that farmers are not left without options for their own protection in the event of a radiological emergency. (PID, ¶ 1926). Consistent with the NRC's emergency planning regulations which emphasize the protection of persons and leave the protection of property (such as livestock) to ad hoc measures, the Licensing Board properly determined that the lack of specific planning to assure the protection of livestock is not a planning deficiency or defect. (PID, ¶ 1924). Intervenor Aamodt has presented nothing that casts doubt on these findings.

B. Position of Intervenor ANGRY

Intervenor ANGRY's bases for urging that the Commission not lift its immediately effective shutdown order are that certain matters which could effect public health and safety if TMI-1 is permitted to restart have not been considered and resolved and that, in any event, technical problems at TMI-1 preclude restart even if the Commission were to lift its immediately effective shutdown order. Specifically, Intervenor ANGRY argues that:

- (1) the effects of psychological stress from the TMI-2 accident and restart on the efficacy of emergency actions during any future accident at TMI have been ignored (ANGRY Comments, pp. 1, 2, 3);
- (2) emergency planning for TMI-1 is deficient with regard to school plans, the siren system and public information on protective actions (ANGRY Comments, p. 2);
- (3) the Licensing Board has not addressed all issues which were litigated (presumably referring to the matters

considered in the reopened hearing on operator cheating incidents) (ANGRY Comments, p. 2); and

- (4) the steam generator tube problem precludes operation for at least another six months so that there is no practical need to consider authorizing restart now (ANGRY Comments, p. 2).

1. ANGRY's Arguments Regarding Psychological Stress Effects on Emergency Actions

ANGRY argues that the Commission has ignored the potential effects of psychological stress on actions to be taken during a radiological emergency at TMI-1, that the Licensing Board was unable to determine whether such effects would have an impact on the efficacy of protective actions and that TMI-1 should not be permitted to restart until such psychological impacts are considered. In so arguing, Intervenor has ignored the substantial litigation of this issue with regard to emergency response (despite the absence of any contention on the subject) in the TMI-1 restart proceeding and the extensive consideration of this matter in the December 14 PID.^{13/} As recounted at length by the Licensing Board in its PID, evidence on this subject from Licensee, Intervenor, Staff and FEMA witnesses was presented. Contrary to ANGRY's assertion, the Licensing Board did, in fact, determine, based on the evidence, that emergency planning provisions for TMI will tend to reduce and minimize the effects of psychological stress on emergency response.^{14/} ANGRY has not

^{13/} See PID, ¶¶ 1625-55.

^{14/} PID, ¶¶ 1652, 1653.

taken issue with those Licensing Board findings or otherwise presented information or argument which would cast doubt on them.

2. ANGRY'S Arguments Regarding Deficiencies in Emergency Planning

Intervenor asserts that emergency planning for TMI suffers many deficiencies which the Licensing Board itself acknowledges. Specifically, ANGRY argues that the absence of school plans to protect children, the alleged absence of a completed siren alert system, and the lack of distributed public information materials on emergency protective actions should prevent the restart of TMI-1. Although the Licensing Board did, indeed, acknowledge that emergency preparedness was incomplete in these areas, it also provided a remedy. Based on the evidence, the Board determined that, prior to restart, written school district plans for the TMI plume exposure pathway EPZ should be completed and reviewed for adequacy (PID, ¶ 2010h), the entire siren system should be audibly tested and the test results reviewed for adequacy of siren coverage (PID, ¶ 2010f), and the revised and updated Commonwealth and county emergency public information materials should be reviewed for adequacy and distributed to residents and to transient locations (PID, ¶ 2010b, c and d). The satisfaction of these requirements prior to restart will eliminate the emergency planning deficiencies cited by ANGRY as impediments to restart. ANGRY's arguments with regard to these alleged deficiencies are, therefore, without merit.

3. ANGRY's Arguments Regarding Unresolved Issues and the Alleged Lack of Need for a Prompt Decision on Immediate Effectiveness

Finally, ANGRY asserts that the Licensing Board has not yet rendered a decision on all issues that were litigated and that, in any event, the steam generator tube problems at TMI-1 obviate the need for any Commission decision on immediate effectiveness now. ANGRY does not specify the litigated issues for which a Board decision is lacking, but presumably Intervenor is referring to those issues considered in, and affected by, the reopened hearing on cheating incidents. Both that matter and, to some extent, the question of the need for a prompt Commission decision on immediate effectiveness in view of the potential delay in readiness for operation caused by the steam generator tube problems were addressed by interested parties, other than ANGRY, in comments and reply comments, filed on January 13 and January 20, 1982 respectively, on the question as to whether the Commission should defer a decision on restart until the Licensing Board issues its additional decision on operator cheating matters. ANGRY's comments in this regard at this late date are untimely.

Nevertheless, as indicated in the Staff's previous comments to the Commission, the remaining unresolved issues on operator testing and licensing should not preclude a Commission decision now on immediate

effectiveness with regard to TMI-1 restart.^{15/} The Licensing Board explicitly considered the fact that such issues remain unresolved and determined that, pending resolution of the issues, TMI-1 could safely restart and operate at up to five percent of design power.^{16/} ANGRY, in its cryptic and conclusory assertion that litigated issues have yet to be decided by the Licensing Board, does not challenge the validity of the Board's finding that limited power operation would be safe.

ANGRY's argument that, as a practical matter, there are other impediments to restart that obviate the need for a prompt Commission decision was also addressed, in essence, in previous Staff comments.^{17/} In this regard, it remains the Staff position that, despite potential impediments to TMI-1 operation (such as steam generator tube problems and the judgment on psychological stress issued by the Court of Appeals for the D.C. Circuit in PANE v. NRC, No. 81-1131, January 7, 1982) unrelated to the concerns which caused the Commission to issue its immediately effective shutdown order, the Commission can and should decide promptly on whether to lift that immediately effective shutdown

^{15/} See "NRC Staff Comments on Whether Commission Should Defer Restart Decision Until Issuance of Licensing Board's Opinion on Operator Cheating Incidents," January 13, 1982, pp. 7-11; "NRC Staff's Reply To Parties' Comments on Whether Commission Should Defer Restart Decision Until Issuance of Licensing Board's Opinion on Operator Cheating Incidents," January 20, 1981, pp. 3-4.

^{16/} PID, ¶¶ 2016-2023.

^{17/} See "NRC Staff's Reply to Parties' Comments on Whether Commission Should Defer Restart Decision Until Issuance of Licensing Board's Opinion on Operator Cheating Incidents," January 20, 1981, pp. 5-6, and 10.

order when there is a basis for determining that the concerns which prompted that order have been resolved. The Licensing Board's partial initial decisions issued to date provide that basis.

C. Position of Commonwealth of Pennsylvania

The Commonwealth of Pennsylvania's basis for urging that the Commission not lift its immediately effective shutdown order is the Commonwealth's claim that the matter of the availability of permanent record dosimetry for offsite emergency workers for TMI was not adequately resolved by the Licensing Board in its December 14 PID. Specifically, the Commonwealth argues that NRC regulations and regulatory guidance require permanent record dosimetry for emergency workers (Commonwealth Comments, p. 2), that, despite evidence that there is a shortfall of such dosimetry for offsite emergency workers for TMI, the Licensing Board did not address the problem in its PID but, instead, relied on evidence indicating that the Commonwealth is attempting to procure the necessary dosimetry (Commonwealth Comments, pp. 3-4), that the Commonwealth has been unable to procure such dosimetry (Commonwealth Comments, p. 4), and that, without such dosimetry, offsite emergency workers will not be provided with adequate protection in the event of a radiological emergency at TMI-1. Accordingly, the Commonwealth argues that TMI-1 should not be permitted to restart until

adequate dosimetry has been provided by someone (Commonwealth Comments, p. 5).^{18/}

The Staff would note, initially, that the NRC's emergency planning regulations do not "require" permanent record dosimetry for emergency workers. Rather, those regulations require that "[m]eans for controlling radiological exposures, in an emergency, are established for emergency workers." 10 CFR § 50.47(b)(11). Although NUREG-0654 does indicate that permanent record dosimeters should be provided, this is regulatory guidance and does not have the force and effect of a regulation. Thus, the Commonwealth's claim that permanent record dosimetry is required for emergency workers as a matter of regulation is wrong.

Apart from this, it is the Staff's view that the Commonwealth has not shown that permanent record dosimetry is necessary to adequately protect emergency workers. The Licensing Board found, and the Commonwealth does not dispute, that there are sufficient quantities of self-reading dosimeters to provide two types of such dosimeters to each offsite emergency worker for TMI.^{19/} The evidence indicates that there

^{18/} The Commonwealth states that requests to FEMA for permanent record dosimetry have resulted in no definitive response and points to the testimony of a FEMA witness in another proceeding as evidence that FEMA will not provide dosimetry to the Commonwealth. Despite the Commonwealth's view that permanent record dosimetry is required by NRC regulations and is necessary to protect the health and safety of state and local emergency workers, the Commonwealth states that it does not intend to purchase additional dosimetry itself. (Commonwealth Comments, p. 4).

^{19/} See, Staff Ex. 21 at 15, 20; Tr. 22476 (Bath). See also PID, ¶ 1936 and Commonwealth Comments, p. 4.

are other means for providing the protection for emergency workers that permanent record dosimetry would provide, despite the acknowledged shortfall in permanent record dosimetry. Tr. 22772-73 (Adler). Although FEMA determined that permanent record dosimetry for emergency workers is an area of emergency planning for TMI that should be improved upon, it did not find emergency worker exposure control in the absence of such improvement to involve a significant planning deficiency which would render offsite emergency response capabilities inadequate.^{20/} In short, the evidence in the TMI-1 restart proceeding shows that the shortfall in permanent record dosimetry should not result in inadequate emergency preparedness or response. The Commonwealth has not shown otherwise and has not demonstrated that the current shortfall of permanent record dosimetry warrants the continued immediate effectiveness of the TMI-1 shutdown order.

D. Position of Intervenor UCS

Intervenor UCS argues that the Commission cannot permit restart because of deficiencies in the Licensing Board's PID. Specifically, UCS argues that under the standard that the Commission should apply in deciding to lift its immediately effective suspension of the operating license for TMI-1 it may not give immediate effectiveness to the Licensing Board PID because:

^{20/} See Staff Ex. 18 at 2.

(1) The Board adopted an improper standard for determining whether actions are "necessary... to provide reasonable assurance that the facility can be operated... without endangering the health and safety of the public."

(2) The Board has failed to confront issues presented by UCS.

(3) The Board does not resolve numerous issues critical to public safety in that the Board improperly delegated its responsibility to decide issues to the Staff, Staff conditions for restart have not been proposed and the Board improperly excluded issues raised by UCS from consideration.

1. UCS Argument Regarding Standards for Immediate Effectiveness

UCS argues that the Commission does not have the authority to lift its summary suspension of the license for TMI-1 upon a finding that the issues which led to shutdown have been resolved in favor of restart. Rather, according to UCS, the Commission is bound by the standards of 10 CFR 2.764, pertaining to immediate effectiveness of initial decisions on the issuance or amendment of construction permits and operating licenses (UCS Comments, pp. 3-8). The Staff submits that prior decisions of the Commission and the courts demonstrate that the Commission does have such authority, and arguably is required by law to exercise it in this case.^{21/}

UCS attempts to distinguish the federal court cases cited by the NRC Staff^{22/} in support of its position, by noting that the cases

^{21/} See "NRC Staff Comments on Whether Commission Should Defer Restart Decision Until Issuance of Licensing Board's Opinion on Operator Cheating Incidents," January 13, 1982, pp. 4-6.

^{22/} See Northwest Airlines v. CAB, 539 F.2d 748 (D.C. Cir. 1978); See also, ICC v. Oregon Pacific Industries, Inc. 420 U.S. 184 (1975) (concurring opinion of Justice Powell), and discussion of those cases in "NRC Staff Reply to Comments on Immediate Effectiveness with Respect to Licensing Board Decision on Management Competence/Operator Training," dated September 28, 1981, at 7.

reflect a concern for the rights of the parties to notice and a hearing. (UCS Comments, at 4-5). But such a concern -- which we do not dispute -- only highlights the fact that license suspension without prior notice or opportunity for hearing to the licensee is indeed an extraordinary action, a fact which UCS admits. (UCS Comments, at 4). UCS's attempted distinction in no way undercuts the proposition for which the cases are cited: that the justification for summary action ends when the facts that prompted it have changed.

Moreover, the Commission itself, in its December 23, 1981 Order in this proceeding, CLI-81-34, 14 NRC ____ (1981), recognized that if the concerns which prompted its original immediate TMI-1 license suspension order no longer justify a continuation of that suspension, "then the Commission is required by law--whatever the nature of the Licensing Board's decision--to lift that suspension immediately." Order, p. 2.

Consequently, if the Commission, on the basis of the Licensing Board's partial initial decisions on the restart issues, is able to find that its original concerns regarding the operation of TMI-1 have been satisfied, then its basis for finding that the public health, safety or interest requires immediate effectiveness of the shutdown provisions of the July 2 and August 9, 1979 Orders similarly disappears. In such a situation, the Commission arguably is compelled to lift the immediate effectiveness of the TMI-1 license suspension.

Thus, even if this proceeding is to be characterized as a license amendment proceeding, as UCS asserts it should be, there is no impediment to the Commission's summarily lifting its immediately effective shutdown order. A full and protracted hearing on those conditions, and license amendments, necessary for restart has been held. UCS and other interested parties were given notice of, and the opportunity to participate in, that hearing and did, in fact, participate. Hearing requirements, if any, on the license amendments necessary for restart have been satisfied.

2. UCS Arguments Regarding Board Decision

a. UCS Arguments Regarding "Necessary" Standard

UCS asserts that the Board improperly took into account the technical feasibility of proposed actions in reaching its final judgments on whether they are necessary to provide reasonable assurance that TMI-1 can be operated without endangering the health and safety of the public if it is allowed to be restarted. It is not clear to the Staff that such a standard was used to reject any proposed action. It was used to support imposition of a requirement to install a water level meter. Although UCS consumes several pages of its comments attacking the Board's reasoning, it admits at page 14 that "the Board does not specifically discuss feasibility in ruling on the various actions proposed by the parties [other than installing a water level meter], [and] one must assume that the Board took feasibility into account in reaching all of its conclusions." (See UCS Comments, pp. 8-15). Moreover, UCS fails to demonstrate that it or the public has been harmed

by the Board's use of a standard that considers the technical feasibility of proposed actions. It can only speculate that "[t]he Board may well have rejected a proposed actions (sic) on feasibility grounds although the action is otherwise required to assure safety" and assert without even an offer of proof that "[i]f that is true, permitting TMI-1 to reopen would pose a threat to the public health and safety." The Staff submits that such general and speculative comments are of little assistance in trying to deal with concrete issues. Moreover, at their current level of generality such comments do not provide a sufficient basis for constructive consideration.

b. UCS Arguments Regarding the Board's Failure to Confront the Issues Presented by UCS

In addition to the UCS allegations of the Board's failure to resolve numerous issues critical to public safety that are to be dealt with in item c below, UCS also claims to demonstrate by comments on its summary of its contentions that in dealing with issues raised by UCS the Board "has mischaracterized UCS's position and testimony in various instances." (UCS Comments, p. 16) However, UCS does little more than cite its proposed and reply findings in support of its bald assertions of error by the Board. It fails to show by citations to the transcript or exhibits in evidence that reliable and probative evidence supports its view rather than that of the Board on UCS Contentions 1, 2 and 3. The UCS comments, unsupported as they are by a discussion of the record, are of little assistance in assessing the merits of the UCS allegations and should be disregarded by the Commission in its deliberations.

c. UCS Arguments Regarding Board's Failure to Resolve Safety Issues

i. The Board Improperly Delegated Its Responsibility to the Staff

UCS argues that the Licensing Board on numerous occasions improperly delegated its responsibility to decide contested issues to the Staff. It bases its argument on several alleged examples of improper delegation. (UCS Comments, p. 17). However, UCS does not attempt to support its baseless allegations with analysis. Had UCS done so it would have seen that the examples it cites do not support its allegation that the Board delegated to the Staff the Board's responsibility to decide contested issues. Moreover, UCS did not even participate in the litigation of the issues from which the last three of its examples were drawn. In the first example the Board left to the Staff both the verification that procedures for connecting pressurizer heaters to on-site emergency power supplies include Board-specified provisions and the monitoring and evaluation of a test demonstration of heater connection and energization. (PID, ¶¶ 771-773). In the second example, the Board directed the Licensee to propose, for Staff approval and certification to the Commission of reasonable progress toward implementation, a long-term solution to the steam generator bypass logic problem that had come to its attention during cross-examination of Licensee's witness by the Commonwealth of Pennsylvania. (PID, ¶ 1064). In the third example, the Board at the request of the Commonwealth directed that the Licensee submit to the Staff for its review the Licensee's testing program for phase 1 separation of Units 1 and 2. (PID, ¶ 1064). In the fourth example, the Board merely noted that if the Licensee is not able to install prior to restart as planned the supplemental high-range radiation monitors that are required long-term

by NUREG-0737 the Staff will assure that acceptable interim measures are in place prior to restart. (PID, ¶874, n. 101). In the final example, the Board was merely noting the fact that Licensee's Detailed Control Room Design Review report was not likely to be the final word on resolution of control room deficiencies that the report identified because the report had not at the time of the hearing been reviewed by the Staff. (PID, ¶914, n. 109). In none of these instances did the Board delegate its responsibility to decide contested issues to the Staff. The UCS allegation of improper delegation is totally without merit.

ii. Staff Conditions for Restart Have Not Been Proposed

UCS also argues that because proposed Staff conditions for restart are not known to UCS or the Board the Commission cannot allow restart. UCS again fails to support its assertions. As the Licensing Board clearly stated, the report by the Staff and Licensee that was directed by the Board is not a condition precedent to restart and, in the view of the Board, need not even be submitted prior to restart. (PID, ¶1217). The Board has specified conditions that must be satisfied prior to restart. The UCS position in the view of the Staff, and apparently of the Licensing Board as well, is totally without merit.

iii. The Board Improperly Excluded Issues Raised by UCS

UCS argues once again that its hydrogen control contention was improperly excluded by the Commission in spite of the Commission's twice having considered the UCS position and in spite of UCS's having

declined to press the hydrogen issues under the groundrules laid down by the Commission for consideration of hydrogen control measures beyond those presently required by 10 CFR 50.44. UCS also argues that even though the Commission's policy statement on consideration of the environmental impacts of so-called Class 9 accidents clearly did not require their consideration in the TMI-1 restart proceeding, the Licensing Board erred in refusing to consider them. In the Staff's view these arguments should be dismissed without further consideration in that UCS offers nothing new in support of its previously stated differing opinion from that of the Commission.

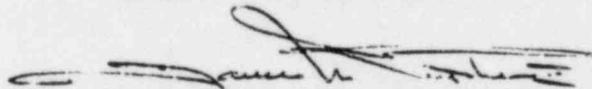
As to the UCS allegation that the Board refused to allow UCS to litigate unresolved generic safety issues related to the three examples it cites, it is simply in the Staff's view not true. UCS concerns related to interaction between safety and non-safety systems were litigated in connection with UCS Contention 14. (See PID, ¶¶971-1004). UCS concerns related to environmental qualification of safety related equipment were litigated in connection with Board Question/UCS Contention 12, a contention that was originally sponsored by UCS but later adopted by the Board after UCS withdrew its sponsorship. However, UCS did participate in the litigation of that issue. (See PID, ¶¶1139-1181). UCS concerns related to the absence of an automatic indication of the disabling of a safety system were considered by the Board in connection with Board Question/UCS Contention 9. That contention also was sponsored by UCS but adopted by the Board when UCS abandoned it. UCS did not present testimony, cross-examine Staff or Licensee

witnesses or file proposed findings on the issue. (See PID, ¶ 887 906). In the Staff's view the UCS complaints regarding improper exclusion by the Board of issues raised by UCS are totally without merit.

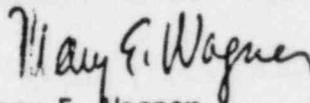
III. CONCLUSION

In conclusion, it is the Staff's position that Intervenors Aamodt, ANGRY and UCS, and the Commonwealth of Pennsylvania have raised nothing that would cast doubt on the adequacy of the Licensing Board's partial initial decisions resolving the concerns which prompted the Commission to issue its immediately effective shutdown order for TMI-1 and have provided nothing that would warrant a determination that such shutdown order should not now be lifted, at least to the extent of allowing operation of TMI-1 at up to five percent power contingent upon certification to the Commission by the Director of NRR that the prerequisites to restart have been satisfied.

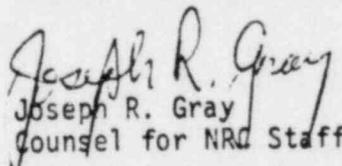
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Dated at Bethesda, Maryland
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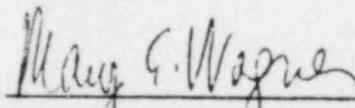
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