UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	
	)	
METROPOLITAN EDISON COMPANY	)	Docket No. 50-289
	)	(Restart)
(Three Mile Island Nuclear Station, Unit No. 1)	)	
	)	

LICENSEE'S RESPONSE TO PANE REQUEST FOR HEARING ON LICENSE AMENDMENTS AND CONDITIONS REQUIRED PRIOR TO RESTART OF TMI-1

On June 3, 1982, People Against Nuclear Energy (PANE) filed with the Commission a request for hearing on license amendments and conditions required prior to restart of TMI-1. PANE's request, as explained by PANE, is a companion to a response by PANE, filed the same day, opposing Licensee's motion dated May 24, 1982, to proceed with the psychological health review mandated by the Court of Appeals for the District of Columbia Circuit, without further adjudicatory trial-type hearings, on the basis of the environmental assessment and/or statement and opportunity for public participation and comment prescribed by NEPA. See Licensee's Motion with Respect to Psychological Health Issue, dated May 24, 1982, and PANE Response to Licensee's Motion with Respect to Psychological

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Health Issue, dated June 3, 1982.

PANE does not in reality seek additional hearings on the health and safety issues already considered in the restart proceeding. It would prefer to treat the hearings already held as satisfying its claim that hearings must be held on any amendments to the TMI-1 operating license resulting from those hearings. PANE's hearing request with respect to the license amendments is filed solely to establish that such a hearing has been formally requested by PANE under Section 189 of the Atomic Energy Act and in support of its argument that either the hearing already held or a new hearing must be considered a non-discretionary hearing legally required prior to the restart of TMI-1. From this proposition PANE moves to the further proposition that such a hearing is part of the "existing agency review process" and that any environmental statement issued by the Commission with respect to psychological health effects must therefore be considered in such a hearing. We do not agree that PANE can bootstrap a discretionary NRC hearing into a non-discretionary one by filing a hearing request after the hearing is completed. More importantly, Licensee submits that PANE builds its legal syllogism on an incorrect premise, i.e. that a hearing is statutorily required if requested by PANE on the license amendments contemplated by the Licensing Board's initial decisions.

PANE does not dispute, either in its own motion or in response to Licensee's motion, the basic position taken by

Licensee and the NRC Staff that hearings are not required, whether or not requested by a third party, prior to lifting an immediately effective suspension order once the NRC has determined that conditions necessary to resolve the bases for suspension have been satisfactorily met. PANE appears to argue, however, that because in this proceeding a number of restart requirements recommended by the Board are to be reflected in amendments to the TMI-1 license or technical specifications, and because PANE has requested a hearing on the amendments, Section 189 of the Atomic Energy Act requires a hearing before the amendments are put in place.

The difficulty with PANE's argument is that it not only uses the license amendment issue as a bootstrap to force continued suspension beyond its intended and authorized purpose, but it ignores the character of the license amendments recommended or approved by the Licensing Board. The TMI-1 restart license amendments simply reflect, and facilitate enforcement of, Licensee commitments and Board requirements which have been found by the Board to be necessary in the interest of increased safety. They are not amendments which either authorize Licensee to engage in activities not previously authorized by the TMI-1 operating license or which present any significant potential for new or increased hazards to the public. As such it is highly questionable whether the amendments are of a character which gives rise to any legal interest by PANE in their adoption. It is not necessary for the

Commission, however, to decide this latter point. PANE's hearing request can be dismissed on other grounds. The decisions of the Licensing Board provide a firm foundation for a Commission determination that the proposed amendments do not involve "significant hazards considerations" as that phrase has been consistently interpreted by the NRC, i.e. that the amendments do not "involve a significant increase in the probability or consequences of an accident previously evaluated, create the possibility of an accident of a type different from any evaluated previously, or involve a significant reduction in a margin of safety."[1/] Such a determination would eliminate any requirement for hearing prior to adoption of the amendments.

Licensee is, of course, aware of the decision of the Court of Appeals for the District of Columbia Circuit in Sholly v. NRC, 651 F.2d 780 (D.C. Cir. Nov. 19, 1980), ruling that hearings in advance of license amendments are required if requested by an interested person notwithstanding a no significant hazards determination. The Supreme Court has granted certiorari in that case, the mandate of the Court of Appeals has been stayed, and the ruling is not presently binding on the Commission. In any event the license amendment involved in the Sholly case was altogether different from the proposed TMI-1 license amendments. It involved a license

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1/ For a description of NRC practice, see Proposed Rule on No Significant Hazards Consideration, 45 F.R. 20491 (March 28, 1980).

amendment which would enlarge the licensee's authority by permitting the licensee to discharge radioactive effluents at a rate greater than permitted under its existing license. It was not an amendment which the Commission had found to be necessary for the public health and safety.

Indiscriminate extension of the Sholly ruling to amendments which the NRC itself finds necessary in the interest of public health and safety and which involve no new safety risks would create an intolerable situation. NRC must retain the authority to issue immediately effective amendments without waiting on a hearing, whether requested by the licensee or a third person, when it determines such amendments to be necessary for the public health and safety. Otherwise, any interested person could delay issuance of the amendment simply by requesting a hearing. The only choice which would then be left to the NRC during the pendency of the hearing process, short of allowing continued operation without an amendment considered necessary by the NRC, would be to suspend operation of the facility until completion of the hearing. Licensee does not believe the Atomic Energy Act was intended to leave the NRC with only such a drastic remedy.

The same considerations apply to the amendment and reinstatement of a license which has already been suspended. Once the Commission has decided on amendments which it considers necessary for safe operation and which do not entail significant hazards considerations, the Commission must be

in a position immediately to issue the amendments and to reinstate the license. There is no more reason in this situation to force the Commission into a continuation of the suspension of a license than to force a suspension in the first instance. In fact, to do so would constitute an unwarranted extension of the Commission's immediately effective suspension authority.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By _____
George F. Trowbridge, P.C.

Dated: June 18, 1982

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Response to PANE Request for Hearing on License Amendments and Conditions Required Prior to Restart of TMI-1," dated June 18, 1982, were served upon those persons on the attached Service List by deposit in the U. S. mail, postage prepaid, this 18th day of June, 1982.

George F. Trowbridge

Dated: June 18, 1982

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