

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

82 JUL 19

WST

Commissioners:

Nunzio J. Palladino, Chairman
Victor Gilinsky
John F. Ahearne
Thomas M. Roberts
James K. Asselstine

SERVED JUL 19 1982

In the Matter of)
)
METROPOLITAN EDISON COMPANY,)
et al.)
)
(Three Mile Island, Unit 1))
_____)

Docket No. 50-289
(Restart)

ORDER (CLI-82-13)

On May 24, 1982, the licensee, Metropolitan Edison Company, filed a "Motion with Respect to Psychological Health Issue" with the Commission, asking that the Commission decide expeditiously whether, in accordance with the decision of the D.C. Circuit Court of Appeals in PANE v. NRC, No. 81-1131 (May 14, 1982), it intended to prepare a supplemental environmental impact statement on psychological health effects associated with the operation of Three Mile Island Unit 1. The licensee further asked the Commission, if its determination of this question was that an SEIS would be prepared, to proceed expeditiously with its preparation and circulation, and to decide that no hearing would be permitted on the SEIS. The licensee stated that the

DS02

Commission should take these actions without prejudice to its pursuit of appellate review of the D.C. Circuit's decision.

Responses to the licensee's motion were filed by PANE on June 3 and by the staff on June 10, 1982. Briefly, PANE urges the Commission to decide to prepare an SEIS and to hold that the SEIS must be considered in an adjudicatory hearing. The staff takes the position that the staff is not now in possession of enough information on the psychological health of residents in the TMI area to make a determination whether to recommend to the Commission that an SEIS be prepared. Efforts to collect such information are in progress at this time. The staff urges that such questions as the right to a hearing if an SEIS is prepared, and the need for and appropriateness of exemptions from the Commission's regulations after the determination whether to prepare an SEIS is made, need not and should not be addressed at this time. Rather, the staff recommends that the Commission defer a decision on these questions until the staff is in a position to report to it on the status of psychological health of residents in the TMI vicinity.

We agree with the staff that the Commission does not at present have enough information to decide whether the terms of the court's decision in PANE v. NRC require

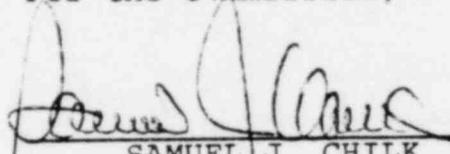
preparation of an SEIS, and that it would be premature to decide what procedures should be followed if a decision is made at some future time that an SEIS should be prepared. Accordingly, the licensee's motion is DENIED.

For the reasons stated in his attached separate views, Commissioner Gilinsky dissents from this decision.

It is so ORDERED.*



For the Commission,


SAMUEL J. CHILK
Secretary of the Commission

Dated at Washington, D.C.,
this 16th day of July, 1982.

*Commissioner Gilinsky was not present when this Order was affirmed, but had previously indicated his disapproval. Had Commissioner Gilinsky been present he would have affirmed his prior vote.

SEPARATE VIEWS OF COMMISSIONER GILINSKY

I would grant GPU's request that the Commission decide as soon as possible whether a supplemental environmental impact statement regarding the psychological impacts of restarting TMI-1 is required. The Commission has, for more than six months, been aware that some sort of assessment of the psychological effects of restarting TMI-1 might have to be made. Indeed, the NRC staff has already spent over a quarter of a million dollars to obtain the advice of a wide array of psychologists and other experts. In these circumstances, it is either disingenuous or a confession of managerial failure for the Commission to say that it "does not at present have enough information" to determine whether the decision in PANE v. NRC requires preparation of a supplemental EIS. The Commission should, by any reasonable standard, be able to decide this question by the end of this summer.

The difficulty seems to be that the Commission is more interested in keeping PANE v. NRC a live controversy in order to justify Supreme Court review than in concluding the TMI-1 case. As matters presently stand, the Commission's refusal to act as soon as possible could postpone the decision on restarting TMI-1 for months, depending upon whether the Supreme Court takes review of this case and upon

the outcome of any such review.¹ The Commission's willingness to risk such delay in order to seek the reversal of an extraordinarily narrow ruling of the Court of Appeals² is particularly ironic since one of the Commission's principal reasons for not admitting the psychological stress contention was the fear that hearing this contention might prolong the proceeding. It is as if the Commission remembers nothing.

¹ Assuming that the other safety problems, such as the steam generator tube corrosion, which are not part of the adjudicatory proceeding will be resolved by then.

² Psychological stress contentions would need to be admitted in proceedings other than TMI-1 restart only where the impacts consist of "post-traumatic anxieties, accompanied by physical effects and caused by fears of recurring catastrophe," that is, only in hearings which deal with the continued operation of a facility which has already suffered an accident of a severity comparable to that of the TMI-2 accident. If the Commission feels threatened by such a possibility then the public really does have something to worry about.

This entire episode shows that nuclear fear-mongering is not restricted to the anti-nuclear side. The Court's narrow ruling, in effect that there are extreme circumstances in which public fear must be taken into account in the Commission's administrative proceedings, has been depicted as a death warrant for nuclear power, and more, if not reversed. It is nothing of the sort. What these critics, many of whom should know better, fail to face up to is that, because of the Atomic Energy Act's preemption of State authority, their unwillingness to consider any but strictly radiological effects would mean that if fifty percent of the population of Middletown were to suddenly drop dead from fear of the TMI-1 restart, not a single entity of the State or Federal Government below the level of the U.S. Congress could take that fact into account in deciding whether to restart Unit 1.