January 26, 1983 SECY-83-35

ADJUDICATORY ISSUE
(Affirmation)

To: The Commissioners

From: Martin G. Malsch
Acting General Counsel

Subject: UCS OBJECTION TO EX PARTE COMMUNICATIONS IN TMI-1 PROCEEDING

Purpose: recommend that

Discussion: The Union of Concerned Scientists (UCS) on November 4, 1982 filed an objection to alleged ex parte communications between the staff and the Commissioners in the Three Mile Island Unit 1 (TMI-1) Restart proceeding. 1/ UCS alleged that it learned of these ex parte communications at the October 6, 1982 Commission meeting on "Status of Staff Certification on Licensee Compliance with Restart Requirement on TMI-1." UCS argued that the NRC staff and the Commission at that meeting, and in SECY-82-111, "Requirements for

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1/ UCS in its January 7, 1983 comments on the Commission meeting of December 17, 1982 (on seismic qualification of TMI-1 auxiliary feedwater system) objected to that meeting as violating the ex parte prohibitions. That motion will be treated in a separate paper.

CONTACT:
Rick Levi, OGC
4-3224

Emergency Response Capability," 2/ and SECY-82-384, "Three Mile Island Unit 1 (TMI) NUREG-0737 Items Status," dealt directly with contested issues in the TMI-1 Restart proceeding.

UCS alleged that "the Staff discussed facts and presented opinion, in an effort to convince the Commission that the plant is safe for restart, which go far beyond what was presented on the record and are in important ways inconsistent with the record." UCS cited one example: Item II.B.2 of NUREG-0737, plant shielding modifications. UCS argued that plant shielding was a contested issue and that the Board resolved the issue by relying on staff's assertion that the plant shielding modifications would be completed by January 1, 1982. UCS maintained that it is improper for staff now to argue outside the proceeding that the Commission should consider delaying this requirement until after restart. UCS concluded that the Licensing Board's decision, which found the plant safe to operate once these requirements are met, is totally undermined by changing the requirements now. UCS therefore moved the Commission to "hold an evidentiary session on this point, allowing all parties to participate, or remand the matter to the Licensing or Appeal Board." 3/

2/ UCS also refers to SECY-82-111A and B, which it has not seen because they were not public documents. Subsequent to the UCS filing, SECY-82-111A was made available to the public. SECY-82-111B also is now being made available to the public.

3/ UCS also argued, with regard to the merits of the issue, that the Licensing Board appears to have erred with regard to the scope of modifications necessary to implement Item II.B.2 as Licensee is now imposing more shielding than the Board required. UCS stated that this is an area which "requires

(Footnote continued on following page)

Licensee opposed the UCS motion. With regard to SECY-82-384, licensee pointed out that the Commission in CLI-81-3, 13 NRC 291 (1981), granted the Licensee's motion requesting that the Commission itself retain jurisdiction to alter scheduled completion dates. Licensee noted that no party objected to that motion. Licensee asserted that, if UCS is complaining that staff's recommendations were not served on it, UCS should have been aware of them because they were publicly available.

Licensee also argued that the NRC staff had not recommended delay in any item which was the subject of a UCS contention. Licensee stated that UCS' only contention regarding plant shielding concerned shielding for radioactive water bled from the primary system during feed and bleed cooling, and the shielding responding to this concern has been installed. The additional shielding for which deferral was sought involves modifications to the DHR valves and relocation of their controls, which involve decay heat removal and not feed and bleed cooling.

3/ (Continued from preceding page)

probing and which we would explore if given the opportunity, as we request herein."

UCS also attacked the reasons given for failing to complete the plant shielding modifications, which were manpower and financial constraints imposed by the steam generator problems. (Staff also cited vendor difficulties as a justification for deferring the scheduled date for completion.) UCS stated that GPU "has no business operating nuclear facilities" if it cannot afford six valves and a control panel, and that it was "difficult to believe that the disciplines involved in addressing the steam generator problem have substantial overlap with those required to complete the plant shielding modifications."

With regard to SECY-82-111, Licensee noted that this document proposes a procedure for completing the emergency planning upgrade at all nuclear power plants, and that it does not discuss requirements and schedules for individual plants. Licensee also argued that the requirements and schedules dealing with emergency response facilities were not at issue in this proceeding. Finally, licensee noted that UCS did not need special notice of SECY-82-111 because it was a major event for anyone following emergency planning.

Staff also opposed the UCS motion. Staff, like licensee, stated that the Commission has determined that it would act on requests for deferrals of NUREG-0737 items on a case-by-case basis, CLI-81-3, 13 NRC 291 (1981), and that UCS did not object to that procedure while licensee's motion was pending before the Commission. Thus staff did not view its comments as ex parte communications.

Staff further suggested, if the Commission believed that the spirit of the prohibition against ex parte communications had been violated, that the Commission provide the documents to the parties and give them an opportunity to submit written comments.

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4/ OPE assisted in preparing the following analysis.

Martin G. Malsch
Acting General Counsel

Attachments:
(1) Proposed Order
(2) UCS motion
(3) NRC staff response
(4) Licensee response

8/ Deferral was sought for plant shielding until the first refueling after restart.

Commissioners comments should be provided directly to the Office of the Secretary by c.o.b. Thursday, February 10, 1983.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Thursday, February 3, 1983, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for affirmation at an Open Meeting during the Week of February 14, 1983. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

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Attachment 1

Attachment 2

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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)

UNION OF CONCERNED SCIENTISTS
OBJECTION TO EX PARTE COMMUNICATIONS

On October 6, 1982, the Commission held a meeting with the NRC Staff to discuss what the Staff characterized as a briefing on "TMI-1 Status." During the course of this meeting, a great deal of information and technical opinion dealing directly with substantive issues which are in controversy in the TMI-1 Restart proceeding was communicated from the NRC Staff, which is a party to that proceeding, to the Commissioners, who will make the final determination of the issues. In the course of this meeting, it was revealed publicly for the first time, to our knowledge, that the Staff has been routinely engaging in ex parte communications with the Licensing Board, Appeal Board and Commissioners by sending them lengthy discussions of technical issues related to TMI-1 without serving those on the parties. We refer here specifically to: 1) SECY-82-384, September 16, 1982, "Three Mile Island, Unit 1 (TMI-1) NUREG-0737 Items Status," which in reality is not a status report, but proposes and purports to present justification for delay of implementation of required safety improvements until after restart of TMI-1; and 2) SECY-82-111, March 11, 1982, "Requirements for Emergency Response Capability" which

requests Commission approval of emergency planning requirements.*/ There are also follow-up documents to SECY-82-111 (i.e., SECY-82-111A, 111B, etc.) which UCS has still not been able to obtain because they are not in the PDR and our request to NRC Staff Counsel for their production has been fruitless -- so UCS is unable to comment on their content. There may well be other SECY documents which have been served on the Boards and the Commission, but not the parties. We have no reason to conclude that the two which happened to be referenced and discussed on October 6 are the only ones that exist.

The Commission meeting and the SECY documents dealt directly with contested issues in the TMI-1 Restart proceeding. Moreover, the Staff discussed facts and presented opinion, in an effort to convince the Commission that the plant is safe for restart, which go far beyond what was presented on the record and are in important ways inconsistent with the record.

The law is clear that off the record briefings by one party to a decision-maker in an adjudicatory proceeding concerning matters in issue at that proceeding constitute improper ex parte contacts, forbidden by the Administrative Procedure Act and NRC regulations. The APA states flatly that decision-makers in adjudicatory proceedings "may not consult a person or party on a fact in issue, unless on notice and opportunity for all parties to participate." 5 U.S.C. Section 554(d)(1). Moreover, the staff "may not, in that or a factually related case,...advise in the decision...except as witness or counsel in public proceedings." Id. In addition, in the section reciting the rules governing adjudicatory proceedings, the APA repeats its prohibition against parties and decision-makers engaging in ex parte contacts concerning the merits of an ongoing proceeding. 5 U.S.C. Section 557(d)(1)(A), (B). The

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*/ While UCS has not raised emergency planning contentions in the Restart hearings, many other parties did.

section goes on to require that any ex parte contacts be placed in the public record, and initiate a further proceeding on the remedy to mitigate, if possible, prejudice to other parties. 5 U.S.C. Section 557(d)(1)(C), (D). NRC regulations restate these prohibitions and remedies at 10 C.F.R. Section 2.780.

In U. S. Lines v. Federal Maritime Commission (FMC), 584 F.2d 519, 539 (D.C. Cir. 1978), the court noted the numerous cases holding that ex parte contacts were inconsistent with the "notion of a fair hearing and with the principles of fairness implicit in due process." Furthermore, the court held that ex parte contacts "foreclose effective judicial review of an agency's final decision." Id. at 541. Citing from the same court's decision in Home Box Office v. FCC, 567 F.2d 9 (D. C. Cir. 1977), cert. den. 434 U.S. 829, the court explained:

> [H]ere agency secrecy stands between us and fulfillment of our obligation. As a practical matter, Overton Park's mandate means that the public record must reflect what representations were made to an agency so that relevant information supporting or refuting those representations may be brought to the attention of the reviewing courts by persons participating in agency proceedings. This course is obviously foreclosed if communications are made to the agency in secret and the agency itself does not disclose the information presented. 567 F.2d at 54.
> Id. at 541, citing 567 F.2d at 54.

In U.S. Lines, the FMC staff communicating to the Commission an analysis of issues before it. The court found these communications to be improper ex parte contacts, in that they "introduced new arguments and positions and responded to and rebutted the arguments which protestant USL made in its public findings." Id. at 538. The court therefore set aside the agency decision and remanded the case to the Commission for new proceedings. Id. at 543. Similarly, see National Small Shipments Traffic Conference v. ICC, 590 F.2d 345 (D.C. Cir. 1978).

In this case, the Staff has labeled its communications to the Commission "status" reports, in an attempt to fall under the exception for such reports under 5 U.S.C. Section 551(14) and 10 C.F.R. Section 2.780(d)(3). However, the content of the Staff's briefing goes far beyond permissible status reports, and encompasses positions and arguments on controverted issues involved in the proceedings before the Commission and the Appeal Board.

For example, the Staff briefed the Commission on the plant shielding modifications required to ensure that vital plant systems and equipment will not be unduly degraded by the high levels of radiation that will result during a TMI-2 type accident. This was item 2.1.6.b of NUREG-0578 required by the Commission to be completed by January 1, 1981 and recodified as item II.B.2 of NUREG-0737 with the deadline extended to January 1, 1982. This issue was litigated as part of UCS Contention 2 and Board Question/UCS Contention 12 and was addressed in the Initial Decision of December 14, 1981 at, for example, paragraph 628. The Board resolved the UCS Contention by relying on the Staff's assertion that the plant shielding modifications would be completed by January 1, 1982, to meet the requirements of Item II.B.2 of NUREG-0737. PID, at Paragraph 628, n. 72. The matter is also the subject of pleadings before the Appeal Board. See "Union of Concerned Scientists' Reply to Staff and Licensee Responses to Appeal Board Order of July 14, 1982" (August 25, 1982) at 4-5.

Nevertheless, on October 6, 1982, the Staff discussed the substance of this issue and indicated that the Commission should consider further delay in the deadline until after restart. In so doing, the Staff presented a very different picture from that presented to the ASLB on the record. In particular, before the ASLB, the Staff testified that all plant shielding modifications necessary to resolve NUREG-0737 Item II.B.2 must be completed by

January 1, 1982, and that reasonable progress had been made to ensure meeting that deadline. Staff Exhibit 14 at 36. Now it is revealed that valves which must be replaced had not even been ordered until September and October, 1982 and that the control panel for these valves has not yet been ordered. SECY-82-384, Enclosure 2 at 2. This means either that the scope of the task was misunderstood during the hearing or that the Staff's "reasonable progress" conclusion was based on nothing. Id. at 1-2.

In addition, it may well be that the scope of modifications necessary to implement the requirements of NUREG-0737 Item II.B.2 is substantially greater than "only one concern" involving two motor control centers. Partial Initial Decision, Dec. 14, 1981, para. 628. The vagueness of the Staff SER makes this impossible to discern but it is an area which UCS believes requires probing and which we would explore if given the opportunity, as we request herein.

These matters are not simply questions of "scheduling." The condition of the plant at restart is fundamental to a determination of whether it is safe enough to operate -- the central issue which was presented to the ASLB. On this score, Intervenors and the ASLB had no choice but to accept the Staff's characterization of its own "requirements." Moreover, parties accepted as the starting point of this litigation that the "requirements" would be enforced. If the requirements are changed after litigation, it undermines the basis for the ASLB decision and deprives Intervenors of any opportunity to challenge the sufficiency of the new, less strict requirements or whether reasonable progress has been made.

In this regard, we further find it inconceivable that as excuses for failing to complete the plant shielding modifications, you are told by your Staff that GPU has "financial constraints," SECY-382, Enclosure 2 at 2, and that it has been delayed by diversion of manpower and resources to the steam

generator repair. Id. If GPU has financial constraints which hinder it from ordering 6 valves and a control panel, it has no business operating nuclear facilities. In addition, we find it exceedingly difficult to believe that the disciplines involved in addressing the steam generator problem have substantial overlap with those required to complete the plant shielding modifications. These are weak excuses, indeed, and hardly provide a basis for further delaying implementation of a basic safety requirement that has already been delayed for almost two years.

The Commission is now in the process of determining whether the ASLB decision should be made immediately effective. The ASLB decision was, in turn, based in this area upon a finding that the plant shielding modifications necessary to protect plant personnel and vital equipment from high radiation would be complete by January 1, 1982. The information conveyed to you by the Staff is so at odds with what it presented to the ASLB that the ASLB decision is no longer valid on this point. Therefore, the Commission must either itself hold an evidentiary session on this point, allowing all parties to participate, or remand the matter to the Licensing or Appeal Board. UCS so moves the Commission. The Commission may not rely only on the untested assertions of one party to this case (which are, in large part based on Licensee's equally untested assertions) to resolve matters in controversy or to alter the deadlines for plant modifications.

Finally, UCS objects to this pattern of ex parte communication between the Staff and the Commission. We assert our right to present evidence and to cross-examine Staff witnesses on issues concerning the safety of TMI-1. We move that any future consideration by the Commission of such questions be done in accordance with the procedural rules set out in 10 CFR Part 2, Subpart G.

Respectfully submitted,

Ellyn R. Weiss
Counsel for UCS

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Dated: November 4, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing UNION OF CONCERNED SCIENTISTS OBJECTION TO EX PARTE COMMUNICATIONS, have been delivered this 5th day of November, 1982, first-class, postage paid, to the following:

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

NRC STAFF'S RESPONSE TO UNION OF CONCERNED SCIENTISTS' OBJECTION TO ALLEGED EX PARTE COMMUNICATIONS

Jack R. Goldberg
Counsel for NRC Staff

November 26, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

NRC STAFF'S RESPONSE TO UNION OF CONCERNED SCIENTISTS' OBJECTION TO ALLEGED EX PARTE COMMUNICATIONS

I. INTRODUCTION

On November 5, 1982, the Union of Concerned Scientists (UCS) filed with the Commission an objection to what UCS alleged were prohibited *ex parte* communications by the Staff to the Licensing Board, the Appeal Board, and the Commissioners. "Union of Concerned Scientists Objection to *Ex Parte* Communications", November 5, 1982 (UCS Objection). UCS cites the Commission's October 6, 1982 meeting with the Staff on "TMI-1 Status," as well as SECY-82-384, September 16, 1982 ("Three Mile Island, Unit 1 (TMI-1) NUREG-0737 Items Status") and SECY-82-111, March 11, 1982 ("Requirements for Emergency Response Capability") as involving communications claimed to be *ex parte* in nature. UCS claims that the substance of these communications, which relates to the deferral of certain implementation dates for NUREG-0737 action items, deals directly with issues in controversy in the TMI-1 Restart proceeding but was not provided to the parties to the proceeding. UCS Objection at 1. UCS alleges that the referenced communications are *ex parte* contacts forbidden by the Administrative Procedure Act and NRC regulations, *citing* 5 U.S.C. § 554(d)(1) and 10 CFR § 2.780. UCS Objection at 2-3. As a result of the alleged improper *ex parte* communications, UCS moves the Commission either to

hold an evidentiary session on the communicated information, with all parties participating, or to remand the matter to the Licensing or Appeal Board. UCS Objection at 6. The Staff hereby responds to UCS' objection and opposes UCS' motion.

II. DISCUSSION

By Order in this proceeding dated March 23, 1981, the Commission, ruling on a motion by Licensee, determined that it would decide on a case-by-case basis requests for deferrals of implementation dates for various TMI-2 accident-related actions required by NUREG-0737. CLI-81-3, 13 NRC 291, 295-96 (1981). USC did not object to the procedure established by the Commission for considering deferrals of implementation dates for NUREG-0737 action items at the time that Licensee's motion was under consideration by the Commission and should not at this late date be heard to object. See Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-288, 2 NRC 390, 393 (1975). In accordance with that Order and the Commission's request that the Staff address NUREG-0737 requirement deferrals for TMI-1, the Staff briefed the Commission on TMI-1 status in SECY-82-384 and discussed the matter of deferral at the October 6, 1982 public meeting. The Staff does not consider its written or oral status reports to constitute prohibited ex parte communications. See 10 CFR §§ 2.780(d)(2) and 2.780(d)(3). The Staff was merely complying with the Commission's directive to provide the Commission with information in accordance with the procedure established by the Commission, without comment or objection by USC, in CLI-81-3.

If, however, the Commission believes that the spirit, if not the letter, of the Commission's regulations prohibiting ex parte communica-

tions was violated as alleged by UCS, then the Staff suggests that the Commission provide all parties to the restart proceeding with the referenced SECY papers, the transcript of the October 6th Commission meeting, and any other related documents which the Commission deems appropriate, and further provide all parties with the opportunity to submit written comments to the Commission on those documents. See 10 CFR § 2.780(b).[1/]

III. CONCLUSION

The Staff does not believe UCS has identified any prohibited ex parte communications. If, however, the Commission determines that the identified communications may have violated the spirit of the NRC's ex parte regulations, then all parties can be given the opportunity to comment on such communications. In either case, UCS' motion for an evidentiary session or remand to the Licensing or Appeal Board should be denied.

Respectfully submitted,

Joseph R. Gray for
Jack R. Goldberg
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 26th day of November, 1982.

1/ This suggested procedure has been used by the Commission in past instances in which concerns over possible ex parte communications have arisen. Specifically, on the matter of core water level instrumentation, the Commission made available to the parties to the TMI-1 Restart Proceeding Commission meeting transcripts and Staff briefing papers and solicited written comments on the matter from the parties. See Memoranda from Samuel J. Chilk to parties to TMI-1 Restart Proceeding, dated October 14, 1982 and January 15, 1982. A similar procedure was also followed with regard to a Staff briefing of the Commission on information flow during the TMI-2 accident. See memorandum from Samuel J. Chilk to TMI-1 Restart Parties, dated December 23, 1981.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO UNION OF CONCERNED SCIENTISTS' OBJECTION TO ALLEGED EX PARTE COMMUNICATIONS" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, this 26th day of November, 1982:

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Mary E. Wagner
Counsel for NRC Staff

Attachment 4

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

LICENSEE'S RESPONSE TO UCS OBJECTION
TO EX PARTE COMMUNICATIONS

On November 5, 1982, UCS filed with the Commission an Objection to Exparte Communications. The communications of which UCS complains are two SECY papers (SECY-82-384 and SECY-82-111) considered by the Commission in announced public meetings, one dealing with NUREG-0737 implementation schedules for TMI-1 and the other dealing generically with plans for establishing implementation schedules for all licensed nuclear power plants with respect to upgrading their emergency response capability. With respect to one of the NUREG-0737 items, UCS also requests a reopening of the TMI-1 restart hearing before the Commission, the Appeal Board or the Licensing Board. Licensee opposes the UCS objections and motion as totally devoid of merit.

SECY-82-384 contains both a status report on NUREG-0737 schedules for TMI-1 and Staff recommendations with respect to the extension of completion dates for five items. With respect to four items previously scheduled for completion prior to restart the Staff recommended that completion dates be set at restart or at March 31, 1982, whichever is later. With respect to a fifth item relating to plant shielding modifications (the only item discussed substantively by UCS) the Staff reported that implementation of a portion of the NUREG-0737 requirements was complete and that Licensee had requested an extension of time until the first refueling after restart to complete the remainder of the item. As to the latter, the Staff reported that it had not yet completed its review of Licensee's request and recommended that the Commission defer action on the matter.

UCS' principal complaint appears to be that the Staff has made recommendations for the extension of NUREG-0737 completion dates outside the hearing process. It simply overlooks the fact that the Staff's recommendations are precisely in keeping with the Commission's own orders in this proceeding.

On February 3, 1981, Licensee filed with the Commission several motions, one of which anticipated the procedural problem which might arise if it became necessary

after the close of the record before the Licensing Board to extend any of the completion dates which had been presented to the Board. Licensee urged the Commission to modify its Order and Notice of Hearing of August 9, 1979, to make clear that in this situation the Commission itself retained jurisdiction, upon the recommendation of the Staff, to alter scheduled completion dates. In granting Licensee's motion by Order dated March 23, 1981 (CLI-81-3) the Commission explained and paraphrased Licensee's motion as follows:

> In its February 3 motion, licensee asserted that it is prepared to meet the same implementation schedules that are required for operating reactors, but expressed the concern that developments subsequent to the close of the hearing record (for example, delays in the procurement of necessary materials and equipment) may make it impossible for it to meet present schedules on all action items. It therefore requested the Commission to modify the August 9, 1979 Order to make clear that the Commission retains the flexibility to defer until after restart, upon the recommendation of the Director of the Office of Nuclear Reactor Regulation, licensee's implementation dates for NUREG-0737 action items where such deferral is consistent with implementation schedules for operating reactors.

The Commission Order granting the motion specified that the Commission would retain its flexibility to consider on a case-by-case basis developments which affect the ability of Licensee to comply with requirements recommended by the Licensing Board.

Licensee's February 3 motion was served on all parties to the proceeding. Neither UCS nor any other party filed any objection.

UCS also appears to complain that the Staff's recommendations were not served on UCS as a party to the restart proceeding. We note at the outset that the Commission's March 23 Order, reserving to itself the flexibility to adjust NUREG-0737 completion dates after the close of the hearing, made no provision for serving staff recommendations to parties in the restart hearing. In any event, however, in the present circumstances UCS' complaint rings a hollow note. UCS had every opportunity to be aware, and was in all probability actually aware, of the Staff's recommendations. To begin with, the Commission gave public notice (47 F.R. 43485) of its intent to hold a public meeting on October 6, 1982, on the status of Staff certification on Licensee's compliance with TMI-1 restart requirements. SECY-82-384 was a handout to attendees at that meeting. UCS was represented at that meeting by Mr. Robert Pollard, who presumably received the same handout as did Licensee and others. Even before the October 6 meeting, however, UCS was or should have been aware of Licensee's proposal to extend the completion date for modifications to the decay heat removal (DHR) valves and controls which are the subject of UCS' complaint. The Status Report attached to the Appeal Board's Order of July 14, 1982 (taken from SECY-82-250,

June 16, 1982) noted that there were "procurement problems" associated with completion of this item and that Licensee estimated completion during the first refueling outage after restart. Similarly, our response to the July 14 Order noted that the DHR system modifications were only 30% complete, and would be completed by Cycle 6 startup. Response at 4.

Finally, UCS is simply wrong in asserting that the Staff has recommended Commission consideration of a delay in a NUREG-0737 item which was the subject of a UCS contention. UCS' only contention (Contention 2c) with respect to plant shielding was concerned solely with adequate shielding for radioactive water bled from the primary system during feed and bleed cooling. Shielding additions which the Licensing Board found to be a satisfactory response to this issue have, as reported in SECY-82-384, already been completed. Modifications to the DHR valves and relocation of their controls, designed to avoid possible overexposures in different circumstances, have nothing to do with feed and bleed cooling.

SECY-82-111

UCS' complaints about SECY-82-111 have even less merit. SECY-82-111 is a paper prepared by the Staff proposing a procedure for completing the emergency planning upgrade at all nuclear power plants. The Staff proposed that unfinished items (primarily the guidance in NUREG-0696) be negotiated

between individual plants and their NRC project managers, and the agreements be reflected in binding orders issued to each plant. The requirements and schedules for individual plants, including TMI-1, were not discussed. Further, unlike the requirements of NUREG-0654 referenced in the Commission emergency planning regulation, the requirements and schedules of NUREG-0696, dealing with emergency response facilities, were not in issue in the restart hearing and were not the basis for any Licensing Board findings or conditions.

It is ridiculous to suggest that UCS or any other party needed special notice of SECY-82-111. The Staff briefed the Commission on SECY-82-111 at an April 15, 1982 public meeting. On May 11, 1982, the ACRS issued a letter commenting on SECY-82-111. A second Commission meeting on SECY-82-111 was held on June 22, 1982. The Commission was at that time again briefed by the Staff. On July 16 the Commission directed the NRC Staff to negotiate implementation of the NUREG-0696 guidance.

Substantial publicity surrounded the release and consideration of SECY-82-111. In addition to the public meetings, reports on SECY-82-111 have appeared throughout the trade press. E.g., Inside N.R.C. March 8 (p. 7), March 22 (pp. 1-2), May 31 (pp. 4-5, 12-13), June 28 (p. 5) and July 26

(pp. 9-10). For anyone following emergency planning, SECY-82-111 was a major event.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By: George F. Trowbridge
Counsel for Licensee

Dated: November 22, 1982

Lic 11/22/82

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Response to UCS Objection to Ex Parte Communications" were served upon those persons on the attached Service List by deposit in the United States mail, postage prepaid, this 22nd day of November, 1982.

George F. Trowbridge

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NUCLEAR REGULATORY COMMISSION

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	)	(Restart)
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Station, Unit No. 1)	)	

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