Tu b.

April 24, 1981

SECY-81-253

RULEMAKING ISSUE
(Affirmation)

For: The Commission

From: William J. Dircks
Executive Director for Operations

Subject: FINANCIAL PROTECTION FOR TMI UNITS 1 AND 2

Purpose: To request that the Commission complete the implementation of financial protection requirements at Three Mile Island.

Background: As the staff discussed in SECY-79-617, American Nuclear-Insurers (ANI) and Mutual Atomic Energy Liability Underwriters (MAELU), the two nuclear liability insurance pools, informed the Commission early in 1979 that they were increasing the amount of primary nuclear liability insurance available from $140 million to $160 million. In accordance with the provisions of subsection 170b. of the Atomic Energy Act, the Commission increased the amount of primary financial protection required for facilities having a rated capacity of 100 electrical megawatts or more from $140 million to $160 million. This change was published in the Federal Register on April 6, 1979 (44 Fed. Reg. 20632) and became effective May 1, 1979.

On May 1, 1979, ANI and MAELU informed the Commission and the licensee that because of the March 28, 1979 accident at TMI, they were unwilling at that time to make $160 million in nuclear liability insurance available for the Three Mile Island site despite the licensee's request for such increased coverage. The pools' principal reason was their desire to limit clearly to $140 million their potential liability for claims and claims expenses arising out of the March 28 accident.

Contact:
Ira Dinitz
Ext. 492-9884

8105060538

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In SECY-79-617, the staff recommended and the Commission approved a requirement that the licensee maintain the same level of financial protection of $160 million for Unit 2 as for Unit 1 and that the licensee's financial protection include the reinstatement of funds paid out for claims arising out of the March 28 accident.

The staff notified the licensee of these requirements in January 1980 (see Appendix "A" for exchange of letters between the licensee and the Commission). The staff continued to work with the licensee, its insurance broker and the insurance pools following this notification to implement the Commission's requirements.

The licensee's efforts have focused on attempting to persuade the insurance pools to provide $160 million for TMI-2 (the pools had advised the licensee earlier than they were willing to provide $160 million for TMI-1). The licensee has also been working with its insurance broker in soliciting interest from the domestic and foreign insurance markets (outside of the pools themselves) in providing the additional $20 million in insurance for Unit 2.

In its letter of May 30, 1980, the licensee indicated that the insurance pools would provide, under certain conditions, the additional $20 million in insurance for both Unit 1 and Unit 2, as well as reinstate the approximately $1.7 million that had been expended for claims and claims expenses. The licensee also stated that its insurance broker had not been successful in obtaining nuclear liability insurance through other domestic or foreign insurance companies. Endorsement No. 43 would reinstate the liability limit to $140 million as of June 1, 1980. Endorsement No. 44 submitted by the insurance pools would provide an additional $20 million for Unit 1 and for Unit 2 as of May 1, 1979 in a situation where a new accident at Unit 2 were declared by the Commission to be an "extraordinary nuclear occurrence" (ENO). The pools insist on this ENO provision for Unit 2 to provide assurance that there is a distinct, new accident to which the additional $20 million would apply and that the new sum could not be used to satisfy public liabilty claims associated with the March 28 accident.

In view of the fact that the insurance endorsements contained the ENO qualification, the staff requested in a letter dated June 13, 1980, that the licensee provide information on whether alternatives other than insurance had been thoroughly investigated. The licensee responded to the Commission in a letter dated July 14, 1980. The staff has evaluated that letter and considers that the endorsements submitted would be in compliance with the required financial protection for the reasons described below.

First, from a practical standpoint, the effect of allowing the licensee to use the pools' endorsement with the ENO limitation provision will be of significance only if another nuclear accident occurs at Unit 2 that, combined with the previous accident, resulted in public liability exceeding $140 million and the new accident were not declared an ENO. In such a situation, the secondary financial protection layer (consisting of a retrospective premium of up to $5 million per reactor applied to 72 reactors) would come into play and other power reactor licensees would make up the $20 million difference through the retrospective premium assessment by contributing at an earlier point (i.e., in excess of $140 million) to their share of the damages than would be the case if the accident had occurred at some other site with $160 million in primary insurance. If the damages exceeded both primary and secondary financial protection layers then government indemnity would make up for the increment of $20 million. The total protection to the public would be unchanged. Moreover, it is difficult to visualize a new accident at TMI that combined with the March 28, 1979 accident, would exceed $140 million in total damages and yet would not be declared an ENO.

Second, the staff believes that although the Commission could legally require the licensee to provide a third party guarantee, such as a letter of credit, to provide financial protection in the event that damages arising from a non-ENO accident at Unit 2 exceeded $140 million, this would be an unadvisable course of action. Given the present state of the licensee's finances and its present needs for cash flow from all possible sources, such a requirement for an additional guarantee could adversely affect the licensee's ability to continue its clean-up activities and to provide service to its customers.

Finally, as the staff indicated in SECY-79-617, Unit 2 is not presently operating nor could it possibly be operated for the foreseeable future. Therefore, the likelihood of a major accident would also be reduced considerably. If Unit 2 were to operate again, the licensee could at that time be required to provide the maximum primary financial protection that is available to all other power reactor licensees.

It is for these reasons that the staff recommends granting the licensee an exemption from the requirements of 10 CFR 140.11(a)(4) which would otherwise require the licensee to maintain $160 million for the TMI site in all instances.

The legal question of whether an exemption to 10 CFR Part 140.11 is "authorized by law" (140.8) was explored in a memorandum from the General Counsel to Chairman Ahearne dated January 15, 1980. The issue centers on the language of subsection 170b of the Atomic Energy Act, which requires that "the amount of financial protection required shall be the maximum amount available at reasonable cost and on reasonable terms." Historically, this amount has been fixed by the Commission in its regulations as the amount made available by the pools at any given time. Prior to TMI, this amount was always uniform for all power reactor licensees. The proposed exemption would permit the TMI licensee to maintain a lesser amount than other utilities under certain circumstances.

The General Counsel concluded that, while the issue was a close one, the better legal view permitted a varying level of coverage, i.e., "maximum amount available" means the maximum level available to a utility which has, to the Commission's satisfaction, made a reasonable attempt to acquire private insurance from all possible sources including the pools. The General Counsel also concluded that, on policy grounds, the Commission should attempt to enforce uniform coverage. ELD concurs in this analysis.

At this juncture the Commission has made clear its intent to enforce a uniform level of coverage, and the licensee has, in the staff's view, made a valid attempt to comply. As discussed above, it is not advisable at this time to force the company to financial extremes to obtain this coverage, when public protection is not affected and the funds are needed for cleanup operations. If the Commission agrees with the OGC/ELD legal position, the staff believes that sound policy now favors the granting of an exemption.

Recommendation: that the Commission

1. Approve publication of a proposed FEDERAL REGISTER notice (Appendix B) that would modify the licensee's indemnity agreement and

   (a) add an endorsement to be effective June 1, 1980 to the licensee's Facility Form insurance policy furnished as proof of primary financial protection that would increase the liability limit to $160 million at the TMI site but provide that the supplemental $20 million for Unit 2 would apply only if an accident at Unit 2 occurs on or after May 1, 1979 and is determined by the Commission to be an "extraordinary nuclear occurrence"; and

   (b) add an endorsement to be effective June 1, 1980 that would restore the funds paid out and claims expenses arising out of the March 28, 1979 accident, but only if new damages resulted from an "extraordinary nuclear occurrence" occurring on or after May 1, 1979.

William J. Dircks
Executive Director for
Operations

Enclosures:
1. Appendix "A" - Exchange of letters between TMI licensees and NRC
2. Appendix "B" - Proposed Federal Register Notice

DISTRIBUTION
Commissioners
Commission Staff Offices
Exec Dir for Operations
ACRS
ASLBP
Secretariat

Commissioners' comments or consent should be provided directly to the Office of the Secretary by c.o.b. May 11, 1981.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Monday, May 4, 1981, 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 May 18, 1981. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

APPENDIX "A"

APPENDIX "A"

Docket Nos. 50-289
50-320

Metropolitan Edison Company
ATTN: Mr. R. C. Arnold
President
260 Cherry Hill Road
Parsippany, NJ 07054

Gentlemen:

As you are aware, the provisions of Section 170 of the Atomic Energy Act of 1954, as amended, (the Act) require production and utilization facility licensees to have and maintain financial protection to cover public liability claims resulting from a nuclear incident. Subsection 170b further requires that for facilities designed for producing substantial amounts of electricity and having a rated capacity of 100 electrical megawatts or more, the amount of financial protection required would be the maximum amount available from private sources.

In January 1979, American Nuclear Insurers (ANI) and Mutual Atomic Energy Liability Underwriters (MAELU), the insurers who provide the nuclear liability insurance provided by licensees as primary financial protection, informed the Commission that they were increasing the amount of nuclear liability insurance available from $140 million to $160 million.

In accordance with the provisions of subsection 170b of the Act, the Commission increased the amount of primary financial protection required for facilities having a rated capacity of 100 electrical megawatts or more from $140 to $160 million. This change was published by the Commission in the Federal Register on April 6, 1979 (44 FR 20632) and became effective May 1, 1979. Subsection 140.11(a)(4) of the Commission's regulations was amended to require that each power reactor licensee maintain financial protection in an amount equal to the sum of $160 million, and the amount available as secondary financial protection for each nuclear reactor licensed to operate at a rated capacity of 100 MW(e) or more. The Commission's regulations further provide in § 140.19 that in any case where the Commission finds that the financial protection maintained by a licensee is not adequate to meet the requirements of the Commission's financial protection regulations, the Commission may suspend or revoke

OFFICE						
SURNAME						
DATE						

the license or may issue such order with respect to licensed activities as the Commission determines to be appropriate or necessary in order to carry out provisions of Part 140 of its regulations and Section 170 of the Act.

At present, the primary financial protection being provided for the Three Mile Island site is $140 million. The insurance pools have proposed an endorsement, which the staff has reviewed and finds to be acceptable, that would provide $140 million in primary insurance to both Three Mile Island Units 1 and 2 with an additional $20 million for Unit 1.

On a related matter, Article II, paragraph 2 of Indemnity Agreement B-64 that you have executed with the Commission requires that in the event of payments made by the insurers under an insurance policy used as financial protection which reduces the aggregate limit of the policy, the licensee must apply to its insurers for reinstatement of the amount of these payments. We understand that you have requested reinstatement of the approximately $1.3 million paid out for claims and claims expenses arising out of the March 28 accident. Insurance pools representatives have informed the Commission staff that they have decided not to reinstate these funds for Unit 2 although they will reinstate them for Unit 1 through a separate supplementary insurance policy. The practical effect of not reinstating the funds paid out for the March 28 accident is that if there were another accident at Unit 2, there would not be the full amount of primary liability insurance to pay public liability claims resulting from such an accident.

Therefore, with respect to Units 1 and 2 it will be necessary for you to demonstrate within sixty days from receipt of this letter that you are in compliance with our regulations by providing evidence to the NRC that $160 million in primary financial protection is in place as of May 1, 1979. This evidence should include a copy of the separate supplementary policy reinstating the $1.3 million in claims and claims expenses for both units, and providing for necessary increases in coverage every thirty days for increased amounts beyond the $1.3 million if the total amount not reinstated by the pools rises beyond that figure. This evidence of primary financial protection equal to a total of $160 million can be through insurance or some other form of third party guarantee, or a combination thereof which provides all of the operable provisions of the facility form of nuclear liability insurance.

Sincerely,

Original signed by
H. R. Denton

Harold R. Denton, Director
Office of Nuclear Reactor Regulation

APPROVED BY ALL COMMISSIONERS BY MEMO
DATED 1/22/80

cc: Harry F. Carety, GPU
bcc: Charles Bollman, Marsh & McLennan
Burt Proom, ANI
Ambrose Kelly, MAELU

See attached list for distribution.

OFFICE	NRR:AIG	NRR:AIG	OELD	NRR	NRR	EDO
SURNAME	DinitZ/cd	JSaltzman		EGCase	HRDenton	LVGossick
DATE	1/25/80	1/25/80	1/25/80	1/25/80	1/27/80	1/25/80

Identical letters sent to:

Jersey Central Power and Light
  Company
ATTN: Dr. S. Bartnoff
      President
Madison Avenue at Punch Bowl Road
Morristown, NJ 07960

Pennsylvania Electric Company
ATTN: Mr. W. A. Verrochi
      President
1001 Broad Street
Johnstown, PA 15907

OFFICE						
SURNAME						
DATE						

Met-Ed / GPU

Metropolitan Edison Company
Post Office Box 480
Middletown, Pennsylvania 17057
717 944-4041

Writer's Direct Dial Number

March 26, 1980
TLL 134

Office of Nuclear Reactor Regulation
Attn: Harold R. Denton, Director
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Sir:

Three Mile Island Nuclear Station, Units I and II (TMI-1 & TMI-2)
Operating License Nos. DPR-50 and DPR-73
Docket Nos. 50-289 and 50-320
Financial Protection

Your letter of January 29, 1980 (received on January 31), requires that Metropolitan Edison Company, as licensee for Three Mile Island Nuclear Station Units I and II demonstrate, by April 1, 1980, that it is in compliance with NRC regulations under Section 170 of the Act pertaining to financial protection to cover public liability claims resulting from a nuclear incident.

GPU Service Company, on behalf of Metropolitan Edison Company, is, through its insurance brokers, Marsh & McLennan, taking steps to obtain the maximum amount of insurance available from private sources and is presently actively pursuing additional insurance protection in those markets. In order to pursue the issue of the availability of such additional private insurance, our brokers advise us that some additional time beyond April 1, 1980, the date set forth in your letter, will be necessary. This will allow us both to survey additional protection from American Nuclear Insurers and Mutual Atomic Energy Liability Underwriters and from individual insurers. For this purpose, we request an extension of time to comply from April 1, 1980 to June 1, 1980. This request applies to both the additional $20 million primary insurance and reinstatement of the $1.3 million in claims and increase for additional amounts paid and not reinstated.

Sincerely,

J. G. Herbein
Vice President
Nuclear Operations

Med w/o

JGH:LWH:hah

cc: J. T. Collins

APR 8 1980

Mr. J. G. Herbein
Vice President
Nuclear Operations
Metropolitan Edison Company
Post Office Box 480
Middletown, PA 17057

Dear Mr. Herbein:

We have received your letter of March 26, 1980. Your request for an extension of time to June 1, 1980 to comply with the Price-Anderson financial protection requirements for the Three Mile Island Unit 2 reactor is granted. We expect that additional extensions will not be necessary. Although not mentioned in your letter, we trust that you will be pursuing other than insurance alternatives for meeting the financial protection requirements should the insurance alternative not be workable.

Sincerely,

Harold R. Denton, Director
Office of Nuclear Reactor Regulation

Met-Ed / GPU

Metropolitan Edison Company
Post Office Box 480
Middletown, Pennsylvania 17057
717 944-4041

Writer's Direct Dial Number

May 30, 1980
TLL 256

Office of Nuclear Reactor Regulation
Attn: Harold R. Denton, Director
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Sir:

Three Mile Island Nuclear Station, Units I and II (TMI-1 and TMI-2)
Operating License Nos. DPR-50 and DPR-73
Docket Nos. 50-289 and 50-320
Financial Protection

The following information is submitted in response to your letter of April 8, 1980 concerning financial protection.

We have been informed by our insurance broker, Marsh and McLennan, that the nuclear liability insurance pools have advised the NRC that they have received approval to provide an additional $20 million primary insurance for TMI-II as well as reinstate approximately $2.5 million that has been expended for claims and claims expenses.

We are enclosing a letter from Marsh and McLennan, advising that they have used all their efforts to obtain nuclear liability insurance for TMI-II and that none is available other than that offered by the nuclear insurance pools. In view of this, we trust that the NRC will accept the additional insurance being provided by the pools as evidence that TMI-II is in compliance with NRC regulations under Section 170 of the Act pertaining to evidence of financial protection.

Sincerely,

J G Herbein

J. G. Herbein
Vice President
TMI-I

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Enclosure
cc: J. Saltzman
J. T. Collins

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May 27, 1980

Mr. Harry Garety
Manager - Insurance & Claims
GPU Service Corp.
100 Interpace Parkway
Parsippany, N.J. 07054

M&M Nuclear Consultants

Three Mile Island - Financial Protection

Charles T. Zollman
Vice President

Dear Mr. Garety:

Marsh & McLennan has attempted to determine the extent and cost of available insurance capacity to fulfill the Nuclear Regulatory Commission's financial protection requirement for Three Mile Island Nuclear Station Unit 2.

Every major insurer, both American and foreign, was contacted as well as a representative cross-section of lesser markets. Markets were selected with careful attention to their financial strength and the likelihood that they would be capable of standing behind a long term commitment to a form of insurance in which ultimate liabilities may take many years to mature. Insurers were asked to consider providing coverage as broad as that usually afforded by the Pools as well as on a basis of supplementing the more limited coverage approach that the Pools have proposed.

Our investigations revealed that virtually all insurers which participate in the American Pools were unwilling to make their capacity available through any other mechanism. Those insurers who do not participate in the American Pools do not do so either because they are ineligible or because they have made underwriting or management decisions not to insure the nuclear hazard.

In those few instances where insurers expressed any interest at all in providing capacity, it was on the basis of exorbitant premiums or narrower coverage than that proposed by the Pools.

Marsh & McLennan

Mr. Harry Garety
Manager - Insurance & Claims
GPU Service Corp.

In summary, we have concluded that there is little or no capacity available from the world market in a form as broad as that being proposed by the nuclear pools with respect to Unit 2 at Three Mile Island.

Charles T. Bollman

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Docket Nos. 50-289
50-320

Mr. J. G. Herbein
Vice President
Metropolitan Edison Company
P. O. Box 480
Middletown, PA 17057

Dear Mr. Herbein:

We have received your letter of May 30, 1980 to Harold Denton concerning compliance with financial protection requirements for Three Mile Island Unit 2. Although the Marsh and McLennan letter states that the only adequate insurance available would be that provided by the insurance pools, there are still a number of questions that must be answered about the insurance endorsement and about alternatives other than insurance that may be available.

First, since we have not as yet received a copy of the endorsement providing the additional $20 million, we cannot determine whether this endorsement fully complies with our regulations. We trust that you will provide us with the endorsement as soon as it becomes available. We understand, however, from the pools that this supplemental limit endorsement would apply only where a new accident at Unit 2 were declared an "extraordinary nuclear occurrence" (ENO). While we understand the reasons for the pools' insistence on this limiting condition, the endorsement could be viewed as providing the public with less protection at Unit 2 than at any other reactor in the country (i.e., with respect to possible further accidents that are not extraordinary nuclear occurrences but are in excess of $140 million).

In our letters of January 29, 1980 and April 8, 1980, we indicated that primary financial protection could be provided through insurance or some other form of third party guarantee. In view of the fact that the supplemental insurance endorsement contains the ENO qualification to coverage we would like information on whether alternatives other than insurance have been investigated and what the results of your investigation were.

What the staff must determine, based largely on information that you provide, is whether the insurance policies proposed to be made available by you from the pools provide the maximum protection to the public that is available from private sources or whether financial protection in some other form is more appropriate. We hope that your reply will furnish a fully-developed discussion on why, in the opinion of Metropolitan Edison, the proposed policies from the pools should be accepted by the Commission in meeting the financial protection requirements of its regulations.

We would be pleased to discuss any questions you may have so that we can satisfactorily resolve this problem at the earliest possible time.

Signed, Jerome D. Saltzman

Jerome Saltzman, Chief
Utility Finance Branch
Division of Engineering
Office of Nuclear Reactor
Regulation

cc: Harry Gorety, GPU

Distribution:
TMI File
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IDinitz:na	DNash	JSaltzman	EJakel
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Met-Ed GPU

Metropolitan Edison Company
Post Office Box 480
Middletown, Pennsylvania 17057
717 944-4041

Writer's Direct Dial Number

July 14, 1980
TLL 332

Utility Finance Branch
Attn: J. Saltzman, Chief
Office of Nuclear Reactor Regulation
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Sir:

Three Mile Island Nuclear Station, Units I and II (TMI-1 and TMI-2)
Operating License Nos. DPR-50 and DPR-73
Docket Nos. 50-289 and 50-320
Financial Protection Requirements

This letter is in response to your letter of June 13, 1980 requesting additional material with respect to the compliance with the financial protection provisions of the Atomic Energy Act for Three Mile Island Unit II.

With respect to the insurance available from the pools, you requested a copy of the endorsement proposed by the pools. By letter of June 12, 1980, Mr. John L. Quattrocchi of ANI forwarded the proposed endorsement to you for your consideration. This had apparently not arrived when you wrote to us. I am enclosing a copy of that letter and the proposed endorsement in the event you did not receive your copy.

With respect to your comment as to the pools' having limited this endorsement so as to apply only where a new accident at TMI-II were declared to be an "extraordinary nuclear occurrence" (ENO), we would, of course, prefer that the endorsement not be so limited. For reasons we will describe, however, we do believe this endorsement, even with the limitation, meets the statutory criteria by providing the maximum insurance available at reasonable cost and on reasonable terms from private sources.

If TMI-II were to be permitted to continue to be licensed with the liability insurance provided by the pools, the only way in which the limitation could become significant is if there were to be another nuclear accident at TMI-II which, when combined with the effects of the March 28, 1980 accident, resulted in liability which exceeded $140 million. In that event, in our view, the secondary financial protection layer would come into play at this $140 million level. The licensees would simply contribute to their share of the damages at a lower amount than would be the case if the accident had occurred at some other site which did not have this limitation. If, then, both the primary and secondary protection layers were to be exceeded, the potential governmental indemnity would make up the $20 million. The total protection for the public would be unchanged. We believe this discussion to be particularly relevant to the statement in your letter of June 13 that the endorsement "could be viewed

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as providing the public with less protection at Unit II than at any other reactor in the country...".

It is relevant to the consideration of the endorsement that TMI-II is not now operating and will not be operating for the foreseeable future. The Commission could review the availability of additional coverage in the future when the unit is again ready for operation.

It would be possible for the Commission to require the licensee to provide a bank instrument, such as a letter of credit, or to segregate $20 million of its existing credit to provide protection in the event of a non-ENO for which liability exceeds $140 million. In the case of the GPU Companies, this would be exceedingly burdensome and, perhaps, impossible to accomplish. As the Commission knows from material submitted to it, the GPU Companies have a limited amount of credit available in the form of a Revolving Credit Agreement under which there is a limit for the GPU System and sublimits applicable to each of the three operating companies (which are the joint owners/licensees to TMI-II). That credit is necessary to support the ongoing utility activities of the Companies, so as to be able to continue to provide safe and adequate service to their customers, while, at the same time, continuing to support the clean-up activities at TMI-II. While the Companies are in a significantly better cash position as a result of rate orders received in the spring of this year and have better prospects with respect to their cash position, the Companies continue to be limited with respect to the availability of credit and will be limited in their access to long term capital markets. It is unlikely that the Companies could both segregate and reserve $20 million of credit and know that they could continue their necessary utility and clean-up activities with an adequate margin of bank credit available. If the companies were, for instance, to attempt to segregate some of their limited credit for this purpose at this time, it could impact their ability to continue to protect the public health and safety through their clean-up activities at TMI-II.

The licensees are continuing to explore the insurance markets to attempt to provide a better protection for this purpose. One avenue which is being reviewed is to provide insurance for some or all of the secondary financial protection layer of $30 million. The Commission has already, by letter dated April 8, 1980, determined that the anticipated cash flow of Metropolitan Edison Company individually and General Public Utilities Corporation consolidated is satisfactory to meet the requirements of 10 CFR Section 140.21. If insurance can be obtained for the secondary financial protection retrospective assessment, the Companies would view the cash flow, previously determined to be satisfactory to meet this obligation, as being available in the event it were necessary to deal with its uninsured liability for non-ENO liability at TMI-II in excess of $140 million up to $160 million if the secondary financial protection provided by assessment of other licensees were not available for this purpose. We will continue to explore this possibility and will report to you on its progress.

In the light of the above discussion, and the materials submitted to you on May 30, 1980 advising as to the efforts of our insurance brokers, we believe the insurance policies proposed to be made available by the licensees from the pools provide the maximum protection to the public that is available from private sources and that no additional protection in some other form is more appropriate. In the light of the above, we believe the proposed policy should be accepted by the Commission to meet the financial protection requirements of its regulations.

Sincerely,

J. G. Herbein
Vice President
TMI-I

JGH:DGM:hah

Attachment

cc: R. W. Reid
B. H. Grier
D. DiIanni
H. Silver
J. T. Collins
B. J. Snyder

APPENDIX "B"

[7590-01]

APPENDIX "B"

NUCLEAR REGULATORY COMMISSION

10 CFR Part 140

FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

AGENCY: U.S. Nuclear Regulatory Commission

ACTION: Request for public comment

SUMMARY: The Commission requests comments on whether the proposed endorsements to Metropolitan Edison's Facility Form liability insurance policy meet the financial protection requirements of subsection 170b. of the Atomic Energy Act of 1954, as amended.

DATE: The public comment period expires [30 days from date of publication].

ADDRESSES: Comments should be sent to the Office of the Secretary U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, Atten: Chief, Docketing and Service Branch. Copies of all comments received will be available for examination in the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Ira Dinitz, Utility Finance Branch, Division of Engineering, Office of Nuclear Reactor Regulation. U. S. Nuclear Regulatory Commission, Washington, D. C. 20555, Telephone (301) 492-9884

SUPPLEMENTARY INFORMATION: American Nuclear Insurers (ANI) and Mutual Atomic Energy Liability Underwriters (MAELU), the two nuclear liability insurance pools, informed the Commission early in 1979 that they were increasing the amount of primary nuclear liability insurance available from $140 million to $160 million. In accordance with the provisions of subsection 170b. of the Atomic Energy Act, the Commission increased the amount of primary financial protection required for facilities having a rated capacity of 100 electrical megawatts or more from $140 million to $160 million. This change was published in the Federal Register on April 6, 1979 (44 Fed. Reg. 20632) and became effective May 1, 1979.

On May 1, 1979, ANI and MAELU informed the Commission and the licensee that because of the March 28, 1979 accident at Three Mile Island, they were unwilling at that time to make $160 million in nuclear liability insurance available for the TMI site despite the licensee's request for such increased coverage. The pools' principal reason was their desire to limit clearly to $140 million their potential liability for claims and claims expenses arising out of the March 28 accident.

In a January 1980 letter, the Commission notified the licensee of the requirement that it maintain the same financial protection level of $160 million for Unit 2 as for Unit 1, and that the licensee's financial protection include the reinstatement of funds paid out for claims arising out of the March 28 accident.

In a letter to the Commission dated May 30, 1980 the licensee indicated that the insurance pools would provide, under certain conditions, the additional $20 million in insurance for Unit 2 under Endorsement No. 44 to its facility form policy as well as reinstate the approximately $1.7 million that had been expended for claims and claims expenses through Endorsement No. 43. The endorsements submitted by the insurance pools providing an additional $20 million for Unit 1 and for Unit 2 would apply only in a situation where a new accident at Unit 2 were declared by the Commission to be an "extraordinary nuclear occurrence" (ENO). The pools insist on this ENO provision to provide assurance that there is a distinct, new accident to which the additional $20 million would apply and that the new sum could not be used to satisfy public liability claims associated with the March 28 accident.

In view of the fact that the insurance endorsement contained the ENO qualification, the Commission requested in a letter dated June 13, 1980 that the licensee provide information on whether alternatives other than insurance had been thoroughly investigated. The licensee responded to the Commission in a letter dated July 14, 1980. The Commission has evaluated that letter and considers that the endorsements submitted would be in compliance with the required financial protection for the reasons described below.

First, from a practical standpoint, the effect of allowing the licensee to use the pools's endorsement with the ENO limitation provision will be of significance only if another nuclear accident occurs at Unit 2 that, combined with the previous accident, resulted in public liability exceeding $140 million and the new accident were not declared an ENO. In such a situation, the secondary financial protection layer (consisting of a retrospective premium of up to $5 million per reactor applied to 72 reactors) would come into play and other power reactor licensees would make up the $20 million difference through the retrospective premium assessment by contributing at an earlier point (i.e., an excess of $140 million) to their share of the damages than would be the case if the accident had occurred at some other site with $160 million in primary insurance. If the damages exceed both primary and secondary financial protection layers then government indemnity would make up for the increment of $20 million.

The total protection to the public would be unchanged. Moreover, it is difficult to visualize a new accident at TMI that combined with the March 28, 1979 accident would exceed $140 million in total damages and yet would not be declared an ENO.

Second, the Commission believes that although it could require the licensee to provide a third party guarantee, such as a letter of credit, to provide financial protection in the event that damages arising from a non-ENO accident at Unit 2 exceeded $140 million, this would be inadvisable. Given the present state of the licensee's finances and its present need for cash flow from all possible sources, such a requirement for an additional guarantee may impact adversely on the licensee's ability to continue its clean-up activities and to provide service to its customers.

Finally, Unit 2 is not presently operating nor will it possibly be operational for the forseeable future. Therefore, the likelihood of a major accident would also be reduced considerably. If Unit 2 were to operate again, the licensee could at that time be required to provide the maximum primary financial protection that is available to all other power reactor licensees.

Pursuant to 10 CFR 140.8, the Commission is proposing to grant an exemption from the requirements of 10 CFR 140.11(a)(4). For the reasons discussed above, the licensee will provide $160 million for Units 1 and 2 in primary insurance subject to the ENO condition described above. Pursuant to §140.9, the following changes are proposed in Indemnity Agreement No. B-64 between the Metropolitan Edison Company and the Commission.

Appendix "B"

1. Article II, Paragraph 8 is revised as follows:

8. With respect to any common occurrence arising out of an accident under DPR-50, or with respect to any common occurrence arising out of an accident under DPR-73 subsequent to May 1, 1979, which is determined by the Commission to be an "extraordinary nuclear occurrence" (a) If the sum of the limit of liability of any Nuclear Energy Liability Insurance Association policy designated in Item 5 of the Attachment and the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Nuclear Energy Liability Insurance Association exceeds $124,000,000, the amount of financial protection specified in Item 2a and b of the Attachment shall be deemed to be reduced by that proportion of the difference between said sum and $124,000,000 as the limit of liability of the Nuclear Energy Liability Insurance Association policy designated in Item 5 of the Attachment bears to the sum of the limits of liability of all nuclear energy liability insurance policies (facility form) applicable to such common occurrence issued by Nuclear Energy Liability Insurance Association:

(b) If the sum of the limit of liability of any Mutual Atomic Energy Liability Underwriters policy designated in Item 5 of the Attachment and the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Mutual Atomic Energy Liability Underwriters exceeds $36,000,000, the amount of financial protection specified in Item 2 a and b of the Attachment shall be deemed to be reduced by that proportion of the difference between said sum and $36,000,000 as the limit of liability of the Mutual Atomic Energy Liability Underwriters policy designated in Item 5 of the Attachment bears to the sum of the limits of libility of all nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Mutual Atomic Energy Liablity Underwriters:

(c) If any of the other applicable agreements is with a person who has furnished financial protection in a form other than a nuclear energy liability insurance policy (facility form) issued by Nuclear Energy Liability Insurance Association or Mutual Atomic Energy Liability Underwriters, and if also the sum of the amount of financial protection established under this agreement and the amounts of financial protection established under all other applicable agreements exceeds and amount equal to the sum of $160,000,000 and the amount available as secondary financial protection, the obligation of the licensee shall not exceed a greater proportion of an amount equal to the sum of $160,000,000 and the amount available as secondary financial protection, than the amount of financial protection established under this agreement bears to the sum of such amount and the amounts of financial protection established under all other applicable agreements.

(d) As used in this paragraph 8, Article II, and in Article III, "other applicable agreements" means each other agreement entered into by the Commission pursuant to subsection 170c of the Act in which agreement the nuclear incident is defined as a "common occurrence." As used in this paragraph 8, Article II, "the obligations of the licensee" means the obligations of the licensee under subsection 53e(8) of the Act to indemnify the United States and the Commission from public liability, together with any public liability satisfied by the insurers under the policy or policies designated in the Attachment, and the reasonable costs of investigating and settling claims and defending suits for damage.

2. A new Paragraph 9 is inserted in Article II to read as follows:

9. With respect to any common occurrence arising out of an accident under DPR-73 subsequent to May 1, 1979, which is not determined by the Commission to be an "extraordinary nuclear occurrence" (a) If the sum of the limit of liability of any Nuclear Energy Liability Insurance Association policy designated in Item 5 of the Attachment and the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Nuclear Energy Liability Insurance Association exceeds $108,500,000 the amount of financial protection specified in Item 2a and b of the Attachment shall be deemed to be reduced by that proportion of the difference between said sum and $108,500,000 as the limit of liability of the Nuclear Energy Liability Insurance Association policy designated in Item 5 of the Attachment bears to the sum of the limits of liability of all nuclear energy liability insurance policies (facility form) applicable to such common occurrence issued by Nuclear Energy Liability Insurance Association:

(b) If the sum of the limit of liability of any Mutual Atomic Energy Liability Underwriters policy designated in Item 5 of the Attachment and the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Mutual Atomic Energy Liability Underwriters exceeds $31,500,000, the amount of financial protection specified in Item 2 a and b of the Attachment shall be deemed to be reduced by that proportion of the difference between said sum and $31,500,000 as the limit of liability of the Mutual Atomic Energy Liability Underwriters policy designated in Item 5 of the Attachment bears to the sum of the limits of libility of all nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Mutual Atomic Energy Liablity Underwriters:

(c) If any of the other applicable agreements is with a person who has furnished financial protection in a form other than a nuclear energy liability insurance policy (facility form) issued by Nuclear Energy Liability Insurance Association or Mutual Atomic Energy Liability Underwriters, and if also the sum of the amount of financial protection established under this agreement and the amounts of financial protection established under all other applicable agreements exceeds and amount equal to the sum of $140,000,000 and the amount available as secondary financial protection, the obligation of the licensee shall not exceed a greater proportion of an amount equal to the sum of $140,000,000 and the amount available as secondary financial protection, than the amount of financial protection established under this agreement bears to the sum of such amount and the amounts of financial protection established under all other applicable agreements.

(d) As used in this paragraph 8, Article II, and in Article III, "other applicable agreements" means each other agreement entered into by the Commission pursuant to subsection 170c of the Act in which agreement the nuclear incident is defined as a "common occurrence." As used in this paragraph 8, Article II, "the obligations of the licensee" means the obligations of the licensee under subsection 53e(8) of the Act to indemnify the United States and the Commission from public liability, together with any puublic liability satisfied by the insurers under the policy or policies designated in the Attachemnt, and the reasonable costs of investigating and settling claims and defending suits for damage.

3. Article II, paragraph 9 is renumbered as paragraph 10 and reads as follows:

10. The obligations of the licensee under this Article shall not be affected by any failure or default on the part of the Commission or the Government of the United States to fulfill any or all of its obligations under this agreement. Bankruptcy or insolvency of any person indemnified other than the licensee, or the estate of any person indemnified other than the licensee, shall not relieve the licensee of any of his obligations hereunder.

4. Article III, paragraph 4(b) is revised as follows:

4.(b) With respect to a common occurrence arising out of an accident under DPR-50, or with respect to any common occurrence arising out of an accident under DPR-73 subsequent to May 1, 1979 which is determined by the Commission to be an "extraordinary nuclear occurrence," the obligations of the Commission under this agreement shall apply only with respect to such public liability, such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article), and to such reasonable costs described in paragraph 2 of this Article, as in the aggregate exceed whichever of the following is lower: (1) The sum of the amounts of financial protection established under this agreement and all other applicable agreements; or (2) an amount equal to the sum of $160,000,000 and the amount available as secondary financial protection.

5. A new paragraph 4(c) is added to Article III, to read as follows:

4.(c) With respect to a common occurrence arising out of an accident under DPR-73 subsequent to May 1, 1979 which is determined by the Commission not to be an "extraordinary nuclear occurrence," the obligations of the Commission under this agrement shall apply only with respect to such public liability, such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article), and to such reasonable costs described in paragraph 3 of this Article, as in the aggregate exceed whichever of the following is lower: (1) The sum of the amounts of financial protection established under this agreement and all other applicable agreements; or (2) an amount equal to the sum of $140,000,000 and the amount available as secondary financial protection.

The following two endorsements have been submitted by American Nuclear Insurers, one of the two insurance pools to restore the claims expense limits for Units 1 and 2 and to add $20 million in insurance for Unit 2. The other insurance pool, Mutual Atomic Energy Liability Underwriters will issue an identical endorsement except for the dollar amounts.

The Commission is publishing the following two endorsements to Facility Form policy NF-220 issued to the licensee.

Appendix "B"

NUCLEAR ENERGY LIABILITY INSURANCE ASSOCIATION

RESTORATION OF LIMIT OF LIABILITY ENDORSEMENT

(Extraordinary Nuclear Occurrence)

It is agreed that:

1. On or about March 28, 1979 a nuclear incident originated (hereinafter called the March 28, 1979 incident) in connection with the ownership, operation, maintenance or use of the Unit 2 nuclear reactor situated at the location designated in Item 3 of the declarations.

2. Payments made by the companies under this policy with respect to the March 28, 1979 incident have reduced by $1,786,863* the limit of the companies' liability stated in Item 4 of the declarations, as amended.

3. The original limit of liability stated in Item 4 and the respective amended limits of liability stated in Endorsements 15, 20 and 31 are hereby restored to the amounts shown below but only with respect to obligations assumed or expenses incurred because of bodily injury or property damage caused by the nuclear energy hazard due to an extraordinary nuclear occurrence which happens during the period from the effective date of this endorsement to the date of termination of the policy and arising out of the ownership, operation, maintenance or use of one or more of the two nuclear reactors situated at the location designated in Item 3 of the declarations; provided however, that such extraordinary nuclear occurrence is determined by the Nuclear Regulatory Commission to be an "extraordinary nuclear occurrence" pursuant to the provisions of its regulations and the Atomic Energy Act of 1954, as amended, and in effect on May 1, 1979:

Original limit stated in Item 4	$ 1,000,000
Limit stated in Endorsement 15	95,250,000
Limit stated in Endorsement 20	96,875,000
Limit stated in Endorsement 31	108,500,000

4. The limits of liability, as described above and as restored to the extent provided by this endorsement, shall not be cumulative; and each payment made by the companies after the effective date of this endorsement for any loss or expense covered by the policy shall reduce by the amount of such payment each of such limits of liability regardless of which limit of liability applies with

Appendix "B"

*Payments made as of May 31, 1980.

respect to the bodily injury or property damage out of which such loss or expense arises.

Effective date of
this Endorsement June 1, 1980, which forms a part of policy No. NF-220

Issued to Metropolitan Edison Company, Jersey Central Power & Light Company, and Pennsylvania Electric Company

For the Subscribing Companies

Date of Issue

By
General Manager

Endorsement No 43 Countersigned by

NUCLEAR ENERGY LIABILITY INSURANCE ASSOCIATION

SUPPLEMENTAL LIMIT OF LIABILITY ENDORSEMENT
(Applicable Under Certain Conditions)

Whereas, there are two nuclear reactors at the location designated in Item 3 of the declarations know respectively as the Unit 1 nuclear reactor and the Unit 2 nuclear reactor; and

Whereas, the limit of liability stated in Item 1 of the declarations of the policy as amended by Endorsements No. 15, 20 and 31 applies jointly and not severally to bodily injury and property damage caused by the nuclear energy hazard and arising out of the ownership, operation, maintenance or use of both nuclear reactors, together with all of the premises, land, buildings, and structures comprising the facility described in Item 2 of the declarations of the policy and all property and operations at the locations designated therein; and

Whereas, such limit of liability, as amended, is reduced by each payment made by the companies for any loss or expense covered by the policy, all as more particularly provided by Condition 3 of the policy and Endorsements No. 15, 20 and 31; and

Whereas, on or about March 28, 1979 a nuclear incident originated (hereinafter called the March 28, 1979 incident) in connection with the ownership, operation, maintenance or use of the Unit 2 nuclear reactor; and

Whereas, the companies are willing to supplement under certain conditions such portion of such limit as may now or in the future be available with respect to bodily injury or property damage caused by the nuclear energy hazard after giving effect to the provisions of Condition 3 and Endorsements No. 15, 20 and 31.

NOW, THEREFORE, IT IS AGREED THAT:

1. In the event the past or future payments by the companies for loss or expense covered by the policy exhaust the limit of liability stated in Item 4 of the declarations, as amended by Endorsements 15, 20 and 31, and as restored by Endorsement 42, with respect only to obligations assumed or expenses incurred because of bodily injury or property damage caused during the period from May 1, 1979 to the date of termination of the policy by the nuclear energy hazard, the limit of the companies' liability shall be increased by

$15,500,000; provided, however, that this increase in the limit of the companies' liability shall not apply to bodily injury or property damage arising out of the ownership, operation, maintenance or use of the Unit 2 nuclear reactor unless such bodily injury or property damage results from a nuclear incident which is determined by the Nuclear Regulatory Commission to be an "extraordinary nuclear occurrence" pursuant to the provisions of its regulations and the Atomic Energy Act of 1954, as amended, and in effect on May 1, 1979.

2. Each payment made by the companies after the effective date of this endorsement shall reduce such limit of liability and each of the companies' limits of liability, as restored by Endorsement 43, by the amount of such payment in the manner provided in Condition 3.

Effective Date of
this Endorsement June 1, 1980, which forms a part of Policy No. MF-220
12:01 A.M. Standard Time

Issued to Metropolitan Edison Company, Jersey Central Power & Light Company, and Pennsylvania Electric Company

Date of Issue ________ For the Subscribing Companies

By: ________
President

Endorsement No. 44 Countersigned by ________

FOR THE NUCLEAR REGULATORY COMMISSION

Samuel Chilk
Secretary of the Commission

Dated at Washington, DC,
this day of 1981

Appendix "B"