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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

BRIEF OF THE NEWBERRY TOWNSHIP
T.M.I. STEERING COMMITTEE AND
MICKEY MINNICH; RICHARD J. ZLOGAR;
LINDA S. CARLISLE; VIRGINIA PHILLIPS; C. WILLIS WOLFE;
LINDA I. DOMINOSKI; PATRICIA A. SMITH; DONNA K. UMHOLTZ;
M. DAVID CLARK; COLLEEN M. CLARK; AND MICHAEL L. GLOCK, M.D.
IN SUPPORT OF THE LICENSING BOARD'S CONSIDERATION
OF "PSYCHOLOGICAL STRESS" AS REQUIRED BY THE
NATIONAL ENVIRONMENTAL POLICY ACT

October 19, 1979

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INTRODUCTION

This Brief is submitted pursuant to the Order of August 9, 1979, of the Nuclear Regulatory Commission requiring parties wishing to submit contentions on the "psychological distress" issue all submit Briefs addressing the relevant duties of the Commission under the National Environmental Policy Act and the Atomic Energy Act. The Petitioners identified in this Brief have raised the issue of psychological distress and therefore it is burdened upon them to present a Brief pursuant to the Order of August 9, 1979. It is the Petitioners' contention that the National Environmental Policy Act requires that the Commission must consider the psychological health issues presented to it in the contentions raised by the Petitioners.

ARGUMENT

1. Psychological distress is an element that effects the quality of the human environment which is a subject which is covered by the National Environmental Policy Act.

The sweep of the National Environmental Policy Act, hereinafter referred to as NEPA, is extraordinarily broad and is not limited to physical environmental impact. The NEPA has been interpreted to include various types of potential environmental impact. Further, the environmental considerations mandated by the NEPA to be considered by federal agency include both the direct and indirect affects of federal actions. M.P.I.R.G. v. Butz, 498 F.2d 1314 (8th Cir., en banc 1974). Finally, the Congress recognized in §101(a) of the NPA that "...it is the continuing policy of the Federal Government in cooperation with the State and local governments ... to use all practical means and measures ... in a manner calculated to

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foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the societal, economic and other requirements of present and future generations of Americans." §101(a) of NEPA, 42 U.S.C. §4331(a).

The interpretation of the scope of the NEPA is more fully understood when read together with C.E.Q. guidelines, 40 C.F.R. §1500.1 through §1500.4, 38 Fed. Reg. 20550 (1973). The guidelines provide the following insight:

"(b) Section 101(b) of the Act (NEPA) indicates the broad range of aspects of the environment to be surveyed in any assessment of significant effect. The Act also indicates that adverse significant effects include those that degrade the quality of the environment, curtail the range of beneficial uses of the environment, and serve short term, to the disadvantage of long term, environmental goals ... Significant effects also include secondary effects ..."

"Secondary or indirect, as well as primary or direct, consequences for the environment should be included in the analysis. Many major federal actions, ... stimulate or induce secondary effects in the form of associated investments and changed patterns of social and economic activities. Such secondary effects, through their impacts on existing community facilities and activities, through inducing new facilities and activities, or through changes in natural conditions, may often be more substantial than the primary effects of the original action itself." 40 C.F.R. §1500.8(a)(3)(ii).

Therefore, it is averred that the psychological stress contention raised by the Petitioners falls within the NEPA and therefore, the NEPA mandates agency evaluation and consideration of this contention.

Case law also clearly supports the proposition that NEPA encompasses more than direct ecological impacts of proposed action. The lead case of Hanly v. Mitchell, 460 F.2d 640 (2d Cir. 1972), cert. denied, 409 U.S. 990 (1972) noted that the NEPA's aims clearly extend beyond the problems and

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effects of those enumerated in the Act. In the Hanly case, the second circuit court of appeal recognized that the NEPA's aim clearly extends beyond the direct problems and effects of sewage and garbage disposal and air and water pollution to include protection of the quality of life of residents who live near the proposed federal project. The Court held in that case that noise, traffic, congestion, overburdened mass transportation systems, crime and congestion all effect the environment. In a later case connected with Hanly v. Mitchell, the second circuit in Hanly v. Kleindienst, 471 F.2d 823 (2d Cir. 1972) cert. denied, 412 U.S. 908 (1973) dealt tangentially with the issue of psychological impacts. The Court in Hanly v. Kleindienst, in dicta, ruled that psychological and sociological effects, because they do not lend themselves to measurement, it was doubtful whether these were types of factors that were to be considered under the NEPA. The Court also went on to note that while there may be a psychological distaste for having a jail located close to a residential area, such a distaste is understandable, however, such distaste, because it was not measurable, was not to be considered within the perimeters of the NEPA. The difference between the incident of March 28, 1979, and the circumstances set forth in the Hanly case are not analogous. The incident of March 28, 1979, is unique and novel in that it is an event which will provide the interveners with identifiable victims of psychological distress and quantifiable manifestations of psychological distress. It is averred that the psychological harms attributed to the renewed operation of T.M.I. Number 1 are not analogous and are easily distinguishable from those of home owners who have a psychological "distaste" for having a jail closely located to their homes. Thus, it is averred that the direct and indirect environmental

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aspects of the reactivation of Unit Number 1 at the Three Mile Island Nuclear Station upon the qualify of the human environment must be considered by the Commission, that the case of Hanly v. Mitchell, supra. and Hanly v. Kleindienst, supra. do not provide a basis for the Commission to deny an evidentiary hearing regarding the psychological stress that will be generated if the T.M.I. Number 1 is allowed to reopen, and that Petitioners have a basis on which to frame their contentions based on the NEPA. See M.P.I.R.G. v. Butz, 498 F.2d 1314 (8th Cir., en banc, 1974); McDowell v. Schlessinger, 404 F. Supp. 221 (W.D. Missouri 1975); Trinity Episcopal School Corporation v. Romni, 387 F. Supp. 1044 (S.D. New York 1974); Jackson County, Mo. v. Jones, 471 F.2d 1004 (3th Cir., 1978).

CONCLUSION

Petitioners hereby request this Board to hear and consider the evidence set forth in Petitioners' contentions regarding psychological stress projected to result from the reopening of T.M.I. Number 1. Petitioners contend that the psychological stress issues are embodied in the NEPA and 10 C.F.R. Part 51 and for these reasons the NRC has a duty under the NEPA to evaluate all environmental impacts and should carry out this duty with respect to the issue of psychological stress.

Respectfully submitted,

FOX, FARR & CUNNINGHAM

DATED: October 19, 1979

BY: _____

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CERTIFICATE OF SERVICE



AND NOW, this 22nd day of October, 1979, I, JORDAN D. CUNNINGHAM, Attorney for Petitioners, hereby certify that I served the within Brief in Support of the Licensing Board's Consideration of "Psychological Stress" as Required by the National Environmental Policy Act by depositing same in the United States Mail, postage prepaid, at the post office in Harrisburg, Pennsylvania, addressed to:

Executive Legal Director
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Mr. George F. Trowbridge, Esquire
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