

Miss Joan Claybrooke, President  
Public Citizen Litigation Group  
1600 20th Street, NW.  
Washington, DC 20009

Dear Miss Claybrooke:

I am responding to the petition for rulemaking (PRM-140-1) that was submitted to the Nuclear Regulatory Commission (NRC) on July 24, 1979, by the Public Citizen Litigation Group and the Critical Mass Energy Project, on behalf of certain residents of Middletown, Pennsylvania, who stated that they were harmed by the March 28, 1979, accident at the Three Mile Island, Unit 2 nuclear reactor (TMI-2). The petition requested that the NRC rule that the accident was an "extraordinary nuclear occurrence" (ENO) within the meaning of Part 140 of Title 10 of the *Code of Federal Regulations*. In addition, the petition requested that the NRC amend the criteria it uses for making an ENO determination "to bring them more in line with the clear intent of Congress with regard to this matter."

When this petition was received, the NRC was in the process of making a determination as to whether the accident at TMI-2 was an ENO. Therefore, the first request in the petition was handled as a public comment on NRC's announcement of its intent to make such a determination. In an April 23, 1980, *Federal Register* notice (45 FR 27590), the NRC published its finding that the March 28, 1979, accident at TMI-2 was not an ENO (Enclosure 1). Thus, the first request in the petition has been denied.

With respect to the second request in the petition, even though the NRC believed that the existing criteria for determining that an ENO has occurred were consistent with the Atomic Energy Act, of 1954, as amended, several other options were considered and published as a proposed rule (Enclosure 2) for public comment on April 9, 1985 (50 FR 13978). The NRC received 27 letters commenting on the proposed rule. There was no preponderance of support for any of the options proposed by the NRC. However, the arguments against changing the criteria for determining that an ENO has occurred were persuasive. The NRC now finds that the options in the 1985 proposed rule are deficient in that they do not meet the intent of Congress when it established the ENO concept. Thus, the Commission has denied the second request in the petition and withdrawn the proposed rule. For a more detailed discussion on the NRC's reasoning in this matter, please see the enclosed *Federal Register* notice (Enclosure 3) that both denies the petition and withdraws the proposed rule.

Several factors contributed to the delay in completing the resolution of this petition until this time. The Commission dealt with the central request of the petition (i.e., to declare the TMI-2 accident an ENO) in a timely fashion. The petition was received on July 25, 1979, and the NRC published its finding that the accident was not an ENO in the *Federal Register* on April 23, 1980. In announcing its finding, the Commission did not specifically deny the petition's request to declare the accident at TMI-2 an ENO.

Miss Joan Claybrooke

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The other request of the petition, to modify the ENO determination criteria, was considered to be of secondary importance. The Commission decided to consider this proposal but accorded it a low priority because of resource considerations and the existence of higher priority rulemaking actions. In the meantime, in light of the public comments received, the Commission has reexamined its reasoning for the need for modification of the ENO criteria and the options that it proposed in the *Federal Register* notice for the proposed rule (50 FR 13978). The Commission also considered the legislative history of the Price-Anderson Act in arriving at its finding in this matter.

Sincerely,

William D. Travers  
Executive Director  
for Operations

Enclosures:

1. April 23, 1980, Federal Register Notice
2. April 9, 1985, Federal Register Notice
3. Federal Register Notice Denying the Petition  
and Withdrawing the Proposed Rule

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Ms. Wanonah Hauter, Director  
Critical Mass Energy Project  
215 Pennsylvania Avenue, SE  
Washington, DC 20003

Dear Ms Hauter:

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