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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION 10/31/79

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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



NRC STAFF RESPONSE TO AMENDED PETITIONS  
AND STATEMENTS BEARING ON INTEREST IN  
THE THREE MILE ISLAND UNIT 1 PROCEEDING  
RECEIVED BY THE STAFF BETWEEN  
SEPTEMBER 21, 1979 AND OCTOBER 31, 1979

INTRODUCTION

Since September 20, 1979, the NRC Staff has received a statement from the Pennsylvania Office of Consumer Advocate bearing on its interest to participate in this proceeding as an interested state agency and amended petitions for leave to intervene which discuss the interests of Jane Lee, Marvin I. Lewis, Marjorie M. Aamodt and Frieda Berryhill. We have previously set forth our understanding of the legal requirements for establishing a petitioner's right to intervene in NRC proceedings and will not repeat them here.<sup>1/</sup> We provide below our response to these petitions in relationship to the adequacy of each petitioner's showing of interest. Our response to the contentions sought to be litigated by Mr. Lewis, Ms. Aamodt, and Ms. Berryhill are contained in our

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1/ NRC Staff Response to Petitions to Intervene in the Three Mile Island Unit 1 Proceeding Received by the Staff on or Before September 13, 1979 at 3-7, September 13, 1979. We have included a copy of our earlier filing with this pleading for Ms. Lee who was not on our service list on September 13.

Brief in Response to Contentions also filed today. Our response to the contentions of Ms. Lee is contained herein.

Our conclusion with respect to each statement or petition is as follows:

- (1) The statement of the Pennsylvania Office of Consumer Advocate satisfies the requirements of 10 C.F.R. §2.715(c) regarding interest.
- (2) The amended petition of Jane Lee satisfies the interest requirements of 10 C.F.R. §2.714(a) but fails to state a litigable contention. Further, we view the petition as an untimely filed petition for leave to intervene in which no good cause has been shown for the untimeliness.
- (3) The amended petitions of Marvin I. Lewis fail to satisfy the interest requirements of 10 C.F.R. §2.714(a).
- (4) The amended petitions of Marjorie M. Aamodt satisfy the interest requirements of 10 C.F.R. §2.714(a).
- (5) The amended petition of Frieda Berryhill fails to satisfy the interest requirements of 10 C.F.R. §2.714(a).

STATEMENT OF THE PENNSYLVANIA  
OFFICE OF THE CONSUMER ADVOCATE

On October 22, 1979, the Pennsylvania Office of the Consumer Advocate filed a supplemental statement regarding its petition for leave to participate as an interested state agency.<sup>2/</sup> The Consumer Advocate states that it has the statutory duty to address, before any relevant agency, matters affecting

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<sup>2/</sup> Statement of the Pennsylvania Office of Consumer Advocate Regarding Petition for Leave to Participate as an Interested State Agency (Statement), October 22, 1979.

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Pennsylvania utility consumers.<sup>3/</sup> This includes the continuing financial viability of the Metropolitan Edison Company and its prospective ability to provide safe, adequate, efficient, and reliable service.<sup>4/</sup> Further, the Consumer Advocate desires to participate in this proceeding on the issue of Metropolitan Edison's financial qualifications as they affect its ability to safely operate TMI. Five sub-issues are enumerated.<sup>5/</sup>

We conclude that the interest of the Consumer Advocate in the safe operation of the TMI facility falls within the zone of interests sought to be protected by the Atomic Energy Act. Therefore, the Consumer Advocate should be permitted to participate in this proceeding as an interested state agency on the issues it has identified.

AMENDED PETITION OF JANE LEE

Ms. Jane Lee filed a document entitled "Amendment to Intervention" on October 15, 1979 in which she seeks to alter her status in this proceeding from a limited appearer pursuant to 10 C.F.R. §2.715(a) to a full party pursuant to 10 C.F.R. §2.714(a). She appears to rely on the October 22, 1979 deadline set by the Licensing Board for filing amended petitions for leave to intervene and final

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<sup>3/</sup> Statement at 5.

<sup>4/</sup> Ibid.

<sup>5/</sup> Id. at 7-8.

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contentions as authority to alter her status.<sup>6/</sup> We first discuss her request to alter her status and then address her showing of interest and the adequacy of the contentions stated in the Amended Petition.

We oppose Ms. Lee's request to alter her status at this time, but recommend that she be permitted to pursue one of the two alternatives we propose below.

Our analysis of Ms. Lee's request begins with the September 18, 1979 Memorandum of the Atomic Safety and Licensing Board cited by Ms. Lee in her Amended Petition. The Licensing Board tentatively set October 22, 1979 as the filing deadline for amended petitions and contentions, and stated its intention to rule on whether "each petition for leave to intervene under 10 C.F.R. §2.714" meets the preliminary standing requirements (emphasis supplied).<sup>7/</sup> In our view, Ms. Lee did not file a petition for leave to intervene under 10 C.F.R. §2.714 until October 15 (her Amended Petition). On the contrary, her initial filing in this proceeding consisted of a one-page, undated, uncaptioned letter which requested permission "to participate in testifying at the TMI-1 hearings" and "time to submit . . . medical and environmental information garnered by me over a three year period . . . to the NRC Panel selected for the purpose of deciding to continue operation.

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<sup>6/</sup> Amendment to Intervention (Amended Petition) at 1.

<sup>7/</sup> Memorandum at 1-2. The schedule was finalized in the Licensing Board's Memorandum and Order Ruling on Petitions and Setting Special Prehearing Conference, September 21, 1979 at 25. No petition from Ms. Lee was considered by the Board or any party with respect to the September 21 Memorandum and Order.

of Unit 1 at TMI."<sup>8/</sup> We did not respond to the letter, treating it as a request to make a limited appearance. The Licensee responded in writing to Ms. Lee's letter on August 30, 1979, stating that it understood her letter to be a limited appearance request (to which it had no objection) rather than a petition for leave to intervene pursuant to 10 C.F.R. §2.714(a). We do not understand Ms. Lee to be objecting to the Licensee's August 30 characterization of her initial letter, a characterization she at least implicitly agrees with in her Amended Petition.<sup>9/</sup>

Therefore, we view Ms. Lee's Amended Petition as a nontimely-filed petition for leave to intervene. We oppose her admission as a party at this time because she has made no substantial showing, or any showing at all, of good cause for the granting of a late petition, based on a balancing of the factors specified in 10 C.F.R. §2.714(a)(i)-(v) and §2.714(d).<sup>10/</sup> However, we suggest that Ms. Lee be given an opportunity to make a showing of good cause for the late filing at the November 8 Special Prehearing Conference if she is also prepared to argue her final contentions at the Conference. Alternatively, if Ms. Lee's major concern is to ensure that the medical and environmental

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<sup>8/</sup> The letter was docketed by the NRC Office of the Secretary on August 20, 1979.

<sup>9/</sup> "Therefore, it is vital that my status be altered from 10 C.F.R. §2.715(a) (limited appearance) to 10 C.F.R. §2.714(a) (litigation). Petition to intervene pursuant to 10 C.F.R. §2.714(a) instead of 10 C.F.R. §2.715(a) (Please note this request for change)." Amended Petition at 1-2.

<sup>10/</sup> See page 17 of the Commission's August 9, 1979 Order and Notice of Hearing, 44 F.R. 47824 (August 15, 1979) which specifically requires such a showing in accordance with usual practice.

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information she has gathered relating to TMI is made a part of the official record and considered to the extent appropriate in this proceeding, then we would welcome a limited appearance statement from her.

Interest and Contentions

Ms. Lee states in her Amended Petition that she resides within three miles of Three Mile Island and will take the position that the resumption of operation will increase the health problems of animals and eventually affect humans in the area as well.<sup>11/</sup> Since Ms. Lee resides so close to the facility, we understand her to be saying that she believes her health may be adversely affected by resumed operations. Therefore, we believe that Ms. Lee satisfies the interest requirements of 10 C.F.R. §2.714(a).

Ms. Lee also appears to raise two contentions which she seeks to litigate, namely medical and environmental information bearing on the prudence of resuming operation as it relates to birds, farm animals and plant life and malfunctions of Unit 1 prior to the Unit 2 accident. In our view, each of these contentions lacks adequate specificity and basis and does not appear tied to, or at least is not limited to, issues within the scope of this proceeding. For example "malfunctions of Unit 1 prior to the Unit 2 accident" fails to identify in any fashion what malfunction of Unit 1 petitioner is

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<sup>11/</sup> Amended Petition at 2.

concerned about and how such malfunctions might relate to the bases for the present suspension of Unit 1 operations. Therefore, we conclude that petitioner has failed to identify a litigable contention.

INTEREST OF MARVIN I. LEWIS

Marvin I. Lewis has filed a number of documents since our September 20, 1979 response to his amended petition for leave to intervene and the September 21, 1979 ruling by the Atomic Safety and Licensing Board that petitioner had so far failed to provide an adequate basis for establishing his interest in this proceeding.<sup>12/</sup> In particular, two of Mr. Lewis' recent submittals address the question of his interest.<sup>13/</sup>

We conclude that Mr. Lewis' subsequent filings fail to provide an adequate basis for establishing his interest in this proceeding. We understand the essence of Mr. Lewis' interest arguments in Further Amendments to be that his life is endangered by potential operation of TMI-1 since the theoretical consequences of a "Class 9" accident at a nuclear power plant could cause death at a distance of up to 150 kilometers (approximately 93 miles) from the accident site. Mr. Lewis resides approximately 90 miles from Three Mile Island.<sup>14/</sup> Petitioner's letter advances a similar theory.<sup>15/</sup> The flaw

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<sup>12/</sup> See Memorandum and Order Ruling on Petitions and Setting Special Prehearing Conference at 18-21.

<sup>13/</sup> Further Amendments to Petition to Intervene, undated, docketed by the NRC, Office of the Secretary on September 27, 1979 (Further Amendments) and letter dated September 26, 1979 to the Atomic Safety and Licensing Board (Letter).

<sup>14/</sup> See Further Amendments at 3-4.

<sup>15/</sup> See Letter at 3-4, 8-9.

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with Mr. Lewis' argument is that he premises his showing of "injury in fact" on the theoretical consequences of some undescribed accident at Three Mile Island with no identification of a credible mechanism which could cause an accident with the theoretical consequences he relies upon.<sup>16/</sup> Therefore, we believe that Mr. Lewis' attempt to show possible injury from the theoretical consequences of an unidentified accident at a distance of some ninety miles from the TMI site is too remote and speculative to demonstrate "injury in fact" consistent with judicial concepts of standing. The Appeal Board has stated that residence at 50 miles is "not so great as necessarily to have precluded a finding of standing based on residence"<sup>17/</sup> and that the showing by a petitioner of the existence of "reasonable possibility" of adverse impact can serve as the basis for standing.<sup>18/</sup> In addition, the injury is to be particularized to the individual, not "shared in substantially equal measure by all or a large class of citizens."<sup>19/</sup> As we understand Mr. Lewis' reliance on accident consequences, he has not alleged a reasonable possibility

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<sup>16/</sup> In determining whether the issue of consequences of "Class 9" accidents is appropriate for litigation in NRC proceedings, the Appeal Board has generally followed the "interim guidance" of the Commission set forth in the proposed Annex to Appendix D to 10 C.F.R. Part 50 (now Part 51), 36 Fed. Reg. 22851-52 (Dec. 1, 1971), which states that the consequences of such accidents need not be discussed because of the low probability of their occurrence. However, a potential litigant may make "an affirmative showing" that this regulatory judgment is incorrect, Consumers Power Company (Midland Plant, Units 1 & 2), ALAB-123, 6 AEC 331, 348 (1973), or "demonstrate that other assumptions are more appropriate." Wisconsin Electric Power Co. (Point Beach Nuclear Plant Unit 2), ALAB-137, 6 AEC 491, 502 (1973). Accord, Offshore Power Systems (Floating Nuclear Power Plants), CLI- \_\_\_\_\_ (September 14, 1979).

<sup>17/</sup> Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 & 2), ALAB-413, 5 NRC 1418, 1421 (1977).

<sup>18/</sup> Virginia Electric and Power Company (North Anna Power Station, Units 1 & 2), ALAB-522, 9 NRC 54, 56 (1979).

<sup>19/</sup> Edlow International Co., CLI-76-6, 3 NRC 563 at 576 (1975), quoting from Warth v. Seldin, 422 U.S. 490, 499 (1975).

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of consequences particularized to his residence but has, instead, relied upon assertions of wide-scale potential consequences of an accident without any description of the circumstances whereby it might occur.

INTEREST OF MAJORIE M. AAMODT

Marjorie M. Aamodt has filed two amended petitions for leave to intervene since our response to her original petition on September 20, 1979.<sup>20/</sup> Her most recent petition states that her residence is approximately 48 miles from Three Mile Island.<sup>21/</sup> Her husband, Norman O. Aamodt, and her daughter, Susan E. Aamodt, wish to join her as co-intervenors.<sup>22/</sup> Mr. Aamodt works in Intercourse, Pa., 35 miles from TMI-1. The Aamodts evacuated from their home during the Three Mile Island accident and allege they have suffered economic harm from the accident because former customers no longer perceive their family farm as a desirable source of food supply.<sup>23/</sup> We conclude that the Aamodts satisfy the interest requirements of 10 C.F.R. §2.714(a).

INTEREST OF FRIEDA BERRYHILL/COALITION  
FOR NUCLEAR POWER PLANT POSTPONEMENT

Frieda Berryhill, Chairman CNPPP, filed a supplemental petition by letter dated September 24, 1979.

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<sup>20/</sup> A letter addressed to the Secretary of the Commission, dated October 4, 1979 (Letter) and Petition for Intervention of Marjorie M. Aamodt, filed October 22, 1979.

<sup>21/</sup> Petition at 1.

<sup>22/</sup> Ibid.

<sup>23/</sup> Ibid.

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Ms. Berryhill states that she resides "approximately 50 miles" from Three Mile Island.<sup>24/</sup> Although the letter describes Ms. Berryhill's activities in the aftermath of the accident at TMI-2, she has failed to allege how her interest may be affected by this proceeding and has therefore failed to meet the interest requirements of 10 C.F.R. §2.714(a).<sup>25/</sup>

CONCLUSION

For the reasons identified above, we argue that the statement of the Consumer Advocate satisfies the interest requirement of 10 C.F.R. §2.715(c) and the petitions of Marjorie M. Aamodt and Jane Lee comport with the interest requirement of 10 C.F.R. §2.714(a). However, Ms. Lee has failed to show good cause for the filing of a late petition and has also failed to identify a litigable contention. We further argue that the petitions of Marvin I. Lewis and Frieda Barryhill fail to identify an interest which may be affected by the proceeding sufficient to establish standing to intervene.

Respectfully submitted,

*Bruce A. Berson*

Bruce A. Berson  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 31st day of October, 1979.

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<sup>24/</sup> Supplemental Petition at 1. We note that the address provided in the Supplemental Petition is identical to that provided in the original petition under CNPPP letterhead, Wilmington, Delaware. Wilmington is approximately 75 miles from Three Mile Island.

<sup>25/</sup> The Supplemental Petition also does not resolve the ambiguity we observed in our September 13, 1979 response to her petition regarding whether Ms. Berryhill seeks to represent her own interest or that of CNPPP. The supplemental petition, although on plain letterhead, is signed "Frieda Berryhill, Chairman, CNPPP." Our conclusion as to interest applies to either circumstance.

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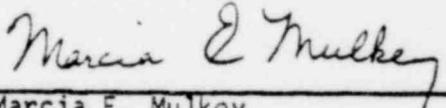
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