

August 26, 1974

UNITED STATES OF AMERICA  
ATOMIC ENERGY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
METROPOLITAN EDISON COMPANY	)	
ET AL.	)	Docket No. 50-320
	)	
(Three Mile Island Generating	)	
Station, Unit 2)	)	

APPLICANTS' ANSWER OPPOSING PETITION  
FOR LEAVE TO INTERVENE OF  
FREDERICK AND GERTRUDE HELLRICH, ET AL.

1. On May 20, 1974, the Atomic Energy Commission (Commission) issued a Notice of Receipt of Application for Facility Operating License, Notice of Consideration of Issuance of Facility Operating License and Notice of Opportunity for Hearing concerning Unit 2 of the Three Mile Island Generating Station. This Notice of Opportunity was published in the Federal Register on May 28, 1974 (39 Fed.Reg. 18497), and notices were sent by the Commission to the following newspapers for display advertising: Patriot News, Dispatch, and Press and Journal. The Dispatch, located in York, Pennsylvania, and the Press and Journal, located in Middletown, Pennsylvania, ran articles on May 29, 1974, and May 30, 1974, respectively.

2. The Notice of Opportunity provided that any person whose interest might be affected by this proceeding

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could file a request for a public hearing in the form of a petition for leave to intervene. The Notice further provided that petitions for leave to intervene to be timely had to be filed by June 27, 1974, and that petitions filed thereafter would not be granted unless a determination could be made that such petitioner made a substantial showing of good cause for failure to file on time, and after consideration of factors specified in section 2.714 of the Commission's regulations.

3. Subsequent to the Notice of Opportunity, petitions for leave to intervene were filed and in a Memorandum and Order, dated July 25, 1974, the Atomic Safety and Licensing Board designated to rule on petitions for leave to intervene in this proceeding allowed the intervention of one joint intervenor, denied a second petition, granted the Commonwealth of Pennsylvania's request to participate as a state, and issued a Notice of Hearing (39 Fed.Reg. 27749) implementing the decisions.

4. Some seven weeks after the time for filing timely intervention petitions had expired, on August 14, 1974, a Petition for Leave to Intervene on behalf of thirteen, individual, named landowners in Berks County, Pennsylvania (collectively "Petitioners") was mailed to the Commission. For the reasons set forth in paragraphs 6 through 8 below, Metropolitan Edison Company, Jersey Central Power & Light Company, and Pennsylvania Electric Company (Applicants)

oppose the grant of this untimely Petition.

5. Petitioners' contentions all concern a transmission line being constructed by Applicants from its Three Mile Island Nuclear Station, Unit 2, to Hosensack substation in Berks County, Pennsylvania. More particularly, Petitioners' stated interest lies in the transmission line "with respect to that Sector in Berks County, Pennsylvania." Applicants do not contest Petitioners' interests in this segment of the TMI 2 - Hosensack line.

6. Applicants do oppose the grant of Petitioners' request to intervene, however, for the reason that good cause has not been shown why these particular individuals could not have filed a timely petition for leave to intervene in this proceeding. We are not here dealing with individuals whose interest in the progress of construction of a nuclear power plant is recent, nor whose knowledge of its construction and the construction of its related transmission lines is dependent upon their reading the Federal Register. These same individuals have been engaged in litigation with Applicants over the construction of this line for more than a year. The line in question is presently approximately ninety-five per cent completed and those segments of the line crossing Petitioners' properties are 100 per cent completed. We are not dealing here with individuals attempting pro se to familiarize themselves with the Commission's hearing procedures and notice regulations.

The Petitioners are represented by counsel who is both familiar with, and experienced in, AEC practice. In fact, Petitioners' counsel represented other intervenors in the Three Mile Island Generating Station, Unit 1, proceeding, noticed and conducted under the identical sections of the Commission's regulations less than a year ago. Under these circumstances little weight should be given to Petitioners' argument that "Petitioners and their counsel do not receive the Federal Register and were not apprised of the pending action of this Commission involving their rights until after the time to file a Petition for Intervention had expired." The fact is that these individuals and their counsel were actively engaged in litigation with Applicants in a federal court at the same time notice was provided on an AEC proceeding encompassing the same subject matter and compliance with NEPA. Notice of the opportunity to participate in the AEC proceeding was provided in the Federal Register as well as in the newspapers in the vicinity of the plant. There was no duty on Applicants' counsel in the civil litigation, as Petitioners suggest, to keep Petitioners informed of the status of opportunities for Petitioners to participate in the publicly-noticed AEC proceeding. Rather it seems incumbent on Petitioners and their counsel that they take some initiative to keep themselves informed as to the timing of such closely related events. Applicants suggest that a mere postcard

request of the AEC to keep Petitioners informed of public notices in the TMI 2 licensing proceeding would have been sufficient for Petitioners. Other petitioners in this proceeding -- now admitted as Intervenor after a timely petition was filed -- took such initiative and were individually informed of the AEC's Notice of Opportunity for a Hearing.

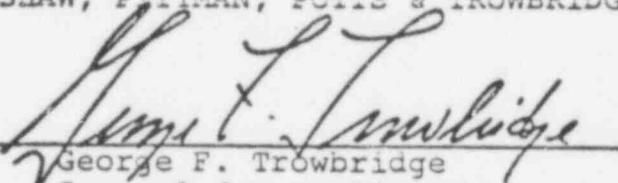
7. Finally, Petitioners make reference to an agreement whereby the AEC Regulatory Staff will not oppose Petitioners' intervention on grounds of lateness and Petitioners agree "to abate further action in Civil Action No. 73-531 as to the United States Atomic Energy Commission [which had been joined as a party defendant in that action at the court's insistence.]." Petitioners cite in this regard a "Motion and Memorandum of Law dated August 7, 1974, and filed by Paul E. Holl, Esquire, Assistant United States attorney in the ... civil action." Applicants have not been consulted on, and are not party to, such an agreement; Applicants and their counsel (both counsel in the civil action and counsel in the AEC proceeding) first learned of it through the instant Petition. Applicants have not been served with the document, although Applicants' counsel is informed that a like document was filed on August 19, 1974, with the clerk of the district court having jurisdiction.

8. The Appeal Board in Duquesne Light Company, et al. (Beaver Valley Point Station, Unit 2) ALAB-208, RAI-74-6, 959

(June 10, 1974) discusses at some length the requirement to show good cause for failure to file on time a petition for leave to intervene. The Appeal Board in that case expressed its view that "the intent of Section 2.714(a) is that the enumerated factors [in subsections 2.714(a)(1)-(4) and 2.714(d)] are to come into play only in circumstances where there has been a reasonable excuse tendered for the tardiness." Applicants contend that Petitioners have failed to pass this threshold test, that Petitioners have made no substantial good cause showing, and that, for this reasons, Petitioners' untimely request for leave to intervene should be denied.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

  
George F. Trowbridge  
Counsel for Applicants

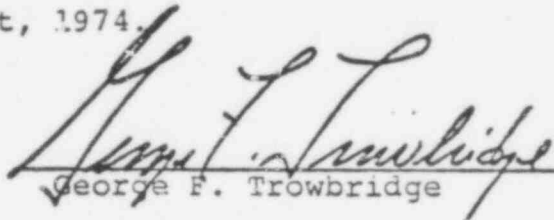
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Answer Opposing Petition for Leave to Intervene of Frederick and Gertrude Hellrich, et al.," dated August 26, 1974, were served upon those persons on the attached Service List by deposit in the United States mail, postage pre-paid, this 26th day of August, 1974.

  
George F. Trowbridge

Dated: August 26, 1974

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Docket No. 50-320

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