

9/20/79

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF RESPONSE TO PETITIONS TO INTERVENE
AND AMENDED PETITIONS IN THE THREE MILE ISLAND
UNIT 1 PROCEEDING RECEIVED BY THE STAFF BETWEEN
SEPTEMBER 14, 1979 AND SEPTEMBER 20, 1979



Introduction

POOR ORIGINAL

The NRC Staff has received four additional petitions to intervene and one amended petition since we filed our initial response to petitions to intervene in this proceeding on September 13, 1979. We provide below our response to these petitions in relationship to the adequacy of each petitioner's showing of interest and identification of aspects of the subject matter of the proceeding on which intervention is sought. Our understanding of the legal requirements for establishing a petitioner's right to intervene in NRC proceedings was fully set forth in our September 13 response and will not be rehashed here.^{1/} While some petitions identify contentions or potential contentions, we do not address the adequacy of contentions in this submittal, in accordance with the Board's Order of August 31, 1979.

1/ NRC Staff Response to Petitions to Intervene in the Three Mile Island Unit 1 Proceeding, at 3-7, September 13, 1979. We have included a copy of our response along with this pleading for those petitioners who were not on our service list on September 13.

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The petitions addressed herein and our conclusions respecting them are as follows:

- (1) The petition of Three Mile Island Alert, Incorporated satisfies the requirements of 10 C.F.R. §2.714(a) regarding interest and aspects.
- (2) The petition of the Union of Concerned Scientists satisfies the requirements of 10 C.F.R. §2.714(a) regarding interests and aspects.
- (3) The petition of People Against Nuclear Energy satisfies the interest requirements of 10 C.F.R. §2.714(a) but meets the aspects requirements only if the Commission later determines, by the mechanism identified on page 13 of the August 9, 1979 Order, 44 F.R. 47824 (August 15, 1979), that "issues such as psychological distress . . . can legally be relevant to this proceeding."
- (4) The petition of Majorie M. Aamodt, which alternatively requests the opportunity to make a limited appearance, is wholly lacking in allegations relating to petitioner's interest, although adequate identification of aspects of the subject matter of desired intervention is provided.
- (5) The amended petition of Marvin I. Lewis provides an inadequate basis for establishing interest although it appears to identify aspects of the subject matter of desired intervention is sought.

Petition of Three Mile Island Alert, Incorporated (TMIA)

TMIA filed a petition for leave to intervene in a document mailed on September 12, 1979. The petition states that TMIA is a non-profit corporation with offices in Harrisburg, Pennsylvania.^{2/} Every member of TMIA lives within twenty miles of TMI-1.^{3/} TMIA is concerned about the environmental, health and economic consequences of reopening TMI Unit 1 and believes that reopening will increase the detrimental health effects suffered by its members.^{4/} The petition is signed by Ms. Kathy A. McCaughin, authorized representative for TMIA. NRC Staff has confirmed by telephone that Ms. McCaughin is a member of TMIA. Therefore, TMIA meets the requirements of 10 C.F.R. §2.714(a) to represent the interests of its members since the petition identifies a member with personal interest who authorizes the intervention.

TMIA also satisfies the aspects requirements of 10 C.F.R. §2.714(a). The petition lists twelve contentions which TMIA wishes to litigate. While we express no view as to the admissibility or the merits of the contentions as written, we note that at least several appear to raise issues within the scope of this proceeding. For example, contentions 5 and 6 relate to the technical and financial qualifications of the licensee, and contention 7 relates to the safety of operating TMI-1 prior to the decontamination of TMI-2.^{5/}

^{2/} Petition for Intervention of Three Mile Island Alert, Incorporated (Petition) at 1.

^{3/} Ibid.

^{5/} Petition at 4-5.

POOR ORIGINAL

Petition of the Union of Concerned Scientists (UCS)

The USC filed a petition for leave to intervene on behalf of six named sponsors and contributors by document dated September 13, 1979. The named individuals, William Kwalwasser, Carol S. Carl, Fred W. Mergenthaler, Morris E. Ech, Helen Armacost, and Roger E. Miller, all live within 20 miles of TMI-1.^{6/} Each alleges that his or her physical and economic well-being would be adversely affected by operation of the facility.^{7/}

In our view, UCS satisfies the requirements of 10 C.F.R. 32.714(a) to represent the interests of its sponsors and contributors in this proceeding. We recognize that the question of whether representational standing can be based on the personal interests of a financial contributor to an organization (as contrasted with the personal interests of an organization member), is one of first impression.^{8/} We presume that, with respect to UCS, there is no important distinction between the role of a sponsor/financial contributor and that of a member insofar as their understanding and expectations relating to representation are concerned. We note that all of the named sponsors of and contributors to UCS specifically authorize UCS to represent their interest in this proceeding.^{9/}

^{6/} Union of Concerned Scientists' Petition to Intervene (Petition) at 2.

^{7/} Ibid.

^{8/} An Appeal Board found no necessity to explore that question with respect to the representational standing of UCS in Virginia Electric and Power Co. (North Anna Nuclear Power Station), ALAB-536 (April 5, 1979), slip op. at 5, n. 2. The Appeal Board denied standing on independent grounds.

^{9/} Petition at 2. No affidavits demonstrating authorization are provided.

authorization is sufficient in the circumstances of this case.

The information presently available to us indicates that membership in the UCS is limited to scientists, engineers and other professionals,^{10/} and that sponsorship/financial contribution is the means of participation in the organization which is available to the general public.

UCS also satisfies the aspects requirements of 10 C.F.R. §2.714(a). Specifically, petitioner alleges that neither the short-term nor the long-term actions identified by the NRC Staff are sufficient to permit operation of TMI-1 without endangering the health and safety of the public.^{11/}

Petition of People Against Nuclear Energy (PANE)

PANE filed a petition for leave to intervene on behalf of its members by document dated September 14, 1979. The petition identifies eleven members who live within five miles of the TMI facility and specifically authorizes PANE to represent their interests.^{12/} John M. Garver, Jr., and James B. Hurst of Middletown, Pennsylvania are two of the named members.^{13/} PANE alleges that resumption of operations at TMI-1 would "unreasonably threaten the physical . . . well-being"^{14/} of its named members.

We conclude that the petition identifies at least one member of PANE with an interest in this proceeding who has expressly authorized PANE to represent that interest. Therefore, they meet the interest requirement of §2.714(a).

^{10/} See Virginia Electric and Power Co., ALA5-536, supra at 3.

^{11/} Petition at 3.

^{12/} People Against Nuclear Energy Petition to Intervene (Petition) at 2-3.

^{13/} Id. at 2.

^{14/} Id. at 3. Each named individual also executed an affidavit attesting to the statements of residency, authorization and concern.

POOR ORIGINAL

However, as we read the petition, the only specific aspect of the subject matter of the proceeding on which PANE wishes to intervene appears to relate to emotional distress resulting from the accident at TMI-2.^{15/} If this is correct, then we express no view at this time as to whether petitioner has identified an aspect appropriate for hearing. The Commission will determine, by the mechanism identified on page 13 of its August 9, 1979 Order and Notice of Hearing, F.R. 47824 (August 15, 1979), whether such issues are legally relevant to this proceeding. Therefore, PANE will have an opportunity to fully brief this question in accordance with the provisions of the Order.

Petition of Marjorie M. Aamodt

Marjorie M. Aamodt filed a petition for leave to intervene by letter dated September 12, 1979. Her petition states that although she would prefer to participate as a full party, she would alternatively wish to make a limited appearance. Our review of Ms. Aamodt's one-page letter reveals that she has completely failed to allege how her interest may be affected by this proceeding. Therefore, unless or until amended pursuant to 10 C.F.R. §2.714(a)(3), petitioner has failed to meet the interest requirements for intervention as of right.^{16/} However, Ms. Aamodt's letter does satisfy the aspects requirements of 10 C.F.R. §2.714(a). Ms. Aamodt states, for example, that she is interested in the adequacy of radiation detection systems and information flow to the public.

^{15/} Petition at 3-4.

1207 127

appearance in accordance with the provisions of 10 C.F.R. §2.714(a) without any further action on her part. We note that the presiding Atomic Safety and Licensing Board has tentatively scheduled limited appearances in this proceeding for November 15-17 by memorandum dated September 18, 1979.

Amended Petition of Marvin I. Lewis

Marvin I. Lewis filed an amended petition to intervene by letter dated September 9, 1979. Our response to his initial petition had concluded that Mr. Lewis failed to provide an adequate basis for establishing his interest in this proceeding and failed to identify aspects regarding which participation was sought.^{17/}

We conclude that Mr. Lewis' amended petition also fails to establish his interest. He again cites the possibility of ingesting milk from the Harrisburg area containing radioactive iodine and states that his ingestion of such milk would shorten his life and increase his chance of developing cancer.^{18/} However, as in his original petition, Mr. Lewis has failed to provide adequate basis from which one can conclude that he could possibly be injured by any future releases of radioactive iodine. On the contrary, we believe that the notion that an individual residing some ninety miles from the TMI site wight, following some future accident, ingest milk which might come from Harrisburg, which might be allowed to reach the market with radioiodine content which might be of sufficient quantity to cause injury is entirely too remote and speculative to demonstrate "injury in fact" consistent with judicial concepts of standing.^{19/}

^{17/} See 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 18 and 19.

^{18/} Amended Petition at 2-3.

^{19/} Mr. Lewis again relies on his ratepayer status to establish interest, as well.

POOR ORIGINAL

The amended petition does appear to satisfy the aspects requirements of 10 C.F.R. §2.714(a), although, in all candor, we found the petition very difficult to follow. One aspect of the subject matter of the proceeding on which Mr. Lewis apparently seeks to intervene relates to the Licensee's training of the TMI-1 operators.^{20/}

Conclusion

For the reasons identified above, we argue that the petitions of Three Mile Island Alert, Union of Concerned Scientists, and People Against Nuclear Energy all comport with the interest requirement of 10 C.F.R. §2.714(a) and adequately identify subject matter aspects on which intervention is sought. The aspect identified by People Against Nuclear Energy, however, has not yet been determined to be legally relevant to this proceeding. We further argue that the petitions of Majorie Aamodt and Marvin I. Lewis 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

Marcia E. Mulkey

Marcia E. Mulkey
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 20th day of September, 1979.

20/ "The operators for TMI-1 and TMI-2 work for the same management. They receive the same training and are subject to the same safety procedures. In fact, the operators of TMI-2 on 3/28/79. Therefore, the chance of detecting pipe cracks from measuring leakage is not dependable." Amended petition at 7.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE NUCLEAR REGULATORY BOARD

In the Matter of)
METROPOLITAN EDISON COMPANY,)
ET AL.)
(Three Mile Island, Unit 1)

Docket No. 50-289

POOR ORIGINAL

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO PETITIONS TO INTERVENE AND AMENDED PETITIONS IN THE THREE MILE ISLAND UNIT 1 PROCEEDING RECEIVED BY THE STAFF BETWEEN SEPTEMBER 14, 1979 AND SEPTEMBER 18, 1979" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by a single asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system or, as indicated by a double asterisk, hand-delivered, this 20th day of September, 1979.

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