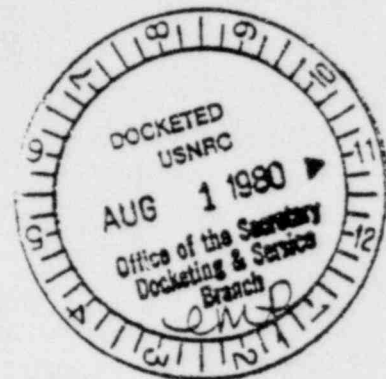


UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION



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

Docket No. 50-289 (Restart)

MEMORANDUM AND ORDER

On May 30, 1980 the Consumer Advocate of Pennsylvania (CAP) filed a petition for reconsideration of our decision in CLI-80-19, denying CAP's prior petition for financial assistance to intervenors who are participating in the Three Mile Island Unit 1 restart proceeding. The major complaint relates to two alleged inconsistencies in the decision: (1) that although the Commission has stated in the decision that it "does favor funding intervenors ..." (emphasis in original), the Commission ruled to the contrary; and (2) that although the Comptroller General ruled that there is no legal impediment to funding intervenors in fiscal year 1980, the Commission stated that "Congress has precluded such funding ..." On June 16, 1980, the NRC staff filed its response in opposition to the petition for reconsideration.

CAP has not persuaded us to reconsider our original decision. In stating that, "Congress has precluded such funding..." we did not intend to say that such funding was legally impossible. However, as a practical matter, this Commission must work closely with the Appropriations and the Authorization

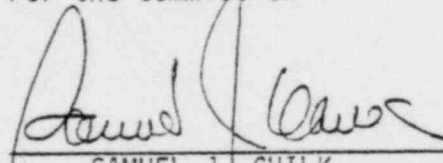
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Committees of the Congress in setting its priorities and in defending its budgets. While we are not legally bound to follow the expressions of committee intent set forth in the reports that accompany our appropriations bills, we would normally expect to do so rather than jeopardize relationships which affect every aspect of the Nuclear Regulatory Commission's operations. While the Commission is committed to continuing to try to develop intervenor funding and other forms of assistance to public participants in our processes, we have not reached a point at which we would contravene the clearly expressed intentions of both appropriations committees, especially when that intent has not been contradicted by the action of the Congress as a whole.\*/

The petition for reconsideration and other relief requested by CAP will be denied.

It is so ORDERED.\*\*

For the Commission

  
SAMUEL J. CHILK  
Secretary of the Commission

Dated at Washington, D.C.

this 1st day of August, 1980.

\* In his advice on this question, the Comptroller General indicated that: "\*\*\* [t]his [ruling that intervenor funding is legal] does not mean that agencies are free to ignore clearly expressed legislative history applicable to the use of appropriate funds."

Financial Assistance to Intervenors in Proceedings of Nuclear Regulatory Commission, B-92288 (Jan. 25, 1980) at 6, quoting LTV Aerospace Corp. 55 Comp. Gen. 307, 319 (1975).

\*\* Section 201 of the Energy Reorganization Act, 42 U.S.C. §5841, provides that action of the Commission shall be determined by a "majority vote of the members present." Commissioner Gilinsky was not present when this item was affirmed, but had previously voted by notation to approve this item. Had Commissioner Gilinsky been present, he would have affirmed his prior vote. Accordingly, the formal vote of the Commission was 3-0 in favor of the decision.

Separate concurring opinion of Chairman Ahearne

I concur in the decision to deny the petition. The NRC is under clear Congressional direction this time not to provide such funding.

I disagree with that part of Commissioner Gilinsky's opinion that could be read as indicating the NRC staff should not follow either Congressional direction nor Commission policy. The Commission must clearly establish policy, and the staff should then implement that policy. They did so in this case.

Separate Opinion of Commissioner Gilinsky

I concur in the Commission's decision to deny the petition filed by the Consumer Advocate of Pennsylvania ("CAP") seeking reconsideration of the Commission decision to deny intervenor funding in the Three Mile Island Unit 1 proceeding. I have concurred in deference to Congressional Committee direction not to provide such funding.

An aspect of our consideration of this petition -- the role played by the NRC staff -- requires further comment, however, because it has implications beyond the case before us. Although I have agreed with the result advocated by the staff, I am troubled by the narrow legal position it adopted in opposing funding for CAP. The question which the staff should have asked before taking a position in this case is "What best protects the public health and safety?" Had the staff been convinced that providing intervenor funding to CAP would be detrimental to the public's health and safety it should have opposed the petition on those grounds. If the staff had found that it was unable to make this argument, it should have remained silent and allowed the applicant and intervenor to argue their respective cases. The NRC staff is not a party like any other. Its obligation is to protect the public health and safety. It is difficult to see how that mandate can be stretched to cover legal tactics designed to constrain the participation of the parties in a proceeding.

For the reasons stated in this concurring opinion denying the original CAP petition for funding, Commissioner Bradford shares the concern set forth in this opinion.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of }  
METROPOLITAN EDISON COMPANY, ET AL. } Docket No. 50-289  
(Three Mile Island Unit No 1 } (Restart)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document(s)\* upon each person designated on the official service list compiled by the Office of the Secretary of the Commission in this proceeding in accordance with the requirements of Section 2.712 of 10 CFR Part 2 - Rules of Practice, of the Nuclear Regulatory Commission's Rules and Regulations.

Dated at Washington, D. C. this

12<sup>th</sup> day of Aug 19 80

Pravin T. Lawning  
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- 1- TMIA's Motion for Revision of Contention 5 dtd 7/26/80
- 2- Int. S.C. Shally Report to the Bd on the Consideration Proposal by the Intervenor dtd 7/29/80
- 3- UCS Review of Contentions dtd 7/31/80
- 4- TMIA's Supplement Answer to licensee's Interrogatory 5-2(c) dtd 7/26/80 (RC)
- 5- TMIA's Motion to Compel Discovery by licensee dtd 7/26/80 (RC)
- 6- Comm. Memo & Order dtd 5/1/80



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