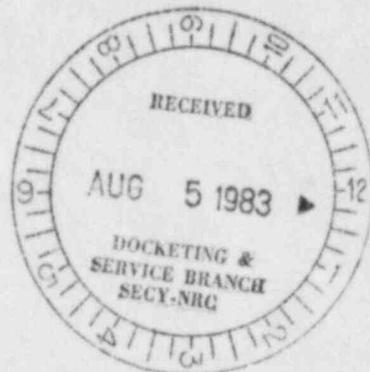


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judges:
Sheldon J. Wolfe, Chairman
Dr. David L. Hetrick
Dr. James C. Lamb, III



In the Matter of)
METROPOLITAN EDISON COMPANY, ET AL.) ASLBP Docket No. 83-491-04 OLA
(Three Mile Island Nuclear) (NRC Docket No. 50-289)
Station, Unit No. 1) (Steam Generator Repair)
August 5, 1983

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MEMORANDUM AND ORDER
(Provisionally Ordering A Hearing And Granting
Certain Petitions For Leave To Intervene)

MEMORANDUM

On May 31, 1983, the Nuclear Regulatory Commission published a notice captioned "Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing."¹ 48 Fed. Reg. 24231. Among other things, this notice stated that:

The amendment requested would revise the Technical Specifications to recognize steam generator tube repair techniques, other than plugging, provided such techniques are approved by the Commission.

The licensees' application, dated May 9, 1983, further requested that the Commission approve, within the provisions

¹ A second notice, published on June 14, 1983, extended the time from June 27 to June 30, 1983 within which the licensees might request a hearing and interested persons might file written petitions for leave to intervene. 48 Fed. Reg. 27328.

of the proposed Technical Specification revision, the kinetic expansion steam generator tube repair technique used at the facility, thus permitting subsequent operation of the facility with the as-repaired steam generators.

On May 19, 1983, Three Mile Island Alert, Inc. (TMIA) filed, in substance, a petition for leave to intervene and a request for a hearing, and on June 23rd, supplemented its petition to include an affidavit. In a response filed on June 3, 1983, the NRC Staff opposed in that the (initial) TMIA petition failed to show that the requirements for intervention either as a matter of right or as a matter of the Commission's discretion had been met. However, on July 18th, in light of TMIA's submission of the affidavit, the Staff stated that it believed that this petitioner had met the interest requirements of 10 C.F.R. § 2.714 and that it should be admitted as a party to this proceeding provided it submitted in a timely manner at least one litigable contention. In a response filed on July 22, 1983, the Licensees did not question the interest of TMIA in this proceeding nor its right to intervene provided it submitted at least one allowable contention.

On June 28, 1983, Ms. Jane Lee, Dr. Bruce Molholt, and Mr. Norman Aamodt (Joint Petitioners) filed a petition for leave to intervene and requested a hearing, and, on July 13th, filed an amended petition. In a response filed on July 20, 1983, the Staff opposed in that the petition of June 28th did not contain the requisite demonstration of the Joint Petitioners' interest in this licensing amendment action. On August 2, 1983, in responding to the July 13th amended petition, the Staff stated that Ms. Lee had made the requisite

demonstration of her interest because she had asserted in the amended petition that her residence was within five miles of the TMI-1 facility and that she operated a dairy farm at that location.² Accordingly, the Staff concluded that it could be presumed that Ms. Lee has an interest in this proceeding and that she should be admitted as a party provided she submitted at least one litigable contention. However, the Staff stated that Petitioners Molholt and Aamodt failed to show that they met the applicable requirements for intervention either as a matter of right or as a matter of the Commission's discretion. In their response of July 22, 1983, the Licensees did not question the interest of the Joint Petitioners in this proceeding nor their right to intervene provided they submitted at least one allowable contention.

I. Discussion

10 C.F.R. § 2.714(a)(2) requires that a petition for leave to intervene set forth with particularity the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, including the reasons why the petitioner should be permitted to intervene, and the specific aspect or aspects of the subject matter

² In passing, we note that the Joint Petitioners filed a document on July 26th, responding to the Staff's response of July 20th. Therein, while asserting that the contents of the July 26th submission clearly demonstrated the (three) Joint Petitioners' standing, Ms. Lee proceeded to discuss only her own standing or interest.

of the proceeding as to which the petitioner wishes to intervene. This section also requires that the petition should make particular reference to the following factors in § 2.714(d):

- (1) The nature of the petitioner's right under the Act to be made a party to the proceeding.
- (2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.
- (3) The possible effect of any order which may be entered in the proceeding on the petitioner's interest.

With regard to case law, in Portland General Electric Company, et al. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613 (1976), the Commission stated that to have standing to intervene as a matter of right, a petitioner must satisfy two tests - one, some injury must be alleged that has occurred or will probably result from the action involved, and, second, an interest must be alleged that is "arguably within the zone of interest" protected by the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2011, et. seq. (1976) and by the National Environmental Policy Act, 42 U.S.C. § 4321 et. seq. (1976). The Appeal Board has held that (1) close proximity has always been deemed enough, standing alone, to establish the requisite interest (Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1979)), and that (2) a residence approximately 50 miles from the facility is not so great as necessarily to preclude a finding of standing (Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 n.4 (1977)). The Appeal Board has also indicated that a residence 75 miles from the

facility was beyond the geographical zone of interest. Dairyland Power Cooperative (LaCross Boiling Water Reactor), ALAB-497, 8 NRC 312 (1978).

Further, in the Portland General Electric Company case, supra, at 616, the Commission stated that, in determining in a particular case whether or not to permit intervention by petitioners who do not meet the tests for intervention as a matter of right, adjudicatory boards should exercise their discretion based on an assessment of the following factors:

(a) Weighing in favor of allowing intervention -

- (1) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.
- (3) The possible effect of any order which may be entered in the proceeding on the petitioner's interest.

(b) Weighing against allowing intervention -

- (4) The availability of other means whereby petitioner's interest will be protected.
- (5) The extent to which petitioner's interest will be represented by existing parties.
- (6) The extent to which petitioner's participation will inappropriately broaden or delay the proceeding.

Finally, where an organization's standing hinges upon its being the representative of a member who has the requisite affected personal interest, it is obviously important that there be some concrete indication that, in fact, the member wishes to have that interest represented in the proceeding. Unless an organization's charter

provides to the contrary, mere membership in it does not ordinarily constitute blanket authorization for the organization to represent any of the member's personal interests it cares to without his or her consent. Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 396 (1979).

A. Three Mile Alert, Inc.

Among other things, petitioner (TMIA) asserts³ that it is a public interest organization located in Harrisburg, Pennsylvania. Via an affidavit, a member and an officer of TMIA attests that he resides within seven or eight miles of TMI-1, that he supports the organization's efforts on his behalf to insure that hearings are held in this licensing amendment case, and that the TMIA Planning Council has officially endorsed the May 19, 1983 submission which had been filed by two TMIA members upon behalf of its members and other members of the public living in the vicinity of TMI-1. Finally, TMIA identifies at least two aspects of the subject matter of the proceeding as to which it wishes to

³ In passing, we note that, in its submissions of May 19 and June 3, 1983, TMIA requested that the hearing be held prior to the license becoming immediately effective and operation of TMI-1 permitted. This Board has no authority in this matter. The Notice published on May 31, 1983 clearly states that it is the Commission which will make the final determination as to whether or not the requested amendment involves a significant hazards consideration and that this final determination will serve to decide whether the hearing will be held prior to or after the issuance of the amendment.

intervene.⁴ It questions whether there will be proper testing to determine if the repaired tubes can withstand the pressure experience which would result from a turbine trip at maximum power or from thermal shock which would be generated from inadvertent actuation of the emergency feedwater system at high power. It also questions the chances of, the potential consequences of, and the ability of operators to handle multiple tube ruptures in the two steam generators.

We conclude that TMIA has satisfied the "interest" and "aspects" requirements of 10 C.F.R. § 2.714, and thus that it has established "standing."

B. The Joint Petitioners

The three Joint Petitioners have satisfied the "aspects" requirement of § 2.714 in identifying the following aspects of the proceeding as to which they wish to intervene. Ms. Lee is concerned with the identification of the cause of past corrosion, the likelihood of reoccurrence, the reliability of repairs and the program for future detection of breaks. Mr. Aamodt is apparently concerned that, even after repair has been accomplished, the continued use of equipment that has suffered degradation to the extent detected in the steam generator

⁴ We do not decide whether or not any of the aspects identified by TMIA and the Joint Petitioners relate to matters within the scope of the amendment under consideration. We will, of course, subsequently decide whether any of the contentions submitted fall within the scope of the instant amendment.

tubes is inconsistent with accepted engineering practices. Dr. Molholt is concerned about the effect of power excursions upon the repaired and the unrepaired tubes.

However, only Ms. Lee and Mr. Aamodt have satisfied the interest or standing requirements. Ms. Lee resides within 3½ to 5 miles of the TMI-1 site and states, in substance, that she is concerned that, in using previously damaged steam generator tubes, the plant will release radioactive materials which will present a health hazard to herself, her family and to the animals in her dairy farm.⁵ Mr. Aamodt does not tell us how distant his residence is from the plant and, without further explication, merely asserts that he conducts business and/or has social contacts within the ten mile radius of TMI-1.⁶ However, the Rand McNally road atlas reflects that Coatesville, Pennsylvania, where Mr. Aamodt resides, is about fifty air miles from the TMI-1 site. Thus, Mr. Aamodt does reside within the geographical zone of interest and therefore his standing as a matter of right has been established. Further, since he is a graduate mechanical engineer, we deem that he is knowledgeable with regard to the aspect of the proceeding as to which he seeks to intervene. The pivotal factor in the exercise of a Licensing Board's discretion is the ability of a

⁵ Joint Petitioners' amended petition of July 13th and response of July 26th.

⁶ Joint Petitioners' amended petition at 2.

petitioner to make a valuable contribution to the development of a sound record. Public Service Company of Oklahoma, et al. (Black Fox Station, Units 1 and 2), ALAB-397, 5 NRC 1143, 1151 n.14 (1977).

Dr. Molholt has failed to demonstrate that he has standing to intervene either as a matter of right or as a matter of this Board's discretion. He does not tell us whether he resides or works at an address in Haverford, Pennsylvania, and merely advises without further particularization that he conducts business and/or has social contacts within a ten mile radius of the facility. In any event, according to the Rand McNally road atlas, Haverford is about seventy-five miles distant from the TMI-1 site which is beyond the geographical zone of interest. Contrary to 10 C.F.R. § 2.714(a)(2) he did not set forth with particularity his interest in the proceeding and how that interest might be affected by the results of the proceeding, including the reasons why he should be permitted to intervene. Other than conclusionally alleging that his interest is in his health and safety, he has failed to allege either that some "injury in fact" will probably result from the action involved or that his interest is arguably within the protected zone of interests. Not knowing what Dr. Molholt's interest is and how it might be adversely impacted, we are unable to assess fully the factors set forth in the Portland General Electric case, supra, in order whether, within our discretion, we should determine that he has the requisite standing. Dr. Molholt merely tells us that he is a graduate biochemist but does not tell how that discipline would enable him to make a valuable contribution to the development of a sound record. Moreover,

while he states he is prepared to present two expert witnesses, he does not identify the witnesses, their expertise, or the subject areas of their testimony.

We conclude that while the three Joint Petitioners have satisfied the "aspects" requirements, only Ms. Lee and Mr. Aamodt have satisfied the "standing" requirements of 10 C.F.R. § 2.714.

ORDER

For the foregoing reasons, it is, this 5th day of August, 1983,

ORDERED

1. That a hearing is ordered upon the application for an amendment to TMI-1 Facility Operating License No. DPR-50 dated May 9, 1983. A notice of hearing to this effect will be issued in the near future. At that time, pursuant to 10 C.F.R. § 2.751a, the Board will also schedule a special prehearing conference which will be held on October 17, 1983.
2. That the petitions for leave to intervene of TMIA and of Joint Petitioners Lee and Aamodt are granted.
3. That the petition for leave to intervene of Joint Petitioner Dr. Molholt is denied without prejudice, and he may file a second amended petition to demonstrate that he has standing as a matter of right or that he should be granted standing by the Board in the exercise of its discretion. In order that, before the § 2.751a special prehearing conference is held on October 17, 1983, the Board will have

sufficient time within which to review Dr. Molholt's second amended petition and to review the responses of the Licensees and the NRC Staff, pursuant to § 2.711, the Board extends the fifteen (15) day time limit set forth in § 2.714(a)(3). This second amended petition should be filed by no later than September 21, 1983.

4. That this action, in ordering a hearing and granting certain of the petitions for leave to intervene, is provisional because the Board cannot rule upon the admissibility of contentions and upon the need for an evidentiary hearing until after the special prehearing conference required under § 2.751a. Moreover, Dr. Molholt has been given the opportunity to file a second amended petition. Therefore, the Board will not enter the order referred to in § 2.714a pertaining to appeals on petition rulings until later. Therefore this action is not appealable under that section.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


Sheldon J. Wolfe, Chairman
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 5th day of August, 1983.