



June 23, 1983

**ADJUDICATORY ISSUE**  
(Affirmation)

SECY-83-247

For: The Commission  
From: Martin G. Malsch  
Deputy General Counsel  
Subject: TMIA Request for Hearing  
Purpose: *Ex. 5* [ ]

Discussion:

On May 9, 1983 General Public Utilities Corp. (GPU) requested an amendment to the license for Three Mile Island, Unit 1 (TMI-1) to permit the steam generators to be declared operable following repair by methods to be approved by the NRC. GPU also requested an amendment approving the specific repair method used on the steam generators.

On May 19, 1983 Three Mile Island Alert, Inc. (TMIA) requested a hearing on the amendment to the TMI-1 operating license concerning the steam generator tube repairs. TMIA did not distinguish between the two requested amendments.

On May 31, 1983 notice was published in the Federal Register of GPU's amendment request and of the opportunity for a hearing on the request. Apparently staff is treating GPU's requests as a single amendment.

CONTACT:  
Rick Levi, OGC  
4-1465

Information in this record was deleted  
in accordance with the Freedom of Information  
Act, exemptions 5  
FOIA: 72-436

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On June 3, 1983 staff responded to TMIA's request, arguing that the petition should be denied because TMIA had failed to meet the applicable requirements for intervention either as a matter of right or as a matter of the Commission's discretion. Staff noted that TMIA could file another petition which takes account of the pleading defects in the present petition.

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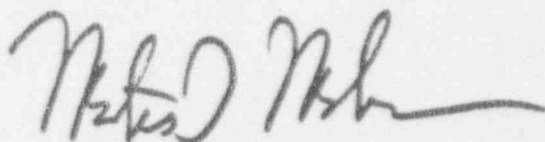
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EXS

Since it is our understanding that

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Recommendation:



Martin G. Malsch  
Deputy General Counsel

## Enclosures:

1. Draft Order
2. TMIA Request
3. Staff Response

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Commissioners' comments should be provided directly to the Office of the Secretary by c.o.o. Friday, July 8, 1983.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Friday, July 1, 1983, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for affirmation at an Open Meeting during the Week of July 11, 1983. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

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UNITED STATES OF AMERICA      DOCKETED  
NUCLEAR REGULATORY COMMISSION      10/19/82

BEFORE THE NUCLEAR REGULATORY COMMISSION      10/19/82      A9:15

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

FORMAL DEMAND FOR AN ADJUDICATORY HEARING  
ON AMENDMENT TO THE TMI-1 OPERATING LICENSE  
CONCERNING STEAM GENERATOR TUBE REPAIRS

Three Mile Island Alert, Inc. ("Petitioner") hereby formally demands that it be granted a full adjudicatory hearing on the amendment to the TMI-1 Facility Operating License, No. DPR-50 issued by the Nuclear Regulatory Commission in June, 1974, permitting operation of TMI-1 after completion of explosive expansion repairs to all steam generator tubes in the upper tubesheet, most of which had failed due to an "intergranular attack (IGA) initiated from the primary side (ID) of the the tubes resulting in the formation of stress assisted intergranular cracks." SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION, October, 1982. Further, Petitioner formally demands that such license amendment not become immediately effective before completion of the hearing requested herein, pursuant to §12(a)(2)(A) of §189(a) of the Atomic Energy Act of 1954, 42 U.S.C. 2239(a), as amended, because of the "significant hazards consideration" involved with this repair process and subsequent operation of the plant.



In support of this demand, Petitioner asserts as follows:

1. Petitioner Three Mile Island Alert, Inc., a public interest organization located in Harrisburg, Pennsylvania, has been a recognized intervenor in hearings established by the Commission's Order and Notice of Hearing dated August 9, 1979, Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), CLI-79-8, 10 NRC 141 (1979), representing its membership and other members of the public residing in the vicinity of the Three Mile Island Nuclear facilities. Any order permitting operation of TMI-1 may affect the interests of Petitioner and those whom it represents to live in a environment free from health and safety hazards resulting from operation of TMI-1. Petitioner has the requisite knowledge and experience suitable to qualify it to be admitted as a party to any hearing concerning the subject license amendment.

2. The TMI-1 facility has not operated since its sister plant, TMI-2, experienced the worst commercial nuclear plant accident in history on March 28, 1979. On July 2, 1979, the Nuclear Regulatory Commission issued an Order directing that TMI-1 be maintained in a shutdown condition pending further order of the Commission, further determining that it was in the public interest that a hearing precede any possible restart of TMI-1. The Commission based its action on a conclusion that,

In view of the variety of issues raised by the accident at the Three Mile Island Unit No. 2 facility, the Commission presently lacks the



requisite reasonable assurance that the same licensee's Three Mile Island Unit No. 1 facility, a nuclear power reactor of similar design, can be operated without endangering the health and safety of the public.

3. In late 1981, in the midst of the process established by the Commission to examine if TMI-1 could ever be safely operated, approximately 16,000 to 20,000 potentially defective steam generator tubes were detected in the secondary side of both steam generators at TMI-1, causing primary to secondary leakage. These defects were determined to be caused by intergranular stress corrosion initiated from the surface on the primary side resulting in the formation of circumferential intergranular cracks. The active chemical impurity causing the corrosion was determined to be sulfur, the source of which was thiosulfate from the reactor-building spray system which entered the primary system by leaking through isolation valves in the spray system and entering the reactor coolant system during testing. The majority of the defects occurred within the top 2-3 inches of the 24 inch upper tubesheet (UTS).

4. In April, 1982, the Licensee notified the NRC staff that it had decided to repair the steam generator tubes using an explosive repair technique which would expand the tubes against the tubesheet, thereby establishing a new leak limiting/load carrying seal. The Licensee further decided to apply the explosive repair technique to all tubes within the UTS.

5. By letter dated August 23, 1982, Darrel G. Eisenhut, Director of the Division of Licensing of the Office of Nuclear Reactor Regulation, (NRR) notified the Licensee that a license amendment would be required before such repairs could begin, and before subsequent operation of the plant could be permitted. In particular, Mr. Eisenhut stated,

[B]ecause the portion of the tube within the tubesheet contains defects greater than 40% throughwall and your repair method for the majority of these defects will not involve plugging, an amendment to the Technical Specifications (TS) 4.19 will be needed prior to return to power operation.... In the Staff's view, this section of the TS applies to the existing condition of the steam generators and not the condition following repair.

6. In October, 1982, NRR issued a Safety Evaluation of Licensee's proposed repair technique, concluding without opportunity for public comment, that the NRC staff was reversing its prior position with regard to the necessity of a license amendment before use of the explosive expansion repair technique, finding unilaterally that the "proposed repair process does not involve an unreviewed safety question or a modification to the Technical Specifications and hence, may be conducted without NRC approval." NRR clarified that the "Safety Evaluation is limited to an evaluation of the acceptability of performing the explosive expansion repair," not of the acceptability of operation after completion of the repair process. (emphasis added).

7. Licensee began performing said explosive expansion repairs shortly after the Safety Evaluation was issued. Petitioner believes that Licensee has now substantially completed said repair process.

8. NRC has consistently maintained that a license amendment will be required before operation after completion of the explosive expansion repairs. See, Eisenhut letter of August 23, 1982, supra; Statement by Eisenhut before the House of Representatives Subcommittee on Oversight and Investigation, Committee on Interior and Insular Affairs, December 13, 1982, (Transcript at pp. 39, 42) ("It is, and it still remains, and has always been our position that prior to restart of that unit an amendment will be required... [T]he degradation problems at Three Mile Island clearly are unique, and we have taken the position that prior to restart on that facility an amendment is required... it is an unreviewed safety question."); See, also, Commission letter in response to February 23, 1983 inquiry from Hon. Morris K. Udall, Chairman, House Committee on Interior and Insular Affairs.

9. There is little question that Licensee will request a license amendment to permit operation of TMI-1 with subject steam generator tube repairs in place. On February 2, 1983, the Licensee requested a license amendment to allow the repaired steam generators to be declared operable, but recently withdrew that request. In a letter dated April 19, 1983 to the NRC, Henry D. Hukill, Vice-President GPU

Nuclear, stated that Licensee will be resubmitting its request for a license amendment sometime after May 6, 1983. See, also, Additional Statements of GPU Nuclear Corporation, before the House of Representatives Subcommittee on Energy and Environment, Committee on Interior and Insular Affairs, April 26, 1983, at p. II-7.

10. Under §12(a)(2)(A) of §189(a) of the Atomic Energy Act of 1954, 42 U.S.C. 2239(a), as amended, the NRC is required to hold a requested hearing on any license amendment, but under the recently enacted "Sholly" amendment to the Act, may avoid holding a requested hearing prior to that amendment becoming immediately effective only if it finds that the amendment presents no significant hazards consideration. In enacting this provision, Congress explicitly intended that license amendments involving irreversible consequences (such as those ... allowing a facility to operate for a period of time without full safety protections) require prior hearings or the public's right to have its views considered would be foreclosed, and that "borderline" cases be resolved in favor of finding a significant hazard consideration. H.R. Rep. 97-884, p. 37 (1982).

11. The NRC has already admitted that the TMI-1 steam tube problem is the very worst in the entire country. See, Statement of Harold Denton, Director of NRR in testimony before the House of Representatives Subcommittee on Energy and Environment, Committee on Interior and Insular

Affairs, February 1, 1982. Moreover, the NRC staff has already recognized potential safety hazards which could result from operation of TMI-1 due to the subject steam tube repairs. An internal NRC memorandum dated May 19, 1982 from William V. Johnston, Assistant Director Materials and Qualifications Engineering, Division of Engineering, to Thomas Novak, Assistant Director for Operating Reactors, Division of Licensing, reveals the following concerns:

a. "To the extent that we have not experienced this type of behavior before, ... the staff has not reviewed the potential consequences of known defects. Particularly, the potential for this type of corrosion to rapidly progress upon restart and adversely affect the [steam generator] primary pressure boundary."

b. "We consider the existence of a type of corrosion which has extensively degraded the steam generators, to also have the potential to degrade other reactor coolant system materials." (It is significant that the Waste Gas System and the critical PORV [Power Operated Relief Valve] have already been identified as damaged by sulfur).

c. "The proposed repair technique involves a leak limiting rather than a leak free seal." (emphasis added). (In GPU's October 18-19, 1982 briefing to the NRC, Licensee indicated that this leakage will increase over time, and that in a five year life, the water leakage may increase by a factor of ten, causing increased radiation releases into the environment.)

d. "...[E]xcessive compressive loading may result upon heatup of the plant which could lead to bowing or local buckling which could cause new corrosion initiation sites."

12. Perhaps most significantly, the staff expresses concern with "rapid failures occurring upon plant restart." No recommendations yet exist that the steam generators be tested to examine if the explosively expanded deformed tubes

can withstand, for example, 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. Common sense dictates that the extraordinarily hazardous potential consequences of "rapid failures occurring upon plant restart" or at any point mandate that the tube repair process and any testing procedure proposed by the Licensee or the NRC staff be fully examined in the context of a full adjudicatory hearing before the plant is permitted to operate.

13. Further, in a September 19, 1982 memorandum, then Chairman of the NRC's Advisory Committee on Reactor Safeguards (ACRS) Paul Shewmon stated that a simultaneous rupture in each of the steam generators "isn't an incredible event." In a letter dated January 21, 1983, Congressman Edward J. Markey, Chairman of the Subcommittee on Oversight and Investigations, House Committee on Interior and Insular Affairs, asked the Commission whether such an incident could lead to a sequence not encompassed by emergency procedures and whether this issue would be resolved before restart of the plant. In its response, the Commission stated, "Yes, a tube rupture in both SG's of a two SG plant could lead to a sequence not encompassed by the emergency procedures," and that while the issue was being considered under the TMI Action Plan (Item I.C.1), "(t)he Commission does not consider the implementation of this action plan item to be

necessary before the restart of TMI-1. Congressman Markey then asked for clarification of these comments by letter dated March 23, 1983. In its response dated May 5, 1983, the Commission could only state that a single tube rupture in both steam generators is "highly unlikely," is "not expected to result in core damage," but that "no probabilistic risk assessment of the subject event has been performed by either the NRC staff or the ACRS for TMI-1." (emphasis added). The Commission further noted that in the event that both steam generators have ruptured tubes, the operator would be forced to accomplish cooldown and depressurization using at least one faulted steam generator, resulting in continuous leakage of primary coolant to the secondary system and thus releases of radioactive material to the environment. Clearly, such a scenario raises significant safety hazard considerations. The chances of, potential consequences of, and the ability of operators to handle multiple tube ruptures demand the most intense examination in the context of a full hearing before plant operation is allowed.

14. Moreover, failure to hold a prior hearing in this case through a "no significant hazard consideration" finding, would violate the express intent of Congress in enacting the "Sholly" amendment. Congressman Morris K. Udall, Chairman of the House Committee on Interior and Insular Affairs, and the Conference Committee out of which



the "Sholly" amendment legislation was reported, has already stated,

I am troubled by reports I have heard that some on the NRC staff believe this authority might be used to approve steam generator repairs at Three Mile Island Unit-1. Congress enacted the Sholly provision so that NRC could redirect its attention and resources away from trivial matters and concentrate instead on matters of great public concern and safety significance such as TMI-1 steam generator repair work.

Statement of the Hon. Morris K. Udall, Chairman,  
Subcommittee on Energy and the Environment, Committee on  
Interior and Insular Affairs, February 22, 1983.

Pursuant to the foregoing considerations, Petitioner herein,

1. States that it represents persons whose interests may be affected by the proceeding to grant a license amendment to permit operation of TMI-1 with the subject steam generator tube repairs in place.

2. Request that a public adjudicatory hearing pursuant to §189 of the Atomic Energy Act be held on this license amendment.

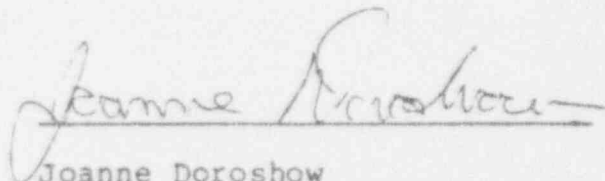
3. Request that such hearing be held prior to the license amendment becoming immediately effective and operation of TMI-1 permitted.

4. Petition that it be granted leave to participate in such a hearing as intervenors.

Respectfully submitted,

May 19, 1983

By:

A handwritten signature in cursive script, appearing to read "Joanne Doroshow", written over a horizontal line.

Joanne Doroshow  
Louise Bradford

Three Mile Island Alert, Inc.  
315 Peffer Street  
Harrisburg, Pennsylvania 17102

Enclosure 3

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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 No. 1)

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}  
Docket No. 50-289  
(Steam Generator Repair)

NRC STAFF RESPONSE TO REQUEST BY THREE MILE  
ISLAND ALERT, INC. FOR ADJUDICATORY  
HEARING ON STEAM GENERATOR REPAIR AMENDMENT

June 3, 1983

Richard J. Rawson  
Counsel for NRC Staff

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 No. 1)

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Docket No. 50-289  
(Steam Generator Repair)

NRC STAFF RESPONSE TO REQUEST BY THREE MILE  
ISLAND ALERT, INC. FOR ADJUDICATORY  
HEARING ON STEAM GENERATOR REPAIR AMENDMENT

I. INTRODUCTION

Three Mile Island Alert, Inc. ("TMIA") has filed a "formal demand for an adjudicatory hearing"<sup>1/</sup> in connection with a request by GPU Nuclear Corporation ("Licensee") for an amendment to the license for Three Mile Island Nuclear Station, Unit 1 ("TMI-1") to permit non-nuclear heat-up of the plant and subsequent operation using recently-repaired steam generators.<sup>2/</sup> For the reasons discussed below, TMIA's petition fails to satisfy the requirements for a request for hearing in that it does not contain the requisite demonstration of petitioner's interest in this licensing action. Accordingly, the present petition should be denied.<sup>3/</sup>

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<sup>1/</sup> "Formal Demand For An Adjudicatory Hearing On Amendment To The TMI-1 Operating License Concerning Steam Generator Tube Repairs", dated May 19, 1983 ("TMIA Petition").

<sup>2/</sup> Approval of the present amendment requested by Licensee would obviously not authorize operation in the absence of prior resolution by the Commission of the matters now pending before the Commission in the TMI-1 restart proceeding.

<sup>3/</sup> As discussed below, the denial of the present request for hearing by TMIA would not bar a further attempt by TMIA to make the requisite showing under the Commission's regulations to support its request for hearing.

## II. DISCUSSION

### A. Factual and Procedural Background

The Commission issued an order on July 2, 1979 directing that the TMI-1 facility remain shut down<sup>4/</sup> until the Commission determined, in light of the March 28, 1979 accident at TMI-2, whether it continued to have reasonable assurance that TMI-1 could be operated with no undue risk to the public health and safety. See Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), CLI-79-8, 10 NRC 141 (1979). A special proceeding addressing that issue is still in progress. While the facility was shut down pursuant to the Commission's order, Licensee discovered that many of the tubes in the steam generators at TMI-1 had been damaged and would require repair or removal from service. Licensee decided to repair the steam generators using a kinetic expansion technique for certain tubes and conventional plugging procedures for other tubes. The Licensee conducted the repairs pursuant to 10 CFR § 50.59 and no license amendment was found to be necessary at that time, although it was noted by the Staff that an amendment would be required for operation with the repaired steam generators.

On May 9, 1983, Licensee submitted a request for an amendment to its license for a change in the technical specifications for TMI-1 to permit the steam generators to be declared operable following repair by methods to be approved by the NRC. Licensee also requested an amendment approving the specific repair method used on the steam generators.

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<sup>4/</sup> At the time of the Commission's July 2, 1979 order, TMI-1 was shut down for refueling.

Licensee had previously submitted to the NRC detailed descriptions and analyses of its steam generator repair method and information to support the adequacy of the repair method.

Revisions to 10 CFR § 50.92 having become effective on May 6, 1983, the issuance of notice of Licensee's amendment request and of opportunity for hearing on the request is governed by new regulatory procedures. Such notice was published in the Federal Register on May 31. 48 Fed. Reg. 24231 (May 31, 1983). In accordance with the procedures provided by 10 CFR § 50.92 and as a result of the Staff's review of the amendment application and supporting information, that notice included: (1) a description of the proposed license amendments; (2) a preliminary determination that no significant hazards consideration is involved; (3) a statement of the reasons for the proposed no significant hazards consideration determination; (4) a request for comments on the proposed no significant hazards consideration determination; and (5) notice of the manner in which interested persons may request a hearing.

On May 19, 1983, prior to the issuance of this Federal Register notice, the present petition was filed by TMIA.

B. TMIA's Request for Hearing

The TMIA Petition demands that a full adjudicatory hearing be held on Licensee's amendment request.<sup>5/</sup> Since no notice of opportunity for

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<sup>5/</sup> TMIA also demands that any license amendment issued in response to Licensee's present request "not become immediately effective before completion of the hearing requested . . . because of the

(FOOTNOTE CONTINUED ON NEXT PAGE)



hearing had been published at the time TMIA filed its request for hearing, the authority for such a hearing request would be derived from Section 189a of the Atomic Energy Act.<sup>6/</sup>

TMIA asserts that it represents its membership and other members of the public "residing in the vicinity" of TMI-1. TMIA Petition at 2. Any order permitting operation of TMI-1, states TMIA, may affect the interests of petitioner and those it represents in living "in an environment free from health and safety hazards resulting from operation of TMI-1." Id. In further support of its petition to intervene, TMIA argues that it has "the requisite knowledge and experience suitable to qualify it to be admitted as a party" and that it has been a recognized intervenor in the TMI-1 restart proceeding. Id.

The remainder of the TMIA Petition is devoted to a discussion of the steam generator tube repair technique itself and to TMIA's position that a significant safety issue is presented by renewed operation as a consequence of the repairs.<sup>7/</sup> See TMIA Petition at 3-10.

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5/ (FOOTNOTE CONTINUED FROM PREVIOUS PAGE)

'significant hazards consideration' involved with this repair process and subsequent operation of the plant." TMIA Petition at 1. Under 10 CFR § 50.92, the Commission has delegated to the Staff the authority to make preliminary and final determinations as to whether a license amendment presents a significant hazards consideration. The Staff will treat that portion of TMIA's Petition addressing the issue of a possible significant hazards consideration as a comment on the Staff's preliminary determination that no significant hazards consideration is presented by these amendments and will take TMIA's comments, together with any other comments received, into account in arriving at a final determination on whether a significant hazards consideration is presented by Licensee's request. Accordingly, no action by the Commission is required with respect to this aspect of the TMIA Petition.

6/ 42 U.S.C. § 2239(a).

7/ See note 5, supra.

C. Requirements for Requests for Hearing

Section 189a of the Atomic Energy Act, 42 U.S.C. § 2239(a), provides that:

In any proceeding under [the] Act, for the granting, suspending, revoking, or amending of any license . . . the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding.

Section 2.714(a) of the Commission's Rules of Practice also provides that "[a]ny person whose interest may be affected by a proceeding and who desires to participate as a party shall file a written petition for leave to intervene." Thus the pertinent inquiry, whether the petitioner's request is considered under Section 189a of the Act or 10 CFR § 2.714(a) of the regulations, is whether the petitioner has alleged an interest which may be affected by the license amendment proceeding. Where the requisite interest is shown, intervention may be granted as a matter of right. Absent a demonstration of the requisite interest, intervention may be granted in the Commission's discretion.

1. Interest and Standing for Intervention as a Matter of Right

In seeking to determine whether the requisite interest prescribed by both Section 189a of the Atomic Energy Act and Section 2.714 of the NRC's Rules of Practice is present, the Commission has held that contemporaneous judicial concepts of standing are controlling. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-14 (1976). Thus, there must be a showing (1) that the action being challenged could cause "injury-in-fact" to the

person seeking to intervene<sup>8/</sup> and (2) that such injury is arguably within the "zone of interests" protected by the Atomic Energy Act<sup>9/</sup> or the National Environmental Policy Act.<sup>10/</sup> Id. See also Warth v. Seldin, 422 U.S. 490 (1975); Sierra Club v. Morton, 405 U.S. 727 (1972); Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150, 153 (1970).

The Appeal Board has ruled that the geographical proximity of a petitioner's residence, standing alone, is sufficient to satisfy the interest requirements. Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1979). Though no firm outer boundary for this geographic zone of interest has been determined, distances of up to 50 miles have been accepted by the Appeal Board as conferring standing upon particular petitioners. See, e.g., Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 at n. 4 (1977); Cf. Virginia Electric and Power Company (North Anna Power Station, Units 1 and 2), ALAB-146, 6 AEC 631, 633-34 (1973); Northern States Power Company (Prairie Island

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8/ "Abstract concerns" or a "mere academic interest" in the matter which are not accompanied by some real impact on a petitioner will not confer standing. See In the Matter of Ten Applications for Low-Enriched Uranium Exports to EURATOM Member Nations, CLI-77-24, 6 NRC 525, 531 (1977); Pebble Springs, CLI-76-27, supra at 613. Rather the asserted harm must have some particular effect on a petitioner, Ten Applications, CLI-77, 24, supra, and a petitioner must have some direct stake in the outcome of the proceeding. See Allied-General Nuclear Services, et al. (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 422 (1976).

9/ 42 U.S.C. § 2239 et seq.

10/ 42 U.S.C. § 4321 et seq.

Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188, 190, 193, reconsideration denied, ALAB-110, 6 AEC 247, aff'd, CLI-7-12, 6 AEC 241 (1973).

An organization may gain standing to intervene based on injury to itself. Edlow International Company, CLI-76-6, 3 NRC 563, 572-74 (1976). If the organization seeks standing on its own behalf, it must establish that it will be injured and that the injury is not a generalized grievance shared in substantially equal measure by all or a large class of citizens. Ten Applications, CLI-77-24, supra, at 531. On the other hand, an organization may establish standing through members of the organization who have an interest which may be affected by the outcome of the proceeding. Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-322, 3 NRC 328, 330 (1976). At the same time, when an organization claims that its standing is based on the interests of its members, the organization must identify specific individual members (by name and address) whose interests may be affected and give some concrete indication that such members have authorized the organization to represent their interests in the proceeding. Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377 393-97 (1979); Public Service Electric and Gas Company (Salem Nuclear Generating Station, Units 1 and 2), ALAB-136, 6 AEC 487, 488-89 (1973); Duquesne Light Company, et al. (Beaver Valley Power Station, Unit No. 1), ALAB-109, 6 AEC 243, 244 at n.2 (1973).

## 2. Requirements for Discretionary Intervention

Intervention may also be granted "as a matter of discretion according to specific criteria" to some petitioners who are not entitled to

intervention as a matter of right. Portland General Electric Company, et al. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 616 (1976). In Pebble Springs the Commission delineated these specific criteria as:

(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. 4 NRC at 616.

The Commission also cautioned in Pebble Springs that the exercise of discretion should be "based on an assessment of all the facts and circumstances of the particular case." Id. Discretionary intervention should be afforded more readily:

"where petitioners show significant ability to contribute on substantial issues of law or fact which will not otherwise be properly raised or presented, set forth these matters with suitable specificity to allow evaluation, and demonstrate their importance and immediacy, justifying the time necessary to consider them." 4 NRC at 617.

The burden of demonstrating that discretionary intervention is appropriate in a given case lies with the petitioner. Nuclear Engineering Company, Inc. (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 743 (1978).

D. Evaluation of the TMIA Petition

TMIA's petition fails to satisfy the requirements for intervention in that it does not contain the requisite demonstration of petitioner's interest in this licensing action. Petitioner has not shown that it is entitled to intervention either as a matter of right or as a matter of the Commission's discretion.

1. TMIA's Petition Does Not Adequately Support Intervention as of Right

TMIA has not attempted to demonstrate that it has standing based on any injury to itself as an organization. Nor is it apparent from TMIA's petition that TMIA has any basis for a claim that it will suffer cognizable injury as an organization if the requested amendment is granted. Accordingly, TMIA must rely for its standing on the standing of at least one of its individual members. Marble Hill, ALAB-322, supra.

TMIA asserts that it has members "in the vicinity" of TMI-1. However, TMIA has failed to identify these members and to demonstrate specifically their geographical proximity to TMI-1 as required by Commission precedent. TMIA has also failed to demonstrate its authority to act on the behalf of its specific members who may possess standing in this proceeding. See Allens Creek, ALAB-535, supra. Without an explicit identification of its members who possess standing on the basis of their geographical proximity to TMI-1 and without a specific statement by TMIA that it is authorized by those members to act on their behalf in this proceeding, TMIA fails to satisfy the requirements for intervention as a matter of right in any adjudicatory proceeding concerning the present amendment request.



The fact that TMIA has been admitted in other proceedings concerning TMI-1 does not excuse TMIA's failure to demonstrate that the requirements for intervention are met for this proceeding. While the fact of such prior intervention suggests that TMIA may ultimately be able to demonstrate that it has standing here, a separate showing for this proceeding must be made.<sup>11/</sup> Similarly, TMIA's assertion that it has the "requisite knowledge and experience" cannot act as a substitute for the legally required showing that TMIA has a cognizable interest in this proceeding.<sup>12/</sup> At the present time, no such interest has been shown.

2. TMIA's Petition Does Not Support Discretionary Intervention

TMIA's petition has not provided sufficient information to carry TMIA's burden of demonstrating that discretionary intervention would be appropriate here. The bare statement that TMIA has the "requisite knowledge and experience" to be an intervenor in this proceeding lacks the degree of particularization which would permit a judgment to be drawn one way or the other as to whether TMIA's participation may reasonably be expected to assist in developing a sound record. TMIA's petition contains little or no information which would permit an

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<sup>11/</sup> It has been held that a petitioner's participation in a prior proceeding with regard to a facility is not sufficient to establish that petitioner's interest with regard to a separate proceeding for that same facility. *Philadelphia Electric Co. et al.* (Peach Bottom Atomic Power Station, Units 2 and 3), LBP-75-22, 1 NRC 451, 454-55 (1975); *Wisconsin Electric Power Co. et al.* (Point Beach Nuclear Plant, Unit 1), LBP-73-26, 6 AEC 612, 616 (1973).

<sup>12/</sup> Standing to intervene as a matter of right does not hinge upon a petitioner's potential contribution to the decision-making process. *Virginia Electric & Power Co.* (North Anna Power Station, Units 1 and 2), ALAB-342, 4 NRC 98, 107 n.12 (1976).



evaluation of the various criteria delineated in Pebble Springs, supra. The burden of demonstrating that discretionary intervention is appropriate under the particular circumstances presented lies with the petitioners. Sheffield, ALAB-473, supra. That burden has not been \_\_\_\_\_ carried by TMIA here.

### III. CONCLUSION

TMIA has failed to show that it meets the applicable requirements for intervention either as a matter of right or as a matter of the Commission's discretion. Accordingly, TMIA's present petition should be denied. The Staff notes, however, that a notice of opportunity for hearing on the proposed license amendment has very recently been published in the Federal Register. 48 Fed. Reg. 24231 (May 31, 1983). There is no bar to TMIA's submission of a new petition, pursuant to that notice, which takes account of the defects in its present petition discussed above. The Staff urges that TMIA's instant request for hearing be denied without prejudice to TMIA's ability to file a subsequent request for hearing pursuant to the notice of opportunity for hearing just published.

Respectfully submitted,



Richard J. Rawson  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 3rd day of June, 1983

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 No. 1) }

Docket No. 50-289  
(Steam Generator Repair)

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO REQUEST BY THREE MILE ISLAND ALERT, INC. FOR ADJUDICATORY HEARING ON STEAM GENERATOR REPAIR AMENDMENT" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, this 3rd day of June 1983:

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