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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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

TMIA'S ANSWER IN OPPOSITION TO MOTION FOR LEAVE TO INTERVENE

By Motion dated August 23, 1982, individuals designated O and VV, through counsel, requested leave to intervene before this Atomic Safety and Licensing Appeal Board in the above-captioned proceeding. TMIA opposes said motion for the reasons stated below.

First, TMIA perceives no legal basis to support the granting of this motion. Both the Atomic Energy Act, §189(a), 42 USC §2239, and the cited regulation, 10 CFR §2.714(1982), contemplate intervention only at the adjudicatory hearing stage, which in this case is complete. Intervention before the Appeal Board, which acts primarily as a reviewer of the evidentiary record and the Licensing Board decision, is not authorized by either the statute or the regulations. In fact, 10 CFR §2.785 (1982), which lists the functions of Appeal Boards, does not include as a permitted function ruling on intervention petitions. Thus,

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by granting this motion, the Appeal Board would be acting wholly outside the scope of the statute and the regulations. Moreover, even if the law did authorize Appeal Boards to rule on such motions, this Appeal Board has no specific authority to do so. When hearings were initiated in this case, the Commission specifically delegated to the Licensing Board authority to rule on intervention petitions. Metropolitan Edison Company, 10 NRC 141, 147 (1979). No similar authority was given the Appeal Board, which was later constituted. The Licensing Board has relinquished jurisdiction over this case, and thus no body other than the Commission itself has current authority to consider this motion.

Second, even assuming, arguendo, that the Appeal Board had a legal basis to consider and rule on this motion, the motion itself is not sufficiently grounded to support intervention at this juncture. The standards for granting intervention as a matter of right, or as a matter of discretion, were set forth in the case of Portland General Electric Co.) Pebble Springs Nuclear Plant, Units 1 & 2), CLI-76-27, 4 NRC 610 (1976). Intervention as a matter of right is governed by judicial standing doctrines, which require the petitioner to allege both some injury that has occurred or will probably result from the action involved (injury in fact), and an interest arguably within the zone of interests protected by the statute (zone of interest). Pebble Springs at 632.

What particular injury O and VV claim to have suffered as a result of the Licensing Board's decision is not clear. The Board did not recommend criminal prosecution or any further action against O stemming from his involvement in the April, 1981 cheating incidents. And with reference to the 1979 VV/O cheating episode, all the Board has recommended is a further NRC staff investigation, at which time both individuals will have another opportunity to explain their actions. The Board has recommended no sanction against either of these individuals.

Further, whether their interest is even within the "zone of interests" contemplated by the Atomic Energy Act, is highly questionable. As established by Congress, the NRC's regulatory scheme, particularly the hearing process, is tailored to insure the protection of the public health and safety and to advance the broad public interest. The concerns of these individuals, a former and current employee, are not among those which the Commission should consider in determining whether to grant an intervention petition. Thus, it is clear that the individuals O and VV have no absolute right to intervene before this Appeal Board.

But even under the discretionary test of Pebble Springs, and under the criteria of 10 CFR §2.714(d) (1982), O and VV have provided no basis to support this motion to intervene. First, where an individual has no right to intervene, the NRC entertains broad discretion in

permitting interventions, but does so for the purpose of maximizing public participation and the potential contribution of public intervenors. Citing Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), CLI-754, 1 NRC 1, 2 (1975), the Commission in Pebble Springs at 617 stated, "Such participation, performed in the public interest (emphasis added), is a vital ingredient to the open and full consideration of licensing issues and in establishing public confidence in the sound discharge of the important duties which have been entrusted to us." Clearly, O and VV assert no public benefit to their participation in this Appeal Board proceeding.

The Commission in Pebble Springs at 617, also explained that, "permission to intervene should prove more readily available 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." In this case, O and VV claim no specific dissatisfaction with the way either Licensee or the Staff represented their interests. They cite no specific examples of how Licensee, particularly regarding the VV/O incident, or the Staff, particularly regarding their decision not to refer the April, 1981 episode to the Department of Justice, failed to present O and VV's position adequately. In fact, the findings and

comments of both the Licensee and the Staff warrant a conclusion that O and VV's positions are quite adequately represented by them.

Also, weighing heavily against granting the motion is its extaordinary untimeliness. Even assuming that O and VV have valid grounds to intervene, the criteria set forth in 10 CFR §2.714(a)(1) must be considered in evaluating this untimely motion, and in assessing several of these criteria, the balance seems to weigh against the granting of this motion. For example, counsel fo VV and O suggest that good cause is shown because it has not heretofore been necessary for O and VV to participate as parties to protect their interest. Par. 9. Apparently to support this assertion, counsel mentions some factors to consider in Par. 8. But these opinions of counsel are without factual support, and contrary to the Licensee and Staff's continuing efforts in this case. Also, other means appear available to protect petitioners' interests. Not only is the Licensee and the Staff actively promoting their interest, but the Board has ordered the Staff to conduct another full investigation into the 1979 episode, which will give O and VV an additional opportunity to explain their positions. Also, granting of this motion can not add to the record, because the record is complete. It should be noted that neither O nor VV requested an opportunity from the Licensing Board to file findings or exceptions to the PID.

Thus, even assuming arguendo that the Appeal Board was legally justified in considering this motion, it fails by every standard, and it should be rejected.

Respectfully submitted,

Louise Bradford

Dated: Sept. 1, 1982