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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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USNRC

ATOMIC SAFETY AND LICENSING BOARD

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Before Administrative Judges:
Sheldon J. Wolfe, Chairman
Dr. Oscar H. Paris
Frederick J. Shon

OFFICE OF SECRETARY
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BRANCH

In the Matter of
METROPOLITAN EDISON COMPANY, et al.
(Three Mile Island Nuclear Station,
Unit No. 1)

Docket No. 50-289 OLA
(Steam Generator Plugging
Criteria)
(ASLBP No. 86-520-01 LA)
February 12, 1986

MEMORANDUM AND ORDER
(Provisionally Ordering A Hearing and Provisionally
Granting TMIA's Petition for Leave to Intervene)

MEMORANDUM

On January 6, 1986, the Nuclear Regulatory Commission published a notice captioned "Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing." 51 Fed. Reg. 459. Among other things, this notice stated that:

The amendment would revise the provisions in the Technical Specifications relating to the steam generator tube plugging limitations, in accordance with the licensee's application for amendment dated November 6, 1985. Basically, the present Technical Specifications require repairing or removing from service a steam generator tube when a defect exceeds 40% of the tube wall thickness. The proposed amendment would maintain the 40% through wall limit on the secondary side of the tube but replaces the limit on the primary side of the tube with a sliding scale which goes

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from 40% to 70% through wall depending on the size of the defect.

The notice also provided that any request for a hearing or a petition for leave to intervene should be filed by February 6, 1986.

Prior to the publication of the aforementioned notice, on December 23, 1985, Three Mile Island Alert (TMIA) had filed with the Commission a Formal Demand for Adjudicatory Hearing in light of the Licensees' application for amendment dated November 6, 1985. TMIA attached as an exhibit to that submission an earlier Formal Demand for Adjudicatory Hearing dated March 25, 1985.¹ The Licensees (Licensee) filed an Answer to TMIA's submission (the petition) on January 7, 1986 and the Staff filed on response on January 13, 1986.

The Licensee argues that the petition should be denied in that it fails to set forth with particularity TMIA's interest in the proceeding and how that interest may be affected. It points out that the petition

¹ TMIA's Formal Demand of March 25, 1985 had been directed originally to Licensee's letters of January 31 and March 1, 1985 wherein the NRC Staff was requested to approve revised plugging limit criteria for TMI-1's steam generator tubes. Licensee took the position in the letters that a license amendment was not required. The Licensee and the Staff opposed TMIA's request for hearing on the ground that it was premature. The Staff also stated that the revised plugging criteria would not be approved without a license amendment and that Licensee had not yet submitted a request for such an amendment. In an Order of April 18, 1985, the Commission denied without prejudice TMIA's request for hearing since it was premature and stated that, if the Licensee submitted an application for an amendment, TMIA could appropriately resubmit its petition to intervene after the NRC published a notice of opportunity for hearing.

does not identify the interested members of TMIA, does not demonstrate that such members have authorized TMIA to represent them, and does not demonstrate that such members possess sufficient interest to give TMIA standing to intervene. Also, it urges that petitioner's previous participation in other proceedings involving TMI-1 is not germane to this proceeding. While the Staff states that TMIA fails to satisfy the requirements for intervention because its petition does not explicitly identify its members who possess standing on the bases of their geographical proximity to TMI-1 and does not specifically indicate that TMIA is authorized to represent those members in this discrete proceeding, it notes that this defect might be cured if at least one member who lives near the plant timely submitted an affidavit stating that he or she authorizes TMIA to intervene on his or her behalf.

Further, the Licensee argues that the petition should be denied in that two aspects or issues raised in the Formal Demand attached to the petition -- the identification and arrest of the 1981 tube corrosion and the adequacy of eddy current testing -- have been decided by the Appeal Board in the TMI-1 kinetic expansion steam generator tube repair decision, ALAB-807, 21 NRC 1195 (1985). The Staff discerns that TMIA raises three aspects questioning (1) whether there has been proper identification of the cause of tube degradation and whether the revised criteria are appropriate if such degradation has not been arrested (Formal Demand, ¶¶ 16-25), (2) whether eddy current testing can accurately detect tube defects and thus support the amendment (Formal Demand, ¶¶ 26-28, 30-32), and (3) whether normal operation leakage

criteria will be impacted by the amendment (Formal Demand, ¶ 22).² The Staff takes the position that these three aspects raise matters arguably within the subject matter of this proceeding and may be relevant to the appropriateness of the revised plugging criteria. The Staff notes that, while arguing that aspects (1) and (2) were decided in ALAB-807, the Licensee does not assert that litigation of these issues would be precluded in the instant proceeding. Accordingly, the Staff believes that TMIA has satisfied the aspect requirement of 10 CFR § 2.714.

I. Discussion

A. Requirements for Intervention

10 CFR § 2.714(a)(2) requires that a petitioner 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 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):

² TMIA set forth two other aspects. First, it urges that, since major safety questions are involved, a hearing should be held prior to the allowance of the proposed amendment to the specifications (Formal Demand, ¶¶ 8-15). The Board agrees with the Staff and Licensee that this aspect is of little significance and/or is irrelevant since a notice of an opportunity for a prior hearing has been issued. Second, TMIA urges that eddy current testing is
(Footnote Continued)

- (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 close proximity has always been deemed enough, standing alone, to establish the requisite interest. Armed Forces Radiobiology Research Institute (Cobalt-60 Storage Facility), ALAB-682, 16 NRC 150, 154 (1982); Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1979).

(Footnote Continued)

needed prior to the restart of TMI-1 (Formal Demand, ¶ 29). The Board agrees with the Staff that this aspect has been mooted since TMI-1 has already commenced operation.

Further, 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. Where an organization's entitlement to intervene is wholly dependent upon the personal standing of at least one of its members, there is every justification for insisting that the member be identified specifically and that said member confirms that he or she has authorized the organization to represent his or her interests in the proceeding. Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 393-97 (1979). Finally, a petitioner's participation in previous Commission licensing proceedings is not determinative of, if indeed relevant to, its being admitted as an intervening party in a subsequent proceeding. Wisconsin Electric Power Company (Point Beach Nuclear Plant, Unit 1), LBP-73-26, 6 AEC 612, 616 (1973).

B. Compliance With Requirements

1. Interest

TMI-1 is located in Dauphin County, Pennsylvania. In its submission and attachment (petition) of December 23, 1985, TMIA asserts

(1) that it is a public interest organization located in Harrisburg, Pennsylvania representing residents within a five county radius of the nuclear plant, (2) that there is a well-grounded concern that these new criteria will both increase the probability of a steam tube rupture and decrease the margin of safety, and (3) that it represents persons whose interests may be affected by the proposed amendment. While TMIA has sufficiently established the requisite interest in assertions (1) and (2) supra, it has failed to identify the name and address of at least one of its members who resides near the facility and failed to specify that TMIA is authorized to represent that member.³

2. Aspects

As we noted supra, at pp. 3 and 4, the Staff discerns that TMIA raises in its petition three specific aspects that are arguably within the subject matter of this proceeding. We agree and shall address each of these aspects in turn.

(a) Cause of Tube Degradation

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While the TMIA alleges that Joanne Doroshow, who signed the petition, and Louise Bradford, who did not sign, are members of that organization and represent its efforts to secure a hearing, it does not state that either Ms. Doroshow or Ms. Bradford reside in geographical proximity to the TMI-1 site and does not state that either one has authorized TMIA to represent her. The Board takes official notice that TMIA has been granted intervention in prior discrete proceedings but previous intervention is not determinative in this case; we must secure verification that at least one member currently resides near the facility and has authorized TMIA to represent his or her interest.

The first aspect questions whether there has been proper identification of the cause of tube degradation, whether it has been arrested, and if not arrested, whether the proposed revision of criteria for plugging would be appropriate. Licensee argues that the Appeal Board, in its decision as to whether TMI-1 should be allowed to resume operation following the steam generator tube repair by kinetic expansion, decided that Licensee's recent eddy current test (ECT) indications resulted from intergranular attack (IGA) that occurred in 1981 and were not the result of a new or different form of corrosion. ALAB-807, 21 NRC 1195, 1210 (1985). In considering this argument the Staff noted that Licensee did not assert that said finding by the Appeal Board in the kinetic expansion tube repair case precluded litigating the issue in the instant case.

The Petitioner, citing the transcript of a meeting between representatives of Licensee and NRC on February 19, 1985, at which Licensee's requested change in the steam generator repair limits were discussed, argues that uncertainty was expressed by both the Staff and Licensee as to whether the corrosion is now active. (Formal Demand, ¶¶ 18-25). We have examined the aforesaid transcript and agree that it appears that the Staff was less than convinced that Licensee was correct in asserting that the ECT indications were revealing only pits that dated from 1981. (Tr. 26-30). In addition, ALAB-807 was rendered against the background of the kinetic expansion repair technique; it is not clear to us that this decision applies to the instant proceeding in which Licensee proposes to omit altogether some repairs heretofore

required. Therefore we reject Licensee's implication that we are precluded from litigating this issue.

(b) Adequacy of Eddy Current Testing

The second aspect questions whether the ECT results accurately detect tube defects and thus support the amendment. (Formal Demand, ¶¶ 26-28, 30-32). Again Licensee argues that this matter was decided by the Appeal Board in ALAB-807, and Staff notes that Licensee did not assert that the Appeal Board decision precluded the litigation of this issue in the instant case. Our study of the transcript cited by Petitioner reveals that the Staff expressed uncertainty as to whether Licensee's ECT results revealed the true density of pits and whether the pits are now separate and will stay separate. (Tr. 32, 37-39). Again it is not clear to us that the Appeal Board's decision on the adequacy of ECT results made against the background of kinetic expansion tube repair should apply here to the proposal to omit some repairs altogether. Therefore we again reject the implication that we are precluded from litigating this issue in the instant proceeding.

(c) Impact on Leakage Criteria

The third aspect asserts that Licensee has not analyzed how the proposed amendment will affect leakage rate during normal operation and thus possibly exceed the leakage criteria in GDC 32. (Formal Demand, ¶ 22). Our study of the transcript of the February 19, 1985 meeting supports Petitioner's position. (Tr. 8-9). Moreover, we note that the Licensee does not address this issue in its Answer.

In conclusion we find that TMIA has set forth three specific aspects of the subject matter of the proceeding as to which it wishes to intervene. As Staff notes an "aspect" is generally considered broader than a "contention". Consumers Power Co. (Midland Plants, Units 1 and 2), LBP-78-27, 8 NRC 275, 278 (1978). Thus Petitioner has complied with the "aspects" requirement of 10 CFR § 2.714(a)(2).

ORDER

For the forgoing reasons, it is

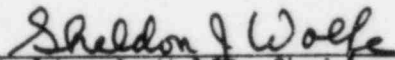
ORDERED


1. That TMIA's petition for leave to intervene is provisionally granted upon the condition that, by no later than February 24, 1986 (pursuant to 10 CFR § 2.711), TMIA amends its petition by filing an appropriate affidavit of one of its members setting forth his or her name and address to establish the necessary proximity to the facility and specifying the authorization for the filing of the instant petition.

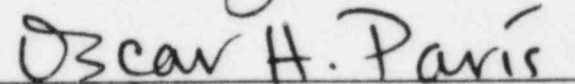
2. That a hearing is provisionally ordered upon the application for an amendment to TMI-1 Facility Operating License No. DPR-50 dated November 6, 1985, upon the condition that TMIA files the appropriate affidavit required in paragraph 1, supra. Further, while a notice of hearing is being issued today which, inter alia, schedules a § 2.715a special prehearing conference to be held on March 27, 1986, said notice is also provisional since the Board cannot rule upon the need for an

evidentiary hearing until after March 27, 1986 when it determines whether TMIA has submitted at least one admissible contention.

THE ATOMIC SAFETY AND LICENSING BOARD


Sheldon J. Wolfe, Chairman
ADMINISTRATIVE JUDGE


Frederick J. Shon
ADMINISTRATIVE JUDGE


Oscar H. Paris
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 12th day of February, 1986.