

207

DOCKETED  
USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'86 AUG -4 P2:55

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

COMMISSIONERS:

Lando W. Zech, Jr., Chairman  
Thomas M. Roberts  
James K. Asselstine  
Frederick M. Bernthal

SERVED AUG 4 1986

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

Docket No. 50-289 SP  
(Restart)

ORDER

On May 1, 1985, Marjorie and Norman Aamodt applied to the Commission for an award of attorney fees and costs under the Equal Access to Justice Act, 5 U.S.C. § 504 et seq. ("EAJA"), for their participation in the Three Mile Island, Unit 1 restart proceeding. The Aamodts were informed at that time that their application would be held in abeyance pending final agency action in the restart proceeding. Final agency action in the proceeding occurred on February 6, 1986, when the Commission declined to review the Atomic Safety and Licensing Appeal Board's final decision in the restart proceeding. In the Matter of Metropolitan Edison Company, et al. (Three Mile Island Nuclear Station, Unit 1), CLI-86-2, 23 NRC 49 (1986).

Subsequently, the Aamodts were advised by letter dated June 16, 1986 that their fee application was being held in abeyance pending the decision of the United States Court of Appeals for the District of Columbia Circuit in

8608060104 860804  
PDR ADOCK 05000289  
G PDR

DS02

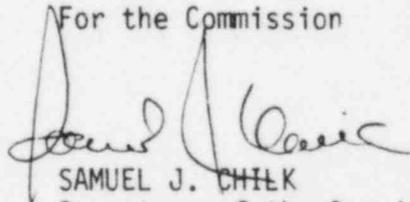
Business and Professional People for the Public Interest v. Nuclear Regulatory Commission and the United States of America, No. 85-1441. On June 27, 1986, the Court issued its decision ruling that Section 502 of the Commission's Appropriations Act, Pub. L. 99-141, § 502 (November 1, 1985) prohibits the payment of EAJA awards to intervenors in NRC proceedings. Section 502 states that:

None of the funds in this Act shall be used to pay the expenses of, or otherwise compensate, parties intervening in regulatory or adjudicatory proceedings funded in this Act.

EAJA awards are paid from appropriated funds. Slip op. at 2. Thus, even if the Aamodts could establish an entitlement to funds (an issue we find it unnecessary to decide), the NRC lacks a source of funds from which to pay an award. Accordingly, the Aamodts' petition is denied.

It is so ORDERED.

For the Commission



SAMUEL J. CHILK  
Secretary of the Commission

Dated at Washington, D.C.  
this 4<sup>th</sup> day of August, 1986.