

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION



In the Matter of :  
METROPOLITAN EDISON :  
COMPANY, et al. : Docket No. 50-289 (Restart)  
(Three Mile Island, Unit 1) :

PETITION TO SEEK NRC FUNDING FOR  
CONSUMER INTERVENORS TO FINANCE  
WITNESS EXPENSES

1. The Atomic Safety and Licensing Board (ASLB) has received several requests from intervenors for financial assistance to retain experts who will submit studies and/or testify before the ASLB on any and all issues raised in the above-captioned action. The Consumer Advocate of Pennsylvania, by this Petition, supports those requests and any similar requests which may be filed by intervenors in the future and respectfully requests that this Honorable Commission provide financial assistance to intervenors requesting such aid.

2. The Nuclear Regulatory Commission (NRC) is the proper party to hear and rule upon this Petition. The ASLB, by its Memorandum and Order issued on October 15, 1979, stated that it is without authority to approve funding to intervenors on any issue other than psychological distress, inasmuch as that was the sole issue upon which the NRC gave the ASLB discretion. Id. at 7. Alternatively, the Petitioner respectfully requests that this Honorable Commission delegate to the ASLB the authority to grant funding for expert witnesses to intervenors on all issues presented by the above-captioned proceeding.

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3. a. Assuming that this Honorable Commission is correct in holding that the opinions of the Comptroller General are controlling on the issue of intervenor funding; In the Matter of Nuclear Regulatory Commission (Financial Assistance to Participants in Commission Proceedings), CLI-76-23, Docket No. PR-2, 4 NRC 494, November 12, 1976, at 497-S01 (hereinafter NRC (Financial Assistance)); then the NRC must fund intervenor participation if such participation can "reasonably be expected to contribute substantially to a full and fair determination." In the Matter of Costs of Intervention - FDA B-139703, December 3, 1976, 56 Decisions of Comptroller General of the U.S. 111-115.

Although the above-cited opinion of the Comptroller General was issued with regard to proceedings before the Food and Drug Administration (FDA), the Comptroller General has made it clear that his opinions on intervenor funding apply with equal force to nine major regulatory agencies, including the NRC. Letter of Comptroller General to the Oversight and Investigations Subcommittee of the House Committee on Interstate and Foreign Commerce, dated May 10, 1976, cited in NRC (Financial Assistance) at 499.

b. Previously, the Comptroller General had stated that a stricter standard applied, which would require that the intervenor participation be necessary or "essential" to the proceedings. However, this ruling was subsequently overturned by the issuance of the letter containing the more liberal requirement of "substantial contribution." Cost of Intervention -FDA, Decisions of Comptroller General, supra.

4. Judge Skelly Wright, for the United States Circuit Court of Appeals, District of Columbia, the judicial tribunal charged with review of orders issued by this Honorable Commission, stated in dicta that "it

would be unrealistic to expect public interest litigants to underwrite the expense of mounting the kind of preparation and presentation of evidence that is ordinarily required in this type case [NRC licensing proceeding]." York Committee for a Safe Environment v. NRC, 527 F.2d 812, 816, footnote 13 (D.C. Cir. 1975).

5. The U.S. District Court, District of Columbia, has expressly held that the United States Department of Agriculture (USDA) may fund intervenor participation in that agency's rule making proceeding. Chamber of Commerce v. U.S. Dept. of Agr., 459 F.Supp 216 (D.C. District Court (1978)). There is no compelling reason to distinguish between the USDA and the NRC with regard to intervenor funding. The D.C. District Court held that Greene County Planning Board v. FPC, 559 F.2d 1227 (2nd Cir. 1977) (en banc), cert. den. 434 U.S. 1086 (1978), was inapplicable on the ground that in that case the FPC had denied intervenor funding, whereas in Chamber of Commerce v. USDA, the USDA had determined that such funding was necessary to ensure a complete record. The court concluded that the determination of an administrative agency that such expenditures were necessary was entitled to great deference.

In Greene v. FPC the intervenors requested attorney fees. In Chamber of Commerce v. USDA the issue was the propriety of the USDA funding an expert study. The court concluded that such disbursement of funds was within the USDA's implied authority to expend funds to fulfill its statutory mandate.

6. This Honorable Commission has recognized in its Order and Notice of Hearing issued August 9, 1979, that it is empowered to provide

financial assistance to parties seeking to raise the issue of psychological distress resulting from the accident at the Three Mile Island (TMI) Unit #2. Id. at 13. The Consumer Advocate believes that one reason this Commission ruled in this manner was because the NRC staff are not experts in psychological responses and, therefore, some outside expert assistance was necessary.

7. The Consumer Advocate submits that this same rationale applies with equal force to other health and safety issues raised in the above-entitled action. The NRC staff is in need of outside assistance and expertise in order to help it deal with the issues raised by the accident at TMI Unit #2 and the resultant effects on Unit #1. The Report of the President's Commission on the Accident at Three Mile Island issued on October 30, 1979 (hereinafter Kemeny Commission Report) is replete with indictments of faulty staff analysis, attitudes and procedures. See for example, Kemeny Commission Report Findings G.1., G.3., G.5., G.8.c., G.8.d., G.10., and G.12. The Kemeny Commission Report concludes that: "With its present organization, staff, and attitudes, the NRC is unable to fulfill its responsibility for providing an acceptable level of safety for nuclear power plants." (Emphasis Added.) Id. at 56.

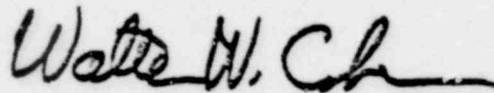
8. These conclusions of an independent Commission substantially refute the assertions contained in the NRC (Financial Assistance) Order regarding a "comprehensive, expertly staffed, well developed regulatory regime," Id. at 502; and "the professionalism, depth and experience of our regulatory staff;" Id. at 503; upon which this Honorable Commission concluded that intervenor funding was not required.

9. Furthermore, the Kemeny Commission Report recommends the establishment of a permanent oversight committee on nuclear reactor safety "to examine, on a continuing basis, the performance of the agency and of the nuclear industry in addressing and resolving important public safety issues associated with the construction and operation of nuclear power plants..." Kemeny Commission Report at 2. Pending the possible creation of such a body through Act of Congress or Executive Order, the Consumer Advocate submits that a proper role for intervenors in this case, who have already filed expressions of interest and contentions for proof, is to provide outside review and input to the regulatory process with appropriate funding to support such efforts.

10. The Consumer Advocate maintains that the Kemeny Commission Report places into question the credibility of the regulatory scheme to produce all significant and relevant testimony on health and safety issues, which credibility can only be guaranteed through the conduct of fair and open proceedings before the Atomic Safety and Licensing Board where all intervenors have adequate resources to fully present testimony in the case.

WHEREFORE, the Consumer Advocate of Pennsylvania respectfully requests that this Honorable Commission provide financial assistance to those intervenors who have now requested or will in the future request such funding for the purpose of retaining experts to submit studies and/or testify on any and all issues raised in the above-captioned action.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Walter W. Cohen", written over a horizontal line.

WALTER W. COHEN