

October 31, 1979

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

LICENSEE'S RESPONSE TO AMENDED PETITION FOR
INTERVENTION AND FINAL CONTENTIONS OF
MARVIN I. LEWIS

In its September 21 Memorandum and Order Ruling On Petitions and Setting Special Prehearing Conference, the Board held that Mr. Lewis had failed to establish standing to intervene in this proceeding as a matter of right and that he had demonstrated neither the "clear, direct and close interest in the matter" nor the likelihood that he would "make a substantial contribution to a full and reliable evidentiary record" necessary for intervention as a matter of discretion. Order, pp. 20-21. At the time the Board ruled on Mr. Lewis' standing, it had only his August 21 and September 9 submissions before it. He has since submitted some eight additional documents of varying format, on a number of different subjects. Licensee first addresses Mr. Lewis' standing to intervene in

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this proceeding, in light of his later submissions, then turns to the contentions which he has proposed.

I. Petitioner's Standing to Intervene

Of the eight documents which Petitioner has submitted which were not before the Board when it issued its September 21 Order, only two (the "later amended petitions") purport to address Petitioner's standing in this proceeding. The first is an undated, nine-page document, apparently docketed by the NRC on September 27, entitled "Further Amendments To Petition To Intervene." The second is a 12-page letter dated September 26, apparently docketed on October 2, in which Petitioner states, "I am . . . amending my petition with this submittal." Neither of these documents alters Licensee's position that Petitioner has failed to show a sufficient personal interest in the proceeding to qualify for intervention pursuant to Section 2.714 of the Commission's Rules of Practice.

The only objection to Petitioner's allegations of interest which he chooses to pursue in his later amended petitions is the argument that his residence in Philadelphia, approximately 90 miles from the TMI facility, weighs against a finding of sufficient interest in this proceeding on his part. As the Board noted at page 19 of its September 21 Order, "This distance [90 miles] does not in itself rule out all possibility that he [Petitioner] has an interest in this proceeding, but it

requires a greater showing that his interests may be affected by the results of the proceeding than would be the case if he resided closer." Rather than attempting to show how his personal particularized interests may be affected by this proceeding despite the distance, Petitioner argues that, because the Unit 2 accident was a "Class 9" accident, he should be afforded standing without the "greater showing that his interests may be affected by the results of the proceeding" required by the Board's September 21 Order and the underlying case law.

Petitioner's argument fails to recognize that the NRC Staff determined that the Unit 2 accident was a "Class 9" accident only in the sense that the accident "involved a sequence of successive failures . . . more severe than those postulated on the design basis of the plant." Public Service Electric & Gas Company (Salem Nuclear Generating Station, Unit No. 1), Docket No. 50-272, NRC Staff Response To Board Question No. 4 Regarding The Occurrence of A Class 9 Accident At Three Mile Island ("Staff Response"), p. 3. The Staff concluded that the radiological consequences of the Unit 2 accident were in fact less severe than those calculated for the design basis accident of the plant. Staff Response, p. 3. The Staff thus based its characterization of the Unit 2 accident as a "Class 9" accident on the premise that "the actual consequences of an accident do not appear to be the controlling factor in

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determining whether an occurrence falls within the Class 9 category." Staff Response, p. 3. Therefore, if the Staff does not consider "Class 9" to be a term defined by consequences, the Staff's determination that the Unit 2 accident was a "Class 9" accident cannot alone impact upon Petitioner's standing to intervene in this proceeding, because such a determination does not itself go to the potential for "injury in fact" that is required for standing.

Petitioner's alleged interests in this proceeding are, as the Board acknowledged in its September 21 Order, too remote to constitute a basis for standing to intervene in this proceeding. The NRC Staff's characterization of the Unit 2 accident as a "Class 9" accident, as the Staff defines that term, does not make those interests any less remote. Petitioner must therefore be denied status as an intervenor as a matter of right in this proceeding. Moreover, like Petitioner's August 21 and September 9 submissions, Petitioner's later submissions demonstrate neither the clear and direct interest in the matter of the proceeding, nor the likelihood that he would make a substantial contribution to the record in this proceeding. Accordingly, he should be denied status as an intervenor as a matter of discretion.

II. Petitioner's Contentions

Petitioner's final contentions are set forth in an untitled, 19-page document dated October 22. Ten of those 19

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pages constitute "Appendix A" of the document, and set forth a version of the background and events of the Karen Silkwood case, but do not relate that case in any way to these proceedings, or otherwise refer to either Unit 1 or Unit 2 at Three Mile Island.

Of the remaining nine pages, the first seven are comprised of orations on topics not at issue in this proceeding. The few contentions set forth at pages eight and nine of the October 22 document are not set forth with the specificity and basis required by Section 2.714(b) of the Commission's Rules of Practice. The waste contentions from Petitioner's October 11 submission, which he incorporates by reference in his October 22 contentions, are outside the scope of this proceeding. Licensee therefore objects to the Petitioner's contentions.

Dated: October 31, 1979

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