

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE PRESIDING BOARD

In the Matter of)

INQUIRY INTO THREE MILE ISLAND)
UNIT 2 LEAK RATE DATA)
FALSIFICATION)

SERVED FEB 3 1986

Docket No. LRP

RESPONSE OF NUMEROUS 1978-79 EMPLOYEES
OF METROPOLITAN EDISON COMPANY
TO PETITION OF MARVIN I. LEWIS TO INTERVENE

On January 13, 1986, Marvin I. Lewis ("Petitioner") filed with the Atomic Safety and Licensing Board a Petition to Intervene and Suggested Board Questions pursuant to the Commission's Order and Notice of Hearing issued on December 18, 1985 ("Order"). CLI-85-18, 50 Fed. Reg. 52,388 (Dec. 23, 1985). The Order states that petitions to intervene shall be granted if the Presiding Board determines that the petitioner both has an interest that may be affected by the proceeding and will likely contribute to the development of an adequate record. Order at 7. Petitioner claims an "extensive and immediate" interest in the proceeding. However, as discussed below, Petitioner can have no interest that may be affected by the Commission's inquiry into the alleged falsification of leak rate data at Three Mile Island Unit 2 ("TMI-2"). Thus the Petition to Intervene should be denied.

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PDR ADOCK 05000320
G PDR

Nature of the Proceeding

The Commission ordered the present proceeding in order to develop the facts surrounding the alleged falsification of reactor coolant system leak rate data at TMI-2 prior to the March 28, 1979 accident. In a Memorandum and Order issued on February 25, 1985, the Commission decided that it would institute such a proceeding separate and apart from the TMI-1 restart proceeding. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-85-2, 21 N.R.C. 282, reconsideration denied, CLI-85-7, 21 N.R.C. 1104 (1985). The basis of this decision was the Commission's determination that the allegations of pre-accident TMI-2 leak rate data falsification "do not raise a currently significant safety issue." 21 N.R.C. at 304. In so doing, the Commission reversed a prior Appeal Board Memorandum and Order reopening the record in the TMI-1 restart proceeding on the allegations of TMI-2 leak rate data falsification. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-738, 18 N.R.C. 177 (1983).^{1/} The Commission subsequently authorized the restart of TMI-1 and reaffirmed its determination that "the fact that individuals working at TMI-2 over 6 years

1. The Commission previously had stayed this order. Appeal Board Order of October 7, 1983 (unpublished). It later lifted the stay. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-84-17, 20 N.R.C. 801 (1984). At the same time, the Commission requested the views of the parties to the TMI-1 restart proceeding on the need, if any, for a reopened record on the allegations. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-84-18, 20 N.R.C. 808 (1984).

ago may have falsified records has no significance to the current operation of TMI-1." Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-85-09, 21 N.R.C. 1118, 1128, aff'd sub nom., Three Mile Island Alert, Inc. v. NRC, 771 F.2d 720, 733-34 (3d Cir. 1985), petition for cert. filed, 54 U.S.L.W. 3463 (U.S. Jan. 14, 1986) (No. 85-1095) (health effects issue only)

The purpose of the present proceeding is to develop findings concerning the possible involvement of individual employees in the alleged leak rate falsification "in sufficient detail to determine the involvement of any individual who may now work, or in the future work, at a nuclear facility." Order at 4, 9. Such findings "will not be binding" in any future licensing or enforcement proceeding. Id. at 11. The issues to be considered by the Presiding Board are carefully defined. Id. at 4-7.

None of the issues set for hearing in the Commission's Order addresses a currently significant safety issue. For example, the interpretation and implementation of technical specification requirements in connection with unidentified RCS leakage at TMI-2 prior to March 28, 1979, is of no significance to the safe operation in 1986 of either TMI-1 or any other nuclear facility licensed by the Commission. Similarly, any alleged actions taken during the performance of leak rate surveillance tests to improperly influence the results of those tests fail to raise a currently significant safety issue. CLI-85-2, 21 N.R.C. at 304.

In view of the retrospective, historical nature of the Commission's inquiry, Petitioner can have no interest that may be affected by this proceeding. Petitioner baldly claims that "the method used to provide the leak rate falsification is still in use." Petition at 1. This entirely unsupported assertion is contrary to the Commission's determination that those individuals likely involved in the alleged falsification of TMI-2 leak rate data are not employed in responsible management or operational positions at TMI-1 and that GPU Nuclear possesses the necessary integrity and competence to comply with leak rate surveillance test procedures. CLI-85-2, 21 N.R.C. at 304-05. The Commission reaffirmed this determination in its TMI-1 restart authorization. CLI-85-09, 21 N.R.C. at 1128. Its finding was upheld by the U.S. Court of Appeals for the Third Circuit.^{2/} Thus Petitioner fails to demonstrate that he has any interest at all that may be affected by the present proceeding.

Prior Intervention

Petitioner relies on his prior intervention in the TMI-1 restart proceeding to claim an interest in the present proceeding. However, Petitioner failed at the outset of the restart proceeding to demonstrate a cognizable interest. He

2. The Third Circuit, in its review of the Commission's restart authorization, concluded that "the Commission could reasonably find, as it did, that altered conditions rendered the [alleged] fact of TMI-2 leak rate falsifications no longer safety significant to TMI-1's operation." 771 F.2d at 734.

was admitted as an intervenor as a matter of discretion on a strictly limited basis. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), LBP-79-34, 10 N.R.C. 828, 852-54 (1979). The Licensing Board admitted Petitioner only on one contention, which concerned filters and preheaters, and specifically excluded him from participation in the restart proceeding on any other contention. Thus Petitioner, who resides some 90 miles from Three Mile Island, failed to qualify as an interested person in a proceeding in which significant safety issues were addressed. Petitioner cannot now claim a cognizable interest in a proceeding in which there are no current safety concerns at all.

In summary, Petitioner can have no interest that may be affected by this inquiry. Moreover, it appears on the face of his filing that Petitioner is quite unlikely to contribute to the development of an adequate record on the issues set for hearing in the present proceeding. The "definite information" offered by Petitioner in his filing ^{3/} and attached comments on NUREG-0956, from a technical and engineering point of view, strains the credibility of his assertion that he could assist in the development of a complete record. See NRC Staff's Answer to Petition of Marvin I. Lewis, Intervenor, for a New or Expanded Contention Concerning the Hartman Leak Rate

3. Petitioner first offered this information in a motion to reopen the record in the TMI-1 restart proceeding, which he filed
(footnote continued on next page)

Allegations (October 9, 1985) in Docket No. 50-289-SP (Restart)
at 8-10.

Conclusion

For the foregoing reasons, the Presiding Board should deny
the Petition to Intervene.

Respectfully submitted,

LEBOEUF, LAMB, LEIBY & MACRAE

By Harry H. Voigt
Partner

Of Counsel:

William G. Primps
Michael F. McBride
Molly S. Boast
James W. Moeller

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Counsel for Numerous 1978-79
Employees of Metropolitan Edison
Company

Dated: January 31, 1986

(footnote continued from previous page)
on September 19, 1985. Petition of Marvin I. Lewis, Intervenor, for
a New or Expanded Contention Concerning the Hartman Leak Rate
Allegations. The Licensing Board determined that it lacked
jurisdiction to entertain the petition and denied it. Licensing
Board Memorandum and Order of October 15, 1985 (unpublished). This
decision was affirmed by the Appeal Board. Metropolitan Edison Co.
(Three Mile Island Nuclear Station, Unit 1), ALAB-821, 22 N.R.C. 750
(1985).

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NOTICE OF APPEARANCE

Pursuant to Section 2.713 of the Rules of Practice of the Nuclear Regulatory Commission, the undersigned attorney herewith enters an appearance in the above-captioned proceeding.

Name

Harry H. Voigt

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Telephone Number

(202) 457-7500

Basis of Eligibility

Admitted to the District of
Columbia Court of Appeals

Representation

Numerous employees of Metropolitan
Edison Company during 1978-79

Harry H. Voigt

Harry H. Voigt

Dated: January 31, 1986

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Pursuant to Section 2.713 of the Rules of Practice of the Nuclear Regulatory Commission, the undersigned attorney herewith enters an appearance in the above-captioned proceeding.

Name	William G. Primps
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Basis of Eligibility	Admitted to the United States Court of Appeals for the Second Circuit
Representation	Numerous employees of Metropolitan Edison Company during 1978-79



William G. Primps

Dated: January 31, 1986

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Pursuant to Section 2.713 of the Rules of Practice of the Nuclear Regulatory Commission, the undersigned attorney herewith enters an appearance in the above-captioned proceeding.

Name	Michael F. McBride
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Telephone Number	(202) 457-7500
Basis of Eligibility	Admitted to the United States Supreme Court
Representation	Numerous employees of Metropolitan Edison Company during 1978-79

Michael F. McBride

Michael F. McBride

Dated: January 31, 1986

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Pursuant to Section 2.713 of the Rules of Practice of the
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herewith enters an appearance in the above-captioned proceeding.

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Basis of Eligibility	Admitted to the Court of Appeals for the State of New York
Representation	Numerous employees of Metropolitan Edison Company during 1978-79


Molly S. Boast

Dated: January 31, 1986

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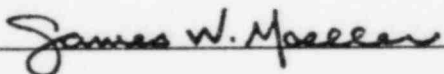
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Pursuant to Section 2.713 of the Rules of Practice of the Nuclear Regulatory Commission, the undersigned attorney herewith enters an appearance in the above-captioned proceeding.

Name	James W. Moeller
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Telephone Number	(202) 457-7500
Basis of Eligibility	Admitted to the District of Columbia Court of Appeals
Representation	Numerous employees of Metropolitan Edison Company during 1978-79


James W. Moeller

Dated: January 31, 1986

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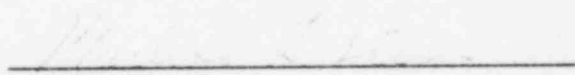
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Pursuant to Section 2.713 of the Rules of Practice of the Nuclear Regulatory Commission, the undersigned attorney herewith enters an appearance in the above-captioned proceeding.

Name	Marlene L. Stein
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Telephone Number	(202) 457-7500
Basis of Eligibility	Admitted to the Supreme Judicial Court of Massachusetts
Representation	Numerous employees of Metropolitan Edison Company during 1978-79



Marlene L. Stein

Dated: January 31, 1986

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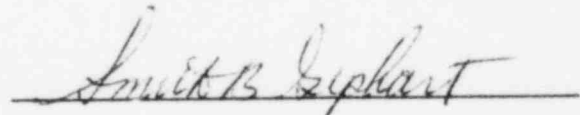
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Pursuant to Section 2.713 of the Rules of Practice of the Nuclear Regulatory Commission, the undersigned attorney herewith enters an appearance in the above-captioned proceeding.

Name	Smith B. Gephart
Address	Killian & Gephart 216-218 Pine Street P.O. Box 886 Harrisburg, PA 17108
Telephone Number	(717) 232-1851
Basis of Eligibility	Admitted to the United States Supreme Court
Representation	Numerous employees of Metropolitan Edison Company during 1978-79



Smith B. Gephart

Dated: January 31, 1986

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Pursuant to Section 2.713 of the Rules of Practice of the Nuclear Regulatory Commission, the undersigned attorney herewith enters an appearance in the above-captioned proceeding.

Name

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Telephone Number

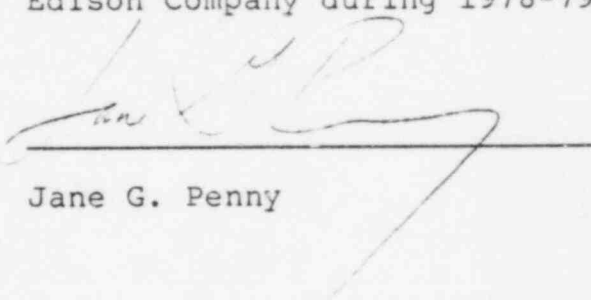
(717) 232-1851

Basis of Eligibility

Admitted to the Supreme Court of
Pennsylvania

Representation

Numerous employees of Metropolitan
Edison Company during 1978-79


Jane G. Penny

Dated: January 31, 1986

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Name	Terrence J. McGowan
Address	Killian & Gephart 216-218 Pine Street P.O. Box 886 Harrisburg, PA 17108
Telephone Number	(717) 232-1851
Basis of Eligibility	Admitted to the Supreme Court of Pennsylvania
Representation	Numerous employees of Metropolitan Edison Company during 1978-79

Terrence J. McGowan
Terrence J. McGowan

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CERTIFICATE OF SERVICE

I hereby certify that I have served copies of "Petition of Numerous 1978-79 Employees of Metropolitan Edison Company for Leave to Intervene," "Response of Numerous 1978-79 Employees of Metropolitan Edison Company to Petition of Marvin I. Lewis to Intervene," and "Notice of Appearance" for Harry H. Voigt, William G. Primps, Michael F. McBride, Molly S. Boast, James W. Moeller, Marlene L. Stein, Smith B. Gephart, Jane G. Penny, and for Terrance L. McGowan, by deposit in the United States mail, first class, postage prepaid, or, as indicated by an asterik, by hand delivery, to the following persons this 31st day of January 1986:

*Administrative Judge James L. Kelly, Chairman
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

*Administrative Judge Glenn O. Bright
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

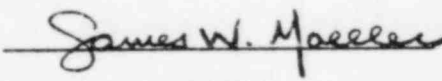
*Administrative Judge Jerry R. Kline
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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