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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND  
LICENSING BOARD

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

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STATEMENT OF THE PENNSYLVANIA  
OFFICE OF CONSUMER ADVOCATE REGARDING PETITION  
FOR LEAVE TO PARTICIPATE AS AN INTERESTED  
STATE AGENCY

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1. On August 15, 1979 the Pennsylvania Office of Consumer Advocate filed with this Honorable Board a Petition for Leave to Participate in the above-captioned action, pursuant to 10 CFR 2.715(c). Such participation would be as a matter of right for representatives of an interested State agency.

2. The Nuclear Regulatory Commission Staff (Staff), on September 4, 1979, filed a Response to this and other governmental petitions. The Staff stated therein that it "does not now oppose the participation of any of these petitioners." The Staff Response then questioned this Office's participation under §2.715(c) on the ground that the Consumer Advocate sought to represent "the economic interests of ratepayer consumers", which was not "within the zone of interests

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sought to be protected by the Atomic Energy Act and National Environmental Policy Act."

In a Memorandum and Order Ruling on Petitions and Setting Special Prehearing Conference, issued September 21, 1979 in the above-captioned action (hereinafter Memorandum and Order), this Honorable Board deferred rendering a final decision on the Consumer Advocate's Petition and requested that the Consumer Advocate submit a statement or report addressing: (1) the specific subject matter on which the Consumer Advocate wishes to participate; (2) how that subject matter pertains to the responsibilities of his Office; and (3) the result of a suggested conference with counsel for the Pennsylvania Public Utility Commission regarding that agency's representation of the interests of the Consumer Advocate or consolidated participation between the Consumer Advocate and the Commission in the above-captioned action. This statement is filed pursuant to that request.

4. The Consumer Advocate respectfully represents that he should be permitted to participate, not as a matter of this Honorable Board's discretion, but as a matter of right under 10 CFR §2.715(c), which states in pertinent part: "The presiding officer will afford representatives of an interested State. . . and/or agencies thereof, a reasonable opportunity to participate. . . ." (Emphasis added.)

5. The Office of Consumer Advocate was created by the Pennsylvania General Assembly in 1976 as an independent state agency authorized to represent the "interest of consumers" before state and federal regulatory commissions. The Consumer Advocate by statute has broad discretion to

define and interpret that phrase and is required to file a written Public Statement at the time of intervention in any proceeding "stating concisely the specific interest of consumers to be protected." 71 Pa. C.S.A. §309-2 and 309-4.

6. The Consumer Advocate thus has the broad duty "to represent the interest of consumers as a party. . . before the [Pennsylvania Public Utility] Commission in any matter properly before the commission." (Emphasis added.) 71 Pa. C.S.A. §309-4(a). Therefore, the subject matter jurisdiction (although not the interest) of the Consumer Advocate is, in this respect, identical to and coincidental with that of the Pennsylvania Public Utility Commission (PUC) as delineated under the Public Utility Code of Pennsylvania.

7. This Honorable Board has granted the Public Utility Commission participant status in the above-captioned proceeding under §2.715(c), on the ground that the responsibilities of the PUC "relevant to the safe, adequate and reliable generation of electricity comprise appropriate interest and standing to participate." Memorandum and Order at 4. This is the very same subject matter jurisdiction and framework within which the Consumer Advocate operates in representing the interest of consumers. Therefore, it would be inconsistent and erroneous for this Honorable Board to deny §2.715(c) standing to the Consumer Advocate while properly and wisely granting such status to the PUC.

8. Pursuant to the direction of this Honorable Board in its Memorandum and Order, the Consumer Advocate conferred with counsel for the Public Utility Commission (Deputy Chief Counsel Steven A. McClaren)

and can report agreement that there exists a fundamental difference in roles between the two parties. Further, both counsel believe that the separate representation and presence of both agencies in the instant proceeding can add strength to the overall development of a sound and thorough record on which this Honorable Board can make a most informed decision. For example, there may be instances where counsel for the PUC may be unable to take firm positions on given issues in this forum because related issues may come in front of the members of the Public Utility Commission for decision. In such instances, the Consumer Advocate would not suffer from the same restrictions and would be able more freely to offer testimony and express opinions.

9. Counsel further agree that this issue and the rationale behind their joint understanding of the perspective with which each agency must function can be expanded upon at the Special Prehearing Conference. Briefly, while the subject matter jurisdiction of the Pennsylvania Public Utility Commission and the Consumer Advocate is coincidental, the interest to be served is different. The Consumer Advocate must act in the consumers' interest, not in the more general public interest. Thus, the PUC must also consider the interest of the utilities under its regulation, the concerns of the investment community, and the general welfare of the Commonwealth of Pennsylvania. Positions taken by the PUC in the instant proceedings will not necessarily coincide with the interest of Pennsylvania consumers as this interest must be defined under the law by the Consumer Advocate. For this reason, it would be inappropriate to require the Consumer Advocate to be represented

by counsel for the PUC or to suggest a consolidated presentation by the two parties.

10. It is the statutory duty of the Consumer Advocate to address, before any relevant agency, matters affecting Pennsylvania utility consumers. This would include the continuing financial viability of the Metropolitan Edison Company (Met-Ed) and the prospective ability of Met-Ed to provide safe, adequate, efficient, and reliable service.

11. The Office of Consumer Advocate is intimately familiar with the financial status of General Public Utilities (GPU) and its two Pennsylvania subsidiaries, Met-Ed and Pennsylvania Electric Company (Penelec), and has the capability to offer special assistance and insight to this Honorable Board in grappling with these issues. During the past two years, this Office litigated each of the two rate relief requests that each of these operating companies brought before the Public Utility Commission. Furthermore, between April and June of 1979, this Office was deeply involved in the special consolidated TMI-2 related rate proceeding before the PUC. Each of these five cases involved an in-depth analysis of GPU's service and business operations. Consequently, the Consumer Advocate has had a particularly good opportunity to become intimately familiar with the economic and financial picture that faces, and is likely to face, Met-Ed and GPU.

12. The service and financial problems confronting Met-Ed will be directly and expressly addressed by this Honorable Board in the instant action. Order and Notice of Hearing, August 9, 1979, at 4 and 7. Further, these issues will be studied by the Pennsylvania Public

Utility Commission in the near future, which consideration could be affected substantially by actions of this Honorable Board. Information gathered by the Consumer Advocate in hearings held in the instant case will be of great benefit, if not absolutely necessary, to its participation in hearings before the PUC. For example, in the rate-setting process both this Office and the PUC will need to be aware of all federal safety requirements which will have a cost impact.

13. The rules regarding §2.715(c) standing, interpreted through case law, clearly indicate that the Office of Consumer Advocate should be permitted to participate as an agency of an interested state.

In Exxon Nuclear Company, Inc., 6 NRC 518 (1977), the California Energy Resource Conservation and Development Commission (Energy Commission) petitioned the Atomic Safety and Licensing Board (ASLB) for leave to participate under §2.715(c) in hearings addressing the issue of whether Exxon should be permitted to construct a reprocessing plant in Tennessee. The California Energy Commission's Petition was based upon the argument that participation was necessary in order to secure information in the Tennessee proceedings relevant to its authority in California. The Petition was granted by the ASLB.

Upon appeal by Exxon, the ASLB decision was upheld by the Atomic Safety and Licensing Appeal Board (Appeal Board). Exxon Nuclear Company, Inc., 6 NRC 873 (1977). Chairman Sharfman stated the general rule: "Once it is determined that a state is an interested State within the rule's meaning, its right to take part in the proceedings is established. The right is not dependent on discretionary factors." Id. at 878.

Mr. Salzman, a member of the Appeal Board, stated the policy considerations underlying §2.715(c):

What is at stake is the agency's right to participate in the development of the record, to ensure that matters of particular concern to California are fully explored, to ask hard questions about them and probe the answers given. . . without demanding that they prejudge the situation. . . . In short, in our proceedings a state agency is not to be analogized to a private party but enjoys a more advantageous position precisely because it represents an aspect of the public interest." Id. at 879.

Mr. Salzman concluded: "In the long run, public confidence in our ability to regulate nuclear power responsibly in an evenhanded, dispassionate manner is ill-served by closed hearings and a crabbed reading of regulations." Id. These considerations are of paramount importance in the instant proceeding, where the attention of the citizens of the Commonwealth of Pennsylvania and, indeed, the entire country is focused upon the actions of this Honorable Board.

Under NRC case law, §2.715(c) is thus interpreted broadly and liberally to allow participation by interested states and agencies thereof, even in other instances where the state seeking to participate is not the situs of the plant in issue and where the state's interest may be informational only.

14. The Consumer Advocate desires to participate in the issue of Metropolitan Edison's financial qualifications as they affect its ability to safely operate Three Mile Island's Unit No. 1 (TMI-1). The issue of the continuing financial capabilities of Met-Ed involves numerous sub-issues including but not necessarily limited to:

- (a) the ability of Met-Ed to perform necessary maintenance and repairs in a timely and responsible manner without

compromising the integrity of TMI-1 or endangering the surrounding community;

- (b) the ability of Metropolitan Edison to adequately train its personnel to safely operate TMI-1;
- (c) the ability of the Company to safely and adequately decontaminate TMI-2 if it should be operating TMI-1 at the same time;
- (d) the ability of Met-Ed to ensure that adequate safeguards are available to protect the general public should another accident occur at the TMI site; and
- (e) the ability of Met-Ed to comply with NRC Rules, Regulations, and/or orders requiring technical changes in the nuclear units at Three Mile Island.

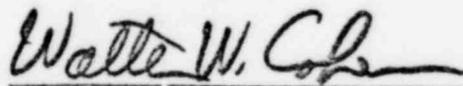
15. The emphasis placed in the Consumer Advocate's Public Statement on the economic interest of ratepayers did not mean to imply that this Office is not concerned with safety issues. Perhaps the requirement for filing a detailed Public Statement, placed on this Office in its enabling legislation, has prejudiced its position through the initial delineation of concerns in far greater depth than the brief Petition of the Public Utility Commission or the even briefer Petition of the Commonwealth of Pennsylvania. The Consumer Advocate contends that questions of financial capabilities are not readily separated from questions of safety, especially when the utility in question is in the precarious financial condition in which Met-Ed currently finds itself following the TMI-2 accident. The financial qualifications of Met-Ed to run the Three Mile Island plant safely have properly been placed in issue by the Nuclear Regulatory Commission in its Order and Notice of Hearing. The management capability of the Company is significantly related to safety of operation of its plant. Such a facility cannot be

made to operate safely by imposition of technical requirements unless the Company has adequate financial and management capabilities. On the other hand, an adequately financed company is worthless without a safely operated generation plant.

16. The consumers of the Metropolitan Edison and Pennsylvania Electric systems will ultimately be the resources called upon to fund the companies. Lacking any effective voice in the management of the companies, these consumers deserve at least to have representation from their statutorily designated counsel in proceedings which ultimately will affect them. The Consumer Advocate has the responsibility to provide this assistance on ensuring through effective advocacy both economy and safety of operation for the Company's ratepayers.

WHEREFORE, The Consumer Advocate respectfully requests that this Honorable Board grant the Consumer Advocate's Petition for Leave to Participate in the above-captioned action under 10 CFR §2.715(c) for the reasons above enumerated and to address the issues above delineated.

Respectfully Submitted,



Walter W. Cohen  
Consumer Advocate

Date: October 22, 1979

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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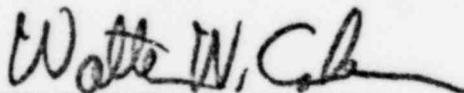
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CERTIFICATE OF SERVICE

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I, Walter W. Cohen, hereby certify that I have this 22nd day of October, 1979 served copies of the attached statement of the Pennsylvania Office of Consumer Advocate Regarding Petition For Leave To Participate As An Interested State Agency on each of the persons named in the attached service list by causing the same to be deposited in envelopes addressed to said persons, first class, postage prepaid, and deposited with the United States Postal Service at 813 Market Street, Harrisburg, Pennsylvania 17105.

Respectfully submitted,



Walter W. Cohen  
Consumer Advocate

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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(Three Mile Island, Unit 1) :

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