DISTRIBUTION:

Docket No. 50-320	HRDenton	GErtter (EDO#90
NRC PDR w/incoming	EGCase	AFerguson
Local PDR w/incoming	PPAS	MDuncan
IERA w/incoming	BGrimes	HThompson
NRR r/f	DEisenhut	RReid
EDO r/f	RHVollmer	SECY (3) 80-106
TMI:PO r/f w/incoming	DRoss	
TMI Site r/f w/incoming	SHanauer	
BJSnyder	RMattson	
JCollins	Attorney, ELD	
WOliu w/incoming	OCA	

JUL 22 1980

Docket No. 50-320

The Honorable Robert S. Walker
United States House of
Representatives
Washington, D. C. 20515

Dear Congressman Walker:

I am writing in response to your letter of April 22, 1980, to Mr. Frank Moore, Assistant to the President for Congressional Liaison, regarding a letter from three Lebanon (Pa.) County Commissioners of April 8, 1980. These officials propose that purchased-power and cleanup costs associated with Three Mile Island be shared by power companies throughout the United States.

The Pennsylvania Public Utility Commission (PUC), in a Decision and Order of June 15, 1979, and reaffirmed in an Order of May 23, 1980, ruled on the allocation of the financial burden resulting from the March 28, 1979, accident. A copy of each of these decisions is enclosed for your information.

While we are, of course, concerned about financial impacts on consumers, the NRC's primary responsibility is the assurance of public health and safety. State public utility commissions and the Federal Energy Regulatory Commission have sole responsibility regarding the rates that consumers pay for electricity. A national cost-sharing proposal affecting one or more utilities would require action by and cooperation among these organizations.

Sincerely,

(Signed) T. A. Rehm

William J. Dircks, Acting
Executive Director for Operations

Enclosures:
1. PUC Order dated June 15, 1979
2. PUC Order dated May 23, 1980

bcc: Mary Martha Seal, Director
Correspondence Agency Liaison
White House

THIS DOCUMENT CONTAINS POOR QUALITY PAGES

OCA

8008050045

*NOTE: SEE PREVIOUS YELLOW FOR CONCURRENCE 7/ /80

OFFICE	TMI PO	DIR/TMI PO	OELD	D:DIR/NRR	DIR/NRR	EDO
SURNAME	*WOliu/hmt	*BJSnyder	*LJChandler	EGCase	HRDenton	WJDircks
DATE	6/13/80	6/16/80	6/20/80	7/ /80	7/ /80	7/ /80

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held June 15, 1979

Commissioners Present:

W. Wilson Goode, Chairman
Louis J. Carter, concurring in part and dissenting in part
Michael Johnson

Pennsylvania Public Utility
Commission, et al.
v.
Metropolitan Edison Company
and
Pennsylvania Electric Company,
Respondents

Docket No. I-79040308

O R D E R

BY THE COMMISSION:

In the early hours of the morning of March 28, 1979 an incident began at the Three Mile Island Power Station operated by Metropolitan Edison Company. A major consequence of that incident has been the loss of more than 1600 megawatts of generating capacity and the required purchase of tens of millions of dollars of power. This proceeding requires an answer to the question: Who shall pay for the costs of that incident?

The issues before the Commission are far more complex than the question implies; and even now the costs and the causes of the incident are not fully known. Nevertheless, most reasonable and knowledgeable persons would support the central determination of the Commission that the ratepayers of Metropolitan Edison Company ("Met Ed") and Pennsylvania Electric Company ("Penelec") should be no worse off - and no better off - because of the incident. The ratepayers should not pay for the costs of the incident; nor should they benefit from it. They should not pay the costs of a plant rendered useless through no fault of their own; nor should they receive needed electric power without payment.

The level of service provided by Met Ed and Penelec is unchanged. The net result of the Commission's findings in this order is that the

total rates of Met Ed and Penelec will be no higher than if the incident at Three Mile Island had never occurred. 1/

On April 19, 1979, the Commission responded to the incident at the Three Mile Island Power Station ("TMI") by taking the following actions: The increased rates of Met Ed which were recently determined at R-78060626 were made final and effective on April 19, 1979. Temporary rates were then set for Met Ed, effective immediately pursuant to Section 1310(of the Public Utility Code, based upon the determinations at R-78060626 and the removal from base rates of costs associated with Unit No. 2 at Three Mile Island ("TMI-2"). Also, Commission complaints were issued against the base rates and energy cost rates of Met Ed and Penelec alleging excessive, unjust and unreasonable rates as a result of the incident at TMI.

On April 25, 1979, the Commission set temporary rates for Penelec, effective immediately pursuant to Section 1310(d) of the Public Utility Code, based upon the recent determinations at R-78040599 (Penelec's last rate case) and the removal from base rates of costs associated with TMI-2. An omnibus investigation docket was opened at I-79040308 at which were consolidated the Commission complaints and the temporary rate orders, as well as the complaints of the Consumer Advocate against the base rates and energy cost rates of Penelec and the energy cost rates of Met Ed. 2/ Subsequently, the Respondents, Met Ed and Penelec, filed complaints against the temporary rates as set by the Commission.

A prehearing conference on the consolidated proceedings was held on April 24, 1979, at which the parties stipulated to the use of the test periods in the last rate cases of Met Ed and Penelec. The Commission proceeded expeditiously and held hearings sitting en banc. A total of ten days of hearings were held between May 2 and June 1, 1979 in Harrisburg, Johnstown and Reading. Evidence was presented by Met Ed and Penelec, the Staff, the Consumer Advocate, Senior Power Action Group, Charles M. Brosenne, and Holly S. Keck. More than 1800 pages of testimony were transcribed.

1/ This statement is based upon a comparison of the average revenues to be derived from the rates set in this order with the average revenues which would have been derived from base rates including the costs of TMI-2 and the energy rates charged prior to the incident at TMI-2.

2/ Several other complaints and petitions to intervene were consolidated at I-79040308. The parties to the proceeding at the close of the record include Staff; Consumer Advocate; Respondents, Met Ed and Penelec; St. Regis Paper Company, et al.; Bethlehem Steel Corporation; Senior Power Action Group of York, et al.; Holly S. Keck; Titanium Metals Corp.; Birdsboro Corp.; Martin G. & Rose Ann Hamberger; Charles M. Brosenne; Deep Run Farms, Inc.; Philip L. Nester, Jr.; and various other industrial customers of Respondents.

Petitions were filed on May 8, 1979 by Met Ed and Penelec requesting that the energy cost rates of the two utilities be modified to immediately reflect the current costs of purchased power and that Met Ed be allowed to accelerate the recovery of certain deferred energy costs. The Commission acted at its Public Meeting on May 10, 1979 to defer action on the petitions until the close of these proceedings. The petitions will be addressed in this order.

The parties filed briefs on June 11, 1979; oral argument was heard on June 13, 1979.

From the outset the Commission has believed it to be in the public interest to proceed expeditiously consistent with the development of an adequate record and a reasonable opportunity for all interested parties to be heard. The Commission has met that public obligation, and by this order renders a decision on all matters properly before it.

The complaints of the Commission, the Consumer Advocate and other parties against Respondents' rates and of the Respondents against the temporary rates set by the Commission compel a redetermination of the rates of Met Ed and Penelec in light of the changes wrought by the incident at TMI. The Commission will, in this order, reassess the used and useful status of the TMI facilities and will determine any associated changes in operating expenses, depreciation and taxes which should be reflected in base rates.

As required by law, the Commission will set rates for Met Ed and Penelec which will provide a reasonable opportunity for those utilities to earn a fair return on the fair value of their used and useful property. However, the separate determinations of "fair rate of return" and "fair value" will be greatly simplified. The parties have stipulated to the use of the test years in the Respondents' last rate cases (R-78060626, Met Ed; R-78040599, Penelec). In addition, the records in those cases have been incorporated by reference into the present record. In the absence of any attempt by any of the parties to introduce specific evidence of changes in fair value or fair rate of return, the Commission is warranted in setting rates by adjusting the rate determinations so recently made. Consistent with the presentations of the parties and for ease of computation, the adjustments are calculated using original cost data. However, this should in no way be interpreted as an attempt to circumvent the required statutory findings.

Finally, and conclusively, the Respondents have waived a redetermination of their capital structure and rate of return for purposes of this proceeding. Witness John Graham, the Treasurer of the parent corporation, General Public Utilities Corporation ("GPU") stated:

"For purposes of this proceeding, the company is willing to accept as the way of looking at our earnings the allowed capital structure and rate of return in the last rate order." TR 1690.

The Staff and the Consumer Advocate agreed to this concession.

The counterpart to the base rate costs associated with the TMI facilities are the increased energy costs of meeting the service demands of Respondents' ratepayers. The energy costs will be segregated for purposes of analysis. However, only the net effect of such changes will be reflected in the actual rates of Met Ed and Penelec so as to minimize disruptive rate and tariff changes.

The Commission's view of the proper rate treatment of the clean up costs of the incident will be addressed in spite of the fact that no claim has been made for these costs. The substantial public concern and uncertainty with respect to these costs warrants a Commission declaration.

This order will not address the issues involving the causes of the incident or whether the design or operation of the plant was faulty. The Commission does not have the primary responsibility to determine those matters and has not developed a record adequate to make those determinations. However, the Commission will continue its investigation of the financing, construction and operation of TMI, and will apprise itself of the findings of the agencies and commissions which are presently investigating the causes of the incident. Ultimately, the causes and assignments of fault may impact upon whether Met Ed and Penelec have acted reasonably and prudently as regulated public utilities.

Another area of concern in this proceeding which will not be addressed in this order are the questions concerning the imminency of Respondents' insolvency or bankruptcy, the probable consequences of insolvency or bankruptcy, and the determination of whether the public interest inheres in the avoidance of bankruptcy. In spite of the general pleas of Respondents for financial aid through rate increases, which were plaintively repeated throughout these proceedings, the Commission is unpersuaded that there is any imminent threat of bankruptcy--particularly in light of the alacrity with which the Commission has acted and the determinations made herein.

A major obstacle to the Commission throughout this proceeding has been the inability and/or unwillingness of Respondents to directly and effectively address the issues. GPU and its companies have demonstrated obtuseness, inability to focus, and a lack of direction. If the Commission errs in its assessment that insolvency or bankruptcy is not imminent, the cause will be the failure of Respondents to clearly and concisely describe its financial position, alternative courses of action, and the

point at which rate relief is mandatory. The performance of the GPU companies before this Commission calls into question the capability of its management and lends urgency to the investigation and management audit which we will require in this order.

The rate determinations announced in this order are the required actions in this proceeding, but they do not comprise a complete regulatory response to the incident at TMI. Therefore, at the end of this order, the Commission will set forth additional matters in response to this troubling event.

Three Mile Island, Unit No. 2 (TMI-2)

A public utility is entitled to earn a return on only that property and investment which is required or used in order to provide utility service. In terms of the Public Utility Code, a public utility must be allowed to charge rates which will permit it to earn a fair return on the fair value of its property which is "used and useful in the public service". A public utility is entitled to neither a return on, nor the recovery of expenses associated with, property which is not used and useful in providing utility service.

At issue before the Commission is whether, in light of the incident at TMI-2, the unit is presently used and useful in the public service. Upon this question hinges the recovery of millions of dollars annually in the base rates of Met Ed and Penelec. Temporary rates were set for Met Ed and Penelec based upon the initial conclusion of the Commission that TMI-2 is not presently used and useful in the public service.

The term "used and useful" has two principal connotations: first, with respect to whether the investment is related to the provision of utility service; and second, with respect to whether a related investment is or will be useful during period in which the rates are to be in effect. It is the latter sense of the phrase with which we are concerned here.

Courts and commissions have dealt with the problem of plant which is out of service for a substantial length of time. Evansville v. Southern Indiana Gas & Electric Co., Ind. App. Ct., 339 N.E. 2d 562 (1975); Pa. P.U.C. v. West Penn Power Co., 25 P.U.R. 4th 492 (1978); Re New Jersey Bell Telephone Co., Docket No. 709-494 (January 13, 1972). However, we find that none of the cases are totally apt to the facts in this case.

The decisions appear to reflect a rational principle which we find appropriate in this case. The length of time which utility plant may be out of service and not be removed from rate base depends upon the nature of the plant, the degree to which the outage can be expected to

occur during normal operation of the plant, and the certainty with which resumption of service can be predicted. An example of an outage which will not require a rate base adjustment would be the outage of a generating plant for several weeks for unscheduled maintenance. Generating plant by its nature cannot be operated continuously without periodic maintenance. Outages of several days to several months duration, whether scheduled or forced, are typical of the normal operation of such plant; and the resumption of service is reasonably certain.

The incide t in the nuclear reactor of TMI-2 is in sharp contrast to the example. Nuclear generating plants by their nature are not expected to experience outages of two to four years (as has been estimated by Met Ed, the plant's operator). Nor, we hope, will anyone attempt to argue that near-disasters such as began on March 28, 1979 at TMI-2, are routine events in the life of a nuclear plant. Finally, there is great uncertainty with respect to when, and in fact if ever, TMI-2 will resume operation. Respondents estimate that TMI-2 will be out of service for two to four years. However, no one has been able to determine the extent of damage to the fuel core. Design and operation changes may be ordered by the Nuclear Regulatory Commission, but these are as yet unknown. Public sentiment has been expressed against the renewed operation of TMI-2; and the cost of repair, clean up and waste removal may be so high as to make restoration of the plant uneconomic.

The Commission finds that Three Mile Island Power Station, Unit No. 2 is not used and useful property in the public service. All of the costs associated with that unit must be removed from the base rates of Met Ed and Penelec.

Three Mile Island, Unit No. 1 (TMI-1)

The parties have raised the issue of the used and useful status of TMI; however, the Commission need not reach that issue at this time. Consistent with the principles discussed with respect to TMI-2, TMI-1 is at present only experiencing an outage. TMI-1 was out of service for a scheduled refueling when the incident at TMI-2 occurred. Its resumption has been delayed, and it is now experiencing an unscheduled outage. At this time it appears reasonably certain that TMI-1 will return to service. Witness Herman Dieckamp, President of GPU, testified that resumption of generation at TMI-1 could occur as early as August, 1979, and certainly no later than January 1, 1980. 3/

However, the Commission will monitor the status of TMI-1. We will require Met Ed to report to the Commission monthly on the progress in returning TMI-1 to service. If that start-up is delayed beyond January 1, 1980, the Commission will issue an order to show cause why TMI-1 should be considered used and useful in the public service.

3/ TR. 1551-1553.

Base Rates of Metropolitan Edison Company

On April 19, 1979, the Commission set temporary base rates for Met Ed based upon the determinations at R-78060626 and the removal of the costs associated with TMI-2. The calculation of these temporary rates, representing a reduction in Met Ed's rates calculated to reduce annual revenues $49,178,000, was necessarily approximate. In light of our determination after hearing that TMI-2 is not used and useful, and therefore must be removed from rate base, a more rigorous determination must be made of the required reduction in Met Ed's rates.

Detailed testimony on the calculation of the costs associated with TMI-2 was presented by GPU's treasurer, John Graham and by Staff witness, Charles Smetak. Only relatively minor differences separate the testimony of these two witnesses. We find the calculations of Staff witness Smetak to reflect the appropriate adjustment of Met Ed's base rates to remove costs associated with TMI-2. Met Ed's base rates shall be further reduced by an amount calculated to produce $2,982,000 annually.

This determination of Met Ed's base rates incorporates the Commission's previous findings with respect to the fair value of Met Ed's property and Respondent's fair rate of return. With the adjustment to remove the costs associated with TMI-2, we find that the resulting rates will provide Met Ed a reasonable opportunity to earn a fair return on the fair value of its used and useful property.

Although the Commission elsewhere in this order will offset the just-determined reduction in Met Ed's base rates through an accelerated recovery of deferred energy costs, the essential finding is that Met Ed may not recover any costs associated with TMI-2.

Base Rates of Pennsylvania Electric Company

On April 25, 1979, the Commission set temporary base rates for Penelec based upon the determinations at R-78040599 and the removal of the costs associated with TMI-2. As with the temporary rates of Met Ed, the calculation of these temporary rates, representing a reduction in Penelec's rates calculated to reduce annual revenues $25,000,000, was necessarily approximate. In light of our determination after hearing that TMI-2 is not used and useful, and therefore must be removed from rate base, a more rigorous determination must be made of the required reduction in Penelec's rates.

Again, as with Met Ed's rates, we find the calculation of Staff witness Smetak to reflect the appropriate adjustment of Penelec's base rates to remove the costs associated with TMI-2. Penelec's base rates shall be further reduced by an amount calculated to produce $1,635,000 annually.

This determination of Penelec's base rates incorporates the Commission's previous findings with respect to the fair value of Penelec's property and Respondent's fair rate of return. With the adjustment to remove the costs associated with TMI-2, we find that the resulting rates will provide Penelec a reasonable opportunity to earn a fair return on the fair value of its used and useful property.

Although the Commission elsewhere in this order will offset the just-determined reduction in Penelec's base rates through an accelerated recovery of deferred energy costs, the essential finding is that Penelec may not recover any costs associated with TMI-2.

Energy Costs - General

The Commission has determined that TMI-2 is not used and useful in the public service. As a consequence, none of the costs associated with TMI-2 may be recovered from the Respondents' ratepayers. As the same time, the Commission recognizes that Met Ed and Penelec have continued to provide adequate, reliable electric service in spite of the loss of generation at TMI. Continued service to the customers of Met Ed and Penelec requires large purchases of power.

The Respondents could have reduced the level of service they are providing; or they could have made maximum use of their existing plants, many of which have higher operating costs than the costs of purchased power. These alternatives, in the opinion of the Commission, would not have been in the public interest. Instead, Met Ed and Penelec have taken advantage of the benefits of the Pennsylvania-New Jersey-Maryland Interconnection ("PJM") and other power pools and have purchased energy from other utilities on an economy basis. We find this to be in the public interest.

In addition, Respondents have entered into contracts with the Allegheny Power System and Pennsylvania Power & Light Company for the purchase of energy on a cost basis, thereby avoiding the added cost of "split-savings" pricing which is typical in sales between interconnected utilities. We find these efforts also to be in the public interest. Cf. Order adopted June 7, 1979 at Docket No. P-79060181 (Petition of Pennsylvania Power & Light Company for Declaratory Order).

Although elsewhere in this order we will require Met Ed and Penelec to take additional steps to further reduce its costs, the purchase of energy from interconnected utilities must be viewed as in the best interests of Respondents' customers when compared to the alternatives of reducing the level of service or utilizing higher cost generation. The purchase of energy is a reasonable and necessary cost of providing service which must be recovered from ratepayers. Service cannot be

provided without cost. It is equitable for the ratepayers of Met Ed and Penelec to pay the costs of purchasing power since they are receiving service and will be paying none of the costs of TMI-2. With the levelized energy charge over 18 months which we will order here, the total rates for electric service to the customers of Met Ed and Penelec will be no greater than the rates which would have been allowed had the incident never occurred.4/ We believe this accomplishes a fair and just result for all concerned.

Deferred Energy Costs

Met Ed and Penelec have deferred the recovery of millions of dollars of energy costs for reasons unrelated to the operation or loss of TMI-2. In response to the nationwide coal strike of 1977-78, the Commission placed a ceiling on the energy clauses of all major electric utilities, including Met Ed and Penelec. This ceiling or restriction on Respondents' energy clauses, imposed from March 1978 through June 1978 required the deferral of legitimate and necessary fuel costs. In addition, on March 1, 1978, the Commission mandated (at Investigation Docket No. 214) a uniform net energy cost rate for all major electric utilities. The transition to the new energy cost rate caused another lag in the recovery of legitimate energy costs incurred by Met Ed and Penelec.

The recovery of these deferred costs by Met Ed was approved at R-78060626 (Met Ed's last general rate increase). The Commission allowed Met Ed to amortize $14,021,000 of deferred energy costs over five years. The annual recoverable expense of $2,804,000 was included in the calculation of Respondent's rates. Subsequently, in setting temporary rates for Met Ed, the Commission did not remove from base rates the annual recovery of $2,804,000 of deferred energy costs, and therefore those costs are now being recovered.

The recovery of the deferred costs by Penelec was approved at R-78040599 (Penelec's last general rate increase). The Commission allowed Penelec to amortize $19,380,000 of deferred energy costs over five years. The annual recoverable expense of $3,876,000 was included in the calculation of respondent's rates. Subsequently, in setting temporary rates for Penelec, the Commission did not remove from base rates the annual recovery of $3,876,000 of deferred energy costs, and therefore those costs are now being recovered.

The issue with respect to these deferred energy costs is whether the Commission should accelerate their recovery. In normal times, the Commission generally requires an amortization of expenses such as these over a period of five years. However, these are not

---

4/ See footnote 1.

normal times. The record before the Commission reflects that Respondents' short-term cash needs have increased dramatically. Therefore, the Commission finds it appropriate to accelerate the recovery of the deferred energy costs of Met Ed and Penelec by the amounts which their respective base rates have been reduced in this order to remove the costs associated with TMI-2.

The Commission will order an increase in the annual recovery of deferred energy costs by Met Ed of $2,982,000, so that the total annual recovery of these costs through base rates will be $5,786,000. Similarly, the Commission will order an increase in the annual recovery of deferred energy costs by Penelec of $1,635,000, so that the total annual recovery of these costs through base rates will be $5,511,000.

The net effect of these changes will be to leave the base rates of Met Ed and Penelec at the level of the existing temporary rates. The accelerated recovery of these deferred energy costs will reduce the costs of financing these deferrals, and will increase Respondents' cash flow without an increase in the total costs to be paid by the ratepayers.

Purchased Energy Costs

As stated elsewhere in this order, the Commission finds, in light of the denial of the recovery of all costs associated with TMI-2, that the recovery from ratepayers of the costs of purchased power accomplishes a fair, just and equitable result. Met Ed and Penelec are presently providing reasonable, adequate, reliable electric service. The costs of purchasing power are unquestionably direct, necessary and reasonable costs of providing that utility service. The Commission cannot punish Respondents by denying the recovery of these costs; nor can it create a windfall for the ratepayers of service without payment. The Commission is of the opinion that the recovery of these costs is required by law. The remaining question is -- What is to be the level of recovery?

The Staff, Consumer Advocate and the Respondents all assert that the energy cost rate of Met Ed should be levelized over a period of 18 months. Without such a "leveling" of the cost rate, the rate will fluctuate from a low in May 1979 of 3.1 mills to more than 15 mills during the winter of 1979-80. In order to avoid the hardships such changes could impose on Met Ed's ratepayers, we will order the implementation of an energy cost rate levelized over a period of 18 months.

Although the Commission is certain that the recovery of purchased energy costs must be allowed, there is less certainty as to the amount. The only figures before us are those provided by Respondents. The calculations are based on projections of costs and estimates of sales.

No effort has been made to anticipate conservation by Met Ed's customers or additional contracts for the purchase of energy. If the Commission is to err, it will be in the direction of setting a cost rate which encourages Met Ed to further reduce its costs. Also, we will assume, as advocated by the witness for the Consumer Advocate, that Met Ed will be able to obtain additional savings through contracts for the purchase of energy. Finally, it appears that the use of data for the period over which the charge is to be collected (18 months, rather than 20 months) is most appropriate.

We find a levelized-rate of 8.8 mills above base rates is the appropriate cost rate for Met Ed, derived as follows:

	Costs (millions)		Usage (GWH)		Cost Rate (mills/kwh)
	$228.8	(a)	13,514	(a)	17.0
May	(14.0)	(b)	(627)	(b)	
June	(13.7)	(b)	(630)	(b)	
	$201.1		12,257		16.4

	16.4	total energy cost
	(8.0)	less amount in base rates
	8.4	amount to be recovered through energy cost rate
x	1.047	Gross Receipts Tax Multiplier
	8.8	levelized energy cost rate

Source:

(a) Consumer Advocate exhibit, Madan Schedule 1
(b) Met Ed and Penelec exhibit A-28

While the energy cost rate of Penelec is not expected to fluctuate as greatly as Met Ed's, we find the implementation of an energy cost rate levelized over 18 months to be in the public interest. Similarly, we find that a levelized-rate of 6.5 mills above base rates is the appropriate cost rate for Penelec, derived as follows:

	Costs (millions)		Usage (GWH)		Cost Rate (mills/kwh)
	$305.7	(a)	19,032	(a)	16.1
May	(13.6)	(b)	(904)	(b)	
June	(12.8)	(b)	(872)	(b)	
	$279.3		17,256		16.2

	16.2	total energy cost
	(10.0)	less amount in base rates
	6.2	amount to be recovered through energy cost rate
x	1.047	Gross Receipts Tax Multiplier
	6.5	levelized energy cost rate

Source:

(a) Consumer Advocate exhibit, Madan Schedule 1
(b) Met Ed and Penelec exhibit A-28

Reserve Capacity (Demand) Charges

Normally, the energy cost rates of electric utilities include only the energy costs of purchased power. Demand or reserve capacity charges for purchased power are usually recovered through base rates which reflect only typical amounts of purchased power. Because of the unusually large amounts of power being purchased by Respondents, which include demand or reserve capacity charges, Respondents have requested approval to recover these demand costs through the net energy cost rate. The Consumer Advocate supports this request, while the Staff opposes the inclusion of demand costs in the energy charge.

As an incentive to Respondents to enter into bulk power purchase arrangements and thereby reduce the energy costs to its ratepayers, the Commission will allow Met Ed and Penelec to include in recoverable costs through the net energy cost rate, the demand or reserve capacity charges incurred from July 1, 1979 until January 1, 1980. No increase in the levelized cost rate will be allowed at this time in order to recover those amounts. However, those accounts may be recovered subsequently.

Clean Up Costs

Although no claim has been made for these costs, the Respondents have made much of the impact of these costs on the utilities' short-term financing needs. Also, the Commission recognizes the substantial public

concern and uncertainty regarding the recovery of these costs. That public concern and uncertainty mandates a declaration on this issue.

The Commission is of the view that none of the costs of responding to the incident, including repair, disposal of wastes and decontamination are recoverable from ratepayers. These costs are and should be insurable.

PURTA Refunds

During the course of these proceedings, the Respondents acknowledged their receipt of Public Utility Realty Tax ("PURTA") refunds from the Commonwealth of Pennsylvania. Specifically, Met Ed received a $9.2 million refund for the 1972-76 period and a $2.6 million refund for the 1977 period, for a total of $11.8 million, while Penelec received a $4.6 million refund for the 1972-76 period and a $1.3 million refund for the 1977 period, for a total of $5.9 million. These refunds arose because of a court decision favorable to Met Ed and Penelec.

The refunds represent monies collected from customers for a tax liability which after litigation has been eliminated. Without question, these refunds must be credited back to the customers of Met Ed and Penelec. The only substantial matter before the Commission is the method of repayment. The Commission Staff has advanced the proposition, through cross-examination, that the most appropriate vehicle for repayment is a credit applied to the state tax surcharge. Since the collection of the tax monies was made on a dollar surcharge basis, a repayment through base rates or on a usage basis through the energy cost rate would necessarily result in customers receiving refunds in amounts substantially different than the amounts previously paid. Although no system of repayment or refund to a changing mix of customers is perfect, we find merit in the Staff's proposal. The credit should be applied in the same manner that the monies were collected.

The Respondents, Met Ed and Penelec, will be ordered to repay the PURTA tax refunds through a credit to the state tax surcharge. Consistent with the determination to levelize the energy cost rates of Met Ed and Penelec for a period of 18 months, this credit of the tax refunds shall be accomplished over a similar 18 month period. Met Ed and Penelec shall separately account for the refunds so as to permit a subsequent Commission audit of the repayment of these amounts.

Low and Fixed Income, and Elderly Customers

The brief submitted by the Central Pennsylvania Legal Services on behalf of several groups and individual complainants was primarily concerned with the subject of the ability of low and fixed income and elderly customers to pay utility charges. Legal Services requests that any increases charged to low and fixed income and elderly customers be

either a small percentage of the amounts charged to other residential customers or in the alternative to exempt from any increase, the first 250 KWH of their residential use per month.

The brief raises the very real problems confronting the low fixed income and elderly utility customers and their ability to pay increased utility costs. The Commission, moreover, is deeply aware of the impact of double digit inflation on not only the utilities themselves but those who have to pay utility bills.

The Commission has, through its visits to communities throughout the state where it has met with and discussed these very problems with ratepayers in all economic circumstances, developed its own independent awareness and appreciation of many of the problems so graphically described by the Pennsylvania Legal Services.

The limited scope of these proceedings, confined as they are to the immediate consequences of the TMI incident, coupled with the harsh time restraints imposed upon us all, are not amenable to the kind of discussion, study and response that these grave problems warrant.

The Commission therefore concludes that it cannot at this time provide a definitive response to the issues raised by Central Pennsylvania Legal Services. These issues will be examined in the near future pursuant to Federal law requiring hearings on "lifeline" rates. (Sec. 114 of Public Utility Regulatory Policies Act, 1978, Pub. L. 95-617).

Other Considerations

The rate determinations in this order do not end the matter. The Commission believes that it has a responsibility to undertake a complete regulatory response to the accident at TMI-2. The public interest inheres not just in the determination of rates, but also in (a) Respondents' efforts to encourage conservation of energy, (b) the determination of whether Respondents' management has acted prudently and wisely, and is efficiently managing its utility operations, (c) Respondents' efforts to reduce the cost of purchased power through the modification of pricing arrangements, and (d) the consideration of legislative changes which will lessen the impact on ratepayers from such accidents. The balance of this order sets forth our concerns and actions in these areas.

Conservation of Energy

Met Ed and Penelec have projected that the quantity of electricity to be used by their customers will steadily increase throughout the remainder of 1979 and that there will be a dramatic increase in the cost of that power. Total system sales for the GPU system are projected to increase from 627 GWH in May 1979 to 717 GWH in December 1979.

Despite these projections of increased costs as a result of increased demands for electricity, Respondents' witness Euguene Carter testified that the management has neither undertaken, nor even considered, specific actions to encourage conservation by the ratepayers. The Commission is dismayed that Respondents have not attempted to implement conservation measures. This is particularly alarming since the costs of energy play such a significant role in respondents' financial problems. The Commission is of the opinion that the ratepayers of Met Ed and Penelec must be advised of the higher costs of meeting added demands for electricity and that they must be encouraged to take whatever measures they can to use electricity wisely.

We will order Met Ed and Penelec to submit within thirty (30) days after entry of this order for Commission approval conservation plans including, but not limited to, the following actions:

(a) the use of newspaper advertisements and bill stuffers to inform their ratepayers of the need to conserve electricity,

(b) the negotiation with ratepayers who have stand-by, emergency or self-generation facilities to make substantial use of such generation,

(c) the implementation of voluntary load curtailment pursuant to emergency fuel conservation tariff procedures filed in compliance with the Commission's order at Emergency Electric Regulation Docket No. 3,

(d) the implementation of a credit billing system which rewards conservation through a credit per kilowatt hour and reduces the bills of ratepayers who achieve at least 5% conservation, determined from past consumption in like periods, and thereby lessens the need for purchases of high cost energy,

(e) the proposed implementation of curtailment and conservation procedures for commercial and industrial ratepayers shall be accompanied by specific proposals to encourage such conservation through the elimination of "rachet" or historic demand charges and minimum bills for those ratepayers who do conserve and through the incremental pricing of usage in excess of the targeted conservation consumption for those ratepayers who do not conserve,

(f) the accelerated promotion of time-of-day and off-peak rates for residential customers.

The Commission's intent is for Respondents to undertake an aggressive, imaginative program of encouraging conservation in order to reduce its costs of purchasing power.

Pricing of Wholesale Purchases of Power

In accordance with typical agreements between interconnected electric utilities, economy dispatched energy is sold at a price midway between the cost of generation of the selling utility and the alternative generation cost to the buying utility - thereby "splitting" the savings between the buyer and the seller. Although the price at which electricity is sold at wholesale is subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC"), the cost of purchased power impacts directly on retail rates and therefore is of concern to this Commission.

Under conditions approaching an equilibrium where electric utilities each buy and sell roughly equivalent amounts of energy annually, the split-savings method of pricing economy sales seems to result in an equitable distribution of the benefits of shared generation. One utility is not significantly better or worse off than another. However, when one or two utilities are forced to buy massive amounts of power from other utilities with large amounts of available generation, such as during the coal strike of 1977-78, an inequitable imbalance occurs. The cost of purchases of power during that emergency by utilities in Western Pennsylvania imposed a considerable burden on those utilities, while the utilities in Eastern Pennsylvania received unexpected revenues.

The loss of generation at Three Mile Island has created a similar imbalance. Metropolitan Edison Company and Pennsylvania Electric Company will incur higher purchased power costs, while the selling companies will generate unexpected revenues.

The Commission is of the opinion that the split savings pricing of interchange sales during emergency conditions is not in the public interest. We will direct Met Ed and Penelec to petition FERC and to negotiate with the other members of the PJM power pool to eliminate split savings during emergency conditions and to price such power at cost. Cf., Order adopted June 7, 1979 at Docket No. P-79060181 (Petition of Pennsylvania Power & Light Company for Declaratory Order).

As an incentive to pursue this elimination of split savings during emergencies, the Commission will consider the efforts of Respondents in this respect in determining whether to allow the amortization of such energy costs deferred during the 18 month period in which their energy clauses are levelized.

Taxation of Receipts from and Sales of Purchased Power

Consistent with our concern that the pricing of wholesale sales of electricity during emergencies increases the burdens of ratepayers, is a concern that the taxing of utility gross receipts from and sales of purchased power during emergencies also works an unfair and unnecessary burden on utility ratepayers. The Commonwealth of Pennsylvania imposes a 4.5% tax on the gross receipts of Pennsylvania utilities and a 6% tax on the sales of such utilities to commercial and industrial customers.

During emergency conditions when the dollar amount of utility sales and receipts may rise unexpectedly, the state receives unexpected tax revenues. The elimination of such unexpected tax receipts should not adversely affect the budgeting efforts of the state and would ease the burden of utility ratepayers. Therefore, the Commission will petition the Legislature to enact legislation removing sales and gross receipts taxes from increased utility revenues during emergencies.

Management Investigation

Finally, there are questions unanswered which deserve the attention of the Commission. Did Respondents act reasonably and prudently in the construction and placing into service of TMI-2? Did Met Ed, as the operator of TMI-2, act reasonably and prudently in the operation of the plant prior to and during the accident? When, if ever, will TMI-2 be returned to service? What will be the costs? Is the present management of Met Ed, Penelec and GPU reasonably efficient? Can their efficiency be improved? These and other related matters directly or indirectly affect the cost and quality of service provided to respondent's ratepayers. Met Ed and Penelec have incurred capital costs which they will undoubtedly seek to recover in future rate cases. The Commission's knowledge and understanding of the causes of these costs cannot await those future rate cases.

Therefore, the Commission will by separate order institute an investigation of the past and present management practices of Met Ed, Penelec and GPU. This investigation will specifically focus on the construction and operation of TMI-2, and will incorporate the public reports of the President's Commission, the Nuclear Regulatory Commission, and others concerning the accident at TMI-2. However, the investigation will include broader questions concerning the management of these companies, and will incorporate the findings of a management audit which the Commission will authorize; THEREFORE,

IT IS ORDERED:

1. That the temporary rates presently in effect for Metropolitan Edison Company and Pennsylvania Electric Company are hereby made permanent, consistent with the findings of the Commission.

2. That Metropolitan Edison Company and Pennsylvania Electric Company shall specifically account for the accelerated amortization of deferred energy costs through base rates, consistent with the findings of the Commission.

3. That Metropolitan Edison Company and Pennsylvania Electric Company shall forthwith file tariffs, implementing net energy cost rates, effective July 1, 1979 and levelized for a period of 18 months at 8.8 mills/KWH and 6.5 mills/KWH respectively, consistent with the findings of the Commission.

4. That Metropolitan Edison Company and Pennsylvania Electric Company may amend their tariffs to include in costs recoverable through the net energy cost rate the cost of demand or reserve capacity charges associated with purchased power incurred from July 1, 1979 through January 1, 1980, consistent with the findings of the Commission.

5. The Metropolitan Edison Company and Pennsylvania Electric Company shall calculate the state tax adjustment surcharge so as to credit the Public Utility Realty Tax refunds over a period of 18 months beginning July 1, 1979, consistent with findings of the Commission.

6. That Metropolitan Edison Company and Pennsylvania Electric Company shall within thirty (30) days after entry of this order submit for Commission approval conservation plans, consistent with the findings of the Commission.

7. That Metroplitan Edison Company and Pennsylvania Electric Company shall undertake in good faith to petition the Federal Energy Regulatory Commission, and to negotiate with other members of the Pennsylvania-New Jersey-Maryland Interconnection, for the pricing of purchases of energy during emergency conditions at cost, consistent with the findings of the Commission, and shall report monthly on its efforts.

8. That the complaints of the Commission and the parties against the rates of Metropolitan Edison Company are hereby sustained to the extent consistent with this order, and are hereby otherwise denied.

9. That the complaints of Metropolitan Edison Company and Pennsylvania Electric Company against the temporary rates set by the Commission are hereby denied.

10. That the petitions filed on May 8, 1979, by Metropolitan Edison Company and Pennsylvania Electric Company are hereby granted to the extent consistent with this order, and are hereby otherwise denied.

11. That Metropolitan Edison Company and Pennsylvania Electric Company shall submit monthly reports to the Commission on the progress of returning Three Mile Island Unit No. 1 to service.

12. That Metropolitan Edison Company and Pennsylvania Electric Company shall submit monthly reports to the Commission showing the operation of the levelized energy cost rate, including sales, revenues, expenses and deferrals.

13. That Metropolitan Edison Company and Pennsylvania Electric Company shall submit a report to the Commission within twenty (20) days after entry of this order describing in detail the steps which will be taken to implement this order.

14. That a copy of this order shall be served on all parties.

BY THE COMMISSION,

William P. Thierfelder
Acting Secretary

(SEAL)

ORDER ADOPTED: June 15, 1979

ORDER ENTERED: June 19, 1979

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting Held May 23, 1980

Commissioners Present:

Susan M. Shanaman, Chairman
Michael Johnson
James H. Cawley
Linda C. Taliaferro

Pennsylvania Public Utility Commission, et al.
v.
Metropolitan Edison Company
and
Pennsylvania Electric Company

Docket No.
I-79040308

O R D E R

BY THE COMMISSION:

The current proceedings are a continuation of an investigation at this docket which began shortly after the accident at Three Mile Island on March 28, 1979. This order is a sequel to the Commission's order entered June 19, 1979. At issue here are three matters:

First, on September 20, 1979 the Commission ordered Metropolitan Edison Company ("Met Ed") and the Pennsylvania Electric Company ("Penelec") to show cause why the Three Mile Island Power Station, Unit No. 1 ("TMI-1") should be considered used and useful in the public service and why all of the costs associated with TMI-1 should not be removed from their respective base rates. The second matter at issue in these proceedings arises from an order to show cause adopted on November 1, 1979, directed only to Met Ed. After taking notice of recent financial, operational and regulatory difficulties facing Met Ed, the Commission ordered Met Ed to show cause why its certificate of public convenience [1/] should not be revoked. Third, on November 1, 1979 Met Ed filed a petition for modification of the order entered June 19, 1979, seeking a 6.9 mill per kilowatt hour increase in its energy cost rate and an extension of time within which to include as recoverable costs under the energy cost rate the demand or reserve capacity costs associated with purchased power.

1/ For economy of expression, all of the pertinent certificates granting Met Ed its present rights to operate as a public utility are referred to as its "certificate of convenience."

The three matters were consolidated for hearing at this docket. The Commission, sitting en banc, presided at the taking of evidence and rendered this decision without the interjection of a recommended decision of an administrative law judge. After twenty-seven (27) days of hearings, which produced more than 4,000 pages of transcript, the parties were permitted to file briefs and present oral arguments before the Commission. 2/

Consolidated with the current proceedings are complaints docketed at C-79101682, C-79121754, and C-79121808. This order disposes of these complaints. There are also three complaints which were filed during our initial proceedings which culminated in the order entered June 19, 1979. Those complaints are C-79040831, C-79050907, and C-79050909. The order of June 19, 1979 effectively disposed of all

---

2/ The parties to these proceedings are: Respondents, Met Ed and Penelec; Staff; Consumer Advocate; St. Regis Paper Company of York, Airco Speer Carbon Graphite of St. Marys, Autex Corporation of Meadville, Avtex Fibers, Inc. of Lewistown, and P.H. Glatfelter Company of Spring Grove, jointly ("St. Regis, et al."); Patricia Street, Dr. Timothy Percarpio, and Three Mile Island Alert, Inc., jointly ("TMIA, et al."); Senior Power Action Group of York and Louise Riley, jointly ("Senior Power Action Group, et al."); Holly Keck and Deep Run Farm, Inc., jointly ("Holly Keck, et al."); Bethlehem Steel; Standard Steel Division, Titanium Metals Corporation of America ("Standard Steel"); Citibank, N.A. Agent and Chemical Bank N.A. Co-Agent ("Citibank, et al."); Mrs. Patricia Smith; Pennsylvania Foundrymen's Association and Lebanon Steel Foundry of Lebanon, jointly ("Pennsylvania Foundrymen's Association, et al."); Universal Cyclops Corporation, Electralloy Corporation, Erie Malleable Iron Company, Franklin Steel Company, National Forge Company, Proctor & Gamble Paper Products Company, Talon Textron and Welch Foods, Inc., jointly ("Universal Cyclops Corporation, et al."); Lehigh Pocono Committee of Concern; Louise Dufour and Limerick Ecology Action (Complaint Docket No. C-79101682); Representative Harold Brown (Complaint Docket No. C-79121754); Joyce Wendler (Complaint Docket No. C-79121808); and the City of Lancaster.

matters raised therein; therefore, we hereby direct that these complaint dockets be marked closed.3/

An initial decision of the presiding commissioners was issued on May 9, 1980. Exceptions were filed by: Respondents; Staff; Consumer Advocate; TMIA, et al.; Senior Power Action Group, et al.; Holly Keck, et al.; Standard Steel; Citibank et al.; Mrs. Patricia Smith; Lehigh Pocono Committee of Concern; Louise Dufour and Limerick Ecology Action; and, by permission, the Pennsylvania Electric Association. The Commission has reviewed and considered each exception. For the most part the exceptions are denied - for the reasons already given for the initial decision. A seriatim discussion of each exception would serve only to reiterate the original text, other than where a specific departure is noted. Therefore, this order, in its entirety, should be treated as the Commission's response to the exceptions.

The current proceedings have presented exceedingly difficult issues for this Commission to resolve. The Commission has had to balance the need to explore and carefully examine Met Ed's continuing, long-term viability against the urgency to act promptly to avoid being overtaken by events. In addition, the Commission has had to resolve the competing concerns of creditors who want assurance of earnings and ratepayers who want equity in allocating the costs associated with the Three Mile Island accident (and who see an inequitable duplication in paying the costs of TMI-1 and the costs of TMI-1 replacement power); and of Respondents who would emphasize their financial needs and other parties seeking a determination based on other economic, social and political principles.

The responsibility presented to the Commission by these concerns is indeed a grave one, and whereas each of the parties may propose solutions, this Commission recognizes one factor which applies solely to

---

3/ A request to intervene in the nature of a complaint was received on March 24, 1980 from David D. Trout. Mr. Trout complains of the application of the increase granted to Met Ed on February 8, 1980 to his service. It appears that Mr. Trout was unaware of the Commission's intent to make the increase effective for bills rendered on and after March 1, 1980. Met Ed's energy cost rate was previously changed effective for bills rendered on and after a date certain. The February 8, 1980 action of the Commission was consistent with that practice. Also, it was the Commission's intent to increase Met Ed's rate so as to generate revenues in March and April, 1980 sufficient to obviate increasing the short-term debt limit under the Revolving Credit Agreement until a final order is issued. If the tariff was made effective for service rendered on and after March 1, 1980 there would have been a lag in the collection of revenues in March and April, 1980. Thus, Met Ed was allowed to increase its energy cost rate effective for bills rendered on and after March 1, 1980.

In light of the above discussion, we do not perceive a basis for a complaint by Mr. Trout. The request to intervene filed by David D. Trout on March 24, 1980 is hereby denied without prejudice to Mr. Trout to file a formal complaint.

it -- namely, it does not have the luxury of avoiding responsibility for being wrong.

The basic conclusion of the Commission in this order is that Met Ed should continue to operate as a public utility. The Commission will provide Met Ed the means of financial rehabilitation. However, we will write no blank checks on its ratepayers. We find that TMI-1 is no longer used and useful and that the base rates of both Met Ed and Penelec should be reduced. This order, with its provisions for a fully current recovery of energy costs and an accelerated amortization of deferred energy costs provides an adequate framework for Met Ed's recovery. Respondent must convince its bank creditors that it has the will and the ability to rehabilitate itself.

Above all, Met Ed must demonstrate candor and a willingness to address its problems and the initiative and ability to find solutions to those problems. The very real fears and concerns of its customers and neighbors must be allayed. Met Ed's costs must be reduced through load management and conservation-inducing rate structure change. Met Ed must aggressively pursue the return to service of TMI-1 or an early decision on its conversion to the use of an alternative fuel. If these things are done, the Commission is confident that Met Ed will not only survive but will regain its financial health.

Finally, we emphasize that this order does not end our regulatory concern. The management investigation of the GPU Companies at Docket No. I-79080320 continues. Further, we will continue to closely monitor the operations of Met Ed, Penelec and the GPU Companies to assure the continued provision of safe, adequate and reliable service to Pennsylvania ratepayers at reasonable rates.

Order to Show Cause on Revocation of
Met Ed's Certificate of Public Convenience

In the order to show cause adopted November 1, 1979, the Commission concluded, after taking notice of recent financial, operational and regulatory difficulties facing Met Ed:

> "Recognition of [these] matters raises serious questions about the continued ability of Met Ed to provide safe, adequate and reliable electric service at just and reasonable rates. The Commission therefore finds it in the public interest to put at issue in these proceedings the continued viability of Met Ed as a public utility.
>
> * * * * * * * * * * * *
>
> Therefore, the Commission hereby orders Metropolitan Edison Company to show cause why its certificate of public convenience should not be revoked."

The order to show cause manifests the Commission's concern for the continuing adequacy and reliability of Met Ed's service and for the

continuing ability of Met Ed to provide that service at reasonable rates. The accident at Three Mile Island and subsequent events have placed severe strains on the utility. This Commission would be remiss if it did not formally examine Met Ed's overall condition to ensure that service to Met Ed's customers will continue. That purpose is served by making Met Ed's continuing viability an issue in these proceedings.

We need not here decide the limits of the Commission's authority to revoke the certificate of an electric public utility. But we note in general that although there is no express provision in the Public Utility Code dealing with the subject, the Commission has the same power to revoke a certificate as it has to issue it, upon due cause being shown, and that a utility holding a certificate of public convenience accepts it subject to the statutory provision which permits the certificate to be modified or rescinded for legal cause.

We disagree with Respondents' statement of the law, not finding it relevant to draw distinctions between past and future actions, or between service and rate functions, or that in a proceeding upon motion of the Commission the burden lies with any party other than the respondent-utility.

There is no vested or property right in a certificate of public convenience. Common sense and due process require that a certificated public utility be given notice of its deficiencies and a reasonable opportunity to correct those deficiencies. However, what is paramount to this Commission is the continued provision of safe, adequate and reliable electric service. If the welfare of the public should require an immediate transfer of the right to serve the public, either temporarily or permanently, we would not hesitate to order such action. On the other hand, if the question posed is whether another provider could make the required service available at a lower cost, then the certain benefit of such a change must be clearly and unequivocally established.

We must conclude that based upon this record no modification or revocation of Met Ed's certificate is required at this time because we find no imminent and foreseeable threat to continued provision of adequate and reliable service at reasonable rates. Nor do we find that the record supports the issuance of a complaint. However, in all cases this Commission has continuing jurisdiction over the services, rates, and certificates of public utilities.

The Commission is acutely aware of the substantial, continuing public debate over whether or not radiological dangers exist at Three Mile Island. This record contains many allegations concerning Met Ed's responsibility for the construction, maintenance, operation and clean up of the Three Mile Island nuclear units. To the extent that these allegations relate to the safety of the people of Pennsylvania, this Commission is required to recognize that the Federal government has completely pre-empted the States in the licensing and regulation of the commercial use of nuclear reactors and in the protection of the public from radiological hazards. Northern States Power Company v.

State of Minnesota, 447 F.2d 1143 (8th Cir. 1971), aff'd mem. 405 U.S. 1035 (1972). These allegations also present difficult questions of whether they constitute a sufficient basis for the revocation of the certificate of an electric utility which owns and operates nuclear facilities. If the courts and/or the NRC ultimately conclude that Met Ed has been imprudent or negligent or is incompetent, then this Commission will take notice of such determination and will respond appropriately. For the present, the Commission believes it to be most appropriate to monitor any proceedings before the NRC and the courts.

The Commission will follow the proceedings before the NRC on the restart of TMI-1 and with respect to the clean up of TMI-2. The management consultants engaged to audit the management of the GPU Companies will consider carefully those proceedings. Any finding by the NRC of incompetence or inability by the management of Met Ed to operate the TMI units would be a matter of grave concern to this Commission.

Our management consultants auditing the management of the GPU Companies will carefully and thoroughly examine any proposed management changes. To the extent that other issues relating to the reasonableness or prudence of the management of the GPU Companies remain or arise, they can and should be explored in our investigation at Docket No. I-79080320.

Regretably, the Commission must again decry the failure of the Federal government to respond to the accident at Three Mile Island with financial assistance that is commensurate with its responsibility for the development of nuclear energy. The Federal government has been a keystone in the development of commercial uses of nuclear power. It has insured, promoted and exclusively regulated its development. Duke Power Company v. Carolina Environmental Study Group, Inc., 438 U.S. 59 (1978). The people of Pennsylvania should not have to bear the entire burden--emotionally or financially -- where that burden properly belongs to all those who have benefited from the development of nuclear energy.

The enactment of the Price-Anderson Act in 1957 reflected Congress's acceptance of the idea that the Federal government should intervene in the event of a major nuclear incident. In discussing the basic approach and underlying principles of the new legislation, the Joint Committee of Atomic Energy commented as follows:

> "The chance that a reactor will run away is too small and the foreseeable possible damages of the reactor are too great to allow the accumulation of a fund which would be adequate. If this unlikely event were to occur, the contributions of the companies protected are likely to be too small by far to protect the public, so Federal action is going to be required anyway."

S. Rep. No. 296, 85th Cong., 1st Sess. reprinted in [1957] U.S. Code Cong. & Ad. News 1810-11.

Moreover in extending the Price-Anderson Act for the second time in 1975, Congress expressly included the concept in the statute itself:

> "Provided, that in the event of a nuclear incident involving damages in excess of the amount of aggregate liability, the Congress will thoroughly review the particular incident and will take whatever action is deemed necessary and appropriate to protect the public from the consequences of a disaster of such magnitude."

42 U.S.C. §2210(e)(Supp. 1979).

Nevertheless, what is painfully clear is that an economic catastrophe has befallen the GPU Companies, and their ratepayers and investors as well. We believe that Congress has a parallel responsibility to act in this situation, noting that when the prospect of a nuclear "incident" seemed remote, Federal willingness to render assistance to the nuclear industry was freeflowing. Now that such a tragedy has become more than a remote possibility, that willingness has dissipated. Never has it been more true that victory has a thousand followers, but that defeat is an orphan.

The only action of the Federal government reflected on this record is contained in the statement of the Respondents at ME/PN Exhibit A-74, that:

> "The DOE has agreed to fund up to $500,000 for certain work relating to radioactive decontamination used at TMI-2. Moreover, a contract is being negotiated with a DOE contractor in which it is anticipated that the DOE will fund up to $1,000,000 of engineering services and health physics work in support of a research program which should be of assistance in the TMI recovery program."

We find the Federal response described in Exhibit A-74 to be woefully inadequate at a time when the owners of the plant, the utility ratepayers, and a consortium of bankers are acting as surrogate insurers of a nuclear accident which may yet threaten to bankrupt three major electric utilities.

The Commission notes with disappointment the failure of President Carter to respond to our letter of March 19. We again urge President Carter and the United States Congress to recognize their responsibility and use their power to minimize the financial burden of this unfortunate accident.

Order to Show Cause on Used and Useful Status of TMI-1

The genesis of this order to show cause was the statement of the Commission, in the order entered June 19, 1979 at this docket that:

"At this time it appears reasonably certain that TMI-1 will return to service. Witness Herman Dieckamp, President of GPU, testified that resumption of generation at TMI-1 could occur as early as August, 1979, and certainly no later than January 1, 1980.

However, the Commission will monitor the status of TMI-1. We will require Met Ed to report to the Commission monthly on the progress in returning TMI-1 to service. If that start-up is delayed beyond January 1, 1980, the Commission will issue an order to show cause why TMI-1 should be considered used and useful in the public service."

TMI-1 did not return to service by January 1, 1980. By September 29, 1979 (when the order to show cause was adopted) it was clear that the resumption of generation at TMI-1 would be delayed substantially, and, at this time, remains uncertain.

The Commission has narrowed the issues somewhat with respect to this matter. In a prehearing order adopted December 21, 1979, the Commission declined to fix a test period for adjusting Respondents' base rates, stating:

"The Commission does not yet have before it the issue of finding just and reasonable rates for Respondents."

The Commission further stated:

"With respect to the motion [of Respondents] for an initial decision on the used and useful status of TMI-1, prior to the presentation of the base rate adjustments associated with the removal of TMI-1 from rate base, the motion is granted. The Commission has no desire to undertake a re-determination of Respondents' base rates as a hypothetical exercise. If this Commission finds TMI-1 no longer used and useful in the public service, then the determination of just and reasonable rates for Respondents will be an issue before us."

As a result of that ruling, the present record was not developed with respect to a current test period determination of Respondents' revenue requirements.

Subsequently, in a prehearing order adopted January 18, 1980, the Commission deferred the intervention of certain customers of Penelec (who wished to address Penelec's rate structure), stating:

"In light of the Commission's decision in its December 21, 1979 prehearing order to grant Respondents' motion for an initial decision on the status of TMI-1 prior to developing the record with respect to any associated changes in Respondents' base rates, it appears that the

concerns of the hospitals will not be addressed until a decision is reached on the matters now being developed on the record."

Thus, the Commission finds that it cannot now determine and fix the just and reasonable base rates to be charged by Respondents. However, the Commission has the authority and discretion, upon the notice given in this proceeding and the record as developed, to determine (a) whether TMI-1 is used and useful in the public service, and whether Respondents' base rates should be adjusted to eliminate the costs associated with TMI-1, and (b) whether to fix temporary rates pending further investigation.

(a) Used and Useful Status of TMI-1

In the order entered June 19, 1979, the Commission concluded with respect to TMI-1 that:

"The parties have raised the issue of the used and useful status of TMI-1; however, the Commission need not reach that issue at this time. Consistent with the principles discussed with respect to TMI-2, TMI-1 is at present only experiencing an outage."

We now have before us the issue of whether TMI-1 is used and useful in the public service.

The decisional principle used to determine that TMI-2 was not used and useful in the public service was succinctly stated in our prior order:

"The length of time which utility plant may be out of service and not be removed from rate base depends upon the nature of the plant, the degree to which the outage can be expected to occur during normal operation of the plant, and the certainty with which resumption of service can be predicted."

The parties were provided ample opportunity to put before us the legal and factual bases that they advocate the Commission adopt in determining the status of TMI-1. In addition to the usual briefs and reply briefs, memoranda of law were requested by the Commission in its prehearing order adopted December 14, 1979.

Before discussing the evidence of record, the Commission should clarify one aspect of the law which appears to trouble the Respondents. In the Respondents' memorandum of law dated January 14, 1980 and their main brief, uncertainty is expressed concerning the Commission's use of the phrase "used and useful" rather than "used or useful," and the possible intent of the Legislature in employing both phrases in the Public Utility Code, 66 Pa.C.S. §101, et seq. The answer to these concerns is quite simple and straightforward.

In our opinion, the Legislature anticipated and intended a difference in these phrases. "Used or useful" has a broader, more inclusive connotation and is employed to define the types of property which are subject to the reporting, accounting and certification requirements. See 66 Pa. C.S. §§1102(a) (3), 1702, and 1703(a). Whereas, "used and useful" has a narrower, less inclusive connotation and is employed to define and describe the types of property which are includable in the utility's rate base for purpose of fixing rates. See 66 Pa. C.S. §§1102(a)(3)(iii), 1307(a), 1310(a), 1310(d) and 1311. Since our present focus is on the status of TMI-1 for ratemaking purposes, the phrase "used and useful" is appropriate. However, our view of the Legislative intent in employing these different phrases is independent of the determination of the substantive content of the phrase "used and useful." The point here is that the scope of the reporting, accounting and certification provisions, with respect to utility property, is broader and more inclusive than the class or classes of property which are includable in the utility's rate base.

It is appropriate at this time to bring into focus the concept of "used and useful" property for rate making purposes. The Commission is in agreement that "used and useful" is a flexible rate making tool whose definition to some extent is shaped by the individual circumstances of each case. Whether property is used and useful in providing service to the customers of a utility is a question which of necessity must be resolved on the basis of a case-by-case analysis. The status of plant cannot be determined through the application of any set formula but should be ascertained [illegible] of all the circumstances.

The Respondents distinguish the present circumstances of TMI-1 and the circumstances of TMI-2 at the time it was determined not to be used and useful in the public service. TMI-1 has been in service for a substantial period of time. Its operating record from September, 1974 until March, 1979 has been excellent. TMI-1's experienced annual capacity factor through 1978 was about seventy-eight percent (78%), well above the national average for nuclear generating units. TMI-1 was not extensively damaged, as was TMI-2, by the accident on March 28, 1979. Respondents maintain it is presently operable, if permitted by the NRC, and that all modifications which it is anticipated the NRC will require should be completed by June, 1980. Finally, Respondents claim that even with the required NRC approval pursuant to the restart hearings at NRC Docket No. 50-289 the plant will return to service by January 1, 1981.

We recognize the plant's past operating history and the fact that TMI-1's unusually high level of operation has inured to the benefit of Respondents' customers. Similarly, the Commission notes that TMI-1, according to Respondents, is physically ready to commence commercial operation, but that the delay of its in-service date is presently due to ongoing Federal investigations. These circumstances materially distinguish the condition of TMI-1 from plant that might have otherwise been excluded from base rates due to obsolesence and operational or structural defects. Although we recognize these apparent distinctions, the Commission is not convinced that these facts should result in ratepayer contribution toward returns on the investments associated with TMI-1.

Notwithstanding the Respondents' contentions, for rate making purposes for classes of property which are to be included or excluded from rate base, we are compelled to draw the line between the operating history and present condition of the plant and the timing and certainty of the return to service. The reasonableness of Respondents' actions in operating and maintaining the plant is not being measured here. Nor will the reasonableness of Federal regulatory action enter into our determination.[4/] For ratemaking purposes our primary issue is the weight that is to be accorded TMI-1's present circumstances and when the plant will return to service.

The Pennsylvania Public Utility Code and various Commission orders that refer to property valuations for ratemaking purposes incorporate the generally accepted principle that a utility is not entitled to include, in the valuation of its rate base, property not actually used and useful in providing its public service. Whether TMI-1 was related to the provision of utility service is not at issue here. The focus with regard to TMI-1's treatment here relates to the length of the plant's present and ongoing outage.

A plant's timely return to public service, so as to be properly included in utility base rates, is an established principle enunciated by the courts. See Schuylkill Valley Lines v. Pennsylvania Public Utility Commission, 165 Pa. Super. Ct. 393, 68 A.2d 448 (1949); Glenwood Light & Water Company v. Glenwood Springs, 98 Colo. 340, 55 P.2d 399 (1936); Office of Consumer's Counsel v. Public Utility Commission, et al., 580 Ohio St. 2d 449, 391 N.E. 2d 311 (1979). The standard by which courts and this Commission have measured a plant's timely return to service has been the plant's imminent or certain use in providing service to the public. Schuylkill Valley Lines, supra.

The Commission's treatment of TMI-1 and TMI-2 in our June 19th order expressed our intent to continue applying "imminence and certainty" as a standard for the determination of a plant's used and useful status.

There our decision not to exclude TMI-1 from the Respondents' base rates was due primarily to the plant's expected return that appeared to be both imminent and certain.

> "At this time it appears reasonably certain that TMI-1 will return to service. Witness Herman Dieckamp, President of GPU, testified that resumption of generation at TMI-1 could occur as early as August, 1979 and certainly no later than January 1, 1980."

From the evidence we have before us, TMI-1 is out of service and, based on Respondents' testimony of an in-service date of approximately January 1, 1981, the unit will have been out of service for nearly two (2) years.

4/ Although the Respondents have contended throughout these proceedings that the Unit No. 1 in-service date is due to unjustified or discriminatory Federal action, the Commission will not attempt to look behind these investigations to determine the reasonableness of those acts.

Also, there exists substantial uncertainty with respect to the return of service of TMI-1. On the last day of hearings, Mr. Robert C. Arnold, GPU Vice President for Generation testified:

> Question: "How would you assess . . . or how would you characterize the track record of the respondent in making representations to the Commission with respect to the restart of TMI-1?"
>
> . . .
>
> Answer: ". . . I would have to judge that our forecasts have not been accurate in terms of what has actually worked out."
>
> Tr. 3998-4000

Dr. Robert B. Parente, a power production and operations planning consultant with Theodore Barry & Associates, testified:

> "We believe that there is a strong probability that significant delays will occur in the restart of TMI-1, currently scheduled for January 1, 1981 for the Company's financial forecasting purposes, and furthermore, the distinct possibility exists that the unit may never be permitted to restart."
> (TB&A Statement No. 2, p. 11-14)

On cross-examination, Dr. Parente testified that mid-1983 was, in his view, a realistic start-up date for TMI-1. Tr. 3448.

Finally, we take notice of an order adopted on March 6, 1980 by the NRC, docketed at CLI-80-5 (In the Matter of Metropolitan Edison Company, Docket No. 50-289), wherein the NRC directed its Atomic Safety and Licensing Board to consider the following issues in the TMI-1 restart proceedings:

> "(1) whether Metropolitan Edison's management is sufficiently staffed, has sufficient resources and is appropriately organized to operate Unit 1 safely; (2) whether facts revealed by the accident at Three Mile Island Unit 2 present questions concerning management competence which must be resolved before Metropolitan Edison can be found competent to operate Unit 1 safely; and (3) whether Metropolitan Edison is capable of operating Unit 1 safely while simultaneously conducting the clean-up operation at Unit 2."

The scope of those issues and the obvious concern of the NRC with the restart of TMI-1 while the clean-up continues at TMI-2 convince the Commission that a substantial uncertainty presently exists with respect

to the resumption of generation at TMI-1.[5/] The implications of an NRC decision to delay the restart of TMI-1 until the clean up of TMI-2 is completed are even more serious in light of the fact that Mr. Robert C. Arnold, GPU Vice President for Generation, has testified that it is now unlikely that the clean up and restoration of TMI-2 will be completed by June, 1983 and that considerably more time will be required. Tr. 741.

Considering the above, the Commission hereby finds that the Three Mile Island Power Station, Unit 1 is not used and useful in the public service.

In the case of Philadelphia Electric Company (PECO) at R-79060865, we disallowed approximately $25 million of PECO's claimed original cost based upon a finding of 748 megawatts of excess generating capacity. There are certain similarities between the issue of excess capacity in the PECO case and the matter of TMI-1 in this investigation; however, there are a number of features which distinguish the issue in the PECO case from the problem of TMI-1 in this proceeding.

The issue in the PECO case was one of excess capacity. The problem which confronts us in this case is one of unusable capacity caused by the outage of a particular generating facility, complicated by the need to purchase energy to replace that capacity. The matter of replacement energy was not at issue in the PECO case and we concluded that a proper method of allocating the risk relating to the excessive generating capacity would be to require the stockholders to forego a return on their investment in that capacity while allowing the company to recover the associated expenses and depreciation from the ratepayers. In this proceeding, while we have not specifically allocated the

---

5/ Notwithstanding the Commission's concern with and recognition of the probable effects of NRC proceedings on the restart of TMI-1, in the context of determining the used and useful status of TMI-1, the implications of that specific decision should not be misunderstood by the NRC or the Atomic Safety and Licensing Board which presides over the TMI-1 restart hearings. We understand that Met Ed's financial ability to operate the unit is an issue to be resolved in the restart hearings. No specific implication should be drawn from our determination that TMI-1 is no longer used and useful that Met Ed is, therefore financially unable to operate the unit. To do so would be to create a regulatory self-fulfilling prophecy of unfortunate consequences.

The financial capability of Met Ed as the operator of TMI-1 is more appropriately reflected in our overall determination in this order that Met Ed should continue to operate as a public utility and should recover financially.

responsibility for the risk related to the outage of TMI-1, we note that with this order the Respondents' will be permitted full recovery of the reasonable costs of energy needed to replace that unit's capacity. In our opinion it would be inequitable to also permit the Respondents to recover the maintenance and depreciation costs on a plant which should be, but which is not, providing their customers with economical energy.

We further note that our treatment of TMI-1 in this decision does not represent the permanent disposition of this issue. When that facility is permitted to resume commercial operation, the Respondents' right to again earn a return on the investment in that plant and to resume recovery of the costs associated with its operation will be given full consideration by this Commission.

With respect to the recovery of clean up costs through rates, nothing in this order negates the statements of the Commission in the June 19, 1979 order.

(b) Adjustment of Base Rates - Temporary Rates

Inasmuch as the Commission has determined that TMI-1 is not used and useful in the public service, the adjustment of the respective base rates of Met Ed and Penelec, as a matter of ratemaking, is compelled. However, the Commission will not fix new permanent rates.

The issue to be resolved with respect to TMI-1 is whether the Commission should exercise its discretion to set temporary rates for Respondents. The Commission has the authority pursuant to Section 1310(d) of the Public Utility Code to prescribe temporary rates for a period of six (6) months. This Commission has examined the financial data presented on this record, Respondents' recent financial reports to the Commission and to their shareholders, and the orders of the Commission at Docket Nos. R-78060626 and R-78040599. Based on this information, and on its finding that TMI-1 is not used and useful in the public service, the Commission is of the opinion that Respondents' rates are producing a return in excess of a fair return upon the fair value of the utilities' property.

The determination that TMI-1 is not "used and useful" gives rise to an unquestionable need to adjust Respondents' base rates. Based upon recent determinations of the Commission, the annual revenues associated with TMI-1 are approximately $26.9 million for Met Ed (ME/PN Ex. A-16) and $11.7 million for Penelec (ME/PN Ex. A-32). Whatever the proper level if determined today, these are not insignificant or de minimus amounts. The substantial nature of the revenues and return associated with TMI-1 is a consideration in the Commission's exercise of discretion in setting temporary rates.

Also relevant is the determination that Respondents should be granted full recovery of current energy costs. The Commission affirms its conclusion in the June 19th order that ratepayers should not pay both the cost of a generating station which is out of service and the costs of replacement generation where the outage is beyond normal expectations and of uncertain duration. Our allowance of a full recovery

of replacement power, including power purchased and generated to replace TMI-1 generation, necessitates the setting of temporary rates.

Finally, the Commission notes that the return associated with TMI-1 for Met Ed is approximately $15.2 million (ME/PN Ex. A-16) and for Penelec is approximately $7.0 million (ME/PN Ex. A-32). These amounts create excessive returns, in our opinion, on the remaining rate base, given the determination that TMI-1 is not used and useful.

For these reasons, we hereby prescribe temporary base rates at an annual level of $26.9 million less than existing rates for Met Ed and $11.7 million less than existing rates for Penelec. We find that these base rate revenue reductions should be allocated to Respondents' customer classifications according to the contribution of those customer classes to Respondents' total base rate revenue requirement as determined in their most recent rate investigations (R-78060626 and R-78040599 respectively).

If Respondents file a complaint against the temporary rates set by this order and subsequently the Commission determines that the temporary rates were set unreasonably low, an adjustment can be granted through restatement of Respondents' balances of deferred energy costs. However, the inclusion of TMI-1 in Respondents' base rates will not be retroactively restated, even if TMI-1 returns to service as expected by Respondents and is determined by the Commission once again to be used and useful in the public service.

Petition of Met Ed for Modification of Order Entered June 19, 1979

The third matter at issue in these proceedings arises from a petition filed by Met Ed on November 1, 1979 for modification of the order entered June 19, 1979. Met Ed's prayer for relief was a 6.9 mill increase in its levelized energy cost charge, effective January 1, 1980, and an extension of the time within which to include demand or reserve capacity charges associated with purchased power as recoverable costs through the energy cost charge. On February 8, 1980, the Commission granted Met Ed a 6.9 mill increase in its energy cost charge, effective March 1, 1980 and until a final order is issued, subject to the completion of our investigation.

Respondents' request for energy cost relief was broadly stated in their main brief, as follows:

" . . . Met Ed requests that this Commission:

(1) effective June 1, 1980, grant a levelized energy clause increase of 3 mills/kwh;

(2) permit the energy clause in effect prior to this Commission's June 19, 1979 order to resume normal operation, effective January 1, 1981;

(3) extend the permitted inclusion of demand or reserve capacity costs associated with purchased power from January 1, 1980 until TMI-1 returns to service; and

(4) permit the amortization of Met Ed's and Penelec's unrecovered balance of energy costs incurred since TMI-2's accident through a surcharge which will recover such costs over a 14 month period, beginning June 1, 1980."

Respondents' request for a 6.9 mill increase for Met Ed was predicated upon meeting short-term cash needs. However, Met Ed's and Penelec's past, present and projected energy costs, as well as short-term cash and credit needs, have been fully developed on this record. We consider all issues with respect to the proper energy charges for Met Ed and Penelec to have been fully developed and to be properly before us now for decision.

The Commission again finds that Met Ed and Penelec are providing adequate, reliable service in spite of the loss of generation at TMI. We affirm our determination in the order of June 19, 1979, that:

> "Met Ed and Penelec are presently providing reasonable, adequate, reliable electric service. The costs of purchasing power are unquestionably direct, necessary and reasonable costs of providing that utility service. The Commission cannot punish Respondents by denying the recovery of these costs; nor can it create a windfall for the ratepayers of service without payment. The Commission is of the opinion that the recovery of these costs is required by law."

However, the last-quoted sentence requires qualification. The use of that Commission language by some of the parties indicates a misunderstanding of the Commission's intent.

The statement that the recovery of purchased power costs is "required by law" was obviously not intended to mean that some specific element of statutory or case law generally required the recovery of purchased power costs from ratepayers -- regardless of how or why those costs were incurred. In our view, there is no such legal requirement. Rather, the statement must be viewed in its context. The Commission had removed the costs associated with TMI-2 from Respondents' base rates, determined that TMI-1 was only experiencing a normal outage, and determined that the current purchases of power by Respondents were direct and immediate costs of providing service. In that context, those costs were recoverable from ratepayers.

In the current proceedings, the Commission finds that Met Ed and Penelec have similarly incurred additional purchased power costs. This is not, however, a determination that every dollar of purchased power costs recorded on Respondents' books is recoverable from their ratepayers. Those amounts are subject to audit and review by the Com-

mission and to a later determination that specific amounts of energy costs were imprudently or unreasonably incurred. If the courts and/or the NRC should ultimately conclude that Met Ed was imprudent or negligent in its operation or management of Three Mile Island, then this Commission will take notice of such determinations and their relevance to any portion of the replacement power costs for which current recovery is permitted today.

Any subsequent examination of these issues would have to be made with the public's interest in the continued provision of adequate, reliable electric service clearly in mind. This Commission recognizes the close relationship between that public interest and Met Ed's financial viability, and, if necessary, would balance the public's interest in adequate, reliable service against its interest in refunds. We point out that the Pennsylvania Commonwealth Court has affirmed our discretion with respect to the extent of refunds to be made to public utility patrons if good reason is shown for the contrary. Community Central Energy Corporation v. Pennsylvania Public Utility Commission, No. 451 C.D. 1979 (Pa. Cmwlth. Ct., May 6, 1980).

The basic determination in this order is that neither TMI-1 nor TMI-2 is used and useful, that Respondents are providing adequate, reliable service without those generating units, and that the costs of power prudently and reasonably incurred to replace generation lost at TMI-1 are direct costs to serve Respondents' ratepayers. Furthermore, for the reasons stated below, the Commission finds that Respondents should be allowed a full recovery of current energy costs.

First, by this order, the Commission is denying Respondents' recovery of the revenues associated with Three Mile Island. Since the Respondents are providing service through greatly increased costs of purchased power, those energy costs should be promptly recovered from their ratepayers. The determinations that TMI-1 is not "used and useful," and that the revenues associated with TMI-1 should not be recovered through Respondents' base rates, are inseparably interwined with our determination to allow a full and current energy cost recovery. If our determination on TMI-1 were reversed, the recovery of energy costs would have to be modified.

Second, the extreme dependence of Respondents on short-term debt creates an unstable financial condition which potentially threatens the continued provision of utility service to Respondents' customers. The costs of purchasing energy are a major reason for short-term borrowing. A full recovery of current energy costs should lessen the need for short-term debt and facilitate the obtaining of permanent financing by Respondents.

Finally, the continued accrual of deferred energy costs may ultimately prove to be burdensome to Respondents' ratepayers. If not collected now, those amounts will have to be collected later in the form of additional charges. In addition, there is greater equity in requiring the ratepayers of today to pay the costs of service today, rather than requiring tomorrow's ratepayers to pay today's costs.

The Commission therefore finds that a fully current energy cost recovery for the balance of 1980 for Met Ed requires an energy charge of 19.1 mills per kilowatt hour, calculated as follows:

Met Ed Energy Charge Full Cost Recovery
for Period June 1, 1980 through December 31, 1980*

Total System Energy Cost ($ millions)	120.7
Total System Sales (GWH)	4614
Average Mills per KWH of Sales	26.2
Less: energy cost recovery allowed by June 19, 1979 Order, exclusive of gross receipts tax	16.4
(8.0 mills - base rates) (8.4 mills - energy cost rate)	
Required Increase in Energy Charge exclusive of gross receipts tax	9.8**
Plus: Energy Charge allowed by June 19, 1979 Order, exclusive of gross receipts tax	8.4
Required Energy Charge for full cost recovery, exclusive of gross receipts tax	18.2
Required Energy Charge for full cost recovery, including gross receipts tax	19.1

---

* Source: ME/PN Exhibit A-39
Includes recovery of demand or reserve capacity charges associated with purchased power.

** Required increase determination essentially affirms interim relief of 6.9 mills granted on February 8, 1980.

The Commission also finds that a fully current energy cost recovery for the balance of 1980 for Penelec requires an energy charge of 8.5 mills per kilowatt hour, calculated as follows:

Penelec Energy Charge Full Cost Recovery
for Period June 1, 1980 through December 31, 1980*

Total System Energy Costs ($ millions)	115.9
Total System Sales (GWH)	6395
Average Mills per KWH of Sales	18.1
Less: energy cost recovery allowed by June 19, 1979 Order, exclusive of gross receipts tax	16.2
(10.0 mills - base rates) (6.2 mills - energy cost rate)	
Required Increase in Energy Charge exclusive of gross receipts tax	1.9
Plus: Energy Charge allowed by June 19, 1979 Order, exclusive of gross receipts tax	6.2
Required Energy Charge for full cost recovery, exclusive of gross receipts tax	8.1
Required Energy Charge for full cost recovery, including gross receipts tax	8.5

* Source: ME/PN Exhibit A-95
Includes recovery of demand or reserve capacity charges associated with purchased power.

Energy Cost Rate

We will further direct Met Ed and Penelec to file and comment upon proposed tariff revisions, to become effective January 1, 1981, which will replace their energy cost adjustment clause with an energy cost rate. The energy cost rate shall be applicable to customers' bills for one-year periods during the billing period from January through December; provided, however, that such rate may be revised on an interim basis upon approval of the Commission. Upon determination that the effective rate will result in over or under collection, such interim change shall become effective 30 days from the date of filing, unless otherwise ordered by the Commission. Interest shall be computed monthly, at the appropriate rate as provided in Section 1308(d) of the Public Utility Code. Computation of interest shall begin in the month an over collection or under collection occurs, and end in the effective month any over collection is refunded or any under collection is recouped. Customers shall not be liable for interest on net under collections. The intent of the Commission is that this energy cost rate would replace the levelized energy charges presently approved through December 31, 1980.

Recovery of Deferred Energy Balance

The record indicates that by the end of February, 1980 Met Ed's deferred energy balance was $84.6 million. Penelec's deferred energy balance totaled $7.8 million at the same point in time. We hereby find that both companies are entitled to collect the total amount of outstanding deferred energy costs over the next 18 months. The collection will be in the form of a surcharge, to be applied on a KWH (usage) basis.

Yearly Surcharge */

	Met Ed ($ millions)	Penelec ($ millions)
Deferred Energy Blance ME/PN Ex. A-91 & A-96	84.6	7.8
Twelve Month Recovery	56.4	5.2
Retail Sales ME/PN Ex. A-89 & A-95	7904 GWH	10461 GWH
Mills per KWH	7.1	.5
Energy charge for full cost recovery, including gross receipts tax (1.047)	7.4	.5

*/ Exact amounts are dependent upon total deferred energy costs at the time temporary rates go into effect as well as the final Commission adjustment to Met Ed's deferred energy balance pursuant to its complaint and investigation at C.21597.

Demand or Reserve Capacity Charges

In the order entered June 19, 1979, the Commission stated, with respect to demand or reserve capacity charges associated with purchased power:

> "As an incentive to Respondents to enter into bulk power purchase arrangements and thereby reduce the energy costs to its ratepayers, the Commission will allow Met Ed and Penelec to include in recoverable costs through the net energy cost rate, the demand or reserve capacity charges incurred from July 1, 1979 until January 1, 1980."

The Respondents and the Consumer Advocate request that the Commission extend the recoverability of these costs to continue to encourage Respondents to keep their energy costs as low as possible.

We find on this record that Respondents' committed purchases of power, which entail demand or reserve capacity charges, have reduced the costs of purchasing power from what would be otherwise incurred. Therefore, the Commission hereby extends the time within which demand or reserve capacity charges associated with purchased power may be included as recoverable costs through Respondents' energy cost charges from Janauary 1, 1980 until TMI-1 returns to service or until further order of the Commission.

Rate Structure

The changes caused by the Three Mile Island accident have drastically altered Met Ed's costs to serve. Purchased power now replaces large amounts of energy which were previously generated internally. Met Ed's rate base has been reduced significantly, and there is a real need to conserve and thereby reduce current expenditures.

These changes compel a re-examination of Met Ed's rate structure. As noted previously in this order, rate structure is an issue which has been excluded from the current proceedings. However, it is a matter which cannot be ignored. If appropriate, a rate investigation will be consolidated with the hearings on temporary rates for Met Ed or with hearings on any general rate increase filing.

Energy Conservation

Our June 19, 1979 Order expressed dismay at Respondents' failure to even consider specific actions that would encourage ratepayers to conserve energy during this crisis. Our statement of intent on this matter was to be a clarification to the Respondents that they were to act immediately to propose rate structure changes as well as to secure low cost sources of generation.

The Respondents have responded by filing tariffs which expand the availability of time of day pricing, reduce stand-by charges for solar power customers and increase incentives to use power on an interruptible service tariff. The Respondents have developed a thirty year Master Plan designed to foster conservation and load management so that new construction can be deferred and reduced. Respondents have also proposed several tariff rule changes designed to encourage conservation of energy by providing for minimum insulation standards as a prerequisite for connecting new service and by permitting under certain conditions the use of renewable energy sources in conjunction with residential rates.

We encourage the Respondents to continue to bring their proposals to the Commission for prompt consideration; however, the proposals so far will have a de minimus effect on ratepayers' bills today. We are extremely concerned about the energy emergency which has followed the TMI-2 accident.

The GPU Companies have had to purchase substantial quantities of energy from 8:00 AM to 8:00 PM daily, except weekends, at greatly increased rates. This high-priced, on-peak expense has exacerbated the financial condition of the companies, and is causing the bills of ratepayers to increase. The Commission urges ratepayers in the strongest terms to attempt to reduce their energy consumpton during those hours, and to try to schedule use of electricity during off-peak hours and on weekends. In addition, the Company must redouble its efforts to reduce its costs.

In particular, we point out that in the June 19, 1979 Order we directed the Respondents to file a plan to implement a credit billing system which would reward conservation through a credit per kilowatt hour saved. The Respondents' reply indicated various reasons why the plan outlined would neither be equitable nor reduce purchased power costs. Respondents chose to evaluate our directive without offering an alternative proposal. We renew our directive to the Respondents to develop a proposal that will reduce today's costs of purchased power as a result of the actions of its customers.

Met Ed has indicated in response to our June 19, 1979 Order that there are many uncertainties associated with a credit billing system. However, during cross-examination Respondents' witness indicated that any reduction in energy consumption would reduce purchases:

> Q: Mr. Carter, if, in fact, Metropolitan Edison were able to reduce by whatever means its total sales to customers, you were able to reduce it by say 10 million KWH, does it necessarily follow that you are going to reduce purchased power?
>
> A: Presently, yes.
>
> Q: Because you are buying so much at all times --
>
> A: I suspect Met Ed is buying around the clock either short-term purchases from an associated company or from the pool. So any reduction in kilowatt hours at this point would be a reduction in purchases at any time, regardless of the time at which the reduction occurred.

(N.T. 4112-4113) (emphasis added).

Therefore, we will again order Met Ed and Penelec to propose a plan, within 90 days after entry of this order, for the implementation of a test program which will measure the effects of conservation-inducing rates on customer kilowatt-hour consumption and on revenues. The objective of the test program is to determine whether or not the offer of a discount or credit to residential, commercial, and industrial ratepayers who achieve a significant reduction in their electric consumption over a comparable period in the preceding year would encourage those customers to further conserve electricity.

All parties should be aware that if cooperation is not forthcoming in this regard, the Commission will be forced to consider imposing on its own motion such conservation measures as curtailments of various kinds, prohibition of new customer connections, ceilings on consumption with penalties for overruns, pricing of consumption above a targeted level at the average cost of purchased power, and/or other similar measures.

Effectivity of Tariffs

Notwithstanding our previous determinations, all rate changes permitted by this order shall be put into effect for service rendered on and after the date specified. The departure from this normal practice in the June 19, 1979 and February 8, 1980 orders was for the Respondents' energy charges only and for the purpose of insuring an immediate increase in cash flow. Here, Respondents' base rates are also being changed, and we do not find at present such urgency to increase Respondents' cash flow as would warrant granting an increase for bills rendered on and after a date specified. The substantial increases granted by this order will, in our opinion, be adequate when recovered for service rendered on and after the date specified.

Inasmuch as all matters properly before the Commission at this time at this docket have been determined; THEREFORE,

IT IS ORDERED:

1. That the order to show cause why the certificates of public convenience of Metropolitan Edison Company should not be revoked, which was adopted on November 1, 1979, is hereby discharged.

2. That the order to show cause why Three Mile Island Power Station, Unit No. 1, should be considered used and useful in the public service and why all of the costs associated with the unit should not be removed from the base rates of Metropolitan Edison Company and Pennsylvania Electric Company, which was adopted September 20, 1979, is hereby made absolute, consistent with this order.

3. That temporary base rates are hereby prescribed for Metropolitan Edison Company and Pennsylvania Electric Company, effective for service rendered on and after June 1, 1980, at the level of rates prescribed herein, to remain in effect until December 1, 1980.

4. That Metropolitan Edison Company and Pennsylvania Electric Company are hereby directed to file appropriate tariffs or tariff supplements in compliance with this order prescribing temporary rates.

5. That Metropolitan Edison Company and Pennsylvania Electric Company are hereby permitted to accelerate the amortization of their deferred energy costs through a surcharge, effective for service rendered on and after June 1, 1980, consistent with this order.

6. That the petition for modification of the order entered June 19, 1979 which was filed by Metropolitan Edison Company on November 1, 1979, is hereby granted, consistent with this order.

7. That Metropolitan Edison Company and Pennsylvania Electric Company are hereby permitted to file tariffs implementing energy cost charges, effective for service rendered on and after June 1, 1980, and levelized at 19.1 mills per KWH and 8.5 mills per KWH respectively, consistent with this order.

8. That Metropolitan Edison Company and Pennsylvania Electric Company may amend their tariffs to include in costs recoverable through their energy cost charges the costs of demand or reserve capacity charges associated with purchased power incurred from January 1, 1980 until Three Mile Island Power Station, Unit No. 1 returns to service or until further order of the Commission, consistent with this order.

9. That Metropolitan Edison Company shall forthwith reduce its deferred energy cost balance in the amount finally determined by the Commission at C.21597, in satisfaction of the refunds ordered by the Commission.

10. That the complaints of the parties consolidated at this docket are hereby sustained to the extent consistent with this order, and are hereby otherwise denied.

11. That the request to intervene filed by David D. Trout, filed on March 24, 1980, is hereby denied without prejudice to Mr. Trout to file a formal complaint.

12. That the complaint dockets C-79040831, C-79050907, C-79050909, C-79101682, C-79121754, and C-79121808 be marked closed.

13. That Metropolitan Edison Company and Pennsylvania Electric Company are hereby directed to propose, within 90 days after entry of this order, a plan for the implementation of a test program which will measure the effects of conservation-inducing rates on customer kilowatt-hour consumption and on revenues, consistent with this order.

14. That Metropolitan Edison Company and Pennsylvania Electric Company are hereby directed to file and comment upon, within 90 days after entry of this order, a proposed energy cost rate tariff to become effective January 1, 1981, consistent with this order.

15. That the exceptions of the parties are hereby granted to the extent consistent with this order and are hereby otherwise denied.

16. That Respondents are hereby directed to serve all parties with copies of all tariffs filed in compliance with this order.

17. That a copy of this order shall be served on all parties.

BY THE COMMISSION,

William P. Thierfelder
Secretary

(Seal)

ORDER ADOPTED: May 23, 1980

ORDER ENTERED: May 23, 1980

CONCURRING OPINION

BY CHAIRMAN SUSAN M. SHANAMAN

RE:

Metropolitan Edison Company

and

Pennsylvania Electric Company

Docket No. I-79040308

May 23, 1980

In response to recent news releases and press conferences by the General Public Utilities Corporation and the Office of Consumer Advocate concerning the Commission's Initial Decision in this case, I think it only proper at this time to express my extreme displeasure at the conduct of the parties in the Commission's administrative process in both parties.

I would note that the recent public statements made by Mr. Cohen in particular are not only objectionable to myself and the entire Commission, but also highly unprofessional. Such actions are especially disconcerning in view of the fact that the Consumer Advocate holds a position of public trust and responsibility. As a party in these proceedings the Consumer Advocate is expected to vigorougly and aggressively represent his client. As an officer of the court the Consumer Advocate is expected to abide by the Canons of Ethics and Disciplinary Rules. During the pendence of a proceeding a lawyer should not participate in publicity seeking means to influence the outcome of the merits of such proceedings. The failure of this Commission to adopt the particular course of action suggested by the Consumer Advocate must, of course, be personally disappointing. It should not be utilized as an excuse for demogoguery.

It is also clear that the statements released by GPU, though not as derogatory as those by the Consumer Advocate, can also be considered highly unprofessional. The mere fact that Mr. Kuhns expressed an opinion

which questions both the fairness and the legality of the Commission's proposal to remove TMI Unit #1 from the base rate pending the adoption of our final order today leaves one with an impression of somewhat dubious motives.

I can only hope that in future proceedings before this Commission, both the Office of Consumer Advocate and the General Public Utilities Corporation will restrain from such unprofessional and apparently unethical actions as they have recently displayed at the conclusion of this proceeding. It is the timing and the highly opionated tone of the releases that is of concern. Had they been issued today I would have no problem.

I am concerned that the testimony and the questions concerning the assessment of alternatives with respect to TMI do not become mere dictum in an otherwise lengthy decision. This Commission has stated that

> "Met Ed must aggressively pursue the return to service of TMI #1 or an early decision on its conversion and use of alternative fuel."

That statement is insufficient standing alone. The impact upon the ratepayer of waiting for some sign can be measured in the dollars spent for replacement power. The Commission must determine whether Respondents truly wish to explore the alternatives and their cost or whether there is a mindset to conduct "business as usual."

This Commission, this Commonwealth and indeed this Nation are struggling to gain independence from OPEC and to develop our own resources to the greatest extent possible. One such example within Pennsylvania is the study by Penn State regarding the feasibility of mine mouth electric generation from anthracite through utilization of large open pit mining technology. Clearly a facility of this nature deserves careful consideration.

The viability of the return to service of TMI, its conversion, or the decision to build anew are options that must be critically assessed.

I would therefore direct the Bureau of Conservation, Economics and Energy Planning to recommend to this Commission appropriate reporting requirements, studies, or actions which should be undertaken to ensure the appropriate assessment of the option viability. I would ask the Company to submit its decision-making time schedule to the Commission.

And thus with my concurring statement we reach the denouement -- the final revelation of occurrence which clarifies the nature and outcome of a complex sequence of events. There are no clear-cut victories, nor outright defeats for any of the parties who participated in this democratic process. There is hopefully an indication that the system of democracy in which we are engaged does work.

To quote from a statement by one resident of this area:

"The /members/ of the Public Utility Commission of Pennsylvania have my profound empathy. They have before them a most unenviable task. It has been their job to hear reams of testimony, to come to a decision on what is the right thing to do.

The utility, Met Ed, on the one hand demands compensation for a tragedy, albeit a self-inflicted tragedy. The people of the community serviced by the utility demand morality from a system devised two hundred years ago to dispense justice to its citizens.

The decision, one way or the other, will bear the names of those who effected it. The names of the Legislative body of the Commonwealth of Pennsylvania will not appear even though they are the ones who make the laws wherein the PUC must work. The names of the utility /industry/ and its varied interests will not appear; neither will the names of thousands of the utility's adversaries who protested its actions.

The choice will be a difficult and lasting one."

This Commission is charged by law to balance the competing interests of the ratepayer, the Company and its investors. It is sincerely hoped that our collective wisdom will serve that public interest with equity for all concerned.

ROBERT S. WALKER
16TH DISTRICT, PENNSYLVANIA

COMMITTEES:
GOVERNMENT OPERATIONS
SCIENCE AND TECHNOLOGY

STAFF IN CHARGE:
THOMAS R. BLANK
WASHINGTON OFFICE
GEORGE W. JACKSON
DISTRICT OFFICES

Congress of the United States
House of Representatives
Washington, D.C. 20515

April 22, 1980

Ack FM IS. Eizenstat
CONGRESSIONAL
LIAISON

APR 24 1980

Mr. Frank Moore
Assistant to the President
for Congressional Liaison
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

070572

Dear Mr. Moore:

Attached is a copy of a letter to the President from the Lebanon County (PA) Commissioners who are my constituents.

They focus on a very serious irony of the aftermath of the Three Mile Island accident on many of my constituents. I commend this letter to your attention and would hope that the views it contains could play a role in future policy deliberations on nuclear issues as well as issues pertaining to my region of our country.

Cordially,

Robert S. Walker

ts

Attachment

April 8, 1980

The Honorable James E. Carter
President of the United States
White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

Dear President Carter;

It is ironic that on the first anniversary of the Three Mile Island incident, we, the customers of the Metropolitan Edison Company, living within the twenty-five mile radius, received electric power bills reflecting a fifty percent (50%) increase in cost over and above prior monthly and previous yearly bills even though our consumption of kilowatt hours decreased substantially.

When we questioned Met-Ed Officials concerning this increase, they explained the rise in costs were due to Met-Ed's having to purchase energy from other power utility companies because of the shut down of Three Mile Island Unit I and Unit II. Thus, it appears our citizens are paying other power companies for premium energy and thereby reducing the power companies' cost of energy, but drastically increasing the cost to the victims of Three Mile Island. In this circuitous fashion, the victims are forced to pay for the damages which resulted from T.M.I.

Lebanon Countians have been affected psychologically, physically and financially. We believe that our cost of energy as well as the cost of clean-up, should be shared by those who benefited from the T.M.I. accident experience: namely, power companies throughout the United States.

After meeting jointly with Lebanon City Officials, we found that they too are concerned about the safety and well being of City residents, as well as the dramatic increase of energy costs and that they concur with this action.

We urge you to take our proposal under consideration and trust in you to make the right decision.

Thank you.

Sincerely yours,

Thomas A. Behney, Chairman

Harry W. Fisher

Edward Arnold
Lebanon County Commissioners

DJR/as
cc: Senator Schweiker
Senator Heinz
Congressman Walker
Congressman Ertel