

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



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

COMMONWEALTH OF PENNSYLVANIA'S ANSWER
TO PETITION TO INTERVENE OF
VICTAULIC COMPANY OF AMERICA, ET AL.

INTRODUCTION

The Commonwealth of Pennsylvania herein presents its response to the petition to intervene of Victaulic Company of America, Lebanon Steel Foundry, P.H. Glatfelter Company, Mack Printing, S. I. Handling Systems, Inc., Alloy Rods Division of Allegheny Ludlum Industries, Inc., Aluminum Company of America, and ARSCO Corporation, (hereinafter "Petitioners") served upon the parties in this proceeding on June 13, 1980.

Besides the factors enumerated in 10 C.F.R. 2.714(d) which the Board must consider in ruling on any petition to intervene, there are five other factors, set forth in 10 C.F.R. 2.714(a)(1) which must be considered when the petition filed is untimely. These factors are:

- (i) Good cause, if any, for failure to file on time.
- (ii) The availability of other means whereby the petitioner's interest will be protected.
- (iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (iv) The extent to which the petitioner's interest will be represented by existing parties.
- (v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

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The Commonwealth will limit itself in this response to consideration of the third and fifth of the above factors.

ANALYSIS

A. Petitioners' Contribution to a Sound Record.

Because of its belief in the overwhelming importance of creating a full, fair and complete public record in this proceeding, the Commonwealth considers this factor to be the most important of the five factors listed in 2.714(a)(1), and one which the Board should weigh carefully in exercising its discretion. Although Petitioners have not described the nature of their business operations or the scope of their expertise, the Commonwealth has had occasion to become familiar with the activities of most of the Petitioners as permittees and, in a few instances, as defendants. Through its Department of Environmental Resources, the Commonwealth has spent a decade regulating the air pollution control, water pollution control, and solid waste management activities of Petitioners, and has thereby gained some appreciation for the kind of evidence and expertise which Petitioners 'may reasonably be expected' to supply in this proceeding. The Commonwealth has examined both the August 9 Commission order and the March 6, 1980 Commission order (CLI-80-5) on management competence issues, and concluded that the latter order contains several items on which the Petitioners may reasonably be expected to assist in developing a sound record. These items are found on pages 2 and 3 of CLI-80-5 and are as follows:

- (1) whether Metropolitan Edison's command and administrative structure, at both the plant and corporate levels, is appropriately organized to assure safe operation of Unit 1;
- (6) whether the relationship between Metropolitan Edison's corporate finance and technical departments is such as to prevent financial considerations from having an improper impact upon technical decisions;

- (8) what, if any, conclusions regarding Metropolitan Edison's ability to operate Unit 1 safely can be drawn from a comparison of the number and type of past infractions of NRC regulations attributable to the Three Mile Island Units with industry-wide infraction statistics;
- (9) what, if any, conclusions regarding Metropolitan Edison's ability to operate Unit 1 safely can be drawn from a comparison of the number and type of past Licensee Event Reports ("LER") and the licensee's operating experience at the Three Mile Island Units with industry-wide statistics on LER's and operating experience;
- (12) whether Metropolitan Edison possesses the financial resources necessary to safely operate Unit 1 in addition to cleaning up Unit 2.

These items are matters on which Petitioners, as companies which have experienced extensive environmental regulation and (in a few cases) litigation, may reasonably be expected to have the kind of expertise available to enable them to contribute to a full and complete record. Petitioners may, of course, be able to hire or acquire experts on other issues, but the Commonwealth has no information in that regard.

B. Petitioner's Effect on Breadth of Issues or Delay of Proceedings.

The Board now has before it the assertion of Petitioners that they desire to expedite, not delay, the proceedings (page 8 of petition) and a description of their position (page 5 of petition) in general terms which do not appear to represent any attempt to broaden the scope of the proceeding. Moreover, the Board will have the opportunity (if the petition is granted) to rule on the scope and specificity of any contentions filed by Petitioners and to require them to adhere to any schedule which has been established in the proceeding. In short, the Petitioners take the proceeding as they find it.

Fortunately for Petitioners, the proceeding as they find it includes an SER which it by its own admission contains an incomplete evaluation of management capability issues and the statement that an SER supplement based

on "an assessment of conformance to the available new and upgraded criteria and standards" will be issued later (SER, page C6-1). The Board will undoubtedly allow a brief opportunity for discovery on new material contained in this supplement, and the supplement will apparently not be issued until October (Tr. p 2449-50). By the time that discovery period begins, Petitioners (if allowed to intervene) will have had an opportunity to file final contentions, the parties will have had an opportunity to respond, and the Board will have had an opportunity to rule on the contentions. When the post-SER supplement discovery begins, Petitioners can be given exactly the same discovery rights as any other party; and all of the parties can file discovery requests on Petitioners as they would on any other intervenor. The more extensive the new information contained in the SER supplement, the more similar Petitioners' position in this proceeding will be to that of other intervenors having contentions on the management competence issue. In summary, the Commonwealth envisions the following schedule:

1. August 25 - Last day for filing answers to petition to intervene.
2. September 2 - Board rules on petition and gives Petitioners week to file contentions.
3. September 15 - Contentions are received (time has been allowed for Board to mail its ruling, but Petitioners are required to give actual service to parties by hand carrying or other means by this date).
4. September 29 - All answers to contentions are filed.
5. October 1 - SER supplement is issued by NRC.
6. October 3 - All answers to contentions are ruled upon by Board.
7. October 6 - SER Supplement is received by parties and discovery begins.

The use of October 1 as the SER supplement issuance date is, of course, conservative. Any slippage in that date would allow the Board and the parties even more time for consideration of contentions.

CONCLUSIONS

The Commonwealth has concluded that Petitioners may reasonably be expected to contribute to a sound record on certain management competence issues and that the proceeding will not thereby be delayed or broadened. The Commonwealth urges that the Board grant the petition to intervene with such restrictions upon the scope of Petitioners' participation as the Board deems essential to the conduct of a full, fair and expeditious hearing.

Respectfully submitted,

Karin W. Carter

KARIN W. CARTER
Assistant Attorney General

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Commonwealth of Pennsylvania

Dated: August 25, 1980

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CERTIFICATE OF SERVICE

I hereby certify that copies of the attached "Commonwealth of Pennsylvania's Answer to Petition to Intervene of Victaulic Company of America, et al" were mailed, postage prepaid, this 25th day of August, 1980, to the persons on the attached service list.

Karin W. Carter

KARIN W. CARTER
Assistant Attorney General

Dated: August 25, 1980

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