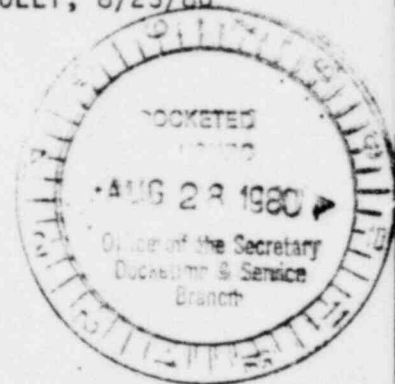


SHOLLY, 8/23/80

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION



Before the Atomic Safety and Licensing Board

In the Matter of  
METROPOLITAN EDISON COMPANY, ET AL.  
(Three Mile Island Nuclear  
Station, Unit No. 1)

Docket No. 50-289  
(RESTART)

INTERVENOR STEVEN C. SHOLLY ANSWER  
(SUPPLEMENTAL) TO PETITION TO INTERVENE  
OF VICTAULIC COMPANY OF AMERICA, ET AL.

The Board at the Second Special Prehearing Conference ruled that the parties had until August 23, 1980, to file answers to the Petition to Intervene of Victaulic et al (Transcript, page 2388, lines 5 and 6). This intervenor responded in a filing dated 8/18/80 (SEE Intervenor Steven C. Sholly Answer to Petition to Intervene of Victaulic Company of America, et al., filed with the Commission on June 13, 1980). This further (supplemental) answer to Victaulic et al. is based on the availability of the transcript of the proceedings of August 12-13, 1980.

1. Petitioners seek to intervene pursuant to 10 CFR 2.714 with a late-filed petition. Such late-filed petitions must meet standards specified in 10 CFR 2.714 and those imposed by virtue of precedent.

2. This intervenor noted in the 8/18/80 filing at page 4 that petitioners will have the opportunity to participate in PUC proceedings on the recent rate hike request by the Licensee. I note by way of an article in the Harrisburg Evening News (Friday, August 22, 1980,

8009020052

D 503  
S 0/1

page 21, copy attached) that the petitioners are members of an organization called "The Coalition of Concerned Consumers Organization" or COCCO. This organization has, according to the article, petitioned to intervene in the PUC proceeding on the Licensee's most recent rate hike request; COCCO is being represented by Mr. Bruce Eckert, Esq., in the petition. This is relevant to the Board's decision on this petition to intervene because of a ruling made by the Appeal Board in ALAB-289 (2 NRC 395):

"In deciding whether a petition to intervene which has been filed late should be granted, one factor which must be considered is whether the late petitioner has some other means of protecting its interests, e.g., the ability to participate in a state proceeding on essentially the same matter."

Petitioners not only have the ability to participate in the PUC proceeding, which goes directly to the heart of their alleged economic interests (i.e., the losses incurred due to high utility bills), but are actively seeking to participate in the proceeding.

3. Petitioners allege at page 8 of the petition to intervene that the most recent rate hike request by the Licensee, filed on 29 July 1980, "has made it clear to Petitioners' that they have very vital interests at stake in the TMI-1 Restart proceeding", interests which presumably were not apparent before the most recent request by the Licensee to the PUC. In the Evening News article noted above, Mr. David Wauls, vice president of the Lebanon Valley Chamber of Commerce (Mr. Wauls, according to the article, initiated the coalition), provided figures which are reported to represent the above-normal costs for replacement energy

for January through March of 1980 of \$2.64 million for industrial and commercial customers of Metropolitan Edison Company. Clearly, these figures indicate an awareness of the problem well before the 29 July 1980 rate request filing, and add further weight to the conclusion drawn in this intervenor's 8/18/80 answer that no good cause is established in the petition for lateness.

4. The petition to intervene at page 2 asserts that the petitioners "would also represent the interests of all Met-Ed customers from residential to industrial who have been adversely affected and will continue to be adversely affected by the TMI-1 Shutdown Order." This representation by acting as a "private attorney general" is not permissible in Commission proceedings. There are clearly many customers of the Licensee who will not permit the petitioners to represent their interests in this proceeding, even if such representation without authorization were permissible. The Board should explicitly rule on this point that no such representation is permissible.

5. The petitioners acknowledged at the Prehearing Conference on August 12, 1980, that its petition was very late (Transcript, pages 2020-2021).

6. The petitioners failed to take advantage of the Board's offer to inform the Board of the aspects of the proceeding which affected the petitioners. In fact, the Chairman stated:

"It is more than an opportunity, sir; it really is a directive."

Transcript, page 2022. Mr. Tortorice, representing the petitioners, made

no attempt to delineate the petitioners interests in the proceeding beyond the language in the petition to intervene, despite an express directive from the Chair to do so.

7. The petitioners were quite clearly put on notice by the Board that contentions were expected as soon as possible. The following exchange between the Chairman and Mr. Kelly of the petitioners shows this quite clearly (Transcript, page 2267):

"MR. KELLY: Mr. Smith, I realize that our petition does not consist of our contentions at this point, I do recognize that the two-step filing procedure, first the petition, then the contentions--although I would state that I do not know if the--I did not see anything specifically in the regulations which set a specific time table as to late filings or even later filings, but I think your basic point is, since this is the last prehearing conference--Is that my understanding?"

"MR. SMITH: That is correct, and the point has a different significance, and that is that at this late date to begin afresh a petition, anticipating the more leisurely pace set forth in 2.714, that would raise questions in our minds as to how diligent you are, to come in now without even having contention, and even having those off some time in the future. However, I do not wish to be a party to reforming a faulty petition."

The Chairman continued at pages 2267 through 2268 to draw a scenario which would have resulted in considerable delay in the start of the proceeding as a result of the petitioners' late filing of petition without contentions. The Chairman finished, stating, "You had not thought along those lines, apparently." Mr. Kelly responded by saying, "We'll, we have, Your Honor, but we are trying to do the best with the situation that we face."

The petitioners note at page 2271 of the transcripts that they have no expertise in utility management, although they indicated the intent to obtain expert testimony.

The petitioners note at page 2272 of the transcripts that:

"They certainly have contentions in mind, and I think that we have stated them to some degree of specificity in Paragraph 13 when we stated our aspects, but as far as particular detailed contentions, no."

Despite continuing discussion of the issues of contentions, no contentions have been filed and received by this intervenor. This brings further question as to the diligence of the petitioners in meeting their obligations on a late-filed petition.

#### CONCLUSION

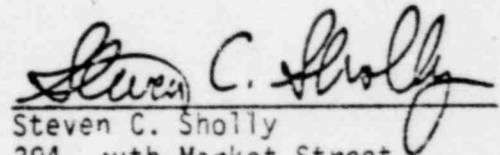
It has become even clearer upon reviewing the transcripts of the Second Prehearing Conference and the article in the Evening News that the petitioners have no excuse for late-filing of the petition to intervene. The petitioners have demonstrated a lack of diligence in filing contentions, even when provided with very clear discussion from the Board of the necessity of doing so at the earliest possible date.

The petition of Victaulic et al. should be denied as a matter of law as being in default with respect to the showings required in 10 CFR 2.714 for late petitions. Discretionary intervention should be considered by the Board if the petitioners come forward immediately with contentions which are properly litigable, have sufficient basis, and are accompanied

by information from the petitioners which specifies how they intend to participate in the proceeding, who their expert witnesses will be, and what the qualifications of those witnesses are to address the issues upon which the intervention petition is based. Discretionary must also be based on full procedural rights of the intervenors being preserved, i.e., time to respond to the contentions and provision for discovery of the petitioners. Admission of the petitioners at this late date, on the showing made thus far, under any other circumstances would be, in the opinion of this intervenor, an abuse of discretion. Such admission would be immediately appealed on the grounds that the petition should have been wholly denied.

DATED: August 23, 1980

RESPECTFULLY SUBMITTED,



Steven C. Sholly  
304 South Market Street  
Mechanicsburg, PA 17055  
w--233/4241  
h--766/1857

# Coalition of businesses to push fight against Met-Ed rate boosts

A fledgling coalition of business organizations and industries served by the owners of Three Mile Island is formalizing its attack on the mounting cost of electricity since the TMI accident.

The Coalition of Concerned Consumers Organization has retained a Philadelphia consulting firm, Lewis Associates, and its lawyer, Bruce Eckert, to represent the group.

Members of the coalition, which include chambers of commerce in Lebanon, Reading, Easton, York, Hanover and Gettysburg, the state Chamber of Commerce and business and industrial customers of Metropolitan Edison Co. and General Public Utilities Corp., met earlier this month in Reading to devise a "plan of action" to seek rate relief.

The group said it was encouraged by the recommendation Wednesday of a state Public Utility Commission administrative law judge that the PUC deny a \$35 million emergency rate request sought by Met-Ed.

Judge Joseph Matuschak's 32-page opinion stated that Met-Ed's request failed to substantiate its claim that an immediate influx of cash is needed to avoid layoffs, inadequate service and maintenance.

"That was our position," Eckert said, adding that Met-Ed's request for emergency relief is "not justified."

The state Public Utility Commission is to decide on the matter next Thursday.

A petition requesting participation in the rate hearing has been filed with the PUC on behalf of COCCO affiliates, Eckert said.

"As part of our brief, and certainly as part of our argument, we contend that the balance of the (rate) filing should be investigated at a later time."

Met-Ed last month asked the PUC for a \$76.5 million rate increase to become effective on Sept. 27. It also asked that \$35 million of the increase take effect on Sept. 1 on an emergency basis.

If the overall request of \$76.5 million is granted, Eckert noted, it would represent a 17 percent increase in rates for Met-Ed consumers.

David Wauls, executive vice president of the Lebanon Valley Chamber of Commerce, who initiated the coalition, said the business community can respond to increased utility rates in two ways.

"One, of course, is to pass the increase on to customers," he said. "Or, when it gets to a point where we can no longer do that and remain competitive, they (businessmen) would have to take those particular costs out of the profit

Eventually, he said, "it gets to a point" where businessmen can no longer pass the cost along or dip into profits, "and that could lead to the possibility of layoffs if we keep getting increased costs associated with this particular accident."

Figures supplied by the state chamber show, for example, that in the period January through March of this year, Lebanon County users paid above-normal costs for replacement energy in this manner: Industrial customers, \$1.54 million; commercial, \$1.1 million; residential, \$1.8 million.

The "economical question" has to be addressed, Wauls explained. "To say that there's an industry out there that cannot survive because of electrical utility costs may or may not be true," he said. "We won't know that until a lot of these businesses are faced with all these increases that are being proposed by Met-Ed."

Eckert said a petition has been filed on behalf of eight industries to intervene at hearings before the Nuclear Regulatory Commission on the restarting of TMI Unit 1. The industries, including the Lebanon Steel Foundry, are described in the petition as "some of the largest electrical users of Met-Ed."

He said COCCO's position is that pursuant to the safe operation of Unit 1 at its meeting of the various safety requirements that the NRC proposes, "it should be brought back on line as expeditiously as possible."

The cost of electrical energy "negotiated by Unit 1 being off line are extremely detrimental to the job base in Central Pennsylvania," he said.

The increased costs result from the shutdown of both nuclear reactors at TMI, and the need for Met-Ed to purchase electrical power from other utilities.

POOR ORIGINAL

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

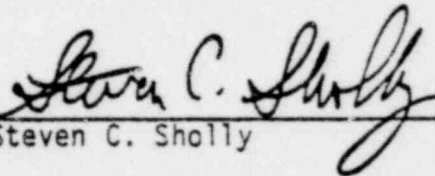
Before the Atomic Safety and Licensing Board

In the Matter of  
METROPOLITAN EDISON COMPANY, ET AL.  
(Three Mile Island Nuclear  
Station, Unit No. 1)

Docket No. 50-289  
(RESTART)

CERTIFICATE OF SERVICE

I hereby certify that a single copy of INTERVENOR STEVEN C. SHOLLY ANSWER (SUPPLEMENTAL) TO PETITION TO INTERVENE OF VICTAULIC COMPANY OF AMERICA, ET AL. was served upon those persons on the service list below by deposit in the United States mail, first class, postage prepaid, this 23rd day of August, 1980.

  
Steven C. Sholly

Mr. Robert E. Kelly, Esq.  
Duane, Morris & Heckscher  
P.O. Box 1003  
203 Pine Street, Suite 401  
Harrisburg, PA 17108

Mr. Ivan W. Smith, Esq.  
Chairman, Atomic Safety and  
Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dr. Walter H. Jordan  
881 West Outer Drive  
Oak Ridge, TN 37830

Dr. Linda W. Little  
5000 Hermitage Drive  
Raleigh, NC 27612

Karin W. Carter, Esq.  
505 Executive House  
P.O. Box 2357  
Harrisburg, PA 17120

George F. Trowbridge, Esq.  
Shaw, Pittman, Potts & Trowbridge  
1800 M Street, N.W.  
Washington, D.C. 20006

Walter W. Cohen, Esq., Consumer Advocate  
Department of Justice  
Strawberry Square, 14th Floor  
Harrisburg, PA 17127

John Levin, Esq.  
Pa. PUC  
Box 3265  
Harrisburg, PA 17120

Office of the Executive Legal Director  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555  
ATTN: Docketing and Service Section