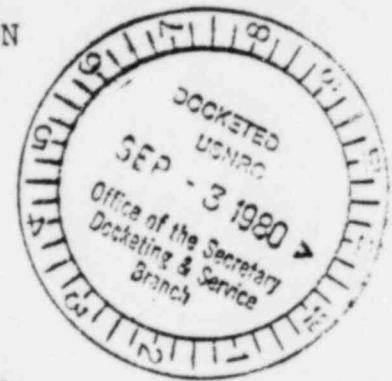


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD *SERVED*
Ivan W. Smith, Chairman
Dr. Walter H. Jordan
Dr. Linda W. Little



SEP 3 1980

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

Docket No. 50-289 SP
(Restart)

MEMORANDUM AND ORDER
DENYING PETITION TO INTERVENE
OF VICTAULIC COMPANY, ET AL.
(September 2, 1980)

On August 13, 1980 the Victaulic Company of America and seven other business customers of licensee ^{1/} (Petitioners) filed a late petition to intervene in this proceeding. ^{2/} For perhaps the first and last time in this proceeding, the licensee, staff, and the intervenors who have filed a response ^{3/} are in agreement on an important substantive issue. All urge that the petition be denied. The Commonwealth of Pennsylvania does not oppose the petition.

- 1/ Victaulic's co-petitioners are: Lebanon Steel Foundry, P. H. Glatfelter Co., Mack Printing, S I Handling Systems, Inc., Alloy Rods Division of Allegheny Ludlum Industries, Inc., Aluminum Company of America, and Harsco Corp.
- 2/ Timely petitions to intervene were due by September 15, 1979.
- 3/ These intervenors are the Union of Concerned Scientists (UCS), Mr. Steven C. Sholly, the Environmental Coalition on Nuclear Power (ECNP), and Three Mile Island Alert, Inc. (TMIA).

*DS02
S 0/1*

economic interest of a utility ratepayer is not cognizable in NRC licensing proceedings because such an interest is not within the zone of interests protected by either the AEA or the National Environmental Policy Act (NEPA). E.g., Pebble Springs, supra, at 614; Detroit Edison Company (Enrico Fermi, Unit 2), ALAB-470, 7 NRC 473 (1978); Kansas Gas and Electric Company, et al. (Wolf Creek, Unit 1), ALAB-424, 6 NRC 122, 128 at n. 7 (1977); Tennessee Valley Authority (Watts Bar, Units 1 and 2), ALAB-413, 5 NRC 1418, 1420-21 (1977).

We agree with the analysis of both UCS and the staff that Petitioners' allegation of interest is clearly that of their economic interest as ratepayers, despite Petitioners' assertion to the contrary. Petition, at p. 4. As set forth by Petitioners themselves, their interest is that of large users of electricity who are adversely affected by the shutdown of TMI-1 because this has raised the cost of electricity to licensee's customers, including Petitioners. Petition, at p. 3. In turn, these higher electricity costs to Petitioners have disadvantaged their position vis-a-vis competitors serviced by other utilities, caused the indefinite postponement of expansion plans and raised the possibility of cutbacks in production with concomitant furloughs of employees. Petition, at p. 4.^{4/}

^{4/} Furthermore, as UCS points out in its response (at p.4), Petitioners' only stated reason for seeking to intervene at such a late date is the recent request by licensee for a rate increase.

doing business in the area affected by the releases). [Emphasis in original.]

Id., at 105.^{5/}

The financial loss due to higher rates alleged by Petitioners are not losses stemming from either radiological releases or impacts upon the environment and therefore are not within the zone of interest protected by either the AEA or NEPA.^{6/} Accordingly, Petitioners do not have standing as of right to become a party to this proceeding.

^{5/} Similarly, economic harm comes within the zone of interest of NEPA only if it is environmentally related; i.e., resulting from an environmental impact. Watts Bar, supra, 5 NRC at 1421, citing Mr. Rosenthal's opinion in Long Island Lighting Company (Jamesport, Units 1 and 2), ALAB-292, 2 NRC 631, 638-40 (1975). An example which comes to the board's mind would be the allegations of a commercial fisherman that a nuclear power plant would adversely affect the fish population and thereby his livelihood.

^{6/} Indeed, the illustration of the Sun Ship case put forward by Petitioners is particularly unhelpful to them. It is readily apparent that Sun Ship, whose economic interest could be affected if a component of the nuclear plant was found to be inadequate, presented a much closer "zone of interest" case than the instant Petitioners' interest in keeping rates down. The Appeal Board has so implied in another decision in the Sun Ship matter. Virginia Electric and Power Company (North Anna, Units 1 and 2), ALAB-363, 4 NRC 631, 633 at n. 3 (1976). However, as noted above, the Appeal Board found that Sun Ship's interest was not within the zone of interest.

to the development of a sound record on important and specific issues which would not otherwise be properly presented. Pebble Springs, supra, 4 NRC at 617; Fermi, supra, 7 NRC at 475 at n. 2; Watts Bar, supra, 5 NRC at 1422. Petitioners here have totally failed to make any such showing. They broadly state that they will take the position that licensee will comply with the short- and long-term requirements of the Commission's August 9, 1979 order and will not endanger the health and safety of the public. Petition, at p. 5. The petition also supports licensee's management capabilities (at p. 5), but at the prehearing conference Petitioners disclaimed any expertise in utility management, although they stated they could attempt to obtain expert testimony. Tr. 2271.

In short, Petitioners have not set forth, let alone demonstrated, that they have useful expertise on the issues in this proceeding.^{7/} It may well be that Petitioners and their counsel are experienced in environmental regulation and litigation, as stated by the Commonwealth in its response, but Petitioners have shown no particular expertise in matters before us.

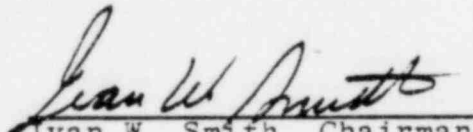
^{7/} The intervention rule, § 2.714, is not easily applied to the situation before us. Ideally a determination as to whether a petitioner should be admitted should be based upon the petition as originally filed and upon the list of contentions to be filed in a later supplement. (§ 2.714(b)). By not promptly submitting a list of specific contentions, the Petitioners have not aided us in deciding the question of discretionary intervention. However, Petitioners have set forth the aspects as to which they seek to intervene with sufficient specificity to permit a fair evaluation.

such interests "... are the appropriate concern of state public utility commissions" Fermi, supra, 7 NRC at 476.

Admission of Petitioners just before the commencement of the hearing in mid-October 1980 will inevitably delay the proceeding. The suggestion by the Commonwealth that contentions can be filed, answered, and ruled upon by us before the hearing is optimistic. More importantly, it ignores the discovery rights other parties have of Petitioners. In this proceeding, especially, we join in the Appeal Board's view that "... experience teaches that the admission of a new party just before a hearing starts is bound to confuse or complicate matters". Virginia Electric and Power Company (North Anna, Units 1 and 2), ALAB-289, 2 NRC 395, 400. Mr. Sholly, for one, properly takes the position that he would not waive his important discovery rights. Additionally, it has taken a lengthy period and much work by the parties and the board over this past year, while Petitioners rested on whatever rights they may have had, to particularize contentions to the fullest extent possible as the discovery process provided more information. It is too late in the day to start the process again with as yet uncertain contentions from Petitioners, and as set forth above, there is no good reason to do so. If Petitioners have any information or expertise in support of licensee which licensee does not have, Petitioners can provide licensee with access to it:

Accordingly the petition to intervene is wholly denied. Pursuant to 10 CFR 2.714a, and the Commission's August 9, 1979 Order and Notice of Hearing (10 NRC 140,150), this order may be appealed by Petitioners to the Nuclear Regulatory Commission within ten days after its service.

THE ATOMIC SAFETY AND
LICENSING BOARD


Ivan W. Smith, Chairman

Bethesda, Maryland

September 2, 1980