

ENVIRONMENTAL COALITION ON NUCLEAR POWER

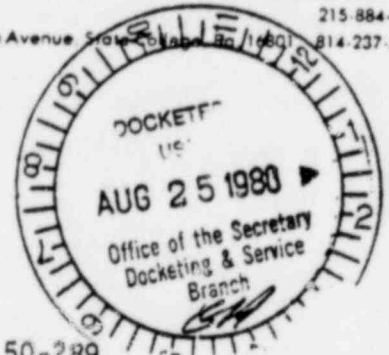
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UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

In the Matter of)
METROPOLITAN EDISON COMPANY, et al.)
(Three Mile Island Nuclear Generating)
Station, Unit 1, Restart))

Docket Number 50-289
(Restart/License Revocation)



ECNP INTERVENORS' RESPONSE TO LATE-FILED PETITION TO INTERVENE OF VICTAULIC COMPANY OF AMERICA, ET AL.

On August 13, 1980, counsel for Victaulic Company of America, et al., hand-delivered a late petition for leave to intervene in the above-captioned proceeding during the course of the Final Prehearing Conference in this proceeding which had been noticed for hearing by the Order of the NRC Commissioners dated August 9, 1979 (not August 9, 1980*, as is stated by this petitioner on page 1 of its filing). The Environmental Coalition on Nuclear Power opposes the granting of full party status to these late petitioners, unless the Commission wishes to toss aside a full year of work by all parties who had filed timely petitions to intervene and begin again with the requisite full rounds of discovery among the parties, yet more motions and cross-motions, yet additional prehearing conferences. From long observation of NRC ASLB proceedings, it would be our expectation that such a petition as has here been filed would have been denied on the spot by the Board had the petitioners been expressing their opposition to the reopening of TMI-1.

The petitioner here cites 10 CFR 2.711 and 2.714 as a basis for this very late request. We note that 2.711 states quite clearly that extensions or reductions of time limits may be set by the Commission or the presiding officer, except as otherwise provided by law or by the Commission's Rules of Practice codified in 10 CFR Part 2. On both counts, this petition is not timely: the Rules at 10 CFR 2.714(a)(1) specify that such petitions must be filed not later than the time

* The date of the Commission's Order to maintain TMI-1 in shutdown condition is similarly misstated as July 2, 1980, rather than 1979, on the same page.

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set in the notice of hearing or by the Commissioners or ASLB presiding officer. The same section further states that nontimely filings will not be entertained in the absence of a balancing of the specified factors (i) through (v) in addition to those enumerated in 2.714(d)(1), (2), and (3).

On these bases, the petitioners fail to qualify for late intervention in the following ways:

1. There is no good cause shown for these petitioners to have failed to file at the proper time nearly a year ago. There is no good cause shown for their having failed to file at any time since the deadline. The Federal Register notice and ample newspaper coverage of the Commission's Order of August 9, 1979, and of these proceedings have been available to all who wished to participate.
2. The interest now claimed by these petitioners was known, in its essence, to all ratepayers of the Suspended Licensee at the time when intervention was permitted. Other parties complied with the regulations. No new interest that has developed suddenly at this late hour is claimed in this petition.
3. No evidence is advanced that these ratepayers, who claim to be "some of the largest electrical users of Met-Ed," are indeed subject to rates that are as high as or higher than those of other industrial and commercial customers of other utilities in the Commonwealth or elsewhere. There is, further, no information provided in the petition to justify the claim that these petitioners have any special claim to represent the interests of the Suspended Licensee's residential customers. The members of the citizen group A.H.G.R.Y. or of ECNP would appear to meet that interest better in that some of those persons are actual residential customers of this utility.
4. As Intervenor Sholly has pointed out in conversation, some of these late petitioners were parties to the Public Utility Commission's proceedings on rate increases related to the TMI accident at the time appropriate for intervening in the TMI-1 Restart proceeding. As such, they have surely been fully informed of the issues they now seek to raise on the eve of hearings.
5. Utility rates and cost of purchased power are not matters within the decision-making realm of the NRC's ASLB. For satisfaction in these matters, the petitioners should be returning to the PUC; that body is the appropriate forum for protection of these petitioners' alleged interests. Rates exceed the scope of this NRC proceeding.
6. The petitioners, at nos. 10 - 12, claim but have not demonstrated cutbacks in production, furloughs of employees, loss of competitive position, and "indefinitely continued expansion plans." Nor have they shown that any such alleged suffering exceeds that of all of us who are suffering the effects of rampant inflation combined with severe regional and nationwide economic recession.
7. The petitioner has not demonstrated in what ways the interests of these firms differ significantly enough from those of the Suspended Licensee to warrant late intervention.

I hereby certify that copies of ECMP INTERVENORS' RESPONSE TO LATE-FILED PETITION TO INTERVENE OF VICTAULIC COMPANY OF AMERICA, ET AL. were served upon the parties to the proceeding as required by deposit in the U.S. Mail, first class, postage paid, this 22nd day of August, 1930.

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8. The petition before us offers no information concerning the ways that this petitioner expects to assist in the development of a sound and complete record; nor is there any explanation as to how those issues suggested in no. 13 will be addressed better or more fully than can be expected to be provided by the Suspended Licensee in its own defense.
9. There is no question that the petitioner's entrance into this proceeding will serve to delay the hearings without commensurately broadening the issues to be addressed. Only management capability and financial condition of the Suspended Licensee appear to be issues of concern to these petitioners. Other parties, including the Licensee and the NRC Staff, will be presenting direct evidence on these issues. There is no showing in the late petition of ways in which those petitioners would contribute substantively to the record in ways that the admitted parties will not.

But unquestionably, if these late petitioners are admitted, the other parties that had raised those issues at the proper time, whether they are now expecting to be able to litigate them in the proceeding as it now exists or not, would undertake discovery, as, presumably, so also will the Licensee and the NRC Staff. The proceedings will be delayed.

Such delay might not work to the detriment of several of the parties other than the late petitioner, but the intent of the Commission to complete these TMI-1 proceedings as expeditiously as possible would be frustrated. The Board will note that some of the intervenors may be required to utilize vacation or other personal time from their full-time employment in order to participate in these proceedings. The Board has already issued its Order that sets forth the opening date for the evidentiary hearings, and part of the issues these petitioners propose to raise are scheduled for the early sessions. The adjudicative rights of the parties will be violated if a new party is allowed to enter without opportunity for discovery by the other parties. No positive purpose will be served.

With respect to 10 CFR 2.714(d), ECNP agrees that the late petitioners will be affected by the outcome of these proceedings. All who purchase their electricity from this utility, all others whose "nuclear utilities" would be assessed to pay for the clean-up of TMI-2 under a plan proposed by the Suspended Licensee, and all who live in the long shadow of TMI share the consequences of the outcome of this proceeding. In the event of future accident conditions at either TMI-1 or TMI-2, ECNP concludes that these late petitioners will be adversely affected by the very outcome that they so ardently desire.

The petition of Victaulic Company of America and its co-petitioners should be denied, unless the Commission wishes to liberalize its Rules so as to allow the comparable late petitions to intervene of others who might wish to oppose the reopening of TMI-1 but for any reason, or none, had failed to meet the NRC's deadline.

Dated this 22 day
of August, 1980

Respectfully submitted,
Judith H. Johnsrud
Judith H. Johnsrud
Co-Director, ECNP