

**UNITED STATES OF AMERICA**  
**NUCLEAR REGULATORY COMMISSION**  
**BEFORE THE SECRETARY**

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**In the matter of**

**Docket No. 52-039-COL**

**Bell Bend Nuclear Power Plant**

**Combined Construction and License Application**

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**PETITION TO INTERVENE IN THE RADIOACTIVE**  
**BELL BEND NUCLEAR POWER PLANT COMBINED**  
**CONSTRUCTION AND LICENSE APPLICATION BY GENE STILP**  
**AND TAXPAYERS AND RATEPAYERS UNITED (TRU)**

**Introduction**

As provided by the hearing notice published in the Federal Register on

March 18, 2009, at 74 Federal Register 11,606, Gene Stilp and the

Taxpayers and Ratepayers United (TRU) Association (“Petitioners”) petition to intervene in the combined construction permit and operating license Nuclear Regulatory Commission proceedings for the Bell Bend radioactive nuclear power plant. Petitioners have standing to participate in this proceeding and have also submitted a number of admissible contentions.

**Standing**

Gene Stilp is a citizen of Pennsylvania. Mr. Stilp owns a house and property at 275 Poplar Street, Wilkes-Barre, Pennsylvania less than twenty miles from the proposed foreign designed radioactive reactor at the Bell Bend Nuclear Power Plant. An accident or terrorist attack at the proposed radioactive nuclear plant or its proposed high level radioactive nuclear waste dump or its low level radioactive nuclear waste dump areas could result in radioactive releases and environmental contamination that would adversely affect Mr. Stilps’s health and safety, and the value of the property, and

would interfere with his business interests which takes him within the fifty mile radius of the proposed radioactive nuclear plant. Mr. Stilp's business interests include fighting high utility rate increases like the upcoming PPL 40% rate increase Mr. Stilp's business also includes consulting on government issues that affect taxpayers and going after government and politicians' waste of taxpayer money and that this continually takes him within the fifty mile radius of the proposed radioactive nuclear plant at Bell Bend. . Mr. Stilp business concerns also advocate alternative energy sources like solar, wind, conservation, geothermal, energy efficiency and advanced building and transportation practices. This advocacy continually takes him within the fifty mile radius of the proposed radioactive nuclear plant at Bell Bend. Mr. Stilp also has major extended family within the area that can be affected by the reactor's operation that will be affected by a radioactive release. If radioactive contamination occurs, a distinct and palpable harm that constitutes injury in fact within the area of

interests protected by the following statutes will be incurred: The Atomic Energy Act of 1954, the National Environmental Policy Act of 1969. The injury can be traced to the challenged action. And the injury is likely to be addressed by a favorable decision, In Matter of Pacific Gas and Electric (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation) LBP-02-23, 56 N.R.C. 413, 426-427 (2002).

Gene Stilp is also the Director of the citizens association Taxpayers and Ratepayers United (TRU) Association in Pennsylvania. Taxpayers and Ratepayers United Association is a Pennsylvania corporation with members in the PPL service territory which comprises twenty-nine counties in eastern Pennsylvania. The Taxpayers and Ratepayers Association is currently fighting the 40% rate increase scheduled for all PPL customers on December 31, 2009. The rate increase is directly related to billions of dollars in cost overruns at the other PPL radioactive nuclear power plants run by PPL at the

Susquehanna Electric Station near Berwick, Pennsylvania on the  
Susquehanna River. The two radioactive nuclear plants came on line in the  
early 1980's and all the PPL ratepayers in the twenty-nine county service  
area are still paying for those two nuclear units located near Berwick, Pa  
right next to the site of this new radioactive foreign designed and built  
radioactive nuclear plant. As demonstrated by the attached declaration of  
member Adam Helfrich, Mr. Helfrich owns a home and property  
at 613 Casey Ave. in Wilkes-Barre Township, Pennsylvania within  
twenty miles of the proposed radioactive Bell Bend Nuclear Power  
Plant and his interest in health, safety, and property value are affected.  
Taxpayers and Ratepayers United (TRU) Association has an ongoing  
interest in costs associated with taxpayer and ratepayer economics,  
safety, nuclear power, energy efficiency, radioactive nuclear waste,  
alternative energy, and the risks posed by radioactive nuclear plants and  
radioactive nuclear waste dumps in all of Pennsylvania. including the Bell

Bend radioactive nuclear plant site. An accident at the radioactive nuclear plant could result in radiological releases, environmental contamination and economic devastation that would adversely affect the health, well being, property, and the ability to conduct business for Adam Helfrich and members of the Taxpayers and Ratepayers United Association within the fifty mile area surrounding the proposed radioactive nuclear units. *Warth v. Seldan*, 422 U.S. 490, 511 (1975) “There is no question that an association may have standing in its own right to seek judicial relief from injury to itself and to vindicate whatever rights and immunities the association may enjoy.”

The Nuclear Regulatory Commission’s regulations recognize that an accidental release has potential effects within a 50 mile radius under 10 C.F.R. section 50.33 (g) “the ingestion pathway ... shall consist of an area 50 miles (80km) in radius.” As recently as March 24, 2009 the Atomic Safety and Licensing Board in Calvert Cliffs 3 Nuclear Project, at ASLBP No. 09-874-02-COL-BDO1 at page 11 to 13 recognizes the 50 mile radius as

a recognized radius for including interveners who have an interest within that fifty mile zone. 10 C.F.R. Part 50 has the Appendix 1 Section 1, recognizes that the liquid and gaseous waste system at a nuclear power plant can affect populations at distances up to fifty miles from the plant.

**CONTENTION ONE - HIGH LEVEL RADIOACTIVE WASTE  
GENERATED BY PPL AT BELL BEND**

**The contention is that the PPL Construction and Licensing Application for a new radioactive nuclear plant cannot be granted because there is no reasonable or technical confidence or belief that the high level radioactive waste from the Bell Bend's radioactive nuclear power plant will be disposed of, or can be disposed of in a safe way, and that PPL has not addressed this issue in its Application, and that PPL's Bell Bend high level radioactive nuclear waste disposal problem has unique, special and site specific, safety, health and environmental issues that allow the ASLB to consider this contention at this time as specific and non-generic or allows the ASLB to delay their deliberations on this contention until the rulemaking on the Rule for the Proposed Temporary Spent Fuel Storage proposal and the Waste Confidence**

**Decision that is proposed are ruled on because any license granted to PPL must be in compliance with the National Environmental Policy Act.**

The history of the high level radioactive nuclear waste repository situation must be understood in depth to understand this contention. This is because, each and every high level radioactive nuclear waste dump for all commercial, electric utility generated high level radioactive spent fuel wastes is dead. They do not exist. There is absolutely no place in the United States for PPL to transport almost thirty years of radioactive high level spent nuclear fuel waste that has been created at their radioactive nuclear plants, Susquehanna 1 and 2 above Berwick, PA on the Susquehanna River near Bell Bend let alone Bell Bend's future massive high level radioactive nuclear waste output..

A number of possibilities for high level radioactive nuclear waste dumps were planned decades ago and all but one were stopped by the federal government. Now, as of May 8, 2009, the last one, the proposed Yucca Mountain High Level Radioactive Waste Dump in Nevada is dead. The funding is totally cut from future federal budgets. The Environmental News

Service of May 8, 2009 article “FY 2010 Energy Budget Shuts Yucca Mountain Nuclear Dump,” Energy Secretary Chu’s budget request cuts \$90 million out of the Civilian Radioactive Waste Budget and ...”implements the administration’s decision to terminate the Yucca Mountain program...”

The federal government has always promised the citizens of Northeast Pennsylvania, all of Pennsylvania, and the citizens of the United States that all the high level radioactive spent nuclear waste from radioactive nuclear fuel would be taken away from the existing plants and stored at a federal government run facility for highest security and safety reasons.

Now, the people of Pennsylvania have five de facto “permanent” high level radioactive nuclear waste storage areas next to the five nuclear plants in the state of Pennsylvania: Susquehanna (Berwick), Limerick (Pottsville), Three Mile Island (Middletown), Peach Bottom (Delta) and Beaver Valley. (Beaver County near the Ohio line).

The one existing Pennsylvania radioactive nuclear plant site that is the subject directly related to this contention, a “special area or case” if you will, is the Susquehanna 1 & 2 site because that is where the utility, PPL, wants to

place another radioactive nuclear plant right next to its existing nuclear plant and high level radioactive temporary waste site. No other of the four temporary high level radioactive nuclear waste sites run by utilities in Pennsylvania which are now de facto permanent high level nuclear waste sites has submitted an Application to build a new radioactive nuclear plant.

PPL is the only company that is stupid enough to submit an application for a new nuclear plant that will produce sixty years of high level radioactive nuclear waste that has no permanent burial site. Very financially irresponsible but more importantly, a very highly irresponsible practice, security wise and safety wise.

As we proceed in reviewing the history that must be considered in reviewing this contention, we must remember that the Environmental Protection Agency's Final Yucca Mountain Radiation Standards are the radiation standards that should apply to any temporary or permanent high level radioactive nuclear waste site and are as follows: (1) retain the dose limit of 15 millirems per year for the first 10,000 years after disposal, (2) establish a dose limit of 100 millirems annual exposure per year between 10,000 years and 1 million years, (3) require the Department of Energy to

consider the effects of climate change, earthquakes, volcanoes, and corrosion of the waste packages to safely contain the waste during the 1 million year period, and (4) be consistent with the recommendations of the National Academy of Sciences by establishing a radiological protection standard for the facility at the time of peak dose up to 1 million years after disposal. EPA 2008. Very serious standards.

This brief history of the process shows how long the process of finding a high level radioactive nuclear waste site has been going on and sheds light onto the length of the next process for the storage of the high level radioactive nuclear wastes from radioactive nuclear plants like PPL's Susquehanna 1 & 2 and PPL's proposed radioactive nuclear plant which is the subject of this contention.

Thirty-one years ago the federal government began the process for a high level radioactive nuclear waste site at Yucca Mountain in 1978. The Nuclear Waste Policy Act of 1982 instructed the DOE to study locations for a permanent repository. In 1987, twenty-two years ago, the amendments to the Nuclear Waste Policy Act directed DOE to only study Yucca Mountain as a potential disposal site. In 1992, the Energy Policy Act told the

Environmental Protection Agency to develop standards for radioactive nuclear waste site at Yucca Mountain based on the National Academy of Sciences recommendations.

In 2001, in order to protect human health at the Yucca Mountain dump, the EPA issued a set of radiation standards. In 2002, then Pres. Bush approved the Yucca Mountain site for development. After a court fight in 2004 over the EPA's rejection of certain National Academy of Sciences, the EPA had to upgrade its requirements in line with the National Academy of Sciences radiation protection requirements.

In 2008, after, after 21 years, the radiological standards (listed above) for the Yucca Mountain radioactive nuclear waste dump were set and released. But even then the NRC had to issue licensing regulations that would implement the EPA rules and decide on other technical requirements that would be used in making a decision on Yucca Mountain's safety. In June of 2008, the DOE submitted their licensing application that the NRC would have to approve.

But that is all over now because the Yucca Mountain radioactive dump has been stopped.

Even if the elimination from the national budget did not happen, the ASLB in the Matter of the Department of Energy (High Level Waste Repository), Docket No. 63-001 HLW on May 11, 2009 admitted 299 contentions into the proceedings. Physically and with all the opposition the Yucca Mountain Radioactive Nuclear Waste Dump was not going to happen.

The parallel history of the NRC legal decisions, policies, missed promises and actions weighs heavily in to this “special” and “unique” contention in the site specific Bell Bend PPL Application. The ASLB will be challenged to overcome its historical lax assessment of reality. This time the reality of no permanent site and no technical basis for a finding of reasonable confidence that any high level waste can be safely stored in the future cannot be denied.

Although there is no confidence in the ability of the government to secure,

- a.) all the high level radioactive nuclear waste that as already been produced,
- b.) the high level radioactive nuclear waste that will be produce because of the almost fifty nuclear plant twenty year license extensions that have been granted by the NRC, and
- c.) the high level radioactive nuclear waste that

will be produced by any new radioactive nuclear plants that may be licensed, the federal government continues to refer to the process by which a new high level radioactive nuclear waste dump will be licensed as a waste “confidence” proceeding.

No one on the planet has any confidence in the past or future policy on high level nuclear waste.

Way back in 1977 in the Proposed Waste Confidence Decision 73 Federal Register 59, 552 (citing 42 Federal Register 34,391, 34,393 (July 5, 1977); Natural Resources defense Council V. NRC, 582 F.2<sup>nd</sup> 166 (2d Cir. 1978), the NRC stated the belief that “it would not continue to license reactors if it did not have reasonable confidence that the wastes can and will in due course be disposed of safely.” They continued to issue licenses and extensions.

In 1983, The U.S. Supreme Court stated in *Baltimore Gas and Electric v. Natural Resources Defense Council*, 42 U.S. 87 at 96 (1983), “The key requirement of NEPA...is that the agency consider and disclose the actual environmental effects in a manner that will ensure that the overall process,

including both the generic rulemaking and the individual proceedings, brings those effects to bear on the decisions to take particular actions that significantly effect the environment.” It hasn’t.

With the above in mind the NRC in 1984 led every one to believe that by 2009 a high level disposal site for radioactive spent fuel would be open. As a matter of fact they said one or more sites would be open by then.

In the 1983 the anticipated amount of radioactive spent nuclear fuel from commercial reactors was estimated to be 63,000 metric tons and it would all go to Yucca Mountain which could accept that amount.

In the 1990’s the amount DOE estimated was that by 2030 the existing commercial radioactive nuclear reactors would generate 80,000 metric tons of radioactive used fuel.

Finally, just last year, the NRC said Yucca Mountain’s capacity was only good until early 2010, less than a year from now. It would be filled to capacity at that time and another repository would have to be developed.

As of May 18, 2009, today, there are not two repositories under development. There is not one repository under development. There are none under development for licensing with the termination of Yucca Mountain.

Congress isn't even working on a second repository. Section 161(a) of the Nuclear Waste Policy Amendments of 1987 says that, "The Secretary may not conduct site-specific activities with respect with respect to a second repository unless Congress has specifically authorized and appropriated funds for such activities." Congress has not. Storage for the high level radioactive waste already created depended on Yucca Mountain opening, let alone high level radioactive waste from new radioactive plants like Bell, Bend.

In October of 2008, the NRC called for a revisiting of the Nuclear Waste Confidence Decision in order to figure out what to do. Even so, the new first repository is decades away if it ever happens at all. And if it ever happens, no radioactive nuclear waste from spent nuclear fuel from any new reactor like Bell Bend will go there because the new reactors have to wait in line until the radioactive nuclear waste from the last forty years of reactors can

be safely stored forever. Even if a new repository opens in two decades, the 80,000 metric tons that DOE estimates will be produced by 2030 will come from the current generation of reactors, not the new ones like the radioactive nuclear power plant planned by PPL at Bell Bend. Remember the NRC just gave out almost fifty license extensions. Idiots.

Because the radioactive high level nuclear waste from the proposed radioactive nuclear power plant at Bell Bend will be there for an indefinite time period, the usual characterization of such high level radioactive waste as being at the Bell Bend site for a temporary period does not apply. This makes the Bell Bend a ‘very special and unique situation’ that officially came into existence with the complete defunding of Yucca Mountain. De facto permanent surface storage of high level radioactive waste at Bell Bend must be evaluated before a combined operating and construction license can be granted.

This is thirty two years latter and the ASLB is at that crossroads. There is no safe permanent disposal of high level radioactive waste. The National Environmental Policy Act and the Atomic Energy Act requirements are not met by the Spent Fuel Storage Rule that is on the table. The Waste

Confidence Decision that is on the table doesn't do it. 73 Federal Register 59,547 from October 9<sup>th</sup> of 2008.

Things are so bad that the proposed decision and rule cannot any longer support Waste Confidence Rule Table -3. The NRC has no basis at this time to say that a temporary storage site for high level radioactive waste produced by PPL at Bell Bend is not a de facto permanent storage site, that the temporary storage site that PPL had in mind while planning and then submitting its Combined Construction and Operating License Application has anything to do with the current reality for this specific site, and that the NRC has no basis for saying that it is not now at the crossroads where the NRC must look at Table S-3 because it can no longer have confidence in the complete safe disposal of high level radioactive nuclear waste at a permanent site. 55 Federal Register 38,474, 38,491 from September 18<sup>th</sup>, 1990. It is at the crossroads where Table S-3 has to be addressed.

The ASLB is now past the threshold of "special" circumstances in regard to Bell Bend. Therefore, the site specific contention by the interveners in this case invokes 10 C.F.R. Section 2.335(b) in that the ASLB must recognize that a "unique" and "special circumstance" exists in the fact that the

Applicant's ER does not deal with the site specific environmental situation that is created by the total lack of any foreseeable high level radioactive permanent waste dump for high level radioactive nuclear waste during the licensed life of the radioactive nuclear plant or PPL's stated proposed 60 year lifetime of the plant.

The special circumstances also exists because the regulations and decisions upon which the Applicant's ER existed in regard to high level radioactive nuclear waste are fractured by the reality of no high level radioactive waste site and a Table of regulations that needs a total make over with a complete Environmental Impact Statement that follows the rules and looks at the uranium cycle including disposal along with the health and safety effects and environmental impacts, what will have to be spent (the actual costs) going along that path, and why new radioactive high level waste from nuclear plants should be produced at all (why they should not just shut the nukes down). The underground repository had to have a zero emissions policy. If you are going to make the temporary storage above ground permanent then the NRC has to meet that standard and have the rules in place so that Applicants can explain that they have the ability to meet the standards and explain how they will do it. Until then the Bell Bend Application has to fail.

A new radioactive nuclear plant that is “not” being built next to an existing radioactive nuclear plant has a special and unique and different set of environmental circumstances than a new radioactive nuclear plant that “is” being built next to an existing radioactive nuclear plant that already has almost thirty years of high level radioactive nuclear waste on site. That is the unique Bell Bend situation. PPL wants to build Bell Bend next to the operating nuclear plants at the Susquehanna 1 & 2 site. More unique features for Bell Bend are laid out below.

To further qualify the special circumstances and uniqueness of the situation, each plant is unique to the environment to which it exists. Northeast Pennsylvania is not Virginia and it is not Illinois. It not just about the lack of a permanent radioactive nuclear waste dump for high level radioactive used fuel rods. It is about the clear fact that the Applicant does not address the fact that the storage of radioactive high level nuclear waste within a stones throw of an existing high level radioactive waste storage area with thirty years of high level radioactive nuclear waste is important, especially if each radioactive waste dump is now faced with a de facto permanent label. It is a specific synergistic situation unique to the Bell Bend application. It is part of

the unique and special environment in which the Applicant is proposing to build a new radioactive nuclear plant.

How can the Applicant PPL even do this without the new technical direction from the NRC from its future new rulemaking?

The existing high level radioactive nuclear dump close by is unique and special as are the environmental condition of the geographic location which includes the water, air, soil conditions, geologic conditions that are special to that specific location. This specific radioactive nuclear power plant, Bell Bend sits on the Susquehanna River where it draws its water and empties it nuclear water waste into the Susquehanna River. The hundreds of thousands of people who utilize the Susquehanna River for drinking water downstream constitute a unique environmental consideration for this site. The cumulative effect of the addition of Bell Bend nuclear effluents into the Susquehanna must be considered in relation to the other radioactive nuclear plants that also dispose of there wastes into the Susquehanna River, namely, Susquehanna 1 & 2, which are nearby, Three Mile Island downstream, the Peach Bottom nuclear plants further downstream, and finally the synergistic effects on the Chesapeake Bay which is already subject to the discharges

from Calvert Cliffs 1 & 2 and is now the subject of more discharges from the proposed Unit 3 and the existing and proposed plants at North Anna, Virginia.

The unique and special environmental conditions that are unique and special are the synergies that also exist between the proposed radioactive nuclear plant and the radioactive low level dump that is addressed in a later contention by the present interveners. With the closing of the Barnwell site and the lack of an Appalachian Compact site, a unique situation exists whereby this proposed radioactive plant does not have access to a low level nuclear waste site as some new proposed plants do. The Applicant does not have access to nuclear waste sites in the Western United States, it does not have access to the Compact that Texas and its partner have access to, and stating it again, this proposed radioactive plant does not have access to Barnwell since the end of June, 2008. This is another unique feature that affects Bell Bend's Application.

The added environmental impact of the European Pressurized Reactor that has been selected as the reactor type for Bell Bend has not been utilized in the United States before. This reactor design has not met NRC approval yet

and that is years away. The European Reactor has a fuel burn up factor that affects the waste content and makes the Applicants lack of addressing the special and unique circumstances surrounding the proposed radioactive nuclear plant even more open to contention and rejection of the ER as inadequate.

The fact is that facts about safety, health and the environment are in question by the interveners and this is a factual contention to a specific and unique situation at Bell Bend.

Because of the special and unique circumstances surrounding the unique environmental, safety, and health facts and issues at the Bell Bend radioactive nuclear plant, the usual and tired use by the NRC staff of objecting to the present contention by saying that it could be solved by a generic proceeding does not apply and should not be applied by the ASLB. The interveners in the present case are establishing the necessary elements for the ASLB to proceed on this contention to a determination in interveners' favor for this and only this specific site.

The interveners' contention is that the generic high level radioactive waste issue has safety significance for the Bell Bend reactor under review and that the way Bell Bend ER deals with the matter of high level radioactive nuclear waste or the short term solution offered by PPL to the problem is inadequate.. Gulf States Utilities Company, ALAB-444, 6 NRC 760, 773 (1977); Illinois Power Company, LBP-82-103, 16 NRC 1603, 1608 (1982), citing River Bend , supra, 6 NRC at 773; Public Service Company of New Hampshire, LBP-82-106, 16 NRC1649, 1657 (1982); Duquesne Light Co., LBP-84-6, 19 NRC 393, 418, 420 (1984); , citing River Bend, supra, 6 NRC at b773; and Virginia Electric and Power Company, ALAB-491, NRC 245, 248(1978). PPL does nothing to address the de facto permanent high level radioactive nuclear waste storage possibilities at Bell Bend and even lacks the recognition of the current state of affairs concerning the lack of future storage of high level radioactive nuclear waste rules for health safety and the environment that it must eventually follow when the future rule is completed. This is fatal to the application.

The interveners believe that the interveners in the present contention have presented the necessary nexus for a generic issue to be examined by the ASLB in this proceeding that is specific to the Bell Bend radioactive nuclear

power plant. Cleveland Electric Illuminating Company, LBP-82-15, 15 NRC 555, 558-559 (1982); Pacific Gas and Electric Co., LBP-87-24, 26 NRC 159 (1987) affirmed on other grounds. ALAB-880, 26 NRC 449, 456-457 n. 7 (1987), remanded on other grounds, Sierra Club v. NRC, 862 F.2d 22 (9<sup>th</sup> Circuit. 1988).

If the ASLB determines that that is not so and denies the Interveners assertion that a specific plant nexus exists at this time, the ASLB should not dismiss the contention out of hand. The ASLB can wait to adjudicate the contention or submit it to the Commission for determination. “The key element of NEPA is that the agency consider and disclose the actual environmental effects in a manner that will ensure that the overall process, including the generic rulemaking and the individual proceedings, brings those effects to bear on the decisions to take particular actions that significantly affect the environment.” Id. 462 U.S. 96. (Baltimore Gas and Electric Co.).

Millions of lives are at stake. The de facto high level permanent radioactive nuclear waste site at Bell Bend will sit next to three operating nuclear plants and an existing high level radioactive nuclear waste dump at Susquehanna

Unit 1 & 2 and can affect millions of people depending on which way the wind blows and the water flows..

**CONTENTION TWO – LOW LEVEL RADIOACTIVE NULCEAR**

**WASTE GENERATED BY PPL AT**

## **BELL BEND**

**PPL's application to construct and operate the radioactive nuclear power plant known as the Bell Bend Nuclear Power Plant violates the National Environmental Policy Act (NEPA) by failing to clearly address the serious environmental, health and safety impacts of the radioactive nuclear waste that it will generate in the absence of licensed low level radioactive nuclear waste disposal facilities or capability to isolate the radioactive waste from the environment. The utility's self generated and prejudiced environmental report on the radioactive nuclear power plant known as Bell Bend (ER) does not address the environmental, health, safety, security, environmental justice or economic consequences that will result from the lack of a permanent disposal facility.**

After June 30, 2008 no facility in the United States is licensed to accept and able to accept Class B and Class C radioactive waste from the Bell Bend proposed radioactive nuclear plant. Since that date, generators of Class B and Class C radioactive nuclear waste in Pennsylvania have no licensed disposal site to send their radioactive nuclear waste to.

The NRC Regulatory Issues Summary 2008-12, states, “After June 30, 2008, it is likely those generators in 36 States and the District of Columbia, the Commonwealth of Puerto Rico and the U.S. Territories will lose access to the full-service LLRW (Class A, B, and C LLRW as defined in section 61.55 of 10 CFR Part 61, “Licensing Requirements for Land Disposal of Radioactive Waste disposal facility in Barnwell, South Carolina”). Consequently, many generators will likely need to store a portion of their LLRW for an indefinite period.”

The Applicant, PPL in its application fails to offer a complete and viable plan for the disposal of Class B and Class C radioactive nuclear waste along with Greater than Class C waste another highly radioactive component of its waste stream.

The Environmental Report (ER) refers to the low level radioactive nuclear waste in a number of sections in chapter 3, 4, 5, 6, and 7. However, nowhere in the entire ER does the utility address the complete long term storage of low level radioactive nuclear B and C waste or Greater than Class C nuclear waste.

The utility Applicant’s ER never addresses the well documented closing of access to Barnwell, South Carolina nuclear radioactive waste site and its

shallow land burial capabilities. At numerous points in the ER the Applicant refers to future off site disposal as a fact.

In Figure 3.5-8, at page 3-121, titled Solid Waste System Flow Diagram.

The flow of the diagram ends with the nuclear waste being shipped to a "... Low Level Rad Waste Disposal Facility." The generic low level radioactive waste disposal site does not exist and the Applicant does not address the application's lack of recognition in this section that the permanent site for the disposal of the radioactive nuclear plant waste does not exist.

Section 3.5.4 refers to the Solid Radioactive Waste System. It states that, "Once treated the solid waste ... is stored in two areas. One area is a tubular shaft storage area for the high activity drums and the other area is a temporary storage area for low to medium activity drums. Once the activity has reduced to a low enough level, the drums are transported to an offsite repository for final disposal." Again this section has no recognition that a low level radioactive nuclear waste repository is not licensed to accept B and C waste from the proposed radioactive nuclear plant

Section 3.5.4.2 refers to "...final packaging for temporary storage in-plant or shipment to a licensed disposal facility offsite or a licensed waste processor for additional processing before final disposal."

Section 3.5.4.3 titled “Solid Waste Storage System” notes that the B and C level nuclear waste can be stored on site for “five to six years” and that EPRI Class B/C Waste Reduction Guide (Nov.2007) and EPRI Operational Strategies to Reduce Class B/C Wastes (April.2007) offer techniques to minimize waste so that on site disposal could last ten years so offsite disposal could be developed. This section also notes the NRC’s guidance including Appendix 11.4 –A , “Design Guidance for the Temporary Storage of Low-Level Waste.” This section ends by recognizing that the B and C radioactive nuclear waste drums will be moved offsite via vehicle. “Once in the vehicle entrance area, each drum is removed from the (shielding) cask and placed into an approved shipping container to be moved to the offsite facility.” Guidance documents are not rules and do not have the force of rules.

The licensed waste processor or the site of the final disposal are never mentioned by name in Section 3.5.4.2.

Section 3.5.4 .5 states that, “Solid wastes will be shipped from the site for burial at a NRC licensed burial site.”

Section 3.8.1 notes that “The reactor for BBNPP has a rated core thermal power of 4,590 (MWt). Although the European Pressurized Reactor is to be licensed for 40 years, the proposed operating life is 60 years.”

Section 3.8.4 notes that the “Radioactive waste from BBNPP will be shipped by truck or rail.” The section never says where it is going to ship the radioactive wastes.

The ER does not contain the needed facts to provide for a complete and comprehensive understanding of the health effects of extended on site storage of radioactive nuclear B and C class low level waste and Greater than Class C nuclear waste. Considering that the Applicant says at Section 3.8.1 that the Applicant considers an operating life of 60 years for the European Pressurized Reactor reactor, the ER must contain the facts and figures for the period of the suggested operating life or at least the 40 years of the license that is being applied for.

This interveners contention is site specific and points out the ER’s failure to address the need for, and the environmental consequences of, long-term storage of Class B and C radioactive nuclear waste and Greater than Class C nuclear waste at the proposed Bell Bend radioactive nuclear waste plant.

Intervenors assert that this contention fits the standards for admissibility under 10 C.F.R. Section 2.309(f)(1). Both the recent Memorandum and Order in Calvert Cliffs 3, ASLBP No. 09-874-02 COL (March 24, 2009), p. 67 et seq. and North Anna, LBP -08-15, 68 NRC at \_ (slip op. at 21-22) accepted similar contentions.

Applicant assumes to their detriment that an offsite low level nuclear waste dump will be licensed. At ER Section 3.5.4.3, paragraph 3, Applicant postulates that if they follow waste minimization guidelines and store radioactive nuclear Class B and C waste for possibly over ten years that, “This would provide ample time for offsite disposal capability to be developed or additional on site capacity to be added.” As mentioned above the Applicant uses the next two paragraphs to outline what happens generally if they have to do more onsite storage. But they neglect to give any time frames after the ten years are up and ends two paragraphs later by concluding that the radioactive product will be moved offsite as noted at the last paragraph of Section 3.5.4.3. What exactly happens between years ten and forty or years ten and sixty is conveniently left unanswered. And again, NRC guideline documents are not rules. Where are any solid NRC rules?

The fact that the Applicant fails to address fully on site storage for potentially permanent low level radioactive Class B and C wastes and Greater than Class C radioactive nuclear waste violates the environmental, security and safety requirements under the law.

The Applicant gives no indication as to why they believe or state that a permanent low level radioactive waste facility will be available at some point in the future.

As a plant proposed to be sited in the State of Pennsylvania, the ASLB can take judicial notice that no low level radioactive waste disposal facility is being planned for anytime in the near or distant future under the Appalachian Low Level Waste Siting Commission. No activity in the Compact States of Maryland, Pennsylvania, West Virginia, or Delaware is currently taking place and no activity is projected for the distant future. The Appalachian Compact has closed its office at 218 State Street in Harrisburg, PA many years ago and at this point has a meeting once a year in November to see if there is enough money in the budget to buy the members lunch that day.

The Applicant can provide no justification to show that a low level radioactive waste facility can be relied upon and the Applicant has

provided very little planning to show that the low level production can be handled for permitted life of the plant or for the stated 60 years that the Applicant believes that the plant can function.

This contention challenges the legal sufficiency of the Applicant's ER under Part 52, for a Combined Operating and Construction license for this proposed radioactive nuclear facility. This contention is within the scope of the proceedings as required by Section 2.309 (f)(1)(iii). This contention is material to compliance with NEPA and NRC implementation regulations and satisfies Section 2.309(f)(1)(iv).

The Applicant does not satisfy the law with a brief statement that refers to a "Temporary Storage "facility in Section 3.5.4.3 that "would be located in a previously disturbed area in the vicinity of the power block, and in a location that would not affect wetlands. The impacts of constructing such a facility would be minimal. The operation of a storage facility meeting the standards in Appendix A-1 would provide appropriate protection against releases, maintain exposures to workers and public below applicable limits, and result in no significant environmental impact."

This statement in the ER is not enough the for the requirements that the application must describe the proposed action and discuss the impact of the

proposed action on the environment, the adverse environmental impacts which cannot be avoided should the proposal be implemented and the irreversible and irretrievable commitments of resources which would be involved if the proposed action should it be implemented. The ER does none of these required actions and, furthermore, the proposed action does not include any adverse information as required by law under 10 C.F.R. Section 51.45(b) and (e) and under the National Environmental Policy Act.

The above information should have been included and cannot be omitted.

The Applicant is a corporate entity directly connected to the corporate structure that runs the Susquehanna Nuclear Power Plants 1 and 2 which are a stones throw from the proposed site. The Applicant knows darn well that the existing radioactive nuclear plants cannot send their low level radioactive nuclear waste to any licensed disposal facility let alone the Barnwell disposal site or any licensed Compact facility. The Applicant knows that the existing radioactive nuclear plants will also have to provide long term low level radioactive nuclear waste storage on site.

The deficiencies in the Applicant's ER, as stated above, lie in the very limited and poorly demonstrated method that the Applicant has stated it will deal with the radioactive nuclear waste and the unstated adverse impacts that

can be anticipated from having to deal with the waste. Furthermore, the Applicant has demonstrated that it believes that an offsite low level radioactive waste facility will have plenty of time to be developed as the Applicant progresses during its construction schedule. This is another fatal flaw in its interpretation of reality and policy. See Section 3.5.4.3 on page 3-59 of the ER. Even the NRC “has acknowledged that the future availability of disposal capacity for low level waste remains highly uncertain.” Bellfonte, CLI-09-03, 69 NRC (slip op. at 10). The Application never mentions that possibility that low level wastes from decommissioning may have to remain on site at a permanent onsite facility and the Applicant assumes again that a site will appear for low level wastes associated with decommissioning. (See Application sections 1.6.1 and 1.6.2)

This contention is completely justified by PPL’s lack of addressing the long term and/or permanent storage environmental, health and safety impacts in their flawed application and by their lack of addressing how they would run this permanent or long term radioactive waste facility next to a new radioactive nuclear plant, next to two operating radioactive nuclear plants, an existing radioactive low level nuclear waste dump, an existing high level radioactive nuclear waste dump and the new proposed high level radioactive nuclear waste dump at Bell Bend that has no plan for the permanent storage

of any of the high level radioactive waste that it proposes to produce during the 60 years that PPL says the radioactive nuclear plant should run.

It was a beautiful morning, a perfect late summer day. A beautiful jet airliner passed directly over the emergency planning zone of the radioactive nuclear plant at Susquehanna 1 & 2 near Berwick, Pennsylvania.

**CONTENTION THREE - TERRORISM AND BELL BAND:  
HEALTH, SAFETY, ENVIRONMENTAL  
IMPACTS**

**The Applicant, PPL's, Environmental Report (ER) is deficient because it does not look at the environmental, health and safety effects of a terrorist attack against the proposed radioactive nuclear plant at Bell Bend or its proposed high level and possibly de facto permanent radioactive nuclear waste facility or its proposed low level radioactive low level nuclear waste storage area.**

On September 11, 2001, United Airlines Flight 93 left Newark Airport in New Jersey. It slowly climbed as it proceeded west over Pennsylvania and passed through the emergency planning zone for the radioactive nuclear plants at Susquehanna 1 & 2 and their high level radioactive waste used fuel pool nearby. That zone is the same zone that the proposed radioactive nuclear plant at Bell Bend is using as its emergency planning zone.

A short time after take off four terrorists launched their coordinated plan to kill the flight attendants and pilots and seize control of the United Airlines Flight 93.

The ASLB can take judicial notice of the final resting place of the 40 passengers and crew of United Airlines Flight 93 who tried to stop the terrorists and now lie together, forever, deep in a field in Western Pennsylvania, in Somerset County near a small country town called Shanksville. The ASLB can take judicial notice of the words on a flag that honors the victims of United Flight 93 and flies over the site of the tragedy: “Our Nation Will Eternally Honor The Heroes Of Flight 93.”

We know that the other three hijacked jets on September 11, 2001 went into the Pentagon and the two towers of the World Trade Center and caused untold suffering and death by the thousands. We do not know where the terrorists wanted to take United Flight 93 or what they wanted to crash the jetliner into. If we look at the other locations it should give us an idea of their intentions. Most people believe that Washington, D.C. was the ultimate target; The White House, the U.S. Capitol, or another high value target. We will never really know.

But there is no doubt that terrorists would cause a major health and safety disaster and an immense loss of life if these terrorists crashed a jumbo jet into a radioactive nuclear plant or a radioactive high level nuclear waste storage site at a nuclear plant anywhere in the United States including Susquehanna 1 &2 or the proposed radioactive nuclear plant at Bell Bend.

The reality of licensing of a nuclear power plant has changed dramatically since the 1974 construction licensing and eventual construction of that last plant. That licensing was thirty five years ago. The man made disasters at Three Mile Island, Chernobyl and the demise of the proposed radioactive high level nuclear waste underground dump at Yucca Mountain are just some of the events that are having an impact on the construction of any new radioactive plant.

Terrorism has also changed. Sophisticated weapons and communications had given the terrorists huge advantages. Foreign terrorists are not the only source of terrorism. The bombing of the Oklahoma City Federal Building by a street parked fertilizer bomb made by an American man cannot be dismissed as a one time aberration or an act by Islamic martyrs.

The bottom line is that a radioactive nuclear power plant is a prime terrorist target. The reality is that a high level radioactive nuclear waste storage area whether permanent or temporary is a prime terrorist target. The reality is that a low level permanent or temporary nuclear waste storage area or dump is prime terrorist target. The reality is that a terrorist attack can have an impact on a radioactive nuclear plant, a radioactive nuclear waste site and all of the surrounding areas near and far from the plant.

In this proceeding we are to focus on the environmental, health and safety impacts of the proposed radioactive nuclear plant for Bell Bend.

We recognize that the Security section of the Application is basically off limits to most interveners in such proceedings.

When PPL was building Susquehanna 1 & 2 the regulations that covered such terrorist incidents were not spelled out as they are now. The planning for such incidents was not as defined or elaborate.

In 2009, it can be noted that in 2001 a hijacked United Airlines jetliner flew directly through the Susquehanna 1 & 2 emergency planning zone that is now being used as the proposed emergency planning zone for the proposed Bell Bend radioactive nuclear plant. While we can't go back in time and do anything about the Susquehanna 1 & 2 process, we can do something in the present time about the present Bell Bend process. We can address the impacts of a terrorist action at Bell Bend and the health, safety and environmental impacts and issues surrounding a terrorist attack.

We only have to look at the Emergency Planning section of the Application to see that that many level of government at the Federal, State and local levels have security as a prime concern for the actual radioactive nuclear plant proposed at Bell Bend but also for the high level radioactive used fuel waste area at the site.

In the present application, one just has to look at the Emergency Planning sections to understand that this new century is not anything like the last. The people who put together the application for Susquehanna 1 & 2 did not have

the present circumstances or the recent tragic historical events to force them to address security concerns that the nation faces today.

A quick look at the higher emergency levels and the definitions that the Applicant has to deal with shows that today new applicants have to respond to terrorism and outline every action to be taken and who has to do it and when.

At page D-3, the definition of “General Emergency” is “Events are in progress or have occurred which involve actual or eminent substantial core degradation or melting with potential for loss of containment integrity or HOSTILE ACTION (emphasis is by Applicant not intervener) that results in an actual loss of physical control of the facility. Releases can be reasonably expected to exceed EPA Protective Action Guidelines for exposure levels offsite for more than the immediate area. The purpose of this classification, in addition to the Site Area Emergency level, is to initiate predetermined protective actions from the public and provide continuous assessment information for monitoring groups....Required actions at this classification. In addition to those listed under the Alert and Site Area Emergency, include:

\_A Protective Action Recommendation will be determined. \_Assessment of the situation and response as necessary.”

Hostile act is defined by the Applicant as, “HOSTILE ACTION: An act toward a nuclear power plant or its personnel that includes the use of violent force to destroy equipment, take hostages, and/or intimidates the licensee to achieve an end. This includes attack by air, land or water using guns, explosives, projectiles, vehicles, or other devices used to deliver destructive force...”

The Applicant also defines hostile force in the Emergency Planning section. “HOSTILE FORCE. One or more individuals who are engaged in a determined assault, overtly or by stealth and deception, equipped with suitable weapons capable of killing, maiming, or causing destruction.”

The Applicant also defines large aircraft in the Emergency Planning section. Page 6, “LARGE AIRCRAFT: Aircraft as large or larger than passenger airlines or air cargo / freight plane (for example; 737, DC9, MD80, MD90, 717 or C-130)....” And bomb on page 7. “BOMB: An explosive device suspected of having sufficient force to damage plant systems or structures.”

(BBNPP)Emergency Plan D-5 Rev 1”...The Security Plan identifies situations that could be initiating conditions for EAL (Emergency Action Levels) classifications. Contingency events include bomb threats, attack threats, civil disturbances, protected area intrusions, loss of guard/post contact, vital area intrusions, bomb devices discovered, loss of guard fence, hostages, extortion, fire/explosives, internal disturbances, security communications failure, and obvious attempts at tampering....”

The Applicant in its Emergency Planning section sets up recognition categories for hazards that may affect the site and offsite conditions.

“Recognition Category Hazards and Other Conditions Affecting Plant Safety (BBNPP) 60 Revision 0... HG1: HOSTILE ACTION resulting in the loss of physical control of the facility. ...EALs (Emergency Action Levels);

1. A HOSTILE ACTION has occurred such that plant personnel are unable to operate equipment required to maintain safety functions. OR
2. A HOSTILE ACTION has caused failure of the spent fuel cooling system and IMMINENT fuel damage is likely. The Applicant PPL goes on to note that this item **applies to attacks on used high level radioactive spent nuclear fuel** (emphasis added by intervener) in the temporary spent fuel storage area

before it is moved to a permanent offsite repository, "...such as when a freshly off-loaded reactor core is in the spent fuel pool."

The above EAL (Emergency Action Level) "encompasses conditions under which a HOSTILE ACTION has resulted in a loss of physical control of VITAL AREAS ...required to maintain safety functions and the control of that equipment cannot be transferred to and operated from another location....these safety functions are reactivity control (the ability to shut down the reactor and keep it shut down), RCS inventory (ability to cool the core), and secondary heat removal ..."

The Applicant also adds "RECOGNITION CATEGORY HAZAR4DS AND OTHER CONDITIONS AFFECTING PLANT SAFETY" (BBNPP 61 Revision 0) HS 1" which is a HOSTILE ACTION in a protected area. The Application states that, "This condition represents an escalated threat to plant safety above that contained in the Alert in that a HOSTILE FORCE has progressed from the OWNER CONTROLLED AREA to the PROTECTEC AREA." The Applicant says that this emergency action level "...addresses that contingency for a very rapid progression of events, such as that experienced on September 11, 2001. It is not premised solely on the

potential for a radiological release. Rather the issue includes the need for rapid assistance due to the possibility for significant and indeterminate damage from additional air, land or water attack elements.”

The Applicant continues, “RECOGNITION CATEGORY HAZARDS AND OTHER CONDITIONS AFFECTING PLANT SAFETY (BBNPP) 63

Revision 0...HA 1...HOSTILE ACTION within the OWNER

CONTROLLED AREA or airborne attack threat... 2. A validated

notification from the NRC of a large aircraft of a large aircraft attack threat

within thirty minutes of the site. These EALs address the contingency for a

very rapid progression of events, such as that experienced on September 11,

2001. They are not premised solely on the potential for a radiological

release. Rather the issue includes the need for further assistance due to the

possibility for significant and indeterminate damage from additional air, land

or water attack elements”.

Of course the 30 minute notification really doesn't count when a jet liner

would initiate its attack after lifting off from Wilkes-Barre/ Scranton

Airport, Allentown/Bethlehem/ Easton Airport, Harrisburg International

Airport, Binghamton Airport, or for that fact Philadelphia or New York,

whose closing distance can be accomplished in less than thirty minutes. (If it were the Scranton/Wilkes-Barre International Airport at Avoca, PA, the equation would be thirty miles from the nuclear plant divided by 300 miles per hour equals about six minutes. That's twenty-four minutes short of the NRC's thirty minute valid notification rule in this hazard category. Terrorists don't care about NRC's time limits.)

The NRC and the Applicant acknowledge that major security concerns exist. PPL wants to be a good corporate citizen but refuses to assess the impacts of terrorist attacks on peoples' health, safety and the environment. This makes PPL just another utility corporation doing the minimum and filing a deficient Application. You would think that in a time of heightened terrorist concern, with our country at war with terrorists that they would do everything they could to assess the impacts of terrorist attacks in order to prepare the proper countermeasures for the environmental, health and safety effects from a radioactive release caused by a terrorist attack.

There is little doubt that a terrorist action could result in radiological releases that could affect the population and surrounding environment. There are definitely health and safety consequences of a terrorist attack.

These days the terrorist attack could be of a cyber nature; an attack that reaches into a radioactive nuclear plants computer systems and inflicts damage. But the fact that a terrorist attack is possible and the security preparations that the NRC and the utility are making is not the subject of this contention. **The purpose of this contention is to take full notice of the enormity of the security concerns that face radioactive nuclear facilities and then demand that the environmental consequences of the projected threats be understood and addressed by the Applicant.**

The contention of the Applicants omission focuses directly on that by noting that the Application is deficient because it does not address these environmental consequences of terrorist actions. What happens radiologically when an airliner is hijacked and flown directly into a high level radioactive spent fuel storage pool?

The method of the terrorist attack breach is not in question here. What happens to the health and safety and environment when the reactor fails or a high level radioactive used nuclear fuel pool is breached from terrorist actions and the plume from the radioactive release travels from the

immediate plant site? What is the damage that will be done? What is anticipated?

Again, take the high level radioactive used fuel pool as a starting point for NRC action. At this point the NRC only calls a potential fire at a high density radioactive spent fuel pool a security issue. The NRC will not even address the huge environmental impact such a scenario in the current Temporary Storage Rule that is proposed and the Proposed Waste Confidence Decision ( 73 Federal Register 59,551 (October 9, 2008)).

Where is an Environmental Impact Statement as required by NEPA for this?

Where are the environmental impacts of a terrorist attack addressed by the Applicant?

Terrorist attacks are not looked at by PPL in the “hard look” fashion that NEPA requires. The environmental effects of terrorism should be addressed in a “full and fair discussion,” supported by clear evidence that the necessary environmental analysis has been accomplished. (40 C.F.R. section 1501).

Under 40 C.F.R. sections 1508.7, 1508.8 and 1508.25, PPL must do an analysis of the cumulative impacts of the proposed action, also direct and

indirect impacts. PPL has done none of this. PPL has to include an analysis of adverse information that it uncovers. 10 C.F.R. section 51.45(e).

The NRC already knows that certain security problems exist at high level radioactive nuclear waste on site storage areas. In February, 2001 the NRC issued a report on the fire risks at high level radioactive nuclear used fuel storage areas near nuclear plants. The terrorists don't even have to get into a nuclear reactor to cause a dirty type radioactive nuclear contamination release. The NRC's lack of confidence in the security of densely packed used radioactive fuel pools was brought out by the National Academy of Sciences in a 2005-06 study.

It may be an entire century that PPL and the NRC want to store high level and low level radioactive waste in Northeast Pennsylvania now that the Yucca Mountain high level radioactive waste repository is finished as was revealed in the news just to weeks ago.

The basic assessment of terrorist attacks to that fact alone has to be dealt along with the environmental, health and safety consequences related to a

terrorist attack at the proposed radioactive nuclear plant. (This was explained in depth in earlier contention)

The NRC should hold this contention in limbo until the Waste Confidence proceeding is resolved because of the environmental impact that must be assessed in that proceeding.

In a prepared world one would expect PPL to be a good corporate citizen and assess the environmental dangers that the surrounding residents are faced with by a terrorist attack on a proposed radioactive nuclear plant or high level radioactive used fuel waste dump on site at the reactor. We actually find in the Application that PPL will not do an analysis of the health, safety and environmental impacts associated with the terrorist threats.

If the NRC is demanding that Applicant show that the Applicant is preparing for a terrorist threat, why should the preparations for the outcome of an actually accomplished threat be ignored by a utility? There are two steps. One is stopping the threat and two is preparing for the outcome of a tragic and unfortunate event.

We can extrapolate from a non-environmental example from the disasters of September 11, 2001. We saw what the lack of radio compatibility did at the World Trade Center terrorist attack. .If the New York City police radios and the New York City Firefighter radios had the ability to communicate with each other, who knows how many lives could been saved by an early alert to the collapse of both towers that would have allowed an early evacuation of first responders.. Police radios outside could not communicate with firefighter radios inside.

In other words, preparation is key. A “hard look” tells the assessor what to expect. Then the expected can be anticipated and dealt with. This simple point can be applied by the NRC to the health, safety and environment surrounding a radioactive nuclear plant if the NRC got its head out of its schizophrenic res judicata hole.and protected the public.

In the Applicant’s case, if the surrounding communities know the environmental, health and safety impacts of a terrorist attack, then the proper action could be taken to prepare for the, God forbid, outcome of terrorist attack.

There are currently about 104 commercial nuclear plants in the United States that the terrorists, foreign and domestic, consider to be targets. If the country is going to add more plants, it would be good to prepare for the effects in case a suicidal domestic or foreign terrorist gets through. But it doesn't have to be a devoted terrorist with a religious or political agenda. A terroristic type act can be initiated by a nuclear plant worker. A Bell Bend or a Susquehanna 1 or Susquehanna 2 employee with access, on a bad day, could start a hostile action resulting in a radioactive deadly release damaging to the health and safety of the people surrounding the proposed site.

When you look at the decision in *San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016, 1030-31 (9<sup>th</sup> Circuit.2006), the NRC has to consider the environmental impacts of terrorists attacks. The terrorists' attacks are foreseeable which means that if you have not assessed the impacts on the health and safety of the possible radioactive damage on the surrounding population, they may be injured to a greater degree than if they are prepared by the findings of a NEPA Environmental Impact Statement.

In New York City, the first responders and all the volunteers who took part in looking for survivors and those that carefully and respectfully removed

the bodies of the victims became victims themselves when they breathed in the fumes from the ongoing fires and dust from the destroyed buildings of the World Trade Center. (Intervener spent the first weekend after the disaster working at the World Trade Center disaster site looking for the bodies of victims and removing debris and can personally attest to the devastation he saw.) Some rescue workers' ingestion lasted for months. Many rescuers have already died from their unselfish acts and many more will die just from breathing the aftermath of a terrorist attack. There is actually a registry for World Trade Center rescue workers so their health can be monitored. Why not be prepared? In New York it was the waste product from crushed buildings. At Bell Bend, it could be the radioactive nuclear fission elements which no one can see, smell or taste, along with their extremely deadly consequences.

Why not assess the dangerous environmental impacts from a terrorist attack on a radioactive nuclear plant or a poorly protected high level radioactive waste used fuel pool terrorist attack? The assessment can only help to protect the onsite and offsite people in the radioactive pathways from aftermath of the attack. Does the Applicant, PPL, demand that the citizens in

the emergency planning zone be subject to a radioactive release to assess the consequences?

The proposed radioactive nuclear plant and proposed permanent/ temporary high level radioactive spent fuel dump site are to be located in the Third Circuit area.

The Third Circuit held that a terrorist attack would require two intervening events that that made the causation chain basically too hard to be believed to require a NEPA review. The court set two steps. First, one would have to have the act of a third party criminal and, secondly, all government agencies would have to fail in preventing an attack.

Wait a minute. That is exactly what happened at the World Trade Center. And that is after the World Trade Center was known to be a prime target because of the 1993 attack on that same location. We already know that our existing nuclear plants and radioactive nuclear waste storage dumps are terrorist targets.

The NRC has to look closer at its policy of circuit court decision picking when the circuits have conflicting results. It is time for the NRC to pick the side of prudence and caution and follow its prime directive to “protect the public” and not subject the interveners’ safety, health and property to a utility serving, non-real world, non-assessment of the environmental, health and safety impacts from a terrorist attack at a radioactive nuclear plant and/or a high level or low level radioactive nuclear waste storage area on site.

The ASLB noted that a Georgians for Safe Energy contention was filed before the World Trade Center attack and stated afterwards, “Regardless of how foreseeable terrorist acts that could cause a beyond basis accident were prior to the terrorist attacks of September 11, 2001, involving the deliberate crash of a hijacked jumbo jet into the twin towers of the World Trade Center and the Pentagon in the Nation’s Capitol killing thousands of people, it can no longer be argued that terrorist attacks of heretofore unimagined scope and sophistication against previously unimagined targets are not reasonably foreseen. Indeed, the very fact these attacks occurred demonstrates that massive and destructive terrorist attacks can and do occur and that closes the door...on qualitative arguments that such terrorist attacks are always remote and speculative and not reasonably foreseeable.”

Duke Cogema and Webster (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-01-35, ASLBP No. 01-790-01-ML, 54 NRC 403, 446 (2001).

The interveners urge the ASLB to accept this contention and find PPL's application deficient.

**CONTENTION FOUR - UNCERTIFIED NUCLEAR REACTOR IN**

## **BELL BEND APPLICATION**

**This entire proceeding for approval of a combined construction and licensing application, is, at this time, premature and must be suspended or held in abeyance because the redesign of radioactive European Pressurized Reactor that PPL wants to use at the proposed radioactive nuclear plant at Bell Bend is not approved by the Nuclear Regulatory Commission under the Nuclear Regulatory Commission design certification process.**

PPL wants everything to go their way. They want the European Pressurized Water Reactor redesign to be approved by the NRC. They want their Application which is the subject of these contentions to be approved by the NRC. They want the redesigned French European Pressurized Water Reactor to be called an Evolutionary Pressurized Reactor in the United States so there are no public relations problems with this new untested French designed reactor which has not even been certified in the United States. PPL wants everything. They want the French government owned company Areva to build the reactor for Bell Bend

But guess what? This licensing proceeding violates the basics of the Atomic Energy Act and the National Environmental Policy Act.

PPL has submitted an Application saying that they are going to use the untested, uncertified French designed European Pressurized Reactor that is being redesigned and has not been certified by the NRC or any other United States agency.

Although there is no U.S. approval for the radioactive European designed reactor PPL wants to use, PPL wants the NRC to approve the present Application that is the subject of these contentions without the reactor being certified. PPL wants the NRC to approve and certify the reactor in another proceeding. That proceeding will take a while and they want to streamline this proceeding by not waiting for the other proceeding to conclude.

Intervenors contend that PPL and the NRC also can't have it both ways. 10 Code of Federal Regulations Part 52 says that you have to hold a licensing hearing on the whole application or you should complete any hearings or

proceedings on the certification of a new radioactive reactor design before you hold a hearing on a combined construction and operating license.

The interveners contend that the radioactive reactor design that PPL is pushing in its present application is obviously crucial to the present Application and other parts of the Application depend on the final design of the untested reactor. The outcome of the proceedings governing the design and certification of the proposed new French reactor that is untested has to be completed for the interveners to have complete final facts on how the final design relates to radioactive waste characteristics, accident types, radioactive emissions, control mechanisms and cyber systems changes, security concerns, etc, so that the changed health, safety and environmental impacts and facts are correctly addressed.

The NRC cannot just go and cut out parts of the Application that they want to deal with somewhere else and leave the interveners with a Swiss cheese type application that must be dealt with. The NRC can't just ignore Part 52.

So the interveners contend that the ASLB can suspend the current Application proceeding and wait and see where the design and certification

proceeding goes, or the Application must be redone to include each and every aspect of the new untried French designed reactor that PPL wants to use.

We urge PPL to withdraw this incomplete application and resubmit it after the other proceeding is completed.

Just because Luzerne is a French word does not mean that people in Luzerne County, the site of the proposed radioactive reactor, want an untested French designed radioactive reactor. The one the French are trying to build in Finland is already three years behind schedule and two billion dollars over budget.

“...While the NRC may steer a challenging party’s concern about the effects of new and significant information on an individual licensing decision into a generic proceeding, the NRC may not refuse to provide “at least one path by which the [interveners] may establish a connection’ between the rulemaking and the licensing proceeding, thereby ensuring that the proceeding will be applied to the individual licensing case.” Commonwealth of Massachusetts v. NRC, 522 F.3d, 127,128 (2008). It continues, “To ensure that a

connection is maintained between any rulemaking determination on the EPR design certification and the Petitioners right to seek application of any new and significant information to this proceeding, the Petitioners request that this contention be admitted and held in abeyance pending the outcome of the generic proceeding.”

What if the French reactor runs into certification problems at the NRC? Will PPL substitute another reactor design for Bell Bend?

The NRC must follow the Atomic Energy Act. The Atomic Energy Act must implement the National Environmental Policy Act. Under NEPA, the NRC must show that it has taken a hard look at the environmental impacts associated with placing the new untested French designed reactor near the Susquehanna River. Back in the *Earth Island Institute v. U.S. Forest Service* case, the court noted that ”NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken.” 442 F.3d 1147, 1153-1154 (2006).

PPL has to provide the results of the final design and certification process to be placed in the Combined Construction and Operating License Application before the license can be approved by the NRC.

Without the complete facts, the public is deprived of the public's right to comment on a complete application under NEPA.

The current Application contains speculation if the final design has not yet been certified. to be in the Application.

The NRC staff under the Atomic Energy Act should be making the determination that this Application is complete to be on the docket not the ASLB side of the NRC. New England Power Company, BP-78-9, 7 NRC 271 (1978).

The citizens of the surrounding counties and communities have recently seen enough of judicial proceedings where rights have been trampled and citizens sentenced to confinement for financial gain.

The citizens of Luzerne County should not be made captive by a process that would license a radioactive untested, uncertified reactor for forty to sixty years with out the benefit of a full and complete and final application where all the facts including a certified reactor design are presented in the application and the citizens have reviewed the complete facts and commented.

PPL and the NRC can't use corrupted procedure like Civerilla and Conahan used in Luzerne County for their benefit. The citizens won't stand for it anymore.

**CONTENTION FIVE - INADEQUATE PPL FUNDS FOR  
RADIOACTIVE DECOMMISSIONING  
OF BELL BEND**

**Contention five. The interveners contend that the decommissioning Funding Assurance in Application is not enough and the Applicant must immediately show that the Applicants selected method of funding must pass an immediate financial test to assure adequate funding. If the proposed radioactive nuclear power plant at Bell Bend and all the related radioactive parts are to be cleaned and decontaminated of all radioactivity and decommissioned at the end of a forty year license or at the end of sixty years as PPL depicts the possible active life of this plant to be, the interveners contend that the amount of money that PPL says it is required to assure sufficient funds for the decommissioning of this radioactive nuclear plant will not be enough and that the Applicant PPL Bell Bend LLC must show that the method of assurance is financially possible now.**

The Applicant at 1-11 of its Application says that PPL Bell Bend, LLC certifies that financial assurance for decommissioning this proposed

radioactive nuclear plant will be in the amount of \$398.6 million in 2008 dollars. PPL says that that is the minimum funding requirement. At page 1-11, section 1.6.2, the mechanism that PPL Bell Bend LLC says that it will use is a parent company guarantee from PPL Energy Supply Company to provide this assurance.

Intervenors say that the assurance provided by PPL Bell Bend company is not enough according to federal regulations ( 10 Code of Federal Regulations 50.75 and 10 Code of Federal Regulations 30 Appendix A.)

Intervenors contend that the parent company providing the parent company guarantee is already committed to providing funding for the radioactive decontamination and decommissioning for the Susquehanna radioactive nuclear plants 1 and 2 owned by the same parent company that will guarantee the radioactive decontamination and decommissioning of Bell Bend.

PPL Bell Bend LLC does provide anything at this time showing that it is possible to provide this funding. Therefore, it is inadequate.

There is a factual dispute as to when the Applicant must show that it can meet the criteria for funding assurance for decommissioning. Interveners say that the Applicant must meet the adequacy test now and it hasn't and therefore the Application is deficient.

The ASLB can take judicial notice of the huge financial losses in the financial markets and the existence of the current recession. PPL's resources for decommissioning Susquehanna 1 & 2 have experienced a substantial decrease and PPL should provide facts and figures at this time to prove that it has the financial ability to assure decommissioning for the radioactive Bell Bend nuclear plant.

PPL has omitted any such actual figures, therefore this Application is deficient.

## **CONCLUSION**

The NRC designed process for intervention is narrow and selective for interveners and favors the utilities and the NRC. The contentions put forward by the interveners concerning the health, safety and environmental impacts and issues involving high level radioactive nuclear waste, low level radioactive nuclear waste, terrorism, uncertified nuclear reactor design and the lack of radioactive decontamination and decommissioning funding

surrounding the proposed radioactive nuclear plant at Bell Bend justify the interveners position that the Applicant is deficient and the issues be addressed in a hearing.

Electronically signed and submitted by

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