January 26, 1979

NRC Central

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
PENNSYLVANIA POWER AND LIGHT CO.	)	Docket Nos. 50-387
ALLEGHENY ELECTRIC COOPERATIVE, INC.	)	50-388
	)	
(Susquehanna Steam Electric Station, Units 1 and 2)	)	

NRC STAFF ANSWER TO AMENDED PETITION FOR LEAVE TO INTERVENE OF THE CITIZENS AGAINST NUCLEAR DANGERS

The NRC Staff believes that the petition of Citizens Against Nuclear Dangers (CAND) should be denied because the Petitioner has failed to list even one admissible contention and set forth the bases for that contention with reasonable specificity.

I. BACKGROUND

On August 9, 1978, the Nuclear Regulatory Commission (Commission or NRC) published a notice of opportunity for hearing in the captioned matter (43 Fed. Reg. 35406). CAND submitted a timely request for a hearing and a petition for leave to intervene.

In its Memorandum and Order dated October 26, 1978, this Licensing Board concluded that CAND had demonstrated standing to intervene. Noting that CAND had not submitted contentions and that it had an unqualified right to do so at any time up to 15 days prior to the holding of the first prehearing conference, the Board withheld a judgment on contentions. Furthermore, the Board stated its intention to schedule the first prehearing conference during January 1979 and urged Applicant and Staff to meet with the various petitioners prior to that time to attempt to agree on contentions, if any, suitable for litigation in this proceeding.

Both the Staff and the Applicant attempted to arrange a meeting with the petitioners to discuss contentions. Not only did CAND refuse to attend such a meeting, but in its letter to the Secretary of the Commission dated December 4, it urged other petitioners to do likewise.

By Order dated December 14, 1978, this Licensing Board scheduled a prehearing conference to be held on January 29, 1979, and stated that petitions for leave to intervene could be amended or supplemented by no later than January 15, 1979.

On January 3, 1979, the Staff received a filing dated December 29 and postmarked December 30, 1978. On January 4, 1979, the Staff received a filing dated December 28 and postmarked December 29, 1978. On January 9, 1979, the Staff received a filing dated January 3 on which the postmark

was illegible. On January 12, 1979, the Staff received a filing dated January 5 and postmarked January 9, 1979. On January 15, 1979, the Staff received: (1) a filing dated January 8, and postmarked January 10, 1979, (2) a filing dated January 9, and postmarked January 10, 1979, and (3) a filing dated January 10, and postmarked January 12, 1979. All of the filings included letters bearing a CAND letterhead. All of the letters were identical except for their dates. Attached to the seven letters were a total of sixteen pages--four to the letter dated December 28, and two to the letter dated December 29, two to the letter dated January 3, two to the letter dated January 5, two to the letter dated January 8, two to the letter dated January 9, and two to the letter dated January 10. Each of the sixteen pages begins with identical words up through "the Citizens Against Nuclear Dangers hereby allege, contend and aver the following" and states in what may be termed "resolution form" a CAND position. The Staff has assumed that these filings were intended as supplements to the CAND petition for leave to intervene and that each of the attached pages was intended as a contention. Each of the "contentions" is addressed below.

II. CONTENTIONS

As a general rule, contentions to be admissible in an NRC licensing proceeding (except an antitrust proceeding) must deal with matters

arising under the Atomic Energy Act or the National Environmental Policy Act. Not only must the contentions sought to be litigated be listed, but also the bases for the contentions must be set forth with reasonable specificity in accordance with the requirements of 10 CFR 2.714(b). A specific basis for each contention is required: (1) to help assure that the hearing process is not improperly invoked, (2) to help assure that other parties are sufficiently put on notice of what they will have to defend against or oppose, and (3) to ensure that the hearing process is invoked solely for the resolution of concrete issues.[1/]

Because a hearing is not mandatory in an operating license proceeding, a Licensing Board, before granting an intervention petition and thus triggering a hearing, should take the utmost care to satisfy itself fully that there is at least one contention advanced in the petition which on its face raises an issue clearly open to adjudication in the proceeding.[2/] Furthermore, a Licensing Board has no duty to recast contentions offered by a petitioner to make those contentions acceptable.[3/] The task of drafting an admissible contention is the responsibility of the petitioner alone.

1/ Philadelphia Electric Company (Peach Bottom, Units 2 and 3), ALAB-216, 8 AEC 13, 20 (1974).

2/ Cincinnati Gas and Electric Company (William H. Zimmer Nuclear Power Station), ALAB-305, 3 NRC 8, 12 (1976).

3/ Commonwealth Edison Company (Zion Station, Units 1 and 2), ALAB-226, 8 AEC 381, 406 (1974).

As the Commission has stressed on several occasions:

> A cardinal prehearing objective of the presiding Atomic Safety and Licensing Board will be to establish, on as timely a basis as possible, a clear and particularized identification of those matters related to the issues in this proceeding which are in controversy. As a first step in this prehearing process, we expect the Board to obtain from petitioners a detailed specification of the matters which they seek to have considered in the ensuring hearing.
>
> In the Commission's view, the course outlined above is central to the proper focus and orderly conduct of the prehearing process, including the scope of appropriate discovery and of the later hearing itself. 4/

Contention 1 (First page attached to letter dated December 28)

CAND appears to state that, because a nuclear attack on the plant by a foreign power would render the local area uninhabitable, the NRC must await some action by the Department of Defense before ruling on issuance of operating licenses for the Susquehanna units. 10 CFR 50.13 states that an applicant is not required to provide measures for the specific purpose of

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4/ Wisconsin Electric Power Company (Point Beach Nuclear Plant, Unit 2), Memorandum and Order, 4 AEC 635, 636 (1971); Boston Edison Company (Pilgrim Nuclear Power Station), Memorandum and Order, 4 AEC 666, 667 (1971); Maine Yankee Atomic Power Company, Memorandum and Order, 4 AEC 728, 730 (1971); Florida Power and Light Company (Turkey Point, Units 3 and 4), Memorandum and Order, 4 AEC 787, 789 (1972).

protection against the effects of attacks directed against the facility by a foreign government. This regulation has been challenged and upheld by the courts.[5/] Therefore, such a contention is not admissible because it would be an impermissible challenge to a Commission regulation absent a showing of special circumstances. 10 CFR 2.758.[6/] No such showing is made.

Contention 2 (Second page attached to letter dated December 28)

CAND appears to state that because neither the Applicant nor appropriate state agencies will pay for dairy cattle which may have to be destroyed if contaminated by abnormal radioactive releases from the facility, the Pennsylvania General Assembly must take some action. The NRC has no jurisdiction over the Pennsylvania General Assembly. Congress has imposed limits on the liability of nuclear facility licensees for damages from nuclear incidents under the Price-Anderson Act (42 U.S.C. §2210). No allegation is made that any discharge would exceed those permitted by 10 CFR 20 and other Commission regulations. To the extent CAND seeks to challenge the values in those regulations, it cannot do so in a licensing proceeding without a showing of special circumstances. 10 CFR 2.758. Thus, there is no admissible contention.

Contention 3 (Third page attached to letter dated December 28)

CAND appears to state that, until the Loss of Fluid Test (LOFT) for Emergency Core Cooling System (ECCS) has been completed and fully

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[5/] Siegel v. Atomic Energy Commission, 400 F.2d 778 (D.C. Cir. 1968).

[6/] See Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79 89 (1974).

evaluated, operating licenses for the Susquehanna units should not be issued. NRC requirements for the design of the ECCS are established by regulations (General Design Criterion 35, Appendix A to 10 CFR 50; 10 CFR 50.46; Appendix K to 10 CFR 50). Therefore, a contention such as the above would constitute an impermissible challenge to Commission regulations and is not admissible in this proceeding without a showing of special circumstances (10 CFR 2.758). No such showing is made.

Contention 4 (Fourth page attached to letter dated December 28)

CAND appears to state that operating licenses for the Susquehanna units should not be issued until the spent fuel storage structure is designed to withstand bombardment by terrorists. 10 CFR 50.13 states that an applicant is not required to design against the effects of destructive attacks and sabotage. Thus, the contention is not admissible.

Contention 5 (First page attached to letter dated December 29)

CAND appears to state that the NRC should order the Pennsylvania Public Utility Commission to investigate alleged miscalculations of future

electricity demand in the major Applicant's service area and that construction of the Susquehanna units should be halted until that investigation is completed. This Commission has no jurisdiction over such actions of the Pennsylvania Public Utility Commission. Moreover, an interest as a ratepayer is not amenable to protection in an NRC proceeding. Such complaints have a forum in state utility commissions.[7] Continuation of construction is not before this Board. CAND also states that the NRC should "comply" with the "National Energy Program" in the national interest. Such a broad statement raises no issues suitable for litigation in this proceeding. Thus, there is no admissible contention.

Contention 6 (Second page attached to letter dated December 29)

CAND appears to state that, because nuclear wastes and chlorine will be discharged into the Susquehanna River by the Susquehanna units as designed, the NRC should order installation of a liquid treatment system designed to remove all traces of chlorine and nuclear wastes from the water to be discharged. Chlorine discharge limits are set by and within the exclusive authority of the Environmental Protection Agency.[8] Acceptable levels of radioactivity in effluents released to unrestricted areas are specified in NRC regulations (10 CFR 20.106, Appendix B to 10 CFR 20). To the extent that CAND seeks to challenge the effluent release requirements of 10 CFR 20 and Appendix I to 10 CFR 50, the contention

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[7] See Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), ALAB-333, 3 NRC 804 (1976).

[8] See Tennessee Valley Authority (Yellow Creek Nuclear Plant, Units 1 and 2), ALAB-515, 8 NRC ____ (December 27, 1978).

is an impermissible challenge to NRC regulations without a showing of special circumstances. 10 CFR 2.758. No such showing has been made. To the extent that CAND seeks to reopen matters decided at the construction permit stage regarding the balance between environmental impacts of radioactive and chemical effluents and benefits of the facility, CAND has made no allegation that there is new information available which should allow reopening of those matters. See 10 CFR 51.21. Thus, CAND has not raised an admissible contention.

Contention 7 (First page attached to letter dated January 3)

CAND appears to seek an order from the NRC (in conjunction with the Susquehanna River Basin Commission and the U.S. Army Corps of Engineers) directing the Applicant to build a reservoir to store water. NRC has no authority to issue such an order. It can only deny the license if the environmental impact of operation of the plant outweigh its benefits or if the plant cannot be operated in compliance with applicable safety requirements. CAND has not alleged that either situation exists nor has it set forth reasonably specific bases for such a contention. Thus, CAND has not raised an admissible contention.

Contention 8 (Second page attached to letter dated January 3)

CAND states that the NRC or the Applicant must decide before operating licenses are issued whether the Susquehanna facility ultimately will be

"dismantled," "entombed" or "mothballed" and that escrow financing of the selected mode of decommissioning is required. Commission approval of an applicant's specific, detailed decommissioning plans is not required until authority is sought to terminate the operating license. 10 CFR 50.82. Present Commission regulations regarding decommissioning only require that an applicant for an operating license furnish information to show that it has reasonable assurance of obtaining funds necessary to cover the estimated costs of permanently shutting the facility down and maintaining it in a safe condition. 10 CFR 50.33(f) and Appendix C to 10 CFR 50. In addition the Staff considers the costs of decommissioning in its environmental cost-benefit balance. To the extent that CAND seeks to litigate decommissioning details or costs, its contention is an impermissible challenge to Commission regulations absent a showing of special circumstances. 10 CFR 2.758. No showing has been made. Moreover, the Commission published advance notice of proposed rulemaking on decommissioning criteria on March 13, 1978. (43 Fed. Reg. 10370). Where matters are being considered generically they should not be considered in individual licensing proceedings.[9/] Thus, the CAND contention is inadmissible.

Contention 9 (First page attached to letter dated January 5)

CAND states that several Federal and State agencies should be directed by the NRC to provide ambulance and other specialized transportation for persons

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[9/] Potomac Edison Power Co. (Douglas Point Nuclear Generating Plant, Units 1 and 2), ALAB-218, 8 AEC 79, 85 (1974).

in nursing homes and mental treatment facilities, as well as the mentally and physically handicapped within a fifty-mile radius of Salem Township. Aside from the fact that the NRC has no authority to require what CAND desires, current Commission regulations (Appendix E to 10 CFR 50) do not require that consideration be given in a licensing proceeding to the feasibility of devising an emergency plan for the protection in the event of an accident of persons located outside the low population zone for the particular facility.[10/] Although the Commission has issued notice of a proposed rulemaking to consider changes to Appendix E to 10 CFR 50 which would modify the requirements for emergency planning (43 Fed. Reg. 37343), the CAND contention is an impermissible challenge to current Commission regulations absent a showing of special circumstances. 10 CFR 2.758. No such showing is made. Thus, the contention is inadmissible.

Contention 10 (Second page attached to letter dated January 5)

CAND states that the NRC should direct the Applicant, the Pennsylvania Departments of Education and Health and the Environmental Protection Agency, to conduct annual physical examinations of all children through high-school age within a fifty-mile radius of the Susquehanna facility to study

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10/ New England Power Company (NEP, Units 1 and 2), ALAB-390, 5 NRC 733 (1977).

the link between low-level radiation and disease. NRC has no authority to order Pennsylvania agencies or the EPA to undertake such studies. Commission regulations establish limits on releases of radioactive effluents in gaseous and liquid effluents and quidelines for keeping those doses as low as is reasonably achievable. 10 CFR 20 and Appendix I to 10 CFR 50. The Commission in Technical Specifications which are a part of the operating license for a facility imposes monitoring requirements to assure that the established release limits are complied with. To the extent that the CAND contention seeks to require more, it is an impermissible challenge to Commission regulations without a showing of special circumstances. 10 CFR 2.758. No such showing is made. Thus, the contention is inadmissible.

Contention 11 (First page attached to letter dated January 8)

CAND states that, because the major Applicant has publicly admitted the discovery of defects in major components of the Susquehanna units and the GAO has criticized NRC conduct of inspections, NRC should perform a 100 % examination of on-site and off-site quality assurance records related to those units and examine placement of vital components and structures. The Commission has stated that NRC's role is primarily one of review and audit of license activities, recognizing that limited resources preclude 100% inspection.[11/] Applicant's quality assurance programs are governed by 10 CFR 50, Appendix B. CAND does not allege that the requirements of

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11/ Petition for Emergency and Remedial Action, CLI-78-6, 7 NRC 400, 418 (1978).

this regulation are not being met at the Susquehanna facility. Thus, there is no contention. To the extent CAND feels the regulations are not sufficient, this is an attack on the regulations and is not appropriate in a licensing proceeding. 10 CFR 2.758.

Contention 12 (Second page attached to letter dated January 8)

CAND states that a moritorium should be placed on any shipment of fuel to the Susquehanna units until all railroad beds and tracks enroute are rebuilt and inspected. CAND has not alleged that fuel will be shipped to the Susquehanna units by rail or that NRC regulations governing transportation of fuel cannot be complied with. The CAND allegations, even if true, do not provide a valid basis for a contention. Thus, the "contention" is inadmissible.

Contention 13 (First page attached to letter dated January 9)

CAND states that operating licenses should not issue for the Susquehanna units until the entire issue of nuclear waste disposal is settled by the government and industry.

The Commission in denying a Natural Resources Defense Council request for rulemaking on waste disposal stated that it "would not continue to license reactors if it did not have reasonable confidence that the wastes can and will be disposed of safely." 42 Fed. Reg. 34391.[12/] Moreover, on review of that denial the Court held that the Atomic Energy Act does not require an affirmative determination that high-level nuclear wastes can be permanently disposed of prior to issuing a facility operating license.[13/]

Thus, this contention involving the availability of nuclear waste disposal is inadmissible.

Contention 14 (Second page attached to letter dated January 9)

CAND states that the NRC, with the Federal Power Commission (now a part of DOE), should direct the Applicants to build a specific type of transmission line with a specified maximum capacity because such transmission lines would be environmentally "safer." The NRC evaluates the environmental

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12/ See Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 NRC 41, 48-50 (1978).

13/ Natural Resources Defense Council v. Nuclear Regulatory Commission, 11 ERC 1945 (2d Cir. 1978).

impacts of the transmission lines proposed by the Applicant and imposes conditions (including rerouting) as necessary to minimize those impacts.[14/]

Again, the CAND allegations do not raise a question of whether there is compliance with regulatory requirements imposed by or on the NRC. Thus, CAND has not raised an admissible contention.

Contention 15 (First page attached to letter dated January 10)

CAND appears to question the genetic effect of low-level radiation which may be released during operation of the facility. To the extent relevant to this proceeding, CAND seeks to question the adequacy of the Commission's regulations governing releases of radioactive effluents (10 CFR 20 and Appendix I to 10 CFR 50) its contention is an impermissible challenge to Commission regulations and is inadmissible (10 CFR 2.758).

Contention 16 (Second page attached to letter dated January 10)

CAND appears to be asking questions of and threatening this Licensing Board as well as criticizing the Commission in general. Such questions and statements do not constitute a contention suitable for litigation in this proceeding.

14/ See Public Service Company of New Hampshire v. Nuclear Regulatory Commission, 8 ELR 20557 (1st Cir. 1978).

CONCLUSION

CAND has not advanced at least one admissible contention and set forth the bases for that contention with reasonable specificity. Therefore, its request for a hearing and its petition for leave to intervene should be denied. Furthermore, because CAND has exhausted its opportunity to amend or supplement its petition absent the permission of the Licensing Board and has refused to meet with the Staff and the Applicant to attempt to agree on contentions suitable for litigation in this proceeding in spite of the Board's request and ample opportunity, the Staff opposes the granting of additional time to CAND to cure the defects in its petition without the showing of good cause for untimeliness required under 10 CFR 2.714(a)(1).

Respectfully submitted,

James M. Cutchin, IV
Counsel for NRC Staff

Dated at Bethesda, Maryland,
this 26th day of January, 1979.

January 26, 1979

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
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PENNSYLVANIA POWER AND LIGHT CO.	)	Docket Nos. 50-387
ALLEGHENY ELECTRIC COOPERATIVE, INC.	)	50-388
	)	
(Susquehanna Steam Electric Station, Units 1 and 2)	)	

NRC STAFF ANSWER TO AMENDED PETITION FOR LEAVE TO INTERVENE OF SUSQUEHANNA ENVIRONMENTAL ADVOCATES

The NRC Staff believes that the petition of the Susquehanna Environmental Advocates (SEA) should be granted because SEA has listed at least one admissible contention and has set forth the bases for that contention with reasonable specificity.

I. BACKGROUND

On August 9, 1978, the Nuclear Regulatory Commission (Commission or NRC) published a notice of opportunity for hearing in the captioned matter (48 Fed. Reg. 35406). SEA submitted a timely request for hearing and petition for leave to intervene. In its Memorandum and Order dated October 26, 1978, this Licensing Board concluded that SEA had demonstrated standing to intervene. Because SEA had not submitted contentions and had an unqualified right to do so at any time up to 15 days prior to the holding of the first prehearing conference, this Board withheld a ruling on

contentions. Furthermore, the Board stated its intention to schedule the first prehearing conference during January 1979 and urged the Applicant and Staff to meet with the various petitioners prior to that time to attempt to agree on contentions, if any, suitable for litigation in this proceeding. Both the Staff and the Applicant attempted without success to arrange such a meeting with all the petitioners.

By order dated December 14, 1978, this Licensing Board scheduled a prehearing conference to be held on January 29, 1979, and stated that petitions for leave to intervene could be amended or supplemented by no later than January 15, 1979.

SEA filed a timely amended petition for leave to intervene. The amended petition lists several "contentions." Each of them is addressed below.

II. CONTENTIONS

As a general rule, contentions to be admissible in an NRC licensing proceeding (except an antitrust proceeding) must deal with matters arising under the Atomic Energy Act or the National Environmental Policy Act. Not only must the contentions sought to be litigated be listed, but also the bases for the contentions must be set forth with reasonable specificity in accordance with the requirements of 10 CFR §2.714(b). A specific basis for each contention is required: (1) to help assure

that the hearing process is not improperly invoked, (2) to help assure that other parties are sufficiently put on notice of what they will have to defend against or oppose, and (3) to ensure that the hearing process is invoked solely for the resolution of concrete issues.[1/]

Because a hearing is not mandatory in an operating license proceeding, a Licensing Board, before granting an intervention petition and thus triggering a hearing, should take the utmost care to satisfy itself fully that there is at least one contention advanced in the petition which on its face raises an issue clearly open to adjudication in the proceeding.[2/] Furthermore, a Licensing Board has no duty to recast contentions offered by a petitioner to make those contentions acceptable.[3/] The task of drafting an admissible contention is the responsibility of the petitioner alone.

As the Commission has stressed on several occasions:

> A cardinal prehearing objective of the presiding Atomic Safety and Licensing Board will be to establish on as timely a basis as possible, a clear and

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[1/] Philadelphia Electric Company (Peach Bottom, Units 2 and 3), ALAB-216, 8 AEC 13, 20 (1974).

[2/] Cincinnati Gas and Electric Company (William H. Zimmer Nuclear Power Station), ALAB-305, 3 NRC 8, 12 (1976).

[3/] Commonwealth Edison Company (Zion Station, Units 1 and 2), ALAB-226, 8 AEC 381, 406 (1974).

> particularized identification of those matters related to the issues in this proceeding which are in controversy. As a first step in this prehearing process, we expect the Board to obtain from petitioners a detailed specification of the matters which they seek to have considered in the ensuing hearing.
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> In the Commission's view, the course outlined above is central to the proper focus and orderly conduct of the prehearing process, including the scope of appropriate discovery and of the later hearing itself. 4/

Contention 1

SEA alleges a number of deficiencies in the Applicant's Environmental Report (ER). Even if true, without more these allegations do not state a contention suitable for litigation in this proceeding. The ER provides information for use by the NRC Staff in preparing an Environmental Impact Statement (EIS). It is the EIS which must be adequate and provide a basis for Commission action and not the ER.5/ A contention about the adequacy of the ER is not material to issues in this proceeding.

4/ Wisconsin Electric Power Company (Point Beach Nuclear Plant, Unit 2), Memorandum and Order, 4 AEC 635, 636 (1971); Boston Edison Company (Pilgrim Nuclear Power Station), Memorandum and Order, 4 AEC 666, 667 (1971); Maine Yankee Atomic Power Company, Memorandum and Order, 4 AEC 728, 730 (1971); Florida Power and Light Company (Turkey Point, Units 3 and 4), Memorandum and Order, 4 AEC 787, 789 (1972).

5/ See Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503, 525 (1977); Boston Edison Co. (Pilgrim Nuclear Generating Station, Unit 2, ALAB-479, 7 NRC 774, 792 (1978). See also New England Power Company (NEP, Units 1 and 2), LBP-78-9, 7 NRC 271, 279 (1978).

Furthermore, the environmental effects of transportation of radioactive materials are governed by Table S-3 and Table S-4 of 10 CFR 51.20. To the extent SEA seeks to litigate the environmental effects of transportation of radioactive materials, this is an attack on Commission regulations which may not be made in an individual licensing proceeding. 10 CFR 2.758. Thus, the contention is inadmissible.

Contention 2

SEA appears to allege that deficiencies in "the report" provide a basis for a contention about sites for low-level radioactive waste disposal purportedly set forth in its original petition. The environmental impacts of management of low-level wastes related to uranium fuel cycle activities are as set forth in Table S-3 of 10 CFR 51.20(e). To the extent the contention seeks to litigate such environmental impacts, it is an impermissible challenge to Commission regulations without a showing of special circumstances. 10 CFR 2.758. No such showing is made.

The Commission in denying a Natural Resources Defense Council request for rulemaking on waste disposal stated 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." (42 Fed. Reg. 34391).[6/]

[6/] See also Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 NRC 41, 48-50 (1978).

Moreover, on review of that denial the Court of Appeals held that the Atomic Energy Act does not require an affirmative determination that high-level nuclear wastes can be permanently disposed of prior to issuing a facility operating license.[7/] Obviously, the Act does not require a determination of sites for disposal of low-level wastes prior to issuing an operating license. The SEA contention is inadmissible.

Contention 3

SEA alleges that the Applicant's plans for decommissioning the Susquehanna units are deficient and inadequate. Commission regulations regarding decommissioning are set forth in 10 CFR 50.82, 10 CFR 50.33(f) and Appendix C to 10 CFR 50. Commission approval of an Applicant's specific, detailed decommissioning plans is not required until authority to terminate the operating license is sought. 10 CFR 50.82. Present Commission regulations regarding decommissioning require only that an Applicant for an operating license furnish information to show that it has reasonable assurance of obtaining funds necessary to cover the estimated costs of permanently

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7/ Natural Resources Defense Council v. Nuclear Regulatory Commission, 11 ERC 1945 (2d Cir. 1978).

shutting the facility down and maintaining it in a safe condition. The Commission published advance notice of proposed rulemaking on decommissioning criteria on March 13, 1978. (43 Fed. Reg. 10370). Licensing Boards should not accept contentions in individual licensing cases which are or are about to become the subject of general rulemaking.[8] Insofar as these allegations address matters other than costs, they are clearly inadmissible as contentions in this proceeding absent a showing of special circumstances. 10 CFR 2.758.

Although SEA contends that the cost estimates for decommissioning the Susquehanna units are far below what the actual costs will be, it has not provided sufficiently specific bases for such a contention. It offers only a general statement that the cost estimates are obviously biased because they are based on an industry-sponsored study. Thus, the decommissioning contention is totally inadmissible.

Contention 4

SEA again cites alleged deficiencies in the ER and FSAR as bases for a contention. It requests that the adequacy of the fuel supply be discussed. For the reasons discussed under Contentions 1 and 2, allegations of deficiencies in the ER and SER without more do not provide contentions suitable for litigation in this proceeding. SEA has neither alleged that the fuel supply will be inadequate nor cited any relevant basis for such an allegation. Thus, it has raised no admissible contention.

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[8] Potomac Electric Power Co. (Douglas Point Nuclear Generating Plant, Units 1 and 2), ALAB-218, 8 AEC 79 (1974).

Contentions 5 and 6

SEA seeks to raise a contention regarding environmental considerations of the uranium fuel cycle. Again SEA seeks to found contentions on the ER. The adequacy of that report is immaterial. The test is whether the EIS is adequate. The desire for information in a certain form is not germane to whether a license should issue for the facility. To the extent that the contention seeks a further discussion of the environmental effects of the uranium fuel cycle than is presented in Table S-3 of 10 CFR 51.20(e), other than health effects from effluents described in the table or estimates of releases of Radon-222, it is an impermissible challenge to Commission regulations without a showing of special circumstances. 10 CFR 2.758. No such showing is made. Thus, the contention is admissible only to the extent that it raises concerns about health effects and Radon-222 releases.

Contention 7

SEA alleges that the ER and FSAR are inadequate in that they do not detail the number of cancer and premature deaths to be caused by exposure of maintenance workers to radiation. Also, SEA alleges that these reports are inadequate in that they fail to state why workers constructing Unit 2 need be exposed during operation of Unit 1. SEA "contends" that Unit 1 should not begin operation until construction is completed on Unit 2. Occupational exposures are governed by 10 CFR 20 of the Commission's regulations. The reasons cited by SEA do not allege a non-compliance with a cognizable regulatory requirement. If SEA contends that the regulations should prohibit

operation of Unit 1 merely because the workers receive some exposure to radiation, the SEA contention constitutes an impermissible attack on the Commission's regulations absent a showing of special circumstances. 10 CFR 2.758. No special circumstances have been presented. However, to the extent that the contention raises concerns about the health effects of occupational exposures of workers completing construction of Unit 2 while Unit 1 is in operation, it is admissible.

Contention 8

SEA does not allege that the Applicant's emergency plans do not comply with NRC regulations but merely that "the report does not elaborate on" or "state whether" training of local emergency units will be provided. The "report" is not identified. No basis exists other than speculation to suppose that emergency plans do not exist that meet NRC regulations (Appendix E to 10 CFR 50). The contention is too general, lacks adequately specific bases and is inadmissible.

Contention 9

To the extent that the contention concerns the health effects of occupational exposure of workers during reprocessing of spent fuel from the Susquehanna units, it is admissible.

Contention 10

SEA alleges that the consequences of a serious accident involving a major release of radiation are not discussed in the ER and the FSAR, says it wants to know the consequences of such an accident and asks who will bear the costs of such an accident at Susquehanna facility. Consequences of these accidents having extremely low probability need not be discussed in the consideration of land-based light water reactors. See, e.g., Long Island Lighting Co. (Shoreham Nuclear Power Station), ALAB-156, 6 AEC 831 (1973); Carolina Environmental Study Group v. United States, 510 F.2d 796 (D.C. Cir. 1975). Again, a desire for information is not a basis for a contention. No material issue of fact is raised. SEA merely asked who will bear the costs. There is no issue relevant to this proceeding.

Clearly, if an accident greater than the design basis accident for the facility were to occur and resulted in consequences of the type postulated by SEA, the situation would be governed by the provisions of the Price-Anderson Act (42 U.S.C. §2210).

SEA has neither raised an admissible contention nor set forth a reasonably specific basis for a contention.

Contention 11

SEA makes a general statement about the reliability of the ECCS. SEA does not even allege that the ECCS does not meet applicable regulations (10 CFR 50.46; General Design Criteria 35, Appendix A to 10 CFR 50; Appendix K to 10 CFR 50). No basis is provided for a contention. Thus, no admissible contention has been raised.

Contention 12

There is no contention numbered 12 in the amended petition.

Contentions 13 and 14

SEA notes that the Security Plan for the Susquehanna facility has been submitted as a separate document withheld from public disclosure and merely says that it has a right to know certain facts concerning security arrangements. Again, a desire for knowledge is not a contention. SEA has not alleged any deficiency in security for the facility nor any bases for such an allegation.[9/] Security plans have been deemed to be commercial and financial information subject to disclosure only in accordance with provisions governing that type of information. 10 CFR 2.790(d). SEA's allegation that it has a "right to know" without raising an admissible

[9/] See Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-410, 5 NRC 1398, Commission review declined, CLI-77-23, 6 NRC 455 (1977).

contention is an impermissible challenge to Commission regulations. 10 CFR 2.758. Thus, SEA has not raised an admissible contention regarding security plans.

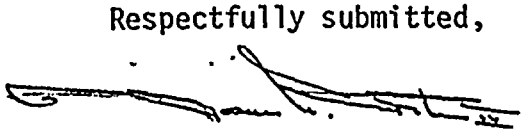
Contention 15

SEA has alleged that the ER is inadequate and has cited this deficiency as a basis for having paragraph 15 of its original petition as amended admitted as a contention. As discussed under Contention 1, allegations of deficiencies in the Applicant's ER do not state admissible contentions. The obligation to explore the environmental ramifications of licensing a nuclear power plant lies with the Commission--and as a practical matter with the Staff. The agency may not substitute the Applicant's analysis for its own and the agency must itself satisfy the requirements of the National Environmental Policy Act, regardless of what the Applicant does or does not discuss in its ER. SEA has not raised an admissible contention.

III. CONCLUSIONS

SEA has advanced at least one admissible contention and set forth the bases for that contention with reasonable specificity. Therefore, the request for hearing and petition for leave to intervene of SEA should be granted.

Respectfully submitted,



James M. Cutchin, IV
Counsel for NRC Staff

Dated at Bethesda, Maryland,
this 26th day of January, 1979.

January 26, 1979

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
PENNSYLVANIA POWER AND LIGHT CO.	)	Docket Nos. 50-387
ALLEGHENY ELECTRIC COOPERATIVE, INC.	)	50-388
	)	
(Susquehanna Steam Electric Station, Units 1 and 2)	)	

NRC STAFF ANSWER TO AMENDED PETITION FOR LEAVE TO INTERVENE OF ENVIRONMENTAL COALITION ON NUCLEAR POWER

The NRC Staff believes that the petition of the Environmental Coalition on Nuclear Power (ECNP) should be granted and that a hearing should be ordered because ECNP has listed at least one admissible contention and set forth the bases for that contention with reasonable specificity.

I. BACKGROUND

On August 9, 1978, the Nuclear Regulatory Commission (Commission or NRC) published a notice of opportunity for hearing in the captioned matter (43 Fed. Reg. 35406). ECNP submitted a timely request for hearing and petition for leave to intervene. In its Memorandum and Order dated October 26, 1978, this Licensing Board concluded that ECNP

had demonstrated standing to intervene, subject to the Board's receipt of information that certain individuals who had submitted affidavits were members of ECNP. Because ECNP had not submitted contentions and had an unqualified right to do so at any time up to 15 days prior to the holding of the first prehearing conference, the Board withheld a ruling on contentions. Furthermore, the Board stated its intention to schedule the first prehearing conference during January 1979 and urged the Applicant and Staff to meet with the various Petitioners prior to that time to attempt to agree on contentions, if any, suitable for litigation in this proceeding. Both the Staff and the Applicant attempted without success to arrange such a meeting with all the Petitioners.

By order dated December 14, 1978, this Licensing Board scheduled a prehearing conference to be held on January 29, 1979, and stated that petitions for leave to intervene could be amended or supplemented by no later than January 15, 1979.

ECNP filed a timely amendment to its petition for leave to intervene. The amended petition lists twelve contentions. Each contention is addressed below.

II. CONTENTIONS

As a general rule, contentions to be admissible in an NRC licensing proceeding (except an antitrust proceeding) must deal with matters arising under the Atomic Energy Act or the National Environmental Policy Act. Not only must the contentions sought to be litigated be listed, but also the bases for the contentions must be set forth with reasonable specificity in accordance with the requirements of 10 CFR 2.714(b). A specific basis for each contention is required: (1) to help assure that the hearing process is not improperly invoked, (2) to help assure that other parties are sufficiently put on notice of what they will have to defend against or oppose, and (3) to ensure that the hearing process is invoked solely for the resolution of concrete issues.[1/]

Because a hearing is not mandatory in an operating license proceeding, a Licensing Board, before granting an intervention petition and thus triggering a hearing, should take the utmost care to satisfy itself fully that there is at least one contention advanced in the petition which on its face raises an issue clearly open to adjudication in the proceeding.[2/] Furthermore, a Licensing Board has no duty to recast contentions offered

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1/ Philadelphia Electric Company (Peach Bottom, Units 2 and 3), ALAB-216, 8 AEC 13, 20 (1974).

2/ Cincinnati Gas and Electric Company (William H. Zimmer Nuclear Power Station), ALAB-305, 3 NRC 8, 12 (1976).

by a petitioner to make those contentions acceptable.[3] The task of drafting an admissible contention is the responsibility of the petitioner alone.

As the Commission has stressed on several occasions:

> A cardinal prehearing objective of the presiding Atomic Safety and Licensing Board will be to establish, on as timely a basis as possible, a clear and particularized identification of those matters related to the issues in this proceeding which are in controversy. As a first step in this prehearing process, we expect the Board to obtain from petitioners a detailed specification of the matters which they seek to have considered in the ensuing hearing.
>
> In the Commission's view, the course outlined above is central to the proper focus and orderly conduct of the prehearing process, including the scope of appropriate discovery and of the later hearing itself. [4]

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[3] Commonwealth Edison Company (Zion Station, Units 1 and 2), ALAB-226, 8 AEC 381, 406 (1974).

[4] Wisconsin Electric Power Company (Point Beach Nuclear Plant, Unit 2), Memorandum and Order, 4 AEC 635, 636 (1971); Boston Edison Company (Pilgrim Nuclear Power Station), Memorandum and Order, 4 AEC 666, 667 (1971); Maine Yankee Atomic Power Company, Memorandum and Order, 4 AEC 728, 730 (1971); Florida Power and Light Company (Turkey Point, Units 3 and 4), Memorandum and Order, 4 AEC 787, 789 (1972).

Contention 1

ECNP contends that the analysis of the human health effects of the uranium fuel cycle have been seriously misrepresented and underestimated. It is not clear from the bases set forth for the contention whether that is a general allegation or specific to the Susquehanna proceeding since the Environmental Impact Statement on issuance of operating licenses has not yet been issued by the Staff. At best the contention is premature and speculative. But because it raises concerns about the health effects of the uranium fuel cycle, it should be admitted to the extent that ECNP contends that these health effects tip the balance against issuing operating licenses for the Susquehanna units[5/] and provided ECNP identifies specifically what health effects it refers to and what those effects are caused by.

Contention 2

ECNP appears to contend that the cost-benefit analysis for the Susquehanna units is incorrect because it compares environmental impacts related to operation of the nuclear plant with impacts attributable to background

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5/ See Potomac Electric Power Company (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 88 (1974).

radiation and because it does not consider health effects of all long-lived radioactive isotopes released or caused to be released by operation of the Susquehanna units. Again, the bases for the contention are unreasonably general. ECNP has not specified exactly which long-lived radioactive isotopes have not been considered. However, a contention may be admitted dealing with whether the cost-benefit balance for the facility is rendered of no worth: 1) by a consideration of the incremental radiation to be caused by the facility compared with background radiation, and 2) by a failure to consider all radioactive isotopes released or caused to be released by operation of the facility. Further, ECNP must identify all isotopes which it contends were not considered.

Contention 3

ECNP asserts that known and assured reserves of uranium are insufficient to supply the lifetime fuel requirements for the Susquehanna units and offers this assertion as a basis for its contention that full environmental effects of fuel supply and mill tailings have not been properly considered. The contention is vague. There is no indication whether ECNP is here concerned with the availability of fuel, the costs of fuel, the general problems of disposal of mine waste or the radiological effects of such waste. To the extent that ECNP seeks a further discussion of the

environmental impacts of the uranium fuel cycle than is presented in Table S-3 to 10 CFR 51.20(e), other than health effects (which are raised in Contentions 1 and 2) and estimated releases of Radon-222 (which are not raised), the contention is inadmissible. 10 CFR 2.758. Thus, this contention fails to indicate whether the hearing process is properly invoked, fails to alert the parties to what they must litigate, and does not present a concrete issue. It is inadmissible.

Contention 4

ECNP contends that there is no need for the power produced by the Susquehanna units, in that strict energy conservation has not been realistically considered. It further states the effect of the use of electricity on reducing employment has not been considered. As a basis for its contention, it cites information presented and allegedly omitted by the Applicant in its Environmental Report (ER). Even if true, such bases do not support the ECNP contention. The ER provides information for use by the Staff in preparing an Environmental Impact Statement (EIS). It is the EIS and not the ER which must be adequate and provide a basis for Commission action.[6/] ECNP has

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[6/] See Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503, 525 (1977); Boston Edison Co. (Pilgrim Nuclear Generating Station, Unit 2, ALAB-479, 7 NRC 774, 792 (1978). See also New England Power Company (NEP, Units 1 and 2), LBP-78-9, 7 NRC 271, 279 (1978).

not alleged that the facts regarding need for power are so changed from the time of issuance of construction permits they must be redealt with in the operating license proceeding. See 10 CFR 51.21. Further, the Appeal Board has held that social value of the end uses of electricity is "beyond the pale" of what is required by NEPA.[7] Thus, ECNP has provided no valid bases for its contention and the contention is inadmissible.

Contention 5

ECNP contends that "the models used to calculate individual and population doses" are inaccurate and obsolete and that radiation doses are thus underestimated. Although it is not clear what impact ECNP alleges that this fact should have on the issuance of the operating license, it appears that ECNP is challenging the bases for the Commission's regulations on effluent limits in 10 CFR 20. To the extent that ECNP seeks to do so such a challenge is impermissible. 10 CFR 2.758. Moreover, "the models used to calculate individual and population doses" is too general and thus not reasonably specific enough to inform the parties of the issues sought to be litigated. The contention is inadmissible.

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[7] Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-123, 6 AEC 331, 351-352 (1973); Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), LBP-76-38, 4 NRC 435, 438 (1976).

Contention 6

ECNP contends that the analysis of alternatives is incomplete. It is not clear how ECNP can make such an allegation before the EIS is issued. Also, portions of this contention appear to be repetitious of other contentions.[8/] Furthermore, ECNP does not appear to recognize that the plant will have been constructed. As the Supreme Court has said:

> Common sense also teaches us that the "detailed statement of alternatives" cannot be found wanting simply because the agency failed to include every alternative device and thought conceivable by the mind of man. Time and resources are simply too limited to hold that an impact statement fails because the agency failed to ferret out every possible alternative, regardless of how uncommon or unknown that alternative may have been at the time the project was approved. [9/]

ECNP has provided absolutely no basis for raising such a contention in the operating license proceeding. The contention is not admissible for lack of reasonable specificity of bases to support such a contention.

[8/] The allegations concerning health costs are so unspecific as to be incapable of answer. Further, see Staff reply to contentions.

[9/] See Vermont Yankee Nuclear Power Corporation v. Natural Resources Defense Council, 98 S.Ct. 1197 (1978).

Contention 7

ECNP contends that emergency response planning by the Applicant and State agencies for notification and evacuation of the public beyond the site boundary is not complete and sufficient. Current Commission regulations (Appendix E to 10 CFR 50) do not require that consideration be given to the feasibility of devising an emergency plan for the protection in the event of an accident of persons located outside the low-population zone for the particular facility.[10/] Apparently it is these areas outside the low-population zone to which ECNP has reference. Although the Commission has issued notice of proposed rulemaking to consider changes to Appendix E to 10 CFR 50 which would modify the requirements for emergency planning (43 Fed. Reg. 37343), the ECNP contention is an impermissible challenge to current regulations. 10 CFR 2.758. To the extent that the contention deals with matters in the low-population zone, there is no allegation or detail on how the plans do not meet the requirements of Appendix E.[11/] The contention is inadmissible.

Contention 8

ECNP alleges that use of certain herbicides to maintain clearance of transmission line rights-of-way is a threat to the health and safety of persons living near or traversing these areas. Without more ECNP has not raised an admissible contention. It has not identified the specific herbicides or alleged that the Applicant plans to use them to clear rights-of-way.

10/ New England Power Company (NEP, Units 1 and 2), ALAB-390, 5 NRC 775 (1977).

11/ There has been no change in Commission direction in the treatment of Class 9 accidents.

Contention 9

ECNP alleges that archeological investigation of the site was inadequate and incomplete prior to start of construction of the Susquehanna units and asks this Board to require completion of these investigations before further construction. ECNP has provided no basis for such a contention. No sites are identified. ECNP does not specify what should have been done that was not done. Furthermore, whether construction should proceed is not before this Board. In addition, it is not even contended that any further work at this stage of construction could have any effect on the archeology of the area. ECNP has not raised an admissible contention.

Contention 10

ECNP asserts that the Susquehanna units contain numerous design deficiencies which may never be resolvable and that the Susquehanna units may never be safe enough to operate. ECNP provides a number of general and speculative bases to support its speculative contention. Such bases do not provide the reasonable specificity and concrete issues required. Moreover, ECNP makes general reference to a number of documents. A petitioner is not permitted to incorporate massive documents by reference as a basis for, or statement of, contentions.[12/] The contention is too general, lacks adequately reasonable bases and is inadmissible.

12/ Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1 and 2), LBP-76-10, 3 NRC 209, 216 (1976).

Contention 11

ECNP "contends" that excessive reliance on single failure[13] events leads to a false sense of security and certainty. ECNP does not allege that a regulatory requirement is not complied with. As a basis for its contention Petitioner makes a general reference to testimony of Dr. David Okrent of the ACRS and hearings before the Joint Committee on Atomic Energy. A petitioner is not permitted to incorporate massive documents by reference as a basis for, or statement of, contentions.[14] ECNP has not stated a valid contention or reasonably specified its bases. Such a contention is inadmissible.

Contention 12

ECNP contends that no operating licenses should issue for Susquehanna Units 1 and 2 "[a]bsent national policy determinations, federal legislation, and administrative agency regulation" of certain issues. As a basis for this contention ECNP alleges that "plant decommissioning and ultimate dismantling and site decontamination, . . . spent fuel storage and . . . disposal, radioactive waste management and disposal . . ., and health costs will render the Susquehanna "facility economically non-competitive with virtually any of the many alternative sources of energy or with conservation."

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[13] See Appendix A to 10 CFR 50, Definitions and Explanations.

[14] LBP-76-10, supra.

Such a contention is too general and lacks reasonably specific bases. Petitioner appears to be leveling an attack on the entire scheme of regulation of nuclear plant licensing including current national policy, federal laws and agency regulations. Such a general challenge is impermissible in a licensing proceeding and the contention is inadmissible.

III. CONCLUSION

ECNP has advanced at least one admissible contention and set forth the bases for that contention with reasonable specificity. Therefore, the request for hearing and petition for leave to intervene of ECNP should be granted.

Respectfully submitted,

James M. Cutchin, IV
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 26th day of January, 1979

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
PENNSYLVANIA POWER AND LIGHT CO. ALLEGHENY ELECTRIC COOPERATIVE, INC.	)	Docket Nos. 50-387 50-388
(Susquehanna Steam Electric Station, Units 1 and 2)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF ANSWER TO AMENDED PETITION FOR LEAVE TO INTERVENE OF COLLEEN MARSH, ET AL.," "NRC STAFF ANSWER TO AMENDED PETITION FOR LEAVE TO INTERVENE OF THE CITIZENS AGAINST NUCLEAR DANGERS," "NRC STAFF ANSWER TO AMENDED PETITION FOR LEAVE TO INTERVENE OF SUSQUEHANNA ENVIRONMENTAL ADVOCATES," and "NRC STAFF ANSWER TO AMENDED PETITION FOR LEAVE TO INTERVENE OF ENVIRONMENTAL COALITION ON NUCLEAR POWER" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission internal mail system, this 26th day of January, 1979:

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