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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of

PENNSYLVANIA POWER AND LIGHT CO.
ALLEGHENY ELECTRIC COOPERATIVE, INC.

(Susquehanna Steam Electric Station,
Units 1 and 2)

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Docket Nos. 50-387
50-388

NRC STAFF'S ANSWER IN OPPOSITION TO THE
APPEAL BY CITIZENS AGAINST NUCLEAR DANGERS

9/17/79

On August 30, 1979 Intervenor Citizens Against Nuclear Dangers (CAND) via mailgram and letter filed an interlocutory appeal from rulings on discovery matters made by the Licensing Board in its "Memorandum and Order on Scheduling and Discovery Motions" dated August 24, 1979. On September 1, 1979 CAND filed a supplement to its appeal. An additional supplement to the appeal was filed on September 10, 1979.

The order appealed from does not relate to the granting or the denying of a petition to intervene. With the exception of the appeal allowed under 10 CFR 2.714a, from an order wholly denying (or granting rather than wholly denying) a petition for leave to intervene, the Commission's Rules of Practice forbid the appeal of an interlocutory ruling by a Licensing Board.^{1/}

The Staff recognizes that the Appeal Board could treat this appeal by lay intervenors not represented by counsel as a request that it invoke its powers

^{1/} 10 CFR 2.730(f). Duke Power Company (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-433, 6 NRC 469 (1977).

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under 10 CFR 2.785(b)(1) and 10 CFR 2.718(i) to direct Licensing Board certification.^{2/} However, such discretionary interlocutory review generally will be granted only when the ruling below either (1) threatens the party adversely affected by it with immediate and serious irreparable impact which, as a practical matter, cannot be alleviated by a later appeal or (2) affects the basic structure of the proceeding in a pervasive or unusual manner.^{3/} An Appeal Board has previously refused to direct certification to review rulings on interrogatories made at the discovery stage of a proceeding.^{4/} An Appeal Board has also refused to become involved at an interlocutory stage in a scheduling controversy arising before a Licensing Board where the controversy does not bring to the fore any limitations imposed by law on the Licensing Board's jurisdiction or authority and where no "truly exceptional situation" is involved.^{5/} CAND has shown neither such a limitation nor a "truly exceptional situation" as to discovery or scheduling which might justify a departure from the Appeal Board's general practice of forbearance. In these circumstances appellate review of the Licensing Board's interlocutory order is available only by means of exceptions to that Board's decision at the end of the proceeding.^{6/} CAND has alleged no errors that cannot be corrected at that time. As in the Bailly case, alleged prejudicial errors

^{2/} Public Service of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-271, 1 NRC 478 (1975).

^{3/} Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-405, 5 NRC 1190 (1977).

^{4/} Long Island Lighting and Power Company (Jamesport Nuclear Power Station, Units 1 and 2), ALAB-318, 3 NRC 186 (1976).


^{5/} Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-295, 2 NRC 668 (1975).

^{6/} See: Boston Edison Company (Pilgrim Nuclear Generating Station, Unit 2), ALAB-269, 1 NRC 411 (1975).

stemming from among other things rulings on discovery and schedules are reviewable on exceptions to the Licensing Board's initial decision.^{7/}

Therefore, CAND's appeal should be denied.^{8/} Should the Appeal Board nevertheless grant the appeal, the Staff requests that it be granted the opportunity to address the individual questions sought to be raised in the appeal.

Respectfully submitted,


James M. Cutchin, IV
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 17th day of September, 1979

^{7/} See: Northern Indiana Public Service Company (Bailly Generating Station, Nuclear-1), ALAB-224, 8 AEC 244 (1974) and ALAB-302, 2 NRC 858 (1975).

^{8/} In addition, the Staff respectfully suggests that CAND be advised of the possible consequences of filing insulting and disrespectful papers. Laymen no more than lawyers may file such papers. Metropolitan Edison Company (Three Mile Island, Unit No. 2), ALAB-474, 7 NRC 746 (1978). CAND has filed other such papers, e.g., "CAND Supplemental Discovery Requests to Commonwealth of Pennsylvania" dated July 25, 1979 and "CAND Replies to Interrogatories of NRC Staff and Applicants" filed June 16, 1979.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWER IN OPPOSITION TO THE APPEAL BY CITIZENS AGAINST NUCLEAR DANGERS" 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, through deposit in the Nuclear Regulatory Commission's internal mail system, this 17th day of September, 1979:

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