

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION



Before the Atomic Safety and Licensing Appeal Board

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

APPLICANTS' RESPONSE TO CITIZENS AGAINST  
NUCLEAR DANGERS' APPEAL AND SUPPLEMENTAL APPEAL

9/14/79

On August 30, 1979, the Citizens Against Nuclear Dangers (CAND) filed an "Appeal Before the NRC Appeal Board Panel Pertaining to the Licensing Board's 'Memorandum and Order on Scheduling and Discovery Motions,' August 24, 1979." On September 1, 1979, CAND filed a "Supplemental Appeal with Particular Objections, Before the Atomic Safety and Licensing Appeal Board Panel." Applicants submit that these interlocutory appeals are prohibited by NRC regulations.

In its filings, CAND identifies four matters as a basis for its appeal. First, it asserts that the Licensing Board incorporated too many rulings in a single order. See September 1 filing at 1. Second, it objects to the time it has been given to answer Applicants' original discovery requests. See September 1 filing at 2. Third, it answers Applicants' objections to CAND

discovery request #18. See September 1 filing at 3-4. Fourth, it objects to the Board's position on the anticipated licensing schedule. See September 1 filing at 4-6. Of these items, the first, second, and fourth would be appeals from Licensing Board decisions. The third item is a matter that would properly be before the Licensing Board, since that Board in its August 24 Memorandum and Order permitted CAND to file answers to Applicants' objections to CAND discovery requests.

With regard to matters in both the August 30 and September 1 filings that constitute an appeal from the Board's Memorandum and Order, Commission regulations and practice do not allow interlocutory appeals, other than in the case of a denied intervention petition. This principle has been stated on numerous occasions, such as in a proceeding regarding the Black Fox Station, where the Appeal Board said:

"Intervenors Citizens Action for Safe Energy and Ilene Younghein endeavor to appeal from certain interlocutory rulings of the Licensing Board in this construction permit proceeding. The appeal must be dismissed. As we have previously observed:

10 CFR 2.730(f) contains a general prohibition against interlocutory appeals from licensing board rulings made during the course of a proceeding. The single exception to this prohibition is found in 10 CFR 2.714a. Insofar as a petitioner for intervention is concerned, that Section allows an appeal from an order concerning his petition if--but only if--the order denied the petition outright." (Citations omitted)

Public Service Company of Oklahoma  
(Black Fox Station Units 1 and 2),  
ALAB-370, 5 NRC 131 (January 28, 1977).

See also Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-541, 9 NRC \_\_\_\_ (April 27, 1979); Long Island Lighting Company (Jamesport Nuclear Power Station Units 1 and 2), ALAB-318, 3 NRC 186, 187 (March 16, 1976); Boston Edison Co. (Pilgrim Nuclear Generating Station, Unit 1), ALAB-269, 1 NRC 411, 413 (April 28, 1975). Based on Commission regulations, CAND's appeals cannot be adjudicated at this time.

In the final paragraph of its August 30 filing, CAND also requests that a stay be issued regarding the Board's directive that CAND respond to Applicants' and Staff's discovery requests submitted in May, 1979. See Memorandum and Order on Scheduling and Discovery Motions, August 24, 1979, at 11. The Commission regulations set forth the standards that will be applied in considering a request for a stay. See 10 C.F.R. §2.788(e). CAND has failed to make the requisite showings, and therefore, under NRC regulations, its request for a stay must be denied.

Finally, one part of CAND's September 1, 1979 Appeal is an answer to Applicants' objections regarding an original CAND discovery request on pressure vessel manufacture. This answer is apparently made pursuant to the Board's permitting CAND to respond to Applicants' objections to discovery requests within five days of the service of the August 24 order. See Memorandum and Order at 11. Thus, the objection would have to be considered by the Licensing Board, not the Appeal Board. Applicants will file with the Licensing Board an answer to CAND's reply.

For the reasons stated above, Applicants believe that CAND's interlocutory appeal cannot be considered, and that a stay of the Board's August 24, 1979 Memorandum and Order would be inappropriate.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

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Dated: September 14, 1979

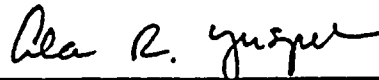
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CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing "Applicants' Response to Citizens Against Nuclear Dangers' Appeal and Supplemental Appeal" were served by deposit in the U.S. Mail, first class, postage prepaid, this 14th day of September, 1979, to all those on the attached Service List.



Alan R. Yuspeh

Dated: September 14, 1979

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NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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and ) 50-388  
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(Susquehanna Steam Electric Station, )  
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