

CP

January 11, 1980

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

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

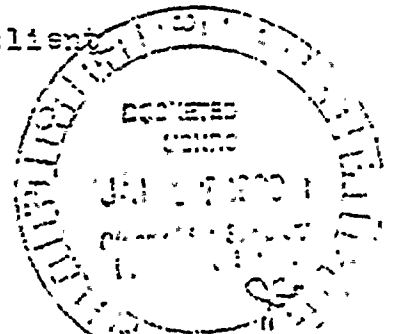
Docket Nos. 50-387
50-388

(Berwick Atomic Power Plant)
(Susquehanna Units 1 and 2)

CITIZENS AGAINST NUCLEAR DANGERS
MOTION FOR RECONSIDERATION OF MOTIONS .
BEFORE THE LICENSING BOARD

The Citizens Against Nuclear Dangers of Berwick, Pennsylvania move the U.S. Atomic Safety and Licensing Board to reconsider the Order of January 4, 1980, and the Order of October 30, 1979, and issue a protective order, based not on any so-called "overview" of the issues, which is too broad and elusive a vehicle to specifically respond to, but, rather to reconsider the petitions and motions for a protective order based on the fundamental fact that the civil rights of the Citizens and the other three intervenor groups were and still are being violated, inadvertently or otherwise. The Citizens call upon the Licensing Board to review this matter, once again, in light of the factual recapitulation that follows, going back to square one, and, keeping in mind that the intervenors are not law firms or public utility corporations with vested interests and vast resources, but, rather ordinary individual private citizens representing the views of a broad-based constituency in the public interest.

In a letter dated December 4, 1978, filed with the NRC and the Licensing Board, the Citizens requested the following salient documentation:



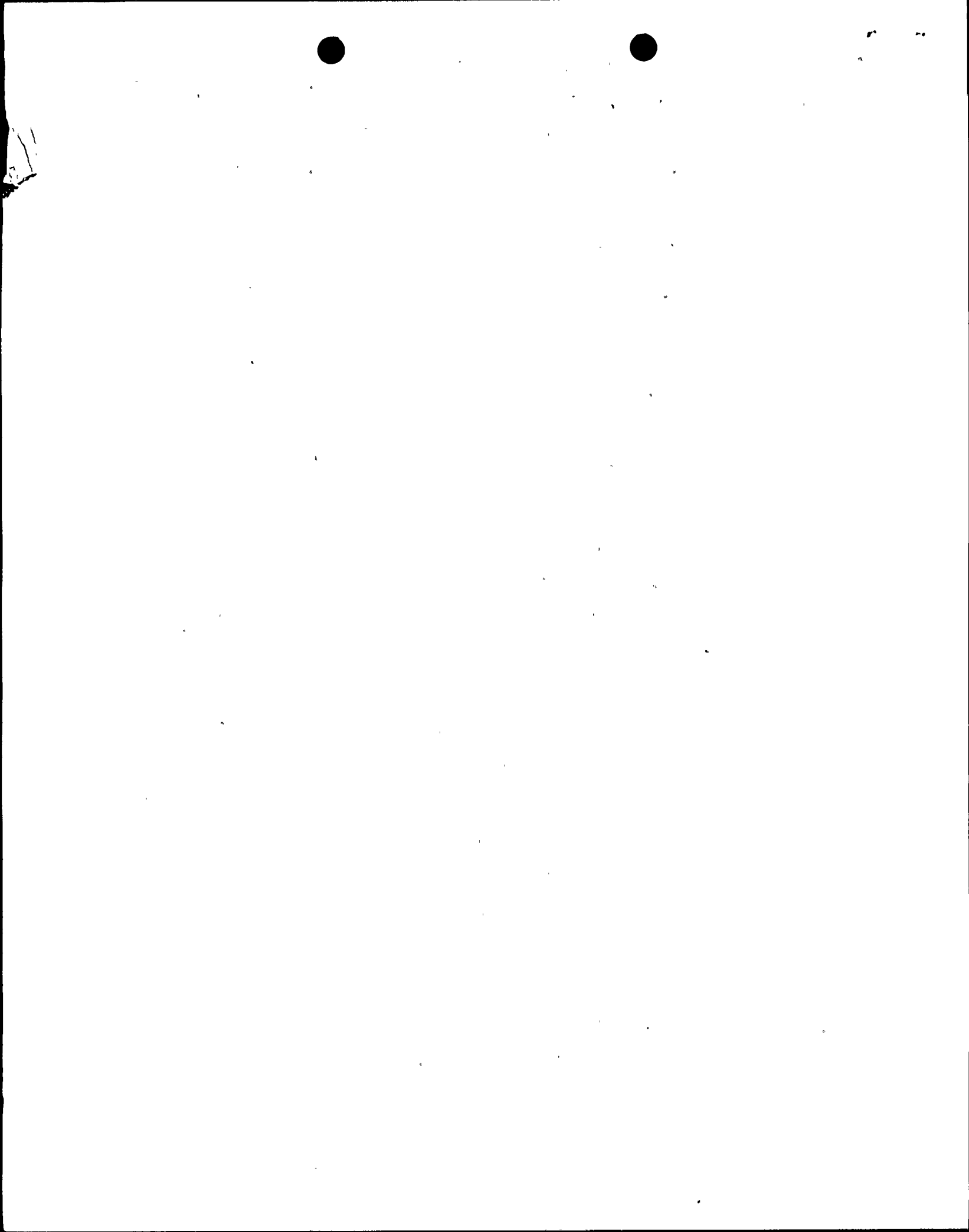
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"Pursuant to the Freedom of Information Act, et al., the intervening parties should be promptly furnished, free of charge, one true certified set of the complete NRC file, including: applications, correspondence, NRC staff reports, memorandums, safety and environmental studies and reports, legal documents, and any other pertinent government data relating to Permit Nos. CFP-101 and CFP-102; and Docket Nos. 50-387 and 50-388 (see post script for one example). The Citizens believe that this request for public documents is reasonable, necessary and in the public interest.

P.S. The NRC is requested to furnish the Citizens with the official railroad safety inspectors' accident reports on the CONRAIL derailment of a train engine and flatcar carrying the million-dollar transformer that was damaged as a result of the run-away train derailment on the premises of the PP&L Atomic Plant construction site near Berwick, Pa., occurring on Thursday, October 26, 1978."

The Licensing Board, could have, but, did not direct the NRC to comply with this legitimate request, nor did the Licensing Board even reply! This was the first episode on discovery in the Berwick case, and it was a foreshadowing of what has become a pattern of stonewalling. It might be characterized by some as a conspiracy of silence in dealing with the interverers right to know. If the NRC furnished the full set of unclassified documents, with periodic updated supplements, to each intervening group (which would have been the logical thing to do) the dispute over discovery replies could have been resolved months ago.

The cost of each updated set would be about \$2,000. Yet, the NRC apparently is willing to spend enormous sums of the taxpayers money, possibly \$100,000 directly and indirectly, if necessary,



on legal and bureacratic manipulation in just this one case, to deny placing these documents in the possession of the citizen interveners. There is something sinister emitting out of Bethesda about all this concealment of public documents. Government in a free and open society should not operate this way!

The Licensing Board's order of denial dated January 4, 1980, gives the false impression that the Citizens Against Nuclear Dangers "has supplied no good reason for a change in this outstanding order, or for its request that its protective order request be reconsidered and expanded to include the Applicnats."

This in preposterous!

The facts are, the Citizens supplied the following several good reasons to the Licensing Board, which obviously were virtually ignored.

In testimony before the Licensing Board on January 30, 1979, at the Pre-Hearing Conference, the Citizens explained that the Wilkes-Barre Public Library, which is not allowed to circulate reference department materials, thereby, could not provide satisfactory service for the interveners in regards to the examination of the incomplete and valdalized set of NRC documents placed on the shelves. The library (located 25 miles distance from Berwick) is closed on Sundays and holidays, late in the evening and during vacation hours, precisely when volunteer researchers have most of their free time at home to work on the Berwick project. Thus, the interveners were, de facto, denied the very government documents that contain much of the discovery related information that would later be required to answer the interrogatories.

In a filing dated June 16, 1979, the Citizens presented timely objections to the oppressively burdensome interrogatories of the NRC

and the Applicants. It was pointed out that the Board itself was (and still is) obstructing the proceedings by denying all intervening parties the complete set of government documents in Docket 50-387/388, including the Transcript of the Pre-Hearing Conference. This clearly violates legal standards of fairness, is discriminatory, and violates due process of law, since the Applicants and the NRC staff have been furnished all these documents, and continue to receive them--exclusively.

It was also pointed out that the Licensing Board had previously, and in our opinion, wrongly, upheld the NRC staff in denying the interveners the very government documents that contain most of the discovery related information that would be required to answer the interrogatories.

Concerning the motion for a protective order in regard to
the Applicants

In a filing before the Licensing Board on July 25, 1979, the Citizens explicitly stated that the Applicants (PP&L) failed to furnish the Citizens with a considerable amount of data previously requested under discovery on May 22, 1979. Much of the ^{data} forwarded by PP&L was woefully incomplete and/or substituted materials. Yet, virtually all of the requested documentation is in the possession of the Applicants and it is public record, but it is not readily obtainable from other sources by the interveners. The Citizens thereby cannot comply with the Applicants discovery requests without this data. The Licensing Board should know this, it is self-evident.

One case in point should suffice. Some of the outstanding discovery requests are for catalogued data. The PP&L admitted the existence of extensive files on the Berwick project, but the PP&L refuses to identify the titles of these papers or Release annotations of the individual subject matter, as requested, thereby, leaving the Citizens in the dark concerning the requisitioning of particular papers and reports from the Applicants under second round discovery, which in turn would have provided answers to many of the interrogatories directed at the Citizens. The useless bare-bones listing that was forwarded was evidently the brain child of some corporate smart aleck and another good example of stonewalling.

The Licensing Board did nothing to review and rectify this obvious non-compliance, nor the other types of stonewalling resorted to by the NRC and the Applicants over the past twelve months. The Licensing Board is being hypocritical at this juncture, promulgating a double standard, by insisting on discovery compliance from one side but not from the other parties. Accordingly, it might be advisable for the interveners to learn to what degree their rights have been violated pursuant to the Civil Rights Act, et al.

In a filing on September 1, 1979, the Citizens again noted for the record that the interveners, representing the general public, have been denied the pertinent government records and relevant documents in the possession of the Applicants in the Berwick case. Yet, the Licensing Board for some strange reason, will not order the NRC or the Applicants to comply with the interveners legitimate discovery requests and the public's right-to-know.

It was also restated that the Licensing Board has discriminated against all the interveners by its inaction to uphold the intent of

the Freedom of Information laws concerning discovery. The Licensing Board has the jurisdiction to uphold the public disclosure laws, but, failed to take this initiative to serve the public interest-- which is the Licensing Board's mandate! GOVERNMENT IN A FREE AND OPEN SOCIETY SHOULD NOT OPERATE THIS WAY!

In a filing dated September 10, 1979, the Citizens informed the Licensing and the Appeals Board that to attempt compliance with the unreasonable interrogatories of the NRC and the Applicants would also be a financial burden beyond the means of the Citizens. We submit that this is another fundamental valid and compelling reason for being granted an exemption.

It was also stated that it would take an extraordinary amount of time and effort (possibly one year), which an ad hoc group of private citizens does not have available, to obtain the thousands of items of technical data demanded by the NRC and the Applicants. Especially, in light of the fact that the NRC and the Applicants have remained intransigent in not releasing the relevant documents to the interveners containing most of the necessary discovery data (what are they trying to hide?).

The Citizens also submitted the probability that the NRC and the Applicants are on a discovery fishing expedition, which is hardly sufficient grounds for compelling the interveners to reply...or the Licensing Board to so order. In summary, the Citizens have, in truth, supplied very good reasons for the Licensing Board to reconsider their order!

The Licensing Board has for the most part cleverly side-stepped the fundamental issue of accessibility of records, and a number of other valid arguments put forward by the interveners in their petitions

and motions for protective orders against the gross misuse of discovery. The NRC is seemingly hellbent on conducting what may become a mock public hearing that would severely restrict the important testimony of the public interest interveners because they were denied the documents and therefore cannot comply with the unfair discovery impediments, unjustly placed there by Licensing Board sanctions, and, this we fear will open the door wide to attempts by the NRC and the Applicants to intimidate and harrass the interveners (already attempted), attempts to impeach the credibility of their witnesses, and attempts to invalidate the admissibility of their testimony, and otherwise make a mockery out of the public hearing process.

This particular Licensing Board has, by its inactions, omissions and misguided directives to date, apparently relinquishes its impartial status and assumes an adversary role against the people of the United States in the Berwick intervention. GOVERNMENT IN A FREE AND OPEN SOCIETY SHOULD NOT--AND MUST NOT--OPERATE THIS WAY!

Dated: January 11, 1980

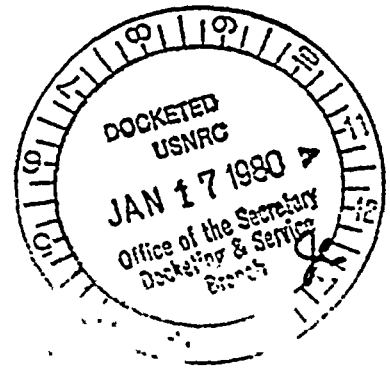
Thomas J. Halligan
 Thomas J. Halligan Correspondent

CERTIFICATE OF SERVICE

I hereby certify that copies of Citizens Against Nuclear Dangers Motion For Reconsideration of Motions Before The Licensing Board have been served on the following by deposit in the United States mail, first class, this 11th day of January, 1980.

Mr. Charles Bechhoefer, Esq.
 Mr. Glenn O. Bright
 Dr. Oscar H. Paris
 Atomic Safety & Licensing Board
 Atomic Safety & Licensing Appeal Board
 Docketing & Service Section
 Mr. James M. Cutchin, Esq.
 Mr. Jay Silberg, Esq.

Dr. Judith H. Johnsrud
 Mrs. Colleen Marsh
 Mr. Gerald Schultz, Esq.
 Mr. Thomas M. Gerusky
 Comptroller General of U.S.
 U.S. Senator John Heinz
 U.S. Senator Richard Schweiker



NOTICE TO ALL CONCERNED

Henceforth, all communications from any party to the intervention sent to the Citizens Against Nuclear Dangers shall be addressed to the centralized clearinghouse c/o Mrs. Mary K. Creasy
925 East 2nd Street
Berwick, Pa. 18603

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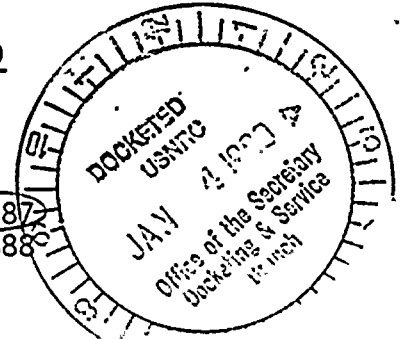
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

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

(Susquehanna Steam Electric Station,
Units 1 and 2)

Docket Nos. 50-387
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NRC STAFF'S ANSWER TO CAND MOTIONS

On December 17, 1979, the Staff received a filing entitled "Citizens Against Nuclear Dangers Petition for a Government Inquiry; Replies to Discovery Order; Motions on Interrogatories before the Licensing Board." The filing includes a motion to amend an earlier motion, a motion for subpoenas and a motion for a special prehearing conference.^{1/} All should be denied for reasons discussed below.

In that portion of its filing labelled "Forward" CAND, claiming that it inadvertently omitted the inclusion of Applicants in its October 9 motion for a protective order, seeks to amend that motion to include the Applicants. This Board, in its Memorandum and Order on Discovery Motions (II) dated October 30, 1979, took an overview of the discovery situation (Order at 5) instead of dealing separately with the various motions. Therefore, it dealt with CAND's

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The filing also includes a petition directed to the United States Senators from the Commonwealth of Pennsylvania. No action on that petition is requested of the Licensing Board. Filing at Part I.

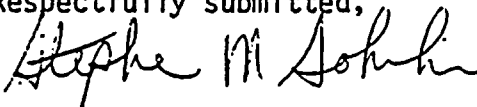
objections to discovery as if they applied to the discovery requests of both the Staff and the Applicants. For that reason, and because CAND neither purports to advance nor advances any new grounds for its October 9 motion, CAND's motion to amend its October 9 motion should be denied.

In Part II of its filing CAND moves the Board to subpoena ". . . appropriate qualified government officials at the state and federal level who have expert knowledge of these matters in the course of their government service" and have them answer ". . . every applicable specific discovery question formulated by the NRC Staff and the Applicants." CAND requests that the Board "interview" such persons ". . . at government expense of course . . ." In addition, CAND moves the Board to convene "a special prehearing conference on this subject at Wilkes-Barre, Pa. or Berwick, Pa. in January or February, 1980, to arrange the details for the taking of depositions, and setting the guidelines, etc."

As this Board explained in its Memorandum and Order on Discovery Motions (I), ". . . the purpose of discovery is to enable each party prior to hearing to become aware of the positions of each adversary party on the various issues in controversy, and the information available to adversary parties to support those positions." Order at 5-6. In addition, as the Board pointed out in both of its memoranda and orders on discovery motions, ". . . an intervenor is not required to engage in extended research to answer questions and may, if it is true, state that it has no knowledge of a given subject or that it is in the process of developing such knowledge." Order I at 8 and Order II at 19.

In its sound discretion, this Board may, at public expense, subpoena witnesses whom an Intervenor would have called but for financial considerations. However, it may do so only "where it finds a genuine need for their testimony" * * * "to hear evidence which a Board deems relevant and important for the resolution of a significant contested issue."^{2/} It is improper for a Board to subpoena at public expense numerous unnamed persons at the behest of an Intervenor on the chance that they may provide relevant testimony.^{3/} For these reasons the motions to subpoena government officials and to schedule a pre-hearing conference to arrange for the taking of their depositions should be denied.

Respectfully submitted,


for James M. Cutchin, IV
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 2nd day of January, 1980

2/

Consumers Power Company (Midland Plant Units 1 and 2), ALAB-382, 5 NRC 603, 607-608 (1977).

3/

Id. at 608. It is further noted that to the extent CAND wishes various NRC employees to be subpoenaed, the procedures in 10 CFR 2.720(h)(2)(ii) apply. See 10 CFR 2.740a(j); Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-226, 8 AEC 381, 391-92 (1974).

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

(Susquehanna Steam Electric Station,)
Units 1 and 2))

Docket Nos. 50-387
50-388

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWER TO CAND MOTIONS" 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 2nd day of January, 1980:

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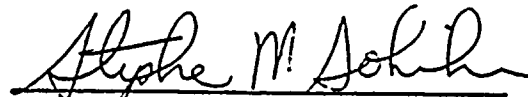
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