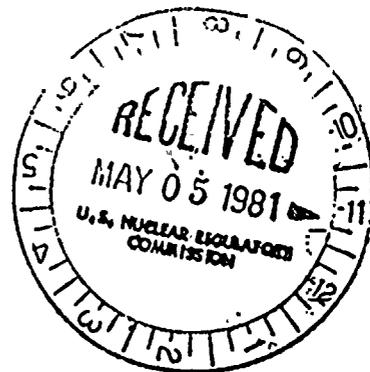


5/4/81



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

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

(Susquehanna Steam Electric Station,  
Units 1 and 2)

}  
} Docket Nos. 50-387  
} 50-388

NRC STAFF ANSWER IN SUPPORT OF  
APPLICANTS' MOTION TO DISMISS CONTENTION 10

I. INTRODUCTION

In its Special Prehearing Conference Order, the Board admitted the following contention, based on Citizens Against Nuclear Dangers (CAND) contention 12:

- 10. Notwithstanding the requirements of 10 CFR Part 50, Appendix A, Criterion 4, structures, systems, and components important to safety have not been adequately protected against the effects of rail accidents onsite, including those involving shipments of spent fuel. A significant accident has already occurred, and the rail line is not adequately designed to assure that such accidents will not occur in the future, with a potential impact on safety structures, systems, or components. <sup>1/</sup>

The Board expressly recognized, however, that CAND had not identified any structures, systems, or components which might arguably be affected by an onsite rail accident.<sup>2/</sup> It stated that "prior to any hearing on this

1/ Pennsylvania Power and Light Company (Susquehanna Steam Electric Station, Units 1 and 2), LBP-79-6, 9 NRC 291, 316-17 (1979).

2/ Id. at 316.

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contention," CAND must identify those structures, systems, or components it believed would be affected by an onsite rail accident.<sup>3/</sup> On the ground that CAND has failed to identify any such structures, systems, or components in its responses to the NRC Staff's and Applicants' specific interrogatories on the subject, Applicants have moved to dismiss this contention from the proceeding.<sup>4/</sup> The Staff supports Applicants' motion.

## II. BACKGROUND

On January 8, 1979, CAND submitted its contention 12.<sup>5/</sup> That contention stated in pertinent part:

Whereas, the Applicants plan to ship to and from Salem Township via rail an average of twenty shipments (each containing 18 BWR fuel assemblies per cask) an average distance of one thousand miles;

Therefore, because of the badly deteriorating roadbeds and trackage of CONRAIL and the other rail carriers, and the crushing sixty-five ton weight of each fuel cask, the shipment of radioactive cargoes is definitely unsafe at any speed. There should be a moratorium placed on any shipment of atomic fuel to the Applicants' Salem plant until all railway roadbeds and trackage enroute are rebuilt and inspected;

Therefore, the Nuclear Regulatory Commission should also place emphasis on ways and means of dealing with problems that will arise from derailments and collisions especially at: grade crossings, over-passes, under-passes, tunnels, bridges and barge crossings, as well as emergency evacuation plans enroute.<sup>6/</sup>

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<sup>3/</sup> Id.

<sup>4/</sup> Applicants' Motion to Dismiss Contention 10, April 14, 1981.

<sup>5/</sup> Letter from Mrs. Irene Lemanowicz to Mr. James M. Cutchin, January 8, 1979.

<sup>6/</sup> Id. at 2.

The Board restated the above contention on the grounds that (1) offsite transportation is outside the scope of an operating license proceeding<sup>7/</sup> and (2) although ambiguous, CAND had stated at the prehearing conference that it intended its contention to cover onsite as well as offsite transportation.<sup>8/</sup>

On May 21, 1979, the Staff filed its first round discovery requests on CAND.<sup>9/</sup> Staff's Interrogatory S-10.6 requested that CAND identify the safety structures, systems, or components it believed would be damaged by a rail accident onsite and state the basis for its conclusion.<sup>10/</sup> On June 16, 1979 CAND filed a document responding to the Staff's discovery requests.<sup>11/</sup> At page 3 of that document, CAND stated:

The Citizens Against Nuclear Dangers categorically object to each and every interrogatory question submitted by the NRC . . . . The Citizens objections are as follows . . . . The Licensing Board Panel, or their agents, authored or edited, almost beyond recognition, most of the so-called admitted contentions by using some esoteric methodology. The Citizens did not concur with the Board's revisionist contentions. Nor, are the Citizens willing to be caught in some legalistic entrapment inherent in the apparent rigged interrogatories.

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7/ Wisconsin Electric Power Company (Point Beach Nuclear Plant, Unit 2), ALAB-31, 4 AEC 689, 693, 697 (1971); Trustees of Columbia University in the City of New York, ALAB-50, 4 AEC 849, 863 (1972).

8/ Pennsylvania Power and Light Company (Susquehanna Steam Electric Station, Units 1 and 2), LBP-79-6, 9 NRC 291, 315 (1979).

9/ NRC Staff's First Round Discovery Requests of the Citizens Against Nuclear Dangers (CAND), May 21, 1979.

10/ Id. at 7.

11/ Citizens Against Nuclear Dangers' Replies to the Interrogatories of the NRC Staff and the Applicants and Other Matters, June 16, 1979.

On January 15, 1981, CAND filed another document purportedly responding to the discovery requests filed by the Staff.<sup>12/</sup> That document stated that discovery responses would be provided from the factual replies of the NRC Staff in response to CAND supplemental discovery requests based on the FES, the SER, and SER Supplement.<sup>13/</sup> Pursuant to a subsequent Board Order directing CAND to respond to the Staff's health and safety interrogatories,<sup>14/</sup> including S-10.6, CAND stated that "the Citizens currently do not possess any of the discovery information sought by the NRC."<sup>15/</sup>

### III. DISCUSSION

With regard to the above information, the Staff believes two things are clear. First, the contention which is presently admitted to the proceeding and labeled number 10 is not the contention originally propounded by CAND and has not been adopted by CAND.<sup>16/</sup> Second, the

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<sup>12/</sup> Citizens Against Nuclear Dangers Responses to Discovery on Health and Safety Contentions, January 15, 1981.

<sup>13/</sup> Id. at 1-2.

<sup>14/</sup> Memorandum and Order (Directing CAND and ECNP to Response to Interrogatories), February 27, 1981.

<sup>15/</sup> Citizens Against Nuclear Dangers Statement on Interrogatoires and Motions before the Licensing Board, March 27, 1981 at 1.

<sup>16/</sup> Citizens Against Nuclear Dangers' Replies to the Interrogatories of the NRC Staff and the Applicants and Other Matters, June 16, 1979 at 3.

Staff notes that the Board ordered CAND to identify the structures, systems, or components it believed might be affected by an onsite rail accident. Section 2.714(b) of the Commission's Rules of Practice requires that a petitioner set forth with reasonable specificity the basis for each contention it wishes to litigate. Thus, as CAND has stated that it does not have the discovery information sought and as that discovery includes a specific request for the basis of this contention, this contention could be viewed as lacking the basis required by the Commission's Rules and the Board's Order.<sup>17/</sup> In light of CAND's failure

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<sup>17/</sup> With regard to the Board's statement that it would expect the Staff to consider a rail accident, the Staff notes that Table S-4 summarizes the environmental impact of transportation of fuel and waste to and from a light-water-cooled nuclear power reactor. The Staff further notes that the Board "construes" a rail accident to be within the scope of the requirements in 10 C.F.R. Part 50, Appendix 4, Criterion 4. Without more, the Staff is not sure why the Board so concludes. Criterion 4 states:

Criterion 4 - Environmental and missile design bases. Structures, systems, and components important to safety shall be designed to accommodate the effects of and to be compatible with the environmental conditions associated with normal operation, maintenance, testing, and postulated accidents, including loss-of-coolant accidents. These structures, systems, and components shall be appropriately protected against dynamic effects, including the effects of missiles, pipe whipping, and discharging fluids, that may result from equipment failures and from events and conditions outside the nuclear power unit.

Pennsylvania Power and Light Company (Susquehanna Steam Electric Station, Units 1 and 2), LBP-79-6, 9 NRC 291, 316 (1979).

to provide this information and the resultant lack of a basis for  
contention 10 as admitted, the Staff urges that Contention 10 be  
dismissed from this proceeding.

Respectfully submitted,

*Jessica H. Laverty*  
Jessica H. Laverty  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 4th day of May, 1981