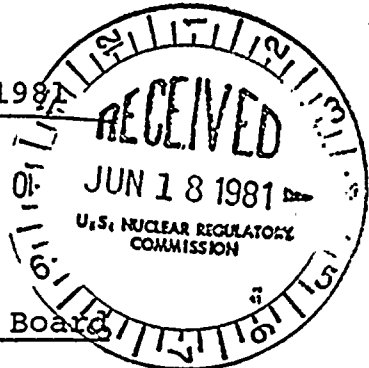




June 15, 1981



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Appeal Board

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

Docket Nos. 50-387
50-388

APPLICANTS' ANSWER TO "CITIZENS AGAINST NUCLEAR DANGERS MOTIONS BEFORE THE APPEAL BOARD REGARDING ASLB MEMORANDUM AND ORDER DATED MAY 20, 1981"

I. Introduction

On June 2, 1981, intervenor Citizens Against Nuclear Dangers ("Citizens") requested that the Atomic Safety and Licensing Appeal Board overturn several of the rulings made by the Atomic Safety and Licensing Board in its Memorandum and Order on Pending Motions, dated May 20, 1981 ("Memorandum and Order"). The Citizens' pleading, entitled "Citizens Against Nuclear Dangers Motions Before the Appeal Board Regarding ASLB Memorandum and Order Dated May 20, 1981" ("Citizens Motions") challenges five of the Licensing Board's rulings:

1. Imposition of limits on the participation of another intervenor, Environmental Coalition on Nuclear Power ("ECNP"),
2. Granting of summary disposition of Contention 12;
3. Denial at this time of Citizens' request for a hearing on a new fuel receipt and storage license application

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pursuant to 10 CFR Part 70;

4. Determination that Citizens' request for an "inquiry" into Applicants' plans for a low level radioactive waste holding facility was not presently justiciable; and
5. Granting of partial summary disposition on Contention 17.

Applicants oppose Citizens' motions and respectfully request that they be denied.

II. Limitation of ECNP's Participation in the Proceeding

The Memorandum and Order ruled that ECNP would not be allowed to participate in the proceeding with respect to health and safety contentions. This ruling was based on ECNP's continued refusal to comply with its discovery obligations. Much of the dispute over ECNP's discovery obligations is familiar to the Appeal Board. See Pennsylvania Power & Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317 (1980). Following that decision, ECNP continued to ignore orders of the Licensing Board compelling discovery. As a result, Applicants on April 14, 1981 moved that the Licensing Board dismiss ECNP as a party to the proceeding. The Licensing Board declined to dismiss ECNP in toto, but rather prohibited its participation on health and safety issues.

It is the judgment of the Board that by refusing to respond to the interrogatories of the Applicants and Staff on Safety and Health contentions, ECNP has demonstrated a callous disregard of the responsibilities it owes to the Board and the parties and as

a result will not be permitted to participate further in the hearing on this application on safety contentions.

Slip op. at 27-28.

There are at least two reasons why Citizens' appeal of this ruling should be rejected. The first reason is that Citizens lacks standing to bring to the Appeal Board a ruling that is directed solely at another party. The Appeal Board has recently addressed this specific question. In Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit No. 1), ALAB-631, 13 NRC ____ (February 4, 1981), intervenor Marrack appealed a ruling by the licensing board which limited the cross-examination of an applicant witness by intervenor Rentfro. The appeal was rejected.

[T]he Licensing Board confined its ruling to Mr. Rentfro and whether that ruling will ever have application to Dr. Marrack is at best conjectural. Dr. Marrack has no standing to press before this Board the grievances of other parties to the proceeding who are not represented by him. Puget Sound and Light Co. (Skagit Nuclear Power Project, Units 1 and 2), ALAB-556, 10 NRC 30, 32-33 (1979); Project Management Corp. (Clinch River Breeder Reactor Plant), ALAB-345, 4 NRC 212, 213 (1976). Nor is he entitled to complain himself of a licensing board ruling unless and until that ruling has worked a concrete injury to his personal interests. Prairie Island, ALAB-252, supra 8 AEC at 1177; Toledo Edison Co. (Davis-Besse Nuclear Power Station), ALAB-157, 6 AEC 858 (1973).

ALAB-631, slip op. at 3-4. Citizens does not represent ECNP in this proceeding. Nor has Citizens suffered a concrete injury to its interest from the ruling.

The second reason for denying Citizens' appeal of this issue is that the appeal is interlocutory. The Commission's regulations prohibit interlocutory appeals. 10 CFR §2.730(f). The appeal is clearly of an interlocutory character since it "dispose[s] of less than an entire cause." Pennsylvania Power & Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 321 (1980). As the Appeal Board stated in another recent decision:

Because that ruling did not eliminate [the intervenor] as a party in the proceeding it is an interlocutory order.

Cincinnati Gas & Electric Co. (William H. Zimmer Station), ALAB-633, 13.NRC ___ (February 9, 1981) (slip op. at 1). ECNP was not eliminated as a party; instead its participation was limited to environmental issues. While the appeal could be treated as a request for directed certification pursuant to 10 CFR §2.718(i), no basis has been alleged by Citizens to justify this treatment.^{1/} See Pennsylvania Power & Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-563, 10 NRC 449 (1979) (interlocutory appeal by Citizens dismissed; no justification to grant appeal under 10 CFR §2.718(i)).

^{1/}The sole basis set forth by Citizens for its appeal of this issue is that the Licensing Board had not ruled on certain motions made by Citizens at earlier stages of the proceeding. Citizens Motions, p. 1. Aside from the lack of relevance of this argument to the Licensing Board's ruling on ECNP, the Licensing Board has in fact disposed of all but the most recent of the Citizens' earlier motions. See Applicants' Answer to "Citizens Against Nuclear Dangers Motion Concerning Intervenor Participation, and Motion to Resolve Backlog of Motions", dated May 15, 1981.

III. Summary Disposition of Contention 12

The Memorandum and Order granted summary disposition of Contention 12 in this proceeding. Slip op., pp. 15-17. This contention, sponsored by another intervenor, Colleen Marsh et al., alleged the existence of a safety problem with feedwater spargers. See Special Prehearing Conference Order, LBP-79-6, 9 NRC 291, 318 (1979). On March 9, 1981, Applicants moved for summary disposition of Contention 12. Pursuant to the schedule established by the Licensing Board, responses were due by April 3, 1981 (21 days plus 5 days for mailing). See LBP-79-6, 9 NRC at 328. Intervenor Marsh, the contention's sponsor, filed no response. Citizens filed a pleading on May 14, 1981^{2/}, more than five weeks late, which purported to address Applicants' summary disposition motion. The Citizens' present argument to the Appeal Board claims that the Licensing Board should not have granted summary disposition because of Citizens' May 14 request that the Licensing Board should

re-examine the Contention 12 safety issue to determine if it is in any way connected to the NUREG-0785 safety issues.

Citizens Motions, p. 2.

This motion should be rejected. First, it is interlocutory and therefore prohibited. As the Appeal Board recently held in denying a similar appeal:

^{2/}"Citizens Against Nuclear Dangers Statement Before the Appeal Board; Statement of Policy and Request for Commencement of Hearings; Motion before the Licensing Board on Contention 12", dated May 14, 1981.

Under the Rules of Practice, appeals from such orders [summarily disposing of a contention] must await the "initial decision" rendered by the Board at the end of the case. 10 CFR §§2.760 and 2.762; Boston Edison Co. (Pilgrim Station, Unit 2), ALAB-269, 1 NRC 411, 413 (1975).

Cincinnati Gas & Electric Co. (William H. Zimmer Station, ALAB-633, supra. See also, Pennsylvania Power & Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-641, 13 NRC ____ (May 15, 1981) (slip op. at 1-2).

A second reason for rejecting this argument is that NUREG-0785^{3/} (the document referenced by Citizens), as its title indicates, deals with the scram system of boiling water reactors and has nothing whatsoever to do with the subject matter of Contention 12--feedwater spargers. Furthermore, Citizens has proposed a new contention based on NUREG-0785.^{4/} Applicants have not objected to the admission of this contention (and a similar one proposed by another intervenor, Susquehanna Environmental Advocates).^{5/}

^{3/}NUREG-0785, "Safety Concerns Associated with Pipe Break in a BWR Scram System" (March 1981).

^{4/}See "Citizens Against Nuclear Dangers Motion Opposed to Dismissal of Contention 10, and New Contention on the Potential Dangerous Flaw in the Design of the Primary Cooling System", dated May 12, 1981.

^{5/}See "Applicants' Answer to Citizens Against Nuclear Dangers Motion to Admit New Contention", dated May 28, 1981; "Applicants' Answer to Susquehanna Environmental Advocates' Motion for Allowance of New Contentions", dated May 12, 1981. The Licensing Board has not yet ruled on the admission of this new contention.

IV. Hearing Request on Part 70 Application and Request for "Inquiry" on Low Level Radioactive Waste Holding Facility

Citizens alleges that it was denied a hearing with respect to Applicants' application for a Part 70 new fuel receipt and storage license and with respect to Applicants' plans for a low-level radioactive waste holding facility. The Licensing Board denied Citizens' request for a hearing at this time on the Part 70 license application, indicating that by expediting the operating license hearing a separate Part 70 license hearing might not be needed. Memorandum and Order at 29.^{6/} Citizens' request for an "inquiry" into Applicants' plans for a low level radioactive waste holding Facility was denied as premature by the Board, since no application for the facility had been filed. Memorandum and Order at 29. However, the Licensing Board ruled that "this matter can be explored, if necessary, in the consideration of Contention 11 during the proceeding." Id.

Citizens bases its attack on these rulings on "a conclusive Appellate Court order requiring the NRC to hold public hearings, on request, before changing a nuclear plant operating license."^{7/}

^{6/}Applicants have sought clarification of this ruling, noting that the Licensing Board's ruling can be read in several different ways and urging that Citizens' hearing request (and a similar one by another intervenor) be disposed of on the merits. See Applicants' Request for Clarification of Licensing Board's Ruling on Requests for Hearing, dated June 9, 1981.

^{7/}The case to which Citizens refers is presumably Sholly v. Nuclear Regulatory Commission, ___ F.2d ___ (D. C. Cir. 1980), cert. granted sub nom. United States Nuclear Regulatory Commission v. Sholly and Metropolitan Edison Co. v. People Against Nuclear Energy (May 26, 1981).

Citizens' Motions, p. 2. Citizens' motion is groundless. First, it is interlocutory and therefore prohibited. (See Part II above). Second, the Sholly decision is not relevant here. The Sholly case deals with amendments to operating licenses; this proceeding does not. Nor is the Sholly decision in effect. The court's mandate is stayed pending Supreme Court review. Third, with respect to the low-level radioactive waste holding facility, the Licensing Board explicitly stated that the matter can be raised at the operating license hearing in the context of Contention 11, Memorandum and Order at 29. Finally, with respect to the Part 70 request, Citizens' action is premature, at least pending the Licensing Board's action on Applicants' request for clarification.

VI. Partial Summary Disposition of Contention 17

The Memorandum and Order granted summary disposition as to portions of Contention 17 (transmission line impacts). Slip op. at 2-14. It is by no means clear what the basis for Citizens' motion is. We do not understand what Citizens has in mind when it charges that the Licensing Board erred "by referring primarily to the Atomic Energy Act and NRC 'rules'" rather than basing its judgments on environmental statutes and regulations, Citizens Motions, p. 3. In any event, this motion is also clearly interlocutory and thus prohibited. (See Part III above).

VI. Conclusion

For the reasons set forth above, Applicants respectfully submit that the Citizens motions should be denied.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By



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Dated: June 15, 1981

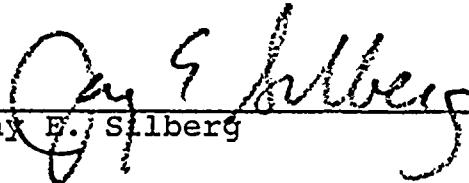
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Units 1 and 2).)

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing "Applicants' Answer to 'Citizens Against Nuclear Dangers Motions Before the Appeal Board Regarding ASLB Memorandum and Order Dated May 20, 1981'" was served by deposit in the United States Mail, first class, postage prepaid, this 15th day of June, 1981, to all those on the attached Service List.



Jay E. Silberg

Dated: June 15, 1981

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
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ALLEGHENY ELECTRIC COOPERATIVE, INC.)
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