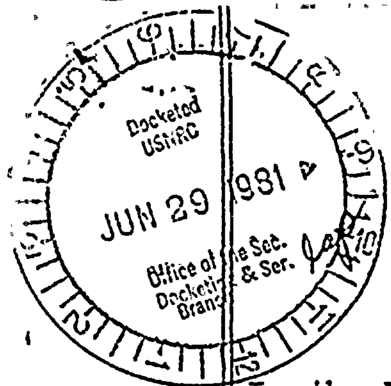


DOCKET NUMBER PR-2 (717)
PROPOSED RULE (46 FR 17216)

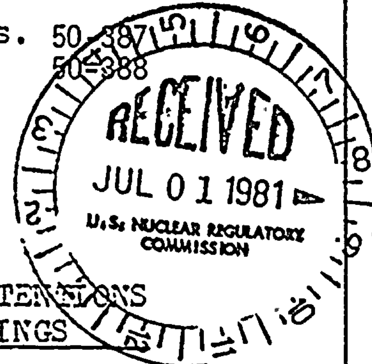
DOCKET NUMBER 50-387
PROD. & UTIL. FAC. 50-388

June 25, 1981

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING 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



COMMENTS ON PROPOSED NRC RULES LIMITING CONTENTIONS AND INTERROGATORIES IN ADJUDICATORY HEARINGS

SUSQUEHANNA ENVIRONMENTAL ADVOCATES, a citizen intervenor in the Susquehanna operating license proceedings, respectfully submits the following comments on the proposed rules:

This most recent proposal in the series of proposed rules to "expedite" the NRC's licensing process is a thinly-veiled attempt to curtail public participation. If adopted, it would impose an impossible burden on only one class of parties to NRC proceedings - the public - that would result in leaving the public hearing process as a facade.

In brief, the proposed rule would require, as a condition to admission as an intervenor, that a person (or group) plead each fact, along with supporting documents, which it will prove at the ultimate hearing. Assuming an intervenor pleads such facts in sufficient specificity to be admitted, the intervenor is not allowed without a special showing to establish other facts or cite other sources at the hearing. Remarkably, this requirement applies only to intervenors. Neither the Applicant nor NRC Staff are required to demonstrate the facts that they will rely on in response to the intervenor at any time.

We must begin by acknowledging several basic realities of NRC proceedings which are curiously ignored in this proposal:

1. At the time when intervention petitions must be filed, the Staff has typically not even written or published the basic Staff review documents - the Safety Evaluation Report and the Final Environmental Impact Statement.
2. At the time intervention petitions must be filed, the Applicant's documents are undergoing substantial revision. It is not at all unusual for over 20 amendments to the Applicant's PSAR or FSAR to be filed before and through the hearings themselves.

The Commission's practice has long recognized that because of these realities and because of the inherent complexity of the factual issues in a licensing case and the very short time

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allowed potential intervenors to respond to notices of the opportunity for hearing, the public is simply not in a position at the outset to establish evidentiary facts. At least, the Commission recognized this prior to this proposed rule.

To the extent that the drafting of contentions fills a "notice" function, that is met by the current requirement that a contention must be stated with specificity and must contain a basis. Thus, when the Commission states in the explanation to the proposed rule that "the petitioner is under no obligation to demonstrate the existence of some factual support for a contention as a precondition to its acceptance," it is flat wrong. The requirements of 10 CFR 2.714(b) have consistently been interpreted by the AEC and NRC as requiring the showing of a basis in fact in order to have a contention admitted. It is a far different thing, however, to require an intervenor to plead and document all facts it intends to rely upon before a contention is admitted.

The procedure envisioned by the rule is fundamentally alien to the American system of jurisprudence and has no precedent that we have been able to locate. There is no kind of litigation where the parties are required to plead all of their facts in order to start a case.

This is particularly crucial in NRC proceedings, where applicants for licenses have the burden of proving that construction or operation of the facility is consistent with public health and safety. 10 CFR 2.732, Tennessee Valley Authority (Hartsville Nuclear Plant), ALAB-463, 7 NRC 341, 356, 360 (1948), Union Electric Co. (Callaway Plant) ALAB-348, 4 NRC 225, 227-31, 233. An intervenor may prove his case by cross-examination alone, and the gross disparity of resources between intervenors vis-a-vis the applicants and NRC make cross-examination a particularly crucial element of public hearings. The effect of this amendment, in requiring a potential intervenor to plead all facts prior to discovery, would be to functionally eliminate the right to prove a case by cross-examination, since an intervenor would have no way at the beginning of a case to plead and document facts within the knowledge of his adversaries. This raises a serious question as to whether the proposed rule is inconsistent with the NRC's rules on burden of proof, 10 CFR 2.732, or with the Federal Administrative Procedure Act, which provides that the proponent of an order, in this case an applicant, has the burden of proof in administrative proceedings (5 USC § 556(d).

We also note the remarkable one-sidedness of the proposed rule.

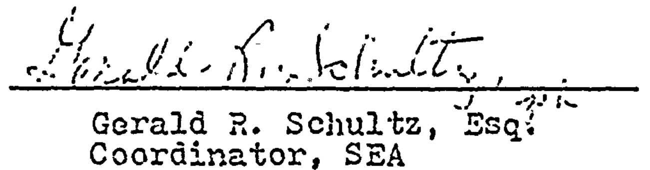
This proposed rule is the pure antithesis of the recommendations of the Kemeny Commission and the NRC's own internal investigation in the aftermath of the TMI-2 accident. Both called for more public participation and called for NRC to assist the

public by setting up offices charged only with that responsibility. These recommendations were not implemented by NRC. On the contrary, the agency is proposing steps which would skew an already unbalanced process even further against public participation. Nothing else will so surely and justifiably erode public confidence in the integrity of the licensing process than implementation of these rules.

It appears that this agency has determined that it need not be troubled by the issues of concern to the public and is moving with a vengeance back to "business as usual." Actually, it proposes to adopt rules even more restrictive of public participation than were ever considered before the TMI-2 accident. This is a dangerous and self-defeating course.

SUSQUEHANNA ENVIRONMENTAL ADVOCATES urge that the proposed rules not be adopted.

Respectfully submitted,



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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
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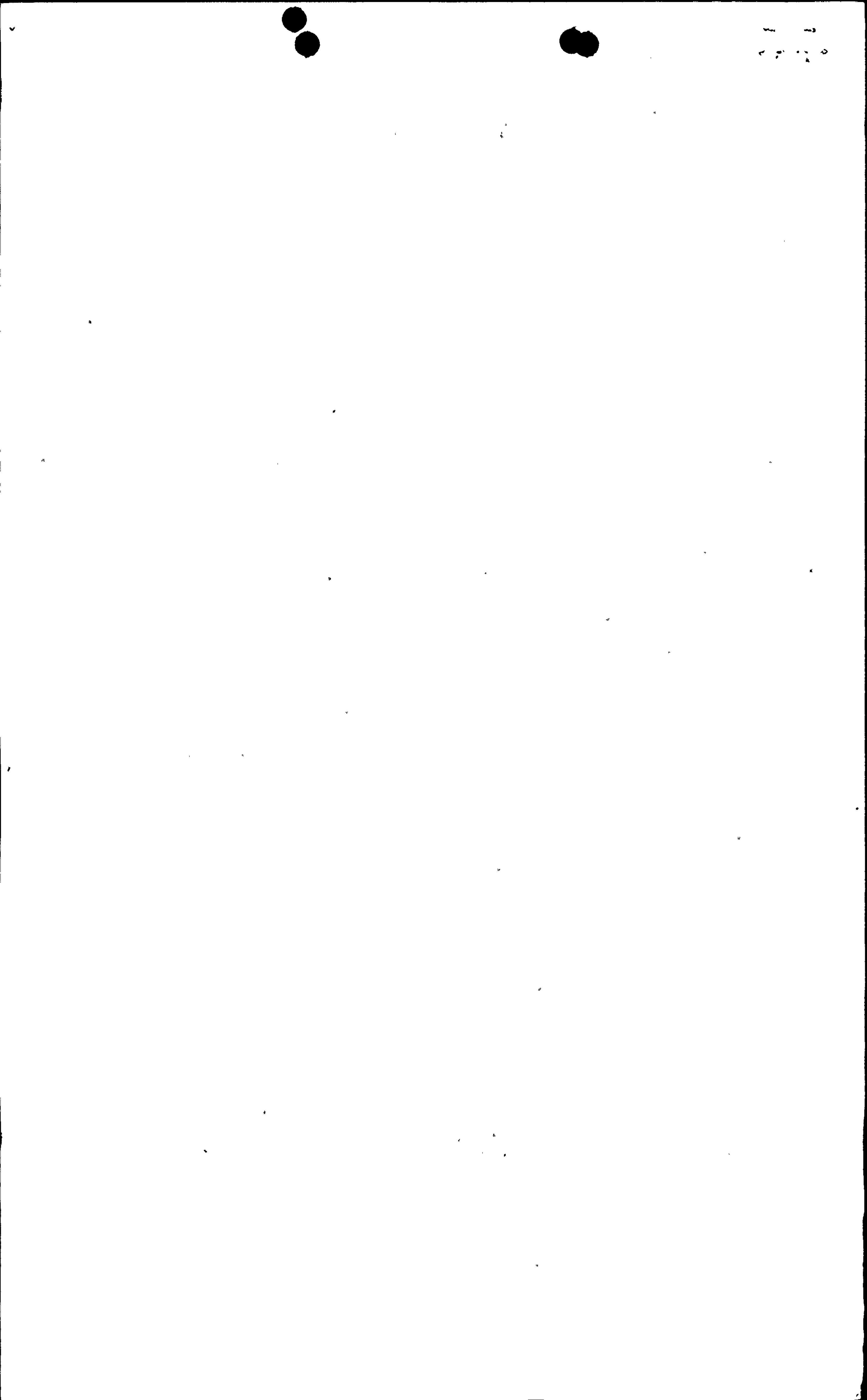
CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Intervenor's Comments on Proposed NRC Rules Limiting Contentions and Interrogatories in Adjudicatory Hearings was served by deposit in the United States Mail, First Class, postage prepaid this 26th day of June, 1981, to all those on the attached Service List.

Patricia Kellmer, Sec., SEA

Dated: June 26, 1981



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NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

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