January 26, 1979

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF ANSWER TO AMENDED PETITION FOR LEAVE TO INTERVENE OF SUSQUEHANNA ENVIRONMENTAL ADVOCATES

The NRC Staff believes that the petition of the Susquehanna Environmental Advocates (SEA) should be granted because SEA has listed at least one admissible contention and has set forth the bases for that contention with reasonable specificity.

I. BACKGROUND

On August 9, 1978, the Nuclear Regulatory Commission (Commission or NRC) published a notice of opportunity for hearing in the captioned matter (48 Fed. Reg. 35406). SEA submitted a timely request for hearing and petition for leave to intervene. In its Memorandum and Order dated October 26, 1978, this Licensing Board concluded that SEA had demonstrated standing to intervene. Because SEA had not submitted contentions and had an unqualified right to do so at any time up to 15 days prior to the holding of the first prehearing conference, this Board withheld a ruling on

contentions. Furthermore, the Board stated its intention to schedule the first prehearing conference during January 1979 and urged the Applicant and Staff to meet with the various petitioners prior to that time to attempt to agree on contentions, if any, suitable for litigation in this proceeding. Both the Staff and the Applicant attempted without success to arrange such a meeting with all the petitioners.

By order dated December 14, 1978, this Licensing Board scheduled a prehearing conference to be held on January 29, 1979, and stated that petitions for leave to intervene could be amended or supplemented by no later than January 15, 1979.

SEA filed a timely amended petition for leave to intervene. The amended petition lists several "contentions." Each of them is addressed below.

II. CONTENTIONS

As a general rule, contentions to be admissible in an NRC licensing proceeding (except an antitrust proceeding) must deal with matters arising under the Atomic Energy Act or the National Environmental Policy Act. Not only must the contentions sought to be litigated be listed, but also the bases for t[illegible]ntentions must be set forth with reasonable specificity in accordance with the requirements of 10 CFR §2.714(b). A specific basis for each contention is required: (1) to help assure

that the hearing process is not improperly invoked, (2) to help assure that other parties are sufficiently put on notice of what they will have to defend against or oppose, and (3) to ensure that the hearing process is invoked solely for the resolution of concrete issues.[1/]

Because a hearing is not mandatory in an operating license proceeding, a Licensing Board, before granting an intervention petition and thus triggering a hearing, should take the utmost care to satisfy itself fully that there is at least one contention advanced in the petition which on its face raises an issue clearly open to adjudication in the proceeding.[2/] Furthermore, a Licensing Board has no duty to recast contentions offered by a petitioner to make those contentions acceptable.[3/] The task of drafting an admissible contention is the responsibility of the petitioner alone.

As the Commission has stressed on several occasions:

> A cardinal prehearing objective of the presiding Atomic Safety and Licensing Board will be to establish on as timely a basis as possible, a clear and

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[1/] Philadelphia Electric Company (Peach Bottom, Units 2 and 3), ALAB-216, 8 AEC 13, 20 (1974).

[2/] Cincinnati Gas and Electric Company (William H. Zimmer Nuclear Power Station), ALAB-305, 3 NRC 8, 12 (1976).

[3/] Commonwealth Edison Company (Zion Station, Units 1 and 2), ALAB-226, 8 AEC 381, 406 (1974).

> particularized identification of those matters related to the issues in this proceeding which are in controversy. As a first step in this prehearing process, we expect the Board to obtain from petitioners a detailed specification of the matters which they seek to have considered in the ensuing hearing.
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> In the Commission's view, the course outlined above is central to the proper focus and orderly conduct of the prehearing process, including the scope of appropriate discovery and of the later hearing itself. 4/

Contention 1

SEA alleges a number of deficiencies in the Applicant's Environmental Report (ER). Even if true, without more these allegations do not state a contention suitable for litigation in this proceeding. The ER provides information for use by the NRC Staff in preparing an Environmental Impact Statement (EIS). It is the EIS which must be adequate and provide a basis for Commission action and not the ER.5/ A contention about the adequacy of the ER is not material to issues in this proceeding.

4/ Wisconsin Electric Power Company (Point Beach Nuclear Plant, Unit 2), Memorandum and Order, 4 AEC 635, 636 (1971); Boston Edison Company (Pilgrim Nuclear Power Station), Memorandum and Order, 4 AEC 666, 667 (1971); Maine Yankee Atomic Power Company, Memorandum and Order, 4 AEC 728, 730 (1971); Florida Power and Light Company (Turkey Point, Units 3 and 4), Memorandum and Order, 4 AEC 787, 789 (1972).

5/ See Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503, 525 (1977); Boston Edison Co. (Pilgrim Nuclear Generating Station, Unit 2, ALAB-479, 7 NRC 774, 792 (1978). See also New England Power Company (NEP, Units 1 and 2), LBP-78-9, 7 NRC 271, 279 (1978).

Furthermore, the environmental effects of transportation of radioactive materials are governed by Table S-3 and Table S-4 of 10 CFR 51.20. To the extent SEA seeks to litigate the environmental effects of transportation of radioactive materials, this is an attack on Commission regulations which may not be made in an individual licensing proceeding. 10 CFR 2.758. Thus, the contention is inadmissible.

Contention 2

SEA appears to allege that deficiencies in "the report" provide a basis for a contention about sites for low-level radioactive waste disposal purportedly set forth in its original petition. The environmental impacts of management of low-level wastes related to uranium fuel cycle activities are as set forth in Table S-3 of 10 CFR 51.20(e). To the extent the contention seeks to litigate such environmental impacts, it is an impermissible challenge to Commission regulations without a showing of special circumstances. 10 CFR 2.758. No such showing is made.

The Commission in denying a Natural Resources Defense Council request for rulemaking on waste disposal stated that it "would not continue to license reactors if it did not have reasonable confidence that the wastes can and will in due course be disposed of safely." (42 Fed. Reg. 34391).[6/]

[6/] See also Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 NRC 41, 48-50 (1978).

Moreover, on review of that denial the Court of Appeals held that the Atomic Energy Act does not require an affirmative determination that high-level nuclear wastes can be permanently disposed of prior to issuing a facility operating license.[7/] Obviously, the Act does not require a determination of sites for disposal of low-level wastes prior to issuing an operating license. The SEA contention is inadmissible.

Contention 3

SEA alleges that the Applicant's plans for decommissioning the Susquehanna units are deficient and inadequate. Commission regulations regarding decommissioning are set forth in 10 CFR 50.82, 10 CFR 50.33(f) and Appendix C to 10 CFR 50. Commission approval of an Applicant's specific, detailed decommissioning plans is not required until authority to terminate the operating license is sought. 10 CFR 50.82. Present Commission regulations regarding decommissioning require only that an Applicant for an operating license furnish information to show that it has reasonable assurance of obtaining funds necessary to cover the estimated costs of permanently

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7/ Natural Resources Defense Council v. Nuclear Regulatory Commission, 11 ERC 1945 (2d Cir. 1978).

shutting the facility down and maintaining it in a safe condition. The Commission published advance notice of proposed rulemaking on decommissioning criteria on March 13, 1978. (43 Fed. Reg. 10370). Licensing Boards should not accept contentions in individual licensing cases which are or are about to become the subject of general rulemaking.[8/] Insofar as these allegations address matters other than costs, they are clearly inadmissible as contentions in this proceeding absent a showing of special circumstances. 10 CFR 2.758.

Although SEA contends that the cost estimates for decommissioning the Susquehanna units are far below what the actual costs will be, it has not provided sufficiently specific bases for such a contention. It offers only a general statement that the cost estimates are obviously biased because they are based on an industry-sponsored study. Thus, the decommissioning contention is totally inadmissible.

Contention 4

SEA again cites alleged deficiencies in the ER and FSAR as bases for a contention. It requests that the adequacy of the fuel supply be discussed. For the reasons discussed under Contentions 1 and 2, allegations of deficiencies in the ER and SER without more do not provide contentions suitable for litigation in this proceeding. SEA has neither alleged that the fuel supply will be inadequate nor cited any relevant basis for such an allegation. Thus, it has raised no admissible contention.

[8/] Potomac Electric Power Co. (Douglas Point Nuclear Generating Plant, Units 1 and 2), ALAB-218, 8 AEC 79 (1974).

Contentions 5 and 6

SEA seeks to raise a contention regarding environmental considerations of the uranium fuel cycle. Again SEA seeks to found contentions on the ER. The adequacy of that report is immaterial. The test is whether the EIS is adequate. The desire for information in a certain form is not germane to whether a license should issue for the facility. To the extent that the contention seeks a further discussion of the environmental effects of the uranium fuel cycle than is presented in Table S-3 of 10 CFR 51.20(e), other than health effects from effluents described in the table or estimates of releases of Radon-222, it is an impermissible challenge to Commission regulations without a showing of special circumstances. 10 CFR 2.758. No such showing is made. Thus, the contention is admissible only to the extent that it raises concerns about health effects and Radon-222 releases.

Contention 7

SEA alleges that the ER and FSAR are inadequate in that they do not detail the number of cancer and premature deaths to be caused by exposure of maintenance workers to radiation. Also, SEA alleges that these reports are inadequate in that they fail to state why workers constructing Unit 2 need be exposed during operation of Unit 1. SEA "contends" that Unit 1 should not begin operation until construction is completed on Unit 2. Occupational exposures are governed by 10 CFR 20 of the Commission's regulations The reasons cited by SEA do not allege a no ompliance with a cognizable regulatory requirement. If SEA contends that the regulations should prohibit

operation of Unit 1 merely because the workers receive some exposure to radiation, the SEA contention constitutes an impermissible attack on the Commission's regulations absent a showing of special circumstances. 10 CFR 2.758. No special circumstances have been presented. However, to the extent that the contention raises concerns about the health effects of occupational exposures of workers completing construction of Unit 2 while Unit 1 is in operation, it is admissible.

Contention 8

SEA does not allege that the Applicant's emergency plans do not comply with NRC regulations but merely that "the report does not elaborate on" or "state whether" training of local emergency units will be provided. The "report" is not identified. No basis exists other than speculation to suppose that emergency plans do not exist that meet NRC regulations (Appendix E to 10 CFR 50). The contention is too general, lacks adequately specific bases and is inadmissible.

Contention 9

To the extent that the contention concerns the health effects of occupational exposure of workers during reprocessing of spent fuel from the Susquehanna units, it is admissible.

Contention 10

SEA alleges that the consequences of a serious accident involving a major release of radiation are not discussed in the ER and the FSAR, says it wants to know the consequences of such an accident and asks who will bear the costs of such an accident at Susquehanna facility. Consequences of these accidents having extremely low probability need not be discussed in the consideration of land-based light water reactors. See, e.g., Long Island Lighting Co. (Shoreham Nuclear Power Station), ALAB-156, 6 AEC 831 (1973); Carolina Environmental Study Group v. United States, 510 F.2d 796 (D.C. Cir. 1975). Again, a desire for information is not a basis for a contention. No material issue of fact is raised. SEA merely asked who will bear the costs. There is no issue relevant to this proceeding.

Clearly, if an accident greater than the design basis accident for the facility were to occur and resulted in consequences of the type postulated by SEA, the situation would be governed by the provisions of the Price-Anderson Act (42 U.S.C. §2210).

SEA has neither raised an admissible contention nor set forth a reasonably specific basis for a contention.

Contention 11

SEA makes a general statement about the reliability of the ECCS. SEA does not even allege that the ECCS does not meet applicable regulations (10 CFR 50.46; General Design Criteria 35, Appendix A to 10 CFR 50; Appendix K to 10 CFR 50). No basis is provided for a contention. Thus, no admissible contention has been raised.

Contention 12

There is no contention numbered 12 in the amended petition.

Contentions 13 and 14

SEA notes that the Security Plan for the Susquehanna facility has been submitted as a separate document withheld from public disclosure and merely says that it has a right to know certain facts concerning security arrangements. Again, a desire for knowledge is not a contention. SEA has not alleged any deficiency in security for the facility nor any bases for such an allegation.[9] Security plans have been deemed to be commercial and financial information subject to disclosure only in accordance with provisions governing that type of information. 10 CFR 2.790(d). SEA's allegation that it has a "right to know" without raising an admissible

[9] See Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-410, 5 NRC 1398, Commission review declined, CLI-77-23, 6 NRC 455 (1977).

contention is an impermissible challenge to Commission regulations. 10 CFR 2.758. Thus, SEA has not raised an admissible contention regarding security plans.

Contention 15

SEA has alleged that the ER is inadequate and has cited this deficiency as a basis for having paragraph 15 of its original petition as amended admitted as a contention. As discussed under Contention 1, allegations of deficiencies in the Applicant's ER do not state admissible contentions. The obligation to explore the environmental ramifications of licensing a nuclear power plant lies with the Commission--and as a practical matter with the Staff. The agency may not substitute the Applicant's analysis for its own and the agency must itself satisfy the requirements of the National Environmental Policy Act, regardless of what the Applicant does or does not discuss in its ER. SEA has not raised an admissible contention.

III. CONCLUSIONS

SEA has advanced at least one admissible contention and set forth the bases for that contention with reasonable specificity. Therefore, the request for hearing and petition for leave to intervene of SEA should be granted.

Respectfully submitted,

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Counsel for NRC Staff

Dated at Bethesda, Maryland,
this 26th day of January, 1979.