UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

APPLICANTS' RESPONSE TO AMENDED PETITION FOR LEAVE TO INTERVENE OF SUSQUEHANNA ENVIRONMENTAL ADVOCATES

In an undated filing docketed with the NRC on January 17, 1979, Petitioner Susquehanna Environmental Advocates (SEA) filed an Amended Petition for Leave to Intervene including a statement of SEA's contentions. Pursuant to the Board's December 14, 1978 Order Scheduling Prehearing Conference, Applicants submit their response to SEA's contentions.

In responding to SEA's contentions, Applicants have treated both the contentions set forth in the Amended Petition as well as the corresponding issue set forth in the initial Petition. Applicants note that SEA's Amended Petition does not include Issue 12 from the original Petition, and assume that SEA thus no longer desires to put forward as a contention "the contribution of the proposed plant to nuclear weapons proliferation."

Contention 1 (Transportation of Radioactive Materials)

This contention suggests that Applicants have failed to designate transportation routes that will be used for the transport of radioactive materials and "what safeguards are being implemented." In addition, the contention also questions "whether the government or private is handling the design and implementation of those safeguards" and who will pay for these "safeguards." None of these assertions constitutes a sound contention, and Applicant respectfully requests that the contention not be admitted.

With regard to the issue of transportation routes, there is no requirement in the Commission regulations that such routes be identified. Environmental impacts of transportation are specified by regulation. 10 CFR Part 51, Table S-4. The Commission's determination on the type and magnitude of transportation impacts does not depend upon the selection of particular transportation routes. Thus this aspect of the contention would appear to be a challenge to Table S-4.

Applicants take the contention's reference to the design and implementation of "safeguards" to relate to the types of physical security measures for transportation. Such safeguard requirements are specified in 10 CFR §73. Transportation of radioactive materials will, of course, fully comply with these regulations. This part of the contention would thus appear to be a challenge to such regulation.

On the issue of costs, the identity of the party who will pay the costs of necessary safeguard systems is not relevant to an operating license proceeding. These costs will be ultimately borne by the electric consumer. SEA's concern on this question is outside the scope of the operating license proceeding.

Contention 2 (Low-level Wastes)

The statement in SEA's Amended Petition taken together with paragraph 2 in the original Petition argue that Applicants must specify the location of off-site disposal and storage locations for low-level wastes; who will be responsible for maintenance, security, and monitoring of such sites; and how long such sites must be maintained. Applicants believe that such questions are outside the scope of this reactor operating license proceeding. The Commission by regulation has specified the environmental impacts associated with the off-site storage and disposal of low-level nuclear wastes. See Table S-3, 10 CFR Part 50. That regulation does not require that the location of off-site storage and disposal areas be specified by the reactor license applicant. The impacts were developed on a generic basis. Questions such as the identity of the persons responsible for maintenance, security, or monitoring would be relevant in a proceeding for licensing such off-site storage and disposal areas. These questions are not relevant to licensing a power reactor.

Similarly, "how long such sites must be maintained" is not an appropriate issue here. What is relevant is the environmental impact of off-site low-level radioactive waste storage, and this is covered by Table S-3. The contention should therefore be rejected as a challenge to Commission regulations.

Contention 3 (Decommissioning)

In this contention, SEA states several concerns regarding the decommissioning of the Susquehanna facility. Specifically, SEA asserts that the Applicants must provide information on: (1) the method for decommissioning; (2) property values after decommissioning; (3) cost estimates of decommissioning; (4) surveillance program after decommissioning; (5) time period prior to decommissioning; and other related issues.

Applicants would not object to the admission of a contention on the accuracy of the projected cost of decommissioning and the property values after decommissioning.

Applicants submit that the remaining concerns raised by SEA in this contention either challenge Commission regulations or are outside the scope of this proceeding. The contention should therefore not be admitted. Current regulations require either that the applicant possesses or has reasonable assurance of obtaining the funds to pay for permanently shutting down the facility and maintaining it in a safe condition. 10 CFR §50.33(f), and Appendix C, §I.B. The procedures for decommissioning are set forth in 10 CFR

§50.82, which provides that information on the methods for decommissioning is to be submitted in connection with an application to dismantle the facility. Thus, the issues which SEA would litigate in this area are in direct conflict with Commission regulations.

That these concerns go beyond what Commission regulations currently require is pointed out most clearly by the Commission's consideration of changes in existing rules. On March 13, 1978, the Commission published in the Federal Register an Advance Notice of Proposed Rulemaking on decommissioning criteria for nuclear facilities. 43 Fed. Reg. 10370 (1978). This notice stated:

> The Commission is considering development of a more explicit overall policy for decommissioning nuclear facilities and amending its regulations in 10 CFR Parts 30, 40, 50 and 70 to include more specific guidance on decommissioning criteria for production and utilization facility licenses . . . .

The questions to which the Commission invited comment included:

1. Is it desirable to develop more definitive decommissioning criteria for production and utilization facility licensees . . . ?

2. Should detailed decommissioning plans be required prior to issuance of licenses?

3. Should funding or other surety arrangements be required before the issuance of licenses for all cases? If not, which cases?

Thus, the very questions which SEA seeks to litigate in this proceeding are, in the Commission's view, beyond the scope of present regulations. It should also be noted that a petition filed by Public Interest Research Group, et al. on July 5, 1977, requested NRC to modify its regulations to require escrow financing of future nuclear power plant decommissioning. See Docket No. PRM-50-22, Public Interest Research Group--Filing of Petition for Rulemaking, 42 Fed. Reg. 40063 (1977). This rulemaking proceeding is still in progress.

With respect to SEA's reference to the "serious radiation hazards" to workers dismantling the plant, Applicants believe that occupational radiation exposure values specified in 10 CFR Part 20 set forth acceptable limits which would govern decommissioning activities. This issue would thus seem to be a challenge to Part 20 and outside the scope of this hearing.

Contention 4 (Uranium Supply)

In this contention, SEA questions the long-term adequacy of uranium supply, the price of uranium, the source of supply, and Applicants' existing contracts.

Applicants would not object to the admission of a contention questioning the long-term adequacy of the supply of uranium for the Susquehanna facilities and the projected price of that uranium.

Applicants believe that SEA's request that "the source of the [uranium] supply (company and country) . . . and existing contracts for uranium fuel should be disclosed and discussed" is not an appropriate contention. The Atomic Safety and Licensing Appeal Board has held that uranium contracts are not a licensing prerequisite and that an operating license applicant is not required to "identify the source of the special nuclear material" (i.e. enriched uranium fuel) that it will use. Union Electric Co. (Callaway Plant, Units 1 and 2), ALAB-347, 4 NRC 216, 222 (1976). Thus, the contention's attempt to delve into these areas has been determined by the Appeal Board to be inappropriate.

Contentions 5 and 6 (Radiation Exposure from Uranium Mining)

Contentions 5 and 6 express concern with radiation exposure to miners and the general public from uranium mining and mill tailings. Applicants do not object to a contention addressed to the radiological health effects of uranium mining and mill tailings.

Contention 7 (Exposure of Workers to Radiation)

In this contention, SEA asserts that the Environmental Report (ER) and Final Safety Analysis Report (FSAR) do not provide adequate information about the effects of radiation emissions on maintenance and construction workers at the Susquehanna facility. Additionally, SEA contends that the

first unit should not be placed into operation until construction on the second unit is completed in order to prevent any radiation exposure to the construction workers completing Unit 2.

Applicants have included in the FSAR an extensive assessment of the radiation doses related to Susquehanna. Section 12.4.1 of the FSAR considers the doses for maintenance workers, and Section 12.4.4 discusses exposure of construction workers. It is clear from these sections that the dosage will be well below the levels established in Commission regulations.

Applicants would not object to a contention concerning the radiological health effects on maintenance and construction workers. Applicants do object to that portion of SEA's argument which argues for zero radiation exposure to construction workers. Such an argument would constitute a challenge to the permissible radiation levels for occupational exposure specified in 10 CFR Part 20.

Contention 8 (Evacuation Plans)

In this contention, SEA asserts that the Applicants' evacuation plan is insufficient because it does not consider the adequacy of safeguards to protect local emergency units. Additionally, SEA is concerned about who will provide training for local emergency units.

On the assumption that SEA means protection against radiation hazards when it refers to "safeguards to protect" local emergency units, Applicants would not object to the admission of both SEA assertions as issues in the proceeding.

Contention 9 (Environmental Effects of Reprocessing)

In this contention, SEA acknowledges that Applicants' Environmental Report includes information on "occupational exposure from reprocessing" but asserts that information on health effects is required.

Table S-3 of 10 CFR Part 50 fully summarizes the permissible environmental effects from the uranium fuel cycle. However, the radiological health effects of the occupational exposures specified in Table S-3 (i.e. 22.6 person-rem from reprocessing and waste management per reference reactor year) is a properly litigable issue. See Footnote 1 to Table S-3. Applicants would therefore not object to the admission of this contention.

Contention 10 (Environmental Consequences of a "Serious" Accident)

This contention states that the Applicants must assess the consequences of a "serious accident at the plant site involving a major release of radiation." Additionally, SEA "want[s] to know who will bear the costs of injuries and damages to the health, property, and liberty in the event of a major accident which could contaminate the entire Wyoming Valley . . . ."

It appears that the kind of accident which is discussed in this contention is a Class 9 accident. The Commission's position that it is not necessary for a license applicant to discuss Class 9 accidents because the probability of their occurrence is so small has been upheld by the courts. Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194 (1978); Porter County Chapter v. AEC, 533 F.2d 1011, 1017-18 (7th Cir.), cert. denied 429 U.S. 945 (1976); Carolina Environmental Study Group v. AEC, 510 F.2d 796 (D. C. Cir. 1975); Ecology Action v. AEC, 492 F.2d 998 (2d Cir. 1974).* Thus, this part of SEA's contention is a challenge to Commission policy, upheld by the courts, and should not be admitted.

The second part of the contention, dealing with the financial responsibility for such an accident, appears to be a challenge to the Price-Anderson Act. Under the Price-Anderson Act (42 U.S.C. §2210), Applicants must obtain private insurance coverage and indemnification totaling $560 million for any single nuclear incident. As the number of nuclear plants increases, the statute provides that the $560 million figure will increase. Applicants' liability for damages is, by this statute, limited to this amount. The United States Supreme Court has upheld the constitutionality

*It should be noted that none of these decisions rely upon WASH-1400 (the "Rasmussen Report"). Therefore, their conclusions are unaffected by the recent NRC Statement on WASH-1400.

of this limitation of liability. Duke Power Co. v. Carolina Environmental Study Group, Inc., 438 U.S. 59 (1978). To the extent that the contention challenges this statutory scheme, it raises issues outside the scope of this proceeding. See, e.g., Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 81 (1974). Thus, Applicants respectfully submit that this contention should not be admitted.

Contention 11 (Emergency Core Cooling System (ECCS))

In this contention, SEA states:

> In light of recent E.C.C.S. Testing, it is still uncertain as to whether the back-up system can perform satisfactorally [sic] under the more dynamic conditions found in the nuclear facility in Berwick.

Applicants object to this contention in that it is a challenge to Commission regulations and fails to comply with 10 CFR §2.758. The performance requirements for ECCS are specified in NRC regulations. See 10 CFR §50.46 and Appendix K to Part 50. SEA does not claim that the Susquehanna ECCS fails to comply with these regulations and, as shown in the Final Safety Analysis Report (FSAR), the Susquehanna ECCS fully meets NRC regulations. The fact that there may be on-going tests involving ECCS criteria, design, or performance cannot impose obligations other than those in NRC regulations. It is worth noting that the Loss of Fluid Test (LOFT) was in progress when the Commission, after an extraordinarily

elaborate rulemaking hearing, issued the ECCS regulations. Yet nowhere in the regulations or the Commission's decision announcing those regulations is there any indication that further licensing must await completion of LOFT.

Contentions 13 and 14 (Security Plans)

In this contention, SEA asks that the Applicants disclose certain information for the Security Plan. The contention does not allege any specific (or general) inadequacies in the security protection to be afforded the Susquehanna facility and is therefore more in the nature of a discovery request than a contention.

Applicants respectfully submit that this contention should not be admitted, because it is a challenge to Commission regulations regarding public disclosure of Security Plans. Commission regulations in 10 CFR §2.790 specifically provide that certain materials are exempt from public disclosure. Section 2.790(d)(1) indicates that among these materials are:

> correspondence and reports to or from the NRC which identify a licensee's or applicant's procedures for safeguarding licensed special nuclear material or detailed security measures for the physical protection of a licensed facility or plant in which licensed special nuclear material is possessed or used. 10 CFR §2.790

To the extent that SEA desires to obtain information covered by 10 CFR §2.790, it must observe the procedure specified in

10 CFR §2.744. As far as SEA's sub-issue of who will bear the costs of security forces, all the costs of operating the facility, including the costs of providing plant security, will be ultimately borne by the electric consumer. However, the identity of the party bearing these costs is not relevant to any issues in this proceeding.

In addition to this disclosure objection to SEA's contention, Applicants would also indicate that the detailed requirements for the safeguard of licensed activities are specified in 10 CFR §73.55. Applicants will comply with all aspects of these Commission rules. SEA's requests for information regarding the size of the security force and weapons used by the force are generally covered under portions of 10 CFR §73.55.

For the reasons stated, Applicants believe that these contentions should not be admitted.

Contention 15 (Alternatives to the Proposed Plant)

This contention states that Applicants' assessment of alternatives to the Susquehanna Steam Electric Station (SSES) is inadequate. In this proceeding, Applicants seek the necessary licenses to operate a completed nuclear power facility. In terms of the National Environmental Policy Act (NEPA) analysis, therefore, Applicants submit that alternate facilities relying on different energy sources or on energy conservation are no longer reasonable alternatives to Susquehanna. Therefore, Applicants oppose the admission of this contention.

Applicants' opposition to the consideration of a proposal that an alternative to the SSES be selected is based on the principle, now well established both in the courts and before the Commission, that NEPA is applied with a "rule of reason" for the range of alternatives that must be considered. Important court cases articulating this legal principle are Natural Resources Defense Council v. Morton, 458 F.2d 827, 834-36 (D. C. Cir. 1972); Carolina Environmental Study Group v. U. S., 510 F.2d 796, 798 (D. C. Cir. 1975); Scientists' Institute for Public Information, Inc. v. AEC, 481 F.2d 1079, 1092 (D. C. Cir. 1973). The principle is also adopted by the Commission in Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2) and Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), ALAB-455, 7 NRC 41, 1978.

Applicants believe that the application of NEPA at the operating license stage under a rule of reason precludes consideration of an alternative that is inconsistent with already constructed facilities. Applicants are authorized, under the construction permits, to complete construction of the two nuclear power units. It is an unreasonable alternative, therefore, to consider the initiation of an entirely new and different construction effort to generate needed electrical power.

NEPA case law supports the proposition that alternatives to completed projects need not be considered under the rule

of reason. For example, in Badoni v. Higginson, 455 F. Supp. 641 (D. Utah 1977), the Federal Court in considering the need for an environmental impact statement prior to the operation of a dam and reservoir, concluded that:

> . . . [t]he courts have consistently interpreted NEPA to require a consideration of alternatives which are reasonable and do not demand what is not meaningfully possible. (citations omitted)
> 455 F. Supp. at 649

Similarly, the Federal District Court for the Southern District of New York discussed the application of NEPA to a substantially completed Federal housing project and upheld the NEPA evaluation performed by the Department of Housing and Urban Development (HUD). The court stated:

> In reviewing HUD's weighing of the advantages and disadvantages of the appropriate alternatives, we will not turn the clock back and compel the agency to disregard present realities or require HUD to pivot its decision on facts that no longer exist.

Trinity Episcopal School v. Harris, 12 E.R.C. 1281, 1293 (S.D.N.Y. 1978).

The United States Court of Appeals for the District of Columbia Circuit in Maryland National Capital Park and Planning Commission v. U. S. Postal Service, 487 F.2d 1029 (D. C. Cir. 1973), declined to stop construction of a substantially completed facility, notwithstanding the absence of any NEPA review. The Court observed:

> . . . [w]e must face the reality that the building was substantially complete as of May 1973.
> 487 F.2d at 1042

The appropriate time to raise the question of whether the Susquehanna plant, rather than some alternative, should have been built was before construction was authorized. Cases have held that no environmental review is needed if the facility has already been completed. See, e.g. Save Our Wetlands v. U. S. Army Corps of Engineers, 549 F.2d 1021 (5th Cir. 1977). Other cases hold that a project which has been completed would not be reassessed even where the original environmental review was inadequate. See, e.g. Ogunquit Village Corp. v. R. M. Davis, 553 F.2d 243 (1st Cir. 1977).

In this proceeding, environmental review of the plant was completed at the construction permit stage. Many of the alternatives proposed by SEA have been fully treated at the construction permit stage. Reopening those decisions after construction has been authorized and substantial construction completed would be, in Applicants' view, inappropriate. See Detroit Edison Company, et al. (Enrico Fermi Atomic Power Plant, Unit 2), Docket No. 50-341, Decision of the Atomic Safety and Licensing Board dated January 2, 1979 at 24-24a. For the reasons stated above, this contention should not be admitted.

CONCLUSION

For the reasons set forth above and in Applicants' September 21, 1978 Answer to "Petition for Leave to Intervene and Request for Hearing Submitted by the Susquehanna Environmental Advocates," Applicants respectfully submit that SEA should be admitted as an intervenor in this proceeding and that proposed contentions (or parts thereof) to which Applicants did not object should be admitted as the contentions of Susquehanna Environmental Advocates.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

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Dated: January 26, 1979

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NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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and	)	Docket Nos. 50-387
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	)	
(Susquehanna Steam Electric Station, Units 1 and 2)	)	

CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing "Applicants' Response to Amended Petition for Leave to Intervene of Susquehanna Environmental Advocates" were served by deposit in the U. S. Mail, first class, postage prepaid, or by hand, this 26th day of January, 1979, to all those on the attached Service List.

Alan R. Yuspeh

Dated: January 26, 1979

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