



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
METROPOLITAN EDISON COMPANY)
)
(Three Mile Island, Unit 1))

Docket No. 50-289
(Restart)

CEA OMNIBUS MOTION TO THE BOARD

On the occasion of the Second Special Pre-Hearing Conference (SSPHC) in the Nuclear Regulatory Commission proceedings to consider whether and under what conditions the Three Mile Island, Unit One (TMI-1) Nuclear Power Plant should be permitted to re-open, Chesapeake Energy Alliance hereby submits the below stated motions pertinent to these proceedings.

By way of preface, CEA makes reference to its original Petition for Leave to Intervene (CEA:PLI-79.09.03), wherein CEA clearly anticipated an issue that will eventually be seen as central to the final resolution of these proceedings, namely the structural inequality that has been inherent in the manner and attitude of the overall Nuclear Regulatory Process (NRP) as it has manifested itself under the aegis of the AEC and NRC (see CEA:PLI at 1). This basic issue was further addressed in CEA's Motion to Modify Memorandum and Order and the Supplements thereto (CEA:MMMO-79.09.27, 28, & 28a).

Whether or not the inequality was and/or is intentional is not ultimately the issue that will be decided if CEA needs to resort to seeking the appropriate remedies through the Federal Court System under the Federal Civil Rights Act which makes provisions for remedy to petitioners who are being denied Constitutionally protected rights under color of law or administrative agency. (42USCA1983)

As we enter the SSPHC, it is very clear from the nature and content of recent filings that there exists a great potential for bitter conflict over a number of issues related to the above-cited tendencies towards structural inequality in the NRP. (E.g. UCS Motion for an Order to Compel (UCS:MOC-80.01.25), NRC's Response to UCS:MOC (UCS:MOC:NRC-80.02.08), Licensee's Response to Sholly's second Set of Interrogatories (SHO:DIS:LIC-80.02.08), PANE's Request for Expedited Decision (PANE:FUND-80.02.01), etc).

It is also very clear from the determination of the Intervenor to pursue the matters in these proceedings that if there is failure by the Board to resolve fundamental issues, Intervenor will be prepared to resort to the necessary appeals through the Commission and the Courts, with the end result of delays in final resolution of the

re-start that will likely be far greater than if appropriate remedies can be implemented by the Board. In this respect, CEA also draws the Board's attention to the Modified Adjudicatory Procedures promulgated by the Commission on November 9, 1979 (7590-01), wherein it is stated, inter alia, that "Boards should interpret existing regulations and regulatory policies with due consideration to the implications for these regulations and policies of the Three Mile Island accident" (7590-01 at 4) and "Boards should identify any aspects of the case which, in their judgment, present issues on which prompt Commission policy guidance is called for" (7590-01 at 5, emphasis added).

In consideration of the above, CEA moves that the Board, whenever its readings of the Commission's August 9th Order appears to limit the appropriate due consideration in interpreting regulations and regulatory policies in a manner that will tend to inhibit the development of a full and adequate record, promptly seek the guidance of the Commission by certifying the matter to its attention.

In respect of specific matters pertinent to these proceedings, CEA submits the following additional Motions to the Board:

- Board*
- 1) That the completion of discovery be extended until May 15, 1980, with the final date for requests for discovery to be extended until April 25, 1980, in view of the expected completion date for the SER. At an absolute minimum, CEA moves that discovery be permitted through March 1, given the extension that has been made for responding to discovery, an extension that as the Board admits "tends to benefit the licensee and staff more than the other parties." (ASLB:M&O-80.02.01 at 3)
 - 2) That the Board formally admits CEA's contentions 2(b), 2(c), & 2(d), & 3, on which ruling had been deferred pending possible revision after CEA received Licensee's emergency plan. CEA was of the understanding that in not exercising its rights to revise these contentions, which CEA saw no need to do, that the Board would make a formal ruling on the admissibility of these contentions in their original form. Following formal admission of these contentions, CEA requests suitable provisions for discovery to be made in respect to these contentions.
 - 3) That the Board re-consider, and in the alternative, certify to the Commission, the matter of intervenor's funding in the light of the recommendations of NUREG 0660 (DRAFT), Task IV.E.1, and of the information revealed in that report that a fiscal year 1981 (FY81) budget request for intervenor funding has been submitted by the NRC, thus clearly providing evidence of a shift in NRC policy towards the issue of intervenor funding. Since it is now clear that the hearings in this matter will be continuing well into FY81, the implementation of Task IV.E.1 of NUREG0660 (Draft) would be quite possible with respect to these proceedings.

Furthermore the Rogovin Report (Vol. I at 142 & 143) recognizes the need for an Office of Public Counsel to assist intervenors, and the provision of funding for intervenors who "contribute materially to licensing efforts by pressing significant concerns that are not being urged by other parties."

In further support of this motion CEA would draw attention to those points during the First Special Pre Hearing Conference (FSPHC) at which it was acknowledged by parties and by the Board that the lack of adequate intervenor funding provisions clearly posed a severe burden on the intervenors, and tended substantially to limit the development of a full and adequate record. CEA also draws attention to the White House memorandum, dated May 16, 1979, signed by Jimmy Carter, in reference to Executive Order 12044, concerning the need for effective programs of Intervenor funding.

As the proceedings continue to develop and unfold, the scope of the hearings, as evidenced by the number, diversity, and complexity of the contentions, is becoming evident, and a reasonably conservative estimate is that the hearings will take six months on a full time basis.

Such extended hearings clearly greatly increase the burden on those intervenors without adequate funds, and raises a very definite question among some intervenors, including CEA, as to whether it will be possible to continue participating in these proceedings without funding, as to do so would require either resignation from current employment, or obtaining an extended leave of absence without pay, as well as obtaining housing in the Harrisburg area for the duration of the hearings--the alternative being four hour a day round trip commuting from Baltimore each day at a daily cost of \$12 in gasoline alone (February 1 prices).

The motions, contentions, interrogatories, and participation in the FSPHC by CEA make it clear that the exclusion of CEA from these proceedings as a result of denial of Intervenor funding, would substantially restrict the development of a full and thorough record, both with respect to substance and to process. Furthermore, such exclusion would also tend to deny CEA's members their constitutionally protected rights to equal protection under the law, and to effective due process in the protection of their life, liberty and property from the threat of TMI-1 to their health and safety.

Revised 4) In light of the NRC response to the UCS:MOC, in which the staff appears to offer the possibility that it will hide behind rules to limit the discovery it provides to Intervenor, CEA moves that, absent an adequate voluntary response of NRC staff to CEA's first set of Interrogatories, that the Board consider those interrogatories as being filed with the presiding officer in accordance with 2.720(h)(2)(ii), and direct the staff to answer the interrogatories.

5) With an ever growing volume of filings in this proceedings, (an issue CEA had addressed in its contention 11), there is an increasing problem in organizing and keeping track of the documents in a systematic and effective manner. Furthermore, the lengthy titles of many of the filings make cumbersome the process of citing previously filed documents. In response to this, CEA moves that the Board consider the promulgation of a uniform system of assigning document identification to all filings. CEA suggests that a relatively simple and effective procedure could be devised, providing consistent labelling

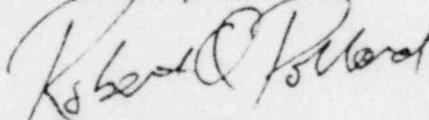
of each document, and including the initiating party, the type of document, the date, and other key information, with this identification to be placed in the top right hand side of the document's first page.

For example, CEA's discovery to NRC staff of February 13, 1980 could be labelled CEA:DIS:NRC.80.02.13. The Board's first Pre Hearing Conference Order of December 19, 1979 might be ASLB:PHCO:79.12.19, etc. (Note that the unconventional ordering of year:month:date facilitates a more logical numerical sequence for filing of documents than does the traditional method of month:day:year.)

The adoption of some such uniform document identification system would greatly assist all parties, in this proceeding, and could set a valuable precedent for future NRC proceedings in lessening the burden that all parties face in managing the mass of documents from this type of proceeding. (CEA notes parenthetically that after having formulated this motion in draft form, it noticed that the NRC staff has begun to adopt a somewhat similar document identification system for some of the documents it has been serving-- eg. Jan 31, 1980 letter of John Collins to R.C. Arnold has been labelled NRC/TMI-80-021).

CEA further moves that oral arguments on the motions in this filing be heard during the SSPHC.

Respectfully submitted,



Robert Q. Pollard, for
Chesapeake Energy Alliance

Dated: February 13, 1980

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CERTIFICATE OF SERVICE

I do hereby certify that I served a true and correct copy of the foregoing document on the below named parties by first-class mailing; *or by hand.*

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Respectfully submitted,

Robert C. Pollard

Robert C. Pollard, for
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Dated: *February 13, 1980*