

UNITED STATES OF AMERICA
 NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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| In the Matter of | } | |
| METROPOLITAN EDISON COMPANY, <u>ET AL.</u> | } | Docket No. 50-289 |
| (Three Mile Island Nuclear Station, Unit 1) | } | |

NRC STAFF RESPONSE TO CEA OMNIBUS MOTION

On February 13, 1980, Chesapeake Energy Alliance (CEA) submitted "CEA Omnibus Motion to the Board" (Motion). After setting forth some preliminary remarks regarding CEA's concern about structural inequality in the regulatory process in the NRC, CEA moved the Board to take action on six separate matters. The Staff's response to these requests is set forth below.

The first request is a general one, that the Board certify to the Commission any matter which the Board feels may not be subject to a full and adequate development on the record because the Commission's August 9th Order appears to limit the "appropriate due consideration" of the matter. CEA appears to have prematurely arrived at a conclusion that the Board may at some future date decide that an issue cannot be adequately explored in this proceeding which should be. The Staff submits that CEA should await the development of a specific situation in which it believes the Board is restricted before

raising its concern to the Board. The Board simply cannot be expected to act on a generalized and hypothetical concern of a party. The Board may instead wish to retain flexibility in handling a situation should it develop at a later date. Accordingly, the Staff opposes this Motion.

CEA follows this general motion with five specific motions related to this proceeding. Apparently CEA has withdrawn the specific motions designated by the numbers "1)" and "4)", which deal, respectively, with a request for extension of discovery dates, and a redesignation of CEA's interrogatories to the Staff as being filed with the Board pursuant to 10 CFR § 2.720(h)(2) (ii). The Staff notes that Mr. Pollard, the author of the Motion, has handwritten the word "resolved" next to these two motions, and has initiated the writing. Accordingly, the Staff does not respond to these two requests.

CEA specific motion number 2) involves a request to the Board to admit CEA's proposed contentions 2(b), 2(c), 2(d), and 3. However, this motion requires only a brief Staff answer. CEA contentions 2(b), (c), and (d) were initially accepted by the Board in its First Prehearing Conference Order at page 47. However, CEA failed to address the licensee's revised emergency response plans. Accordingly, subsequent to the filing of this Motion, the Board in its Interim Order on Late Filed Emergency Planning Contentions dated February 15, 1980, dismissed these contentions for default, and for other reasons which will be explained in a later Board memorandum. Although not addressed in the Interim Order, CEA proposed contention 3 fits into the same category.

This contention was not accepted initially in the First Prehearing Conference Order. However, the Board there noted (at page 47) that CEA had agreed to reconsider this contention in light of the revised emergency plans. Since CEA has failed to address these revised plans, its proposed contention 3 apparently also is in default, and should be treated the same as contentions 2(b), (c), and (d). Thus, the Staff opposes this Motion.

CEA specific request number 3) is a request for the Board to reconsider or, in the alternative, to certify to the Commission, the matter of intervenor funding. This issue has been raised numerous times in this proceeding, from other parties as well as by CEA. However, the Board denied CEA's request for funding in its October 15, 1979 Memorandum and Order, citing the Commission's expressed policy against general intervenor funding. This conclusion was reaffirmed by the Board in its October 31, 1979 Memorandum and Order Denying Motions by TMIA and ANGRY. In the October 31st decision, the Board likewise denied a request by ANGRY to certify the question of intervenor funding to the Commission, stating that no purpose would be served by doing so, for the Commission impliedly considered the possibility of general intervenor funding in this proceeding and instead decided to limit its consideration to funding on psychological issues. No new information is cited by CEA which indicates that the Commission has changed its position on the subject of general intervenor funding. Thus, notwithstanding any merits of funding intervenors or the recommendations in favor of such funding by the Rogovin committee and others, there appears to be little value in certifying a question that the Commission has already resolved. Accordingly, the Staff opposes this motion.

CEA specific motion number 5) seeks the Board's approval of a uniform system of filing and identifying documents being generated in this proceeding. Although the filing of documents in this proceeding is indeed a major undertaking, the Staff cannot agree that the system proposed by CEA is required nor that it is a particularly useful one. CEA refers to the cumbersome task of citing previously filed documents. The Staff notes that there exists an obvious need for proper identification of documents when citing them in pleadings. However, a simple method of referring to documents is for the drafter of a pleading to identify a document fully the first time that it is referenced, and simply to designate a short title for it in future references in the pleading, such as the Staff has done in this response with respect to CEA's "Motion." The problem that would inevitably occur with CEA's suggestion is that each separate party is free to caption his or her pleading as he/she desires, and there is no guarantee that the resulting abbreviation for the pleading title would be at all useful in identifying the document in later references. Further, CEA's admittedly unconventional ordering of the year, month and date is not only awkward and confusing, but has only marginal value in the filing of documents unless one is to assume that this proceeding is likely to stretch out over a large number of years.

The Staff recognizes that some parties may find helpful a uniform system of labelling filings. Accordingly, the Staff would comply with any practical suggestions that the Board endorses. The Staff would hope that such a system, if adopted, would eliminate confusion and would be sufficiently

short to actually save time in referencing documents. However, the Staff does not support the motion as proposed by CEA.

CONCLUSION

The Staff does not support the CEA Omnibus Motion for the reasons set forth in this response.

Respectfully submitted,

Daniel T. Swanson

Daniel T. Swanson
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 28th day of February, 1980