

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
METROPOLITAN EDISON COMPANY)
(Three Mile Island Nuclear)
Station, Unit No. 1))

Docket No. 50-289
(Restart?)



CEA SUPPLEMENT TO ITS OMNIBUS MOTION TO THE BOARD

CEA hereby submits the following supplement to its Omnibus Motion to the Board (CEA:OMB-80.02.13, hereinafter OMB), following the denial of its Motion to Permit Oral Argument--argument that had been requested in OMB, at 4. CEA notes that the denial of oral argument by the Board placed a substantially greater burden on CEA in the way of preparation of these written arguments in support of OMB.

The arguments advanced below also incorporate CEA's responses to NRC & LIC Responses to OMB. CEA notes, however, that it has not yet received a copy of the Board's February 22 Certification to the Commission on the Psychological Distress Contentions, which CEA understands from conversation on March 4 with Lucinda Low Swartz to include Certification of the issue of financial assistance to parties seeking to raise psychological distress issues. Thus, CEA is not aware of the Board's argument on that matter. (Ms. Swartz is forwarding to CEA a copy of the February 22 Certification).

In this respect, CEA notes that to the extent the Board has supported the matter of financial assistance for parties litigating psychological distress (PD) issues, the Board may have opened the door to CEA's request for intervenor funding. For, CEA notes on review of the Commission's August 9 Order, discussing PD issues that:

"At the time the Commission reaches a decision on these issues, it will also consider whether it can and should grant financial assistance to parties seeking to raise these issues in this case."

Since CEA's contention 1 has been included in the Board's purview as a PD contention, this would make CEA eligible for financial assistance if the Commission were to rule favorably on the matter.

Modified Adjudicatory Procedure (MAP)

Both NRC and LIC object to the initial component of OMB in that it is not apparently addressed to any specific matter that calls for Board action under MAP. That point is well taken in that CEA was not sufficiently clear in linking the request for Board action under MAP to the impediments to the development of a full and fair record arising from the lack of adequate intervenor funding and/or lack of previous experience in NRC licensing procedures. That such a linkage was intended could, however have been reasonably inferred from CEA's discussion leading up to CEA's request for the Board to raise the matter yto the Commission.

CEA notes that the handicaps and burdens experienced by the intervenors due to lack of funds and experience, besides severely limiting the effectiveness of intervenors in developing a full and complete record in the proceedings,

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also have the effect of creating a burden on other parties, including the Board, NRC, Staff, and Licensee, due to problems that are generated from the need to address issues such as late filings, motions seeking remedy for disadvantages experienced by intervenors, and other problems arising from intervenors' lack of familiarity with the numerous and complex rules governing licensing proceedings. Retrospectively, many of these problems may have been mitigated had the Board been more responsive to CEA's request for assistance in this matter in its Supplement to Motion to Modify Memorandum and Order (CEA:MMMO-79.09.28)

Emergency Planning Contentions

Now that the Board has ruled against the admission of CEA's emergency planning contentions (2(b), 2(c), 2(d), & 3) and set forth its reasons in its February 29 Fourth Special Pre-Hearing Conference Order, CEA intends to move for re-consideration of that ruling in a separate filing. CEA notes, however, that one element of that argument, namely "The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record." will be addressed in part below.

Intervenor Funding

There are two basic issues that must be addressed on the question of intervenor funding as it applies to CEA. Firstly there is the matter of the Commission's policy, and secondly, there is the matter of the specific merits of granting financial assistance to CEA.

On the matter of Commission policy, the Board, along with NRC staff and Licensee, have relied upon a static perception based on the Commission's 1976 Statement on this matter (CLI-76-23, 4 NRC 494), and its August 9 Order limiting consideration of financial assistance to parties raising PD issues. Such a perception, however, fails to address the fact that since the TMI-2 accident there has been considerable momentum towards changing that policy, and particularly, that since the issuance of the MAP (7590-01), the Commission has placed a clear responsibility on Licensing Boards to assume initiative in pointing out the need for revision and reformulation of policies to the Commission, where such policies tend to impede the development of a full and sound record.

Thus, the Board can no longer rightfully wait for the Commission to announce a change, or intended change, in its policy before acting on this matter, and the Staff's conclusion that "notwithstanding any merits of funding intervenors or 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." (NRC Staff Response to OMB (CEA:OMB:NRC-80.02.28) at 3, emphasis added) is clearly in error.

Licensee correctly notes that the recommendation for a 'pilot program' of intervenor funding in NUREG 0660 at Task IV.E.1 is a draft document, and hence does not carry the full weight of an official NRC document. Since NUREG 0660 sets a February 15 proposed date for the Commission to adopt the action plan, that matter may have already been resolved--although CEA has not yet received any notification on that matter.

Furthermore NUREG 0660 refers at IV.E.1-1 to a "pilot program for intervenor funding in accordance with fiscal 1981 budget request." (emphasis added), leading to a reasonable inference that such a budget request has been submitted by the Commission, and that hence Commission policy is in the process of being reformulated. Such being the case, the Commission would doubtless benefit from hearing and having the opportunity to review the considerable discussion of intervenor funding that has transpired during these proceedings. Indeed, CEA was given to understand that this issue has been aired far more fully than in previous licensing proceedings, if so, that would make it all the more important to bring the matter to the attention of the Commission.

On the question of the NUREG 0660 proposal being for a 'pilot program', (as Licensee correctly points out) that matter seems to present little if any obstacle in respect to the consideration of this issue by the Board. Indeed, CEA hereby amends its motion 3) in OMB by specifying that the matter of a pilot program for intervenor funding be certified to the Commission.

Furthermore, the needs of parties in this proceeding for funds, and the diversity of the nature, interests, and skills of the parties intervening in the TMI-1 proceedings would contribute substantially to the value of having these proceedings serve as the pilot program for IF. For such diversity would assist an evaluation of the effectiveness of an IF program, and would allow provide data for a broader and more thorough set of criteria and procedures for IF than in proceedings with a smaller number and variety of intervenors.

Furthermore, given the possibility of IF for parties raising PD issues in these proceedings, and that that would represent the first such program of IF by the NRC, it is appropriate that the procedure be established as a pilot program, with the accompanying review and evaluation that is entailed. The value of such a pilot program and of the lessons learned from it would greatly be enhanced by the inclusion of all parties in need of IF. Furthermore, CEA's representative would be able to make a substantial contribution to the evaluation of the pilot program due to his extensive research experience (elaborated below in the discussion of the expertise that CEA will bring to the proceedings).

From the standpoint of the basic legal principle of equity, there seems to be little justification for providing preferential consideration for one class of intervenors over another (those raising PD issues over those who are not), again arguing for providing IF for all intervenors in these proceedings who request and justify the provision of IF in accordance with such criteria as can reasonably be developed.

Besides remedying the immediate problem of IF, a pilot program could also be readily designed to ascertain and identify the specific obstacles and problems that have been experienced by intervenors in this proceedings with a view to identifying the concerns that an Office of Public Counsel or of Hearing Counsel would need to address--concerns that can best be recognized and enumerated by intervenors themselves.

Material Contribution of CEA

Licensee goes on to note that the Rogovin Report's recommendation on IF includes the observation that:

"If citizens or groups contribute materially ... by pressing significant concerns that are not being urged by other parties, they should be reimbursed ..." and that "... funding be conditioned upon the intervenor propounding nonfrivolous issues that are not being effectively advanced by others." (Rogovin at 143-4)

In respect to this concern of Licensee, CEA contends that it very definitely would be able, if funding is made available, to contribute materially to the proceedings as to propound nonfrivolous issues not being effectively advanced by others.

Procedural

Specific issues being propounded by CEA include, perhaps first and foremost, the procedural issue (nuclear regulatory procedure--NRP), of which there are several elements:

Equal Protection

Firstly, there is the basis issue of the rights of intervenors to be afforded equal protection, and the full opportunity to develop a full and thorough record (e.g. CEA:PLI-79.09.03 at 1, CEA:MMMO-79.09.28 at 2 et seq., CEA:OMB-80.02.13 at 1). This is a vital issue, both from the standpoints of Constitutional rights as well as of the improved thoroughness of the regulatory procedure that it would lead to.

Due Process

Rights to equal protection include those of due process, including the opportunity to readily gain knowledge, in a reasonably accessible format, of the rules under which the proceedings are conducted, and reasonable access to the legal and technical resources required for participation in an effective manner. These rights too CEA has addressed (e.g. CEA:PLI- at 1, CEA:MMMO-79.09.27 at 2-3).

Access to Information

Effective access to the necessary information by the intervenors (as well as by other parties) has too been addressed by CEA on several occasions as an important parameter in NRC proceedings, and one that must be addressed here (e.g. CEA:MMMO-79.09.27 at 1-3, CEA:MMMO-79.09.28 at 1 et seq., CEA:CON-79.10.05a at 1, CEA:CON-79.10.22 at 12, and CEA:OMB-80.02.13 at 3-4).

Information Storage & Retrieval

An integral component of the intervenors' effective access to information as CEA has addressed it is the manner in which information is (and is not) organized by the NRC, hence contributing to a state of information overload and ineffective access to, and retrieval of, relevant information (e.g. CEA:CON-79.10.05a at 1 and CEA:OMB-80.02.23 at 4). Furthermore, pursuant to the issuance of NUREG-0631, Title List, TMI-1 Documents, CEA has prepared comments, criticisms and suggestions on that volume following the request for such at vii.

Substantive

On the matter of substantive, as opposed to procedural, issues, CEA has also advanced issues that have not otherwise been adequately addressed:

Probability

In the matter of assessing the probability of events, including Class 9 related events, CEA has thoroughly pursued, in its interrogatories to Staff and Licensee (CEA:DIS:NRC-80.02.13, 25, & 26) and CEA:DIS:LIC-80.02.25 & 26) an investigation of the basis for and reliability of the probability estimates of events (CEA:DIS:NRC-80.02.13 at 8-10 & 12, and CEA:DIS:LIC-80.02.25 at 2 & 5-6) and has formulated a precise and thorough definition of probability. (CEA:DIS:LIC-80.02.25 at 8, and 80.02.26) without the likes of which a meaningful discussion of probability estimates of various events can not take place.

Indeed, ultimately the resolution of 'Class 9' accidents as an issue must include, and perhaps rest on, decisions made on the basis of valid and precise probability estimates. (Note that the qualifications of GEA to address this and other issues it is pursuing will be presented below).

Mindset

GEA in its Contention 13 is the only intervenor specifically addressing the issue of the development, and identification, and prevention of operator 'mindset', and brings to bear considerable expertise in the area of psychology (see below).

Medical Facilities

No other intervenor is raising the inadequacy of medical facilities in the event of a major offsite release of radiation as an essential element of the emergency plan--a need that was brought to GEA's attention by Congresswoman Barbara Mikulski after the TMI-2 accident. While the Board has dismissed that contention (2(b)) apparently understanding it only to refer to medical facilities in Baltimore, rather than within a fifty mile radius of TMI, GEA intends to seek to have that reinstated, especially given the extremely scant information on that matter in the Emergency plan.

Qualifications

Besides the matter of the issues that GEA is raising, there is also need to address the qualifications and expertise that GEA will bring to the proceedings in evaluating the extent of GEA's material contribution that can be expected if GEA has the opportunity to participate in a full time capacity (something that will only be possible if GEA receives adequate funding).

Constitutional Issues

In this respect, GEA representative, Robert Q. Pollard (RQP), draws on six year's experience as Librarian at Baltimore City Jail, in which the Law Library plays a central role. There are numerous parallels between the situation of an intervenor in these proceedings and the plight of a defendant in criminal court, with the need for an Office of Public Counsel paralleling the need for Office of Public Defender.

Experience gained in legal research, general understanding of legal process, especially concerning Constitutional and procedural matters, will enable RQP to be able to address the issues of law that arise, and his substantial legal ability--as suggested by his score of 745 (99th percentile) in the Law School Admission Test--indicates significant contribution that could be expected in this regard, as well as in the overall analytic ability and understanding of process that can always be of value throughout the proceedings.

Information Issues

Separate from an ability to address the issue of right to information (again something that RQP has been an advocate of in his role of Librarian at the Baltimore City Jail), RQP has considerable expertise in the matter of information science, both in a theoretical context developed in conjunction with his formulation of a mathematical model of behavior (human and of systems in general) while he was a graduate student in Social Relations at Johns Hopkins University (M.A. 1972), and in a practical one, e.g. classification and coding for computer analysis of grievances expressed on the eve of the French Revolution, as well as document management techniques developed in his role as Librarian.

In the development of document management and information retrieval systems, RQP draws on considerable experience with computers, from a programming and data analysis standpoint, and has developed a proposal for an Integrated Information and Communication System at Baltimore City Jail, incorporating modern video and computer technology capabilities. As a recent delegate to the Maryland Governor's Conference on Libraries and Information Services, RQP was a member of an ad hoc Maryland Advisory Group on Information and Communication (MAGIC) composed of other information scientists concerned with the appropriate use and development of modern information storage and retrieval methodology.

Mathematical

RQP earned an Exhibition (Minor Scholarship) in Mathematics at Cambridge University (England), from whence he graduated with a B.A. in Economics and Mathematics in 1966. He continued to maintain a mathematical analysis and approach in Economics, and then in Sociology and Psychology as a Graduate student at Johns Hopkins (considered to be a center for the development of mathematical models in Sociology), maintaining a focus on data analysis and methodology, mathematical models, and probability.

Psychology/Sociology

RQP's thesis research at Hopkins was on the relationship between personality, interpersonal behavior, and criminal behavior, and out of it he developed the outline of an integrated mathematical model of behavior, along with substantial expertise in the realm of the evaluation of psychometric tests.

An information science approach underlies the model of behavior, which incorporates characteristics of information transformation systems, and includes a concern with information overload issues and factors associated within the development and processing of 'noise' and 'error' signals--matters that CEA contends are integrally related to the development of mindset in operators of nuclear plants and similarly complex control systems.

RQP's understanding of integrated information systems has relevance in the issue of mindset, in that inadequacies of control room design tend to contribute substantially to the development of mindset, and hence in part need to be remedied to correct and prevent the onset of mindset.

Medical Service Delivery

CEA's potential insight and contribution in this regard include RQP's research experience at Hopkins School of Public Health and related professional interest in the matter--an interest that takes practical form in RQP's position as a member of the Board of Trustees of the People's Free Medical Clinic in Baltimore.

General Qualifications

In addition to the specific skills described above, CEA's representative also brings a number of other general skills that may be of considerable value, including parliamentary procedure, an extensive research background, along with analytic and questioning skills, and a considerable ability to conceptualize and formulate resolutions of misunderstandings and conflict (an ability that the Board has to date tended to deny RQP the opportunity to express as the Board acknowledged at the Second Special Pre Hearing Conference on Feb. 13)

That CEA has the capability to make a substantial material contribution to these proceedings should be clear from the above. What is also clear is that CEA's continued effective participation is contingent upon the provision of assistance to CEA, in the form of full time support for CEA's representative, and related clerical support.

For it is clear that the extent of demands on an intervenor, and the amount of information that must be digested, the never ending sequence of deadlines for filings, preparation of pre-filed written testimony, participation in the Hearings, and the follow up to that is not a burden that can be expected to be carried by someone who is obliged to work a full forty hour week at another occupation.

The Board Chairman expressed great sympathy for TMIA's attorney faced with the prospect of taking five depositions a day, however, where is the comparable concern with CEA's representative who must fulfil the responsibilities of a full day's work elsewhere before he can address the matters in these proceedings. As the proceedings progress, the difficulties associated with such a task grow steadily.

There is very clearly a need for a prompt remedy for this matter, as there will be no effective redress of grievance available to CEA if funding is denied and appeal of the issue can not be taken until after the hearings are completed. Failure of the Board and Commission to resolve the matter favorably will preclude the ability of CEA to be made whole for any wrong suffered and any right denied.

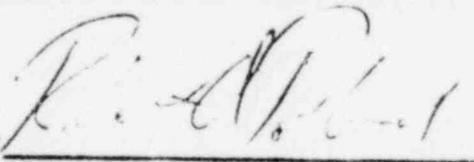
Therefore CEA moves that the Board certify to the Commission the provision of financial assistance to CEA in the amount of the attached budget request

Document Identification System

Part 5 of CEA's OMB addressed the need for a systematic means of labelling documents in these proceedings. CEA does not intend to argue this matter further except to point to the convenience of the system as used in this motion, and to state that CEA's representative offers his services, on appropriate terms, to the Board for the purposes of elaborating on such a system, and developing a more specific and detailed system that could be adopted without encountering the problems that NRC and Licensee have identified as concerns in their response to OMB.

Respectfully submitted

CHESAPEAKE ENERGY ALLIANCE, INC.

By: 

Robert G. Pollard

Dated March 6, 1980

Attachments: Budget Request (1 p.)

CHESAPEAKE ENERGY ALLIANCE
INTERVENOR BUDGET REQUEST

BUDGET NUMBER
PROD. & UTIL. FAC. 50,289
(Restart)

Personnel

1 Full time representative (One year)	16,000	
1 Half time senior clerk typist	4,500	
	<u>20,500</u>	
F.I.C.A. & Related overhead costs	2,050	
	<u>22,550</u>	22,550

Supplies & Equipment

Office supplies (paper, file folders, etc)	500	
Photocopying costs	500	
Typewriter (IBM Selectric)	900	
	<u>1,900</u>	1,900

Telephone

Long distance calls (\$40/month)	480	480
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Travel

800 miles per month @ 20¢/mile	1,920	
Out of town expenses (food & lodging)	500	
	<u>2,420</u>	2,420

Total (excluding witness expenses) \$27,350



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CERTIFICATE OF SERVICE

I do hereby certify that I served a true and correct copy of the above-labelled document on the below listed parties by first-class mailing:

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Respectfully submitted,

Robert O. Ballard, for
CHESAPEAKE ENERGY ALLIANCE

Dated: March 6, 1980