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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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OFFICE OF SECRETARY
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ATOMIC SAFETY AND LICENSING APPEAL BOARD

Administrative Judges:

Thomas S. Moore, Chairman
Dr. John H. Buck
Stephen F. Eilperin

SERVED SEP 29 1982

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

Mr. Thomas J. Halligan, Scranton, Pennsylvania, for the intervenor, Citizens Against Nuclear Danger.

Messrs. Jay E. Silberg and Matias F. Travieso-Diaz, Washington, D.C., for the applicants, Pennsylvania Power and Light Company et al.

Mr. James M. Cutchin, IV, for the Nuclear Regulatory Commission staff.

MEMORANDUM AND ORDER

September 28, 1982

(ALAB-693)

On April 12, 1982, the Licensing Board issued its initial decision (LBP-82-30, 15 NRC 771) authorizing the issuance of full-power operating licenses for Units 1 and 2

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of the Susquehanna facility. [1/] Appeals were timely filed by the Commonwealth of Pennsylvania and intervenor Citizens Against Nuclear Dangers (CAND). The Commonwealth subsequently withdrew its appeal, based upon our approval of a stipulation as to its sole concern, i.e., the provision of adequate dosimetry for the protection of offsite emergency workers from radiological exposure. See Order of September 16, 1982 (unpublished). Thus, the only remaining appeal is that filed by intervenor CAND. The applicants and the NRC staff ask that we dismiss CAND's appeal. For the reasons set forth below, we do so. [2/]

CAND's appellate submissions are vague and unenlightening. Its three-page brief summarily asserts that the Licensing Board did not evaluate the relevant environmental "assessments" (i.e, impacts) or consider available

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1/ By order issued August 9, 1982, the Commission completed its "immediate effectiveness" review favorably to the applicants. See 10 CFR 2.764(f) (1982). The Director of Nuclear Reactor Regulation issued an operating license for Unit 1 on July 17, 1982. 47 Fed. Reg. 32225 (July 26, 1982).

2/ We must still complete our sua sponte review on issues other than dosimetry (which we disposed of in our September 16, 1982 order) before the initial decision becomes final agency action. See Offshore Power Systems (Manufacturing License for Floating Nuclear Plants), ALAB-689, 16 NRC __, __ (September 1, 1982) (slip opinion at 4-7).

alternatives. 3/ CAND claims, again without offering factual support or references, that some of the environ-

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3/ See CAND Brief (May 21, 1982) at 1-2. There was, of course, a Final Environmental Statement (FES) prepared by the NRC staff. It evaluated the environmental impacts of the grant of an operating license for the Susquehanna facility and alternatives to plant operation -- most pertinently the no-action alternative. See NUREG-0564 (June 1981). Thus, the FES stated (id. at 7-6):

> The staff believes that the only reasonable alternative to the proposed action of granting an operating license for SSES available for consideration at the operating license stage is denying the license for operation of the facility and thereby not permitting the constructed nuclear facility to be added to the applicant's generating system. Alternatives such as construction at alternative sites, extensive station modification, or construction of facilities utilizing different energy sources would each require additional construction activity with its accompanying economic and environmental costs, whereas operation of the already constructed plant would not create these costs. Therefore, unless major safety or environmental concerns resulting from operating the plant that were not evident and considered during the construction-permit review are revealed, these alternatives are unreasonable as compared to operating the already constructed plant. No such concerns have been revealed with regard to operation of SSES.

So too, the Licensing Board considered the contested environmental issues. See generally 15 NRC at 773-77, 787-93.

mental data in the staff's Final Environmental Statement were presented "in a misleading fashion." 4/ CAND asks that a new Environmental Impact Statement be prepared and the license conditioned to require a finding by the Director of Nuclear Reactor Regulation, prior to plant operation, that all provisions of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et. seq., have been fully implemented. CAND Brief at 2. In addition to not providing any support, record or otherwise, for its arguments, CAND did not file proposed findings of fact and conclusions of law on these NEPA issues with the Licensing Board.5/

This failure of CAND to provide both the Licensing Board and us with any support for its assertions reveals a complete lack of appreciation of the requirements of our

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4/ CAND Brief at 3. The same kind of assertions form the basis of CAND's exceptions to the initial decision. See CAND Exceptions (April 21, 1982) at 2.

5/ CAND filed what it termed "proposed findings of facts and conclusions of law" on March 26 and April 2, 1982. The filings were three months late, and neither raised environmental issues. The Board ruled that the filings were untimely if considered as proposed findings. Treating the filings as motions to reopen, the Board ruled that the motions failed to meet the standards required for reopening. Licensing Board Order of April 22, 1982 (unpublished).

> Rules of Practice. We have stated that those Rules were not promulgated capriciously. They were drafted to insure that, when followed, the arguments and positions of all parties -- applicants, staff and intervenors -- would be spread fully upon the record in order to permit fair rebuttal by those holding opposing views and to facilitate our ultimate evaluation of the competing contentions. Disregard of the Rules frustrates those salutary purposes and burdens rather than assists the adjudicator's task.

Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-270, 1 NRC 473, 476 (1975). Accordingly, the Rules require that a party's brief specify the precise portion of the record relied upon in support of the assertion of error. 10 CFR 2.762(a). It must also relate to matters raised in the party's proposed findings of fact and conclusions of law. Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Unit 1), ALAB-650, 14 NRC 43, 49 (1981). 6/

CAND's submissions fall far short of these requirements. Its brief contains only conclusory assertions of insufficient environmental analysis and alleged wrongdoing. These naked assertions leave us without sufficient infor-

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6/ This is because we will not ordinarily entertain arguments raised for the first time on appeal, absent a serious substantive issue. Salem, supra, 14 NRC at 49; Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B, and 2B), ALAB-463, 7 NRC 341, 348 (1978). See also, Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-691, 16 NRC __, __ (September 9, 1982) (slip opinion at 10-11).

mation to dispose of its arguments intelligently. 7/ We noted on an earlier occasion:

> Disregarding similarly vague contentions in an appellant's brief, the Court of Appeals for the Seventh Circuit cogently observed that "[i]t is impossible for a [tribunal] to consider general allegations such as these." United States Steel Corp. v. Train, [556 F.2d 822, 837 (1977]. We have no choice but to follow that course here. Because inadequate briefing has made their arguments "impossible of resolution," we dismiss intervenors' exceptions on this point.

Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-573, 10 NRC 775, 786-87 (1979) (footnote omitted). See also Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 397, 413 (1976).

We recognize that CAND's representative is not an attorney, and that as a rule we do not hold lay representatives to the same standard for appellate briefs that we expect lawyers to meet. Salem, supra, 14 NRC at 50

7/ We note, however, that the "NEPA compliance" license condition CAND requests (see p. 4, supra), is already imposed as a matter of NRC regulation. Before the Director issued the operating license for Susquehanna Steam Electric Station Unit 1, see n.1 supra, he was obliged to and did find that Commission regulations, including those implementing NEPA, had been satisfied and that the activities authorized by the license could be conducted without endangering the health and safety of the public. See 10 CFR 50.40(d), 50.57; Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 NRC 41, 44 (1978), remanded on other grounds sub. nom. Minnesota v. Nuclear Regulatory Commission, 602 F.2d 412 (D.C. Cir. 1978); Facility Operating License No. NPF-14, para. I(H) (July 17, 1982).

n.7. Nonetheless, we have previously admonished CAND as to the importance of compliance with the Commission's procedural requirements. In ALAB-563, 10 NRC 449, 450 n.1 (1979), we stated unequivocally that NRC litigants appearing pro se or through lay representatives are in no way relieved by that status

> of any obligation to familiarize themselves with [the Commission's] rules. To the contrary, all individuals and organizations electing to become parties to NRC licensing proceedings can fairly be expected both to obtain access to a copy of the rules and to refer to it as the occasion arises . . . . [S]hould such reference leave the pro se litigant or lay representative uncertain regarding precisely what procedural steps can or should be taken by him in certain circumstances, he undoubtedly will be able to obtain the guidance of staff counsel. Whether or not in agreement with the position of an intervenor on the merits of the issues presented in the particular proceeding, the staff traditionally has manifested a commendable willingness to provide that type of assistance.

In this regard, we note that staff counsel has represented to us that he provided CAND's representative with sample proposed findings and on more than one occasion in the course of this proceeding, offered him guidance in procedural matters.[8/]

Our concern here is not with technical pleading requirements, but with the basic obligation of an intervenor in our proceedings to "structure [its] participation so that it is meaningful, so that it alerts the agency to [its]

8/ Staff Brief (July 6, 1982) at 16 n.11.

position and contentions." Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519, 553 (1978). A totally deficient brief, such as we have here, provides us no more assistance than no brief at all. It does not merit special consideration merely because it was prepared by a layman. See Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 546 (1980); Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Units 1 and 2), ALAB-136, 6 AEC 487, 489 (1973).

CAND's appeal is dismissed.

It is so ORDERED.

FOR THE APPEAL BOARD

Barbara A. Tompkins
Secretary to the
Appeal Board