

UNITED STATES OF AMERICA
 NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

APPLICANTS' RESPONSE TO SUPPLEMENTS
 TO PETITION FOR LEAVE TO INTERVENE
 OF CITIZENS AGAINST NUCLEAR DANGERS

In seven filings between December 28, 1978, and January 10, 1979, the Citizens Against Nuclear Dangers (CAND) have supplemented their Petition for Leave to Intervene by adding a series of contentions. Pursuant to the Licensing Board's December 14, 1978 Order Scheduling Prehearing Conference, Applicants submit their response to petitioner's contentions.

Applicants assume that CAND intends its seven filings to supersede its earlier petition. This would appear to be the case since each of the issues dealt with in the contentions in its original submittals have been included in one or more of the contentions in its supplemental filings. Consequently, Applicants have treated the sixteen contentions in the seven supplemental filings as the complete statement of the Citizens' contentions. For the purpose of responding, Applicants have numbered the contentions in the following manner:

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December 28, 1978

1. National Crisis Relocation Program
2. Liability for Damage to Dairy Farmers
3. Loss of Coolant Accident
4. Armed Attack on Spent Fuel Pool

December 29, 1978

5. Reserve Margins
6. Liquid Releases of Chlorine, Cesium and Cobalt

January 3, 1979

7. Low Susquehanna River Flow
8. Decommissioning

January 5, 1979

9. Evacuation Plans
10. Radiation Studies

January 8, 1979

11. Inadequate Construction Monitoring
12. Transportation of Nuclear Fuel

January 9, 1979

13. Spent Fuel Storage
14. Transmission Line Impacts

January 10, 1979

15. Health Effects of Low-Level Radiation
16. Shipment of Highly Enriched Uranium to Rumania

Contention 1 (National Crisis Relocation Program)

This contention states that the Salem Township area, including the Susquehanna Steam Electric Station (SSES) site and its surroundings, has been designated by Civil Defense officials as a "host area" for people who might be evacuated from Wilkes-Barre in the event of a foreign nuclear attack. The contention then states that SSES would itself be a target for a nuclear attack, thus making the Salem Township environs unsuitable as a "host area."

This contention appears to be a clear challenge to NRC regulations. The Commission's regulations state that an applicant:

is not required to provide for design features or other measures for the specific purpose of protecting against the effects of (a) attacks and destructive acts, including sabotage, directed against the facility by an enemy of the United States, whether a foreign government or other person

10 CFR §50.13. The contention would clearly seem to involve matters involving acts of war, which are excluded by this regulation from consideration in licensing hearings. This regulation and the Commission's policy of not considering military attacks have been upheld by the courts. Siegel v. Atomic Energy Commission, 400 F.2d 778 (D. C. Cir. 1968). To the extent that CAND is concerned with the "host area" designation, that matter should be raised with appropriate civil defense authorities not NRC.

Contention 2 (Liability for Damage to Dairy Farmers)

The basic thrust of this contention appears to be that the Pennsylvania General Assembly must take some type of action because Applicants assertedly "claim no liability" for postulated damage to the dairy industry.

Under the Price-Anderson Act (42 U.S.C. §2210), Applicants must obtain private insurance coverage and federal indemnification totalling \$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 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). Likewise, to the extent that the contention seeks action by the Pennsylvania General Assembly, it is raising issues which are not within the jurisdiction of the Licensing Board or the Commission.

One of the paragraphs of the contention does set forth an issue which Applicants believe should be admitted as a contention. That paragraph states:

[S]eventy million gallons of radioactive evaporated water to be vented daily from the Applicants' atomic power plant at Salem Township, will pose an economic threat to the dairy industry.

The two preceeding paragraphs could be considered to constitute a basis for this contention:

Whereas, dairy farming is a major industry in the Eastern-Central area of Pennsylvania, vital to the total economy of the Commonwealth.

Whereas, milk production in this area will increase substantially in the years ahead to meet the demands for raw milk needed to supply three large cheese factories now under construction.

Although Applicants do not agree that "seventy million gallons of radioactive evaporated water will be vented daily from Applicants' atomic power plant" (the water to be evaporated from the cooling towers is not radioactive) or that operation of the plant "will pose an economic threat to the dairy industry", these are issues to be decided on the merits rather than at the contention stage.

Finally, it is Applicants' position that the paragraph involving the asserted unpreparedness of Applicants and certain State agencies "to safeguard the dairymen for loss of livestock in the event the herds must be destroyed due to radioactive contamination" raises issues not properly before this Licensing Board in that it appears to challenge Price-Anderson Act limitations and positions of state agencies not properly within the jurisdiction of the Nuclear Regulatory Commission.

Contention 3 (Loss of Coolant Accident)

CAND contends that no operating licenses for SSES should be granted until the currently on-going Loss of Fluid Test (LOFT) of emergency core cooling systems (ECCS) has been completed and commented upon by all parties.

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. 10 CFR §50.46 and Appendix K to Part 50. CAND 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 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.

Contention 4 (Armed Attack on Spent Fuel Pool)

This contention argues that the "spent fuel containment structure", i.e. the spent fuel pool, must be designed

to withstand the direct impact of sustaining rounds of high explosives, either from a general aviation bombardment or para-military mortar rocket fire.

CAND states that should such a "terroristic attack by armed extremists" occur, "a large scale, high level radioactive release into the atmosphere of catastrophic proportions could result."

Applicants believe that the contention is a challenge to Commission regulations and should be rejected. First, the type of attack which CAND postulates would seem to fall within the scope of 10 CFR §50.13 (see discussion of Contention 1 above) and is thus the type of "attacks and destructive acts" against which the facility need not be designed. Second, the contention would require physical security measures above and beyond the threat level specified in 10 CFR §73.55(a). That regulation requires a licensee to provide a physical protection system and security organization to protect against

(1) A determined violent external assault, attack by stealth, or deceptive actions, of several persons with the following attributes, assistance and equipment: (i) Well-trained (including military training and skills) and dedicated individuals, (ii) Inside assistance which may include a knowledgeable individual who attempts to participate in both a passive role (e.g., provide information) and an active role (e.g., facilitate entrance and exit, disable alarms and communications, participate in violent attack), (iii) Suitable weapons, up to and including hand-held automatic weapons, equipped with silencers and having effective long range accuracy, (iv) Hand-carried equipment, including incapacitating agents and ex-

plosives for use as tools of entry or otherwise destroying the reactor integrity, and

(2) An internal threat of an insider, including an employee (in any position).

"General aviation bombardment" and "para-military mortar rocket fire" postulated in this contention far exceed this threat level. By arguing that the facility must be designed to withstand such attacks, the contention is taking issue with Commission regulations and is thus not appropriate for litigation in this proceeding.

Contention 5 (Reserve Margins)

This contention contains several aspects which are beyond the scope of this proceeding. First, it requests the Licensing Board to direct the Pennsylvania Public Utility Commission to investigate the consequences of inaccurate projections of demand for electricity "in order to establish equity for rate-payers." The Licensing Board has no such power and has no jurisdiction over setting of rates. Second, it requests the Licensing Board to order a halt in construction at the Susquehanna site. The question of continued construction is not within the scope of this operating license proceeding. Third, it calls for NRC to "comply with the National Energy Program, enunciated by the President before a joint session of Congress (April 20, 1977)".* This

*The energy goal referred to in the contention of "reducing annual growth of United States energy demand to less than two percent" is, in any event, a goal for energy demand, not for electricity demand. Footnote continued on page 9

type of broad claim, unrelated to this proceeding, raises no litigable issues.

However, several of the introductory paragraphs do raise appropriate issues. Thus, CAND states:

. . . the major Applicant [Pennsylvania Power & Light (PP&L)] presently has electric generating over-capacity, estimated to range as high as forty percent within its service area,

. . . the major Applicant justified construction of the Salem Township atomic power plant based on future electric demand projections that never happened to materialize,

Applicants basically agree with these statements. PP&L has, and will continue to have for some time, reserve levels "as high as forty percent." PP&L's earlier forecasts, on which the decision to construct SSES were based, turned out to be too high. Chapter 1 of Applicants' Environmental Report-Operating Licensing Stage, describes this situation in detail.

While these statements by CAND would ordinarily form the core of a valid contention, in this instance there is nothing to litigate since Applicants do not challenge the statements. These two statements can thus be considered as admissions by Applicants. See 10 CFR §2.742. These admissions, however, provide no basis for denying issuance of operating licenses. As shown in Applicants' Environmental Report, operation of the units is justified on economic grounds notwithstanding the reserve levels identified in the contention. See Environmental

Footnote continued from page 8

Furthermore, it is a goal for 1985, which is after Susquehanna is scheduled to commence operation. See President's Address Delivered Before a Joint Session of Congress, April 20, 1977, 13 Weekly Compilation of Presidential Documents at 566.

Report, §1.1. CAND has not challenged this justification. Thus these statements by CAND, even if accepted as a contention, do not require hearing consideration.

Contention 6 (Liquid Releases of Chlorine, Cesium and Cobalt)

This contention asserts that releases of chlorine and "nuclear²waste materials (such as cesium 137 and cobalt 60)" from the Susquehanna facility "will pose a serious public health danger to the citizens of Danville" Applicants do not object to the admission of a contention on the public health danger to the citizens of Danville from releases of chlorine, cesium 137 and cobalt 60, the specific releases identified by CAND. Notwithstanding Applicants' compliance with chlorine discharge limits established under the Federal Water Pollution Control Act and compliance with liquid radioactive discharge limits of NRC regulations (i.e. 10 CFR Part 20 and Appendix I to Part 50), the health effects of such discharges are an appropriate issue in the context of the Commission's responsibilities under the National Environmental Policy Act (NEPA). Applicants would present evidence showing that these discharges would cause no adverse health effects.

It is Applicants' position, however, that the portions of the contention requesting that NRC impose a "zero release" limit on discharges of chlorine and "nuclear wastes" are a challenge to regulations and statutes. NRC regulations permit liquid radioactive discharges so long as they meet

the requirements of 10 CFR Part 20 and Appendix I to Part 50. A "zero release" requirement would represent a challenge to those regulations. As to chlorine releases, NRC is by statute prohibited from setting any restrictions different from those specified in a National Pollution Discharge Elimination System (NPDES) permit issued under Section 402 of the Federal Water Pollution Control Act (FWPCA). See FWPCA, §511(c)(2), 33 U.S.C. §1371. This portion of CAND's contention should therefore be rejected.

Contention 7 (Low Susquehanna River Flow)

This contention asks the NRC, together with the Susquehanna River Basin Commission (SRBC) and the U. S. Army Corps of Engineers, to direct Applicants to build a reservoir to augment flow of the Susquehanna River during low flow periods. The contention also claims that such a reservoir should be constructed prior to licensing of the facility, that Applicants "should not be permitted to possibly intimidate any government licensing commission" on low flow augmentation, and that Applicants should be barred from claiming water rights from existing reservoirs dedicated to drinking water use and under the jurisdiction of the Pennsylvania Public Utility Commission.

Applicants respectfully submit that this contention is outside the scope of this proceeding. Consumptive use of Susquehanna River water is governed by SRBC regulations. 18 CFR §803.61. Those regulations require compensation for

consumptive uses of water during low flow periods. §803.61(b)(1).
The method of compensation is to be determined by SRBC:

Methods of compensation acceptable to the [Susquehanna River Basin] Commission will depend upon the character of the project's source of water supply and other factors noted below.

§803.61(c)(1). Thus, it is the responsibility of SRBC, not of NRC, to determine whether there should be a reservoir built, and if so what kind. And, if there are no "consumptive uses of water during periods of low flow", using the language of §803.61(b)(1), then no compensation is required.* Thus, construction of a reservoir is not needed to comply with SRBC regulations.

Applicants are, of course, bound by SRBC regulations and requirements. The argument that NRC should direct how SRBC will carry out its responsibility does not raise an issue properly before this Licensing Board.

The passing reference in the contention to "an adequate supply of water . . . for emergency cooling purposes" does not contain sufficient information to allow for admission as an issue. In any event, the Susquehanna facility does not rely at all on water from the Susquehanna River for emergency cooling purposes, but rather on the on-site spray pond. See Environmental Report, §3.4.6.

*Operating a nuclear plant in this mode, i.e. reducing or stopping consumptive use during low flow periods, was specifically recognized in Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-262, 1 NRC 163 (1975).

Contention 8 (Decommissioning)

This contention asserts that NRC, before issuing operating licenses for the Susquehanna units, must (1) determine which method will be used for the eventual decommissioning of the facility, (2) establish escrow financing for the selected mode, and (3) develop a "contingency decommissioning plan" to provide for decommissioning the Susquehanna facility "sometime within the next few years."

Applicants submit that these issues 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, §T.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 CAND would litigate are in direct conflict with Commission regulations.

That CAND's assertions 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 decommis-

sioning 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 licensees

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 CAND 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 (August 8, 1977). This rulemaking proceeding is still in progress.

Contention 9 (Evacuation Plans)

This contention asserts that Applicants' emergency plans must provide

realistic logistical transportation assistance for the tens of thousands of hospitalized and institutionalized persons in nursing homes and mental treatment facilities, as well as the physically and mentally handicapped within a fifty mile radius of Salem Township.

The contention also includes the claim that the "instruments to track radioactivity much beyond the Salem Township atomic plant site" are inadequate.

Applicants would not object to the admission of these two assertions as issues in this proceeding. While prior Commission decisions had concluded that evacuation plans beyond the low population zone were not to be considered in licensing proceedings, New England Power Co. (NEP Units 1 and 2), ALAB-390, 5 NRC 733 (1977), the Commission has rejected this interpretation. See Notice of Proposed Rule-making, 43 Fed. Reg. 37473 (1978) in which the Commission has directed that a proposed amendment to 10 CFR Part 50, Appendix E, be used as interim guidance. That proposed amendment provides that the extent of emergency planning beyond the low population zone should depend on facility design features, site characteristics, and appropriate emergency protection action criteria. See also 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 12.

Contention 10 (Radiation Studies)

This contention asserts that Applicants, in conjunction with EPA and state agencies, should be directed to study "the link between low-level radiation and disease, such as cancer, on the human inhabitants" of the area around the Susquehanna facility. The contention would also require annual testing of all school children within a fifty mile radius of the plant.

It appears that this contention is not raising the issue of health effects of low level radiation per se. (That issue is specifically addressed in CAND's Contention 15. To the extent that this contention seeks to raise the health effects question, Applicants note that they have no objection to the admission of this issue as raised by Contention 15.) Rather, the contention appears to argue that basic research is needed "to scientifically evaluate the effects of low-level radiation on humans" Such a contention raises no issues specific to the Susquehanna facility. What is more, it would seem to challenge NRC and EPA regulations governing radiological releases from nuclear power plants. Both NRC's regulations in Appendix I to 10 CFR Part 50 and EPA's rules in 40 CFR Part 190 take into account the health effects to humans which could be caused by releases of radioactive effluents at the levels contemplated by the rules. See, e.g., In the Matter of Rule-making Hearing, Docket No. RM-50-2, CLI-75-5, 1 NRC 277 at

298, 311, 315-318 (1975); NRC Decision Not To Conduct a Hearing to Refine or Reduce the Health Cost Figures Previously Adopted, 43 Fed. Reg. 22253 (1978). The extensive rulemaking proceedings which resulted in the two rules explored the calculated health effects which could be expected from the release levels. Thus, the thrust of the contention that some form of "systematic human physical examinations" are necessary to show what health effects will be caused by radiological releases is a quarrel with the underlying bases of the regulations themselves. The contention should therefore not be admitted.

Contention 11 (Inadequate Construction Monitoring)

In this contention, CAND refers to a report of the General Accounting Office (GAO) related to NRC's monitoring of nuclear power plant construction.* Based on the observations in this report, CAND requests that the Commission re-examine inspection records with regard to a number of construction elements for the Susquehanna plant and re-examine "the structural placement" of "all . . . vital components necessary for the proper containment of radioactivity. . . ."

Applicants submit that CAND's statements and observations do not constitute an admissible contention.

*Though CAND does not state the specific GAO report about which it is concerned, Applicants assume this contention is a reference to a report of September 7, 1978, titled "The Nuclear Regulatory Commission Needs to Aggressively Monitor and Independently Evaluate Nuclear Powerplant Construction."

CAND's statement does not relate specifically to the Susquehanna project. CAND provides no information indicating the existence of any deficiencies in the construction of the Susquehanna facility. Nor does the GAO report on which the contention relies make any reference to this facility.

Applicants' FSAR provides a detailed description of the quality assurance program for the Susquehanna project. See FSAR, ch. 17. The contention has not asserted any specific (or even any general) criticisms of that program. The contention, in fact, appears to acknowledge that Applicants' quality assurance program has properly functioned in that the program has discovered instances of "defective manufacture and assemblage, etc. of major components. . . ." Absent some specific, supported allegation that instances of "defective manufacture and assemblage" have not been discovered or corrected, the contention should be denied.

Contention 12 (Transportation of Nuclear Fuel)

This contention states that because the railroad bed and track over which fuel shipments to the Susquehanna plant will travel have deteriorated, Applicants should not be permitted to receive fuel shipped by rail until all roadbeds and trackage are rebuilt. CAND in this contention appears to express a concern that existing rail conditions pose a hazard because of possible rail accidents.

The concern that existing rail conditions pose a hazard is thoroughly addressed in several parts of the Commission regulations. This contention is a challenge to such regulations and should not be admitted.

It is not completely clear whether the contention deals only with transportation of fuel to the plant site (i.e. transportation of unirradiated, fresh fuel) or with transportation of fuel to and from the site (i.e. transportation of unirradiated and of spent fuel).^{*} In either case, the subject matter of the contention is covered by Commission regulations responsive to the concern expressed. The environmental impacts of transporting fresh and spent fuel are specified in 10 CFR Part 51, Table S-4. These impacts include those from transportation accidents as well as the exposure to transportation workers and the general public. Thus, the environmental impacts of fuel transportation are covered by Commission regulation and cannot be litigated in individual licensing proceedings. See, e.g. Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit No. 1), LBP-75-33, 1 NRC 618, 619-620 (1975).

Implicit in CAND's contention is the assertion that a nuclear fuel cask involved in a train accident would be damaged. However, such casks are required by Commission

^{*}To the extent that the contention is intended to apply to fresh fuel, it lacks any basis since, as stated in Applicants' Environmental Report, fresh fuel is to be shipped to the Susquehanna facility by truck, not by rail. Environmental Report, §3.8

regulations to be designed in a manner to avoid damage even in severe accident situations. (See 10 CFR Part 71) Specific accident requirements are summarized in 10 CFR §71.36 and Appendix B to Part 71 of the Commission regulations.

Additionally, in 49 CFR Part 173, there are further regulations that deal with the manner of shipment and packaging of radioactive material. The specific regulations relating to rail shipment are found in 49 CFR Part 174. Such contention is a challenge to these regulations, and therefore should not be admitted in the proceeding.

Contention 13 (Spent Fuel Storage)

In this contention, CAND argues that the Commission should establish a moratorium on the granting of nuclear power plant operating licenses until "the entire issue over nuclear waste disposal is settled by the government and industry." The Commission has already rejected this assertion in its denial of a petition for rulemaking and that denial has been judicially affirmed. For this reason, the contention should not be admitted.

On November 8, 1976, the Natural Resources Defense Council (NRDC) filed a petition for rulemaking (Docket No. PRM-50-18) requesting that the NRC cease issuing operating licenses until it made a "definitive safety finding" on the nuclear waste disposal issue. That rulemaking petition was denied by the Commission on July 5, 1977, on the grounds

that such a request was inconsistent with statutes, regulations and Commission policy. See 42 Fed. Reg. 34391 (1977).

Subsequently, the NRDC appealed the Commission decision to the U. S. Court of Appeals for the Second Circuit. The Court upheld the NRC action and said:

. . . NRC is not required to conduct the rulemaking proceeding requested by NRDC or to withhold action on pending or future applications for nuclear power reactor operating licenses until it makes a determination that high-level radioactive wastes can be permanently disposed of safely . . .
NRDC v. NRC, 582 F.2d 166 (2nd Cir. 1978)

Thus, the request for a moratorium, which is called for in this contention, has already been rejected by the Commission and the courts. Such contention is a challenge to those rulings, and therefore should not be admitted.*

Contention 14 (Transmission Line Impacts)

CAND in this contention makes a series of assertions about impacts from high voltage transmission lines. These impacts include noise pollution, electrical shocks, television and radio interference, electrostatic and electromagnetic fields, ozone levels, and others.

Applicants do not object to the admission of a contention on these concerns about potential impacts of transmission lines. However, Applicants would oppose the admission

*Applicants note that Paragraph 1.B of the Supplement to Petition for Leave to Intervene of Colleen Marsh, et al. raises an issue on the ability to safely store spent fuel and low-level radioactive wastes. Applicants have raised no objection to this contention. If the Marsh contention is admitted, CAND may participate in litigation of this issue in accordance with NRC practice.

of a contention related to CAND's statement that the transmission lines should be built underground.

Applicants' opposition to the consideration of a proposal that the lines be placed underground 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 overhead transmission lines. It is an unreasonable alternative, therefore, to consider the initiation of an entirely new and different construction effort to place the lines underground.

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 substantially complete

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 how the transmission lines should be 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 transmission lines was completed at the construction permit stage. Reopening that decision after construction has been authorized and substantial construction completed would be, we believe, 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, the aspect of this contention related to constructing underground transmission lines should not be admitted.

Contention 15 (Health Effects of Low-Level Radiation)

In this contention, CAND makes a series of assertions about the alleged adverse health consequences of low-level radiation, which CAND believes may be emitted from the

Susquehanna plant. Applicants do not object to the admission of this contention, and will present evidence to demonstrate that none of the alleged health effects of low-level radiation will occur as a result of plant operation.

Contention 16 (Shipment of Highly Enriched Uranium to Rumania)

This contention does not appear to relate to the operating license proceeding for Susquehanna. CAND appears to express its concern in this contention about the security related to weapons grade uranium (highly enriched uranium). The fuel that will be used in the Susquehanna plant, like that used in other light water power reactors, is not enriched beyond a level of four percent. Thus, concerns about highly enriched uranium are not relevant here.

CAND's contention appears to relate to national security issues and not to the operation of Applicant's commercial nuclear facility. Applicants therefore respectfully request that this contention not be admitted.

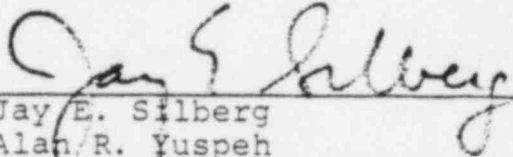
CONCLUSION

For the reasons set forth above and in Applicants' September 21, 1978 Answer to "Petition for Leave to Intervene" submitted by Citizens Against Nuclear Dangers Applicants respectfully submit that Citizens Against Nuclear Dangers, should be admitted as an intervenor in this proceeding and that elements of the proposed contentions as specified above should be admitted as the

contentions of Citizens Against Nuclear Dangers.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

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Dated: January 26, 1979

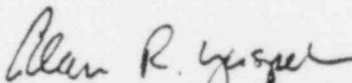
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CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing
"Applicants' Response to Supplements to Petition for Leave
to Intervene of Citizens Against Nuclear Dangers" 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

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

SERVICE LIST

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