

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

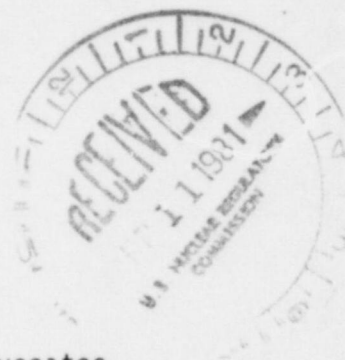
In the Matter of

PENNSYLVANIA POWER AND LIGHT CO.  
ALLEGHENY ELECTRIC COOPERATIVE, INC.

(Susquehanna Steam Electric Station,  
Units 1 and 2)

Docket Nos. 50-387  
50-388

NRC STAFF ANSWER TO SEA MOTION FOR  
AL NCE OF NEW CONTENTION



I. INTRODUCTION

On August 22, 1981 Intervenor Susquehanna Environmental Advocates (SEA) filed its "Motion for Allowance of New Contention (Proposed Contention 22)."<sup>1/</sup> For the reasons set forth below, the NRC Staff opposes the motion.

II. DISCUSSION

A. Timeliness of Motion

On August 9, 1978 a notice of opportunity for hearing in the captioned matter was published (43 Fed. Reg. 35406). The notice stated, in accordance with 10 CFR 2.714(b) of the Commission's Regulations, that contentions must be filed not later than fifteen days prior to the first

1/ Proposed Contention 22 reads as follows:

The "Environmental Impact of Postulated Accidents", as assessed by the Staff in Chapter 6 of the FES, grossly understates said impact in that it relies on a probability factor which is far too low and either does not take into consideration or understates the economic loss due to physical health effects and long-term or chronic health and environmental effects. SEA Motion at 1.

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prehearing conference scheduled in the proceeding. The first prehearing conference in the proceeding took place on January 29-31, 1979. Thus the SEA filing is obviously late.

B. Balancing of Factors in § 2.714(a)(1)

In situations such as this, Section 2.714(a)(3) provides that a party may file new contentions only with the approval of the Licensing Board based upon a balancing of the five factors set forth in Section 2.714(a)(1). Those factors are:

- (i) Good cause, if any, for failure to file on time.
- (ii) The availability of other means whereby the petitioner's interest will be protected.
- (iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (iv) The extent to which the petitioner's interest will be represented by existing parties.
- (v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

Although SEA mentions, it fails adequately to discuss its reasons for concluding that the factors balance in its favor.

Factor i

SEA cites as good cause for its late filing its limited number of personnel who are able to deal with the legal and technical complexity of the proceeding and the amount of work that was required to write the type of contention that SEA believed to be necessary. Each of the claimed justifications is merely a different way of pleading SEA's limited resources. But in its "Statement of Policy on Conduct of Licensing Proceedings" the Commission stated that:

Fairness to all involved in NRC's adjudicatory procedures requires that every participant fulfill the obligations imposed by and in accordance with applicable law and Commission regulations. While a Board should endeavor to conduct the proceeding in a manner that

takes account of the special circumstances faced by any participant, the fact that a party may have personal or other obligations or possesses fewer resources than others to devote to the proceeding does not relieve the party of its hearing obligations. When a participant fails to meet its obligations, a Board should consider the imposition of sanctions against the offending party. 45 Fed. Reg. 28533, 28534 (May 27, 1981).

Therefore, it appears to be obvious that the Commission does not consider limited resources to constitute good cause for a late filing.

SEA also alleges that the contention is based on new information that appears in the Final Environmental Statement (FES). However, SEA fails adequately to identify the specific new information and its location in the FES or how that information provides the basis for a contention that could not have been raised earlier in the proceeding. Moreover, the "new" contention appears to be nothing more than a rewrite of SEA Proposed Contention 21 that SEA without success previously sought to have admitted.<sup>2/</sup> The thrust of both rejected Proposed Contention 21 and Proposed Contention 22 appears to be that the environmental statement understates the health and economic effects of "Class 9" accidents. Finally, SEA alleges that:

"[t]he bases for this contention are calculations done by Jim Perkins, who has a masters degree in mathematics; comments on the SSES filed by Mr. Perkins and Mr. Mike Molesevich of the Susquehanna Alliance; the response of the NRC Staff to these comments; a study cited by Mr. Molesevich and a review of the SSES by Professor Sam Merrill of Wilkes College." SEA Motion at 1.

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<sup>2/</sup> Proposed Contention 21 was filed in SEA's "Motion for Allowance of New Contentions" dated May 6, 1981 and was ruled inadmissible in the Board's "Memorandum and Order on Pending Motions and Requests" dated July 7, 1981. It reads as follows:

Applicants' supplement to the Draft Environmental Statement vastly understates the health and economic effects of a Class 9 accident. In addition, it relies on invalid statistical analyses. In addition, it relies on the Rasmussen Report, which itself did not take into consideration human error. In addition, it is not site specific, as required by NRC regulations.



Thus by SEA's own admission the contention is not based primarily, if at all, on information appearing in the FES.

Clearly, SEA has not shown good cause for its late filing on either "limited resources" or "new information" grounds and factor i weighs against entertainment by the Board of SEA's late filed contention.

Factors ii & iv

SEA alleges that there are no means other than admission of the contention by which its interests will be protected and that its interests will not be represented by any other party. The Staff believes that SEA's allegations, if true, would be entitled to some weight in deciding whether to admit a petitioner as an intervenor where good cause for a late filing has been shown and where the proceeding would not be unreasonably lengthened or delayed. However, where one is already a party to the proceeding and files late, as SEA admits that it has,<sup>3/</sup> not only with respect to initial deadlines for filing additional contentions beyond the one that qualified it as an intervenor but also with respect to the additional time period provided by the Board for filing contentions based on new information appearing in the FES, the Staff believes, absent a compelling showing by SEA in its favor on the other three factors, that factors ii and iv should be accorded little

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<sup>3/</sup> SEA Motion at 3. SEA admits that its motion is being filed after "the 10-day deadline." However, the Board in its Memorandum and Order dated June 24, 1980, established a deadline of 30 days after service of the FES for the filing of additional contentions based on new information in the FES. LBP-80-18, 11 NRC 906, 910-911. The FES was initially served by the NRC Staff on June 26, 1981. Because of claims of non-receipt by some parties, followup service was made by Counsel for the NRC Staff on July 14, 1981. Thus the SEA Motion was clearly filed more than 30 days after service of the FES.

weight. Moreover, SEA admits that its concerns have been considered by the Staff in that the comments on the Draft Environmental Statement by persons whose work is alleged by SEA to provide bases for its Proposed Contention 22 were addressed by the Staff in the FES, albeit not to SEA's satisfaction. Thus factors ii and iv weigh only slightly, if at all, in favor of the Board's entertaining SEA's late filed contention.

Factor iii

SEA has not specified how its participation may reasonably be expected to assist in developing a sound record on Proposed Contention 22. It merely alleges that "[t]he admission of this contention will assist in developing a sound record, given the importance of the issue and the alleged deficiencies in the Staff's treatment of it." SEA Motion at 3. Without more it is impossible to conclude that SEA will assist at all in the development of a sound record. Thus factor iii weighs against entertainment by the Board of SEA's late filed contention.

Factor v

As SEA recognizes, the admission of a new contention will broaden the issues and lengthen the proceeding. The issues sought to be raised are not covered by the subject matter of contentions remaining to be litigated. The hearing would be lengthened by at least the time necessary to take evidence on the new contention. Moreover, at this stage of the proceeding, approximately one month prior to the start of the evidentiary hearing, discovery and preparation of testimony on the new contention would interfere with preparations by the parties to litigate the contentions remaining of those already admitted. Obviously,

factor v weighs heavily against entertainment by the Board of SEA's late filed contention.

Thus it is clear that, rather than balancing in SEA's favor, the factors balance heavily against the Board's entertaining SEA's late filed contention.

C. Suitability of Contention for Litigation

Even if the factors set forth in Section 2.714(a)(1) were to have balanced in favor of entertainment by the Board of SEA's late filing, Proposed Contention 22 should not be admitted to the proceeding. Proposed Contention 22 as written is not suitable for litigation. An allegation that certain environmental impacts may be understated in the Final Environmental Statement, without more, even if true is not important to the outcome of the proceeding. Only if the net effect of the correction of such understatements, when considered in the cost-benefit balance, supports modifications in design or operation of the facility, or results in a conclusion that operating licenses should not be granted, would such understatements of impacts be important to the outcome of the proceeding. No such allegation is made in Proposed Contention 22 and no specific bases for such an allegation have been cited by SEA. Moreover, as bases for Proposed Contention 22 SEA merely refers generally to calculations done by Mr. Perkins, comments on the SSES by Mssrs. Perkins and Molesevich, a study cited by Mr. Molesevich, a review by Professor Sam Merrill and a listing of "new" information in the FES. Such generalized lists of so-called bases are lacking in reasonable specificity. The Board and the parties are left to speculate



as to the relationship, if any, between the so-called bases and the allegations that are made. Thus, Proposed Contention 22 is inadmissible on other grounds even if SEA's motion were to be entertained.<sup>4/</sup>

### III. CONCLUSION

For all of the reasons set forth above, the Staff believes that the SEA motion must be denied.

Respectfully submitted,



James M. Cutchin IV  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 10th day of September, 1981.

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<sup>4/</sup> Moreover, a Licensing Board has no duty to recast contentions to make them admissible. Commonwealth Edison Company (Zion Station, Units 1 and 2) ALAB-226, 8 AEC 381, 406 (1974). The task of drafting an admissible contention is the responsibility of SEA alone.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF ANSWER TO SEA MOTION FOR ALLOWANCE OF NEW CONTENTION", dated September 10, 1981, in the above-captioned proceeding have been served on the following by deposit in the United States mail, or as indicated by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system this 10th day of September, 1981

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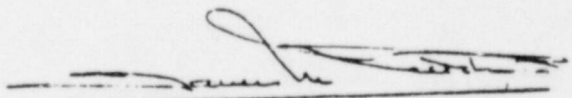
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