

**United Middle District Court  
Harrisburg Divisional Office  
Ronald Reagan Federal Bldg.  
228 Walnut Street  
Harrisburg, PA 17108-9998**

**March 5, 2008**

**Eric Joseph Epstein, *Pro se* :  
4100 Hillsdale Road :  
Harrisburg, PA 17112, :  
Plaintiff :**

**Civil Action  
No:**

**v. :**

**Susquehanna River Basin :  
Commission, :  
1721 North Front Street :  
Harrisburg, PA 17102-2391 :  
& :  
PPL Susquehanna LLC, :  
Two North Ninth Street :  
Allentown, PA 18101-1179, :  
Defendants :**

# Complaint

## I. Introduction and Nature of the Action

This is a civil action seeking an injunction and immediate stay of all activities related to PPL Susquehanna's implementation of a license extension and power uprates for the Susquehanna Steam Electric Station and related relief arising from the Susquehanna Basin's Commission's denial of Eric Joseph Epstein's Re: Administrative Appeal of PPL Susquehanna, LLC Docket Approval, September 12, 2007, Docket No. 19950301-1, Request for Stay and Related Matters, Notice of Hearing on December 5, 2007 at the Commission Meeting held on the campus of Franklin & Marshall College in Lancaster, Pennsylvania.

Eric Joseph Epstein ("Plaintiff," "Epstein," or "Mr. Epstein"), argued before the Susquehanna River Basin Commission ("SRBC"), i.e., ("Eric Joseph Epstein Petition Opposition to PPL Susquehanna's, LLC Application for Surface Water Withdrawal Request to Modify Application 19950301-EPU-0572 with the Susquehanna River Basin Commission," August 1, 2007) that PPL Susquehanna LLC's ("PPL" or "the Company" or "the Applicant") request and the Company's "Proposed Amendment Requests for the Susquehanna Steam Electric Station's 1 & 2 Would Increase Thermal Power to 3,952 Mega-Watts Which Is 20% Above the Original Rated Thermal Power (RTP) 3,293 MWt, And Approximately 13% Above the Current RTP of 3,489 MWt," Docket Nos. 50-387 PLA-6110 and 50-388, U.S. Nuclear Regulatory Commission) are defective on their face.

The Plaintiff's Complaint does **not** oppose the uprate or relicensing of the Susquehanna Steam Electric Station ("SSES"). Rather, the Plaintiff is asking the United States Middle District Court ("the Court") to issue an injunction staying all activities related to PPL Susquehanna's implementation of a power uprate, and license extension and the Company's ability to withdraw more water from the Susquehanna River until PPL has addressed unresolved water use, water safety, and interagency issues.

PPL applied and received approval from the Nuclear Regulatory Commission for permission to uprate and run the Susquehanna Steam Electric Station until 2043 [Unit-1] and 2045 [Unit-2] over the Plaintiff's objections.

The Plaintiff began raising interagency issues, with the SRBC's knowledge, dating back to a hearing convened by the Nuclear Regulatory Commission on November 15, 2006. Berwick, Pennsylvania. Mr. Epstein identified the legitimate and peculiar interests of the Susquehanna River Basin Commission, and introduced representatives from the NRC's-NRR, Division of License Renewal to members of the SRBC in attendance. The Chief of the NRC's Environmental Branch acknowledged to the Plaintiff that she was unaware of the SRBC's charge. (Epstein's Administrative Appeal, October 12, 2007, p. 7)

The Plaintiff simply seeks to cure "irreparable harms" caused by an incomplete public record, and the adverse precedent set by not resolving environmental and technical omissions and regulatory gaps identified by Mr. Epstein. Certainly all parties can agree that unintentionally destabilizing a sensitive and important aquatic asset is not in the public interest, and all sensible and proactive measures should be deployed to mitigate against this scenario. The "merits" of this Complaint are immeasurable, and present no hardship to PPL Susquehanna given the timing of their filings. PPL Susquehanna's current licenses do not expire until July 17, 2022 and March 23, 2024. There is ample opportunity to address all problems and challenges associated with operating a nuclear power plant for 60 years.

PPL's rush to relicense and uprate the SSES coincides with the lifting of the generation rate caps. In Pennsylvania on December 31, 2008. The prices PPL customers pay for power are capped until the start of 2010. After that, customers will pay open-market rates. Monthly bills are on track to jump by 34.5 percent for the average residential customer.

PPL did not apply or receive necessary approvals from the SRBC relating to an 1.4% uprate (increase in capacity) in 2001, yet the Company applied to extend the license of the nuclear plant for an additional 20 years, and expand the nuclear plant's capacity by 13% and received approval from both the NRC and the SRBC. The SRBC's Executive Director Paul O. Swartz announced the Commission's intent to fine PPL Susquehanna \$500,000 for water use violations.

The project sponsor has offered a settlement by agreement pursuant to Commission Regulation §808.18, in the amount of \$500,000, for its alleged noncompliance with Commission regulations, and is hereby accepted...

The Plaintiff's filings at the Susquehanna River Basin Commission and Nuclear Regulatory Commission relating to the relicensing and uprate of the Susquehanna Steam Electric Station have sought to refine and define, clarify and coordinate, and address issues that have fallen through the regulatory gaps. The SRBC and the NRC ignored most of the environmental and technical issues relating to water use, water chemistry and public health and safety raised by Mr. Epstein, and both agencies discounted their merit as being "outside the scope" of the relicensing and uprate proceedings.

Beginning on June 5, 2007, PPL and NRC filed Responses in opposition to Mr. Epstein's Contentions at the Nuclear Regulatory Commission. NRC staff alleged that Mr. Epstein's contention (T-1) is "outside of the scope" and "not material" to this proceeding, and that there is not enough information to establish a "genuine dispute." (U.S. NRC Atomic Safety & Licensing Board Panel, Memorandum & Order, In the Matter of the PPL Susquehanna LLC, (Susquehanna Steam Electric Station, Units 1 and 2), Docket Nos. 50-387 and 50-388-OLA, ASLBP No. 07854-01-BD01, July 27, 2007: Judge G. Paul Bollwerk, II, Memorandum and Order. III. Conclusion; Refer to NRC Staff, p. 8)

The NRC staff and PPL viewed the issues raised by the Plaintiff as outside the scope of the NRC's uprate and relicensing proceeding. Please refer to the "NRC Staff's Brief in Opposition to Mr. Epstein's Appeal of LBP--07-10" (August 16, 2007), and "PPL Susquehanna's Brief in Opposition to Appeal of Eric Joseph Epstein." (August 16, 2007)

The NRC ruled on March 22, 2007, that the Plaintiff's Contention 2, ("Failure to Address Water Use Issues") was dismissed and bounced to the "pending uprate application" and "as staff pointed out there will be an opportunity for a hearing on this, for any petitioner who files a properly supported request for hearing and petition to intervene. "Docket Nos. 50-387 and 50-388-OLA, ASLBP No. 07854-01-BD01, March 22, 2007: Memorandum and Order, p. 49.)

No hearing was convened, and the issues the Plaintiff raised fell through the regulatory cracks. As evidenced in the Denial of Mr. Epstein's "Administrative Appeal of PPL Susquehanna, LLC Docket Approval, September 12, 2007, Docket No. 19950301-1, Request for Stay and Related Matters, Notice of Hearing." The SRBC stated, "other agencies are dealing with many of the issues raised by Mr. Epstein that are outside the authority of the SRBC." (Minutes of the Susquehanna River Basin Commission, December 5, 2007, p.6)

However, the Commission never identified the issues or agencies that were outside of the SRBC's purview, and allowed the Plaintiff's requests to legally atrophy. The water use, water safety and interagency issues Mr. Epstein raised throughout the Susquehanna River Basin Commission's adjudicatory process (and at the NRC), were **not raised or addressed** in "PPL's Application For Surface Water Withdrawal Request to Modify Application 19950301-EPU-0572."

The Susquehanna River Basin Commission should not allow an Applicant to play a regulatory shell game. The Court should compel the Susquehanna River Basin Commission to enforce the letter and spirit of its mandated charge, and publicly investigate the outstanding issues and contentions raised in “Eric Joseph Epstein’s Petition in Opposition to PPL Susquehanna, LLC Application for Surface Water Withdrawal Request to Modify Application 19950301-EPU-0572” submitted on August 1, 2007.

In general, the purposes of this compact are to promote interstate comity; to remove causes of possible controversy; to make secure and protect developments within the states; to encourage and provide for the planning; conservation, utilization, development, management, and control of the water resources of the basin; to provide for cooperative and coordinated planning and action by the signatory parties with respect to water resources; and to apply the principle of equal and uniform treatment to all users of water and of water related facilities without regard to political boundaries (Susquehanna River Basin Compact, 1.3—Purpose and Findings)

The hearing process employed by that the Susquehanna River Basin Commission remains adrift, and concealed in a bureaucratic maze (Federal Register/Vol.71, No. 250/Friday, December 29, 2006/Rules and Regulations, “Susquehanna River Basin Commission: 18 CFR Parts 803, 804, 805 et al. Review and Approval of Projects; Special Regulations and Standards; Hearings and Enforcement Actions; Final Rule.”)

The Plaintiff respectfully requests the Court to issue an injunction and immediately stay the relicensing and uprate of the Susquehanna Electric Steam Station Unit until the record upon which the Susquehanna River Basin Commission’s approval of PPL Susquehanna, LLC is complete. It is imperative that “other agencies,” or at least **a state or federal agency** review water use, water safety, and interagency issues identified by Mr. Epstein.

## **II. Timing**

1) Pursuant to Article 3.10(6) of the Susquehanna River Basin Compact and 18 CFR 808.2(i), the Plaintiff has ninety (90) days from the date of the Susquehanna River Basin Commission's determination on the Plaintiff's request for an Administrative Review, (which occurred on December 5, 2007), to file an appeal in the United States Middle District Court, Harrisburg Divisional Office

## **III. Jurisdiction**

2) The Plaintiff's Complaint falls within 28 USC 1331 under the Susquehanna River Basin Commission, ARTICLE 11—*Regulation of Withdrawal and Diversions: Protected Areas, and Emergencies* 11.6—Judicial Review. "The determinations and delineations of the commission pursuant to Section 1 1.2 and the granting, modification or denial of permits pursuant to Section 11.3, 1 1.4, and 1 1.5 shall be subject to judicial review in any court of competent jurisdiction."

## **IV. Party**

3) Eric Joseph Epstein is a resident of 4100 Hillsdale Road, Harrisburg, Pennsylvania, 17112.

4) The Plaintiff has established standing at the Susquehanna River Basin Commission.

5) Mr. Epstein has established standing before the Atomic Safety Licensing Board at the Nuclear Regulatory Commission.

6) The Plaintiff is a residential customer of PPL.

7) Mr. Epstein is also a shareholder in good standing with PPL Corporation.

## **V. Statement of Facts**

8) On July 27, 2007, Eric Joseph Epstein officially announced his intent to file a Petition in Opposition to PPL Susquehanna's, LLC Application for Surface Water Withdrawal Request to Modify Application 19950301-EPU-0572 with the Susquehanna River Basin Commission.

9) On August 1, 2007, Eric Joseph Epstein formally filed his Petition in Opposition to PPL Susquehanna's, LLC Application for Surface Water Withdrawal Request to Modify Application 19950301-EPU-0572 at the Susquehanna River Basin Commission, requested a Public Input Hearing under Subpart A - Conduct of Hearings § 808.1, and Proposed Remedies.

10) On August 15, 2007, Paul O. Swartz, Executive Director, of Susquehanna River Basin Commission filed a Response and Notice. However, the SRBC did not address numerous issues and contentions raised by Mr. Epstein and indicated that the "application will be reviewed and acted upon by the Commission at a public hearing to be convened" in Binghamton, New York, on September 12, 2007. (Susquehanna River Basin Commission, Response and Notice, "Re: Petition in Opposition to PPL Susquehanna's, LLC Application for Surface Water Withdrawal Request to Modify Application 19950301-EPU-0572 at the Susquehanna River Basin Commission and Formal Request for A Public Input Hearing Under Subpart A - Conduct of Hearings § 808.1, p. 1 August 15, 2007.") Mr. Epstein received the correspondence on August 16, 2007.

11) On August 31, 2007, a copy of "Eric Joseph Epstein's Notice of Appearance, Data Requests, and Motion to Postpone Final Determination PPL Susquehanna, LLC's Application for Surface Water Withdrawal Request to Modify Application 19950301-EPU-0572 until the Susquehanna River Basin Commission meeting Scheduled for December 5, 2007 in Lancaster, Pennsylvania was served.



12) On September 5, 2007, Paul O. Swartz, Executive Director of Susquehanna River Basin Commission, responded to Eric Joseph Epstein's Notice of Appearance, Data Requests, and Motion to Postpone Final Determination PPL Susquehanna, LLC's Application for Surface Water Withdrawal Request to Modify Application 19950301-EPU-0572 until the Susquehanna River Basin Commission meeting Scheduled for December 5, 2007 in Lancaster, Pennsylvania.

To provide you with adequate notice prior to your upcoming appearance before the Commission, we are attaching the following information: 1) a copy of the draft docket which has been prepared by staff for consideration by the Commission; and 2) a copy of a proposed settlement agreement which has been offered by PPL Susquehanna, LLC to resolve the 2001 MUR uprate compliance matter. These documents, along with all the filings made by you, have been forwarded to our commissioners for their review.

13) On September 10, 2007, Eric Joseph Epstein filed his "Testimony and Reply to the Susquehanna River Basin Commission's Response of September 5, 2007 Re: Eric Joseph Epstein's Notice of Appearance, Data Requests, and Motion to Postpone Final Determination of PPL Susquehanna, LLC's Application for Surface Water Withdrawal Request to Modify Application 19950301-EPU-0572" until the Susquehanna River Basin Commission Meeting Scheduled for December 5, 2007 in Lancaster, Pennsylvania.

14) Mr. Epstein received the revised draft docket 48 hours before the SRBC acted on PPL's Surface Water Withdrawal Application."

15) Mr. Epstein's Reply stated, "The Commission's responses were helpful and informative, but also created numerous questions that can not be resolved in 48 hours or even one week prior to a final decision."

16) On September 20, 2007, Mr. Epstein contacted Mr. Swartz and Amended his decision to Appeal the SRBC's approval of PPL's Application.

17) On September 12, 2007, the SRBC convened a meeting in Binghamton, New York and approved PPL's Application.

18) Mr. Epstein received a copy of the SRBC's decision on September 21, 2007, (which was postmarked September 20, 2007.)

19) On September 27, 2007, according to Mr. Richard A Cairo, Esquire, the Susquehanna River Basin Commission, sent the Settlement between PPL Susquehanna LLC and the SRBC to Mr. Epstein. The same day, September 27, 2007, Mr. Cairo sent Mr. Epstein an electronic communication stating, "We will be responding shortly to your inquiry to Paul Swartz regarding the Commission's action of September 12, 2007 on the application of PPL Susquehanna, LLC."

20) On October 1, 2007, the SRBC's decision was posted in the Federal Register, and the SRBC sent Mr. Epstein a copy.

21) A correspondence to Mr. Epstein from Richard A Cairo, Esquire, dated and postmarked on October 2, 2007, stated that the SRBC's Approval was sent to Mr. Epstein on September 19, 2007.

22) On October 10, 2007, Mr. Epstein received a transcript from the Susquehanna River Basin Commission's meeting convened on September 12, 2007 meeting. As of October 12, 2007, Mr. Epstein's had a limited opportunity to review the transcript he received in electronic format on October 10, 2007. Mr. Epstein reserved the right to Amend his Appeal after a more through review of the official transcript.

23) Mr. Epstein acknowledged the SRBC's responses and clarifications provided by Mr. Swartz. Some of the issues identified by Mr. Epstein in his previous filings were addressed, while other items and contentions relating to water use, water safety, and interagency regulatory gaps remain open. In addition, portions of Mr. Epstein's Motion were not addressed, and Mr. Epstein's contentions were not publicly discussed until September 12, 2007.

24) October 12, 2007, Eric Joseph Epstein's filed an Administrative Appeal of the Susquehanna River Basin Commission's Approval of the Final Determination of PPL Susquehanna, LLC's Application for Surface Water Withdrawal Request to Modify Application 19950301-EPU-0572 Pursuant to 18 CFR §808.2.

25) On October 25, 2007, Paul O. Swartz, Executive Director of the SRBC, responded to Mr. Epstein's "Administrative Appeal of PPL Susquehanna, LLC Docket Approval, September 12, 2007, Docket No. 19950301-1, Request for Stay and Related Matters, Notice of Hearing" dated October 12, 2007.

26) On November 13, 2007, Mr. Epstein filed an "Amended Administrative Appeal and Affidavit of the SRBC's Final Determination of PPL Susquehanna's, LLC Application for Surface Water Withdrawal Modification.

27) On November 15, 2007, the SRBC acknowledged receipt of the Amended Appeal.

28) On November 21, 2007, the "Response of PPL Susquehanna LLC's to Eric Joseph Epstein's Amended Administrative Appeal" was filed.

29) On December 5, 2007, the Susquehanna River Basin's Commission's denied "Eric Joseph Epstein's Re: Administrative Appeal of PPL Susquehanna, LLC Docket Approval, September 12, 2007, Docket No. 19950301-1, Request for Stay and Related Matters, Notice of Hearing."

30) On December 21, 2007, Mr. Epstein notified all parties, "I understand that Notice of the SRBC's action has been transmitted to the Federal Register, and the Commission's member state registries for publication. This event will likely occur during the holiday season, and I wanted to take the time to inform you of my position. A copy of the December 5, 2007 public hearing transcript is also anticipated in the near term... Please note that I plan to appeal the SRBC's decision of December 5, 2007, based on the three month clock.

31) The transcript from the December 5, 2007, Susquehanna River Basin's Commission meeting was disseminated to Mr. Epstein on January 24, 2008.

32) On January 24, 2008, Mr. Epstein communicated to Samuel Collins, Director, Region I, US NRC, and Richard Barkley, Technical Assistant, US NRC, Region I: "In as much as the NRC is unable to authorize the license extension and uprate at the SSES until this litigation is resolved, I wanted to let you know that I apprised a member of the SRBC on January 22, 2008, that this Appeal will commence later in the filing period. I similar[ly] made an informal contact with a representative from PPL that same day."

33) On January 30, 2008, the NRC approved an increase the generating capacity of Susquehanna Units 1 and 2.

The NRC staff determined that PPL could safely increase the reactors' output primarily by upgrading certain plant systems and components. NRC staff also reviewed PPL's evaluations showing the plant's design can handle the increased power level.

The NRC's safety evaluation of the plant's proposed power uprate focused on several areas, such as the nuclear steam supply systems, instrumentation and control systems, electrical systems, accident evaluations, radiological consequences, operations and training, testing, and technical specification changes. For added confidence in the analysis, the NRC staff also conducted independent calculations and evaluations of selected areas. ( NRC Press Release, January 30, 2008; No. 08-019)

34) On Wednesday, January 29, Richard Barkley called Mr. Epstein at 8:03 pm to apprise Mr. Epstein of the NRC's decision to grant approval of relicensing and uprate at the SSES, and asked if legal counsel had contacted Mr. Epstein said no and requested a legal opinion. There were no follow up contacts on this matter despite prior commitment from Region I.

35) On Thursday, January 31, 2008, Mr. Epstein publicly reiterated his opposition to the uprate and relicensing of the SSES:

The company has cleared a huge hurdle, but the case is still being litigated,” said Eric Epstein, who heads the Harrisburg-based nuclear watchdog organization Three Mile Island Alert....

The NRC, he said, failed to address various technical issues regarding water use, and the SRBC is nevertheless following the NRC’s lead simply because it involves nuclear issues.(*Times Leader*, January 31, 2008)

36) On February 8, 2008, Mr. Epstein received a copy of the Minutes of the December 5, 2007 Susquehanna River Basin Commission meeting.

37) Mr. Epstein also apprised the Nuclear Regulatory Commission of his intent to Appeal and received conformations on February 8 2008, at 8:11 AM, February 22, 2008 at 2:21 pm, and again on February 26, 2008, at 10:54 AM from the U.S. NRC’s Rulemakings and Adjudications Staff, Office of the Secretary.

### **Request for Stay**

38) On October 12, 2007, Mr. Epstein filed an Amended Administrative Appeal of the Susquehanna River Basin Commission’s Approval of the Final Determination of PPL Susquehanna, LLC’s Application for Surface Water Withdrawal Request to Modify Application 19950301-EPU-0572, Pursuant to 18 CFR §808.2.”

39) Mr. Epstein notes that Mr. Swartz cited his own administrative authority, limited consultation with two members of the Commission, and a generic reference to 18 CFR §808.2(d)(2) as justification for denial of the Stay. Neither the Susquehanna River Basin Commission or Mr. Swartz provided case law, precedent or minutes of the deliberations between himself and the Commissioners to justify the denial of Mr. Epstein’s request for a Stay.

Your request failed to include affidavits setting forth facts upon which issuance of the stay would depend and the citations of applicable legal authority, as required by 18 CFR §808.2(d)(2). I find nothing in your request or otherwise to support a determination that you would be irreparably harmed, pending final disposition of your appeal, as required by 18 CFR §808.2(d)(3)(i). Your statement that irreparable harm would be caused “by an incomplete public record” fails to meet that standard.”

40) Mr. Epstein cured the factual omission of a required affidavit under 18 CFR §808.2(d)(2) by filing the document in his Amended Administrative Appeal on October 12, 2007, pp. 30-35.

41) Without offering case law, precedent or specific examples of deficiencies, or concrete examples of “duplication” in Mr. Epstein’s Appeal, Mr. Swartz rendered the issue moot by stating, “I find nothing in your request or otherwise to support a determination that you would be irreparably harmed, pending final disposition of your appeal, as required by 18 CFR §808.2(d)(3)(i).”

42) Ironically, the SRBC did not provide the same “consideration” it requests from Appellants:

Also, I find nothing in your request or otherwise to support a determination of the likelihood of injury to the public pending final disposition of the appeal, as required by 18 CFR §808.2(d)(3)(iii). Your assertion that a stay “will not materially or adversely affect PPL” is not relevant, even if true, because it is not the appropriate standard upon which to grant a request.

### **First Cause of Action:**

#### **Regulatory Atrophy: Lack of Interagency Coordination**

43) Mr. Swartz summarily ignored and dismissed Epstein’s arguments in the “Administrative Appeal,” pp. 8-30 and the “Amended Administrative Appeal.” pp. 10-29 without providing any rationale of reasoning beyond a subjective interpretation of 18 CFR §808.2(d)(3)(iii).

44) Mr. Swartz claimed inherent and exclusive authority to ignore water use issues based on unchallenged and assumed provinces articulated by the NRC and PPL Susquehanna.

45) The SRBC presumed that they same agency (NRC) and Company (PPL) that failed to coordinate and consult with the SRBC on a 2001 uprate is the same agency that provides regulatory omnipresence in all things “radioactive” and “nuclear.”

46) The SRBC failed to coordinate or consult with Public Utility Commission despite being located one mile from its headquarters.

47) The traditional implications of the Pennsylvania Public Utility Commission (“Pa PUC”) policy and regulations relating to “withdraw and treatment” of water, i.e., referred to as “cost of water” under the Public Utility Code, Title 66, have to be factored into this application absent a PUC proceeding. “Reasonableness of cost” and permission to charge a rate to any customer class (based on the provision of “reasonable service”) has been absented from the SRBC and NRC applications. PPL Susquehanna requires permission to withdraw water, but it also uses public water as a key component in a profit making enterprise. (PA DEP regulation of public water supplies falls under Chapter 109 of the Pennsylvania Code.)

48) According to PPL’s 10-K filed with the Security and Exchange Commission, “PPL Energy Plus markets or brokers the electricity produced by PPL Generation subsidiaries, along with purchased power, natural gas and oil, in competitive wholesale and deregulated retail markets in order to take advantage of opportunities in the competitive energy marketplace.”

49) “PPL Energy Plus has a PUC license to act as an EGS [Electric Generation Supplier] in Pennsylvania. This license permits PPL Energy Plus to offer retail electric supply to customers throughout Pennsylvania.” And, “*PPL Susquehanna* - PPL Susquehanna, LLC, the nuclear generating subsidiary of PPL Generation.” (UNITED STATES SECURITIES AND EXCHANGE COMMISSION Washington, D.C. 20549, Form 10-K and Form 10-K405)

50) Contrary to Mr. Swartz's view, the Code of Federal Regulation does not grant exclusive rulemaking authority to the SRBC in isolation. The power to regulate is shared between the SRBC and other affected state and federal agencies despite PPL's bald and unsubstantiated claim of "duplicate jurisdiction." ( PPL Response, October 19, 2007, pp. 8-9, §24, 25, & 26)

51) Repeated omissions based on statutory presumptions are not the basis for sound regulation; or, prudent public policy.

52) SRBC statute regulating portions of the Susquehanna River are not "exclusive" or "inherent. Moreover, the regulations are fluid and evolving and have not been tested in federal court. (Proposed Rules [Federal Register: October 1, 2007 (Volume 72, Number 189) [Proposed Rules][Page 55711-55712] From the Federal Register Online via GPO Access [wais.access.gpo.gov] [DOCID:fro10c07-19] PART 808--HEARINGS AND ENFORCEMENT ACTIONS Dated: September 21, 2007. Paul O. Swartz, Executive Director)

53) The fragmentation of "regulatory oversight" or the segmentation of a large or cumulative project into smaller components in order to avoid designating the project a major federal action has been held to be unlawful.

*City of Rochester v. United States Postal Serv.*, 541 F.2d 967, 972 (2d Cir. 1976) ("To permit noncomprehensive consideration of a project divisible into smaller parts, each of which taken alone does not have a significant impact but which taken as a whole has cumulative significant impact, would provide a clear loophole to NEPA."); *Scientists' Inst. for Pub. Information, Inc. v. AEC*, 156 U.S. App. D.C. 395, 481 F.2d 1079, 1086 n.29, 1086-89 (D.C.Cir. 1973) (statement required for overall project where individual actions are related logically or geographically). See generally W. Rodgers, *Environmental Law* §§ 7.7, 7.9 (1977) (discussing problems arising from scope and timing of environmental impact statements). The Supreme Court, however, has made clear that there is no affirmative obligation to regionalize a proposal under NEPA; a project of genuinely small scope of course would not be an impermissible segmentation. See *Kleppe v. Sierra Club*, 427 U.S. 390, 399-402, 96 S. Ct. 2718, 2725-2726, 49 L. Ed. 2d 576 (1976) (no obligation to prepare impact statement as to regional effects where no regional action proposed).



54) On June 16, 2007 the DEP advertised that the Susquehanna River Basin Commission was proposing comprehensive revisions to its regulations governing water withdrawal and consumptive use projects which are open for public comment through September 1, 2007 - or eleven days prior to the public hearing in Binghamton. The proposed changes include, but are not limited to:

- Require sponsors of consumptive use projects involving ground or surface water withdrawals to request approvals for both the consumptive use and the withdrawal. (Consumptive use is when water is not returned to the Susquehanna basin, including through evaporation, out-of-basin diversions, use in products, etc.)
- Require sponsors of projects withdrawing 100,000 gallons per day or more from any combination of ground and surface water to request approval of the withdrawals.
- End the recognition of “pre-compact” or “grandfathered” consumptive uses or withdrawals upon a change of ownership, and no longer allow the transfer of project approvals when a change of ownership occurs.
- Reduce the duration of consumptive use and withdrawal approvals from 25 years to 15.
- Incorporate standards for interbasin diversions, which are currently effective as policy.
- Establish an administrative appeal procedure for parties aggrieved by an SRBC decision.

55) Mr. Epstein has raised these very issues throughout his briefs only to have them rejected by the SRBC: “Even more baffling are the regulatory moats that federal and state agencies erect to protect rigid and exclusive zones of interest that have been established without a collaborative framework. This type of regulatory behavior gives rise to undesired corporate behaviors such as “grandfathering” and “back fits,” e.g., unapproved “uprates,” passive deterioration of monitoring equipment, “immature” and inadequate scale model testing,” time delays causing avoidable leaks, and waivers for monitoring wells.” (Epstein Appeal, p. 12 and Epstein, Amended Appeal p. 14)

56) Mr. Swartz stated in the proposed rule change, “As the demand for water continues to increase for domestic supplies and economic development, the Commission’s goal is to manage and support that growth, while we protect the environment and existing water users at the same time. We believe these proposed regulatory changes will enhance the Commission’s ability to do just that.” These proposed changes, Mr. Swartz’s statements, and the “absence of [an] administrative appeal procedure,” underline the need for a Stay.

### **Second Cause of Action: Issue Suppression**

57) Four of the issues Mr. Epstein raised at the SRBC remain unaddressed (Epstein Appeal, pp. 8 and 15; (c) (d) (e) (f), (g)), and were deemed “outside the scope” of the NRC’s relicensing and uprate hearing process. An other issue remains on hold based on EPA rulemaking challenges. And in the case of the PUC - no progress has been made. Mr. Epstein continues to seek measured and coordinated oversight of the environmental and aquatic impacts of SSES’s relicensing and uprate.

58) The SRBC did not require or investigate site-specific aquatic challenges or relied on outdated data. The Public Hearing Transcript failed to reflect that by the date of September 12, 2007 meeting, neither the SRBC or DEP had reviewed “PPL Susquehanna, LLC, Susquehanna Steam Electric Station, Units 1 and 2; Draft Environmental Assessment and Finding of No Significant Impact Related to the Proposed License Amendment To Increase the Maximum Reactor Power Level.”

59) This document was released **after** the NRC’s rejection of Mr. Epstein’s Appeal (Federal Register: August 21, 2007 (Volume 72, Number 161, pp. 46670-46680), and was never examined by the SRBC prior to their denial of Mr. Epstein’s Filings.

60) Neither PPL, the EPA, the PUC or the NRC addressed health, safety and structural challenges caused by micro fouling versus macro foiling, micro biologically influenced corrosion, biofilm's disease causing bacteria such as Legionella and listeria, the difficulty in eliminating established biofilms, oxidizing versus non-oxidizing biocides, chlorine versus bleach, alkaline versus non-alkaline environments, possible decomposition into carcinogens, and the eastward migration of Asiatic clams, zebra mussels and the anticipated arrival quagga mussels.

61) The SRBC, by its own admission, has experts available to conduct the reviews requested by the Plaintiff in § 55. "Our team of qualified aquatic ecologists, biologists, water quality specialists and environmental technicians are trained in the latest monitoring techniques and work to generate and provide the highest quality data." ("Water Quality Monitoring, A Vital Link to Restoration," Paul O. Swartz, Executive Director, Susquehanna River Basin Commission, December 24, 2007)

62) PPL's introduction of a "new procedure" to analyze corroded and fouled intake pipes does not address the root cause of the biofouling or technical challenges afflicting the River intake flow meters. (Letter to Jerome S. Fields, PPL Susquehanna, from the Paula B. Ballaron, Director, SRBC, Regulatory Program, September 19, 2007, p. 3)

### **Third Cause of Action: Lack of Factual Support**

63) Although PPL was unable to provide well logs for TW-1 and TW-2, (SRBC & PPL Settlement, p. 3) the SRBC “grandfathered” TW-1 and TW-2. These wells are used to “supply sanitary water for the facility, to produce demineralized water, to maintain pumps seals, and for miscellaneous uses...” (PPL Susquehanna, LLC, Susquehanna Steam Electric Station, Units 1 and 2; Draft Environmental Assessment and Finding of No Significant Impact Related to the Proposed License Amendment To Increase the Maximum Reactor Power Level, “Liquid Radioactive Waste and Offsite Doses [Federal Register: August 21, 2007 (Volume 72, Number 161)] [Notices] [Page 46670-46680]), and may (or may **not**) be included in the Company’s tritium monitoring program according to recent documents submitted to the NRC which indicate “quarterly sampling of four wells (Letter to the NRC, “Susquehanna Steam Electric Station Groundwater Protection - Data Collection Questionnaire,” PLA 6086, Britt T. McKinney, Sr. Vice President & Chief Nuclear Officer, July 20, 2006.)

### **Fourth Cause of Action: Legal Syllogism**

64) Also absent from the SRBC’s logic is any discernible formula or rationale establishing and assessing “the likelihood of injury to the public or other parties.” Does the SRBC operate in adjudicatory vacuum where case law, precedent, citations do not apply? Mr. Swartz provided “nothing” other than a “divine right” dismissal without a substantive argument.

65) The same Company which is requesting a surface water withdrawal “modification” (including a voluntary commitment to check the River Intake Structure) is the same Company that was cavalier in addressing water-leakage and safety-related challenges at the SSES. This is a disturbing concession given the tritium leaks that have occurred at numerous nuclear plants across the nation, and PPL’s identification of “inadvertent releases of radioactive liquids” in December 1983, April, 1988, July, 1991, and February, 1995.

## **V. Prayer for Relief.**

66) The SRBC and PPL must confront unresolved water use, water safety, and interagency issues, even if they fall outside the conventional nuclear tool box. Power generation, plant cooling, public safety are inherently connected. There is no separate imaginary fence between generation and safety.

67) Mr. Epstein has demonstrated that aging equipment coupled with water shortages, water chemistry or invasive aquatic species could create safety challenges at the Susquehanna Steam Electric Station over the life of the license extension.

68) The public should be inoculated against artificial regulatory moats imposed by the SRBC, subjective safety definitions created by PPL, and “cut and paste” oversight produced by the NRC:

Essentially, DLR [the Division of Licensing Renewal] lacks a complete report quality assurance process to ensure documentation of the staff’s aging management program review methodology and substantive support for staff conclusions.

(NRC, OIG-07-A-15, September, 2007, p.11.)

WHEREFORE, in light of the foregoing, the Plaintiff respectfully requests the following:

(a) an injunction immediately staying PPL's implementation of the power uprates and relicensing of the Susquehanna Steam Electric Station;

(b) an order compelling the SRBC to physically inspect the intake pipes at the Susquehanna Electric Steam Station;

(c) an order compelling the SRBC to review PPL's plan to defeat health, safety and structural challenges caused by: micro fouling, macro foiling, micro biologically influenced corrosion, biofilm disease causing bacteria such as Legionella and listeria, and the eastward migration of Asiatic clams, zebra mussels and the anticipated arrival quagga mussels;

(d) an order compelling the SRBC to review PPL's plan and strategy in the event the proposed uprate creates competing water demands in "water budgeted" areas;

(e) an order compelling the SRBC to review PPL's plan and strategy for implementing EPA's 316 (a) and 316 (b) based on the impact to the Susquehanna River as a result of power uprates and 20 year license extension;

(f) an order compelling the Susquehanna River Basin Commission to execute a Memorandum of Understanding with the Nuclear Regulatory Commission relating to the conduct of "respective reviews in a cooperative, coordinated manner." ("Timing of SRBC Project Approvals Vis-à-Vis Signatory Approvals," Policy No. 9501, May 11, 1995, and § 806.7 Concurrent project review by member jurisdictions, Federal Register, December 29, 2006, p. 78583); and,

(g) such other relief the Court deems just and proper.

Respectfully submitted

Eric Joseph Epstein, *Pro se*

Plaintiff  
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Harrisburg, PA 17112,  
(717)-541-1101  
ericepstein@comcast.net

Enclosure

I hereby certify that on March 5, 2008 a copy of “Eric Joseph Epstein’s Federal Appeal of the Susquehanna River Basin Commission’s Denial of Eric Joseph Epstein’s Amended Administrative Appeal of the Susquehanna River Basin Commission’s Approval of the Final Determination of PPL Susquehanna, LLC’s Application for Surface Water Withdrawal Request to Modify Application 19950301-EPU-0572 Pursuant to 18 CFR §808.2” was sent via electronic mail and by the United States Postal Service to:

Richard A. Cairo, Esquire  
General Counsel  
Susquehanna River Basin Commission  
1721 North Front Street  
Harrisburg, PA 17102-2391

Paul E. Russell, Esquire  
PPL Electric Utilities Corporation  
Two North Ninth Street  
Allentown, PA 18101-1179

Office of the Secretary  
U.S. Nuclear Regulatory Commission  
16th Floor  
One White Flint North  
11555 Rockville Pike,  
Rockville, Maryland 20852  
Attn: Rulemaking and Adjudications Staff

Pennsylvania Public Utility Commission  
Attention: Law Bureau  
Bohdan R. Pankiw, Chief Counsel  
Robert F. Young Esquire  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

Secretary James McNulty  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120



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US NRC  
Office of the General Counsel  
Lawrence J. Chandler, Esquire  
Mail Stop  
Washington, DC 2055-0001

Office of the Secretary of the Commission  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
Attn: Rulemaking and Adjudications Staff

Administrative Judge  
Ann Marshall Young, Esq., Chairman  
Atomic Safety and Licensing Board  
Mail Stop T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
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