

6/29/79

June 29, 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)	)	

APPLICANTS' OBJECTIONS TO CERTAIN  
INTERROGATORIES AND REQUESTS FOR DOCUMENTS  
FROM INTERVENOR CITIZENS AGAINST NUCLEAR DANGERS

Intervenor Citizens Against Nuclear Dangers ("CAND") filed interrogatories and requests for documents directed to Applicants and the Commonwealth of Pennsylvania on May 22, 1979. Applicants herein submit their objections to certain interrogatories and requests for documents for the reasons stated below.\*

Interrogatory/Request 2 - Coal Plant Feasibility Study

CAND requests a copy of a feasibility study on an anthracite-fired plant prepared by Skelly & Loy.

Applicants object to this interrogatory because it appears to be directed toward material or information that is not related to any admitted contention in the proceeding. The Commission regulations clearly state that discovery "shall relate only to those matters in controversy which have been identified by the

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\*Applicants' answer to the remainder of CAND's discovery requests are provided in a separate document.

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Commission or the presiding officer in the prehearing order entered at the conclusion of that prehearing conference [provided for in 10 C.F.R. §2.751a]." 10 C.F.R. §2.740(b)(1). Thus, discovery is only permitted regarding the contentions that are admitted in the proceeding. Allied General Nuclear Services (Barnwell Fuel Receiving and Storage Station), LBP-77-13, 5 NRC 489 (1977). See also 10 C.F.R Part 2, App. A, §IV(a).

Because this discovery request is not relevant to contentions admitted in the proceeding, Applicants should not be required to respond.

Interrogatory/Request 3 - Alternate Energy Sources

In this discovery request, CAND asks for information about Applicants' experimentation with sources of electrical power generation other than atomic fission. This request is not relevant to any contention admitted in the proceeding, with the possible exception of Contention 4(d) related to solar energy. Applicants object to CAND's request for information on energy sources other than solar for the reasons set forth in objection to Interrogatory 2. Applicants will make available the information requested by this interrogatory to the extent that it relates to solar energy, as provided in Applicants' answer to CAND's interrogatories.

Interrogatories/Requests 5 and 6 - Financial Reports and Agreements

Interrogatory 5 requests financial reports from PP&L related to methods for raising capital to construct the Susquehanna facility. Interrogatory 6 requests information about "turnkey type agreements concerning Berwick between Applicants and any

vendor or contractor." No contention has been admitted to which these interrogatories appear to be relevant. Thus, Applicants object to the discovery requests for the reasons set forth in objection to Interrogatory 2.

Interrogatory/Request 8 - Insurance

In this interrogatory, CAND requests an "index" of all Applicants' insurance policies relating to the Susquehanna facility. This request is not relevant to any admitted contentions. Therefore, Applicants object to the request for the reasons set forth in objection to Interrogatory 2.

Interrogatory/Request 9 - Court Actions

In this interrogatory, CAND requests "Court Docket title pages" for all litigation related to the Susquehanna facility. Applicants are not certain what information is sought by CAND. To the extent that CAND desires a listing of cases, including captions and docket numbers, which have involved the Susquehanna facility, this information will be made available, as provided in Applicants' answers to CAND's interrogatories.

If, however, CAND seeks a listing of the docket entries for each law suit (i.e., a listing of all pleadings and rulings in each proceeding), Applicants do not have such information. Such information is presumably available from the Clerks' offices of the appropriate courts. NRC decisions do not require a party to perform research or compile data not readily known to it, especially if the data is equally available to the party requesting the information. See Boston Edison Company (Pilgrim

Nuclear Generating Station, Unit 2), LBP-75-30, 1 NRC 579, 584 (1975). Because Applicants will provide CAND with a listing of the court cases about which it seeks information, the docket entries will be as readily available to CAND as they are to the Applicants. Thus, Applicants object to any discovery request that exceeds the case listing which will be provided.

Interrogatory/Request 10 - Catalogue of documentation, correspondence, etc.

In this interrogatory, CAND requests a catalogue of all "documentation, correspondence, etc., on all aspects of the Berwick atomic power plant" sent to or received from a number of State or Federal agencies. Although CAND states in its cover letter that such a catalogue is probably available from computerized retrieval systems, Applicants have no such catalogue, computerized or uncomputerized. Applicants object to this interrogatory because it is overly broad and excessively burdensome. See 10 C.F.R. §2.740(b)(3). The Appendix to 10 C.F.R. Part 2 also indicates that the Commission will not permit the kind of unspecific discovery represented by this interrogatory.

In no event should the parties be permitted to use discovery procedures to conduct a "fishing expedition".  
10 C.F.R. Part 2, App. A, §IV(a)

The Appeal Board has cited with approval the following statement by a leading treatise on blanket discovery requests.

". . . Professor Moore has observed that '[a] blanket request for production of all 'books, documents, papers and records which

are relevant and relate to the subject matter of [an] examination . . . ' is obviously without merit.'"  
Illinois Power Company (Clinton Power Station, Nos. 1 and 2), ALAB-340, 4 NRC 27, 34 (1976).

Additionally, it has been recognized that where discovery requests would be oppressive or cause undue expense, such requests need not be answered. Boston Edison Company supra at 584. Finally, the interrogatory is not limited to the admitted contentions in this proceeding. It is therefore objectionable for the reasons set forth in objection to Interrogatory 2.

Interrogatory/Request 11 - Catalogue of Company Minutes, etc.

This interrogatory requests a catalogue of documents regarding any meetings, hearings, etc. between Applicants and public officials in any way relating to the Susquehanna plant. Applicants object to this contention for the reasons set forth in objection to Contention 10.

Interrogatory/Request 14 - Aquaculture

CAND requests in this interrogatory information regarding "an ongoing experimental project to study aquaculture in the warm-water outflow of power plants along the Susquehanna River." This request is not relevant to any admitted contention, and Applicants therefore object to the request for the reasons set forth in objection to Interrogatory 2.

Interrogatory/Request 15 - Uranium Mining

CAND requests certain information from Applicants regarding uranium mining. This discovery request appears to be related to Contention 3, which raises issues about the supply

and cost of uranium. As indicated in the Special Prehearing Conference Order, however, this contention is sponsored by ECNP and SEA, not CAND. See Special Prehearing Conference Order, LBP-79-6, March 6, 1979, at 16. For this reason, Applicants object to the interrogatory. Because CAND is not a sponsor of this contention, Applicants object to the interrogatory.

The Licensing Board in this proceeding has stated:

For purposes of the conduct of discovery and presentation of direct testimony, the Board contentions will be considered to be sponsored by the petitioners whose contentions or parts thereof are incorporated therein (as indicated by the discussion preceding each contention).

Id. at 5.

The Order limits the participation of intervenors on contentions which they did not sponsor to cross-examination and the submission of proposed findings and conclusions. Thus, an intervenor may not conduct discovery on contentions for which such intervenor is not a sponsor.

This limitation is in accordance with Appeal Board precedent cited by the Licensing Board in the Special Prehearing Conference Order. Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-244, 8 AEC 857 (1974); Id., ALAB-252, 8 AEC 1175 (1975); affirmed, CLI-75-1, 1 NRC 1 (1975).

In ALAB-244, the Appeal Board said:

To avoid possible misunderstanding, it should be stressed that we do not hold here that an intervenor may adduce affirmative evidence (or do anything else during the course of a hearing other than conduct cross-examination) with regard to an issue placed in contest by another party. On such an issue, in order to do more than engage in cross-examination of the witnesses

called by other parties, the intervenor must seek and obtain leave of the Licensing Board to amend his intervention petition to assert the issue on his own behalf. (emphasis supplied)  
Id., n. 17, at 869

The Appeal Board decision clearly indicates that a right of discovery on other parties' contentions has not been provided to intervenors.

Interrogatory/Request 17 - EPRI Programs and Transmission Line Studies

In the first part of this interrogatory, CAND requests information about Applicants' participation in Electric Power Research Institute (EPRI) programs. As stated, this question far exceeds the scope of admitted contentions or of matters regarding the Susquehanna facility. Additionally, the request may relate to contentions not sponsored by CAND. Thus, Applicants object to the first part of the question because it is overly broad, and for reasons set forth in objection to Interrogatories 2 and 15.

Applicants will make available the information requested in the second part of the interrogatory, as provided in Applicants' answers to CAND's interrogatories.

Interrogatory/Request 18 - Pressure Vessel Manufacture

This interrogatory seeks information about the manufacture of the reactor pressure vessels for the Susquehanna units. While there is an admitted contention on pressure vessel integrity (Contention 8), this is sponsored by ECNP, and not by CAND. Since CAND is not a sponsor of the contention on pressure vessel

integrity, Applicants object to the interrogatory for the same reasons as those set forth in objection to Interrogatory 15. Applicants also object to the contention on the grounds of burdensomeness in that it seeks an open-ended quantity of documents ("complete record of the manufacture of the atomic reactor pressure vessels") without any indication of relevance to the issues in this proceeding.

Summary

For the reasons stated above, Applicants object to Interrogatories 2, 5, 6, 8, 10, 11, 12, 14, 15 and 18, and to portions of Interrogatories 3, 9 and 17. Applicants will answer Interrogatories 1, 4, 7, 12, 13 and 16 in their answers to CAND's interrogatories. With regard to Interrogatory 3, Applicants will provide information about Applicants' experimentation with solar energy as a source of electrical power generation. With regard to Interrogatory 9, Applicants will provide a listing of the case captions and docket numbers referred to by CAND. On Interrogatory 17, Applicants will respond to CAND's request for summary reports on participation in research conducted by High Voltage Power Corporation on underground transmission.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By Jay E. Silberg  
Jay E. Silberg  
Alan R. Yuspeh  
1800 M Street, N. W.  
Washington, D. C. 20036  
(202) 331-4100

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