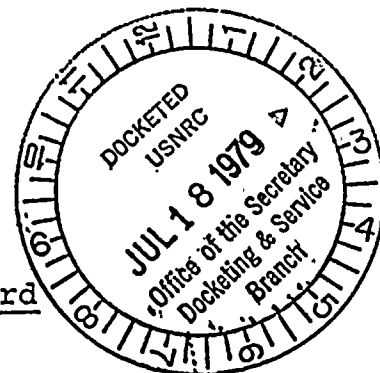


REGULATORY DOCKET FILE COPY

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

JULY 16, 1979

Before The Atomic Safety and Licensing Board



In the Matter of)
)
 PENNSYLVANIA POWER & LIGHT CO.)
 and)
 ALLEGHENY ELECTRIC COOPERATIVE, INC.)
)
 (Susquehanna Steam Electric Station,)
 Units 1 and 2))

Docket Nos. 50-387
50-388

APPLICANTS' ANSWER TO "ENVIRONMENTAL COALITION
 ON NUCLEAR POWER INTERVENORS' ANSWERS TO FIRST ROUND
 APPLICANT INTERROGATORIES" AND MOTION TO COMPEL DISCOVERY

On June 29, 1979, intervenor Environmental Coalition on Nuclear Power ("ECNP") filed a document entitled "Environmental Coalition on Nuclear Power Intervenors' Answers to First Round Applicant Interrogatories". Notwithstanding its title, this document did not set forth answers to "Applicants' First Set of Interrogatories to Intervenor Environmental Coalition on Nuclear Power" and "Applicants' First Request to Intervenor Environmental Coalition on Nuclear Power for the Production of Documents", issued on May 25, 1979. Instead, ECNP's "Answers" set forth a blanket objection to Applicants' discovery requests and moved the Licensing Board to issue a protective order which would relieve ECNP of any responsibility to respond to those requests. Applicants respectfully oppose ECNP's motion, and request that the Board issue an order compelling ECNP to respond to Applicants' May 25, 1979 discovery requests within ten (10) days from the date of issuance of such an Order by the Board.

LABORATORY BOOKLET BUREAU OF

In its filing, ECNP characterizes the Applicants' discovery requests as "extraordinarily burdensome, oppressive, and utterly pointless" and bases its request for a protective order on this characterization.

Applicants' discovery requests are not burdensome, nor were they intended to impose any undue burden on the intervenor. Rather, the interrogatories and request for documents were intended to seek out the basis for intervenors' contentions and information of which ECNP is aware relevant to those contentions. This information is necessary if Applicants are to address ECNP's concerns during the hearings. Additionally, the discovery is intended to determine whether ECNP is presently aware of any new information or any information that is inconsistent with that presently known to the Applicants. Without such knowledge, Applicants cannot know which issues need to be addressed at the evidentiary hearings. ECNP's answers should help define the areas of dispute between the parties and avoid the needless wasting of time litigating issues over which there is no dispute. ECNP's filing explicitly indicates that it has in its possession considerable information and documents. While ECNP states that "the majority of information in the possession of ECNP" consists of "information, documents, etc. . . . in the public domain," ENCP Answers, p. 2, that fact is of no use to Applicants unless Applicants are told what this information is and how it relates to the contentions.

Even if Applicants' discovery request could be considered burdensome, it would not justify ECNP's across-the-board refusal

to answer any of Applicants' interrogatories or document request. The Appeal Board has clearly ruled that such a blanket objection cannot stand.

From the outset, appellants steadfastly maintained that compliance with any portion of the discovery requests would entail an undue burden--a position adhered to even after the Licensing Board had substantially reduced the scope of the discovery. But, as should have been perfectly apparent, some of the documents could have been furnished, and some of the interrogatories answered, without the imposition of any significant burden. In this connection, it is obvious, of course, that compliance with a discovery request invariably will require some exertion of effort. But it is equally obvious that a claim of undue burden (even if advanced by a non-party to the litigation) must be founded on much more than that some expense or inconvenience may have to be incurred in responding to the discovery.

We think that it is the manifest obligation of persons against whom discovery is sought to refrain from asserting a blanket claim of burdensomeness which neither is nor can be substantiated. In the future, a licensing board confronted with an all-encompassing indiscriminate claim of burden will be justified in rejecting the claim in its entirety upon a finding of lack of merit with respect to at least one of the discovery items. Further, the board need not consider whether a response to a particular item would be burdensome unless, with respect to that item, specific reasons for the claim are assigned.

Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-122, 6 AEC 322, 325, fn. 14 (1973). (Original emphasis.)

To avoid the necessity of ECNP's supplying information which it has already made available in this proceeding, Applicants have reviewed the "Environmental Coalition on Nuclear Power Answers to

First Round NRC Staff Interrogatories" to determine whether ECNP has answered Applicants' discovery requests in any of the ECNP answers to NRC staff discovery. In some cases, Applicants' interrogatories are sufficiently similar to the Staff's that an answer to the Staff's would suffice. In a few of these instances, ECNP's answer is adequate and Applicants therefore withdraw their corresponding interrogatories.* In the remainder of those cases,** ECNP has failed to adequately answer the Staff's interrogatories and thus the information Applicants seek remains unavailable.

Section 2.740(f) of the Commission regulations provide that if a party upon whom interrogatories or a request for production of documents is served fails to respond or object to the request, or any part thereof, the party submitting the discovery requests may move the presiding officer for an order compelling a response in accordance with the request. Applicants respectfully submit that ECNP has failed to show an adequate basis for failing to answer Applicants' discovery requests. Applicants have therefore requested that the Board deny ECNP's motion for protective order, and that the Board issue an order pursuant to 10 CFR §2.740(f) compelling ECNP to respond to Applicants' discovery requests

* Applicants' interrogatories 4A-2, 7(a)-1, 7(c)-2 and 19-1. (These correspond to Staff interrogatories S-4.1, S-7.2, S-7.12 and 13, and G-1 respectively.)

** Applicants' interrogatories 1A-1 (S-1.1), 1A-2 (S-1.6), 1B-1(a) (S-1.13), 1B-2 (S-1.12), 1B-3 (S-1.13), 3-1 (S-3.2), 3-2 (S-3.1), 3-9 (S-3.3), 5-1 (S-5.1), 6-1 (S-6.1), 7(a)-2 (S-7.1), 7(b)-2 (S-7.4), 7(c)-3 (S-7.11), 8-1 (S-8.1), 9-2 (S-9.2), 9-3 (S-9.1), 9-5 (S-9.5 and 9.6). (Corresponding Staff interrogatories are in parentheses.)

(except for those which Applicants have withdrawn) within ten
(10) days from the date of the Board's order.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By

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Dated: July 16, 1979

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before The Atomic Safety and Licensing Board

In the Matter of)	
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PENNSYLVANIA POWER & LIGHT CO.)	
and)	Docket Nos. 50-387
ALLEGHENY ELECTRIC COOPERATIVE, INC.)	50-388
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Units 1 and 2))	

CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing "Applicants Answer to 'Environmental Coalition on Nuclear Power Intervenors' Answers to First Round Applicant Interrogatories' and Motion to Compel Discovery" were served by deposit in the U. S. Mail, first class, postage prepaid, this 16th day of July, 1979, to all those on the attached Service List.

Jay E. Silberg

Dated: July 16, 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
ALLGHEHENY ELECTRIC COOPERATIVE, INC.)
(Susquehanna Steam Electric Station,)
Units 1 and 2))

SERVICE LIST

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