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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF'S MOTION FOR AN ORDER COMPELLING ENVIRONMENTAL
COALITION ON NUCLEAR POWER TO PROPERLY
RESPOND TO THE STAFF'S INTERROGATORIES

Pursuant to 10 CFR 2.740(f), the NRC Staff (Staff) moves this Atomic Safety and Licensing Board (Board) for an Order compelling Intervenor, Environmental Coalition on Nuclear Power (ECNP) to properly respond to the Staff's interrogatories on the grounds that:

- (1) Staff's interrogatories are within the scope of permissible discovery as defined by 10 CFR 2.740(b)(1).
- (2) ECNP has neither sought nor received a protective order under 10 CFR 2.740(c).
- (3) ECNP has not raised valid objections to the Staff's interrogatories as allowed under 10 CFR 2.740(b)(b).
- (4) ECNP's evasive and incomplete answers constitute a failure to respond under 10 CFR 2.740(f).

By its Special Prehearing Conference Order dated March 6, 1979, this Board admitted ECNP as an Intervenor, ruled on contentions and established a schedule for discovery. The Board designated May 25, 1979, as the last day for submission of first-round discovery requests and specified June 29, 1979, as the date by

which responses to first-round discovery requests were to have been filed. The Staff's discovery requests of ECNP were timely served by mail on May 21, 1979.

The Staff's discovery requests relate to specific contentions which were admitted by the Board. The Staff requested information concerning the factual bases for ECNP's contentions, the identities, addresses, and professional qualifications, and the subject matter and substance of the testimony of persons expected to be called as expert witnesses and the identification and production of documents to be used by ECNP in examining and cross-examining witnesses.

The Commission's rules regarding discovery state in pertinent part:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. In a proceeding on an application for . . . an operating license for a . . . utilization facility, discovery . . . shall relate only to those matters in controversy which have been identified by the Commission or the presiding officer in the prehearing order entered at the conclusion of that prehearing conference. *** It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. (10 CFR §2.740(b)(1)).

The Staff's discovery requests fall squarely within the bounds of that allowed by 10 CFR 2.740(b)(1). Disclosure of the types of information and documents requested is the precise purpose of the applicable Commission rules and is necessary to enable complete trial preparation by the Staff in this proceeding.^{1/}

On July 2, 1979, the Staff received a document entitled "Environmental Coalition on Nuclear Power Answers to First Round NRC Staff Interrogatories."^{2/}

In its responses to the Staff's Interrogatory G-1, which requests the identities, addresses, and professional qualifications, and the subject matter and substance of the testimony of, expert witnesses expected to be called, and Interrogatory G-2, which requests the identification and production of documents to be relied on, ECNP states that it has made no decisions about expert witnesses and that it has identified no specific documents. ECNP is under a duty seasonably to supplement its responses to Interrogatories G-1 and G-2. 10 CFR 2.740(e). However, the Staff requests that in accordance with 10 CFR 2.740(e)(3) ECNP be ordered to supplement its responses to those interrogatories and that the Board put ECNP on notice that failure to fully and accurately disclose the information requested at least 60 days in advance of the scheduled hearing date will result in the Board's refusal to receive the testimony of witnesses for whom the information requested is not disclosed and denial of the use of documents not specified and produced.^{3/}

^{1/} See: Boston Edison Company, et al. (Pilgrim Nuclear Generating Station, Unit 2), LBP-75-30, 1 NRC 579 (1975). See generally: Commonwealth Edison Company (Zion Station, Units 1 and 2), ALAB-196, 7 AEC 457, 460-3 (1974).

^{2/} Copies of the Staff's Interrogatories and ECNP's Answers are attached for the convenience of the Board.

^{3/} The Staff suggests the 60-day deadline because motions for summary disposition must be filed at least 45 days in advance, and written testimony must be filed 21 days in advance, of the hearing date. The Staff would be hindered in its preparation of summary disposition motions and testimony if a deadline sufficiently in advance of the due dates for those filings is not imposed.

The Staff in its multiple part Interrogatory S-1 requested specification of the bases for ECNP Contention 1. Clearly, interrogatories seeking specification of facts upon which a claim or contention is based are proper and a party may be required to answer questions which attempt to ascertain the bases for the contention or, for example, what deficiencies or defects are claimed to exist in Applicant's or Staff's analyses.^{4/}

In response to Interrogatory S-1.1, which asked that ECNP set forth in detail its basis for the statement that radon-222 to be released as a result of the fuel cycle for the Susquehanna facility has not been adequately assessed, ECNP answered that this belief comes from action by the Commissioners in issuing a March 2, 1978 Order in the Three Mile Island-2 proceeding. As ECNP is well aware, Table S-3 of 10 CFR 51.30(e) no longer includes estimates of radon-222 releases. (See Dr. Kepford's remarks at page 10 of the transcript of the Special Prehearing Conference). Therefore, what the Commission said in the TMI-2 Order about the radon release figure in Table S-3 is totally irrelevant to the situation that exists in the Susquehanna proceeding. Under 10 CFR 2.740(f) such an evasive and incomplete response constitutes a failure to answer. In addition, under the circumstances such a response is clearly dilatory.

In response to Interrogatory S-1.2 which asked that ECNP set forth in detail each incorrect assumption that it believes to have been made in estimating radon releases attributable to the Susquehanna fuel cycle, ECNP again refers to the 74.5 Curie figure that formerly appeared in Table S-3. For the same reasons discussed in connection with Interrogatory S-1.1 this answer is not responsive.

^{4/} Pilarim, supra at 582.

In response to Interrogatory S-1.3 which asked that ECNP specify with particularity the effect it believes each assumption listed in answer to Interrogatory S-1.2 has on the estimate of radon releases, ECNP makes only a bare general reference to testimony by Dr. Kepford in two other proceedings. Such an answer is evasive and unresponsive. Not Dr. Kepford, but Dr. Johnsrud, signed these interrogatories.

In response to Interrogatory S-1.4 which asked ECNP to set forth in detail the assumptions that it believes should be made in estimating radon releases, ECNP does not set forth assumptions but says that it believes "as many as possible of the assumptions should be replaced with experimentally gathered data." This answer is evasive and unresponsive.

In response to Interrogatory S-1.6 which asked that ECNP specify the amount of radon-222 that it believes will be released, show its calculations and specify and state the bases for its assumptions, ECNP says "See answer to S-1.3." As stated above, that answer is itself unresponsive and thus also constitutes a failure or refusal to respond to this interrogatory.

In response to Interrogatory S-1.7 which asked that ECNP specify the errors and the magnitude and causes of the errors it believes to exist in the estimates of the health effects of radon-222, ECNP again refers to its answer to S-1.3. As stated above, that answer is itself unresponsive and thus also constitutes a failure or refusal to respond to this interrogatory. In addition, a reference is made to what Dr. Kepford believes. Since Dr. Kepford did not sign these interrogatories that answer is evasive and unresponsive.

In response to Interrogatory S-1.8 which asked ECNP to specify each health effect of radon-222 that it believes will occur and to state how the health effect is caused, ECNP says it does not understand the questions. The Staff believes that this response is evasive and that ECNP should have sought clarification if needed. This therefore constitutes a failure or refusal to respond.

In response to Interrogatory S-1.9 which asked that ECNP set forth its calculations and specify and state the bases for assumptions made in reaching its conclusions about the health effects of radon-222, ECNP says "See answers to S-1.3 and S-1.7." That answer is evasive and unresponsive. It is not clear whether ECNP has or has not made calculations. It certainly hasn't provided any.

In response to Interrogatory S-1.10 which asked that ECNP specify the effect that it believes inclusion in the cost-benefit analysis of allegedly omitted health effects of radon-222 will have on that analysis, ECNP says "The answer to this question has been presented repeatedly to the NRC Staff in numerous filings in the TMI-2 proceeding." Such an answer is evasive and thus unresponsive.

In response to Interrogatory S-1.11 which asked that ECNP specify the basis for the statement that health effects of all isotopes other than radon-222 have been misrepresented and underestimated, ECNP says it has not made an assessment "of the treatment by NRC of all isotopes" and therefore cannot answer the question.

In response to Interrogatories S-1.12, S-1.13 and S-1.14 which asked for more detailed information about the bases sought in Interrogatory S-1.11, ECNP offers

evasive answers. If ECNP has made no assessments of the errors or their causes, or the health effects or any calculations, it clearly should so state in response to Interrogatories S-1.12, S-1.13 and S-1.14. ECNP's answers to Interrogatories S-1.11, S-1.12, S-1.13 and S-1.14 are evasive and unresponsive.

In response to Interrogatory S-1.15 which asked that ECNP specify the effect that it believes correct inclusion in the cost-benefit analysis of the effects of isotopes other than radon-222 will have on that analysis, ECNP says, "as the Staff has known for about 2 years now, Dr. Kepford believes that the inclusion of the full health costs of radon-222 emissions (TMI-2 testimony) will tip the cost benefit balance against operation of any nuclear power plant . . ." That answer does not provide any information as to why the cost-benefit balance will be tilted. It is therefore incomplete and unresponsive. Dr. Kepford did not sign these interrogatories.

In response to Staff Interrogatories S-2.1 through S-2.5 which sought specification of the bases for ECNP Contention 2, ECNP says that it made no reference in its petition to cesium-137, cobalt-60 or chlorine discharges and does not respond further to the Staff's interrogatories. That answer constitutes a failure or refusal to respond.

The Staff in its Interrogatories S-3.1 through S-3.5 requested specification of the bases for Contention 3.

In response to Interrogatory S-3.2 which asked that ECNP specify values assumed for known reserves of uranium, lifetime fuel requirements for Susquehanna 1 and 2 and bases for the assumptions, ECNP made only a bare general reference to the

"Kepford testimony in the Perkins proceeding" and its answer to Interrogatory S-3.1. The answer to Interrogatory S-3.1 did not specify the values requested in Interrogatory S-3.2, and Dr. Kepford did not sign the answers to these interrogatories. The answer to Interrogatory S-3.1 is evasive and thus unresponsive.

In response to Interrogatory S-3.3 which asked that ECNP specify with particularity its basis for the statement that much uranium for the facility will have to be imported and the amount that it believes will have to be imported, ECNP says only that "no specific assessments have been made." Such an answer is evasive. If ECNP has no basis for the statement and does not know how much uranium will have to be imported because it has made no assessment, it should clearly so state.

In response to Interrogatory S-3.4 which asked that ECNP specify in detail each calculation made and specify and state its basis for all assumptions made in estimating fuel requirements, reserves and imports, ECNP says "See answers to S-3.1-4." The answer is incomplete, evasive and thus unresponsive. If ECNP has made no calculations and has no basis for its assumptions it should clearly so state..

In response to Interrogatory S-3.5 which asked that ECNP specify why it believes that fuel costs when added to other costs will tip the cost-benefit balance against the facility, ECNP says "See answer to S-1.15." As the Staff has noted, supra, that answer is incomplete and thus unresponsive.

In its Interrogatories S-5.1 through S-5.2 the Staff requested specification of the bases for Contention 5.

In response to Interrogatory S-5.1 which asked ECNP to specify with particularity the models alleged to be inaccurate and obsolete, ECNP says "The burden of proof lies upon the Staff of the NRC to ensure that the models used by the Staff are accurate and up to date." That answer is evasive and unresponsive.

In response to Interrogatory S-5.2 which asked that ECNP specify with particularity the models that it believes should be used to calculate doses and set forth its bases for its belief, ECNP says, "We believe that only accurate and up-to-date models should be used." Again, such an answer is evasive and totally unresponsive.

In response to Interrogatory S-5.3 which asked for calculations made by ECNP with assumptions and supporting bases for its conclusions, ECNP says it has made no calculations but is awaiting discovery on the topic of iodine-131 transfer coefficients. This is a refusal to answer based on a claim of awaiting further discovery. The answer is incomplete.

In response to Interrogatory S-5.4 which asks that ECNP specify with particularity (not merely by general reference to an article in Health Physics) its basis for the claim that the milk transfer coefficient of iodine has been underestimated, ECNP says, "See answer to S-5.3." That answer is incomplete.

In response to Interrogatory S-5.5 which asks that ECNP set forth all calculations and specify, and state its bases for all assumptions made in reaching its conclusions about the milk transfer coefficient for iodine, ECNP says merely, "None have been made." That answer is unclear and incomplete. If ECNP has made no calculations and has no bases for its assumptions, it should clearly so state.

In response to Interrogatory S-5.6 which asks that ECNP specify with particularity (not merely by general reference to an article in Health Physics) its basis for the statement that factors for conversion of alpha-particle dose in rads to rems are far too low and that ECNP specify the factors that it believes should be used, ECNP says "the answer to the question has been answered with particularity to an article in Health Physics" and that ECNP has made no specific calculations to determine the appropriate factors. That answer is evasive and unresponsive. The interrogatory did not ask about calculations, it merely asked for specification of factors. If ECNP does not know what factors should be used, it should clearly so state.

In answer to Interrogatories S-5.7, S-5.8 and S-5.9, ECNP says, "See the answer to S-5.6." That answer is itself inaccurate, incomplete, evasive and thus unresponsive to these interrogatories.

In its Interrogatories S-6.1 through S-6.5 the Staff sought to discovery ECNP's factual bases for Contention 6.

In response to Interrogatory S-6.1 which asked that ECNP identify the area in which (in the event of a design basis accident at Susquehanna and without prompt notification and evacuation) it believes persons may be exposed to radiation doses in excess of those permitted by existing radiation exposure standards for the general public and protective action guides, ECNP attacks the regulations and refers to WASH-740 and what it calls the "Class 9 accident at TMI-2." Its answer is totally unresponsive.

ECNP's answer to Interrogatory S-6.2 is "See answer to S-6.1" and thus equally unresponsive.

In response to Interrogatory S-6.4 which asks that ECNP set forth calculations made and specify and state its bases for all assumptions made in reaching its conclusions about the adequacy of the emergency plan, ECNP says that it has made no calculations and refers to the "real emergency at TMI-2 in March and April, 1979." The statement about "no calculations" is responsive. However, the events at TMI-2 had not occurred at the time ECNP filed its contention and thus could not have been the basis for a contention that the emergency plan for Susquehanna was inadequate. That part of ECNP's answer is totally unresponsive. If ECNP had no basis for its conclusion about the adequacy of the emergency plan it should so state.

In response to Interrogatory S-6.5 which asked ECNP to specify in detail how it believes the Applicants' emergency plan fails to satisfy the Commission's regulations, ECNP again merely refers to events at TMI-2. Its answer is totally unresponsive.

In Interrogatories S-7.1 through S-7.16 the Staff seeks to discover the factual bases for ECNP Contention 7.

In response to Interrogatory S-7.1 which asked ECNP to specify its basis for the statement that the Susquehanna containment structures may not be strong enough to withstand the dynamic forces that could occur during blowdown, ECNP says, "This belief rests with the belief that the structures have never been tested under realistic accident conditions." Aside from the fact that construction is not yet complete at Susquehanna, such an answer is evasive, incomplete and not responsive.

In response to Interrogatory S-7.4 which asked ECNP to state with particularity why it believes that the type (emphasis added) of pipe cracking that has occurred at other plants renders the Susquehanna units unsafe to operate, ECNP says, "Pipe cracks at other nuclear power plants may render these plants unsafe to operate, but, in general, will not affect the Susquehanna facility." That answer is unresponsive. The question sought ECNP's basis for its belief that the type of cracking that occurred at other plants, were it to occur at Susquehanna, would render Susquehanna unsafe to operate.

In response to Interrogatory S-7.5 which asked ECNP to identify the types of stainless steel piping in which cracking has occurred, ECNP, rather than simply stating that it does not know says that the Staff knows the answer. That answer is evasive and unresponsive.

In response to Interrogatories S-7.6, S-7.7 and S-7.8, ECNP says, "See the answer to S-7.5." That answer, for the same reason as stated above, is evasive and unresponsive.

In response to Interrogatory S-7.10 which asked ECNP to set forth calculations made, and to specify and state the basis for assumptions made, in reaching its conclusions about pipe cracking, ECNP says, "No calculations have been made." The answer does not specify and state bases for assumptions made in reaching conclusions about pipe cracking and is thus incomplete and unresponsive.

In response to Interrogatory S-7.11 which asked ECNP to specify why the type (emphasis added) of nozzle cracking that has occurred at other BWR facilities renders the Susquehanna units unsafe to operate, ECNP states evasively, "Nozzle cracks at other facilities do not necessarily render Susquehanna unsafe to operate." That answer is unresponsive. The question sought ECNP's basis for its belief that the type of cracking that occurred at other plants, were it to occur at Susquehanna, would render Susquehanna unsafe to operate.

Because ECNP had stated that reliance on probabilities is unwise and unsafe, the Staff in its Interrogatory S-7.16 asked ECNP to state what it would consider to be an acceptable demonstration of the low contribution to risk of an anticipated transient without scram. ECNP's answer--a tirade against the nuclear industry with references to accidents like TMI-2--is totally unresponsive.

In its Interrogatories S-8.1 through S-8.4 the Staff seeks to discover the factual bases for ECNP Contention 8.

In its responses to Interrogatories S-8.1, S-8.2 and S-8.3 ECNP appears to disavow the contention saying, "No such statement alluded to here was made in the ECNP Intervenors' contention on this subject." That answer is not responsive.

In response to Interrogatory S-8.4 which asked ECNP to set forth its calculations and to specify and state its basis for assumptions made in reaching its conclusions about the inability of the reactor pressure vessel to withstand thermal shock, ECNP says, "The answer to this question is being sought on discovery from the Staff." That answer is unresponsive to a question asking ECNP for its calculations and the basis for its conclusions.

In Interrogatories S-9.1 through S-9.7 the Staff seeks to discover the factual bases for Contention 9.

In its response to Interrogatories S-9.1 through S-9.6 ECNP states, "The ECNP petition contains no reference to the subject of this (sic) question." Such does not constitute a valid objection to answering the question. ECNP's answer is not responsive.

In response to Interrogatory S-9.7 which asked ECNP to specify why it believes that the decommissioning costs, when added to other costs of the facility and the nuclear fuel costs, will tilt the cost-benefit balance against authorizing operation of the facility, ECNP said, "See the answer to S-1.15." ECNP's answer is incomplete and unresponsive for the reasons stated above.

In its Interrogatories S-18.1 through S-18.3 the Staff sought to discover facts relevant to whether ECNP believes an environmental cost-beneficial alternate method to herbicides can be found to maintain transmission line rights-of-way.

ECNP in its responses to Interrogatories S-18.2 and S-18.3 says, "ECNP has made no such allegation in its petition." That is not a valid objection to the questions posed. The answers are unresponsive.

Finally, although the Staff would consider the ECNP answers not specifically addressed herein to be acceptable if it were clear that they were prepared by Dr. Johnsrud and that she had sworn that they were prepared by her and that they were true to the best of her knowledge and belief, that is not clear. Many of the answers refer to what Dr. Kepford said and the form of the oath taken by Dr. Johnsrud is not shown. Therefore, the Staff requests that ECNP be instructed to submit all of its answers properly.

CONCLUSION

ECNP's evasive, incomplete, dilatory and unresponsive answers to the Staff's Interrogatories are frustrating the orderly progress of this proceeding. Accordingly, the Staff urges this Board to grant its motion to compel and to order ECNP to respond fully and properly to all of the Staff's discovery requests of May 21, 1979. Further, the Staff requests that ECNP be ordered to supplement its responses to Interrogatories G-1 and G-2 and put on notice of penalties that may be imposed if it fails to comply with the Board's Order.

Respectfully submitted,



James M. Cutchin, IV
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Dated at Bethesda, Maryland
this 13th day of July, 1979