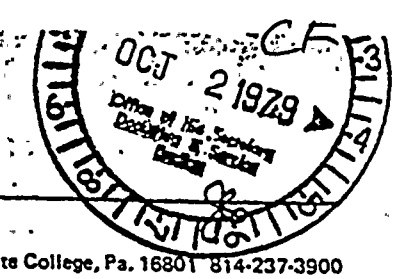
September 24, 1979



ENVIRONMENTAL COALITION ON NUCLEAR POWER

Co-Directors: Mr. George Boonsma—R.D. #1, Peach Bottom, Pa. 17563 717-548-2836
Dr. Judith Johnsrud—433 Orlando Avenue, State College, Pa. 16801 814-237-3900

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

INTERVENORS' MOTION TO COMPEL DISCOVERY UPON THE NRC STAFF

Under Part 2. 740(f) of the Commission's Rules, the ECNP Intervenors move this Board to compel discovery on the NRC Staff. To date, the ECNP Intervenors have received not a shred of the discovery materials twice timely requested from the Staff. Instead, these Intervenors have received evasive and incomplete answers from the Staff, the effect of which is to deny wholly to these Intervenors the background materials requested, materials which are essential to the preparation of the ECNP case. In addition, the Staff refuses to supply documents and transcripts to these Intervenors on the grounds that to do so "would be financial assistance and is prohibited by current Commission policy." (Staff letter denying discovery, September 13, 1979, p. 1).

Unless the Commission has altered its position on whatever it considers "financial assistance to intervenors," this assertion by Counsel for the NRC Staff not only is misleading, but it is also false. These Intervenors observe that the precedent for provision of documents was clearly established in the Three Mile Island, unit 2, operating license proceeding: not only was informal discovery allowed upon the NRC Staff, but also the Staff responded courteously and without evasion or subterfuge to the Intervenors' telephoned request identifying the desired documents, which were promptly forwarded. (See Attachments 1 and 2) In addition, the Intervenors in the TMI-2 proceeding were provided on a timely basis with hearing transcripts on loan from the NRC. We note that in consequence of the NRC Board and Staff's cooperation with the Intervenors in the TMI-2 proceeding the Commissioners were reminded of, and ordered the Staff to rectify, the Staff's enormous error in the Radon-222 calculation in Table S-3 (10 CFR 51.20(e)). In short, in the TMI-2 proceeding, the Intervenors

were denied neither the physical production of documents nor the timely use of transcripts.[1]

In its Memorandum and Order of August 24, 1979, this Board observed that "discovery always entails some burden or expense...." (page 7). The Board here did not offer an exception to the NRC Staff. These Intervenors submit that the refusal by the Staff to comply with our discovery request because of alleged prohibition of financial assistance is nothing but a subterfuge for obstructing the Intervenors' ability to prepare to litigate their contentions. The purpose of this refusal is apparent: it is to prevent these Intervenors from determining just how truly shallow and deficient are the assumptions used by the Staff in reaching its conclusions on the matters admitted in controversy. To accomplish this purpose, the Staff has invented what it calls "informal discovery" and being "reasonable in addressing requests for information," the effect of both of which is in fact a total denial of discovery.

Another effect of the refusal of the Staff to comply with these Intervenors' discovery requests is to simply insert every possible obstacle between the public-interest Intervenors and the materials needed -- and otherwise unavailable -- for preparation for the upcoming hearings. Here again we observe that in the TMI-2 proceeding informal discovery was not used as a technique for refusal of discovery; quite the contrary, it was used as a technique to accomplish discovery, move the proceedings along, and assist the Commission markedly in the exercise of its regulatory responsibility, presumably to the partial satisfaction of all parties.

In the light of past experiences described above, the statement that "the Staff is trying to be reasonable" is absurd and must be termed an utter falsehood.

The Board stated in the Memorandum and Order that

> ...the purpose of discovery is to enable each party prior to hearing to become aware of the positions of each adversary party on the various issues in controversy, and the information available to adversary parties to support those positions. (Board Memorandum and Order, pp. 5 & 6)

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[1] The one issue on which this discovery took place related to the comparative health effects of the uranium and coal fuel cycles. It is one aspect of that issue --the emission of radon-222 from abandoned mines and mill tailings-- which remains unresolved by the Commission.

Yet the Staff simply stonewalls the legitimate discovery requests of the Intervenors. Again, the Board did not offer an exception to the Staff to refuse to make available its positions.

Also in the Memorandum and Order the Board observed that

> Fairness demands that comparable discovery rights and obligations govern each of the parties to this proceeding:...

(Memorandum and Order of the Board, p. 10, quoting 2 NRC 813, 816-7 (1975))

Yet in this proceeding the Staff inexplicably flaunts its position toward public-interest intervenors, disclaiming any responsibility to furnish a single document or to answer any question.

As the Staff is well aware, these Intervenors have in their possession neither the time nor the financial resources to travel to Washington, D.C. (or to Bethesda, Maryland, which comes to the same thing) to spend the necessary time and money to study or to copy wholesale documents already paid for by our taxes or to spend the time required to read and take notes of these documents, far away from home. As the Court observed in another proceeding in which these Intervenors were similarly involved

> We note, however, that it would be unrealistic to expect public interest litigants to underwrite the expense of mounting the kind of preparation and presentation of evidence that is ordinarily required in this type of case.

(York Committee for a Safe Environment v. U.S.N.R.C., U.S. Court of Appeals, D.C. Circuit, 1974, Slip Opinion, at n. 13)

In this proceeding the Staff not only flouts the Court's observation, but also the Staff itself contributes substantially to these Intervenors' burdens by its refusal to honor discovery requests on any basis, formal or informal. Time sorely needed for preparation of the Intervenors' case is, in the meanwhile, rapidly slipping away, another clear frustration of the ultimate purpose of the Commission's hearing process.

Therefore, these Intervenors request this Board to compel the NRC Staff to comply with the discovery requests of these Intervenors in order that a full and fair record may be compiled on the issues raised and accepted into controversy.

With respect to Staff Counsel's negative response to the ECNP Second Round Discovery Request for the transcripts of this proceeding to which we are parties, the Intervenors respectfully suggest the following points:

1. The Board's March 6, 1979, direction to the Staff to make the transcript reasonably accessible to the intervenors (at pp. 82-3) did not exclude the transcript of the Special Prehearing Conference. The Board will note that the Staff, having ready access to that transcript, cites that record at page 4 of the NRC Staff's Motion for an Order Compelling ECNP to Respond to the Staff's Interrogatories, dated July 13, 1979. The public-interest Intervenors did not have access to the record in order to respond. There is an obvious and deadly inequality between the parties created by the Staff's arrogation of the authority to "interpret" the Board's March 6, 1979, directive. We point out that in Staff's September 13, 1979, letter (which is not identifiable as Staff's response to ECNP's Second Round Discovery Requests), the Staff again cites transcript (at p. 2) that has still, after six months, not been made available to these Intervenors.
2. In its March 6, 1979, Special Prehearing Conference Order, rewording the various contentions of the four intervening parties, the Board itself references the transcript (see, e.g., p. 11). Had ECNP had access to the transcript, there would have been an opportunity to respond, with citation of the record, to instances in which the Intervenors question the adequacy of the revisions of their original contentions, revisions that now stand as binding in this proceeding.
3. The Staff's offer of a "mini-LPDR" is not definite (September 13 Staff letter); the Staff merely states that the Staff "would consider establishing" a mini-LPDR. The proposed restriction on the use of the LPDR again is an attempt by Staff counsel to act counter to the Board's express wishes in the March 6, 1979 Order. In any event a non-circulating "mini- LPDR" would still be inadequate to serve the needs of these intervening parties who have a wide spatial distribution.

The Intervenors, for the reasons outlined above, request the Board

to compel the NRC Staff to comply with the Board's March 6, 1979, Special Prehearing Conference Order to provide these Intervenors access to the full transcript of this proceeding and to arrange for the copy to be removed from the Local Public Documents Room for use on a temporary basis as the Board directed.

Respectfully submitted,

Chauncey Kepford
Legal Representative
and

Judith Johnsrud
Co-Director
Environmental Coalition
on Nuclear Power
State College, Pa. 16801

dated this 24th day of
September, 1979

ENVIRONMENTAL COALITION ON NUCLEAR POWER

Co-Directors: Mr. George Boomsma—R.D. #1, Peach Bottom, Pa. 17563 717-548-2836
Dr. Judith Johnsrud—433 Orlando Avenue, State College, Pa. 16801 814-237-3900

CERTIFICATE OF SERVICE

I hereby certify that copies of INTERVENORS' MOTION TO COMPEL DISCOVERY UPON THE STAFF have been deposited in the U.S. Mail, postage paid, this 25th day of September, 1979.

Judith Johnsrud

Judith Johnsrud
Co-Director

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Charles Bechhoefer, Esquire
Chairman, ASLB Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Jay Silberg, Esquire
Shaw, Pittman, Potts, and Trowbridge
1800 M.Street NW
Washington, D.C. 20036

Mr. Glenn O. Bright
ASLB Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Gerald Schultz, Esquire
Susquehanna Environmental Advocates
500 South River Street
Wilkes-Barre, Pa. 18702

Dr. Oscar H. Paris
ASLB Panel
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Mrs. Irene Lemanowicz, Chairperson
Citizens Against Nuclear Danger
P.O. Box 377
R.D. 1
Berwick, Pa. 18603

Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Ms. Colleen Marsh
558 A, R.D. #4
Mountain Top, Pa., 18707

Atomic Safety and Licensing
Appeal Board Panel
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Mr. Thomas M. Gerusky, Director
Bureau of Radiation Protection
Department of Environmental Resources
Commonwealth of Pennsylvania
P.O. Box 2063
Harrisburg, Pa. 17120

James M. Cutchin, IV, Esquire
Office of the Executive Legal
Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555