



motion filed by SEA for protective order against all of Applicants' discovery.\* According to the Licensing Board's August 24, 1979 Memorandum and Order, SEA's motion did not supply specific objections, but rather asserted generally that (1) discovery sought was not described with sufficient particularity; (2) the responses would require expert advice which was not presently available to SEA; and (3) the information sought was irrelevant or within Applicants' knowledge. On July 10, 1979, Applicants filed a motion to compel discovery. Applicants' motion was based upon the apparent absence of any response to Applicants' discovery by SEA, since SEA had not served its motion for protective order on Applicants.\*\*

The Licensing Board's August 24, 1979 Order denied SEA's motion and granted Applicants' motion to compel. Order, p. 14. SEA was directed to respond to Applicants' May 25, 1979 discovery requests, or file specific objections to such requests, within 14 days from the date on which the Order was served (August 27, 1979).

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\*Applicants never received this motion and learned of its existence only from the discussion of it in the Licensing Board's Memorandum and Order on Scheduling and Discovery Motions (August 24, 1979).

\*\*On August 20, 1979, Applicants received an undated Motion for Protective Order from SEA. Applicants answered this motion on August 29, 1979. Based upon the Licensing Board's description of SEA's earlier motion in the August 24 Memorandum and Order, it would appear that this undated Motion was the same document received by the Licensing Board on July 5, 1979.

In response to the August 24, 1979 Order, SEA filed a Motion for Extension of Time to Answer or Object to First Round Interrogatories of Applicant and NRC (dated September 12, 1979). The motion sought an additional 180 days in which to answer or object to Applicants' first round discovery. Applicants have previously set forth the reasons why the requested delay should be denied. See Applicants' Answer to Motion, dated September 20, 1979. In their answer, Applicants stated that they would not object to an extension of time of not more than 20 days from September 12, 1979 (the date Applicants then believed responses to the August 24 Order were due.\*).

More than 20 days have now elapsed (both from September 12 and from September 17). SEA has made no attempt to comply with the terms of the August 24 Order. Applicants therefore submit that an order dismissing SEA as a party to this proceeding is proper with the caveat that the effectiveness of such an order be stayed for a 14 day period to allow SEA to properly respond to Applicants' discovery requests.

The Licensing Board's authority to dismiss a party from the proceeding for failure to adequately comply with discovery requests is clear. See, e.g., Duke Power Co. (Amendment to Materials Licensing SNM-1773), Docket No. 70-2623, "Order Dismissing Carolina Action As An Intervening Party". (May 23, 1979);

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\*Applicants subsequently learned that the August 24, Order was not served until August 27, 1979. Under these circumstances, SEA's responses were due on September 17, rather than September 12.

Ohio Edison Co. (Erie Nuclear Plant, Units 1 and 2), Docket Nos. STN 50-580, 50-581, "Order to Show Cause Relative to Dismissal" (March 12, 1979); Northern States Power Co. (Tyrone Energy Park, Unit 1), LBP-77-37, 5 NRC 1298 (1977); Offshore Power Systems (Manufacturing License for Floating Nuclear Power Plants), LBP-75-67, 2 NRC 813 (1975); Public Service Electric and Gas Co. (Atlantic Nuclear Generating Station, Units 1 and 2), LBP-75-62, 2 NRC 702 (1975). As the Licensing Board in Offshore stated

A party may not insist upon his right to ask questions of other parties, while at the same time disclaiming any obligation to respond to questions from those other parties.

LBP-75-67, 2 NRC at 817. As was the case in Offshore, it would appear that SEA


has no intention of properly responding to the Applicants' discovery requests nor of complying with this Board's Order compelling such response.

Id. Under such circumstances dismissal of SEA as a party is the appropriate remedy.

Applicants would not oppose the Licensing Board's staying the effectiveness of the order dismissing SEA for a period of perhaps 14 days to permit SEA to fully and properly respond to Applicants' discovery requests. Such a stay should however automatically be removed unless SEA demonstrates its compliance within the time specified.

Respectfully submitted,  
SHAW, PITTMAN, POTTS & TROWBRIDGE

By

  
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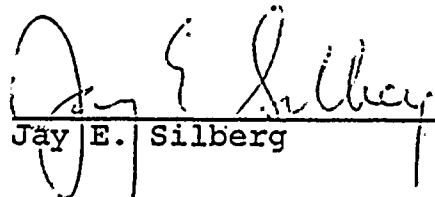
UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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) )

CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing "Applicants' Motion to Dismiss Susquehanna Environmental Advocates From This Proceeding" were served by deposit in the U. S. Mail, First Class, postage prepaid, this 23rd day of October, 1979, to all those on the attached Service List.

  
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Jay E. Silberg

Dated: October 23, 1979

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