

February 4, 1980

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' MOTION TO PROHIBIT ENVIRONMENTAL
COALITION ON NUCLEAR POWER FROM PARTICIPATING IN
LITIGATION OF CERTAIN CONTENTIONS AND MOTION TO COMPEL

On January 18, 1980, Environmental Coalition on Nuclear Power ("ECNP") filed a document entitled "ECNP's Responses to Board's Memorandum and Order on Discovery Motions (II)". In this filing, ECNP submitted its answers to Applicants' interrogatories dealing with the five "environmental" contentions sponsored in whole or in part by ECNP. ECNP stated in its filing that it had made a "good faith response to a Board order that we consider unjust in the extreme" and that its answers "are the best that could be accomplished in the one-month period permitted by the Board." Wholly apart from the fact that ECNP has had almost eight months to prepare answers to Applicants' May 25, 1979, discovery request and almost five months since being ordered by the Licensing Board to answer, ECNP has failed to answer many interrogatories and many of the ones it has answered have not been answered adequately. Applicants therefore respectfully request that the Licensing Board take appropriate action. We

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suggest that such action should prohibit ECNP from participating in any way in the litigation of those contentions as to which it has failed to properly answer interrogatories. This prohibition should include presentation of direct testimony and undertaking cross-examination on these contentions, whether on its own behalf or on behalf of others. As to those interrogatories which ECNP has failed to adequately answer, ECNP's motion for protective order must be denied. Where adequate answers have been supplied, no protective order is needed.

The five contentions to which ECNP supplied "responses" to Applicants' discovery are Contentions 1 (uranium fuel cycle health effects), 2 (health effects of low-level radiation), 3 (uranium price and supply), 4 (need for power/conservation), and 18 (herbicides). Applicants believe that ECNP has provided adequate answers as to Contention 18, by stating in essence that they have no knowledge as to the contention. Applicants also believe that ECNP's answers to interrogatories on Contention 4 represent a good faith attempt to respond, although parts of these answers are inadequate.* These latter portions are described in the Attachment hereto and Applicants request that the Licensing Board order ECNP to supplement their answers to correct the deficiencies identified.

As to ECNP's responses to the interrogatories on Contentions 1, 2 and 3, Applicants respectfully submit that ECNP has

*See ECNP responses to Interrogatories 4B-1 and 4B-2.

failed to meaningfully respond. The attached analysis of ECNP's responses demonstrates that ECNP has failed to make even a good faith attempt to provide answers. In view of the unusually long period of time available to ECNP to prepare its answers, the responses provided by ECNP as to interrogatories on Contentions 1, 2 and 3 must be considered to be a deliberate attempt to avoid the discovery obligations which the Licensing Board has painstakingly and repeatedly explained. Sanctions are therefore clearly in order.

In its October 30, 1979, Memorandum and Order on Discovery Motions (II), the Licensing Board ruled

If any intervenor fails properly to respond in a timely fashion to the discovery as outlined in paragraphs 2 and 3, it will not be permitted to present any direct testimony on that contention (no further order of this Board to this effect will be required).
(Emphasis omitted.)

Applicants, for the reasons stated in the Attachment hereto, submit that ECNP has "failed properly to respond" to interrogatories addressed to Contentions 1, 2 and 3. ECNP's responses to the interrogatories on these contentions are nothing more than an attempt to avoid its discovery obligations. As the Licensing Board ruled in its December 6, 1979 Order Denying Requests of ECNP, pp. 5-6, Applicants have a right to the information being sought prior to the hearing. In accordance with Discovery Memorandum II, ECNP should therefore not be permitted to present direct testimony on these contentions. However, Applicants believe that additional sanctions are appropriate in view of

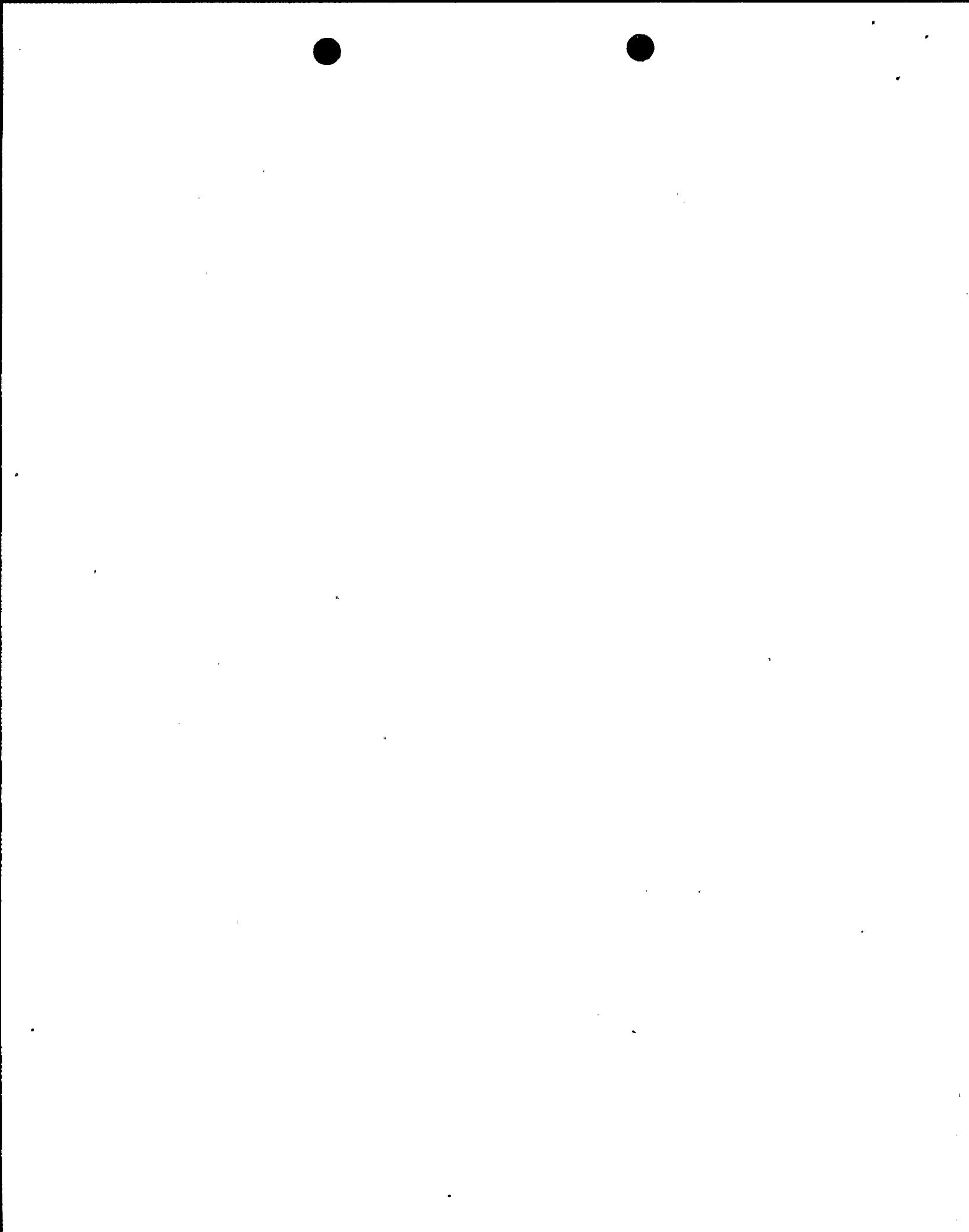
ATTACHMENT

1A-1 The interrogatory asked for a description of each aspect in which ECNP believes that the assessment of the quantity of radon-222 released is inadequate. ECNP's answer merely states that Table S-3 has no number for radon. ECNP's response fails to answer the interrogatory. That Table S-3 does not include a quantity for radon-222 releases is irrelevant. In any event, the NRC Staff has presented a considerable amount of information on radon releases in the Draft Environmental Impact Statement, §4.5.5. ECNP has simply ignored the interrogatory. It should be noted that the Licensing Board's December 6, 1979 Order Denying Requests of ECNP (p. 3), found that responding to this interrogatory imposed no undue burden.

1A-2 This interrogatory asked ECNP to state the quantities of radon-222 to be released during the Susquehanna fuel cycle. Rather than answering, ECNP states:

Calculation of the exact numerical quantity of radon resultant from the known physical decay process is the responsibility of the NRC Staff, not the Intervenors.

This is obviously an improper response and would turn the discovery process on its head. ECNP then refers generally to testimony by Dr. Kepford in the Three Mile Island Unit 2 and Perkins proceedings. Each of the referenced testimony comprises several hundred



pages; it is inappropriate for ECNP to answer merely by stating "see, however", and expecting Applicants to select from these hundreds of pages the numbers to which ECNP may (or may not) be referring. Also, this blanket reference is of no value in this case since Dr. Kepford states in Perkins that he is using the figures of others and makes "no assumption as to the correctness of other values" and only uses the figures for "illustrative purposes." Tr. 2681.

- 1A-3 This interrogatory, requesting quantities of radon-222 released at particular steps of the fuel cycle, remains unanswered. ECNP again states that it is not ECNP's responsibility to develop this information. Then ECNP makes sweeping references to "the Record of the GESMO proceeding" and "public comments" on NUREG-0511. Such an answer, aside from being evasive, is inadequate and improper.
- 1A-4 ECNP's answer to Applicant's interrogatory on the radiological health effects associated with radon releases is that "ECNP commends the Applicant to the Staff for a response to its question." There is also a general reference to Dr. Kepford's voluminous testimony in other proceedings, which reference ECNP may intend as an answer to the interrogatory. Applicants submit that ECNP has failed to adequately answer Applicants' interrogatory.

- 1A-5 ECNP makes no effort to respond to this interrogatory, which seeks the basis for ECNP's answers to Interrogatories 1A-1 through 1A-4. Rather, it states that "no single document or group of readily identifiable documents can be cited. . . ." Since ECNP has not provided meaningful answers to Interrogatories 1A-1 through 1A-4, it follows that ECNP's answer to Interrogatory 1A-5 is also inadequate.
- 1B-1 This interrogatory sought to obtain specific definition for a contention which referred to "all isotopes other than radon-222." ECNP's response refuses to answer, except to identify technetium-99. The reference to "any other isotope associated with the fuel cycle for Susquehanna" is clearly a refusal to answer the interrogatory, which requested the identification of each isotope. Even as to technetium, ECNP has not answered interrogatories 1B-1b. and c. which requested ECNP to specify the fuel cycle steps during which technetium is released and the quantities released. ECNP has therefore effectively failed to respond to the interrogatory.
- 1B-3 This interrogatory sought an identification of the health effects of isotopes other than radon-222. ECNP's response fails to answer the interrogatory in

that it merely references "the open health physics and biological literature". Such lack of specificity renders ECNP's answer totally useless for discovery purposes. It is inadequate and evasive.

1B-4 See Applicants' comments on ECNP's response to Interrogatory 1A-5.

2-1 ECNP has totally failed to respond to the interrogatory. The contention deals with radionuclides released by the Susquehanna facility. ECNP's answer is written in terms of Table S-3, which excludes the releases from the reactor itself. Also, the answer takes the position that since Applicants may have some information in their possession, ECNP does not have to answer an interrogatory relating to that same information. A party may legitimately inquire about the information which another party has in its possession whether or not the former may have similar information. ECNP's view of the facts is of obvious relevance, whether or not Applicants may happen to share the same view.

2-2 ECNP has failed to address the magnitude of residual risks from low-level radiation from Susquehanna, as requested by the interrogatory. ECNP's specification of the types of risks, also requested, is so vague as

to constitute a failure to answer ("effects on human health and genetic well-being of future generations . . .").

2-9 See Applicants' comments on ECNP's response to Interrogatory 1A-5.

3-1 The interrogatory asked for ECNP's estimate of Susquehanna's lifetime fuel requirements (the contention asserts that uranium supplies are inadequate to meet these requirements). ECNP's answer merely asserts that the information is "stated by Applicant in its FSAR". ECNP fails to identify where in the FSAR such information appears. In any case, Applicants are unaware of any such information in the FSAR. While Applicants' Environmental Report does state that the lifetime commitment of natural uranium is 14,700 MT (assuming no reprocessing), sec. 5.7.3.1, Applicants are left to guess whether ECNP would adopt this value as its answer to the interrogatory. ECNP has thus failed to adequately reply to the interrogatory.

3-2 ECNP's answer to a request to specify the "known and assured reserves of uranium" (a phrase used in Contention 3 and in the underlying ECNP contention, number 3), is that this quantity "has been as is being assessed

by the NURE program". This is a non-answer, since ECNP does not provide a specific quantity, nor a reference to a document from which a quantity could be derived, nor an acknowledgement that ECNP agrees with whatever numbers may be developed by the NURE program. ECNP must at least have known what it had in mind when it drafted its own contention. ECNP's response is clearly inadequate.

- 3-3 ECNP's suggestion that Applicants review "data in the open literature from NRC and Department of Energy" fails to answer the interrogatory. If ECNP does not know the answer, it should have so stated.
- 3-6 The interrogatory requested the number of reactors operating in the year 2000 under a 15% growth rate cited by ECNP. ECNP answered by providing a formula. ECNP fails to provide a numerical value for one of the terms in the formula, "current capacity", thus making it impossible to calculate an answer based on what ECNP believes to be the facts. ECNP has therefore failed to adequately respond to the interrogatory.
- 3-7 ECNP's original contention 3 stated that "much higher fuel prices will result" from the increased demand for uranium. See Amendments to the Petition for Leave to

Intervene filed by the Environmental Coalition on Nuclear Power, dated January 15, 1979, p. 4. ECNP's answer to this interrogatory states that "We know of no mechanism for estimating future fuel prices" ECNP has not adequately answered the interrogatory since it must have had some basis for making the statement in its own contention.

- 3-9 That ECNP may not be able to determine "the exact total quantities of [uranium] imports" is an acceptable answer to the portion of the interrogatory asking ECNP to specify the total quantities and price of such imports. If a party does not know the answer to an interrogatory, it may so state. However, ECNP failed to answer that part of the interrogatory asking why much of the uranium for Susquehanna will have to be imported.
- 3-10 See Applicants' comments on ECNP's response to Interrogatory 1A-5.
- 4B-1 The interrogatory requested a definition of the "latest projections of energy use and requirements", as that phrase appears in Contention 4B. ECNP's answer does not deal with projections, but rather with historical growth rates. ECNP has not answered the interrogatory.

4B-2 ECNP has not answered the interrogatory, which asks for ECNP's interpretation of "existing facilities and sources", as that term is used in the contention. Rather, ECNP says that Applicants know what that term means.. This response is contrary to the purpose of discovery which is for one party to have the opportunity to determine another party's understanding of the facts.

ECNP's failure to make a good faith attempt to provide answers in these areas. Since intervenors typically try to make their cases by cross-examination*, merely prohibiting ECNP from introducing direct testimony amounts to little, if any, sanction. The additional step of barring ECNP from conducting cross-examination on these issues would therefore be appropriate, and yet less drastic than the alternative of dismissing them entirely from the proceeding for their default. (We believe that the dismissal option is not called for at this time since ECNP did make a good faith attempt to answer interrogatories on Contention 4.)

Applicants therefore respectfully request that ECNP be prohibited from participating in the litigation of Contentions 1-3 (including presentation of direct testimony and conducting cross-examination) on its own behalf or on behalf of others and that the Licensing Board issue an order compelling adequate answers to interrogatories 4B-1 and 4B-2.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By



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Dated: February 4, 1980

*ENCP has stated that it is "not equipped to present a well-balanced or well-prepared case in this proceeding. Rather our expected methodology is to show through cross-examination and advocacy that the Applicant's case is incomplete." ECNP Intervenors Response to Applicants' Motion to Dismiss ECNP (October 22, 1979, p. 3).

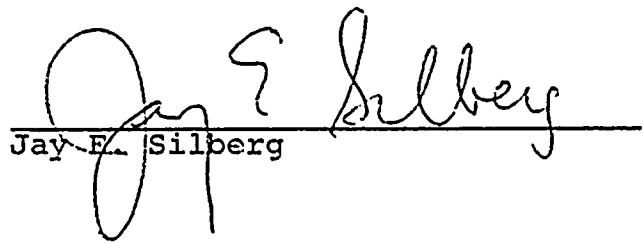
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CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing "Applicants' Motion to Prohibit Environmental Coalition on Nuclear Power From Participating in Litigation of Certain Contentions and Motion to Compel" were served by deposit in the U. S. Mail, First Class, postage prepaid, this 4th day of February, 1980, to all those on the attached Service List.



Jay E. Silberg

Dated: February 4, 1980

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