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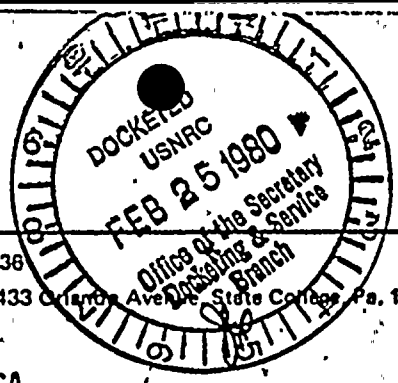

ENVIRONMENTAL COALITION ON NUCLEAR POWER

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

RESPONSE OF ENVIRONMENTAL COALITION ON NUCLEAR POWER TO APPLICANT'S MOTION TO PROHIBIT ECNP INTERVENORS FROM LITIGATING ECNP CONTENTIONS AND MOTION TO COMPEL

On January 18, 1980, the ECNP Representative in this proceeding timely filed ECNP's Responses to Board's Memorandum and Order on Discovery Motions (II). Despite illness of that representative and the press of many other obligations on our voluntary citizens' organization, as well as our belief that the large number of interrogatories posed by the Applicant constituted an excessive and enormous burden on these unfunded intervenors in the scant month since the Board's decision not to grant a protective order, ECNP made a good faith effort to respond to the Applicant's questions and did respond within the one-month time period allotted by the Board. ECNP bore in mind the Board's earlier assurances that public-interest intervenors were not expected to engage in extensive research in order to provide satisfactory responses to interrogatories, were permitted to state that they had no knowledge of a given subject, and were permitted to state that they were in the process of developing such knowledge. (See Board's Memorandum and Order on Discovery Motions (II), dated October 30, 1979, at p. 19.)

In the Applicant's Motion dated February 4, 1980, we find the incredible request that the ECNP Intervenors, who have responded in good faith and in a timely fashion, should now be barred from presenting either direct testimony on their own contentions or witnesses and barred from cross-examination on their contentions, because ECNP's responses do not happen to meet some undefined, unstated standard of the utility counsel, representing proponents of the licensing of the Susquehanna reactors. This ECNP reply attempts to respond to the Applicant's objections. ECNP requests that this Board grant ECNP a protective order from

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further requirements to reanswer these interrogatories under 10 CFR 2.740(c) and (e). ECNP also urges the Board to order Staff and Applicant--whose failures to meet their own proposed time schedule have been the principal cause of actual delay in this proceeding (Board's Memorandum and Order, dated October 30, 1979, at pp. 12 and 13)--to speed the completion of the Final Environmental Statement and the Safety Evaluation Report and SER Supplement so that these proceedings will not continue to be unduly delayed by the inability of the Staff and Applicant to meet the timelines which they, not the Intervenors, laid out at the initiation of this operating license proceeding.

The Applicant's inappropriate motions to prohibit ECNP Intervenors from introducing direct evidence and cross-examination on ECNP's contentions and the Applicant's motion to compel further Discovery responses should be denied by the Board for the following reasons:

1. The ECNP Intervenors did in fact respond to the Applicant's interrogatories in good faith and timely, as directed by the Board, and therefore, Applicant's charge that ECNP did not do so is patently false.

2. The ECNP Intervenors were given only one month to respond to the Board's December 6, 1979, Order, having previously filed with the Board timely requests for protective orders from undue burdens of excessive numbers of interrogatories and requests for adequate amounts of time for response, as are permitted by NRC's Rules of Practice (10 CFR 2.730(c) and 10 CFR 2.741(d)).

3. It would not be consistent with the NRC's statutory objectives of protecting the public health and safety, or with the National Environmental Policy Act of 1969, for these Intervenors to be prevented by the Board from full discussion of these important issues so that the record may be complete.

4. The Applicant, by this motion for sanctions and motion to compel shows that the Applicant is obviously <u>not</u> interested in ensuring a full and open discussion of these issues, and therefore the Applicant has not demonstrated a sufficient commitment to public health and safety to be licensed to operate a nuclear power plant. The Applicant's objections and the sanctions sought by Pennsylvania Power and Light Company against these citizen intervenors show vividly that the utility lacks the requisite character or intentions to <u>operate the reactors</u> safely.

5. The objections raised and penalties sought in the Applicant's February 4, 1980, motion confirm that the Applicant was never interested in, or in need of, the information requested in the Applicant's excessive number of interrogatories in the first place, but rather that the intent of the Applicant has been and is to curtail and ultimately prevent the participation of ECNP and its representatives in this proceeding.

6. The Applicant knows full well that the ECNP responses to all Discovery requests were adequate, and is engaging in conduct unbecoming to the Applicant and to the adversarial process established by statute and tradition in so mischaracterizing our good faith responses to the Applicant's interrogatories.

7. The reasons raised against undue burdens and harrassment in ECNP's previous filings relating to Discovery in this proceeding are here incorporated by reference as objections also to the Applicant's proposal for punitive sanctions against ECNP.

8. ECNP, as is described above, has in good faith complied with and followed the Board's delineation in its October 30, 1979, Memorandum and Order of what constitutes an adequate answer to an interrogatory.

On p. 1 of Applicant's February 4th Motion, it is implied that the Intervenors had no other obligations following May 25, 1979, than to respond to the Applicant's excessive number of interrogatories. As the Board is fully aware, the Intervenors were during those months appealing to the Board concerning the injustice of the excessive interrogatory burden, as well as fulfilling all other obligations of their organization with respect to the Three Mile Island reactors and other matters. We have answered the interrogatories to the best of our ability and in good faith. At no time, to the ECNP Representative's recollection, has either the Board or the Applicant set specified limits as to what is a response "acceptable" to the Board or the Applicant, other than the Board's definitions noted above from the October 30, 1979, Order. It can only be concluded by these intervenors that, no matter how lengthy, complete, indeed exhaustive, might be our responses, this Applicant would yet object and complain that the Intervenors had not done enough. The Applicant's response to our answers to interrogatories confirms that the Applicant has pursued this excessive Discovery in bad faith. Used in such a manner, the NRC's Discovery mechanism is wholly prostituted to serve the Applicant's apparent desire to remove these intervenors who raise troubling questions in their contentions from any participation whatsoever in the proceedings. What the counsel for the Applicant asks at p. 2 of his Motion of February 4, 1980, is nothing short of a gag order from the Board, whereby the ECNP Intervenors might be allowed to sit in the hearing room but would be disallowed from any participation in virtually all aspects of the adjudicative proceeding.

ECNP reiterates its prior statements that we have entered this licensing proceeding in good faith to raise issues that have not been properly addressed nor resolved, issues relating to the health and safety of our members should the

Susquehanna reactors be granted an operating license. That our voluntary efforts to protect our members have been met by the Applicant's request that we be prohibited from presenting direct evidence or cross-examining witnesses of the Staff and Applicant would, if granted, make of this NRC proceeding an intolerable sham, and would deny any semblance of due process or fairness. That we citizen intervenors, without resources, research staff or facilities, documents that the NRC Staff denies to us, or any funding from the agency or the utility to assist us, are apparently being required by the Applicant to meet some vague and undefined and ever-moving standard of response when already we have responded in good faith and within the limits of our ability makes a mockery of the Discovery process. Where we have not provided lengthy research papers or voluminous bibliographies in response to Applicant's questions, it is because we do not have those materials in our possession, have not had time to undertake extensive bibliographic research, have not had the staff to engage in the kinds of detailed and technical research that the Applicant asks us to do, or are unable to provide more detail than we have in good faith done in our January 18th responses.

For the reasons stated above, ECNP asks the Board to deny the Applicant's request that ECNP be prohibited from presentation of direct testimony and cross-examination. We do so because we have fulfilled the Board's Order to answer interrogatories, have done so timely and in good faith, and because the Applicant has set no standards for what constitutes an acceptable response and indeed appears to wish to set a moving target such that no answer by the Intervenors would ever be deemed sufficient, and because the Applicant has not here shown that in fact the ECNP responses do not meet the guidelines given to us by the Board, or have in any way prejudiced the Applicant.

As to ECNP's motion for a protective order, these Intervenors submit that the Applicant has given on p. 2 of its February 4th Motion only a bald insistence backed by no reasoning or explanation for its request. The Applicant merely states that ECNP "has failed to adequately answer" and hence "ECNP's motion for protective order must be denied." This statement on p. 2 does not constitute a reasoned argument, especially in light of no definition of what does comprise an acceptable answer to interrogatories. Therefore and for reasons stated in our previous objections to Discovery requests, ECNP asks the Board to deny the Applicant's request that our motion for a protective order be denied. For the Board to do otherwise would be contrary to reasoning applied by the Board in earlier stages of this proceeding, and would further contribute to the carnival-like atmosphere that the Applicant is attempting to impose on this proceeding.

Most of the Applicant's objections to ECNP's January 18th answers to interrogatories are general, unspecific, or inaccurate and misleading, and hopelessly vague. (See, e.g., 1A-3; 1A-4; 1A-5; 1B-1 through 1B-4; 2-1; 2-2; 2-9; 3-1; 3-2; 3-3; 3-7; 3-10; and 4B-2.) With regard to most of the Applicant's objections, the statements made by Applicant are completely without foundation. The following analysis therefore does not attempt to address each specific item to which the Applicant has objected. ECNP does, however, reiterate that its responses were within the guidelines of the Board's October 30th, 1979, directives concerning responses to interrogatories and that in many instances, ECNP's contentions were drawn from a wide range of background information drawn from numerous sources which may or may not be in the possession of these Intervenors but could not be recovered for specific citations without extensive bibliographic search and/or research.

We turn to the Applicant's characterizations of ECNP's responses at p. 3 of the February 4th Motion. With respect to Contention 18 (herbicides), ECNP objects to, and asks the Board to disregard, the Applicant's inaccurate characterization of our response as "they have no knowledge as to the contention." We direct the Board's attention to what we actually responded: namely, that we are not in a position to undertake the kind or amount of fundamental research that the Applicant demands of us; that the full responsibility for thorough health and safety research and literature review lies with the Applicant and the NRC Staff in order to comply with NEPA and the Atomic Energy Act; and that the Intervenors can at this time neither confirm nor deny the existence of adverse effects from these herbicides. That's very different from saying that we have no knowledge of our contention. The burden of proof of the safety of these substitute chemicals lies with the Applicant that intends to use them, and certainly until that party, and the NRC Staff, have completed their required environmental impact studies ~~of this matter~~; the Intervenors are in no position to provide further answers. Our efforts to research the substitute herbicides will continue if the Board allows us respite from these oppressive and open-ended demands on our time and energies by the Applicant. The same responses here would apply to the General Interrogatories which ask for information which is not in our possession about an herbicide or herbicides that the Applicant was forced to substitute for the toxic one that the Applicant initially proposed using but which was subsequently prohibited by EPA. (See Board's Order of March 6, 1979, at p. 67.)

Similarly, with respect to Contention 4 (need for power and conservation alternatives), ECNP has responded timely and in good faith with the information

available to us. The citation given in response to Interrogatory 4B-1 is the 1979 edition of Moody's Public Utility Manual. We do not believe that a more recent edition has been published, since we are now only in February of 1980. Projections, as requested by the Applicant, are in part based upon historical growth rates. ECNP has responded to the interrogatory to the best of its ability at the present time.

With respect to Interrogatory 4B-2, ECNP suggests that, if the Applicant is dissatisfied with ECNP's response that the Applicant's existing facilities are well known to the Applicant, it would be very helpful to us if the Applicant will send us a list of all its existing (and projected) facilities and sources. We see nothing in the Appliant's original interrogatory that asks us, as his counsel now does, for an "interpretation" of the Applicant's existing facilities and sources. Nor does the ECNP response state, as counsel for the Applicant says on p. 8 of his February 4th Motion, that "Applicants know what that term means." What the ECNP response to Interrogatory 4B-2 did say was "Existing facilities of the Applicants are certainly known to the Applicants." We went on to add that PP&L has stated that it intends to maintain all of its existing facilities and augment them with small generating units in the future with citation given to PP&L's own document. This response clearly fulfills the latter part of the Applicant's Interrogatory 4B-2, which asks if we assume that each such (i.e., existing) facility and source will be available to meet the needs during the entire 30 year period. Because ECNP believes that it has answered as fully and responsively as possible these interrogatories, we ask the Board to deny the Applicant's request that the Licensing Board order ECNP to supplement our answers.

Contentions 1, 2, and 3 relate to the health effects of the uranium fuel cycle, health effects of low-level radiation, and uranium fuel supply. The Applicant is intentionally mischaracterizing more than ten pages of ECNP responses by this ECNP representative as "a deliberate attempt to avoid the discovery obligations" of the Board. I speak personally here to the Board about this apparent attempt to impugn my honesty, integrity and good faith. The Applicant's charge is false and I resent its implications concerning my character. I ask the Board to deny the Applicant's request for sanctions and to issue a protective order to these Intervenors to prevent the Applicant from making further abusive discovery demands on ECNP and to preserve our rights to litigate issues of the utmost importance to the health and safety of our members and all persons exposed to the adverse effects of radioactivity from the nuclear fuel cycle.

The Applicant goes on to say, with no explanation or justification, at p. 3 that "ECNP has failed to properly respond" and again states, with neither

explanation nor justification, that our responses, which were filed timely and in good faith, "are nothing more than an attempt to avoid its discovery requests." Nor is this Applicant content merely to ask the Board to prohibit direct evidence, a measure which we public-interest intervenors cannot believe that a fair Licensing Board would impose on citizens who fulfilled their obligation to submit timely responses to the best of their ability. This Applicant goes on to insist upon additional punitive sanctions that would prevent ECNP even from cross-examining the Applicant's witnesses in this case. Such a totally uncalled-for action would make a mockery of the entire licensing procedure. The Applicant has and shows no basis whatsoever for his untrue statement that ECNP has failed to make a good faith attempt to provide answers in this area. ECNP herewith moves that the Board reject the Applicant's wholly unwarranted and untrue charges against this ECNP representative and that the Board deny entirely the Applicant's request for sanctions that would prevent ECNP from giving direct evidence and cross-examining witnesses on these or any other contentions. Furthermore, I ask the Board to request an apology from counsel for the Applicant to me personally and in writing and orally during the next public hearing session of this operating license proceeding. Press coverage from press releases by the Applicant of these untrue statements are damaging to my good name and reputation. Perhaps attorneys are accustomed to saying such damaging things to one another but I doubt it. I am not an attorney; I am the Co-Director and an authorized representative of a group of citizens whose well-being and very lives will be affected in ways they have good reason to believe will be adverse if the Susquehanna reactors are licensed to operate. ECNP believed that what was asked of us on Discovery was oppressive and amounted to harrassment; we undertook the proper appeal procedures that are allowed under the NRC's Rules of Practice. Having exhausted those remedies without satisfaction of our requests, ECNP did comply to the best of its ability and did so within the time ordered by the Board.

With particular regard to Applicant's comments on ECNP's responses to Interrogatory 1A-1, we ask the Board to note that there is no assessment of radon at the present time in Table S-3--the Commission's standardized table for assessing the environmental effects of the uranium fuel cycle, applicable to Susquehanna 1 and 2--and that the Susquehanna Environmental Impact Statement is thus incomplete without it. Therefore we cannot be expected to "describe each aspect in which...the assessment of the quantity of radon-222...is inadequate" when the assessment does not yet exist in the applicable table of the NRC's regulations. When the Commission has completed its evaluation of the quantity of radon and the health effects of radon attributable to the operation of a reference reactor and has entered such an assessment in its Table S-3,

there will be an assessment for evaluation. At the present time, however, the governing factor is footnote 1 to Table S-3 (10 CFR 51.20(c)) which states, in part:

> Table S-3 does not include health effects from the effluents described in the Table, or estimates of releases of Radon-222 from the uranium fuel cycle. These issues which are not addressed at all by the Table may be the subject of litigation in individual licensing proceedings.

The Applicant's and Staff's Final Environmental Report and Statement cannot be completed until a determination of radon has been made by the Commission. The environmental studies accompanying earlier stages of this plant are no longer applicable in the wake of the deletion of the radon-222 number from Table S-3. In addition, this issue is the subject of adjudicative hearings, and the pertinent transcripts and testimonies referenced by ECNP Intervenors in their responses to interrogatories are all in the public record.

Furthermore, the Applicant references the Draft EIS on Uranium Milling and appears to be familiar with it. ECNP has noted that the Staff of the NRC has failed to supply the additional materials on this subject which were requested in May, 1979. The Applicant is specifically referred to Dr. Kepford's comments on the Draft EIS, and it is clearly stated that, beyond the references supplied, "ECNP has no additional specific information to submit at this time...."

The Applicant's characterization of ECNP's answer to Interrogatory 1A-2 exemplifies the manner in which the Applicant's objections mislead the Board--in this instance by omitting from the objection the previous preceding sentence of the ECNP response which had specified the sources of radon-222 attributable to the Susquehanna reactors as requested. Far from "turning the discovery process on its head," as counsel for the Applicant puts it, the ECNP response is right and proper: that the calculation of the exact amounts of radon-222 which will be released at each step in the fuel cycle is the responsibility of the NRC Staff; that is what the Table S-3 issue raised in the Three Mile Island Unit 2 proceedings by Dr. Kepford is all about: the NRC Staff had been failing to account for the full amount of radon which will be released during the full detoxification period. The ECNP response then goes on to specify for the Applicant's counsel the exact date of the testimony that Dr. Kepford submitted in the Three Mile Island Operating License proceedings, the unrefuted testimony that led to the NRC Commissioners' removal of the inaccurate number in Table S-3 for the curies of radon attributable to an annual fuel requirement for a reference reactor.

The attorney for the Applicant then states that ECNP expects "Applicants to select from these hundreds of pages" the values for radon. The Kepford testimony referenced is only seven pages long. It must be brought to the Board's attention that the Applicant's law firm also represents the Metropolitan Edison Company in the TMI-2 proceeding and hence the transcript, which was properly referenced in ECNP's response, would be in the possession of that firm, with a back-up copy available at the NRC Public Documents Room, within half a dozen blocks of the law firm's Washington, D.C., offices. It must also be brought to this Board's attention that the same counsel who filed the Applicant's February 4, 1980, Motion to prohibit ECNP from participation on its contentions subsequently four days later on February 8, 1980, filed his Notice of Appearance as counsel for the Suspended Licensee (Met Ed) in the remanded TMI-2 proceedings on the radon issue which will commence February 25-26, 1980, before the NRC Appeal Board.[1] It is therefore extremely difficult for these Intervenors to believe that the materials on radon that were used by Dr. Kepford as well as his testimony and the transcripts of TMI-2, as well as of Perkins-1, 2, and 3 (also cited in ECNP's responses on Contention 1) are not already well known to counsel for the Applicant and that these interrogatories were asked in good faith for information of which the Applicant was not already aware--and also aware of the ECNP's Intervenors' knowledge relative to that contention.

With regard to Contention 2 (Health effects of low level radiation), we note that the Applicant had asked ECNP to identify the types of risks of low-level radiation. ECNP has done so in its responses to 2-2 in the first two sentences, and have cited two specific references, as well as discussing at some length the status of uncertainty with respect to the state of knowledge in this field, as is evidenced by the current questioning of the National Institutes of Health and the Department of Health, Education, and Welfare of the adequacy of research in this area of the effects of low-level radiation. ECNP can provide no more detailed information at this time and has already answered the Applicant's interrogatories to the best of our ability within the

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[1] We note also that Applicant's counsel has long been a utility attorney, having participated in the Calvert Cliffs case in 1971. This longevity substantiates for ECNP that the Applicant in this case has full familiarity with the issues about which Applicant's counsel sought such detailed information from the Intervenors.

The Applicant's objections to ECNP's responses to Contention 3 (uranium fuel supply and price) appear to be based on the assumption that ECNP is in a position to pre-guess the results of the NURE program and to specify future costs in an economy where inflation spirals upward at what appears to be an ever-increasing rate of increase. Here again these Intervenors have been unable in the month allowed to engage in extensive research, to exhume specific references used in the background development ofthe original contention, or to undertake any independent calculations. Applicant objects to ECNP's use of a formula in response to Interrogatory 3-6 which asks how many commercial nuclear power plants we contend will be operating in the U.S. by the year 2000, assuming that the growth rate for nuclear generated electricity drops to 15%. Applicant claims that ECNP must provide a numerical value for the formula term, "current capacity." Current capacity is a function of the number of operating and operable reactors and hence changes from time to time. For example, although 72 reactors had been licensed to operate commercially as of March, 1979, by November, 1979, only 53 of those reactors were actually operating. Therefore, current capacity for the month of November, 1979, was 53 times the capacity per reactor of those operating. In December, 1979, to our recollection, 54 reactors were in operation and therefore the current capacity for that month was 54 times the capacity of each of the operating reactors. Thus, ECNP's formulation of its response is clearly appropriate in view of the changing value of one of the terms.

In summary, ECNP Intervenors have clearly responded to the Applicant's interrogatories with the information available to their representative and within the guidelines set forth by this Board and have complied with the Board's order to do so. ECNP therefore asks this Board to deny the Applicant's motions to prohibit ECNP from giving direct evidence on the ECNP contentions and from cross-examining the witnesses of other parties on these contentions, and asks the Board to deny the motion to compel further responses to these interrogatories. under 10 CFR 2.740(c)(7). These Intervenors expect, of course, to comply with the requirements of 10 CFR 2.740(e).

dated this 18th day of February, 1980

Respectfully submitted,

Judith H. Johnsrud

Dr. Judith H. Johnsrud
Co-Director, ECNP

I, Judith H. Johnsrud, hereby affirm that the information contained in ECNP'SRESPONSES TO BOARD'S MEMORANDUM AND ORDER ON DISCOVERY MOTIONS (II) is true and accurate to the best of my knowledge and belief within the time limitations imposed by the Atomic Safety and Licensing Board.

Judith H. Johnsrud

Judith H. Johnsrud
Co-Director
Environmental Coalition
on Nuclear Power

433 Orlando Avenue
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814-237-3900

Sworn and subscribed before me
this 12th day of ~~January~~ February, 1980

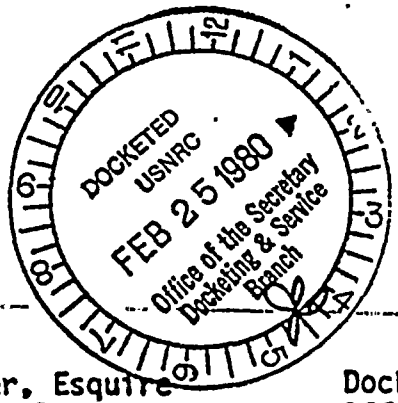
Mary Louise Hart
312 W. College Ave
State College, Pa

MARY LOUISE HART, Notary Public
State College, Centre County, Pa.
My Commission Expires August 17, 1981

CERTIFICATE OF SERVICE

I hereby certify that RESPONSE OF ENVIRONMENTAL COALITION ON NUCLEAR POWER TO APPLICANT'S MOTION TO PROHIBIT ECNP INTERVENORS FROM LITIGATING ECNP CONTENTIONS AND MOTION TO COMPEL has been served this 19th day of February, 1980, by deposit in the U.S. Mail, first class, postage paid, on the parties in this proceeding.

Judith Johnsrud
Authorized representative
and Co-Director, Environmental
Coalition on Nuclear Power



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