

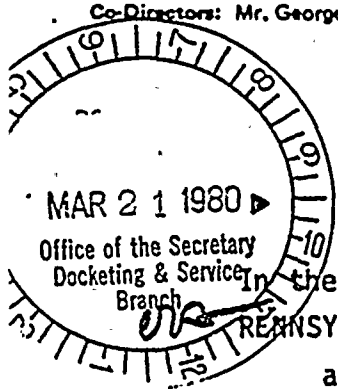
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ENVIRONMENTAL COALITION ON NUCLEAR POWER

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of
PENNSYLVANIA POWER AND LIGHT COMPANY)
and)
ALLEGHENY ELECTRIC COOPERATIVE INC.)
(Susquehanna Steam Electric Station)
Units 1 and 2)

Docket No. 50-387
50-388

ECNP INTERVENORS' RESPONSE TO BOARD QUESTIONS PERTAINING TO APPLICANT'S
MOTION TO PROHIBIT INTERVENORS FROM LITIGATING THEIR CONTENTIONS

The February 22, 1980, Board Order setting oral argument on Applicant's Motions to prohibit SEA and ECNP litigation of contentions and to dismiss CAND was set without consultation among the parties and without adherence to 10 CFR 2.703(b). The date conflicts with other long-standing commitments of both ECNP representatives and entails great inconvenience and expense to attend.

The only matter of fact or law asserted or to be considered that was specified in this February 22 Order is the Applicant's three motions. No "other matters," other than future scheduling, were specified. The ECNP Intervenor's respectfully suggest that 10 CFR 2.703(a)(3) requires more specificity of "other matters" in order to give to participants a fair opportunity to be prepared for oral argument, to avoid "surprises," a term that has figured prominently in the discovery dialogue, and to ensure due process for uncounseled citizen participants.

The Board Memorandum, dated February 26, 1980, then raises an entirely different issue: the treatment of a party that has defaulted. These Intervenor's have received no notification from this Board that they have "defaulted" in this proceeding, nor can ECNP's responses to Interrogatories of the other parties be said to lie within the definitions of "default" in 10 CFR 2.707. ECNP has responded timely, as ordered by this Board, to Interrogatories of the Applicant and Staff and within the guidelines laid

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out by the Board itself. ECNP has stated clearly (January 18, 1980) that it has nothing additional to add to its earlier timely responses to Staff Interrogatories.

ECNP Intervenors therefore can only conclude that the questions posed within the context of a referenced Prairie Island decision (to which this legal representative does not have access) do not properly pertain to the ECNP situation in this proceeding since ECNP has not defaulted under 10 CFR 2.707. For these Intervenors to be required to argue defensively these questions "suggested by the Staff's answers" that presume that default has taken place casts an unjust cloud of "guilt" of default upon this party which has not defaulted. ECNP objects to this requirement which may be construed to darken the good name and standing of this uncounseled party and is therefore improper.

Furthermore, the Board suggests that parties "assume that the issue on which there has been a default is nevertheless litigated...and that the party which has defaulted...remains in the proceeding," as a basis for argument. These questions are therefore purely hypothetical and as such cannot hold weight in the Board's decision-making. (Docket 50-320, Transcript, May 17-18, 1977, pp.) ECNP cannot see what relevance the asking and arguing on these hypothetical questions has for the issue at hand.

The ECNP Intervenors therefore now move that the Board omit consideration and oral argument on these two hypothetical questions.

ECNP, in addition, respectfully requests the Board to supply these Intervenors with clear definitions of what constitute "acceptable," "adequate," "deficient," and "unacceptable" answers to interrogatories, other than the guidelines set forth in the Board's Orders of August 24 and October 30, 1979.

In the absence of any legal citations in, or other substance to, Applicant's Motion to prohibit the intervening parties from litigation of their own contentions, and in the absence of default by ECNP, and in view of ECNP's proper and timely response to the Applicant's improper Motion, these ECNP Intervenors move the Board to cancel oral argument on the Applicant's motion pertaining to ECNP and to deny it forthwith.

The ECNP Intervenors have been sorely troubled by the course of this proceeding and the cumulative impact of the Staff and Applicant's procedural maneuvers under the guise of discovery that now clearly emerge as a concerted effort to remove from these Intervenors any active participation in the proceeding and any opportunity to make a record in this proceeding to which we were admitted--we thought in good faith--as full participating parties. ECNP incorporates as part of this written brief (per Board's Memoranda of February 22 and 26, 1980) for this Board's consideration the Background and Discussion sections of ECNP's Request to the NRC Commissioners for Expedited Consideration of Actions of an Atomic Safety and Licensing Board and Other Matters, dated March 14, 1980, and submitted to the NRC Commissioners, with copies served on the parties in this proceeding.

The gravity of the consequences of the issues here for citizens' due process, for credibility of this regulatory agency, and for the protection of the people of the already seriously damaged Susquehanna Valley is foremost in the mind and conscience of the ECNP Intervenors in this proceeding.

Respectfully submitted,

Judith H. Johnsruud

Dr. Judith H. Johnsruud

Co-Director

Environmental Coalition

on Nuclear Power

Dated this 14th
day of March, 1980.

CERTIFICATE OF SERVICE

I hereby certify that copies of ECNP INTERVENORS' RESPONSE TO BOARD QUESTIONS PERTAINING TO APPLICANT'S MOTION TO PROHIBIT INTERVENORS FROM LITIGATING THEIR CONTENTIONS have been served on the parties by deposit in the U.S. Mail, first class, postage paid, this 15th day of March, 1980.

Judith H. Johnsrud

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