3/14/80

ENVIRONMENTAL COALITION ON NUCLEAR POWER

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

To the NRC Commissioners

In the Matter of	)	
PENNSYLVANIA POWER & LIGHT COMPANY	)	Docket 50-387-88
and	)	
ALLEGHENY ELECTRIC COOPERATIVE, INC.	)	
(Susquehanna Steam Electric Station Units 1 and 2)	)	

REQUEST TO THE NRC COMMISSIONERS FOR EXPEDITED CONSIDERATION OF ACTIONS OF AN ATOMIC SAFETY AND LICENSING BOARD AND OTHER MATTERS

Pursuant to Chapter 1, Section 1 of the Atomic Energy Act of 1954, as amended, and absent any provision of 10 CFR 2, NRC Rules of Practice, that governs[1] this emergency communication, the Environmental Coalition on Nuclear Power (ECNP) Intervenors submit the following requests for immediate consideration and action by the Commissioners. These requests relate to procedural aspects of the above-captioned matter.

The ECNP Intervenors' contentions in this proceeding are not addressed herein, in accordance with the provisions of 10 CFR 2.780 concerning ex parte communications.

The procedural matter in which Petitioners seek immediate relief concerns the limits of discovery and the Board's decision-making process as it has been applied to discovery in this proceeding. When, as here, the parties have grossly unequal resources, we must ask the question: Are the more

[1] ECNP can find, in particular, no wording in 10 CFR 2.780 that would appear to prohibit this request as being an ex parte communication. Copies of this Request are being served for the record on all parties to the proceeding. Nor is this emergency request an interlocutory appeal from a particular ruling of a presiding officer in the context of 10 CFR 2.730(f).

powerful, well-financed parties to be allowed and abetted by the Board to overwhelm another party by the imposition of excessively large numbers of discovery requests, arbitrary rejections of good faith responses, and other continuing demands upon an "underdog" party causing paralysis, exhaustion, and total defeat of the good faith efforts of citizen participants to build a meaningful record on issues of public health and safety and environmental effects?

In this instance, Applicants served some 2700 interrogatories upon these Intervenors. Intervenors were denied a protective order by the Board, whereas the Applicant was granted an order protecting it from responding to the bulk of Intervenors' few discovery requests (Board Memo and Order, August 24, 1979). There have followed months of procedural motions requiring detailed written responses, Board directives that have totally ignored the Intervenors' requests for clarifications as well as for reasonable protection and relief, delays occasioned by NRC Staff and Applicant failures to meet schedules of their devising, and acquiescence by the Board to virtually every demand by Applicant and Staff and denial of virtually every request by the various intervenors. Intervenors have been frustrated in their legitimate modest discovery requests. Deadlines too short to permit adequate responses have been enforced for intervenors, whereas Staff and Applicant's delays are accepted without question by the Board. Slowly and surely effective public-interest participation is being bled to death by procedural maneuvers of the Applicant, Staff, and Board. Intervenors now are called upon to argue why they should not be prohibited both from presenting direct evidence and from cross-examination of the witnesses that other parties will be allowed to present on the Intervenors' contentions.[2] The sole reason for these punitive "sanctions" which the Applicant and the Staff have asked the Board to approve is that the Applicant and the Staff have arbitrarily rejected as "inadequate" or "deficient" the Intervenors' timely good faith responses to the excessively large numbers of interrogatories served by the Applicant and those of the Staff.

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[2]Board Memoranda on Prehearing Conference, dated February 22 and 26, 1980.

Petitioner's Request:

1. Petitioner ECNP asks the NRC Commissioners to direct their Atomic Safety and Licensing Board in the captioned proceeding to omit from the scheduled March 20, 1980, Prehearing Conference oral argument on Applicant's motions to restrict participation of Susquehanna Environmental Advocates (SEA) and ECNP and to dismiss Citizens Against Nuclear Dangers (CAND).

2. Petitioner ECNP asks the Commissioners to deny, and/or direct the Board to deny, without additional filings, the Applicant's Motions to restrict SEA and ECNP participation in, and to dismiss CAND from, this proceeding and Staff's recommendation to restrict ECNP's participation.

3. ECNP asks the Commissioners to direct the Board to certify to the Commissioners the four questions asked by ECNP in its November 19, 1979, filing,[3] a request that Board denied[4].

(A) Does the NRC Staff or the Applicant have the right to create excessive demands for discovery (under Part 2.740) of an Intervenor of such a magnitude that the Intervenor is rendered incapable of further participation in that or any other NRC Proceeding?

(B) Is it an appropriate remedy for this Licensing Board to deny the Intervenors in this proceeding the right to present witnesses simply because these Intervenors have been inundated and paralyzed by the excessive, unreasonable, meritless, and unjustifiable demands of the NRC Staff and Applicant?

(C) Should not the entire Licensing Board in this proceeding be disbanded for gross incompetence, for its continuing refusal to address the objections by the various intervenors to oppressive discovery demands, and for the continuing refusal

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[3]See "Intervenors' Response to Licensing Board Memorandum and Order of October 30, 1979," pp. 11-13.

[4]Board "Order Denying Requests of ECNP," December, 1979, p. 2.

of this Licensing Board to even attempt to conduct a fair hearing under Part 2.718 of the Commission's rules?

(D) As a result of the abuse of the purpose of discovery by the NRC Staff and Applicant in this proceeding, which abuse has been not only condoned, but also aided and abetted by this Licensing Board, should not this Licensing Board be reconstituted so as to include one of the NRC Commissioners who, in the past, has expressed concern about the conduct and quality of NRC licensing proceedings?

4. These Intervenors--beleaguered in the extreme by their treatment at the hands of this Applicant, the Suspended Licensee in TMI-1 and II, the NRC Staff and Licensing Boards, in vigorous protest against the chain of events described in the Background section below, and in order to assist the Commission in avoiding the setting of a procedural precedent that will destroy altogether any remaining pretext of fairness to the public in the NRC licensing process--respectfully ask the Commissioners to respond themselves to these questions, with or without certification from the Board.[5]

5. In view of recent press reports of studies by this Applicant that indicated extensive further delay in completion of these reactors and large additional construction expenses that may require additional review of the plant,[6] the ECNP Intervenors ask the Commissioners to take the unusual step of ordering a halt in this licensing proceeding pending an intensive review by the Commissioners, with <u>independent</u> consultants, of the abuses of discovery that are being tested by its Staff as well as the Applicant in this proceeding, and an investigation of the extent to which such procedural abuses are occurring in other NRC proceedings. Such a review is a vital part of the Commissioners' overall procedural review and reorganization

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[5] Authority for this request for Direction by the Commissioners to Certify resides in 10 CFR 2.718(i). Petitioners also cite 10 CFR 2.704(c) with respect to disqualification.

[6] The [Harrisburg] <u>Patriot</u>," Berwick Area Nuclear Plant Changes Mulled," February 22, 1980; "Nuclear Power: More Delays Feared in Berwick N-Plant Start-Up," March 10, 1980.

growing out of recommendations of the Kemeny and Rogovin Reports.[7]

6. Petitioner asks the Commission to clarify what constitutes "undue burden" of discovery for citizen intervenors, as the term is used in 10 CFR 2.740(c) on protective orders, and what is the total impact of large numbers of discovery demands, and of vague, unfocused open-ended interrogatories upon an impoverished intervenor's ability to respond adequately.[8]

7. ECNP Petitioner asks that the Commission direct the Board to suspend all matters relating to discovery pending clear definition by the Commission of what constitutes an "acceptable" or "adequate" response to interrogatories beyond and more specific than those guidelines provided by the Board, and complied with by these Intervenors.

8. ECNP Petitioner asks the Commission to suspend entirely and indefinitely this license proceeding for Susquehanna 1 and 2 until such time as the Applicant has completed all proposed construction changes and the NRC Staff has completed its review thereof and has completed its required documents (e.g. SER), with sufficient time for meaningful perusal by the Intervenors.

9. When, and if, this proceeding is to be resumed, the ECNP Intervenors ask that any future Board include a Commissioner as an actively participating member to assure a fair proceeding--another request made early in this proceeding with certification of the request denied by the Board.

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[7]As described by Commissioner Bradford, Seventh Annual National Engineer Week Energy Conference, Knoxville, Tennessee, February 21, 1980, p. 2-3

[8]For example, it would take an autobiography to answer questions that require an intervenor to identify all documents and individuals consulted in the formulation of the assumptions behind the basis of a contention.

Background:

The Operating License proceeding for Susquehanna I and 2 was initiated by the Applicant late in the summer of 1978, prior to the accident at Three MIle Island, Unit 2. ECNP, and three other parties, filed timely petitions to intervene, formulated contentions and argued their merits for acceptance in an initial prehearing conference in January, 1979. The Board's Special Prehearing Conference Order of March 6, 1979, consolidated and reworded various contentions; its issuance set forth the Discovery schedule. On March 28, 1979, the accident at Three Mile Island, Unit 2 (TMI), began and is still in progress. The ECNP representatives are the only public-interest litigants in that reactor's still-incomplete Operating License proceeding, as well as participants in three other TMI-related NRC proceedings initiated since the accident began.

The major portion of the ECNP Intervenors' Discovery requests to the NRC Staff were never honored. Staff Counsel James M. Cutchin IV chose to inform Intervenors that NRC policy of not funding public-interest intervenors precluded supplying documents to those parties. The Applicant was granted a protective order by the Board, thereby depriving these Intervenors of a substantial portion of their moderate Discovery requests upon the Applicant (See NRC Staff letter to Dr. Johnsrud, June 27, 1979, and Board Memorandum and Order on Scheduling and Discovery Motions, August 24, 1979).

The ECNP Intervenors, by contrast, were served fewer than 100 Interrogatories from the Staff but fully 2700 by the Applicant upon ECNP's mere dozen contentions. The ECNP Intervenors timely and in good faith responded to the Staff's questions despite Staff's refusal to supply the documents requested and needed in order to answer more fully. These Intervenors sought a protective order from the Board under 10 CFR 2.740(c) on the legitimate grounds that the number of questions served by the Applicant was excessively burdensome, oppressive, and unduly expensive for unfunded citizens, who represent the public's interest, who lack staff, research facilities, even secretarial help. Furthermore, the stringent time limits for response to this burdensome number of requests rendered full compliance literally impossible, particularly in view of the voluntary nature of the participation of the ECNP Intervenors' representatives, who have many additional demands and obligations upon their time wholly unrelated to Susquehanna. Since March 28, 1979, foremost among these additional obligations has been response to the continuing needs of our organization's members and the citizens of Pennsylvania who have been

adversely affected by the ongoing TMI accident.

The ECNP Intervenors have followed the Commission's prescribed methods of petitioning for relief. These efforts have been to no avail. Intervenors' requests for protective orders relative to all interrogatories and subsequently to individual interrogatories have been entirely denied. Requested extensions of time adequate to answer this burdensome number of interrogatories have been denied. The extension finally given by the Board was for only approximately one month.[9] The Board restricted temporarily the required responses to only those numerous interrogatories pertaining to environmental contentions but in no way reduced the number of Applicant interrogatories relating to ECNP's own contentions. Postponement of Intervenors' responses to safety contentions rested on the inability of the NRC Staff, in the post-TMI period, to complete the Safety Evaluation Report according to the schedule set by Staff and Applicant.

It should be noted here that ECNP Intervenors, by contrast with this enormous Discovery burden placed upon them, asked of the NRC Staff a mere handful of questions, lacking the time to prepare properly focused interrogatories of either Staff or Applicant as a direct result of the extraordinary discovery demands of the NRC Staff and the Applicant.

Since September, ECNP's representatives' time has been almost entirely consumed, again and again, by repeated required responses to the Board, the Staff, and Applicant in Susquehanna, very nearly to the exclusion of all other obligations--including our ongoing critical participation in the still-incomplete licensing of TMI-2 (appellate review of aircraft crash and radon issues raised and carried forward by Dr. Kepford) as well as the TMI-1 Restart and NRC Generic Rulemaking proceedings to reassess confidence in the availability of radioactive waste disposal and spent fuel storage--issues which are now critical at TMI-2.

Having exhausted all of the appeal remedies provided for by the NRC's Rules of Practice, the ECNP Intervenors did, in fact, comply fully with the

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[9] Although these Intervenors did not plead illness or request additional response time because of illness (except added time to file a notarized affidavit to accompany discovery responses), this representative believes the record should reflect that ECNP met the discovery deadline despite my repeated debilitating bouts of flu this winter.

Board's October 30 and December 6, 1979, Orders. On January 18, 1980, ECNP filed timely responses within our limited abilities to research and answer the Applicant's interrogatories. By a motion dated February 4, 1980, the Applicant seeks to prohibit ECNP from participating in litigation of its contentions because the Applicant is dissatisfied with ECNP's responses to its extraordinarily large number of interrogatories. The Applicant here seeks to shift the entire burden of providing information to the Intervenors, (even asking Intervenors to identify the Applicant's own facilities), while having provided virtually no information to the Intervenors throughout this protracted discovery period. Petitioners note that 10 CFR 2.732 unambiguously states that "the applicant or proponent of an order has the burden of proof." With no basis in legal citations, the Applicant summarily rejects most of the ECNP Intervenors' responses and moves the Board to compel ECNP to reanswer those few responses the Applicant deems acceptable. Rather than denying Applicant's motion outright, this Board has scheduled oral argument on the Applicant's motion, with Staff's partial opposition and partial support.

However, the Board's Memorandum of February 26, 1980, appears to shift the purpose of oral argument. Instead of consideration of the adequacy of Intervenors' responses to discovery such that Intervenors will be permitted to litigate their own contentions, the Board now requires consideration of whether these parties now presumed to have defaulted should be given lesser participational rights on their issues than are parties which did not raise the issues in question. Thus, there is no Board decision stating that these Intervenors have defaulted, which ECNP certainly has not, by virtue of their timely and good faith responses of January 18, 1980, in which ECNP followed the guidelines provided by the Board in its August 24th and October 30th memoranda and orders on discovery. Yet Intervenors are now ordered to argue that they have defaulted but should be allowed to litigate their contentions anyway on grounds related to Prairie Island decisions from 1974-75, copies of which have not even been provided to the parties.

From September through December, one of ECNP's Legal Representatives estimates that the Intervenors had less than one full day available to devote solely to actual preparation for presentation of ECNP's cases in the Susquehanna, TMI-1 Restart, and TMI-2 proceedings. The time was eaten up with mandatory

responses relating to Discovery matters precipitated by the Susquehanna Applicant's unreasonable number of Interrogatories, Staff's refusals to respond to Discovery requests, and the Board's decision to withhold from ECNP a protective order that would have prevented this clear form of harrassment of intervenors by procedural maneuver. In short, literally hundreds of hours have been consumed in fruitless paperwork, hours diverted from the deadly serious purpose with which ECNP and all other intervenors entered this proceeding.[10] We ask the Commissioners to note especially the explanations of intervenor frustration contained in ECNP Intervenors' November 19, 1979, Response to Licensing Board Memorandum and Order of October 30, 1979.[11] Note also that this Board then denies altogether ECNP's November 19, 1979 requests for (1) a protective order; (2) clarification of which NRC Staff Discovery interrogatories the Board was requiring ECNP to answer for yet a third time; and (3) certification of four questions to the Commissioners.

The result of these events has been a slow but certain procedural crushing and suffocation of these public-interest intervenors under an intolerable burden of hundredsof questions on each of the few issues ECNP has sought to litigate for the protection of its members and the public who will be affected by operation of Susquehanna. Rather than assisting Intervenors by provision of documents necessary for preparation of ECNP's case, the NRC Staff has not only shouldered no discernible burden whatsoever in exploring these contentions but also has refused to comply with Discovery, sending belatedly only a token few documents described as spare copies (NRC Staff letter, November 15, 1979).

[10]Intervenors who volunteer their efforts to make a nuclear reactor less hazardous by their participation in administrative agency regulatory proceedings do not have the luxury of a mere 40-hour work week. In fact, 70 and 80 hour work weeks are normal.

[11]Intervenors invite the Commission to use this document as a prime example of the manner in which the NRC's practices affect public-interest participants, as a Commissioner so vividly described in "The Nuclear Option: Did It Jump or Was It Pushed?" NARUC Annual Regulatory Studies Program, East Lansing, Michigan., August 2, 1979, pp. 3-4.

Rather than showing a concern for resolving the issues raised by Intervenors, the Applicant is evidently attempting to invent new procedural Intervenor traps to prevent full adversarial investigation of these issues in controversy.

Rather than protecting due process of uncounseled citizen intervenors, the Board has thus far used its authority in ways that further the inability of the Intervenors to get on with preparation of their cases, of which the scheduling of March 20th oral argument is only the latest example.[12]

It is difficult for these Intervenors to know how they could have been much more heavily burdened and impeded by the Applicant and NRC licensing procedures so as to prevent ECNP's effective preparation for presentation of the public-interest case on their contentions of significance to the public health and safety. The very fact that the same Legal Representative, in the TMI-2 operating license proceeding, had raised and carried forward both safety and environmental issues that have not yet been resolvedby the Commission or the Court is clear evidence that these Intervenors especially have made, and ought to be encouraged by NRC and assisted to further make, positive contributions to the NRC's licensing of nuclear reactors. They should not have every procedural impediment to full and effective participation placed in their way by other parties and officers in the proceeding.

This background description of the history of discovery in this proceeding is meant to clarify the facts leading to the present situation about which these Intervenors have here petitioned the Commissioners for relief.

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[12] There was no consideration given to 10 CFR 2.703(b) with regard to the scheduling of March 20th oral argument. ECNP Intervenors' representatives both have long-standing obligations out of state on that date; they were not consulted about the date, as has been the courteous practice of Boards in other proceedings to which ECNP has been a party.

Discussion:

It appears that the "misconduct" for which these ECNP Intervenors may now be subject to crippling "sanctions" is in reality only two in number:

(1) ECNP, essentially without funds, was unable to meet the demands imposed by the Applicant, Staff and Board in the Susquehanna proceeding; and

(2) ECNP has shown in the TMI-2 Operating License proceeding how entirely inadequate, indeed farcical, the agency's licensing process really is.

The purpose of the punitive action proposed by Applicant and being given serious enough consideration by the Board to warrant its calling a special prehearing conference appears to be nothing short of rendering impotent Intervenors who have proven their competence at revealing the incompetence of Staff and Licensing Boards in other NRC proceedings. The President's Commission on the Accident at Three Mile Island (Kemeny Commission) concludes, at page 56:

> With its present organization, staff, and attitudes, the NRC is unable to fulfill its responsibility for providing an acceptable level of safety for nuclear power plants.

The NRC here is certainly not improving its ability to provide an acceptable level of safety by preventing legitimate public-interest intervenors of demonstrated competence from fully engaging in the Commission's adversarial licensing process. Nor do the Staff or the Board evidence changes for the better in "organization, staff, and attitudes" by the techniques employed in this proceeding to checkmate the Intervenors.

Similarly, the NRC-commissioned Special Inquiry Group (Rogovin Report) on the TMI accident has observed:

> ...unless fundamental changes...are made in the way commercial reactors are built, operated, and regulated in this country, similar accidents--perhaps with the potentially serious consequences to public health and safety that were only narrowly averted at Three Mile Island--are likely to recur. (emphasis in the original)
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> ...It is, lest we forget, an inherently dangerous activity that Congress has authorized the NRC to license. (p. 92)

> Over the years the nuclear industry and its regulators have identified what have been considered to be serious safety problems and recommendations whose significance has been underscored by ringing statements to the effect that unless such problems are resolved "promptly," a license should be revoked or the industry shut down. Many of these problems are still outstanding. While we do not undertake to set out deadlines, we do believe that the congressional oversight committees should hold the NRC accountable with respect to such issues. (p. 93)
>
> In our view, if a firm commitment is not made promptly to bring about these changes, we will be exposing the public to a needlessly high level of risk. (p. 92)
>
> We have found that there is really no existing organization within the agency that has either the responsibility for or the capability of monitoring the effectiveness of the regulatory staff and of making recommendations for actions needed to establish and maintain a safety review process of the requisite level of quality. It is a paradox that while the agency has long insisted on quality assurance programs for industry entities associated with nuclear powerplants, it has never imposed a similar requirement for its own regulatory staff or for the safety review and inspection process. With the vast amount of unsupervised discretion that exists in the process, it is not surprising that senior managers readily accept the status quo and that few, if any, have spoken out and demanded agencywide organizational reforms. The momentum for that must come from outside of the staff..
>
> Similarly, in other fields project management on a system life cycle basis has been a way of life in directing development, testing, and operation of complex vehicles, facilities, and equipment. Yet relatively little of this systems management philosophy exists at the NRC. Instead, the NRC's role has been oriented more toward prescriptive licensing of a utility--putting a "Good Housekeeping Seal of Approval" on a proposed product--as distinguished from regulation which must include careful monitoring and control of hazards during the entire life of a facility. (SIG Report, p. 118).

Petitioners state that corrective actions, as are vigorously recommended by both the Kemeny and Rogovin studies, must begin with those in charge, namely the Commissioners. In the past, it has been the Licensing and Appeal Boards that have implemented Commission policies--the policies which have gotten us into the regulatory situation so strongly condemned above. There has been no evidence post-TMI that the Licensing Board in this proceeding has initiated the slightest change toward greater safety or any other reform to lessen that "needlessly high level of risk." Penalizing public-spirited, volunteer citizen intervenors for not having the comparatively infinite resources of the Applicant, Staff and Board only confirms the findings of the President's Commission and the NRC Special Inquiry Group. Silencing critics via procedural harrassment will not improve the quality of NRC licensing proceedings nor will it improve public safety.

In the fifty weeks since the TMI accident began, the Board in the Susquehanna proceeding has shown no capacity to undertake the reforms necessary for compliance with the Atomic Energy Act's mandate to protect the public health and safety. It is for this reason that these Petitioners have taken this appeal directly to those who have the ultimate decision-making authority. Herein lies an unparalleled opportunity for affirmative action, in the public interest by the Commissioners.

In the 1971 Calvert Cliffs decision, the Court has plainly said:

> It is, moreover, unrealistic to assume that there will always be an intervenor with the information, energy and money required to challenge a staff recommendation which ignores environmental costs. NEPA establishes environmental protection as an integral part of the Atomic Energy [now Nuclear Regulatory] Commission's basic mandate. The primary responsibility for fulfilling that mandate lies with the Commission. Its responsibility is not simply to sit back, like an umpire, and resolve adversary contentions at the hearing stage. Rather, it must itself take the initiative of considering environmental values at every distinctive and comprehensive stage of the process beyond the staff's evaluation and recommendation.

Furthermore, the accompanying footnote states:

> In recent years, the courts have become increasingly strict in requiring that federal agencies live up to their mandates to consider the public interest. They have become increasingly impatient with agencies which attempt to avoid or dilute their statutorily imposed role as protectors of public interest values beyond the narrow concerns of industries being regulated. (note 21)

And in York Committee for a Safe Environment, 1975, the Court states:

> 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. (note 13)

The words of the Court are clear: the obligation to conduct full and fair proceedings lies squarely with the Commission. Public-interest litigants cannot be expected by the agency to have the capabilities of the more favored parties, but neither has the agency the authority to penalize them for not having those capabilities by Board rulings that effectively exclude their active, meaningful participation in the Commission's adversarial proceedings.

Thus, rephrased, the questions posed here to these Commissioners are:

(1) Does any party to a licensing proceeding have the unlimited right to arbitrarily demand the total, complete dedication of all of the resources in time, energy, and personnel of a second party, even to the point of denying the second party the opportunity to prepare and present its own case?

(2) Do the Administrative Procedures Act of 1946, as amended, the Atomic Energy Act of 1954, as amended, the National Environmental Policy Act of 1969, as amended, and judicial decisions contain any provisions authorizing the proponent of an order in a licensing proceeding to totally and completely consume the resources in time, manpower, and energy of an intervenor in the proceeding for the purpose of preventing the effective participation of that intervenor in that proceeding?

(3) Do the above laws create a hierarchy of "rights" in a licensing proceeding which permit one party to dictate the extent of participation of another party in the proceeding?

(4) If the Applicant were to prevail in this motion, would not the precedent set allow any well-funded party to totally thwart <u>any</u> intervenor, simply by:

(a) asking a large enough number of interrogatories;

(b) declaring the answers are inadequate;

(c) demanding re-answers, until:

(d) the Intervenor capitulates, since the intervenor has no defenses?

Here, the Applicant proposes to bar ECNP from presenting evidence because we lacked the resources to meet some wholly unspecified standard set up, but never defined, <u>post facto</u> by the proponent of the licensing of Susquehanna. There is not a single legal citation in the Applicant's motion for a very good reason: there is no legal justification for prohibiting the ECNP and other Intervenors from litigation of their contentions.

A Board ruling that favored Applicant's Motion to prohibit litigation by these Intervenors would turn Calvert Cliffs, York Committee for a Safe Environment, the Atomic Energy Act, NEPA, and the Administrative Procedures Act on their collective heads. The Motion should be denied. The Commission should so direct its Board.

Beyond denial of this Applicant's Motion, the Commission has an obligation through its Staff and Licensing Board to make whole the participation in this proceeding of these Intervenors whose litigation preparational opportunities have been effectively foreclosed during these many months of procedural wranglings. Since the Board's August 24, 1979, Memorandum and Order on Discovery and Scheduling, these ECNP Intervenors have been deprived of necessary discovery materials and research time for their case. The Commissioners are therefore respectfully asked to direct their Board in this proceeding to grant these Intervenors and others similarly affected a full six months of preparation time plus discovery with no other obligations, such time to commence following whatever period of suspension of these proceedings the Commission may deem appropriate.

One last observation: this emergency communication is more repetitive, less clear, less elegantly composed and legally incisive than Petitioners wanted to file. Any deficiencies herein are a consequence of those very shortages and constraints under which we public-interest intervenors must labor. Therefore, Petitioner also requests the Commissioners to bear those shortcomings in mind in their consideration of this request for emergency action.

Respectfully submitted,

Judith H. Johnsrud

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Dated this 14th day
of March, 1980.

CERTIFICATE OF SERVICE

I certify that copies of REQUEST TO THE NRC COMMISSIONERS FOR EXPEDITED CONSIDERATION OF ACTIONS OF AN ATOMIC SAFETY AND LICENSING BOARD AND OTHER MATTERS have been served on the following parties by deposit in the U.S. Mail, first class, postage paid, this 15th day of March, 1980.

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