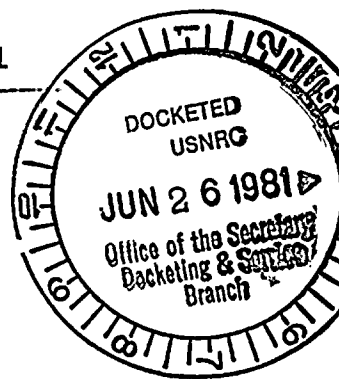


REGISTERED CORRESPONDENCE

June 24, 1981

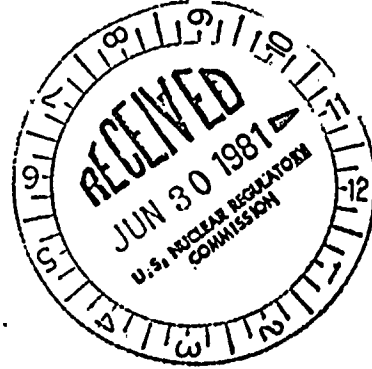


UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

Docket Nos. 50-387  
50-388



MOTION FOR SANCTIONS AGAINST SUSQUEHANNA ENVIRONMENTAL ADVOCATES FOR FAILURE TO COMPLY WITH ORDER COMPELLING DISCOVERY

I. INTRODUCTION

Susquehanna Environmental Advocates ("SEA") has failed to comply with the Licensing Board's order compelling SEA to answer interrogatories by Applicants and the Staff on Contention 6 (Emergency plans). Applicants therefore respectfully request that appropriate sanctions be imposed.

II. BACKGROUND

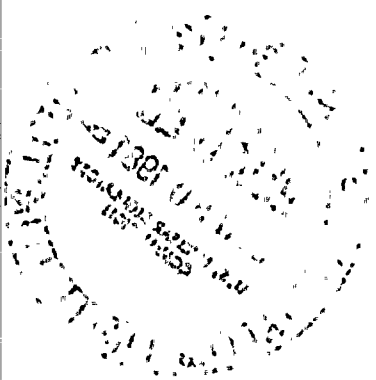
On November 12, 1980 the Licensing Board issued its "Memorandum and Order Establishing New Discovery Schedule for Safety Contentions", in which it ruled that responses to the discovery requests by Applicants and Staff on Contention 6 would be due on January 16, 1981 "or 15 days following service by the Applicants of their new emergency plan." Memorandum and Order, at 7. <sup>1/</sup>

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1/The discovery obligations on Contention 6 and other safety contentions had been suspended by the Board on October 30, 1979. Memorandum and Order on Discovery Motions (II), LBP-79-31, 10 NRC 597, 605 (1979).

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On December 13, 1980, SEA filed a "Petition for Extension of Time" in which it requested that the Board modify its November 12, 1980 Order to grant intervenors 60 days (instead of 15) after issuance of the new emergency plan to respond to discovery regarding Contention 6.

The new emergency plan was served on the parties on December 19, 1980, and on January 2, 1981 the Board issued an Order granting SEA's motion and setting February 23, 1981 as the day in which discovery responses would be due. No discovery responses were forthcoming. On March 3, 1981, Applicants filed a motion to compel discovery against SEA, Environmental Coalition on Nuclear Power and Citizens Against Nuclear Dangers. The NRC Staff supported the motion and requested that an order compelling discovery include the Staff's Contention 6 discovery requests as well.<sup>2/</sup>

On or about March 17, 1981, SEA filed a document which purported to answer the Contention 6 discovery.<sup>3/</sup> In a letter to the Licensing Board dated March 31, 1981, Applicants noted that SEA's filing did not appear to answer Applicants' interrogatories. SEA in a letter dated April 8, 1981, confirmed that its March 17 filing did not address the interrogatories, stating that "the interrogatories are nonsensical in light of the new regulations and the new emergency plans."

The Licensing Board's May 20, 1981 Memorandum and Order on Pending Motions set out this history and found that SEA "remains

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<sup>2/</sup>See "NRC Staff Response in Support of Applicants' Motion to Compel Discovery on Contention 6", dated March 18, 1981.

<sup>3/</sup>SEA Answers to Interrogatories: On Emergency Plan and New Contentions", undated.



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silent on inquiries made" and did "not meet the responsive requirement of interrogatories." Slip op. at 22. The Licensing Board concluded:

When consideration is given to the lengthy delays previously granted to answering such requests, including delays approved at the request of this intervenor, it can only be concluded that SEA is engaged in a deliberate frustration of the Applicants' rights of discovery.

Slip op. at 23. As a result, the Licensing Board granted Applicants' and Staff's motions to compel and ordered SEA<sup>4/</sup> to submit its answers to Contention 6 interrogatories "within 20 days of the date of this Order". Slip op. at 30.

SEA has not complied with this order. No interrogatory answers have been filed, notwithstanding the expiration of the twenty day period specified in the Order. Sanctions are therefore appropriate.

### III. SANCTIONS

There is no need to restate here the Licensing Board's authority to impose sanctions for failure to meet discovery obligations.<sup>5/</sup> In dealing with Environmental Coalition on Nuclear Power's failures to comply with discovery on health and safety contentions, the Licensing Board barred that intervenor from participation in the proceeding with respect to health and safety contentions. Because of SEA's failure to comply with the Licensing Board's discovery orders on

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<sup>4/</sup>The Licensing Board ruled that the motions to compel against Environmental Coalition on Nuclear Power and Citizens Against Nuclear Dangers were moot. Slip op. at 23.

<sup>5/</sup>See "Applicants' Motion to Dismiss Environmental Coalition on Nuclear Power from this Proceeding", dated April 14, 1981.

emergency planning issues, Applicants respectfully submit that the appropriate sanction here is to prohibit SEA from participating in this proceeding with respect to emergency planning issues.<sup>6/</sup> This type of sanction is the minimum needed in fairness to Applicants, given the late date at which SEA's noncompliance occurred and the extraordinary long period of time (since May 25, 1979) that SEA has had to prepare its answers.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

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Matias F. Travieso-Diaz  
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Dated: June 24, 1981

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6/While Contention 6 is, at the present time, the only emergency planning issue in this proceeding, SEA's proposed contention 20 is awaiting a ruling by the Licensing Board. Applicants previously did not object to the admission of that proposed contention, provided that it was rewritten. "Applicants' Answer to Susquehanna Environmental Advocates' Motion for Allowance of New Contentions", dated May 21, 1981. The NRC Staff opposed admission of that contention. "NRC Staff Answer to SEA Motion for Allowance of New Contentions", May 26, 1981. Applicants believe that SEA's subsequent failure to comply with the order compelling discovery should be taken into consideration when the Board rules on proposed Contention 20.

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ALLEGHENY ELECTRIC COOPERATIVE, INC. )  
 )  
(Susquehanna Steam Electric Station, )  
Units 1 and 2) )

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing "Motion for Sanctions Against Susquehanna Environmental Advocates for Failure to Comply with Order Compelling Discovery" was served by deposit in the United States Mail, First Class, postage prepaid, this 24th day of June, 1981, to all those on the attached Service List.

*Matias F. Travieso-Diaz*  
\_\_\_\_\_  
Matias F. Travieso-Diaz

Dated: June 24, 1981

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

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