

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

APPLICANTS' MOTION TO DISMISS ENVIRONMENTAL
COALITION ON NUCLEAR POWER AND CERTAIN
CONTENTIONS FROM THIS PROCEEDING

On August 24, 1979, the Licensing Board issued its Memorandum and Order on Scheduling and Discovery Motions. In its Order, the Licensing Board directed Environmental Coalition on Nuclear Power (ECNP) to comply with discovery requests filed by Applicants. ECNP has failed to comply with the terms of the August 24, 1979 Order. Pursuant to 10 CFR §2.707, Applicants therefore respectfully request that the Licensing Board dismiss ECNP as a party to this proceeding and dismiss as contentions in this proceeding those issues raised solely by ECNP.*

The background for this motion is as follows. The March 6, 1979 Special Prehearing Conference Order (LBP-79-6, 9 NRC 291) established a discovery schedule for this proceeding.

*The issues raised solely by ECNP are set forth in the attachment to this motion.

Interrogatories and requests for production of documents were to be filed by May 25, 1979, with answers due by June 29, 1979. On May 25, 1979, Applicants submitted both interrogatories and a request for production of documents on ECNP. On June 29, 1979, ECNP filed a motion for protective order against all of Applicants' discovery. The motion was based on ECNP's characterization of the discovery requests as "extraordinarily burdensome, oppressive and utterly pointless." On July 16, 1979, Applicants responded in opposition to ECNP's motion and filed a motion to compel discovery.

The Licensing Board's August 24, 1979 Order denied ECNP's motion and granted Applicants' motion to compel. Order, p. 12. ECNP was directed to respond to Applicants' May 25, 1979 discovery requests, or file specific objections to such requests, within 14 days from the date on which the Order was served (August 27, 1979). Specifically, the Licensing Board ruled:

In its response to the discovery requests, we will permit ECNP to file a request for a protective order with respect to particular requests, supplying reasons why each discovery request is objectionable to it.

Order, p. 12.

ECNP's response to the August 24, 1979 Order* was filed in a timely manner, but otherwise failed to comply with the

*"Responses of ECNP Intervenors to Board Memorandum and Order Compelling Intervenors to Answer Applicant and Staff Interrogatories", dated September 17, 1979.

terms of the Order. ECNP's reasons for objecting to Applicants' discovery requests were the same, across-the-board objections which ECNP had filed on June 29, 1979 and which the Licensing Board rejected in its August 24, 1979 Order. The bulk of ECNP's September 17 submittal is a challenge to the discovery rules promulgated by the Commission and described at length in the August 24 Order. This challenge has been adequately dealt with in the August 24 Order.

Notwithstanding the Licensing Board's ruling that "blanket non-specific objections are insufficient", August 24 Order, p. 12, ECNP did "not feel it is appropriate here to list objections to the Applicant's interrogatories above and beyond those objections listed elsewhere in this filing. . . ." September 17, 1979 "Responses of ECNP Intervenors", p. 14 fn. 1. Nowhere in its filing are any specific objections set forth. Thus, on its face, ECNP's response is not in compliance with the Licensing Board's directives.

The only general objection by ECNP to Applicants' discovery request is to its asserted burdensomeness. This same objection has already been rejected by the Licensing Board. See August 24 Order, p. 12. ECNP in its September 17 filing argues that Applicants' discovery request included 2700 interrogatories and that these "constitute a burden of extraordinary magnitude, whose purpose is none other than harrassment". Responses of ECNP Intervenors, p. 11. Putting aside the fact that Colleen Marsh et al. made a good faith effort to answer these

same interrogatories in a timely manner notwithstanding their lack of prior experience in NRC licensing proceedings, ECNP's argument obscures the nature of Applicants' discovery request. ECNP apparently derives the figure of 2700 by multiplying each of Applicants' Specific Interrogatories by the four General Interrogatories (and each subpart of each General Interrogatory). Since the purpose of the General Interrogatories was to determine the basis for ECNP's answers to Specific Interrogatories, it is unlikely that more than one General Interrogatory would need to be answered for each answer to a Specific Interrogatory. If, for example, an answer to a Specific Interrogatory is based upon a document, ECNP would only need to answer the General Interrogatory relating to documents (i.e. identify the document, the information in each document on which the answer is based, and how the information forms the basis for the answer). Thus, the multiplication procedure used by ECNP and the resulting figure of 2700 interrogatories are artificial and misleading. In any event, ECNP has brought forth nothing to support the conclusion that the burden of answering Applicants' discovery is "undue", correctly defined by the Licensing Board as

beyond that normally necessary to identify the details of a party's case and the sources of information upon which it intends to rely.

August 24 Order, p. 7.

With this background, it is clear that ECNP has failed to comply with the Licensing Board's Order compelling discovery, notwithstanding the Licensing Board's warning that

Failure to answer discovery requests adequately is a sufficient ground for us to take steps as drastic as dismissal of a contention or of a party from the proceeding. See 10 CFR §§2.707, 2.718.

Memorandum and Order, p. 7. Pursuant to 10 CFR §§2.707 and 2.718, Applicants therefore request that ECNP and those contentions (or portions thereof) raised solely or essentially by ECNP be dismissed from this proceeding.

The Licensing Board's authority to dismiss a party and its contentions from the proceeding for failure to adequately comply with discovery requests is clear. See, e.g., Duke Power Co. (Amendment to Materials Licensing SNM-1773), Docket No. 70-2623, "Order Dismissing Carolina Action As An Intervening Party" (May 23, 1979); Ohio Edison Co. (Erie Nuclear Plant, Units 1 and 2), Docket Nos. STN 50-580, 50-581, "Order to Show Cause Relative to Dismissal" (March 12, 1979); Ohio Edison Co. (Erie Nuclear Plant, Units 1 and 2), "Order Relative to Applicants' Motion for Dismissal of Certain Contentions and the Coalition's Motion for Additional Time" (April 20, 1978); Northern States Power Co. (Tyrone Energy Park, Unit 1), LBP-77-37, 5 NRC 1298 (1977); Offshore Power Systems (Manufacturing License for Floating Nuclear Power Plants), LBP-75-67, 2 NRC 813 (1975); Public Service Electric and Gas Co. (Atlantic Nuclear Generating Station, Units 1 and 2), LBP-75-62, 2 NRC 702 (1975); Duquesne Light Co. (Beaver Valley Power Station, Units 1 and 2), Docket Nos. 50-334, 50-412, "Order Determining Intervenors' Default and Dismissing Contentions 8 and 9" (January 11, 1974). As the Licensing Board in Offshore stated

A party may not insist upon his right to ask questions of other parties, while at the same time disclaiming any obligation to respond to questions from those other parties.

LBP-75-67, 2 NRC at 817. As was the case in Offshore, it would appear that ECNP

has no intention of properly responding to the Applicants' discovery requests nor of complying with this Board's Order compelling such response.

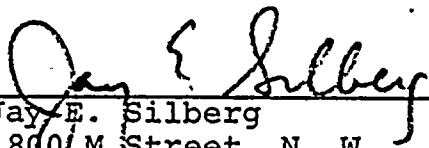
Id. Under such circumstances dismissal of ECNP as a party, and dismissal of ECNP's contentions, is the appropriate remedy.

Applicants would not oppose the Licensing Board's staying the effectiveness of the order dismissing ECNP and its contentions for a period of perhaps 14 days to permit ECNP to fully and properly answer* Applicants' discovery requests. Such a stay should however automatically be removed unless ECNP demonstrates its compliance within the time specified.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By


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Dated: October 12, 1979

*Since ECNP has now had two opportunities to object to Applicants' discovery requests, Applicants believe that a third opportunity to object is not warranted.

ATTACHMENT

CONTENTIONS TO BE DISMISSED

1. Contention 2 (Health Effects of Low-Level Radiation and other Discharges from the Facility):
Assuming that the Staff's motion to dismiss CAND is granted, ECNP would be the only sponsor of this contention. ECNP's dismissal would therefore warrant dismissal of the contention.

2. Contention 4 (Need for Power):
Paragraph a. of Contention 4, alleging that under certain scenarios the entire output of the facility would be available for sale outside Applicants' service area, was raised solely by ECNP. See "Amendments to the Petition for Leave to Intervene Filed by Environmental Coalition on Nuclear Power" (January 15, 1979), p. 4.

Similarly, that portion of paragraph b. asserting that no comparison of the cost of upgrading thermal insulation with the cost of operating the Susquehanna facility, was raised solely by ECNP. See ECNP's "Amendments to the Petition", p. 4.

The portions of paragraph b. dealing with "Second Law Efficiencies" and the "health benefits of conservation" were also raised solely by ECNP. See ECNP's "Amendments to the Petition", p. 6.

Each of these aspects of Contention 4 should therefore be dismissed on dismissal of ECNP as a party.

3. Contention 5 (Dose Calculation Models):

As noted in the Special Prehearing Conference Order, 9 NRC at 305-6, ECNP was the only sponsor of this contention.

4. Contention 6 (Evacuation):

Dismissal of that portion of the contention dealing with alleged inconsistent statements by Pennsylvania officials is appropriate since ECNP alone raised that issue. See "Amendments to the Petition for Leave to Intervene filed by the Environmental Coalition on Nuclear Power" (January 15, 1979), p. 8.

5. Contention 7 (Unresolved Generic Safety):

As noted in the Special Prehearing Conference

Order, 9 NRC at 311-313, ECNP was the only sponsor of this contention.

6. Contention 8 (Reactor Pressure Vessel Thermal Shock):
As noted in the Special Prehearing Conference Order, 9 NRC at 311-313, ECNP was the only sponsor of this contention.

7. Contention 18 (Herbicides):
Dismissal of this issue is appropriate since, as indicated in the Special Prehearing Conference Order, 9 NRC at 322, it would not have been raised absent ECNP.

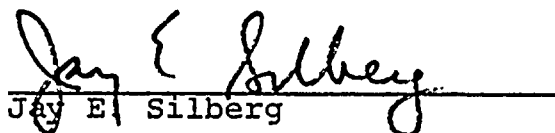
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CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing "Applicants' Motion to Dismiss Environmental Coalition on Nuclear Power and Certain Contentions From This Proceeding" were served by deposit in the U. S. Mail, first class, postage prepaid, this 12th day of October, 1979, to all those on the attached Service List.


Jay E. Silberg

Dated: October 12, 1979

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