

October 10, 1979

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

APPLICANTS' ANSWER IN SUPPORT OF "MOTION OF
NRC STAFF FOR DISMISSAL OF CITIZENS AGAINST
NUCLEAR DANGERS FROM THIS PROCEEDING FOR
FAILURE TO COMPLY WITH THE LICENSING BOARD'S
ORDER DATED AUGUST 24, 1979"

On September 25, 1979 the NRC Staff filed a motion requesting that the Licensing Board dismiss Citizens Against Nuclear Dangers from this proceeding. The motion also requested that the Licensing Board dismiss Contentions 10, 16 and 17 as issues in this proceeding since these contentions were "raised solely or essentially by CAND alone". Staff Motion, p. 5. The Staff proposed that the dismissal order be stayed for a fixed period to allow CAND to comply with the Licensing Board's August 24, 1979 Memorandum and Order compelling discovery.

Applicants support the Staff's motion and the relief which it requests.*

*Applicants believe that, in addition to Contentions 10, 16 and 17, the chlorine issue in Contention 2 was also "raised solely or essentially by CAND alone" and should therefore also be dismissed as an issue in this proceeding.

The factual background for the Staff's motion is adequately set forth therein. There are, however, additional facts which support the relief which the Staff requests. These are based on CAND's failure to comply with the Licensing Board's August 24, 1979, Memorandum and Order as it applied to Applicants' discovery requests to CAND. In accordance with the discovery schedule established in the Special Prehearing Conference Order (March 6, 1979), Applicants on May 25, 1979, served interrogatories and requests for production of documents on CAND. As noted in the Licensing Board's August 24, 1979 Memorandum and Order, CAND's June 16, 1979 response* in effect declined to answer Applicants' discovery requests. On June 27, 1979, Applicant filed a motion to compel discovery; that motion was granted by the August 24, 1979 Memorandum and Order.

In response to the Licensing Board's August 24, 1979 directive, CAND has filed a series of pleadings.** Taken together, CAND's responses fail to respond fully and properly to Applicants' discovery requests or to file particularized, specific objections.

*"Citizens Against Nuclear Dangers' Motion for Board Ruling on Revision of Preliminary Timetable".

**"Citizens Against Nuclear Dangers (Citizens) Appeal Before the NRC Appeal Board Panel Pertaining to the Licensing Board's 'Memorandum and Order on Scheduling and Discovery Motions', dated August 24, 1979", filed August 30, 1979; "Citizens Against Nuclear Dangers Supplemental Appeal with Particular Objections, Before the Atomic Safety and Licensing Appeal Board Panel", filed September 1, 1979; "Citizens Against Nuclear Dangers Response to the Licensing Board Directive, Contained within Additional Briefs to the Appeal Board", filed September 10, 1979.

Instead, CAND characterizes the discovery requests as "outlandish". CAND September 10, 1979 Response, p. 1. Although CAND states that it is "knowledgeable on certain topics, enough to make factual statements under oath, that can be defended under cross-examination", CAND says that it will "submit concise direct testimony on their contentions at the public hearings--extemporaneously". CAND September 10, 1979 Response, p. 2.

CAND has therefore refused to comply with the explicit requirement set forth in the August 24, 1979 Memorandum and Order, notwithstanding the Licensing Board's warning that

Failure to answer discovery requests adequately is 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.

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 License 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 Ser-

vice 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 CAND

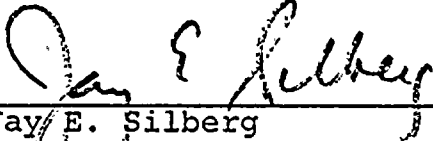
has no intention of properly responding to the Applicants' discovery requests nor of complying with this Board's Order compelling such response.

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

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By


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Dated: October 10, 1979



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CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing "Applicants' Answer in Support of "Motion of NRC Staff for Dismissal of Citizens Against Nuclear Dangers From This Proceeding for Failure to Comply With the Licensing Board's Order Dated August 24, 1979" were served by deposit in the U. S. Mail, first class, postage prepaid, this 10th day of October, 1979, to all those on the attached Service List.

Jay E. Silberg

Dated: October 10, 1979

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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SERVICE LIST

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