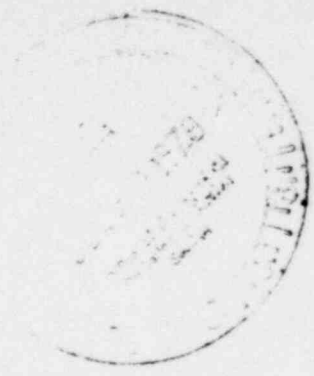


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NRC PUBLIC DOCUMENT RECORD

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
PORTLAND GENERAL ELECTRIC COMPANY,	)	Docket No. 50-344
<u>et al.</u>	)	
	)	(Control Building Proceeding)
(Trojan Nuclear Plant)	)	
	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that on July 27, 1979, I served a copy of the Licensee's Response to NRC Staff's "Motion to Dismiss Nina Bell/ Consolidated Intervenor from Proceeding or for Other Sanctions for Failure to Comply with Licensing Board's Order on Discovery", by placing a true copy of said document in a sealed envelope with postage fully prepaid, in the United States mail at Washington, D.C. addressed as follows:

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Atomic Safety and Licensing Board  
U. S. Nuclear Regulatory Commission  
Washington, D. C. 20555

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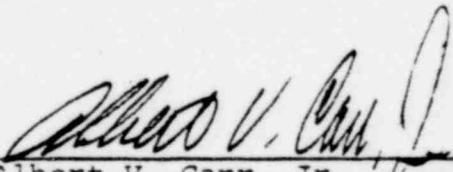
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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of ) Docket No. 50-344  
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PORTLAND GENERAL ELECTRIC CO ) (Control Building Proceeding)  
 et al. )  
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(Trojan Nuclear Plant) )  
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LICENSEE'S RESPONSE TO NRC STAFF'S  
"MOTION TO DISMISS NINA BELL/CONSOLIDATED INTERVENORS  
FROM PROCEEDING OR FOR OTHER SANCTIONS  
FOR FAILURE TO COMPLY WITH LICENSING BOARD'S  
ORDER ON DISCOVERY"

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Portland General Electric Company (Licensee) hereby files its response to the NRC Staff's July 12, 1979 "Motion to Dismiss Nina Bell/Consolidated Intervenor from Proceeding or For Other Sanctions for Failure to Comply with Licensing Board's Order on Discovery." (Staff Motion) For the reasons set forth below, Licensee supports the NRC Staff's motion to dismiss Nina Bell and Consolidated Intervenor (CI) as parties to this proceeding.

The Staff has moved the Board to dismiss CI because of CI's failure to respond to Staff's discovery requests and default on the Board's Order pursuant to 2.740. On July 13, 1979 Licensee filed a "Motion to Dismiss Nina Bell and Consolidated Intervenor as Parties to the Proceeding." (Licensee's Motion) As fully explained therein, Licensee's Motion is also based on CI's

failure to comply with the Commission's discovery rules by refusing to respond to Licensee's interrogatories, and CI's default on a Board order issued pursuant to 10 CFR 2.740. Therefore, for the reasons set out in Licensee's Motion, Licensee supports the Staff's Motion to Dismiss CI.

The Staff has also requested that, if the Board should determine dismissal of CI is not warranted, then certain alternate sanctions should be applied. Those suggested alternates include either dismissing CI's contentions 1, 4, and 11 (those contentions are subject to Staff interrogatories which CI failed to answer and a Board order which CI ignored) or precluding CI from participating in the trial of those contentions. In addition the Staff requests that the Board issue an order, pursuant to Staff's May 15 Motion to Compel now pending before the Board, compelling Intervenors to furnish full and adequate answers in response to its interrogatories directed to CI's other contentions which were inadequately answered. Thus, the Staff has asked the Board to dismiss those contentions as to which CI is clearly in default in responding to the Staff (or to preclude CI's participation in their trial) and, as to the remainder of CI's contentions, issue another order compelling responses.

As Licensee argued in its July 13 Motion, CI's failure to discharge its obligations with respect to discovery, particularly in light of the Board's explicit and detailed instructions and warnings, has been so blatant and all-encompassing that no

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sanction other than dismissal from the proceeding is adequate. However, if the Board decides not to dismiss CI but to consider the alternates suggested by the Staff, Licensee wishes to bring several points to the Board's attention.

First, the Staff's proposed alternates (dismissal of contentions or preclusion of CI participation at trial) are addressed only to these contentions as to which CI has defaulted in responding to the Staff. We urge the Board to take into account, as set forth in Licensee's Motion, that, apart from the Staff's interrogatories the Licensee has addressed interrogatories (Licensee's Second Set of Interrogatories, personally served on May 9) to each of CI's contentions, with one exception.\*/ CI failed to respond, and is in default of a Board order, with respect to all of those interrogatories. Therefore, to protect Licensee's rights, if the Board accepts Staff's suggestion, it should apply the selected remedy (dismissal of contentions or preclusion of CI participation) to all of CI's contentions, with the possible exception of CI 17.\*\*/

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\*/ The exception is CI's Contention 17, which challenges the adequacy of the Staff's review of the proposed modification. Licensee has addressed no interrogatories to that contention.

\*\*/ CI's willful failure to discharge its obligations in discovery would, in Licensee's view, warrant application of the selected remedy to Contention 17 also, even though discovery has not been addressed thereto.

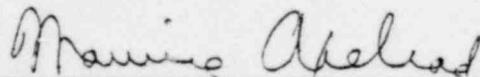
Second, Licensee would point out that one alternate suggested by the Staff -- not dismissing a contention but precluding CI from participation in its trial -- is not desirable. It would create an ambiguous situation since none of the parties, or even the Board, would know the exact subject matter to be addressed, particularly in light of CI's refusal to answer interrogatories elaborating on the contentions. It would appear far preferable, if the Board is interested in some aspect of the subject matter of the contention, for the Board to dismiss the contention and address its own, more precise questions on such subject to the parties, as it has in other areas.

Respectfully submitted,

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By

  
Maurice Axelrad

Dated at Washington, D.C.  
This 27th day of July, 1979

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