

RELATED CORRESPONDENCE



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
PUGET SOUND POWER & LIGHT)	DOCKET NOS. STN 50-522
COMPANY, et al.,)	50-523
)	
)	
(Skagit Nuclear Power Project,)	
Units 1 and 2))	January 18, 1979
)	
)	

SCANP'S MOTION TO COMPEL ANSWERS TO INTERROGATORIES TO
APPLICANT REGARDING SAN JUAN ISLANDS SEISMIC PROFILES

Applicants on December 12, 1979 filed their objection to
SCANP'S interrogatories which were served on October 30, 1979.
Applicants' objections are untimely, see 10 CFR§2.740b(b),
and their objections therefore may not be considered by the
Board. In any event, applicants' objections lack merit, and
the Board should therefore issue an order compelling appli-
cants to answer.

Applicants contend that the interrogatories need not be
answered because they do not relate to any matter in contro-
versy and thus are outside the scope of discovery permitted
by the rules. Objection, pp. 1-2. But Applicants object to
the interrogatories primarily on the basis that they have made
no material false statements, in order to avoid answering under
oath or affirmation questions which, if answered in accordance

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with the representations made in their objections, might substantiate their assertion that no false statements have been made.

The absence of contentions regarding material false statements is entirely beside the point. SCANP does not assert, or at this time have grounds to believe, that applicants made any material false statements prior to the commencement of these proceedings and the filing of SCANP's contentions. But it is curious that applicants' major protestation is not the impropriety of SCANP's interrogatories, but rather their own innocence. And it is also curious that applicants' consultant, Dr. Dobrin, and applicants, were able to obtain several seismic profiles from Western Geophysical in 1975, and commission a study by that firm in 1977, while claiming to be completely unaware of other existing data produced previously by the same firm which might not support the positions asserted by applicants in this proceeding. If applicants truly have nothing to hide regarding the 1971 seismic profiles and applicants' knowledge of their existence and contents, the easiest and most conclusive way to lay to rest any doubts on that score would have been to answer the interrogatories promptly and fully, and to produce publicly all information available to applicants regarding these data. For reasons known only to applicants, they have disdained this course of action.

The Commission has insisted in no uncertain terms that safety is the greatest concern of the Commission, and that in the furtherance of safety the Atomic Energy Act requires complete, truthful, and accurate reporting and disclosures by applicants. See In the matter of Virginia Electric & Power Company (North Anna Power Station, Units 1 and 2), 4 NRCI 480 (1976). Therefore, the Commission interpreted §186 of the Act, 42 U.S.C. §2236, to hold applicants liable for material false statements made in connection with an application, even if the statements were made in the belief that they were true, as well as for failure to speak regarding issues of major importance (i.e., material omissions). 4 NRCI at 486, 489. The Commission's interpretation was upheld in its entirety by the Fourth Circuit Court of Appeals. See VEPCO v. USNRC, 571 F.2d 1289, 1291 (1978) (per curiam)

Both the court and the Commission recognized that if applicants were held to any lesser standard, such applicants might be encouraged to avoid complete investigations and disclosures in order to be certain that their representations were, to the best of their knowledge, truthful. The court and the Commission recognized also that NRC proceedings do not raise the same concerns as are raised in proceedings governed by bodies such as the Securities and Exchange Commission, whose primary concern is maintenance of public confidence in the integrity of commerce. There, the cost of

honest but inaccurate statements is solely economic, in contrast to the possible health and safety consequences of such statements made in connection with an NRC licensing proceeding. In the latter, the best guarantee of safety possible must take precedence over the good faith of an applicant. Accordingly, under §186 of the Atomic Energy Act applicants are held to a much higher standard than is applicable under §10b-5 of the Securities Act and other acts - liability for material false statements is imposed without demonstrating scienter, and the failure to make a material statement when one is appropriate (i.e., a material omission) also is actionable.

In the North Anna case, the parties stipulated that VEPCO believed the statements it made were true when made, and no parties claimed that VEPCO intended to deceive the NRC. 571 F.2d at 1291. But the Commission nevertheless imposed liability and a fine upon VEPCO for failing to bring to the Board's attention facts giving rise to the suspicion that a fault existed in the vicinity of the North Anna site, and for making statements inconsistent with the suspicion of faulting, strongly emphasizing the need to encourage strict attention to safety matters rather than to tolerate ignorant innocence by exculpating an applicant's material omissions or innocent (but inaccurate) false statements. The accident at Three Mile Island and the manner in which the utility

there responded to the accident and reported to the NRC supports the Commission's policy that timely, truthful, complete, and accurate disclosure is demanded to enable the Commission to assure the highest amount of safety in nuclear facilities.

Applicants state that SCANP has not identified statements it believes are material and false, and has failed to set forth the basis for its belief that a material false statement has been made. But if Dr. Dobrin, Mr. Adair, or other consultants or employees retained by applicants were aware prior to previous hearings on geology of the existence of the 1971 seismic profiles performed by Western Geophysical, then the number of knowing material false statements and omissions made in connection with this application might literally be too great to count. See, e.g., Tr. 9473 (Dr. Dobrin responding to Board inquiry) (Exhibits represent all the data); Tr. 9469 (Testimony of Dr. Dobrin) (alluding to prior Western Geophysical work); Tr. 9463 (Testimony of Dr. Dobrin) (admitting prior connections with Mobil Oil Company, which had possession of prior Western Geophysical seismic profiles); Tr. 9399; Tr. 9385 (Testimony of Dr. Dobrin) (implying that Western Geophysical's 1977 study for Puget Power was the first study performed by Western Geophysical in this area; statement may be inconsistent with the fact that Western Geophysical did study for Mobil, a fact Dr.

Dobrin may have known); Tr. 9374 (Testimony of Dr. Dobrin) (other lines contain no evidence of faulting); Tr. 9303 (inquiry from Board soliciting other data from Dr. Dobrin; failure to produce data may be material omission); Tr. 9174 (statement of counsel for applicants) ("All the seismic profiles were provided to each and every party in this proceeding as basic data"); PSAR App. 2G, p. 12 (denying existence of other indications of faulting); Tr. Fol. 840, pp. 5-6, 16-17, 26, 30 (prefiled testimony of Mr. Adair) (several statements denying existence of data indicating significant faulting); Tr. 1762 (testimony of Dr. Dobrin) (denying knowledge of data which could conceivably indicate existence of faulting); Tr. 1737 (same); Tr. 1727-29 (Board requests data; counsel for applicants disclaims knowledge regarding availability of seismic reflection data). There are doubtless countless other statements in a similar vein.

Even if the statements cited were made innocently and without knowledge of the existence of the seismic data produced in 1971, they would still be false statements under the Commission's standards, because the Commission has held that knowledge of falsity is not a relevant consideration in determining whether a material false statement has been made. See 571 F.2d at 1291. Under the Commission's North Anna decision, applicants must be held to a higher standard which requires them to seek out actively all information

which may be material and relevant to their application, and to disclose that information to the Board. Whether or not applicants failed to obtain and produce the 1971 data at an earlier time is relevant only in considering the penalty that should be imposed. If, as it appears to SCANP from the scant information available, Dr. Lubrin and other consultants to applicants had reason to know of the existence and perhaps the contents of this data prior to testifying in March, 1978, then the penalty which should be imposed upon applicants might be much greater than it would in the absence of such knowledge. Applicants' reluctance to support their claim that they have committed no wrongdoing by affirming under oath what they allege in their objection neither advances the Commission's interest in insuring safety through complete and accurate disclosure, nor does it support applicants' own protest of innocence.

Applicants apparently object to the newspaper reports suggesting that evidence was withheld, but have at no time denied the reports without qualification, and now refuse to offer sworn statements to substantiate their position. If applicants continue to refuse to address the circumstances regarding the existence and availability of the 1971 seismic profiles, and this Board sustains applicant's objection, SCANP and others who are interested in resolving this issue and assuring integrity and safety in NRC proceedings will be

forced to continue to rely upon more remote and possibly less accurate sources of information. As applicants have suggested, reliance on such sources may not aid in uncovering the truth, and does not further the important public and safety interests at issue in this proceeding.

A final comment is necessary regarding applicants' suggestion that the newspaper report of October 25, 1979 was published, "apparently on the basis of SCANP sources." This intimation is misleading and inappropriate. The seismologist who reviewed the allegedly proprietary seismic profiles on behalf of SCANP had no knowledge of the history of this proceeding, but merely read the date printed on the profiles themselves (1971) and naturally assumed their availability to applicants since that date. Because the data are alleged to be proprietary, other persons more familiar with this proceeding, who could have explained the circumstances of its availability to applicants to SCANP's seismologist did not have the opportunity to examine the data. Fewer attempts to shroud the licensing process in secrecy by restricting convenient access to allegedly proprietary data, which data in this case is in fact of little or no commercial value for mineral exploration when compared to the amount at stake in this licensing proceeding, would do much to minimize misunderstandings of this sort and facilitate speedier adjudication.

CONCLUSION

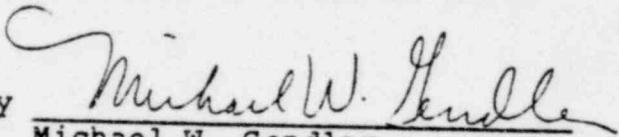
Applicants' untimely objection to SCANP's interrogatories should not be considered by the Board, and applicants should be directed to furnish prompt answers to the interrogatories. Even if the objections are considered, they have misconstrued the purpose of discovery and fail to recognize the Commission's insistence on prompt, complete, and accurate disclosures, and are therefore entirely without merit. An appropriate order compelling answers should be entered.

DATED this 18th day of January, 1980.

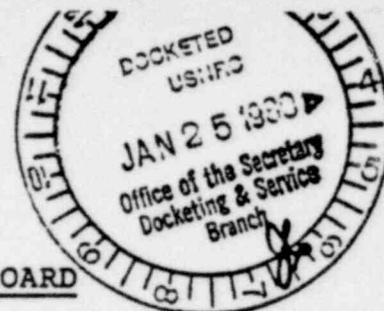
Respectfully submitted,

LAW OFFICES OF ROGER M. LEED

By



Michael W. Gendler
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CERTIFICATE OF SERVICE

I hereby certify that copies of:

SCANP'S MOTION TO COMPEL ANSWERS TO INTERROGATORIES TO
 APPLICANT REGARDING SAN JUAN ISLANDS SEISMIC PROFILES

and

SCANP'S RESPONSE TO STAFF MOTION TO POSTPONE HEARINGS
 ON GEOLOGY AND SEMISMOLOGY ISSUES

dated January 18 and 21, 1980 have been served on the fol-
 lowing by depositing the same in the United States Mail,
 postage prepaid, on this 21 st day of January, 1980.

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DATED: Jan 21, 1980

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