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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Ivan W. Smith, Chairman
Dr. Walter H. Jordan
Dr. Linda W. Little

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| In the Matter of | ) | |
| | ) | Docket No. 50-289 SP |
| METROPOLITAN EDISON COMPANY | ) | (Restart) |
| | ) | |
| (Three Mile Island Nuclear Station, Unit No. 1) | ) | |

MEMORANDUM AND ORDER ON
LICENSEE'S MOTION FOR SANCTIONS AGAINST
ENVIRONMENTAL COALITION ON NUCLEAR POWER

(June 12, 1980)

Summary of Order

On May 9, 1980 the licensee, Metropolitan Edison Company, filed Licensee's Motion For Sanctions Against Environmental Coalition On Nuclear Power (ECNP). The motion is based upon ECNP's failure to comply with discovery requests and with the board's order compelling discovery. Licensee seeks the dismissal of ECNP as a party. The board declines to dismiss ECNP as a party, but it dismisses most of ECNP's contentions.

Background

On September 4, 1979 the Environmental Coalition on Nuclear Power, (ECNP) filed its petition for leave to intervene, on behalf of named persons who, under intervention standards, reside relatively close to the TMI facility. We ruled on

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September 21, 1979 (Memorandum, p. 10) that ECNP met the intervention standing requirements of 10 CFR §2.714. ECNP filed a list of contentions on October 5, 1979 which it supplemented by an additional list on October 22, 1979.

In the First Special Prehearing Conference Order of December 18, 1979 (pp. 37-46) the board found that many of ECNP's contentions are suitable for litigation. ECNP was admitted as an intervenor. On January 7, 1980 ECNP filed its contentions on emergency planning several of which we accepted in the Fourth Prehearing Conference Order of February 29, 1980 (pp. 8-10). In all, twenty-six ECNP contentions, including separate subcontentions, were accepted. In addition ECNP was permitted to adopt six contentions of other intervenors in place of rejected contentions.[1/] First Special Prehearing Conference Order, December 18, 1979, pp. 41-43. A ruling on ECNP psychological stress contention was deferred. Id. p. 41. ECNP was directed to redraft its Contention 5 to separate argument from bases (Id. p. 41) but did not comply with this directive. On January 18, 1980 the licensee served interrogatories upon ECNP pursuant to 10 CFR §2.740(b) but

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1/ UCS Contentions 10, 12, 13, 14, and TMIA Contentions 1 and 2.

ECNP did not respond, object, nor seek a protective order. Licensee filed a motion to compel discovery of ECNP on March 24, 1980.[2/] ECNP answered the motion to compel on April 3, 1980.

In its answer ECNP requested that it be relieved of all responsibility to respond to discovery. ECNP cited, as grounds for this position, that it was too busy in other NRC proceedings to comply with filing deadlines in this proceeding, that licensee's law firm is using discovery requests to harass ECNP, and that ECNP has been totally denied discovery by licensee and the NRC staff. ECNP stated also that the "motion is unfair, burdensome." But it did not state which interrogatories it believes to be unduly burdensome nor did it discuss any other merits of the interrogatories.

ECNP made the additional argument that:

> The ECNP Intervenors have conveyed to this Board all of this information [burden, harrassment, ECNP denied discovery of licensee and staff] in the past. Yet no relief has been forthcoming. Quite to the contrary, this Board has contributed significantly to the denial of the right of full participation of ECNP in this proceeding. (See ECNP filing of January 24, 1980.)

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2/ This motion was timely. The time within which ECNP was required to respond to licensee's interrogatories was extended by board order to March 17, 1980.

So that ECNP's answer to the motion to compel may be viewed in full context, we review its earlier complaints to the board. In its filing of January 24, 1980[3/] ECNP stated that (unspecified) other parties in the proceeding are thwarting its lawful participation in order to preclude an adequate ventilation of important health and safety issues. p.3. Specifically, ECNP stated that it was denied discovery by licensee and the staff and it has no financial resources nor person-power to spend time in the discovery room at TMI 100 miles from its (State College, Pennsylvania) headquarters. It stated that it cannot buy documents and has been denied access to the transcripts in the proceeding. pp. 3, 4.

ECNP continued this theme during the prehearing conference of February 13, 1980, complaining that it was being forced out of the proceeding because of its problems in this and in other proceedings. Tr. 1650-65, 1646-49, 1673-77.[4/]

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3/ ECNP Intervenors' Answer to the Board's Memorandum and Order of January 9, 1980 dated January 24, 1980 (with corrections dated January 25, 1980).

4/ Tr. 1674, lines 14, 17, and 21 are to be corrected in each line to change "Mr. Adler:" to "Dr. Kepford:".

By memorandum and order of April 11, 1980 the board, on its own, narrowed the scope of some of licensee's interrogatories[5/] and ordered ECNP to respond. We observed that licensee's interrogatories would produce information which "would be useful, perhaps necessary, to licensee for it to prepare thoroughly to meet the charges embodied in ECNP's contentions." Id. p. 2. We also commented that "[I]f ECNP is affirmatively to offer evidence on these contentions, or if it is to participate in effective cross-examination, the information generally sought by the series of interrogatories should be known to the ECNP's representatives." Id.

In our order compelling discovery we stated also that we saw no pattern of harrassment of ECNP by licensee's counsel, and that the interrogatories "fall well within the permissible limits of the Commission's discovery rules." As to ECNP's complaint that it is too busy with other NRC proceedings to comply with discovery requests, we noted that, other than to seek total relief from all discovery requests (Answer, p. 2) or an unspecified "liberal" extension of time for discovery (Tr. 1560-65) ECNP has made no request for relief. Answer, and, e.g. 1649. We also ruled that we were without authority to delay

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5/ We narrowed the interrogatories not because they were broader than permitted by discovery rules. We perceived that the objectives of licensee's discovery requests could be accomplished by narrowed interrogatories while reducing the burden upon ECNP. pp. 3-4. See n. 7 infra. Licensee accepted the narrowing.

the instant proceeding to accommodate ECNP's participation in other proceedings. Memorandum and Order, p. 5.

ECNP ignored the board's order directing it to respond to licensee's interrogatories. Licensee served Licensee's Motion for Sanctions Against Environmental Coalition on Nuclear Power on May 9, 1980, requesting that ECNP be dismissed as a party to this proceeding.

At the prehearing conference of May 13, 1980 ECNP requested, and was granted an opportunity to argue orally against licensee's motion for sanctions. Tr. 1937-50.

ECNP's answer to the motion for sanctions,[6/] due May 27, 1980, was served June 2 without leave for late filing or explanation for its tardiness. The NRC staff, in response to the board's telephoned inquiry, stated that the staff had discussed ECNP's allegation orally at the prehearing conference of May 13, (Tr. 1944-47), that ECNP's written answer raised no new material issues, and that the staff will not file a written answer to licensee's motion.

## Discussion

The motion to dismiss ECNP as a party raised troublesome and difficult considerations. The relief sought is the most severe possible against an intervenor in NRC proceedings. The relief we grant is also severe. We allow ECNP to remain in the proceeding with only a few surviving contentions. We have reduced its participation to a relatively low level.

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6/ ECNP Intervenors Answer to a Board Question, dated June 3, but served June 2, 1980.

The contentions submitted by ECNP raise many important and complex issues bearing upon the public health and safety. The licensee's interrogatories were designed to permit it to learn ECNP's positions on the various contentions and to prepare to meet the issues in the hearing. We so ruled in ordering ECNP to respond. We have again examined the interrogatories in considering the motion pending before us. We remain convinced that, as we have narrowed the interrogatories, [7/] the information requested was reasonably sought by the licensee to address the serious allegations embodied in ECNP's contentions. Learning the position of an adversary in litigation is a traditional and important aspect of discovery. It is also an important element in developing a full evidentiary record.

Although ECNP has, without specification, referred to the discovery demands upon it as "burdensome" it has not requested that the interrogatories be further narrowed. At the May 13 prehearing conference ECNP reported that, by oversight, it omitted a "one sentence" request for a protective order in its response to the motion to compel (Tr. 1949), but ECNP has not specified the nature of the protective order. It could not,

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7/ Instead of requiring ECNP to report every fact, person or document bearing upon a particular contention, ECNP was permitted to limit the response to identifying only the information upon which its contentions were then based. April 11, 1980 Memorandum and Order, pp. 3-4.

because of its "one-sentence" length, have been a well-supported request to narrow or to eliminate particular interrogatories. We have had no help whatever from ECNP as to how particular interrogatories could have been further narrowed or eliminated to ease its claimed burden. The information requested by licensee in the interrogatories, as narrowed by the board, was no more than the information needed by ECNP if it is to offer affirmative evidence on the respective contentions or if it is effectively to cross-examine or otherwise confront licensee's evidence on ECNP's contentions.[8/] Burdensome discovery requests are not necessarily inappropriate. In this case we do not see any burden at all beyond that which would normally be required in carefully preparing a party's own case for litigation.

Licensee's motion for sanctions poses a three-part consideration: due process for licensee, due process for ECNP, with an overriding consideration of the public interest in a complete evidentiary record.

Licensee, of course, has valuable property interests dependent upon the outcome of this proceeding. It has the right to know the nature of the charges as to which its

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8/ ECNP's representative has since stated that it intends to rely solely upon cross-examination in support of its contentions. Tr. 1895-97, 1917-18, 1939, 1942.

interests will be adjudicated. Even if there were no fault on the part of ECNP in failing to disclose information on its contentions, we could not hold licensee to a high standard of proof in defending against ECNP's allegations. This is true both as a matter of due process and as a practical matter. With ECNP's failure to provide any information whatever in response to reasonable interrogatories, the board would not know how to force licensee to defend itself even if we were inclined to do so.

ECNP's right to due process is predicated upon a scheme of intervention which recognizes the right of intervenors to have their private financial, property and other personal interests considered. 10 CFR §2.714(d). If ECNP's default can be laid to harrassment, as it alleges, or to denial of information, or to other unfair circumstances, it would be the board's responsibility to abate the unfairness where we can. For this reason we have inquired fully into each of ECNP's allegations of unfairness even though their relevance to the motion for sanctions may not be obvious.

ECNP's Allegations

Has ECNP been harrassed in this proceeding? ECNP makes this allegation in its answer to the motion to compel discovery, and in the January 24, 1979 filing. See also Tr. 1759-60, 1941-42. In its June 3 answer to the motion for sanctions,[9/]

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9/ Because of the seriousness of ECNP's accusations, a copy of its June 3 answer is attached to this order.

ECNP expands upon its "harrassment" charges. ECNP makes the sweeping charge that counsel for licensee, whose law firm is also counsel for the applicant in the Susquehanna proceeding,[10/] this board, the NRC staff here and in Susquehanna, and the licensing board in Susquehanna have all jointly or separately deprived ECNP of its rights by imposing excessive procedural demands. This board has not intended to act in a manner harrassing ECNP or to work a hardship upon its representatives. The procedural demands upon ECNP have been minimal considering the large number of issues ECNP seeks to litigate. We have tried to be alert to opportunities to reduce intervenors' burdens. We have no information indicating a concerted or separate plan of harrassment by others. As we have stated above, if the allegation of harrassment is meant to refer to licensee's interrogatories, we have examined and reexamined them and we believe that they are reasonable. ECNP has not supported the charge of harrassment.

Has ECNP been denied information needed to respond to discovery? This allegation is a very important part of ECNP's

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10/ Pennsylvania Power & Light Company and Allegheny Electric Cooperative, Inc. (Susquehanna Steam Electric Station, Units 1 and 2), Docket Nos. 50-387, 50-388. ECNP, in its response to the motion to compel discovery, requested this board to consider the allegation set forth in ECNP's Request to NRC Commissioners For Expedited Consideration of Actions of An Atomic Safety and Licensing Board and Other Matters, March 14, 1980 in the Susquehanna proceeding. The request is now pending before the Appeal Board. The matter is beyond our knowledge and our jurisdiction.

defense. When ECNP complains that the licensee and the staff have refused to respond to discovery, it is referring to informal requests for information. ECNP has not served formal discovery requests or, for that matter, informal requests. When ECNP complained to the board that its informal requests for information were being ignored, the board cautioned ECNP's representative that it was then time to make formal discovery requests and that the board would not enforce informal requests. Tr. 1673-77.

Throughout the proceeding there has been a clear and continuous understanding among all parties that discovery would proceed under the discovery rules. Our First Special Prehearing Conference Order (p. 66) of December 18, 1979 stated expressly, "Formal discovery pursuant to 10 CFR §2.740-2.742 is now authorized." All other intervenors have requested discovery and have responded under the discovery rules. The board has issued many rulings on discovery disputes under 10 CFR §2.740 and all discovery filings have been served upon ECNP. We do not believe that any reasonable doubt existed in the minds of ECNP's representative that it had access to formal discovery. Any possible belief that ECNP could rely upon informal information requests was timely removed at the February 13, 1980 prehearing conference. Tr. 1673-77. Yet, in all its filings and arguments complaining of the denial of "discovery" ECNP has not once alluded to the NRC compulsory discovery regulations.

It is by no means undisputed that ECNP was denied access to requested information even without formal discovery demands. Both the staff and the licensee maintain open discovery rooms near TMI.[11/]

ECNP, however, complains that it has been unable to use the discovery rooms because its headquarters are located and its representatives reside 100 miles away in State College, Pennsylvania. However, in its petition to intervene, ECNP stated that its members live, work, farm, travel and have businesses in the area affected by the proceeding. p. 3. The petition specifies the names of several ECNP members who live relatively close in communities such as York, Middletown, Mechanicsburg, Millersville and others. Petition, pp. 5, n. 3; 6; 7, n. 7; 8. Yet none of these persons, according to ECNP, have the time nor the background to use the discovery rooms near the facility. Tr. 1560-64. Moreover, Mr. George L. Boomsma, of Peach Bottom, Pennsylvania is ECNP's co-director (petition, p. 5, n. 3). He resides within 50 miles of TMI, but ECNP does not explain why his assistance is not available.

The NRC staff has made public dockets of this proceeding, including the transcripts, available on microfiche to the

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11/ The August 9, 1979 Order and Notice of Hearing, p. 11, provided for a public document room in Harrisburg and elsewhere. It provided that an adequate response to discovery would be to provide sufficient information to locate the requested document or information.

representatives of ECNP in a library at State College. Tr. 1562, 1945. Dr. Chauncey Kepford, ECNP's "legal" representative, states that, because of a vision impairment, he cannot use the microfiche for more than 10 minutes. Therefore he does not know whether the documents he states that he has informally requested are at State College. Tr. 1945-46. Dr. Judith Johnsrud, an ECNP co-director, also resides in State College but ECNP reports that she, as is the case with Dr. Kepford, cannot withstand the glare of microfiche. ECNP's June 3, answer, n. p. 4. ECNP has not mentioned whether the same problem besets Dr. William Lochstet, ECNP's Secretary, who also lives in State College. Intervention petition, p. 5, n. 3.

ECNP has made a single request for one document from the licensee -- Appendix 2A of the FSAR. This request was made in November 1979, apparently orally, and is not remembered by counsel for licensee. It has never been repeated. ECNP's June 3 answer, p. 2, Tr. 1943, 1949-50. In the meantime the document has been on file in the licensee's discovery room. Tr. 1943. Until its June 3 answer, ECNP had never identified the document to the board, nor had it requested our assistance in obtaining it.

As to ECNP's informal requests to the staff, the staff reports that, in addition to providing information in the

public document discovery rooms, it has in fact voluntarily responded directly to ECNP's informal information requests. Tr. 1676. It was the discussion over whether the staff's mailed response was ever received by ECNP which led the board to warn ECNP to pursue timely compulsory discovery. Tr. 1676-77.

In its June 3 answer, ECNP again charges the staff with failing to honor ECNP's informal requests (p. 2), and seems to be seeking an order which would prohibit "the continued withholding of properly requested information from the Staff..." (p. 5). Yet ECNP has never specified to the board the information it needs from the staff, nor how it has been impeded in responding to discovery because of the asserted lack of cooperation from the staff, nor why it has failed to avail itself of the right to discover relevant information under 10 CFR §2.740.

Our discussion of whether ECNP representatives can conveniently use the document depositories near TMI or whether microfiche at State College is a useful source of information, is digressive. Neither the staff nor the licensee is required to place hard copies of all requested materials into the hands of ECNP's representatives at State College.[12/] However, we have inquired carefully into ECNP's complaints of being denied

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12/ We do, however, commend the staff for voluntarily mailing documents to ECNP and establishing a record depository at State College. Similarly licensee's discovery reading room, open to parties without formal demand, has been helpful in making information available.

information in order to determine whether a pro se intervenor, perhaps unskilled in NRC adjudicative procedures, has been deceived and unfairly led to believe that its unstructured approach to discovery is sufficient.

ECNP concedes that it is not an inexperienced intervenor. In addition to the Susquehanna proceeding, itself involving discovery disputes, ECNP has intervened in licensing proceedings for TMI-1 and 2, Fulton Units 1 and 2, Limerick Units 1 and 2, Newbold Island Units 1 and 2 and generic proceeding in GESMO, Table S-3, and ECCS. Answer to Motion to Compel Discovery, p. 2. ECNP knows how to use NRC discovery processes. We find no basis to conclude that ECNP has been led to rely upon informal information requests. ECNP has not been denied discovery of relevant information needed to prepare its defense and to respond to discovery de[illegible]s.

ECNP goes on to argue that because of its commitments in other NRC proceedings and because of the board's failure to secure intervenor funding for it, ECNP was unfairly deprived of the ability to respond to discovery and to otherwise meet the procedural demands of this case. ECNP's June 3 answer.

As to ECNP's complaint that its commitments in other NRC proceedings have prevented it from participating fully in this case, (e.g., Id. Tr. 1564, 1646-48, 1845-46, 1939), the board recognizes that, in fact, ECNP representatives have been

participating in the other proceedings. Normal courtesy to litigants in an adjudicatory proceeding would have been extended to ECNP, or to any party, if a particular unavoidable conflict prevented ECNP from meeting one or more deadlines. ECNP made no request for an extension of time to respond to discovery. Indeed, when ECNP's representative made this general complaint about "being simply squeezed out of this proceeding" (Tr. 1646-49) the board tried, but could not, determine from ECNP what relief it wanted short of suspending the entire TMI-1 proceeding. Tr. 1646-49.

With respect to ECNP's claim that it could not respond to interrogatories because of a lack of intervenor funding, (e.g., 1942), it has raised a defense which we are without authority to accept even if true. But ECNP's stated position on its ability to respond to discovery is incomplete. Some of the interrogatories, for example those asking whether ECNP intends to adopt other contentions, can be answered simply "yes" or "no" without intervenor funding. E.g., 1(f) 1., 19-15. Other interrogatories simply requested ECNP's definition of terms used in its own contentions. E.g., 3-2, 3-6 b. Again, no funds are required to respond. Many of the interrogatories ask no more than an explanation of what is meant by particular contentions. To respond would not require research, nor the expenditure of funds.

When ECNP argued its position on licensee's motion for sanctions, the board inquired as to whether ECNP could have answered any of the interrogatories. Tr. 1947. ECNP's representative replied that, while he cannot remember exactly, ECNP probably could not have responded. Tr. 1949. ECNP's June 3 Answer makes its position clear. It could not have answered because of other commitments. The record suggests also that ECNP does not have all the information requested by licensee's interrogatories. Tr. 1946-49.

On the other hand, there is also a strong indication that ECNP has simply decided that, in view of the perceived unfair denial of information from licensee and staff, it is not required to comply with the board's order to respond to licensee's interrogatories:

> CHAIRMAN SMITH: And then finally, you might address in your written answer what your intentions are as to responding to discovery.
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> DR. KEPFORD: I can do that right now. If we get no information and are not allowed information, I see no point whatsoever in responding to interrogatories. We answered the staff's interrogatories in good faith hoping the staff would make good on its promises for information, and the staff didn't.
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> I asked Mr. Trowbridge [licensee's counsel] last November for a document; it was turned down. Sensing that we were going to get no information from the suspended licensee, I don't really understand why we are required to make their case when they refuse to make ours. I simply do not understand.

CHAIRMAN SMITH: So is this your response to that question?

DR. KEPFORD: I guess in part, yes.

Tr. 1949-50.

The foregoing dialogue suggested to the board that ECNP does not intend to comply with the board's order compelling discovery. This impression was fortified by ECNP's June 3 answer (p. 4) where, it seems to condition its participation in this proceeding upon three demands: "...ECNP should be made whole by (a) the receipt of all requested documents, (b) the granting of time to develop interrogatories, and (c) the granting of time to review and analyze the information and interrogatories."

As is the case with the requested staff documents, ECNP still has not specified the time it would require to develop interrogatories and to review the received information. It requests instead that we set aside our schedule (p. 5).[13/] How long the suspension would last is unclear, but it appears that the delay would be substantial because ECNP reports that it "... is no closer to being ready for trial now in either the TMI-1 Restart Proceeding or Susquehanna 1 and 2 than it was nine months ago." Id. p.4.

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13/ The Commission's August 9, 1979 Order and Notice of Hearing (p. 10) requires the board to publish a schedule as early as possible and to attempt to meet it.

Whether ECNP has willfully refused to comply with the board's order compelling discovery, or whether it simply lacks the information needed to prepare its case, the result is nearly the same. If it has willfully disobeyed our lawful order, it is not entitled to participate on the respective issues. If, on the other hand, ECNP is ignorant of the grounds for its own contentions, and is no closer in preparation for trial than it was nine months ago, it is unlikely that ECNP can make a contribution to the evidentiary record. In either event licensee is entitled to relief. The relief we grant, dismissing certain contentions, may also afford a measure of relief to ECNP by reducing the litigation burden about which it complains.

Remedy

The licensee has submitted legal authority relating to the relief it seeks, which authority subsumes the relief we grant. Motion, p. 3-4. The controlling regulation is 10 CFR §2.707, which, in pertinent part, provides:

> On failure of a party ... to comply with any discovery order entered by the presiding officer pursuant to § 2.740 ... the presiding officer may make such orders in regard to the failure as are just, including among others, the following:
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> (a) Without further notice, find the facts as to the matters regarding which the order was made in accordance with the claim of the party obtaining the order, and enter such order as may be appropriate; or
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> (b) Proceed without further notice to take proof on the issues specified.

In Northern States Power Company, (Tyrone Energy Park, Unit 1) 5 NRC 1298 (1977) the licensing board dismissed intervenors who failed to comply with board orders to respond to discovery. Another licensing board in Offshore Power Systems (Floating Nuclear Plants), 2 NRC 813 (1975), dismissed a pro se intervenor for failing to respond to discovery requests. An intervenor was dismissed by a licensing board under § 2.707 for failure to comply with a direct order of the board in Public Service Electric and Gas Company (Atlantic Nuclear Generating Station, Units 1 and 2), 2 NRC 702 (1975).

In selecting the remedy ordered below, the board considered two other alternatives. The first, dismissing ECNP as a party as urged by licensee, had some appeal.

ECNP has ignored an important board order when it could have complied at least with portions of it. Moreover, ECNP still has not committed itself to complying with the board's orders on discovery. ECNP has raised serious questions about its ability and readiness to participate in the proceeding at all. However, after reviewing the entire record of the dispute, the board accepted the standard of adopting the least severe sanctions consistent with due process for licensee and a reliable evidentiary record. We have, therefore, limited the sanction to dismissing certain contentions. The board does not rely upon National Hockey League v. Metropolitan Hockey Club, Inc., 427 U.S. 639,643 (1976) or similar cases cited

by licensee. Motion n.3. No aspect of our order is punitive. It is not for a deterrent effect upon others. The sanctions we order are remedial and are the least we can impose to regulate the course of the proceeding in accordance with the law and the circumstances of this proceeding.

The other alternative we considered was to deny the motion and to allow ECNP's contentions to go to hearing despite the default. The question of due process aside, we could see no value in this approach. As we noted above (p. 9, supra) we would not know how to force licensee to defend itself against ECNP's allegations if licensee is not informed concerning their specifics. If licensee were to prepare its direct testimony and other evidence to meet ECNP's unclarified charges, it would have to postulate the grounds for them. It would be naive to expect licensee to postulate the particulars of ECNP's contentions, then present a losing case against them. We do not believe that the evidentiary record would be enhanced by a show of the licensee defending against strawman contentions cast into litigable form by licensee itself.

Contentions of other parties raise issues similar to the issues raised by the dismissed ECNP contentions. Motion for sanctions, p. 5, n. 5. Our action will not result in an incomplete evidentiary record.

We have dismissed those ECNP contentions which were the subject of licensee's interrogatories, except for two which are retained. As to the contentions not the subject of interrogatories, licensee has not demonstrated that it has been frustrated in the preparation of its defense. Therefore those contentions survive, as does ECNP as a party.

Two contentions which we retain were the subject of licensee's interrogatories, but the issues raised are not adequately covered by the contentions of other parties. We have revised and retained them in the interest of a complete evidentiary record.

Ruling

ECNP is in default of the board's order in the Memorandum and Order on Licensee's Motion to Compel Discovery Of ECNP, April 11, 1980.

Licensee has not served interrogatories on ECNP contentions 1(a), 1(e), the sub-contentions in the No. 2 series (emergency planning), 4(b) and 4(c). As to these contentions, licensee has not been injured. They may remain as issues in the proceeding. This ruling, however, is without prejudice to the right of the licensee to make later motions for specificity or to seek other relief consistent with this order.

ECNP contention 6 is a psychological stress contention which was deferred. No interrogatory was served on this contention, nor was one possible. ECNP contention 6 remains deferred.

The board disagrees with licensee that the subject matter of ECNP contention 1(c) is adequately covered by UCS contention 9, or that ECNP contention 1(d) is adequately covered by Sholly contention 5. Motion for sanctions, p. 5, n. 5. Therefore, as a matter of board discretion and to assure an adequate evidentiary record, we retain contentions 1(c) and 1(d). Licensee should address in contention 1(c) the topic of the adequacy of Class 1E control room instrumentation following a feedwater transient and small break LOCA. In contention 1(d) the licensee should address the ranges of instrumentation in connection with contention 1(c). This specification will permit the licensee to address the contention adequately.

ECNP is not permitted to adopt UCS contentions 10, 12, 13, and 14, nor may it adopt previous TMIA contentions 1 and 2 which have now been withdrawn.

ECNP contention 17 was an emergency planning contention. It was deferred pending the filing of ECNP emergency planning

contentions dated January 7, 1980. The subject matter was included in those contentions. The board should have noted pro forma the dismissal of ECNP contention 17 in its February 28 Fourth Special Prehearing Conference Order. We did not, but we do so now.

All other ECNP contentions are dismissed.

THE ATOMIC SAFETY AND
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Bethesda, Maryland
June 12, 1980.

Attachment:
As stated