

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
METROPOLITAN EDISON COMPANY, <u>ET AL.</u>)	Docket No. 50-289
)	
(Three Mile Island Nuclear Station,)	
Unit 1))	

NRC STAFF'S RESPONSE TO LICENSEE'S CONTINGENT
REQUEST FOR SANCTIONS AGAINST ECNP CONTAINED
IN LICENSEE'S MOTION FOR ORDER COMPELLING
RESPONSE OF ECNP TO INTERROGATORIES

I. Introduction

By motion filed on August 25, 1980,^{1/} the Licensee in the captioned proceeding seeks, pursuant to 10 CFR § 2.740(f), an order from the Licensing Board compelling Intervenor ECNP to respond to the Licensee's July 29, 1980 interrogatories on Revision 2 to the Emergency Plan. In addition, although not noted in the title to its motion, the Licensee makes a contingent request that, should ECNP fail to comply with any order compelling responses from ECNP, the Licensing Board promptly dismiss ECNP contentions 2-4, 2-7, 2-11, 2-13, 2-20/2-30, 2-26 and 2-28 to which the Licensee's interrogatories are directed. The NRC Staff's position with regard to the Licensee's contingent request for such sanctions is set forth below.^{2/}

^{1/} Licensee's Motion to Compel Response of ECNP to Emergency Planning Interrogatories, August 25, 1980 (Motion).

^{2/} Under the Board's July 15, 1980 "Memorandum and Order Resuming Schedule for Discovery and Contentions on Emergency Planning," answers to motions to compel were to be received by the Chairman within five days of service of such motion. The Staff did not file an answer to the specific portion of the instant Motion seeking an order compelling responses from ECNP. The July 15, 1980 Order does not set a time for responses to motions for sanctions for failure to comply with discovery orders. The time for responses to such motions is governed by the provisions of 10 CFR §§ 2.730 (c) and 2.710. Under these regulations, the instant response is to be filed by September 15, 1980.

II. NRC Staff Position on Licensee's Contingent Request for Sanctions

In its Motion, Licensee recites that, as of the time of the Motion, ECNP had not objected to the interrogatories in question, had not filed answers to those interrogatories, and had not sought an extension of time in which to file answers. At this time, the Staff, for its part, is unaware of any filings by ECNP with regard to the interrogatories in question. Thus, it appears that ECNP has failed to respond in any manner to the Licensee's interrogatories. In these circumstances, Licensee is entitled to an order compelling responses under 10 CFR § 2.740(f). Should such an order be issued and ECNP fail to comply with it, Licensee further requests that the Board promptly dismiss ECNP contentions 2-4, 2-7, 2-11, 2-13, 2-20/2-30, 2-26 and 2-28. The interrogatories propounded by the Licensee are, in fact, directed to these contentions and seek information on whether the Licensee's revised Emergency Plan adequately addresses and alleviates the concerns reflected in these contentions.^{3/} The information sought by Licensee in these interrogatories appears to be useful and perhaps even necessary for Licensee to thoroughly address the concerns raised by the contentions in question. In these circumstances, it is the Staff's view that, should ECNP fail to comply with a Board order compelling responses, the Board has the authority^{4/} to, and should, dismiss those contentions.

^{3/} See Licensee's Interrogatories to Intervenor Environmental Coalition on Nuclear Power on Revision 2 of Licensee's Emergency Plan, July 29, 1980.

^{4/} 10 CFR § 2.707 provides that, upon a party's failure to comply with a discovery order, the presiding officer may impose such sanctions as are just. Pursuant to this regulation, intervenors have been dismissed from proceedings for failure to comply with discovery requests. See Northern States Power Co., et al. (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
(CONTINUE ON NEXT PAGE)

The Licensee's contingent request for a prompt dismissal of ECNP's contentions upon Intervenor's failure to comply with a Board order compelling discovery, though unusual, is rational and appropriate at this stage of the proceeding. Through this request, the Licensee seeks to avoid the need for a further exchange of pleadings on this matter at a time when all parties are engaged in the final preparation for the hearing which commences on October 15, 1980. In addition, by the Licensee's contingent request for sanctions, ECNP is given advance notice of the potential consequences of its failure to comply with any Board order compelling responses.

III. Conclusion

Based on the foregoing, the Staff supports Licensee's contingent request for prompt dismissal of ECNP contentions 2-4, 2-7, 2-11, 2-13, 2-20/2-30, 2-26 and 2-28 should ECNP fail to comply with an order compelling responses to Licensee's interrogatories on these contentions.

Respectfully submitted,

Lisa N. Surgen

for

Joseph R. Gray
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 12th day of September, 1980

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Service Electric & Gas Co. (Atlantic Generating Station, Units 1 & 2), LBP-75-62, 2 NRC 702 (1975). The less drastic remedy of dismissal of a limited number of contentions has been used in the instant proceeding, specifically with regard to certain ECNP contentions which were the subject of unanswered discovery requests. See Memorandum and Order on Licensee's Motion for Sanctions Against Environmental Coalition on Nuclear Power, June 12, 1980.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO LICENSEE'S CONTINGENT REQUEST FOR SANCTIONS AGAINST E P CONTAINED IN LICENSEE'S MOTION FOR ORDER COMPELLING RESPONSE OF ECNP TO 1 TERROGATORIES" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 12th day of September, 1980:

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