

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



Before the Atomic Safety and Licensing Board

In the Matter of)	Docket No. 50-367
)	
NORTHERN INDIANA PUBLIC SERVICE)	(Construction Permit
COMPANY)	Extension)
)	
(Bailly Generating Station,)	14 OCT 80
Nuclear 1))	

MOTION FOR PROTECTIVE ORDER

General Electric Company (GE), by its undersigned attorney, hereby appears specially^{*/} in the above-captioned proceedings and files this Motion for a protective order in connection with the request by BPI, et al. (the intervenors) dated August 21, 1980, for the production of certain GE contracts to supply a nuclear steam supply system (NSSS) and turbine generator, respectively, for the Bailly Station.^{**/} GE is appearing specially for the limited purpose of asserting its claim that disclosure, if any, of the aforementioned contracts or the information therein, should be subject to a protective order. In support of its Motion, GE states the following:

*/ Kans. Gas & E. Co. (Wolf Creek Nuclear Generating Station, Unit No. 1), ALAB-307, 3 NRC 17 (1976).

**/ 10 C.F.R. § 2.740(c).

1. GE is given to understand that discovery has commenced in these proceedings even though final rulings have not been made on the intervenors' contentions. Further, a firm schedule, including the end point, for discovery has not been established. These circumstances pose a serious dilemma for GE. On the one hand, discovery requests are limited to the scope of admitted contentions and unduly broad requests are not favored.^{*/} Subsequent pleadings by the parties and Board rulings may well limit the scope of the contentions and hence the discoverability of the documents in question. On the other hand, if it occurs that specific information contained in the contracts falls within the scope of admitted contentions, GE may well have no problem in providing such information in accordance with a suitable protective order order, or otherwise. Disclosure of the subject contracts, either in whole or in part, may well prove unnecessary. In light of the present uncertainty and the apparent lack of impact upon the schedule for discovery, GE hereby requests a protective order precluding discovery of the subject documents pending admission of all intervenor contentions and the opportunity to examine the document request in light of those admitted contentions. GE submits that this action would

^{*/} Allied-General Nuclear Services (Barnwell Fuel Recovery and Storage Station), LBP-77-13, 5 NRC 489, 492 (1977); Illinois Power Co. (Clinton Nuclear Station, Units 1 and 2, ALAB-340, 4 NRC 27 (1976).

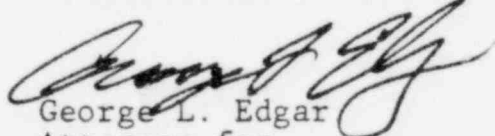
conserve the resources of all parties and the Board, and would not foreclose renewal of the discovery requests or a mutually acceptable resolution of the issue.

2. Alternatively, GE requests a protective order limiting discovery to specific matters or types of information to be identified by the intervenors within the scope of their contentions. Further, the intervenors should, under the terms of that Order, be required to state with specificity how each matter or type of information sought relates to matters at issue in the above-captioned proceedings. As noted above, GE cannot accurately determine on the current state of the record whether or not the discovery request is reasonably designed to lead to relevant information. The contracts in question doubtless contain information of substantial value to GE which could have no bearing on the proceedings in question. Further, if the intervenors' objective is to obtain substantive information relating to their contentions, there may be more appropriate forms for providing that information and better means for suitable protection to GE against disclosure, none of which would involve exposure of the subject contracts. This form of order would enable the parties to arrive at an acceptable resolution of the present dispute, while preserving the rights of all parties in the event that disclosure of certain elements of information contained in the contracts, or the entire contract or parts of those were necessary.

3. Finally, and in the alternative, GE requests a protective order on the terms set forth in Attachment A hereto pursuant to 10 C.F.R. § 2.790(d). GE's contracts are the type of highly sensitive commercial information which would fall within the scope of the four factors enumerated in 10 C.F.R. § 2.790. Up to this point in time, GE believed that GE, the Licensee, and intervenors could reach an acceptable resolution of this item and execute an appropriate form of protective order.^{*/} As a result of a last minute breakdown in these discussions, GE has not had the opportunity to complete an appropriate form of supporting affidavit, and the undersigned only became aware of this matter today. An appropriate affidavit supplementing this Motion will be submitted by October 17, 1980.

WHEREFORE, GE requests that the Board issue a protective order in accordance with the requests made herein above.

Respectfully submitted,



George L. Edgar
Attorney for
General Electric Company

DATED: October 14, 1980

^{*/} The document request was filed on August 21, 1980 and returned on September 26, 1980. In the latter response it was noted that a response on the GE contracts would be postponed until October 3, 1980. GE understands that this latter date was extended by agreement of the parties until October 14, 1980.

ATTACHMENT A

PROPOSED FORM OF PROTECTIVE ORDER

3. IT IS HEREBY FURTHER ORDERED that the discovery granted be conditioned upon the following:
- a. Only Intervenors' counsel be permitted to inspect the information; such inspection shall be made at a time and place which is mutually convenient to the Intervenors' counsel and GE;
 - b. Said counsel shall not disclose the information to any third person, nor photocopy, duplicate or transcribe such information;
 - c. Said counsel shall be permitted to take notes and data from the information, but the disclosure of said notes shall be subject to the restrictions of (b.) and d.) herein;
 - d. Said counsel shall utilize the information only for the purpose of preparation of the issues in this proceeding and for no other purpose; and
 - e. Said counsel shall destroy all notes and data taken from the information at the conclusion of this proceeding.
4. IT IS HEREBY FURTHER ORDERED that in the event Intervenors need to utilize the information during the evidentiary hearing in this proceeding, the information shall only be disclosed in camera under the conditions set forth in Paragraph 3 hereof and the transcript of such portion of the evidentiary hearing shall be sealed.

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<u>Nuclear 1)</u>)	

NOTICE OF SPECIAL APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters a special appearance on behalf of General Electric Company (GE) in the above-captioned matter. In accordance with 10 C.F.R. § 2.713(a), the following information is provided:

Name: Kevin P. Gallen

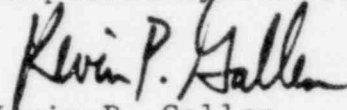
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Eligibility: Admitted to practice before the District of Columbia Court of Appeals, the United States District Court for the District of Columbia, and the United States Court of Appeals for the District of Columbia Circuit

Name of Party Appearing Specially: General Electric Company

Respectfully submitted,

A handwritten signature in cursive script that reads "Kevin P. Gallen".

Kevin P. Gallen
Attorney for
General Electric Company

OF COUNSEL

Morgan, Lewis & Bockius
1800 M Street, N.W.
Washington, D. C. 20036

Dated: October 14, 1980

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Notice is hereby given that the undersigned attorney herewith enters a special appearance on behalf of General Electric Company (GE) in the above-captioned matter. In accordance with 10 C.F.R. § 2.713(a), the following information is provided:

Name: George L. Edgar

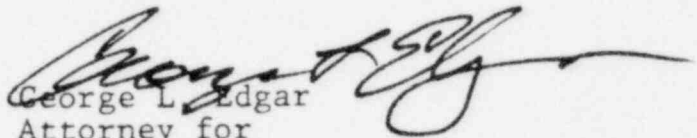
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Respectfully submitted,



George L. Edgar
Attorney for
General Electric Company

OF COUNSEL

Morgan, Lewis & Bockius
1800 M Street, N.W.
Washington, D. C. 20036

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CERTIFICATE OF SERVICE

I hereby certify, this 14th day of October, 1980,
that copies of GE's Notices of Special Appearance and Motion
for Protective Order have been served by hand upon those on
the following list marked by an asterisk, and by mail, first
class and postage prepaid, upon the remainder:

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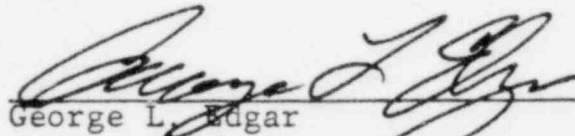
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DATED; October 14, 1980