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UNITED STATES OF AMERICA
= NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY
AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)
)
WASHINGTON PUBLIC POWER)
SUPPLY SYSTEM) Docket No. 50-460 CPA
)
(WPPSS Nuclear Project No. 1))

LICENSEE'S MOTION TO STRIKE
INTERVENOR'S MOTION TO COMPEL

On August 1, 1983, the Washington Public Power Supply System ("Licensee") responded to intervenor's third set of interrogatories in the captioned proceeding. On August 22, intervenor filed a motion to compel a response to interrogatories 5, 6, 9 and 16. The motion further sought a more complete response to interrogatories 2, 3, 13 and 14. Licensee hereby moves to strike intervenor's motion to compel on the grounds that it is untimely.¹

10 C.F.R. Section 2.740(f) states that a party submitting a discovery request "may move the presiding

¹ In submitting the Motion to Strike, Licensee does not intend to waive its opportunity to respond to the merits of intervenor's motion to compel as provided by 10 C.F.R. §2.730, and will submit such response within ten days following the Board's ruling on this Motion to Strike. Licensee further requests an expedited ruling on this motion to allow a prompt resolution of both its Motion to Strike and the intervenor's Motion to Compel.

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officer, within ten (10) days after the date of response . . . for an order compelling a response or inspection in accordance with the request" In addition, 10 C.F.R. Section 2.710 provides that when computing the ten-day period of time, five days shall be added to such period if the service of notice or other paper is made by first-class mail.

Licensee filed its responses to intervenor's third set of interrogatories on August 1, 1983, and served a copy of those responses to intervenor by first-class mail on that date. In accordance with Sections 2.740(f) and 2.710 of the NRC Rules of Practice, intervenor should have filed its motion to compel within the next fifteen-day period, viz., by August 16, 1983. Instead, intervenor filed its motion six days later, on August 22.

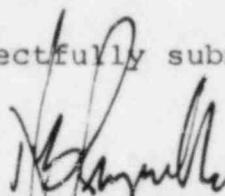
As a participant in this proceeding, intervenor has an obligation to satisfy fully all requirements of the NRC Rules of Practice, including filing discovery requests and motions in a timely manner and in accordance with the Rules of Practice.² By filing its motion to compel well after the deadline without offering an explanation as to

² See Cincinnati Gas & Electric Co. (William H. Zimmer Nuclear Power Station, Unit No. 1), May 10, 1983 Memorandum and Order, slip op. at 5; Duke Power Co. (Perkins Nuclear Station, Units 1, 2, and 3), ALAB-615, 12 NRC 350, 352 (1980), quoting from Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-609, 12 NRC 172, 173 n. 1 (1980).

why the pleading was untimely, and without requesting permission from the Board to file such an untimely pleading, intervenor has failed to satisfy this obligation.

Accordingly, in light of the foregoing, Licensee moves that intervenor's motion to compel be stricken as untimely.³

Respectfully submitted,



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September 6, 1983

³ At page 4 of its motion to compel, intervenor requests that this proceeding be suspended to allow it to file a request, pursuant to the Freedom of Information Act ("FOIA"), with the Bonneville Power Administration. To the extent this extraordinary request constitutes a formal motion to suspend the proceedings, Licensee submits it should be denied. Intervenor could have filed its FOIA request with BPA months ago when it first raised as an issue in this proceeding the role of that agency. Yet, for reasons known only to itself, intervenor did not do so. Moreover, the Board in its July 11, 1983 Order adopted intervenor's proposed extended schedule for the proceeding. This schedule provides intervenor with several additional months during which it could file its Freedom of Information Act request. In short, intervenor has failed to provide any justification in support of its request to suspend this proceeding. Accordingly, such request should be denied.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Licensee's Motion to Strike Intervenor's Motion to Compel" in the captioned matter were served upon the following persons by deposit in the United States mail, first class, postage prepaid, this 6th day of September, 1983:

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