

Intervenors' Contentions 1,2,3,4,5(b),6,7(a),7(b),8, and 11 (excluding 1(b),3(a) and 11(a)).

Intervenors' main reason for pursuing this motion, even though a similar (though not identical) request was earlier denied by the Board, is that allowing Dr. Cochran to serve as a cross-examiner, we submit, would be in the best interest of all parties, would contribute significantly to the efficiency, speed, and utility of the proceedings, and would be helpful to the Board by focusing and sharpening the cross-examination on several highly technical areas.

Intervenors were severely prejudiced during the August 23-27, 1982 LWA-1 evidentiary hearing when the Board would not permit Dr. Cochran to cross-examine witnesses, despite the fact that 10 CFR § 2.733 permits the use of technical experts as cross-examiners, and despite the fact that the Staff had no objection to having Dr. Cochran perform cross-examination. Intervenors had prepared for hearing on the assumption that Dr. Cochran would be allowed to cross-examine witnesses. Instead, counsel for Intervenors, who was unprepared to conduct cross-examination, and lacks the relevant technical background, was forced to confer constantly with Dr. Cochran, thus causing substantial delay in the hearing. In addition, counsel for Intervenors on many occasions was unable to ask meaningful follow-up questions on highly technical questions. Permitting Dr. Cochran to conduct cross-examination during the next hearing phase would avoid a confirmation of this prejudice to Intervenors.

The Board said that Intervenors should not have been surprised by the denial of permission to Dr. Cochran, claiming that it was NRC policy not to permit expert witnesses to act as cross-examiners. As discussed below, however, Intervenors have found no published NRC cases in which such a policy was set forth, but have found instead several cases in which an expert witness was qualified as interrogator under 10 CFR § 2.733.

Dr. Cochran's Qualifications

As demonstrated by the attached affidavit of Dr. Cochran, he is qualified by scientific and technical training and experience to contribute significantly to the development of an adequate decisional record in the proceeding by the conduct of such cross-examination. See The Regents of the University of California (UCLA Research Reactor), LBP-81-29, 14 NRC 353 (1981). Dr. Cochran fully intends to read all written testimony to be filed on November 12, 1982, by Staff and Applicants, and any documents to be used or referred to in the course of the cross-examination. Dr. Cochran has prepared and will continue to prepare himself to conduct a meaningful and expeditious cross-examination. Cross-examination by Dr. Cochran will be limited to areas within his expertise.

Counsel for Intervenors, Natural Resources Defense Council, Inc. and Sierra Club acknowledge that they will be responsible

for the conduct of cross-examination by Dr. Cochran.

The Expert Witness Issue

Intervenors also intend to present Dr. Cochran as an expert witness on Contentions 1,2,3,4,6 and 11 (excluding 1(b),3(a), and 11(a)), but submit that his testimony should not serve as a bar to his qualifications as an expert interrogator under 10 CFR § 2.733. As demonstrated by the attached Affidavit of Ellyn R. Weiss, this very issue arose during the lengthy Three-Mile Island-1 restart hearings. The Atomic Safety and Licensing Board in that proceeding permitted Intervenors' primary expert witness, Mr. Pollard, who had participated extensively in the development of Intervenors' case, to conduct cross-examination of Staff and Licensee witnesses during the entire course of the hearing. The Board indicated that allowing Mr. Pollard to act as both expert witness and cross-examiner contributed to the efficiency and utility of the proceeding and was helpful to the Board. The Board apparently found no prejudice or lack of fairness to any party in so proceeding, nor did any party appeal this course of action.

Intervenors also note that the Atomic Safety and Licensing Board in the Comanche Peak proceeding (in which the same ASLB Chairman serves as in the instant case) recently permitted expert witnesses to serve as cross-examiners, after Intervenors noted that the record would be better served by proceeding in that

matter.

Texas Utilities Generating Company (Comanche Peak Steam Electric Station, Units 1 & 2), Tr. of September 13, 1982 Evidentiary Hearing at 3599-3606. As noted above, Intervenors submit that the record and parties in the instant proceeding would also be served better by qualifying Dr. Cochran as an expert witness under 10 CFR § 2.733.

Barbara A. Finamore DRJ

Barbara A. Finamore
S. Jacob Scherr

Natural Resources Defense
Council, Inc.
1725 I Street, NW, #600
Washington, D.C. 20006
(202) 223-8210

Dean R. Tousley

Dean R. Tousley
Ellyn R. Weiss

HARMON & WEISS
1725 I Street, NW, #506
Washington, D.C. 20006
(202) 833-9070

Attorneys for Natural
Resources Defense Council,
Inc. and the Sierra Club

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