

That the individual is qualified by scientific or technical training or experience to contribute to the development of an adequate decisional record in the proceeding by the conduct of such examination or cross-examination....

Section 2.733 further provides that the use of such an expert interrogator "shall be limited to areas within the expertise of the individual...."

Applicants oppose the motion for the following reasons:

- 1) Intervenors have not demonstrated the qualifications of Dr. Thomas B. Cochran to serve as an expert interrogator.
- 2) Intervenors have not shown that the granting of their motion will further the conduct of these proceedings.

Intervenors Have Not Demonstrated
Dr. Cochran's Qualifications To
Serve As An Expert Interrogator

Intervenors request that Dr. Cochran be qualified as an expert interrogator in order to conduct cross-examination on Intervenors' Contentions 1, 2, 3, 4, 5(b), 6, 7(a), 7(b), 8, and 11, (excluding 1(b), 3(a) and 11(a)).^{1/} Yet,

^{1/} Intervenors' Motion at 2. Intervenors also represent that, pursuant to 10 C.F.R. § 2.733, counsel will be responsible for the conduct of cross-examination. Applicants wish to emphasize that should the Board permit Dr. Cochran to question, Intervenors' counsel remains solely responsible for the form of questions and for responding to all objections raised by opposing parties.

Intervenors provide the Board with no basis for finding that Dr. Cochran has the "scientific or technical training or experience" to provide the specific "expertise" necessary to cross-examine on any of those contentions.

Neither the Intervenors' Motion nor the Cochran affidavit directly relate Dr. Cochran's expertise to any specific contentions in this proceeding. The Motion itself, relying on the attached affidavit, merely vaguely asserts that Dr. Cochran "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."^{2/}

The affidavit, for the most part, contains statements which indicate that Dr. Cochran has an academic background in physics, has a general familiarity with nuclear energy and reactor safety, and has participated in the CRBRP licensing proceedings. The affidavit states that Dr. Cochran has testified before legislative and regulatory panels, but fails to state the nature of the testimony, or the use made of that testimony by the panels.^{3/} Most importantly, the affidavit does not provide any basis for concluding that Dr. Cochran has the necessary training and experience called

^{2/} Id.

^{3/} Cochran Affidavit at 2-3.

for by 10 C.F.R. § 2.733 relating to any specific contention areas.

Even taken in its most favorable light, Dr. Cochran's affidavit makes no claim which in any way demonstrates any expertise regarding Contentions 4 (safeguards), 5 (site characteristics), 7 (alternatives) and 8 (decommissioning). As to Contentions 1a, 2 and 3, Dr. Cochran's "expertise" seems to be that he has a Ph.D. in physics, has testified before Congress and a German commission concerning some unspecified topics and has some general experience with mathematical modeling and computer programming.

With regard to Contention 11, Dr. Cochran's "expertise" seems to be based on an M.S. thesis on Radiation Chemistry, three months of some unspecified on-the-job training which took place approximately twenty years ago, a titular position as campus Radiation Safety Officer (for which no description is provided) and co-authorship of two radiation standards petitions to the NRC, at least one of which was based on the discredited "hot particle" hypothesis (see below). Again, none of these claims presents any demonstration of expertise relating to the specific subject matter addressed by Contention 11.

Dr. Cochran's testimony at the August 23-27, 1982 Hearings raise some measure of real doubt as to his "expertise" in radiation protection matters. In Dr. Cochran's

Part II testimony regarding dose guideline values, he merely deferred to the testimony of Dr. Morgan and Dr. Cobb. Hearing Transcript, TR 3077-3083. The only radiation protection matter in which Dr. Cochran claimed expertise was the "hot particle hypothesis," TR 3083-3085, a theory which has been uniformly rejected by the NRC,^{4/} the Environmental Protection Agency^{5/} and the scientific community.^{6/}

10 C.F.R. § 2.733 contemplates that the use of an expert interrogator for cross-examining expert witnesses "shall be limited to areas within the expertise of the individual." As demonstrated above, the Board has been given no reason to believe that Dr. Cochran has any expertise in the specific subject matter areas which will be considered at the next phase of hearings.

The Conduct Of The Proceedings Would Not Be
Furthered By Qualification of Dr. Cochran

Intervenors claim that cross-examination conducted by Dr. Cochran "would be in the best interest of all parties, would contribute to the efficiency, speed and utility of the proceedings and would be helpful to the Board by focusing

^{4/} 41 Fed. Reg. 15371 (April 12, 1976).

^{5/} 42 Fed. Reg. 1288 (January 1977).

^{6/} See National Academy of Sciences, Ad Hoc Committee on "Hot Particles" of the Advisory Committee on the Biological Effects of Inhaled Radionuclides (1980); Hearing Transcript, TR. 2084-85.

and sharpening the cross-examination on several highly technical areas."^{7/} Intervenors' motion, however, provides little foundation for those sweeping assertions.

Intervenors contend that the only way Intervenors would be able to conduct cross-examination during the next hearing phase without being "severely prejudiced" would be for Dr. Cochran to conduct it. The basis for that contention seems to be the lack of advance preparation by Intervenors' counsel for the August 23 - 27 hearings.^{8/} The Board and all parties are entitled to presume that Intervenors will be represented by competent, well-prepared counsel. A "relevant technical background" which Intervenors' counsel claims to lack is unnecessary for effective cross-examination, if counsel has adequately prepared and has been provided with sound technical input of sufficient clarity that counsel can use it to formulate questions for cross-examination.

^{7/} Intervenors' Motion at 2.

^{8/} Any disadvantage suffered by Intervenors at the August 23-27 hearings was solely of Intervenors' making. Intervenors waited until the opening day of hearings to request that Dr. Cochran be allowed to cross-examine and then the only justification presented was that they had assumed, without any foundation, that he would be allowed to do so. Hearing Transcript TR 1244-1246. After the Board prohibited Dr. Cochran's persistent whispering in counsel's ear, TR. 2114, counsel conducted cross-examination with no apparent difficulty.

The issue of whether Dr. Cochran's participation as a technical interrogator will in any way meaningfully contribute to the development of the record is, of course, a matter for the Board's discretion. That discretion should be exercised, however, in light of the Board's prior direct experience with and knowledge of Dr. Cochran, especially his participation in oral arguments before the Board at meetings of counsel,^{9/} his appearances as an expert witness at the hearings and his participation in depositions during discovery in these proceedings.

The depositions conducted by Dr. Cochran have frequently been characterized by questioning which is argumentative, redundant and non-technical.^{10/} His testimony as an expert witness in the August hearings, on several occasions, was argumentative and non-responsive.^{11/}

It should be emphasized that Intervenors' request, if granted, will place Dr. Cochran in roles which are inherently in conflict. Intervenors ask that Dr. Cochran be allowed to act as an objective commentator in the role of an

^{9/} See, e.g., Transcript of Prehearing Conference (August 2, 1982) TR 792-794.

^{10/} See, e.g., Deposition of Edward Branagan, (October 13, 1982), a copy of which is attached.

^{11/} See e.g., Transcript of August 23 -27 Hearing, TR 2955-2967, 2976-2982. See also, TR 2195-2196.

expert witness^{12/} and as an advocate in the role of an expert interrogator. Although Applicants do not doubt the ability of the Board to ultimately control the nature and scope of Dr. Cochran's cross-examination or to distinguish between expert testimony and gratuitous statements by an interrogator, some justification must exist to subject these proceedings to the continuing potential for delay and confusion. Since Intervenors have failed to advance that justification, it is difficult to conceive how the Board can exercise its discretion to grant the instant motion.

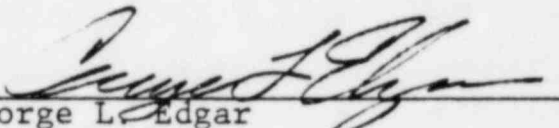
Conclusion

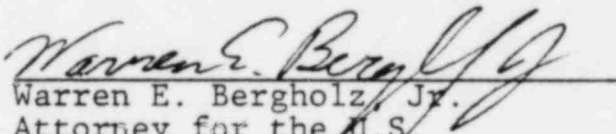
Intervenors have not demonstrated that Dr. Cochran is qualified to act as an expert interrogator for any of the specific contentions in this proceeding. Nor have they presented any reason to believe that well-prepared counsel with competent technical support could not adequately represent Intervenors' interests. Furthermore, Intervenors have not shown how the proceedings will be furthered if Dr. Cochran is allowed to act as an expert interrogator. In fact, in light of experience to date in these proceedings, it is more reasonable to conclude that allowing Dr. Cochran to cross-

^{12/} An expert witness is not an advocate but rather a professional who is to testify objectively. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-600, 12 NRC 3, 12 (1980).

examine would have a delaying, if not disruptive, influence. Applicants therefore oppose Intervenor's motion to qualify him pursuant to 10 C.F.R. § 2.733.

Respectfully submitted,


George L. Edgar
Attorney for
Project Management Corporation


Warren E. Bergholz, Jr.
Attorney for the U.S.
Department of Energy

DATED: October 29, 1982