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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges

SERVED NOV 09 1982

James A. Laurenson, Chairman
Dr. George C. Anderson
Dr. M. Stanley Livingston

In the Matter of)	Docket No. 50-255-OLA
CONSUMERS POWER COMPANY)	
(Palisades Nuclear Power Facility))	November 8, 1982

ORDER OF DISMISSAL

Procedural History

On July 23, 1979 the Licensing Board issued a Special Prehearing Conference Order in this matter which admitted Great Lakes Energy Alliance (hereinafter "GLEA") as a party to this proceeding. GLEA designated Mary P. Sinclair of Midland, Michigan as its representative.

On June 23, 1982 this Board issued an order requiring each party to the proceeding to file a statement on or before July 12, 1982 concerning the status of this proceeding. Licensee and NRC Staff filed such statements; GLEA did not respond to the order.

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On August 9, 1982 the Board issued an order scheduling a prehearing conference to be held on September 21, 1982 in St. Joseph, Michigan. This order was published in the Federal Register on August 13, 1982. 47 Fed. Reg. 35382 (August 13, 1982). Both the order of June 23, 1982 and the order of August 9, 1982 were served upon GLEA representative Mary P. Sinclair.

On September 21, 1982, a prehearing conference was convened in this matter at St. Joseph, Michigan. Licensee and NRC Staff attended and were represented. GLEA did not attend the prehearing conference and was not represented. Mary P. Sinclair did not attend the prehearing conference and was not represented. This Board received no notice that neither GLEA nor Mary P. Sinclair would attend the prehearing conference.

Thereafter, on September 23, 1982 the Board issued an Order to GLEA to Show Cause why it should not be dismissed as a party for its default in failing to attend the prehearing conference of September 21, 1982. That Order was served on GLEA's representative Mary P. Sinclair by Certified Mail on September 27, 1982. Neither GLEA nor anyone on its behalf filed any response to the Order to Show Cause.

Applicable Law

The NRC Rules of Procedure provide in pertinent part as follows:

"On failure of a party...to appear at a hearing or prehearing conference...the Commission or presiding officer may make such orders in regard to the failure as are just including, among others, the following:

(a) Without further notice, find the facts as to the matters regarding which the order was made in accordance with the claim of the party obtaining the order, and enter such order as may be appropriate; or

(b) Proceed without further notice to take proof on the issues specified." 10 CFR § 2.707.

The Order to Show Cause notified GLEA that unless it showed good cause, within 20 days, for its default in failing to attend the prehearing conference, it would be dismissed as a party. Thus, GLEA was fully advised of the consequences of a failure to respond. Nevertheless, GLEA did not respond to the Order to Show Cause.

We are mindful that dismissal of a party is the ultimate sanction applicable to an intervenor. On the other hand, where a party fails to carry out the responsibilities imposed by the fact of its participation in the proceeding, such party may be found to be in default and its contentions dismissed. Boston Edison Co. (Pilgrim Nuclear Generating Station No. 2), LBP-76-7, 3 NRC 156 (1976). We find that GLEA's unexplained failure to attend the prehearing conference and failure to respond to the Order to Show Cause are serious lapses which indicate that it should no longer retain its status as a party in this proceeding.

ORDER

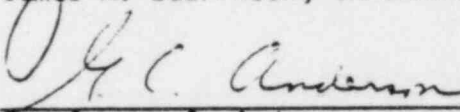
WHEREFORE, IT IS ORDERED this 8th day of November 1982 at Bethesda, Maryland that Great Lakes Energy Alliance is in DEFAULT for

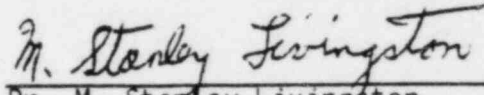
failure to attend a prehearing conference on September 21, 1982; that it has not established good cause why it should not be DISMISSED as a party herein; that it is DISMISSED as a party herein; and that its three previously admitted contentions are also DISMISSED.

IT IS FURTHER ORDERED that since there is no longer any party or contention opposed to the operating license amendment in this proceeding, this proceeding is hereby DISMISSED.

ATOMIC SAFETY AND LICENSING BOARD


James A. Laurenson, CHAIRMAN


Dr. George C. Anderson


Dr. M. Stanley Livingston