

renews its motion to dismiss HBACC Contention 7 concerning radioactive monitoring, and also renews its motion to compel responses to Staff interrogatories I-III which also were virtually unanswered by HBACC. For the convenience of the Board, copies of the Staff's interrogatories and HBACC's response thereto are attached to this motion as appendices.

II. DISCUSSION

HBACC Contention 7, concerning radioactive monitoring (which is virtually the same as New Hampshire Contention 9) provides:

The Seabrook design does not provide for an adequate program for monitoring the release of radioactivity to the plant and its environs either under normal operating conditions or in pre- and post accident circumstances. Thus, the application is not in compliance with general design criteria 63, 64 of Appendix A, 10 C.F.R. Part 50, and the requirements of NUREG-0737 and NUREG-0800.

On February 26, 1983, HBACC mailed its responses to the Staff's interrogatories and document requests filed on November 10, 1982. In response to Staff interrogatory 7(a), HBACC was unable to provide any detail concerning the "equipment, components, and procedures of the Seabrook in-plant monitoring system" that HBACC has alleged in the contention are not in compliance with GDC 63, 64 Appendix A to 10 C.F.R. Part 50, and NUREGs-0737 and -0800. Furthermore, in response to interrogatory 7(d), HBACC was unable to provide any discussion of a major assertion in the contention that Applicants will not provide sufficient radiation monitoring capacity in containment spaces which could contain LOCA fluids, effluent discharge paths, and plant environs as required by GDC 64. Thus, HBACC has not provided basic and necessary information concerning its contention for the Staff to either consider or address in

the preparation of its testimony. It is clear that, regarding this contention, HBACC has not answered the interrogatories as ordered by the Board. If this is permitted to stand, the Staff will soon have to file testimony and make available its witnesses for cross-examination without it, or the Licensing Board, (or any other party) having the slightest idea of what HBACC's concerns are in this area. Moreover, the preparation of such testimony will involve a substantial amount of time by two Staff senior reviewers.^{1/} Notwithstanding the Staff's good faith efforts to obtain information regarding this contention, and notwithstanding the Board's Order of February 16, 1983, directing HBACC to respond, HBACC still has not provided the requested information.

Moreover, HBACC has also declined to provide information relative to Staff interrogatory QI and its subparts which request other information necessary for the preparation of the Staff's case. For example, HBACC refused to provide the educational and professional qualifications of the

^{1/} The Staff reviewers should not be required to file testimony and testify in this proceeding without being informed in detail as to HBACC's concerns in the substantive areas of its filed contentions. The discovery process is designed to provide this information. This is what Staff counsel meant in attempting to explain to the HBACC representative that it had a client to represent, and the requested information was necessary for the presentation of the Staff's testimony. In its "Answer To Memorandum And Order From The . . . [HBACC]" filed February 25, 1982, the HBACC representative "admits to confusion" in being informed of this by the NRC Staff, which apparently was the case.

person it relies upon to substantiate its views on its contentions.^{2/} HBACC also refused or was unable to provide a summary of the views or positions of such person on the proposed contentions.^{3/} It refused or was unable to specify any documents that it may rely on or use during cross-examination of witnesses.^{4/} HBACC has merely stated that the documents it intends to use come from "UNH Library, NRC, State Library, Franklin Pierce Library, newspapers and Public Service Company. A list of title, author, date, publication, and publisher is impossible" (HBACC Response to Staff interrogatories, p. 1 (emphasis in original)). The Appeal Board has ruled that specific answers to such questions concerning documents relied upon, as propounded by the Staff, are required.

Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), ALAB-678, 15 NRC 1400, 1421. This holding, requiring a specific listing of documents, their dates, and their locations, is also consistent with practice in the federal courts. See 15 NRC at 1421 n.39.

HBACC also refused to answer any interrogatories on its contentions 4 and 5 concerning accident classification and onsite protective measures. The explanation for this refusal is "HBACC representative was under the impression that Emergency Planning [was] deemed by the Licensing Board to be premature."^{5/} These two contentions were admitted by the

^{2/} "The Hampton Beach Area Chamber of Commerce . . . Response to the NRC Staff's Interrogatories and Request for Production of Documents," p. 1, no. Q.I(1).

^{3/} Id., response to Q.I(4).

^{4/} Id., response to QI(5).

^{5/} Id., response to QI(4)(9).

Licensing Board in its "Memorandum and Order" of September 3, 1982. That Order provided for discovery to begin immediately on those contentions admitted by that Memorandum and Order. It was only contentions relating to offsite emergency plans that were not admitted by the Licensing Board on the ground of prematurity.^{6/} HBACC contentions concern Applicants' onsite emergency plan, a document which has been available for some time, and which was presumably reviewed by HBACC in conjunction with the filing of these contentions. Therefore, the Staff has renewed its motion to compel HBACC to comply with this Board's Memorandum and Order of February 16, 1983, by providing reasonably detailed and considered responses to the Staff's November interrogatories covering HBACC's contentions 4 and 5. The Staff requests that the Board again also order such responses to Staff interrogatory I as above described.

As was discussed in detail in the Staff's motion to compel answers to interrogatories or its motion to dismiss HBACC contentions 4, 5, and 7, the Staff has waited since November for responses to its interrogatories. HBACC never moved for an extension of time or filed objections to the Staff interrogatories and document requests, which were only seven pages in length. From the nature of the "responses" made by HBACC when directed to do so by the Board, such responses could have been filed in November, for no information was provided. Since HBACC asserts that it did not provide responses to the Staff's interrogatories although specifically directed to do so on its contentions 4 and 5 because "it was

^{6/} See "Memorandum and Order (Addressing Intervenor's Motions for Reconsideration of the Board's Prehearing Conference Ordered Motions for Certification), p. 17 (November 17, 1982).

under the impression" the subject matter was premature, the Staff believes that HBACC may be provided with fourteen additional days to provide the requested information. There is, however, no excuse for HBACC not providing the requested information or documents relevant to its radioactive monitoring contention (HBACC-7). The Staff again moves for dismissal of HBACC Contention 7.

HBACC by not answering the interrogatories and document requests in the area of radioactive monitoring has violated this Board's Order of February 16, 1983, which directed HBACC to provide such answers. 10 C.F.R. § 2.707 authorizes the presiding officer to impose various sanctions on a party for its failure, among other things, to comply with a discovery order. Pursuant to 10 C.F.R. § 2.707, an intervenor can be dismissed from the proceeding for its failure to comply with discovery orders. Northern States Power Co. et al. (Tyrone Energy Park, Unit 1), LBP-77-37, 5 NRC 1298 (1977); Offshore Power Systems (Manufacturing License for Floating Nuclear Power Plants), LBP-75-67, 2 NRC 813 (1975); Public Service Electric & Gas Co. (Atlantic Generating Station, Units 1 & 2), LBP-75-62, 2 NRC 702 (1975).

As discussed in detail in the Staff's motion to compel of February 4, 1983, in Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 1), LBP-80-17, 11 NRC 893 (1980), a licensing board dismissed many of an intervenor's contentions when the intervenor failed to comply with the Board's discovery order. HBACC's position on discovery has resulted in a substantial lack of knowledge by the Staff necessary to the preparation of its case on HBACC's admitted contentions. Since HBACC has refused to participate in the discovery phase of this

proceeding, it should not be permitted to participate in the hearing phase. HBACC contention 7 should therefore be dismissed. The Staff does not at this instant press for dismissal of HBACC's contentions 3 and 4, but will so move unless responsible answers are promptly given in accordance with its renewed motion to compel.

The sanction of dismissal of HBACC contention 7 is factually appropriate and consistent with the Commission's Statement of Policy On Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452 (1981). See also Commonwealth Edison Company, ALAB-678, supra. Relevant to this question is the general guidance at the beginning of the policy statement. The Commission stated:

In selecting a sanction, licensing boards are to consider the relative importance of the unmet obligation, its potential for harm to other parties or the orderly conduct of the proceeding, whether its occurrence is an isolated incident or part of a pattern of behavior, the importance of the safety or environmental concerns raised by the party, and all of the circumstances. Boards should attempt to tailor sanctions to mitigate the harm caused by the failure of a party to fulfill its obligations and bring about improved future compliance. 13 NRC at 454.

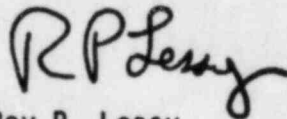
Here, by CCCNH's refusal to participate in the discovery phase of this proceeding despite a specific Board direction to do so, unless contention HBACC-7 is dismissed, the Staff (as well as the Applicant) is faced with the prospect of having to prefile written testimony in the near future on contentions in important areas (such as radioactive monitoring) without the slightest idea of the technical bases underlying CCCNH's adversary positions on these matters.

III. CONCLUSION

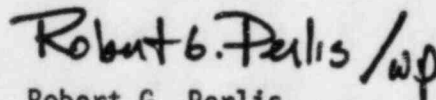
For the reasons stated above, the Staff moves the Licensing Board to:

- 1) dismiss HBACC contention 7,
- 2) re-order responsive answers to Staff interrogatories I, II (concerning HBACC contention 4), and III (concerning HBACC contention 5) within fourteen days; and
- 3) also dismiss HBACC's contentions 4 and 5 if the requested information is not provided.

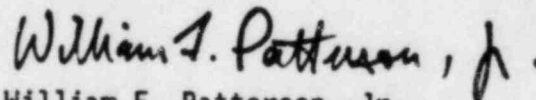
Respectfully submitted,



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Dated at Bethesda, Maryland
this 15th day of March, 1983