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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'94 JUN 17 P3:00

ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF THE SECRETARY
DOCKETS SECTION
WASHINGTON, DC 20545

Before Administrative Judges:

Charles Bechhoefer, Chairman
Dr. Richard F. Cole
Thomas D. Murphy

In the Matter of

SACRAMENTO MUNICIPAL
UTILITY DISTRICT

(Rancho Seco Nuclear
Generating Station, Facility
Operating License No. DPR-54)

Docket No. 50-312-DCOM-R
(Decommissioning Plan)

ASLBP No. 93-677-01-DCOM-R
June 17, 1994

SERVED JUN 17 1994

MEMORANDUM AND ORDER
(Telephone Conference Call, 6/15/94)

In our Memorandum and Order (Telephone Conference Call re: Discovery Schedules), dated April 19, 1994, we directed the parties to report on the status of discovery by June 15, 1994. We conducted a telephone conference call for that purpose at 11:00 a.m. on June 15, 1994. Participating, in addition to the three Licensing Board Judges, were James P. McGranery, Jr., Esq., for ECO (the Intervenor); David R. Lewis, Esq., for SMUD (Licensee), along with Mr. James Shetler, Deputy Assistant General Manager, Nuclear of SMUD and Dana Appling, Esq., General Counsel of SMUD; and Mitzi A. Young, Esq., for the NRC Staff.

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The Board was advised that ECO currently has filed no discovery requests and also has not responded to interrogatories posed by SMUD on May 13, 1994. ECO's responses to interrogatories should have been filed on June 1, 1994, and its responses to requests for documents are scheduled to be filed by June 17, 1994. Having received no responses to its May 13, 1994 interrogatories, and no objections to any questions, SMUD on June 10, 1994 filed a motion to compel responses. This motion was hand-delivered to ECO's counsel on that date.

ECO explained that its reason for not responding to SMUD's interrogatories was its belief that intervenors need not respond to interrogatories prior to receiving responses to their own interrogatories. For this proposition, ECO cited Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-82-116, 16 NRC 1937 (1982), particularly the portion at pp. 1944-46 (titled "The We Don't Know Response").

After considering argument of all parties, we determined that there was no general rule permitting intervenors to postpone answering interrogatories until receiving responses to their own interrogatories and that the Catawba ruling was case-specific. Moreover, in Catawba, intervenors had already answered interrogatories to the effect that they lacked further knowledge absent receipt of information from other parties. The Board noted that Catawba was decided prior to the Commission's adoption of

its new contention rules that require a more detailed development of basis and reasons prior to the submission of a contention. Thus, the "we don't know" response is less likely to be accurate today than it may have been in Catawba.

The Board was also advised that ECO's responses were delayed because of a move of the office of its counsel and difficulties in obtaining the affidavit of its expert witness. The Board stated that to justify a non-response, a party would be remiss in "doing nothing," as ECO has done, but rather should file objections or motions for a protective order to set forth (for the record) and to obtain Licensing Board approval of the proposed course of action.

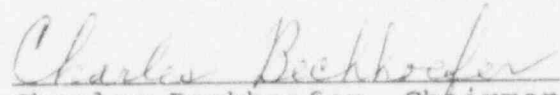
The Board permitted ECO to file (and have in the hands of the Board and parties) additional responses, if any, to the motion to compel, by close of business Monday, June 20, 1994. The Board also directed ECO to respond to SMUD's interrogatories and requests for documents, and have such responses in the hands of the Board and parties, by close of business Wednesday, June 22, 1994. The Board noted that, to the extent ECO might have difficulty in obtaining affidavits, it could file an unsigned affidavit (clearly identifying the affiant) to be followed by submission of a signed affidavit several days later.

Finally, the Board noted that the discovery period expires on August 1, 1994. We encouraged ECO to commence

its own discovery as soon as possible, to the extent it wishes to utilize discovery. Failure to commence discovery will not be a valid reason for us to extend the August 1 termination date and, indeed, is likely to mitigate against any such extension should that later be sought by ECO.

IT IS SO ORDERED.

For the Atomic Safety and
Licensing Board


Charles Bechhoefer, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland
June 17, 1994

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

SACRAMENTO MUNICIPAL UTILITY
DISTRICT
(Rancho Seco Nuclear Generating
Station (Decommissioning Plan))

Docket No.(s) 50-312-DCOM

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMO & ORDER DTD 6/17/94 have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Charles Bechhoefer, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Richard F. Cole
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
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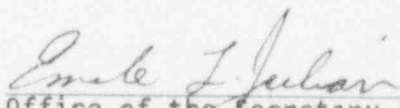
Administrative Judge
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Dated at Rockville, Md. this
17 day of June 1994


Office of the Secretary of the Commission