

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Herbert Grossman, Chairman
Glenn O. Bright
Dr. Jerry Harbour



In the Matter of
WASHINGTON PUBLIC POWER SUPPLY SYSTEM,
et al.
(WPPSS Nuclear Project No. 1)

Docket No. 50-460-CPA

(ASLBP No. 83-485-02-CPA)

June 28, 1983

SERVED JUN 29 1983

MEMORANDUM AND ORDER
(Granting Intervenor's Motion to Compel)

MEMORANDUM

On April 14, 1983, Intervenor, the Coalition for Safe Power (CSP), served its first set of interrogatories upon Applicant, containing ten interrogatories. Applicant objected to Interrogatories 6, 7, 8, and 9, and to a portion of Interrogatory No. 10. On May 23, 1983, CSP moved to compel answers to Interrogatories 6, 7, 8, and 9. Applicant responded to the motion to compel on June 1, 1983.

We grant Intervenor's motion.

Interrogatories 6, 7, and 8 request documents "concerning the delay of WNP-1" or minutes of meetings at which the "delay of WNP-1 was discussed." Interrogatory 9 requests documents related to "all options considered by WPPSS for WNP-1 between April 23 and 29, 1983."

WPPSS objects to these interrogatories on the ground that the discovery sought is not relevant to the subject matter involved in the proceeding. Licensee's response, June 1, 1983, at 3. WPPSS appears to take the position that the mere presence of matters beyond the scope of the proceeding in the requested documents makes these documents non-discoverable. Id. at 5-6.

We cannot accept this proposition. The focus of our inquiry into whether the material is discoverable is not on whether it contains matters beyond the scope of the proceeding but on whether "the information sought [also] appears reasonably calculated to lead to the discovery of admissible evidence." 10 C.F.R. § 2.740(b)(1). If the documents were to fit that description but also contain privileged information not reasonably calculated to lead to the discovery of admissible evidence, perhaps the Board would consider limiting Intervenor's discovery on that basis. However, WPPSS has asserted no privilege.

Since Intervenor's interrogatories all relate directly to either the delay of WNP-1 or to other options considered for WNP-1, the information sought appears to be not only reasonably calculated to lead to

the discovery of admissible evidence but also necessary for Intervenor to prepare its case. Intervenor could hardly attempt to develop its contentions that WPPSS' actions and delaying construction were dilatory and without "good cause", and that the requested extension is not for a reasonable period of time, without fully understanding the reasons for the delay in construction. The possible presence of extraneous matters in these documents cannot influence our decision.

Nevertheless, the Board sees one area that should be excluded from this discovery if it had not already been so contemplated by the parties. As written, these interrogatories could be interpreted as covering documents concerning the originally-requested extension of construction completion date. At the prehearing conference, Intervenor conceded that WPPSS had not intentionally delayed construction so as to necessitate the originally-requested extension of construction completion date (Tr. 58-9), and the Board denied the aspects of Intervenor's contentions that did not relate to the contemplated 2-5 year period of cessation of construction activities added on to the original requested period extension (Memorandum and Order, March 25, 1983, at 3-4; see also Washington Public Power Supply System (WPPSS Nuclear Project No. 2), ALAB-722, 17 NRC ____ (April 11, 1983).

In accordance with our March 25, 1983 Memorandum and Order and ALAB-722, we rule out from discovery those documents relating only to

the originally requested extension and which have no relation to the subsequent request for the additional 2-5 year extension.


ORDER

For all the foregoing reasons and based upon a consideration of the entire record in this matter, it is, this 28th day of June, 1983,

ORDERED,

That Intervenor's motion to compel responses to the first set of interrogatories to Applicant is granted and that Applicant may exclude from the documents sought only those documents relating exclusively to the originally-requested extension that are unrelated to the subsequently requested 2-5 year additional extension.

FOR THE ATOMIC SAFETY AND LICENSING BOARD



Herbert Grossman, Chairman
ADMINISTRATIVE JUDGE