

II. Applicant's Response

Applicant has no basis for questioning the legitimacy of the particular conflicts cited by Intervenor in its November 1, 1994 notice. However, Applicant wishes to raise several issues concerning the appropriateness of Intervenor's request at this stage of the proceeding and to suggest a course of action.

First, Applicant notes that the schedule for the second phase of the evidentiary hearing has been known to all parties since July 1993. In a progress report to the Board dated July 15, 1993, all parties agreed that if the FEIS were issued on the expected date (August 30, 1994), the hearing would commence on December 27, 1994. In fact, the FEIS was issued on August 29, 1994, one day ahead of the anticipated schedule. Thus, the parties have known for almost a year and a half the date (within one day) for commencement of the hearing. To raise such extensive schedule conflicts for the first time at this late date, both for witnesses and counsel, is objectionable.

Second, Intervenor's request for delay serves as another example of its increasing tendency to disregard governing regulations and agreed-upon standards for the advancement of this proceeding. For example, contrary to the established procedure in this case, and less than 90 days prior to commencement of phase one of the hearing, Intervenor moved the Board to defer hearing of Contentions B and Q, effectively revising the hearing schedule that had been established more than a year earlier. More recently, Intervenor not only filed a motion for leave to file "clarified"

proposed findings, which was not contemplated in the Board's July 28, 1994 Order establishing the proposed findings schedule, but also simultaneously filed the "clarified" proposed findings themselves, which is not consistent with agency practice.^{2/} Intervenor's attempt to delay the second phase of the hearing appears to be another in this continuing series of departures from the well-established and agreed-upon schedule for completion of this proceeding.

Third, Applicant is troubled by the fact that for each of CANT's witnesses, and in fact for CANT's counsel, this proceeding appears to come last in terms of priority. While we do not question the validity of the listed activities and events, we point out that this proceeding has been ongoing for more than three years, has been advanced on a clearly defined schedule, and is of sufficient importance to warrant the full attention of the parties involved.

Fourth, Intervenor's request for delay appears to be based largely upon the schedule of a witness, Mr. Robert Bullard, who is made known to Applicant for the first time in Intervenor's Notice. In Interrogatories first served on Intervenor more than two years ago,^{3/} and pursued through various Motions to Compel and

^{2/} See Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-57, 18 NRC 445, 624 n.72 (1983).

^{3/} "Applicant's Interrogatories To Citizens Against Nuclear Trash Regarding Citizens Against Nuclear Trash's Contentions B, I, J, K, L, M, and Q," August 11, 1992.

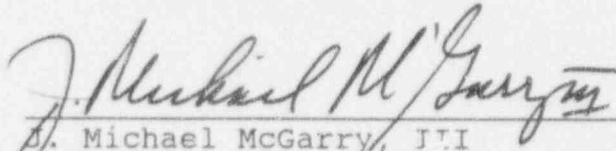
correspondence on several occasions since,^{4/} Applicant requested that Intervenor identify, for each of Contentions B, I, J, K, L, M, and Q, each person whom Intervenor expects to call as a witness at the hearing, including any expert witness, and to provide the subject matter and substance of the matters on which each witness is expected to testify (Interrogatory G-2). Applicant made clear that these interrogatories were continuing in nature as required by 10 C.F.R. § 2.740(e) and directed that Intervenor supplement its responses as necessary to correct or complete its initial responses. In addition, at least with respect to Contentions B and Q, Intervenor has previously stated in its responses that "CANT will notify [Applicant] promptly should a change be necessary."^{5/} Intervenor's failure to advise the parties of the identification of this witness serves as yet another example of Intervenor's tendency to stray from the agreed-upon rules for this proceeding.

^{4/} See, e.g., "Applicant's Motion To Compel Discovery From Intervenor Regarding Witnesses And To Impose A Duty To Supplement Discovery," May 11, 1994. (Applicant later withdrew this motion in light of Intervenor's agreement to provide the requested information, at least with respect to the "safety issues" litigated in July, by a date certain.)

^{5/} "List of Proposed Witnesses on Technical Issues Filed By Citizens Against Nuclear Trash," April 15, 1994.

Finally, while Intervenor's list of conflicts is lengthy, Applicant does not see that it precludes commencement of the hearing on schedule, or at least completion well before mid-March 1995.

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