

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
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BRANCH

Before Administrative Judges:

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

SERVED OCT 3 1983

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

Docket No. 50-460-CPA

(ASLBP No. 83-485-1/2 CPA)

September 30, 1983

MEMORANDUM AND ORDER
(Granting Permittee's Motion to Strike
and Denying Intervenor's Alternative Discovery Motions)

On July 13, 1983 Intervenor, the Coalition for Safe Power (CSP), served its third set of interrogatories on Permittee, the Washington Public Power Supply System (WPPSS). WPPSS responded on August 1, 1983. On August 22, 1983, Intervenor moved to compel WPPSS to respond to certain interrogatories objected to and to respond more fully to certain other interrogatories. In the alternative, in the event the Board did not compel answers to certain of the interrogatories (5 and 6) regarding the Bonneville Power Administration, Intervenor moved to suspend the current hearing schedule to allow it to obtain the information from

the Bonneville Power Administration, a federal agency, through the Freedom of Information Act, 5 USC 552.

On September 6, 1983, WPPSS moved to strike CSP's motion to compel on the ground that it was six days late in that 10 C.F.R. § 2.740(f) requires that a motion to compel be filed within ten days after the date of the response, or the failure to respond, to the interrogatories. WPPSS had responded to the interrogatories on August 1, 1983. Adding five days for service to the ten-day period of time beginning on August 1, 1983 requires a response by August 16, 1983. Intervenor's motion to compel filed on August 22nd was six days late. Intervenor filed no response to WPPSS' motion to strike.

We grant WPPSS' motion to strike. Consequently, we deny Intervenor's motion to compel. We also deny Intervenor's alternative request for a suspension of proceedings.

MEMORANDUM

The six extra days taken by Intervenor to file its motion to compel is of no great moment. Intervenor has diligently and conscientiously pursued the prosecution of its case and, as far we can determine from the discovery papers filed with us, has made a good faith effort to file responsive answers to interrogatories propounded of it. Moreover, the Board was aware, albeit unofficially, that Intervenor's representatives

were actively participating in a prehearing conference in another proceeding, involving WPPSS' Nuclear Project 3, at the time its motion to compel should have been filed. This Board would have been inclined to grant an extension.

However, we cannot allow a flaunting of the Commission's regulations. If Intervenor had some reason for not filing its motion on time, it is not our obligation to guess that reason. Nor can we take it upon ourselves to supply reasons that may not be present. If Intervenor was unable to file a timely request for extension, it could have made the request along with its motion to compel or, thereafter, in response to WPPSS' motion to strike. The Board would have entertained the request even at that late date. Since WPPSS' motion is uncontested, we see little choice but to grant it. Furthermore, since it is Intervenor's unexcused failure to act that resulted in its coming up empty-handed in seeking the Bonneville Power Administration records through ordinary discovery methods, we see no reason to take the extraordinary measure of suspending these proceedings at Intervenor's behest to permit its use of the Freedom of Information Act.

We do not profess to decide this discovery issue as a general proposition that would govern all similar failures to request discovery extensions. Certainly, if the substantive issues before us on which discovery was sought involved compelling matters of the public health and safety we would take it upon ourselves to ignore the delinquent party's

peccadillos, examine the requested discovery in detail to determine its significance in terms of the public health and safety, and take the health and safety significance into account in deciding the motions before us. The substantive issue involved in this proceeding does not impress us as having a sufficient health or safety import to require us to excuse a party's disregard for the regulations.

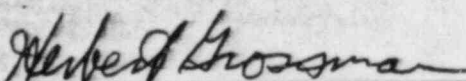
ORDER

For all the foregoing reasons and based upon a consideration of the entire record in this matter, it is, this 30th day of September, 1983,

ORDERED

That Permittee's motion to strike is granted, and Intervenor's alternative motions, to compel answers to the third set of interrogatories or suspend the proceeding to permit Intervenor to discover through means of the Freedom of Information Act, are denied.

FOR THE ATOMIC SAFETY AND LICENSING BOARD



Herbert Grossman, Chairman
ADMINISTRATIVE JUDGE