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

DOCKETED
USNRC

BEFORE ADMINISTRATIVE JUDGES: 84 JUL 25 AIO:34

Lawrence Brenner, Chairman
Dr. Richard F. Cole
Dr. Peter A. Morris

OFFICE OF SECURITY
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SERVED JUL 24 1984

In the Matter of
PHILADELPHIA ELECTRIC COMPANY
(Limerick Generating Station,
Units 1 and 2)

Docket Nos. 50-352-OL
50-353-OL

July 24, 1984

CONFIRMATORY ORDER GRANTING LEA'S MOTION TO COMPEL

On July 10, 1984, the Applicant objected to LEA's "Second Set of Interrogatories . . . on Offsite Emergency Planning Contentions" on the ground that although the certificate of service bears the filing deadline date of June 25, LEA's discovery request was postmarked June 27. LEA's timely motion to compel, dated July 16, 1984, asserts that the interrogatories in question were mailed on June 25, and that LEA had attempted to resolve the dispute with Applicant pursuant to the standing Board requirement that parties make every effort to resolve discovery disputes.

During a July 23 telephone conference call convened by the Board, with LEA, the Applicant, the Commonwealth of Pennsylvania and the NRC Staff, LEA's lay representative who had signed the June 25 certificate

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of service affirmed that she had checked with the person who mailed the Second Set of Interrogatories and that person stated that the filing was placed in a mailbox on June 25. While the matter is not free from doubt,^{1/} in the circumstances of what is at stake, including the absence of prejudice to the Applicant, we accept LEA's assertions this time without any further collateral factual inquiry into this relatively minor matter. LEA's representative has stated that in the future she will either place filings in the mail personally or otherwise take care to assure that they are mailed the same date as the one sworn to on the certificate of service.

Considering the dispute, and LEA's assertions of the facts made known to the Applicant by LEA in an attempt to resolve the dispute, it appears that the Applicant did not exercise the diligence which we require in this proceeding in settling discovery disputes without the need for the intercession of the Board. See "Memorandum and Order Confirming Schedules Established During Prehearing Conference"

^{1/} It appears unusual that an envelope placed in a mailbox on June 25 would not be postmarked until June 27 since there was no intervening weekend. Similarly, the Board's copy of LEA's Motion to Compel, dated July 16 and bearing that date on the certificate of service, was postmarked "July 19, 1984 - p.m." LEA's representative believes that it was mailed on July 16, albeit once again not by her personally. Here too, the delay between asserted mailing and the postmark is surprising in the absence of an intervening weekend. This underscores the importance of better future assurance by LEA's representative that filings are mailed on the date noted on her certificate of service.

(unpublished), slip op. at 3 (May 16, 1983). In particular, the Applicant's objection ignored the requirement to indicate why it was not possible for it and LEA to reach a fair accommodation as a practical matter.

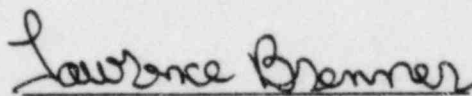
While the Applicant was correct that deadlines are important and have been enforced for formal pleadings before the Board, that must be balanced against the greater flexibility accorded to the parties in making and varying arrangements for discovery requests and answers and settling discovery disputes.^{2/} The result here is that by engaging in a dispute about two days in June (out of the many months accorded for informal and formal discovery on offsite emergency planning issues), while knowing that LEA had a claim that the interrogatories were mailed on time, the Applicant has caused a delay in completing discovery of about two weeks which stretches into August.

^{2/} In this connection, the Board noted during the conference call that Applicant's July 10 objection to LEA's First Set of Interrogatories (which was either mailed on June 21 or hand-delivered on June 22) was at least four days late. Yet LEA and the Applicant resolved that dispute without regard to the untimeliness of the Applicant's objection.

As ordered during the conference call, LEA's motion to compel is granted. The Applicant shall file its answer to LEA's Second Set of Interrogatories by August 2, 1984.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD


Lawrence Brenner, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland
July 24, 1984

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COURTESY NOTIFICATION

As circumstances warrant from time to time, the Board will mail copies of its memoranda and orders directly to each party, petitioner or other interested participant. This is intended solely as a courtesy and convenience to those served to provide extra time. Official service will be separate from the courtesy notification and will continue to be made by the Office of the Secretary of the Commission. Unless otherwise stated, time periods will be computed from the official service.

I hereby certify that I have today mailed copies of the Board's "Confirmatory Order Granting LEA's Motion to Compel" to the persons designated on the attached Courtesy Notification List.

Valarie M. Lane
Valarie M. Lane
Secretary to Judge Brenner
Atomic Safety and Licensing
Board Panel

Bethesda, Maryland

Attachment

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