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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION '84 SEP 12 AM 11:09

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
PUBLIC SERVICE ELECTRIC AND)	Docket No. 50-354-0L
GAS CO., <u>ET AL</u>)	
)	
(Hope Creek Generating Station,)	
Unit 1))	

STAFF'S RESPONSE TO INTERVENORS' PETITION
FOR ADDITIONAL TIME TO MAKE EXPERT
WITNESSES AVAILABLE FOR DEPOSITIONS AND
APPLICANT'S MOTION TO DISMISS THE PROCEEDING

I. INTRODUCTION

On August 20, 1984 the Public Advocate of the State of New Jersey (the Public Advocate) requested as extension of time until October to make its witnesses available for deposition. The Applicant has opposed this request and moved for dismissal of the proceeding for failure to comply with the Board's discovery order scheduling these depositions by September 3, 1984. For the reasons outlined below, Staff opposes the Applicants' request for dismissal and would allow West Valley's extension.

II. BACKGROUND

On August 10, 1984 the Licensing Board, in responding to a motion to compel discovery, ordered the Public Advocate to identify its witnesses by August 20, 1984 and have them available for depositions within two weeks thereafter. The Public Advocate timely responded on August 20, 1984 by

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listing its witnesses, but requested an extension "until October 1984" for their depositions. In support of its request for this extension, it furnished a detailed report of these individuals' prior commitments that would preclude them from being adequately prepared and available for deposition within the two week period ordered by the Board. On August 24, 1984, Applicants opposed this request and moved to dismiss this proceeding for non-compliance with the Board's August 10, 1984 Order.

III. DISCUSSION

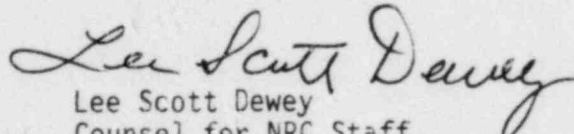
Dismissals of proceedings or parties are reserved for the most severe failures of participants to meet their obligations. Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), ALAB-678, 15 NRC 1400, 1416 (1982).^{1/} This is not the case here. The Public Advocate has complied with the Board's August 10, 1984 Order by listing its witnesses. In view of the prior commitments of these witnesses and the fact that they were only given two weeks notice to appear for deposition, it is not unreasonable and cannot be considered an act of bad faith for the Public Advocate to request an extension of time for their deposition. Moreover, no prejudice has been demonstrated by the prior unavailability of these witnesses for deposition. There are only three remaining contentions to be litigated. Fuel loading for the Hope Creek facility will not take place until January 1986. The hearing date will

^{1/} It should be noted that in Byron the Appeal Board refused to dismiss an intervenor under much more egregious circumstances than here. In that case, in violation of a Board's discovery order, the intervenor had failed to supply any discovery. Id.

not be adversely impacted since it has not yet been scheduled. In addition, with the exception of the deposition schedule set in the Board's Order of August 10, 1984, the Public Advocate has met all of the Board's deadlines in this proceeding. See: "Statement of Policy on Conduct of Licensing Proceedings," CLI-81-8, 13 NRC 452, 454 (1981) regarding the imposition of sanctions in licensing proceedings. For these reasons, Staff opposes the Applicants' request for dismissal.

Staff does not oppose allowing the Public Advocate's witnesses to be deposed in October. As a practical matter, these individuals should be given the opportunity to adequately prepare. Otherwise, a second deposition, at the expense of all parties, may be necessary. This extension should only be granted, however, if the Public Advocate gives assurance that its witnesses are thoroughly prepared so that additional depositions are not required.

Respectfully submitted,


Lee Scott Dewey
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 10th day of September, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of

PUBLIC SERVICE ELECTRIC AND
GAS CO., ET AL

(Hope Creek Generating Station,
Unit 1)

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Docket No. 50-354-0L

CERTIFICATE OF SERVICE

I hereby certify that copies of "STAFF'S RESPONSE TO INTERVENORS' PETITION FOR ADDITIONAL TIME TO MAKE EXPERT WITNESSES AVAILABLE FOR DEPOSITIONS AND APPLICANT'S MOTION TO DISMISS THE PROCEEDING" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, this 7th day of September, 1984:

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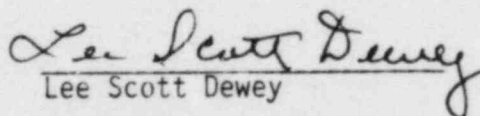
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