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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'84 NOV 23 P2:45

BEFORE THE ATOMIC SAFETY AND
LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

IN THE MATTER OF PUBLIC	:	
SERVICE ELECTRIC & GAS	:	
CO., et al.,	:	DOCKET NO. 50-354-OL
	:	
(HOPE CREEK GENERATING	:	
STATION UNIT I)	:	

INTERVENOR'S RESPONSE TO APPLICANTS'
AMENDED MOTION TO DISMISS THE PROCEEDING

On November 19, 1984, the Department of the Public Advocate of the State of New Jersey, the intervenor in this proceeding, received what is styled the Applicants' Amended Motion to Dismiss the Proceeding. This motion is not only mystifying, but it is also frivolous and fails to state any reasonable grounds for dismissal.

A brief review of the recent course of events in this proceeding reveals the confused nature of Applicants' latest motion. In response to the Atomic Safety and Licensing Board's August 10, 1984, order, the Public Advocate on August 24, 1984, duly identified the names and addresses of each of his three expert witnesses. On that date, the Public Advocate also filed a separate Petition requesting additional time within which to make these expert witnesses available for depositions. In that Petition, the Public Advocate advised the Board that the extensive prior commitments of the expert witnesses precluded their availability until the month of October 1984. The Public Advocate further noted that time would be needed to prepare the experts to assure meaningful and productive depositions. For these reasons, the Public Advocate requested a one-month

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extension of time within which to make his experts reasonably available for deposition by Applicants.

The Applicants' then filed a motion to dismiss. Mischaracterizing the Public Advocate's request for additional time and prior decisions of the Board, Applicants sought dismissal, even though there is absolutely no precedent to support such an extreme sanction in the circumstances of this proceeding. The Public Advocate filed his Response to this motion to dismiss on September 11, 1984, and the motion is presently under advisement.

More than two months later, Applicants submitted the instant "Amended" motion to dismiss the proceeding. The motion does not present any meritorious ground for dismissal. First, the motion wholly ignores the fact that the Applicants' allegations and complaints relating to discovery in this proceeding are presently under consideration by this Board. In his response of September 11, 1984, the Public Advocate explicitly stated his willingness to facilitate discovery and listed the expert witnesses that would be available for depositions. Additionally, the Public Advocate requested that the Board establish a comprehensive pre-hearing discovery schedule to govern these proceedings. These matters, as well as those issues raised by the applicants, have not yet been resolved by the Board. Therefore, it is ridiculous for the applicants to suggest that the Public Advocate has failed to fulfill obligations when the precise nature of these duties has not yet been established.

Second, it is utter nonsense for the applicants to suggest that the Public Advocate somehow failed to "come forward to make his witnesses for depositions as promised." (p. 2). It is the Applicants, and not the Public Advocate, that have "delayed and avoided" the depositions of

these witnesses. Applicants have taken absolutely no steps to notice depositions of any of the Public Advocate's expert witnesses. While they profess to be eager to proceed, they have let the entire month of October and now most of November pass without taking that requisite first step. Certainly, it is the Applicants and not the Public Advocate that are responsible for preparing and serving deposition notices on the Public Advocate's expert witnesses. As the Public Advocate represented to the Board, these experts have been available for the past several weeks, and the applicants have failed to provide a single credible fact to suggest otherwise.

In short, the Applicants' motion lacks any basis in fact or law. Without reiterating the assertions in the Public Advocate's response of September 11, 1984, the record reflects that this Department seeks to protect the health and safety interests of the citizens of the State of New Jersey in this proceeding. The Public Advocate is willing to take the appropriate steps to ensure that these interests can be fully protected within the time schedule established by the Board. The Public Advocate therefore renews his request for the establishment of a pre-hearing discovery schedule to enable all parties to address the merits of our contentions in an orderly and expeditious manner.

CONCLUSION

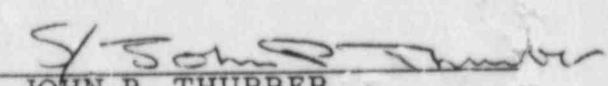
For these reasons, the Board should deny Applicants' "Amended Motion" to dismiss and should establish a prehearing discovery schedule.

Respectfully submitted,

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PUBLIC ADVOCATE OF NEW JERSEY

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By: 
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Counsel for Intervenor

DATED: November 21, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

Before the Atomic Safety and Licensing Board ^{*84 NOV 23 P2:46}

PUBLIC SERVICE ELECTRIC AND
GAS COMPANY

(Hope Creek Generating Station)

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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH
Docket No. 50-354-OL

CERTIFICATE OF SERVICE

I hereby certify that copies of "Intervenor's Response to Applicants' Amended Motion to Dismiss," dated November 21, 1984 in the above-captioned matter have been served upon the following by deposit in the United States mail on this 21st day of November, 1984:

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November 21, 1984