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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD 84 NOV 23 11:12

Before Administrative Judges
Marshall E. Miller, Chairman
Dr. Peter A. Morris
Dr. David R. Schink

OFFICE OF THE
SECRETARY
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In the Matter of PUBLIC SERVICE ELECTRIC AND GAS COMPANY, ET AL. (Hope Creek Generating Station)	}	Docket No. 50-354-0L November 21, 1984
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ORDER TO SHOW CAUSE WHY OL PROCEEDING
SHOULD NOT BE DISMISSED

The Board on August 10, 1984, entered an Order which provided that the sole intervenor in this proceeding, the Public Advocate of New Jersey (Public Advocate), "will be given to and including August 20, 1984, to identify its witnesses and to make them reasonably available for depositions within two weeks thereafter. Noncompliance with such dates may be grounds for dismissal or other sanctions" (p. 2-3). That Order was entered in response to a motion filed by the Applicants July 30, 1984, "To Compel Designation of Witnesses and Their Availability For Depositions and/or to Dismiss the Proceeding."

The pending contentions of the Public Advocate were admitted by the Board from the bench at a special prehearing conference held

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November 22, 1983. Those rulings were reaffirmed in a Special Prehearing Conference Order entered December 21, 1983. The latter Order also provided that the "parties are directed to commence discovery immediately and to proceed with expedition." The parties were further "encouraged to make voluntary disclosure, both formally and informally, of all information, data, documents and the like which could reasonably be relevant to the admitted issues" (Order at page 19).

The Public Advocate responded to our Order on August 20, 1984, by listing its witnesses but requesting an extension "until October 1984" for their depositions. The witnesses thus identified were members of MHB Technical Associates of San Jose, California, including Dale Bridenbaugh, Richard Hubbard, and Gregory Minor. Robert N. Anderson of San Jose State University was also described as a possible witness whose availability was not certain, but as soon as the Public Advocate "is able to discuss the matter with Professor Anderson, we will notify the Board and the parties of his status" (at page 2).

The Applicants filed a motion to dismiss the proceeding on August 24, 1984, arguing that it had vainly attempted since January, 1984, to take the depositions of the Intervenor's expert witnesses who could furnish the bases for his contentions. It was urged that the Public Advocate's actions constituted "inexcusable dilatory conduct" that amounted to "willful neglect...over an extensive period of time" (at pages 3 and 10).

The Staff opposed the Applicants' motion for dismissal, and did not oppose allowing the witnesses to be deposed in October. However, the Staff further stated that 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" (Staff's Response dated September 10, 1984, at page 3).

The Applicants filed their amended motion to dismiss the proceeding on November 13, 1984. They pointed out that the Public Advocate had wholly failed to comply with even "the relaxed schedule proposed by...himself" calling for the production of witnesses for depositions during the month of October (at page 2 and 3). None of the witnesses had been produced for depositions, and the status of Prof. Robert N. Anderson had never been clarified.

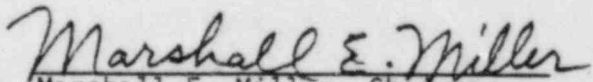
The Board believes that the state of the record requires that the Public Advocate be required to show cause why he and his contentions should not be dismissed. Accordingly, a conference with parties and counsel will be held as described below. In addition, there should be a status report on all aspects of this proceeding. All pending motions will be heard, and any other issues, whether procedural or substantive, will be considered. Counsel should be prepared to address the question of whether the proliferating NRC schedules of professional witnesses should be permitted to cause delays in this OL proceeding. All filings which the parties desire the Board to consider shall be in the hands of all Board members at least one week prior to the scheduled conference.

If any party deems it necessary to proffer testimony at such conferences, the nature and scope of the testimony shall be disclosed to the Board and parties one week prior thereto.

PLEASE TAKE NOTICE that a conference with parties and counsel will be held at 9:00 a.m. on December 17, 1984 at the U. S. Nuclear Regulatory Commission Hearing Room, located at 4350 East/West Highway, 5th Floor, Bethesda, Maryland.

It is so ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


Marshall E. Miller, Chairman
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 21st day of November, 1984.