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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

Public Service Electric and)
Gas Company)
(Hope Creek Generating)
Station))

Docket No. 50-354-OL

OFFICE OF SECRETARY
REGULATORY & SERVICE
FRANCHISE

APPLICANTS' AMENDED MOTION
TO DISMISS THE PROCEEDING

By Order dated August 10, 1984, the Licensing Board in this proceeding directed the intervenor, the Public Advocate of New Jersey, "to identify its witnesses [by August 20, 1984] and to make them reasonably available for depositions within two weeks thereafter. Noncompliance with such dates may be grounds for dismissal or other sanctions."^{1/}

Relying upon this Order, Applicants moved on August 24, 1984 to dismiss the proceeding because the the Public Advocate had not designated witnesses and made them available for depositions as required.^{2/} On September 11, 1984,

1/ Public Service Electric and Gas Company (Hope Creek Generating Station, Unit 1), "Order" at 2-3 (August 10, 1984). In denying the Public Advocate's request for further time, the Board held that the Public Advocate "has not shown good cause for its request at this time." Id. at 1.

2/ See Applicants' Motion to Dismiss the Proceeding as a Result of Default by the Public Advocate and Not (Footnote Continued)

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the Public Advocate opposed dismissal and represented that he then sought "only a brief one-month extension" for producing witnesses for depositions.^{3/} This referred to an earlier request by the Public Advocate in which he requested that he be permitted to produce his witnesses for depositions during the month of October.^{4/} In a related response, the Public Advocate also represented that it would finalize its identification of Professor Robert N. Anderson of San Jose State University as a witness promptly and would "notify the Board and the parties of his status" as soon as possible.^{5/} The Public Advocate has failed to provide such notice.

Because of his failure to comply with his own time frame, Applicants accordingly amend their original motion to dismiss and move that the proceeding be dismissed. At no time has the Public Advocate come forward to make his designated witnesses available for depositions as promised.

(Footnote Continued)

Complying With the Board's Order of August 10, 1984 and Answer to Intervenor's Motion for Additional Delay (August 24, 1984).

- 3/ Intervenor's Response to Applicant's [sic] Third Motion to Dismiss at 9 (September 11, 1984).
- 4/ Intervenor's Petition for Additional Time Within Which to Make Expert Witnesses Available for Depositions at 16 (August 20, 1984).
- 5/ Intervenor's Response to the Atomic Safety and Licensing Board's Order of August 10, 1984 at 2 (August 20, 1984).

Accordingly, even under the relaxed schedule proposed by the Public Advocate himself, there has been a total failure to comply with the Board's Order of August 10, 1984, requiring the Public Advocate "to make [his witnesses] reasonably available for depositions" Given that the Board may have wished to grant some leeway to the Public Advocate as a governmental entity, Applicant believes that there is no longer any justification for the Public Advocate's failure to come forward with his witnesses by producing them for depositions as required by the Licensing Board three months ago.

The Public Advocate has clearly failed to adhere to his representations to the Board and parties regarding discovery. He has thereby delayed and avoided discovery despite the Board's earlier Order by which "all parties were directed to commence discovery immediately and to proceed with expedition."^{6/} Further flouting of the Board's outstanding discovery orders should not be tolerated.

Conclusion

For the reasons discussed more fully above and in Applicant's previous pleadings, the Licensing Board should dismiss the Public Advocate's contentions, and thereby

^{6/} Order at 1 (August 10, 1984), citing Order at 19 (December 21, 1983).

dismiss the proceeding, for failure to comply with the Board's discovery orders.

Respectfully submitted,

CONNER & WETTERHAHN, P.C.

Troy B. Conner, Jr.

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Counsel for the Applicant

November 13, 1984

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Station))

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Amended Motion to Dismiss the Proceeding," dated November 13, 1984 in the captioned matter have been served upon the following by deposit in the United States mail on this 13th day of November, 1984:

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