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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BOARD BRANCH

In the Matter of)
)
PUBLIC SERVICE ELECTRIC AND)
GAS CO., et al.,)
)
(Hope Creek Generating Station))

Docket No. 50-354-OL

INTERVENOR'S RESPONSE TO
THE ORDER TO SHOW CAUSE

I. INTRODUCTION

On November 21, 1984, the Board issued an order directing the Public Advocate to "show cause why he and his contentions should not be dismissed." In The Matter of Public Service Electric and Gas Co., (Hope Creek Generating Station), Docket No. 50-354-OL (Nov. 21, 1984) at 3. Accordingly, this Board scheduled a conference for December 17, 1984, to consider this issue and to hear all pending motions.*

In this submission to the Board, the Public Advocate will briefly reiterate the reasons why this operating license proceeding should not be dismissed. The Public Advocate will also briefly address the Board's question of whether

* The pending matters before this Board are the Public Advocate's petition for additional time within which to make expert witnesses available for depositions, the applicants' third motion to dismiss this proceeding, and the applicants' amended motion to dismiss this proceeding. As we explained in response to the amended motion to dismiss, the Public Advocate's expert witnesses have been available for depositions for over two months. The applicants have taken absolutely no steps to notice depositions for any of these witnesses during this entire period.

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"the proliferating NRC schedules of professional witnesses should be permitted to cause delays in this OL proceeding."

II. ARGUMENT

A. The Public Advocate submits that the applicants' motions to dismiss are completely without merit. As the Board has been advised, the staff agrees with the Public Advocate that the applicants' motions should be denied. Without reiterating all of the points made in prior responses to the Board, we feel compelled to highlight several factors which warrant the Public Advocate's participation in the Hope Creek operating license proceedings. First, the Public Advocate has intervened for a specific and vitally important reason: to represent the public interest of all New Jersey residents in safe and environmentally sound nuclear generating facilities. Certainly, the participation of a State agency that represents state-wide interests is always desirable. Cf. Public Service Co. of New Hampshire, (Seabrook Station Units 1 and 2), CI-77-26, 6 N.R.C. 535 (1975). Indeed, in order to ensure that these interests are heard, the Commission and licensing boards have relaxed procedural requirements for state agencies. Id. at 537; In The Matter of Houston Lighting and Power Co., (South Texas Project, Units 1 and 2), LBP-83-26, 17 N.R.C. 945, 947 (1983). Therefore, the participation of the Public Advocate is essential to present important health, safety and environmental concerns of New Jersey citizens.

Second, there is no basis in the record for dismissal of this operating license proceeding. The applicants do not, and indeed cannot, demonstrate that the Public Advocate either refused to comply with the orders of this Board or took any actions to delay this operating license proceeding. For example, the Public Advocate promptly responded to this Board's August 10, 1984, order by explicitly stating his willingness to facilitate discovery and listing

the names and addresses of the expert witnesses who would be available for depositions. (Intervenor's Response to the Board's Order of August 10, 1984, dated August 20, 1984 at 1-2). At that time, the Public Advocate also sought a brief extension of time in accordance with the provisions of 10 C.F.R. §2.711. (Intervenor's Petition for Additional Time Within Which to Make Expert Witnesses Available for Depositions, dated August 20, 1984). The Public Advocate advised this Board and all parties that his expert witnesses would be available by October 1984, and expressed a willingness "to be responsive to the interests of the Board in the prompt hearing of this matter." (Intervenor's Petition at 9). Additionally, the Public Advocate requested that the Board establish a comprehensive pre-hearing discovery schedule to govern these proceedings. These matters are presently awaiting disposition by the Board.

Third, the applicants' motions fail to cite any precedent to justify the extreme sanction of dismissal of the entire operating license proceeding in these circumstances. As the NRC staff has recognized, the short extension requested by the Public Advocate would neither delay the hearing date in this case, nor cause the applicants any prejudice. Therefore, there is no legal justification for dismissal. (Staff's Response to Intervenor's Petition and Applicants' Motion to Dismiss at 2-3).

Fourth, it bears repetition that while Public Advocate's expert witnesses have been available during the months of October and November and the early part of December, the applicants have failed to serve deposition notices upon any of these witnesses. It is beyond belief that the applicants can seriously request that this Board dismiss this entire operating license proceeding simply because they have failed to prepare and serve deposition notices on the Public

Advocate's expert witnesses.*

B. The Board has also requested that counsel address the question of "whether the proliferating NRC schedules of professional witnesses should be permitted to cause delays in this OL proceeding." Simply stated, our position is that these witnesses should not be treated differently, but that scheduling adjustments for "good cause" may be both proper and necessary for these witnesses under certain circumstances. The Public Advocate, as intervenor in this proceeding, represents the important health, safety and environmental interests of the people of the State of New Jersey. To effectively fulfill this responsibility, he must seek and obtain the services of the best qualified experts to assist him in that representation. The universe of such experts is, however, small. Because of the large number of proceedings before the Atomic Safety and Licensing Board, these experts often have scheduled commitments requiring their presence in other proceedings, thus making it impossible for them to be available elsewhere on those particular dates. This potential for scheduling conflicts can be eliminated by establishing a discovery and hearing schedule in the present case. This would permit all parties to attempt to ensure the availability of expert witnesses for both depositions and hearings. If a scheduling conflict existed, counsel could work to resolve the conflict in a timely fashion. In this manner, the interests of the Board in expedited hearings and those of the parties in retaining the experts of their choice could be accommodated.

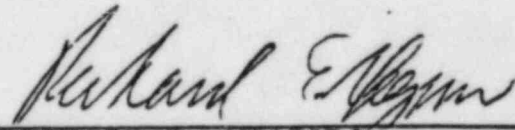
* In order to clarify matters for the Board and all parties, the Public Advocate does not plan to call Dr. Robert N. Anderson as an expert in the Hope Creek operating license proceeding. The applicants, of course, have not demonstrated any prejudice from a lack of information regarding Dr. Anderson's status; nor can they credibly ask for dismissal merely because they lacked information concerning the status of a witness who will not be retained by the Public Advocate.

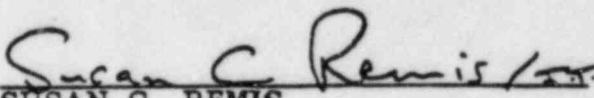
CONCLUSION

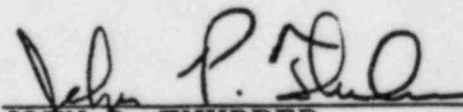
For the above reasons, dismissal of this operating license proceeding would be totally inappropriate under the circumstances of this case. The Public Advocate seeks to protect the health, safety, and environmental interests of New Jersey citizens in this proceeding. We also recognize that these proceedings must be conducted within a time schedule established by the Board. The Public Advocate, therefore, renews his request for a prehearing and hearing schedule that will enable all parties to address the merits of their contentions in an orderly and expeditious manner.

Respectfully submitted,

JOSEPH H. RODRIGUEZ
PUBLIC ADVOCATE OF THE
STATE OF NEW JERSEY

By: 
RICHARD E. SHAPIRO

By: 
SUSAN C. REMIS

By: 
JOHN P. THURBER
Attorneys for Intervenors

Dated: December 10, 1984

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Intervenor's Response To The Order To Show Cause", dated December 10, 1984 in the above-captioned matter have been served upon the following by deposit in the United States mail on this 10th day of December, 1984:

Marshall E. Miller, Esq.
Chairman
Atomic Safety and
Licensing Board Panel
U.S. Nuclear Regulatory
Commission
Washington, DC 20555

Dr. Peter A. Morris
Atomic Safety and
Licensing Board Panel
U.S. Nuclear Regulatory
Commission
Washington, DC 20555

Dr. David R. Schink
Atomic Safety and
Licensing Board
U.S. Nuclear Regulatory
Commission
Washington, DC 20555

Atomic Safety and
Licensing Appeal Panel
U.S. Nuclear Regulatory
Commission
Washington, DC 20555

Docketing and Service
Section
Office of the Secretary
U.S. Nuclear Regulatory
Commission
Washington, DC 20555

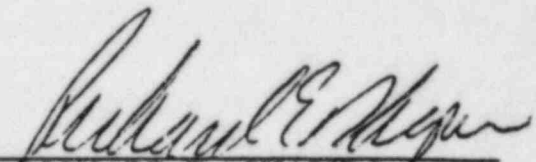
Lee Scott Dewey, Esq.
Office of the Executive
Legal Director
U.S. Nuclear Regulatory
Commission
Washington, DC 20555

Richard Fryling, Jr., Esq.
Associate General Counsel
Public Service Electric &
Gas Company
P.O. Box 570 (T5E)
Newark, NJ 07101

Troy Conner, Jr., Esq.
Conner & Wetterhahn
1747 Pennsylvania Ave., NW
Suite 1050
Washington, DC 20006

Peter Hess, Esq.
Dept. of National Resources
and Environmental Control
Legal Office
89 Kings Highway
Dover, DE 19901

Mr. Ken Koschek
Planning Group
Department of Environmental
Protection
State of New Jersey
CN-402
Trenton, NJ 08625


RICHARD E. SHAPIRO

December 10, 1984