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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

'84 JUN 19 A9:48

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

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

SERVED JUN 19 1984

In the Matter of

PUBLIC SERVICE ELECTRIC AND GAS CO.,
ET AL.

(Hope Creek Generating Station,
Unit 1)

Docket No. 50-354-0L

June 18, 1984

ORDER DENYING APPLICANTS' MOTION TO DISMISS PROCEEDING

By motion of April 12, 1984, the Applicants asked the Board to dismiss this proceeding due to an alleged lack of bases for contentions. A response opposing such motion was filed by the Staff on April 27. The Public Advocate filed his response in opposition on April 30. For the reasons described infra, the Applicants' motion to dismiss is denied.

The motion is based upon the Applicants' argument that under NRC practice, all contentions must have a basis in order to be admissible (10 CFR §2.714(b)). The Applicants noticed the deposition of Mr. Joseph H. Rodriguez, the head of the Public Advocate's office, to determine the basis for and his knowledge of the contentions. The Board issued a subpoena for the attendance of Mr. Rodriguez at his deposition,

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from which action an appeal was taken to the Appeal Board by the Public Advocate.

While the appeal and an accompanying motion to stay were pending, Mr. Rodriguez filed an affidavit stating that he has "no personal knowledge or specialized technical information beyond the information presented to the Board in support of his contentions" (Affidavit filed March 26, 1984 at page 6). This affidavit further stated that Mr. Rodriguez' "direct participation was limited to reviewing the proposed petition to intervene, and assuring that the attorneys had researched the matter thoroughly" (Id., at 6-7). Based upon this affidavit, the Applicants withdrew the subpoena as moot, and now argue that there were no bases for the contentions when they were filed.

As a pleading matter, this Board has already ruled that Contentions 1, 2 and 3 are admissible and that they set forth sufficient bases to open discovery thereon.¹ There is no requirement that the Public Advocate himself be knowledgeable about these contentions; it is sufficient for him to rely upon attorneys from his office to draft contentions. The drafting of pleadings does not require knowledge of their merits by the draftsmen. However, a different rule obviously obtains when the bases of pleadings or contentions is probed by discovery, or becomes the subject of motions for summary disposition.

¹ Contention IV was dismissed by our Order entered February 21, 1984.

But a motion to dismiss the proceedings is premature at this time, and it will be denied.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

Marshall E. Miller
Marshall E. Miller, Chairman
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 18th day of June, 1984.