

11/28/78

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
POWER AUTHORITY OF THE STATE OF ) Docket No. 50-549  
NEW YORK )  
(Greene County Nuclear Power )  
Plant) )

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STATE OF NEW YORK  
DEPARTMENT OF PUBLIC SERVICE BOARD ON  
ELECTRIC GENERATION SITING AND THE ENVIRONMENT

In the Matter of the Application of the )  
POWER AUTHORITY OF THE STATE OF ) Case 80006  
NEW YORK )  
(Greene County Nuclear Generating )  
Facility) )

NRC STAFF RESPONSE TO INTERVENOR  
LEHIGH PORTLAND CEMENT COMPANY'S MOTION TO  
QUASH OR MODIFY SUBPOENAS DATED AUGUST 17, 1978, AND  
OCTOBER 10, 1978, AND TO REQUEST AN EXEMPTION FROM  
THE DISCLOSURE OR PERMISSION TO WITHHOLD FROM  
DISCLOSURE MATERIAL REQUESTED BY NRC STAFF  
BY LETTER DATED SEPTEMBER 8, 1978

INTRODUCTION AND BACKGROUND

On August 17, 1978, the Power Authority of the State of New York  
(PASNY) subpoenaed a document from Lehigh Portland Cement Company (LPCC)  
known as an engineering planning study. This document concerns LPCC's



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activities at the Cementon site. LPCC claims that this document contains proprietary information, and has not as of this date complied with PASNY's subpoena.

On September 8, 1978, the NRC Staff made a formal request for the production of another document. This document is a feasibility study for the building of a "greenfield" cement facility somewhere in the United States. LPCC never produced this document, and so on October 20, 1978, the NRC Staff filed a motion to compel the production of this particular document. On October 10, 1978, PASNY subpoenaed the document which the NRC Staff had requested. LPCC has not as of this date complied with the October 10th subpoena.

Intervenor LPCC has now filed a motion to quash or modify the two above-mentioned subpoenas, and for permission to withhold from disclosure the material formally requested by the NRC Staff on September 1978. Intervenor's motion does not make it clear whether LPCC is contending that the document should be withheld from public disclosure under §2.790, or whether LPCC feels that the document is not an appropriate document for discovery. Regardless of the meaning of LPCC's motion, the Staff has decided not to pursue further its request for the production of the feasibility study concerning the building of a "greenfield" cement facility somewhere in the United States other than the Northeast. The NRC Staff would not oppose a protective order concerning the engineering planning study, if it



were to be found by the Joint Board<sup>1/</sup> that the information is indeed proprietary.

### ARGUMENT

#### I. The Engineering Planning Study

Intervenor LPCC has moved under 10 CFR §§2.740 and 2.790 for protection of certain subpoenaed information. LPCC argues that the document subpoenaed by PASNY in August of 1978 contains information about raw materials reserves at the Alsen site in New York, and future plans for the Alsen site which, if disclosed, would put LPCC at a competitive disadvantage. Normally when a question is raised concerning the proprietary nature of information in a particular document, the NRC Staff is furnished with a copy of the document in question. The Staff then reviews the document to determine whether it is in fact entitled to proprietary status. In the present case the engineering planning study was produced at the deposition of Ralf Bohman taken by the NRC Staff on August 22, 1978. A copy of the study was given to then NRC Staff Counsel. Retention of the document was conditioned by LPCC upon the signing of a confidentiality agreement by any parties receiving copies of the document. This confidentiality agreement was not signed by the Staff, and the document in question was returned to LPCC. Present Staff Counsel have never seen the

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<sup>1/</sup> It appears that there is some confusion as to whether this matter is before the Joint Board or the Licensing Board only. We note that the subpoenas in question were issued by the Licensing Board. It is our view, however, that since the matter pertains to NEPA contentions it is properly before the Joint Board.

document. Therefore, the Staff is not in a position to determine whether or not the engineering planning study is in fact entitled to proprietary status. The Staff would not be opposed to the entry of a protective order were the Joint Board to determine that the document was entitled to proprietary status under 10 CFR §2.790.

II. Feasability Study For The Building Of A  
"Greenfield" Cement Site Somewhere In The United States

Intervenor LPCC represents that its plans to build a "greenfield" cement facility somewhere else in the United States are not dependent on its position concerning the construction of the Greene County Nuclear Power Plant. LPCC has made the same representation in its answers to interrogatories propounded by NRC Staff. The Staff has decided that, due to LPCC answers to its interrogatories, it will not pursue its request for the production of this particular document.



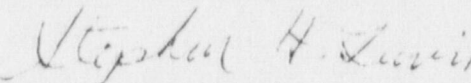
CONCLUSIONS

For the above-mentioned reasons the Staff concludes that:

1. If there is a Joint Board determination that the engineering planning study contains proprietary information, it would not oppose the entry of a protective order regarding this information; and

2. The Staff will not pursue further its request for production of the feasibility study for building a "greenfield" cement facility somewhere in the United States other than the Northeast.

Respectfully submitted,

  
Stephen H. Lewis  
Counsel for NRC Staff

Dated at Bethesda, Maryland

this 28th day of November, 1978.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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STATE OF NEW YORK  
DEPARTMENT OF PUBLIC SERVICE BOARD ON  
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Facility)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of NRC STAFF RESPONSE TO INTERVENOR LEHIGH PORTLAND CEMENT COMPANY'S MOTION TO QUASH OR MODIFY SUBPOENAS DATED AUGUST 17, 1978, AND OCTOBER 10, 1978, AND TO REQUEST AN EXEMPTION FROM THE DISCLOSURE OR PERMISSION TO WITHHOLD FROM DISCLOSURE MATERIAL REQUESTED BY NRC STAFF BY LETTER DATED SEPTEMBER 8, 1978, in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 28th day of November, 1978.

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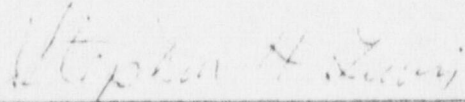
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