

June 27, 1979

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	
PENNSYLVANIA POWER & LIGHT COMPANY)	Docket Nos. 50-387
and)	50-388
ALLEGHENY ELECTRIC COOPERATIVE, INC.)	
)	
(Susquehanna Steam Electric Station,)	
Units 1 and 2))	

APPLICANTS' MOTION TO COMPEL DISCOVERY
OF INTERVENOR CITIZENS AGAINST NUCLEAR DANGERS

Pursuant to 10 C.F.R. §2.740(f), Applicants hereby move the Atomic Safety and Licensing Board ("the Board") to issue an order compelling Intervenor Citizens Against Nuclear Dangers ("CAND") to respond to "Applicants' First Set of Interrogatories to Intervenor Citizens Against Nuclear Dangers" and "Applicants' First Request to Intervenor Citizens Against Nuclear Dangers for the Production of Documents," both dated May 25, 1979, within ten (10) days from the date of issuance of such order by the Board.

In its Special Prehearing Conference Order, the Board provided that responses to first round discovery requests were to be served no later than June 29, 1979. On June 16,

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1979, CAND served upon Applicants a document titled "Citizens Against Nuclear Dangers' Replies to the Interrogatories of the NRC Staff and the Applicants and other Matters" ("CAND Replies"). In this document, CAND objects "to each and every interrogatory question" in the Applicants' May 25 filing.

CAND sets forth several reasons for its blanket objection to Applicants' discovery request. First, CAND alleges that the Commission has declared "a 90 day suspension (and possibly a longer duration) on certain licensing proceedings because of the Three Mile Island (TMI) disaster". CAND Replies, p. 2. While the NRC Staff may have indicated its intention not to issue new licenses for a three month period, the Commission has said nothing which could be interpreted as halting licensing proceedings under way before atomic safety and licensing boards.

Second, CAND asserts that Applicants' discovery requests are "misdirected" and "not applicable". CAND Replies, pp. 2-3. While it is not entirely clear what the thrust of this objection is, it appears that CAND is arguing that because the burden of proof is on Applicants, Applicants cannot seek discovery from intervenors. This objection is contrary to the Commission's discovery regulations (10 CFR §§2.740 - 2.741) and numerous NRC decisions. As stated in Offshore Power Systems (Manufacturing License for Floating Nuclear Power Plants), LBP-75-67, 2 NRC 813, 816-817 (1975),

Status as a party affords certain rights, including the right to ask questions; but it also involves certain obligations, including the duty to answer questions of other parties to the proceeding. . . . A party may not insist upon his right to ask questions of other parties, while at the same time disclaiming any obligation to respond to questions from those other parties. This is a basic rule of any adjudicatory proceeding, whether it be a judicial trial in court or an administrative hearing. (original emphasis)

Third, CAND objects to Applicants' discovery because of its apparent objection to the wording of the admitted contentions. CAND Replies, p. 3. As CAND recognizes, CAND Replies, p. 4, the Commission's rules set a deadline for filing objections to the reframing of contentions in the Special Prehearing Conference Order. See 10 C.F.R. §2.751a(d). Although CAND states that it did not have time to appeal before this deadline, it neither sought additional time from the Board nor objected to the Order during the subsequent three month period. In any case, CAND's dissatisfaction with the Special Prehearing Conference Order forms no basis for its failure to respond to Applicants' discovery.

Fourth, CAND states that some interrogatories are "unanswerable" until CAND has received and analyzed information requested from other parties. CAND Replies, p. 4. Applicants' discovery requests do not require CAND to receive or analyze information sought by CAND through discovery. Rather, Applicants are seeking information which CAND has and on which it

based its contentions. If it does not have the information requested, CAND can say so in its answers. Applicants are entitled to such discovery.

As to the permissible areas of discovery, the authorities are clear that interrogatories seeking specification of the facts upon which a claim or contention is based are wholly proper, and the party may be required to answer questions which attempt to ascertain the basis for his claim or, for example, what deficiencies or defects were claimed to exist with respect to a particular situation or cause.

Boston Edison Co. (Pilgrim Nuclear Generating Station, Unit 2), LBP-75-30, 1 NRC 579, 582 (1975). If CAND has no information and therefore cannot answer an interrogatory or document request, it can simply state that it has no information.* The same comment applies to CAND's statement that it has not yet selected witnesses who will testify on its behalf.

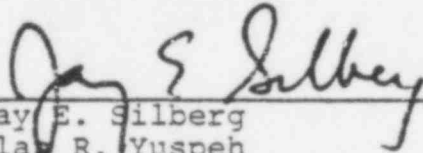
Fifth, CAND objects to Applicants' discovery because "the questioners have the answers already". CAND Replies, p. 4. Applicants' discovery is intended to determine whether CAND is aware of any new information or any information which is inconsistent with that known to Applicants. Without such knowledge, Applicants cannot know which issues need to be addressed at the evidentiary hearings. CAND's answers will help define the areas of dispute between the parties and avoid the needless wasting of time litigating issues over which there is no dispute.

*"The courts have held that if a party cannot furnish information and details, it may so state under oath". Id. at 583.

For these reasons, Applicants respectfully submit that CAND's objections are not supportable and that the Board should direct CAND to promptly answer Applicants' interrogatories (either by providing the information requested or stating that it has no such information) and make available the documents requested.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

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Dated: June 27, 1979

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June 27, 1979

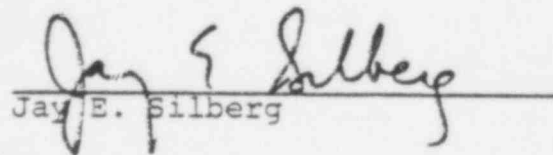
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CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing "Applicants' Motion to Compel Discovery of Intervenor Citizens Against Nuclear Dangers" were served by deposit in the U. S. Mail, first class, postage prepaid, this 27th day of June, 1979, to all those on the attached Service List.


Jay E. Silberg

Dated: June 27, 1979

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UNITED STATES OF AMERICA
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SERVICE LIST

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