

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

PENNSYLVANIA POWER AND LIGHT CO.
ALLEGHENY ELECTRIC COOPERATIVE, INC.

Docket Nos. 50-387
50-388

(Berwick Atomic Power Plant)
(Susquehanna Units 1 and 2)

CITIZENS AGAINST NUCLEAR DANGERS'
REPLIES TO THE INTERROGATORIES
OF THE NRC STAFF AND THE APPLICANTS
AND OTHER MATTERS

PROLOGUE

The people living in the vicinity of Berwick, Pennsylvania were informed by government officials to be prepared to somehow, impossibly, accommodate tens of thousands of fleeing refugees from the Harrisburg area, if a melt-down and steam explosion at Three-Mile-Island necessitated total mass exacuation. Berwick is only about 65 air miles from Three-Mile-Island, in a northeast direction.

The people of Berwick also live very near to a construction site where the Pennsylvania Power and Light Company is proceeding with plans to bring the atomic nightmare of Three-Mile-Island to their doorstep. There is, therefore, a growing alarm and concern over the threat to public health and safety that will be visited upon the citizenry by the Berwick atomic power plant. For government representatives to ignore this deep concern would be a grave mistake. The problems of TMI will not go away. It can never be business as usual again for the atomic industry anywhere in the Susquehanna Valley.

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According to correspondence from the counsel for the NRC, dated May 21, 1979, and the counsel for the Applicants, dated May 25, 1979, the Citizens Against Nuclear Dangers (Citizens) Berwick, Pa., are requested to reply to approximately two-hundred itemized interrogatory questions by June 29, 1979.

The initial response by the Citizens is as follows: The Citizens will presently submit a motion before the U.S. Atomic Safety and Licensing Board requesting a ruling in the form of an Order announcing a suspension of the preliminary timetable for discovery requests and interrogatories, etc., decreed in the Board's Special Prehearing Conference Order, dated March 6, 1979.

The reason for this motion is twofold. The first reason is associated with the announcement issued on/or about May 21, 1979, by the NRC in Washington, D.C. declaring a 90 day suspension (and possibly a longer duration) on certain licensing proceedings because of the Three-Mile-Island (TMI) disaster. The Citizens presume that such rulings by the NRC supersede the orders of the several licensing panels functioning nationwide, including the proceedings at Docket Nos. 50-387 and 50-388, the Berwick applications. Therefore, the Citizens believe that the interrogatories presented by the NRC staff and the Applicants are, at the very least, premature and inappropriate at this time because of the NRC licensing moratorium which is now in force.

The second reason deals with the perplexities of the general and specific interrogatories relative to the admitted contentions. The Citizens propose that the NRC and the Applicants retract their interrogatories because they are not applicable in most instances,

and/or are misdirected to the interveners in general, as stated in their first round discovery requests. The Citizens also regard the choice of most questions directed at the interveners as arbitrary and out of order due to their misdirection.

The NRC should be directing their penetrating questions about the Berwick atomic power plant at the Applicants. The burden of proof is on the Applicants to show that the Berwick facility will not become another Three-Mile-Island disaster. The interveners are not on trial, we represent the American people. But the capability of the Pennsylvania Power and Light Company is; and the credibility of the NRC is!

It is only fair to announce at this point that the Citizens hereby request from the President's Special Commission on TMI, the Governor's Commission on TMI, the appropriate select and standing committees of Congress (plus the GAO), and the General Assembly of Pennsylvania studying TMI and NRC licensing in general, that each group subpoena the entire record of NRC Docket Nos. 55-387 and 55-388 from at least August, 1978 (when the interventions began) onward as material evidence in their proceedings. The serious mistakes of the TMI licenses are occurring all over again with the Berwick operating license case.

The Citizens Against Nuclear Dangers categorically object to each and every interrogatory question submitted by the NRC, and categorically object to each and every interrogatory question submitted by the Applicants. The Citizens' objections are as follows:

In most instances the questions are not applicable to the interveners. The Licensing Board Panel, or their agents, authored or edited, almost beyond recognition, most of the so-called admitted contentions by using some esoteric methodology. The Citizens did not concur with the Board's revisionist contentions. Nor, are the Citizens willing to be caught in some legalistic entrapment inherent in the apparent rigged interrogatories.

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The interveners did not have time to appeal these dubious, yet, apparently official revised contentions, or the contentions rejected outright, because the prescribed time limit--a mere five days-- had passed by the time the 85 page Order of March 6, 1979, was shipped through the mails and received by the interveners. There simply wasn't time to appeal, yet the Board allowed this to transpire! This clearly violated legal standards of fairness.

The Citizens further object to the interrogatories because some of them are unanswerable until the list of documents the Citizens recently requested from the Commonwealth of Pennsylvania and the Applicants arrive and are carefully analyzed. We are setting no arbitrary time limit on our requests. We are allowing a reasonable amount of time because the interveners are more concerned about getting at the true facts in determining if the Berwick atomic plant can be operated in a safer manner than TMI...irregardless of construction timetables, which seems to be an collusion with some other parties.

Also, the Citizens will have no difficulty presenting nationally renowned expert witnesses at the public hearings next year, but we are only beginning to round them up and, of course, cannot submit advance testimony that has not yet been prepared from experts that have not yet been selected, who must first examine and study the documents which the interveners have requested but have not yet received from the other parties.

Many of the submitted interrogatories are possibly intended to cloud the real safety and environmental issues over the Berwick plant? They are certainly intimidating and an affront. The absurdity of many of the questions is that the questioners have the answers already! The Board has previously upheld the NRC in denying the interveners the very government documents that contain much of the information requested. This is definitely "Catch 22".

The Board itself, for six months now, has obstructed their own proceedings by denying all intervening parties individual sets of the documentation from the NRC Accession List. Four months have passed and the interveners patiently await from the Board certified sets of the transcripts from the Special Pre-Hearing Conference. The interveners cannot proceed with their case without this vital information. Denial of this public record, which is in the possession of the NRC and the Applicants, is prejudicial and discriminatory. It also violates due process of law!

If this pattern continues, concerned and aggrieved citizens, acting in the public interest, may have no other course of action but to file a civil action in Federal District Court seeking an injunction in the Berwick licensing case; or to file charges with the U.S. Justice Department alleging collusion to commit unlawful acts.

In order that the TMI Commissions, the Congress and the General Assembly understand just how the Constitutional Rights of American citizens are being trampled upon by the NRC, the Citizens will cite the following examples.

On January 29, 1979, at Wilkes-Barre, Pa., a NRC appointed "Atomic Safety and Licensing Board Panel", having three members, conducted a "Special Pre-Hearing Conference" on the Berwick atomic power plant operating license applications. The Four intervening groups present, without any forewarning, were each handed large sets of documents, about five minutes before the hearing began, by the NRC staff and by the Applicants. These documents contained detailed objections to each and every contention in the petitions of the interveners, which they presented to all parties weeks in advance. There are hundreds of citations of law permeating these documents, which were referred to extensively by the NRC staff, the Applicants and the Board during

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the proceedings, and which weighted heavily in the deliberations.
Five minutes notice! This is the type of high-handed and heavy-handed treatment American citizens get in the NRC kangaroo court!

During the closing morning session on January 31, 1979, the Board, especially, repeatedly objected to the Citizens explaining from their petition matters related to certain health and safety issues. They obviously did not want certain statements recorded by the petitioners. The record will show this, if that testimony has not been abridged or expunged. Since copies of the hearing transcript have been withheld, the Citizens cannot be sure precisely what testimony has been recorded. This has happened, not in the Soviet Union, but right here in the United States!

The Board rushed through the final session, cutting-off some of the most important testimony, which was never admitted, allegedly so they could catch an earlier flight back to Washington, D.C. By any reasonable standards, the Pre-Hearing Conference was procedurally defective, and should be conducted over again, this time the proper Constitutional way.

So...is it any wonder that atomic power plants like TMI get operating licenses from the NRC with such cursory type reviews. The Citizens conclude by stating that an independent re-evaluation of the entire Berwick application is called for, perhaps in the form of a legislative investigation.

CERTIFICATE OF SERVICE

I hereby certify that copies of CITIZENS AGAINST NUCLEAR DANGERS
Replies To The Interrogatories Of The NRC Staff And The Applicants
And Other Matters have been served on the following by deposit in the
United States mail, first class, this 16th day of June, 1979

Commissioners: Dr. Joseph Hendrie, Chm.,
James F. Ahearne, Peter A. Bradford,
Victor Gilinsky, Richard T. Kennedy,
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Charles Bechhoefer, Esq., Chairman
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. Glenn O. Bright
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Oscar H. Paris
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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

Atomic Safety and Licensing
Appeal Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

James M. Cutchin, IV, Esquire
Office of the Executive Legal
Director
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Jay Silberg, Esq.
Shaw, Pittman, Potts and
Trowbridge
1800 M Street, N.W.
Washington, D.C. 20036

Dr. Judith H. Johnsrud
Co-Director
Environmental Coalition on
Nuclear Power
433 Orlando Avenue
State College, PA 16801

Mr. Thomas M. Gerusky, Director
Bureau of Radiation Protection
Department of Environmental
Resources
Commonwealth of Pennsylvania
P.O. Box 2063
Harrisburg, PA 17120

Ms. Colleen Marsh
Box 538A, RD#4
Mountain Top, PA 18707

Susquehanna Environmental
Advocates
c/o Gerald Schultz, Esq.
500 South River Street
Wilkes-Barre, PA 18702

Irene Lemanowicz

Irene Lemanowicz
Chairperson

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONBEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

PENNSYLVANIA POWER AND LIGHT CO.
ALLEGHENY ELECTRIC COOPERATIVE, INC.(Susquehanna Steam Electric Station,
Units 1 and 2)Docket Nos. 50-387
50-388NRC STAFF'S MOTION FOR AN ORDER COMPELLING CITIZENS AGAINST
NUCLEAR DANGERS TO RESPOND TO THE STAFF'S DISCOVERY REQUESTS

Pursuant to 10 CFR 2.740(f), the NRC Staff (Staff) moves this Atomic Safety and Licensing Board (Board) for an Order compelling Intervenor, Citizens Against Nuclear Dangers (CAND), to respond to the Staff's discovery requests on the grounds that:

- (1) Staff's interrogatories and requests for production of documents are within the scope of permissible discovery as defined by 10 CFR 2.740(b)(1).
- (2) CAND has not sought or received a protective order under 10 CFR 2.740(c).
- (3) CAND has neither answered nor objected to any of the Staff's interrogatories as required by 10 CFR 2.740b(b).
- (4) CAND has neither responded to the Staff's requests for production of documents nor objected to the requests as required by 10 CFR 2.741(d).
- (5) CAND's reply dated June 16, 1979 constitutes a failure to answer and respond under 10 CFR 2.740(f).

By its Special Prehearing Conference Order dated March 6, 1979 this Board admitted CAND as an Intervenor, ruled on contentions and established a schedule for discovery. The Board designated May 25, 1979 as the last day for submission

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of first-round discovery requests and specified June 29, 1979 as the date by which responses to first-round discovery requests must be filed. The Staff's discovery requests of CAND were timely served by mail on May 21, 1979.

The Staff's discovery requests relate to specific contentions which were admitted by the Board. The Staff requested information concerning the factual bases for CAND's contentions, the identities and addresses of persons to be called as expert witnesses and the identification and production of documents to be used by CAND in examining and cross-examining witnesses.^{1/}

The Commission's rules regarding discovery state in pertinent part:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. In a proceeding on an application for . . . an operating license for a . . . utilization facility, discovery . . . shall relate only to those matters in controversy which have been identified by the Commission or the presiding officer in the prehearing order entered at the conclusion of that prehearing conference. *** It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. (10 CFR §2.740(b)(1)).

^{1/} A copy of the Staff's discovery requests of CAND is attached.

The Staff's discovery requests fall squarely within the bounds of that allowed by 10 CFR 2.740(b)(1). Disclosure of the types of information and documents requested is the precise purpose of the applicable Commission rules and is necessary to enable complete trial preparation by the Staff in this proceeding.^{2/}

On June 20, 1979 the Staff received a document entitled "Citizens Against Nuclear Dangers' Replies to the Interrogatories of the NRC Staff and the Applicants and Other Matters."^{3/} CAND states at page 3 of the document that it "categorically object[s] to each and every interrogatory question submitted by the NRC . . .". It does not answer any of the interrogatories nor does it provide valid reasons why any of them is objectionable. Although CAND makes an attack on the Staff, the Applicant and the Board, it does not deal with the merits of the Staff's discovery requests. Under 10 CFR 2.740(f) such "an evasive or incomplete answer or response shall be treated as a failure to answer or respond."

CAND's failure to respond is frustrating the orderly progress of this proceeding. Accordingly, the Staff urges this Board to grant its motion to compel, and to order CAND to respond fully and properly to the Staff's discovery requests of

^{2/} See: Boston Edison Company, et al. (Pilgrim Nuclear Generating Station, Unit 2), LBP-75-30, 1 NRC 579 (1975). See generally: Commonwealth Edison Company (Zion Station, Units 1 and 2), ALAB-196, 7 AEC 457, 460-3 (1974).

^{3/} A copy is attached for the convenience of the Board.

May 21, 1979. Further, the Staff requests that the Board dismiss CAND from these proceedings if it fails fully to comply with the Board's Order.

Respectfully submitted,



James M. Cutchin, IV
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 28th day of June, 1979

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50-388

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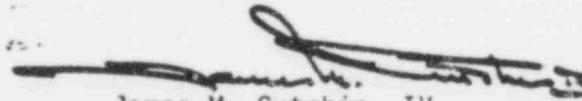
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Accordingly, the Board directs CAND to respond fully and properly to the Staff's discovery requests of May 21, 1979 no later than ten (10) days from the date of this Order subject to dismissal from this proceeding if it fails to comply with this Order.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY AND LICENSING BOARD

Respectfully submitted,



James M. Cutchin, IV
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 28th day of June, 1979

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