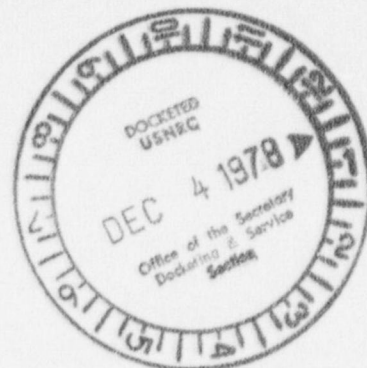


NRC PUBLIC DOCUMENT ROOM

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION



BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
 )  
POWER AUTHORITY OF THE STATE )  
OF NEW YORK )  
 )  
(Greene County Nuclear Power )  
Plant) )

Docket No. 50-549

RESPONSE TO NRC STAFF MOTION  
FOR ORDER COMPELLING DISCOVERY

Citizens to Preserve the Hudson Valley ("CPHV"), Columbia County Survival Committee ("CCSC") and Mid-Hudson Nuclear Opponents ("MHNO") (with Shirley A. Brand) oppose the renewed motion of the NRC Staff for an Order compelling discovery.

CPHV, CCSC and MHNO have each furnished separate responses to every interrogatory asked by the NRC Staff. Therefore, there are no grounds upon which the Staff motion can be granted.

Staff alleges that the responses were deficient. However, an analysis of Staff's position reveals that Staff's real complaints are as follows:

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(1) Staff does not agree with many of 'respondents' answers.

(2) The responses neglect to include the conclusions, opinions or legal theories of the respondents' case. (See 10 CFR §2.740(b)(2)).

(3) The responses only provided the data which the respondents' had within their respective possessions, and respondents should have hired an expert and engaged in research to generate additional information.

(4) Many responses are based upon personal observation and the application of nonexpert, ordinary human reasoning to observed phenomena and well known facts. Presumably, Staff regards these as an inadequate source of evidence.

(5) Rather than pointing to inadequacies in the applicant's and Staff's presentation as the basis for a contention, respondents should affirmatively have come up with new and different information.

Unfortunately, all of these complaints do not support Staff's motion. Discovery under 10 CFR §7.740 is limited to information and documents which a party has. The

respondents have already furnished these. Staff is now, in the guise of compelling discovery, seeking to impose an additional burden (which it has no right so to impose) on respondents, namely, the burden to do original research to develop a data base with which Staff can agree, or at least with which it feels comfortable.

#### A FEW EXAMPLES

A few examples will illustrate the point.

Example 1. Staff dislikes CCSC's response to S5a-1, dealing with airplane overflights. CCSC's members regularly observe airplane overflights, even though the applicant and Staff (who apparently have not made any personal observations) deny they exist. This is the basis for CCSC's contention on this point. Yet Staff objects to CCSC's interrogatory response upon the mistaken belief that through interrogatories it can force CCSC to undertake an investigation to learn from what airport these airplanes are coming and how much they weigh. Discovery is only to discover what a party knows, not to force a party to additional education.

Example 2. Staff dislikes a number of responses because they don't spell out the respondents' legal arguments. Staff complains that respondent hasn't explained "how" a fact



leads to a legal conclusion (See paragraph 1 of page 2 of Staff's "renewed motion" to compel; see also Staff's argument on MHNO's response to 1(b)-1). However, legal theories are protected by 10 CFR §2.740(b)(2) and are not discoverable.

Example 3. The respondents' contentions almost exclusively are that the PSAR (even after issuance of the SER) fails to provide significant information, or that the information provided either does not lead to the conclusion alleged or leads to the conclusion that the construction of the GCNPP as planned would be a most unsafe and unhealthy thing. Of course, the basis for these contentions is the inadequate presentation made by the applicant and Staff. If they can't tell you what emergency medical arrangements have been made and with whom (see MHNO response to 1(c)-1), or how people are going to be evacuated (see MHNO response to 1-2), or how many people in New York City and elsewhere will be without a fresh water supply and for how long (see CCSC response to S9-2), or what the emergency plan is and how it will work (see CCSC response to B-6-3), then the respondents need no further basis for their contentions. The interrogatory responses amply set forth this basis. Staff cannot through

interrogatories force respondents to prepare an equivalent to the SER. Staff may not agree with respondents' conclusions, but this does not make inadequate responses which use the only information which respondents have, namely, the PSAR, the SER and Supplement No. 1 to the SER. (See CPHV responses to S.I.B.3-2, S.I.B.4-2, S.I.B.4-3, S.I.B.4-4, and S.I.B.5-1).

#### CONCLUSION

All interrogatories having been answered, Staff's renewed motion for an Order compelling discovery should be denied.

November 29, 1978

Respectfully submitted,

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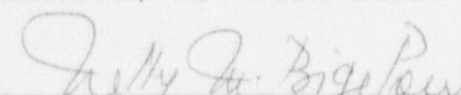
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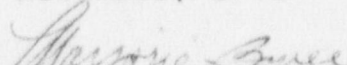
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