



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
James L. Kelley, Chairman
Elizabeth B. Johnson
Cadet H. Hand



SERVED MAY 21 1981

In the Matter of
SOUTHERN CALIFORNIA EDISON COMPANY, ET AL.
(San Onofre Nuclear Generating Station,
Units 2 and 3)

Docket Nos. 50-361-0L
50-362-0L

May 21, 1981

MEMORANDUM
(Reasons for Rulings on Motions to Compel Answers to Interrogatories)

On May 13, 1981, the Board issued an Order setting forth its rulings on two FOE motions to compel answers by the NRC Staff to FOE interrogatories relating to seismic matters. We stated that our reasons for those rulings would be provided in the near future. This memorandum provides those reasons.

In an introductory section to each of its motions, FOE alleges that it was misled by the NRC Staff with respect to its conduct of discovery against the Staff in the seismic area. The Staff did suggest that FOE withhold formal seismic discovery until the SER was prepared. FOE alleges that it thereafter postponed its discovery on the Staff, thinking that the Staff would respond later to discovery requests in an informal and cooperative manner. Pointing to the large number of objections the Staff has raised, FOE alleges that the Staff has misled it to its prejudice. FOE implies that the Staff is now raising frivolous and hypertechnical objections in an effort to avoid answering FOE's questions -- i.e., that the Staff is "stonewalling".

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Our review of these interrogatories and the Staff's answers and objections simply does not bear out any such claim. FOE points out, for example, that the Staff has objected to approximately 80 percent of its February 19 interrogatories. However, upon our review, we are sustaining approximately 95 percent of these Staff objections. In the two sets of interrogatories (February 19 and 20), there was a total of 161 interrogatories, of which 68 were contested, in the sense that the Staff objected and FOE reasserted the question in its motion to compel. Of those 68 contested interrogatories, we are requiring the Staff to answer only six.

The answer to FOE's complaint does not lie only in statistics. Many of the Staff's answers to the FOE interrogatories seem to be carefully prepared and forthright (See e.g., Interrogatories 2, 5, 11 and 16 of the February 20 set). Moreover, the Staff had already prepared a lengthy, documented statement of its basic positions on seismic issues in the SER. Many of FOE's interrogatories were answerable merely by reference to relevant portions of the SER and, in many cases, this is essentially what the Staff did. The Staff is under no obligation to regurgitate its entire SER in answer to interrogatories.

FOE quotes from the transcript of an earlier prehearing conference in which former Chairman Smith refers to discovery rules applying particularly to the Staff and, in effect, admonishes the Staff not to stand on its privileges under the rules if it is asking an Intervenor to defer discovery. FOE implies that the Staff has somehow deviated from former Chairman Smith's admonition. The Staff rejects this implication and we agree. Although the transcript is somewhat garbled, it is fairly clear from the context that

former Chairman Smith was referring to 10 CFR 2.720(h)(2)(ii), which preconditions requiring the Staff to answer interrogatories upon findings that answers are "necessary to a proper decision" and that they are "not reasonably obtainable from any other source." Although these "defenses" were arguably available to the Staff as to at least some of FOE's interrogatories, the Staff in its answers explicitly disclaimed reliance on them. Apart from this, there is nothing in former Chairman Smith's statement or in any other part of FOE's lengthy quotations from the transcript which suggest that the Staff was agreeing to waive legitimate objections it might have to future interrogatories. As we have found, the great majority of the Staff's objections to FOE interrogatories are meritorious.

I. FOE Interrogatories Served on February 19

A. Interrogatories 2-5, 7, 12-17, 19, 21, 22 and 24. These interrogatories pose a standard, multiple-part question which, if literally complied with, would frequently call for a very detailed response. First of all, we agree with the Staff that the fact that other parties to the proceeding may not have objected to this form of question does not prevent the Staff from asserting any proper objections it may have. Moreover, this is not the first time that this question has been evaded or challenged in this case. In our Order of March 31, 1981, we directed FOE to answer certain parts of this same question; we went on to criticize the last subpart and made it clear that we would not enforce answers to it.

The main thrust to the Staff's objection to this form question is that it is burdensome and oppressive in requesting "each and every" fact, document, and person concerning the subject of the question. We agree.

Literal compliance with this request might well send the experts for all parties on unnecessary research and needless specification of detail. In general, we believe it is enough to set forth a party's position on a particular point and indicate the bases for that position, in response to a question like this. That is essentially what the Staff did in this case.

B. Interrogatory 8. The Staff's objection to this interrogatory was sustained because the relevant paragraph of the Intervenor's motion to compel (p. 5a, par. A) was not understandable, particularly the third sentence thereof.

C. Interrogatory 45. The Staff has been directed to answer this interrogatory. FOE is entitled to know the names of specific individuals who worked on the San Onofre OL review for the USGS. It is possible that these people may be subpoenaed as witnesses. In addition, to provide these names would impose no burden on the Staff or the USGS.

D. Interrogatory 47. The Staff has been directed to answer this interrogatory. The Staff's prior answer was literally responsive but evaded the thrust of the question. Whatever the Staff's exact arrangements with USGS for reviewing its work, there are specific people at USGS who have worked on the San Onofre application. Presumably their names are known to the Staff or can be readily obtained.

E. Interrogatory 20. The Staff has provided a further response to Interrogatory 20 dated May 8, 1981.

F. Interrogatories 28-31. These interrogatories relate to a "Bolsa Island Report" prepared by the Department of the Interior in 1967 concerning a site some distance from the SONGS site. These questions do not seek technical information, but rather inquire about the NRC's knowledge of and use of this Report. Objections to these interrogatories were sustained because their relevance was unclear and answering certain aspects could be burdensome. However, we did direct the Staff to provide the Board with copies of this Report. The areas covered by these interrogatories could be looked into at the hearing if their relevance later becomes apparent.

G. Interrogatory 32. As contended by the Staff, this interrogatory seeks an admission as to a legal question, not a factual question. As such, it is improper discovery (10 CFR 2.742(a)).

H. Interrogatory 36. This interrogatory goes to the ability of the facility to withstand an earthquake of a particular magnitude. This is a design issue not within FOE's admitted contention concerning the correctness of the safe shutdown earthquake. The quotation from former Chairman Smith's opinion on summary disposition of the dewatering issue is not to the contrary. That quotation merely indicates that issues of this kind may be in contention if, after a hearing, it is found that the safe shutdown earthquake was incorrectly determined.

I. Interrogatories 37-39. These interrogatories relate in various ways to behavior of plant employees in the event of an earthquake. They are not within FOE's admitted contention and are therefore improper. It has been understood from the beginning that FOE's contention is essentially a matter of geology; it has nothing to do with plant design or human behavior.

Design and, possibly, behavior issues could come into the case if and when FOE's initial contention is substantiated.

The ability of plant operators to respond appropriately to various kinds of emergencies has been an emerging concern particularly since the Three Mile Island accident. However, operator qualifications are dealt with under provisions of the rules other than Part 100, Appendix A. Certain upgraded operator requirements have been imposed in the wake of Three Mile Island. These requirements are discussed in Supplement 1 to the SER. FOE might have sought to raise the adequacy of these requirements in this case, had it done so in a timely fashion. However, it did not choose to do so.

J. Interrogatory 40. This interrogatory concerns design aspects of the spent fuel pools. Any obligation to answer interrogatories concerning spent fuel pools was suspended by the Board at the prehearing conference of April 29 (Tr. 385-87).

K. Interrogatories 41, 42, 43 and 46. These interrogatories seek information about which members of the NRC and USGS Staffs participated in the geologic and seismic reviews for SONGS, Unit 1, up through the reviews for the construction permits for SONGS, Units 2 and 3. The Staff objects to these interrogatories on the ground that they do not relate to matters in controversy -- namely, the correct safe shutdown earthquake for SONGS, Units 2 and 3 at the operating license stage. FOE counters by saying that this information may lead to relevant evidence or that one or more of these individuals may be called as a witness. However, it seems to us likely that information gained from these sources would be inadmissible because of res judicata, collateral estoppel and related theories. It is conceivable

that the list of names sought here would produce someone having some important piece of knowledge that was not brought out in the earlier proceedings. However, the likelihood of this occurring, when weighed against the burden on the Staff in compiling this information, seems remote. Much of this information could be obtained by FOE itself if it wishes to go through the public records of the closed proceedings.

L. Interrogatories 49-60. These interrogatories relate to a series of transactions between NRC personnel and persons associated with FOE in the course of the operating license review. It is difficult to see any relevance in this information to the adequacy of the safe shutdown earthquake. Since much of the information sought by these interrogatories is equally available to FOE and the NRC Staff, FOE does not need it to prepare its case. Should the relevance of one or more of these points become apparent at the hearing, it can be inquired into at that time.

II. FOE Interrogatories Served February 20, 1981

Interrogatory 6. This interrogatory seeks information about research performed near the site and is ambiguous as to whether the research was "off-shore" or "onshore" research. FOE's motion objects that the Staff's answer did not include onshore research; however, the Staff in its answer states that it addressed both kinds of research.

Interrogatory 12. This interrogatory asks the Staff to compare the "quality and quantity of research and data" that are available for different geological formations near the site. The Staff objects that this is

impermissible discovery because it would require them to undertake a study or analysis in order to respond. They rely on the recent Houston Lighting and Power Company case, 11 NRC 477, 478-79 (1980). The Board in that case said it was not necessary for a party to perform "extended research or data gathering in order to respond." FOE seeks to distinguish this case on the ground that the research and data necessary to answer its question is already available. They contend that a party can be required to analyze data that is already available.

The premise underlying Houston Lighting and Power is that a party can be required to state its position and the bases for its position. However, a party cannot be required to undertake substantial additional data gathering or analysis in the discovery context. Although this line may be difficult to draw in some cases, it provides a workable standard. Here, it would be necessary for the Staff to perform rather extensive analyses in order to reach any worthwhile conclusions about the comparative quality of certain research and data. Anything less than thorough analysis -- a so-called "quick look" -- would be essentially worthless. Thus this request exceeds the bounds of the Staff's obligations in discovery.

Interrogatory 18. This interrogatory asks, albeit somewhat indirectly, whether techniques used by oil companies were used by the Applicants to explore geologic conditions on the Christianitos Fault. Contrary to the Staff's suggestion, the question does not require any elaborate analysis of oil company techniques. A rough comparison of the techniques employed and some

explanation as to why oil company techniques were or were not employed is all that is required.

Interrogatory 19. This interrogatory asks for a comparison of the amount of trenching done by the Applicants at San Onofre and at the Vallecitos reactor site. This is a permissible question because it does not require any extensive data gathering or analysis. Trenching is a fairly simple technique and it appears that the extent of its use at these two sites could be compared approximately without much difficulty. The question could disclose evidence relevant to FOE's claims that required investigations have been inadequate, assuming only for purposes of this question that the capability of the Christianitos is not foreclosed by res judicata.

Interrogatory 20. This interrogatory seeks a comparison of the "amount of offshore research" done by the Applicants at Diablo Canyon with the research done by the Applicants in this case. While superficially appearing to be a simple question, it probably would involve rather extensive analysis to provide any useful answer. A simple comparison of dollar amounts probably would not be meaningful, because the need for research at different sites may vary greatly. Moreover, the question of the amounts of money spent by these Applicants for research should have been directed to the Applicants, not the NRC Staff.

Interrogatory 28. Although the matter is arguable, this interrogatory appears to require more analysis than is permissible in discovery.

Interrogatory 46(b). The Staff response makes it clear that they do not intend to require the Applicants to perform the studies suggested by this interrogatory. The Staff apparently believes that the suggested study would

be irrelevant to safety at SONGS, given other studies that have been performed.

Interrogatories 49, 51, 52, 53 and 55. These interrogatories raise various questions about the ability of different parts of the facility to withstand earthquakes of various magnitudes. They go to the adequacy of the design of the plant, not to the safe shutdown earthquake that was determined in the construction permit proceeding and upon which design standards are based. As indicated previously, design contentions of this kind are not within the scope of FOE's original contention for discovery purposes, and are not allowable at this late date, absent a showing good cause.

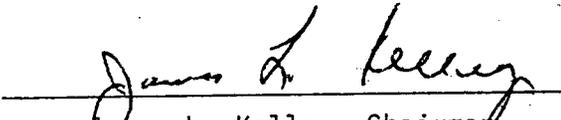
Interrogatories 50 and 54. The Staff has been directed to answer these interrogatories. They may also be objectionable on the ground that they are more relevant to design than to geology questions. However, they differ from the preceding group of questions in that they do not deal directly with the ability of the plant to withstand an earthquake. Moreover, the Staff in its final answer does not object to these interrogatories as design questions. Accordingly, the Staff was directed to respond.

Interrogatories 76, 77 and 78. These interrogatories, like Interrogatories 49-55, address in various ways the ability of these facilities to withstand earthquakes. In addition, Number 77 concerns the spent fuel pools and need not be answered for that reason.

Interrogatory 88. As objected to by the Staff, this interrogatory would require the Staff to perform a significant analysis in order to determine probabilities with respect to certain specified faults. This is impermissible discovery.

Interrogatory 97. This interrogatory seeks information concerning differences in displacements on the San Andreas Fault Zone in different parts of California. In response to the Staff's initial objection, FOE argued that determination of these matters was required by Commission regulations. In its answer to the motion to compel, the Staff put forward a different interpretation of the regulations which the Board believes to be correct. In essence, the Staff is not required to investigate movements on more distant faults if, as previously determined in this case, the safe shutdown earthquake for a particular facility can be associated with a closer fault (10 CFR Part 100, par. IV(a)(6)).

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


James L. Kelley, Chairman
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 21st day of May, 1981.