

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
 ) Docket No. 50-344  
PORTLAND GENERAL ELECTRIC COMPANY, )  
et al. ) (Control Building Proceeding)  
 )  
(Trojan Nuclear Plant) )

LICENSEE'S RESPONSE IN OPPOSITION TO INTERVENORS'  
"MOTION TO COMPEL RESPONSE BY LICENSEE TO INTERVENORS'  
INTERROGATORIES DATED NOVEMBER 14, 1979;"  
LICENSEE'S MOTION FOR PROTECTIVE ORDER

Portland General Electric Company (Licensee) files its response in opposition to Intervenor's "Motion To Compel Response By Licensee to Intervenor's Interrogatories Dated November 14, 1979" ("Motion"), dated December 13, 1979, and moves the Board for a protective order pursuant to 10 CFR §2.740(c).

Licensee opposes Intervenor's Motion in its entirety and urges the Board to deny it in all respects because the Interrogatories which Intervenor request this Board to order Licensee to answer seek information that is not relevant to Intervenor's admitted contentions in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence.

On November 14, 1979, Intervenor served Licensee with four Interrogatories. Interrogatories 1-3 sought information with respect to NRC Staff Bulletin IE 79-14. Interrogatory

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4 sought information with respect to the arrest for drug-related offenses of some guards employed at the Trojan site. On December 3, 1979, Licensee responded to Intervenors' Interrogatories by objecting to each of them on the grounds that the information sought by each was beyond the scope of the issues raised by Intervenors' contentions in this proceeding. Intervenors have filed the instant Motion, dated December 13, 1979, which seeks an Order from this Board requiring Licensee to answer Intervenors' Interrogatories.

The Intervenors' Interrogatories seek information outside the scope of their admitted contentions and thus should be denied. Intervenors' right to obtain discovery is limited to those matters which are relevant to the subject matter of their admitted contentions, and are reasonably calculated to lead to the discovery of admissible evidence.

The Commission's rules specifically provide that

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding. . . . [D]iscovery . . . shall relate only to those matters in controversy which have been identified by . . . the presiding officer. . . . 10 CFR 2.740(b)(1).

The Commission's rules permit discovery only of information or documents "relevant to the subject matter involved in the proceeding," and further limit the term "subject matter" to the contentions admitted by the presiding officer. Allied-General Nuclear Services (Barnwell

Fuel Receiving and Storage Station) 5 NRC 489, 491-492 (1977). The Appeal Board and Licensing Boards have consistently applied the rules in this fashion in ruling on discovery matters. See, e.g., Commonwealth Edison Company (Zion Station, Units 1 and 2), ALAB-196, 7 AEC 457, 470-471 (1974); Boston Edison Company, et al. (Pilgrim Nuclear Generating Station, Unit 2), 2 NRC 159, 168-171 (1975); Pacific Gas & Electric Company (Stanislaus Nuclear Project, Unit 1), 7 NRC 1038, 1040-1041 (1978).

In determining relevancy for purposes of discovery, it is necessary to examine the issues involved. Stanislaus, supra, at 1040. It is evident that if Intervenors' Interrogatories do not meet the test of relevancy they are improper and Licensee's objections should be sustained. An examination of the Interrogatories shows that Intervenors have failed to show their relevance to the contentions in the proceeding.

Interrogatories 1, 2, and 3

As pointed out in Licensee's objections of December 3, 1979, Intervenors' Interrogatories 1 and 2 seek information with respect to Licensee's responses to NRC's IE Bulletin 79-14, entitled "Seismic Analyses for As-Built Safety-Related Piping Systems" (supplied to the Board and parties by NRC Staff letter dated July 2, 1979). In that Bulletin Licensee

was requested, as were all other holders of NRC operating licenses, to verify that analytical input data for seismic analysis of safety-related piping systems conforms to the actually-installed piping configuration at Trojan. Interrogatory 3 seeks information with respect to reviews conducted prior to August 7, 1979, of seismic qualification of certain equipment in the Plant discussed in Licensee's response to IE Bulletin 79-14.

Intervenors' Motion fails to show how such information could relate to any of their admitted contentions.

Intervenors simply argue that

[A]ll three interrogatories relate to CFSP contentions 3 and 4. Both contentions deal with the ability of the Licensee and NRC Staff to evaluate certain information. It is important, not only to Intervenors' but also to the Board, that any past errors be exposed. The only way that information regarding this performance can be obtained is through the discovery process. Motion, p. 2.

Intervenors' argument is without merit. CFSP's Contention 3<sup>\*/</sup> alleges that:

Plant Staff review of proposed modification is inadequate to assure no violations of Technical Specifications will occur.

It is important to emphasize that this contention is quite narrow in scope. As explained to the Board at the

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<sup>\*/</sup> CFSP's Contention 4 alleges that: "NRC Staff review of proposed modification is inadequate to assure no violation of Technical Specifications will occur." Licensee is unable to discern why CFSP thinks its Contention 4, which alleges inadequacy with respect to the NRC Staff's review of the proposed modification to the Control Building entitles it to discovery from Licensee on a totally unrelated subject.

Prehearing Conference by Mr. Rosolie, CFSP's representative, that contention deals only with the scope and adequacy of the PGE Plant Staff's review of Bechtel's work plans for the modification work. (Tr. 3015-3016). Such a limited contention cannot now be expanded to include consideration of matters not part of the modification work, such as the Licensee's inspections and reports under IE Bulletin 79-14.

Intervenors also argue that their Interrogatories are related to the subject matter at hand, since all three allegedly address the seismic qualification of safety-related equipment. Motion, p. 2. As we have explained above, however, Intervenors' discovery rights are limited to their admitted contentions. In its October 17, 1979 "Order Regarding Staff's Motion For Reconsideration Of Consolidation of Intervenors, and Motions Directed To Intervenors' Responses to Discovery," the Board dismissed Intervenors' only contention (Consolidated Intervenors' Contention No. 3) which dealt with seismic qualification of safety-related equipment.<sup>\*/</sup> Thus, Intervenors have no admitted contention relating to seismic qualification of safety-related equipment and their argument is without merit.

Intervenors raise one more argument as to why their Interrogatories should be answered. They claim that the Board's remarks at the prehearing conference (Tr. 3045)

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<sup>\*/</sup> The Board, in its Order, explicitly ruled that Intervenors were thereafter "bound by the admitted contentions of CFSP . . ." Order, p. 4.

concerning the right to file amended or new contentions somehow entitles them to discovery on the subjects covered in Interrogatories 1-3 because

[T]he matters raised [in those Interrogatories] have all come to light recently and intervenors should have a opportunity to flush out all information about them. Motion, p. 2.

The fact that, under some limited circumstances, amended or new contentions may be filed in NRC proceedings does not entitle Intervenor to discovery on matters not relevant to admitted contentions. In short, Intervenor cannot be permitted discovery on matters not relevant to admitted contentions on the theory that they might somehow be able to develop additional contentions at some future time.

#### Interrogatory 4

In their Interrogatory 4, Intervenor seek information with respect to the recent arrest for drug-related offenses of some guards employed at the Trojan site. Licensee objected to that Interrogatory on the grounds that none of Intervenor's contentions related to that information. Intervenor argue that their Contention 18 (which dealt with security matters) was "stipulated to" at the prehearing conference, and that Licensee has already provided information to the NRC Staff with respect to that contention. Intervenor also allude to their December 8, 1979, "Motion To Reopen Phase I Evidentiary Hearings, Revoke Interim Operating License, And Compel Full Disclosure" and claim that neither Licensee nor

Staff is providing information on the matter. Intervenors contend that, in light of that, the only means left is discovery. Motion, p. 3. Presumably they mean that the only means left for them to get information on this matter is through discovery.

Under the stipulation entered into by Intervenors at the Prehearing Conference, Contention 18 was not admitted. Instead, it was agreed that the Staff would submit a report which would address any specific questions raised by Intervenors without compromising security details. (Tr. 3090-3092). Intervenors apparently have decided to ignore the stipulation for, to the best of Licensee's knowledge, they have not addressed questions to the Staff with respect to the arrest incident and have not asked that the answers be incorporated into a supplement to the Staff's report.

In any event, since Interrogatory 4 does not relate to an admitted contention in this proceeding, Intervenors' motion to compel a response thereto should be denied.

Motion For Protective Order

Licensee also moves the Board, pursuant to 10 CFR §2.740(c), for a protective order with respect to Intervenors' December 13, 1979 "Motion To Compel Response By Licensee To Intervenors' Interrogatories Dated November 14, 1979" which would relieve Licensee from responding to Intervenors' Interrogatories 1-4 on the grounds that the information sought by such interrogatories

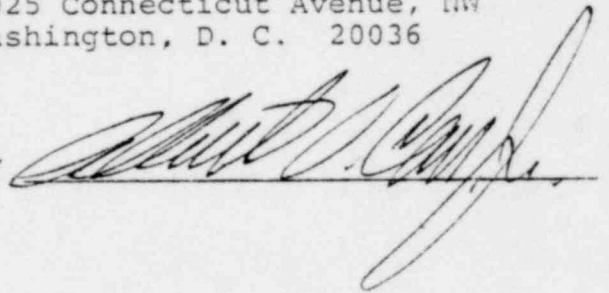
is beyond the scope of Intervenor's' admitted contentions in this proceeding and is not calculated to lead to the discovery of admissible evidence.

Respectfully submitted,

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By

A handwritten signature in black ink, appearing to read "Albert V. Carr, Jr.", is written over a horizontal line. The signature is stylized and cursive.

Dated at Washington, D. C.  
this 21st day of December, 1979.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "LICENSEE'S RESPONSE IN OPPOSITION TO INTERVENORS' 'MOTION TO COMPEL RESPONSE BY LICENSEE TO INTERVENORS' INTERROGATORIES DATED NOVEMBER 14, 1979;' LICENSEE'S MOTION FOR PROTECTIVE ORDER" in the above-captioned proceeding were served on the following by deposit in the United States mail, postage prepaid, this 21st day of December, 1979:

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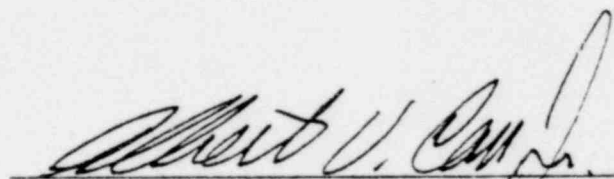
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