

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
SACRAMENTO MUNICIPAL UTILITY DISTRICT	)	Docket No. 50-312
	)	
(Rancho Seco Nuclear Generating	)	
Station)	)	

LICENSEE'S MOTION TO COMPEL DISCOVERY  
OF INTERVENOR FRIENDS OF THE EARTH

Pursuant to 10 C.F.R. § 2.740(f), Licensee Sacramento Municipal Utility District hereby moves the Atomic Safety and Licensing Board to issue an order compelling intervenor Friends of the Earth ("FOE") to respond to certain of "Licensee's First Set of Interrogatories to Friends of the Earth," and "Licensee's First Request for Production of Documents Directed to Friends of the Earth," dated December 4, 1979.

Licensee requested FOE to provide responses to the "First Set of NRC Staff Interrogatories to Friends of the Earth (FOE)" and to produce the documents requested by the "NRC Staff Request to Produce Directed to Friends of the Earth (FOE)," dated November 9, 1979. Licensee stated that to the extent FOE supplies satisfactory responses to the NRC Staff's discovery requests, Licensee will deem them to comply with Licensee's requests.

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On December 7, 1979, FOE served "Answers of Petitioners, Friends of the Earth, to First Set of Staff Interrogatories." FOE has not responded in any manner to the request for production of documents, which response should have been served, pursuant to 10 C.F.R. § 2.741(d), on or before December 14, 1979.

Pursuant to 10 C.F.R. § 2.740(f), if a party upon whom a request for production of documents or for answers to interrogatories is served fails to respond or objects to the request, or any part thereof, the party submitting the request may move the presiding officer for an order compelling a response in accordance with the request. Section 2.740(f) further provides that, for the purposes of that paragraph, an evasive or incomplete answer or response shall be treated as a failure to answer or respond.

Licensee submits that FOE's answers to Interrogatories 4 and 5 are incomplete and evasive, that FOE's objection to Interrogatory 3 (which essentially is entered as to Interrogatory 5 as well) is without legal merit, and that FOE has failed to respond in any manner to the document production request.

FOE's objection reflects a fundamental misunderstanding of the purposes of the discovery process and of the role of a party to a Commission licensing proceeding. FOE essentially argues that as an intervenor it has no obligation to provide the information sought. Having raised a general concern, FOE apparently feels that the other parties must define and respond to that concern as best they can. The various instruments of

discovery, however, serve as a device to narrow and clarify the basic issues between the parties, and as a device for ascertaining the facts relative to those issues. Hickman v. Taylor, 329 U.S. 495, 501 (1947). The purpose of discovery is not only for the ascertainment of facts, but also to determine what the adverse party contends they are, and what purpose they will serve, so that the issues may be narrowed, the trial simplified, and time and expense conserved. Bain & Blank, Inc. v. Philco Distributors, Inc., 25 F.R.D. 86, 87 (E.D.N.Y. 1957).

The Commission's regulations governing the conduct of discovery provide, at 10 C.F.R. § 2.740(b)(1), inter alia, that parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding. The discovery requests to FOE seek information concerning the basis for, and a more specific delineation of, FOE's contentions. As the Atomic Safety and Licensing Appeal Board has held with respect to the requirements for particularity and specificity in the pleading of contentions:

The Applicant is entitled to a fair chance to defend. It is therefore entitled to be told at the outset, with clarity and precision, what arguments are being advanced . . . . So is the Board below. It should not be necessary to speculate about what a pleading is supposed to mean.

Kansas Gas and Electric Company, et al. (Wolf Creek Generating Station, Unit No. 1), ALAB-279, 1 NRC 559, 576 (1975).

Intervenors in Commission licensing proceedings have many participational rights, including the right to offer no

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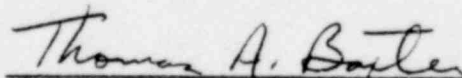
affirmative evidence whatsoever and to attempt to prevail solely through the cross-examination of witnesses for other parties. Intervenors have the responsibility, however, to respond fully to legitimate discovery requests which seek relevant information with respect to their contentions. As one licensing board chairman put it, "[t]here can be no doubt that a party advancing a contention can be required to fully explain and specify the meaning of that contention during the discovery process."

Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1 and 2), Docket Nos. 50-259, 260, Order Compelling Discovery (unreported; May 20, 1976).

For the foregoing reasons, Licensee respectfully requests that the Board issue an order compelling FOE to respond fully, within a specified period of time, to Interrogatories 3, 4 and 5, and to the document production requests.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE



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