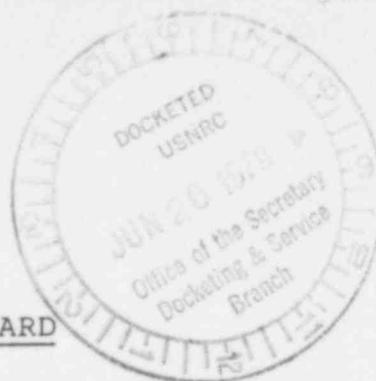


UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION



BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
 )  
THE DETROIT EDISON COMPANY ) Docket No. 50-341  
(Enrico Fermi Atomic Power ) (Operating License)  
Plant, Unit 2) )

APPLICANTS' OBJECTIONS TO CEE'S INTERROGATORIES  
AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Introduction

On May 25, 1979, the intervenors in this proceeding, Citizens for Employment and Energy ("CEE"), served upon Applicants' counsel a document entitled "CEE Interrogatories to Applicant".<sup>1/</sup> The discovery requests made in the document are subject to a number of objections which Applicants set out below pursuant to §2.740b(6) and §2.741(d) of the Commission's Rules of Practice.

Each of the thirteen "interrogatories" contained in the document, in addition to seeking answers to certain questions, requests the Applicants to provide CEE with copies of certain "writings". Applicants, therefore, construe this document to be both a set of interrogatories made pursuant to §2.740b of the Rules of Practice and a request for production of documents made pursuant to §2.741

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1/ The Detroit Edison Company, Northern Michigan Electric Cooperative, Inc., and Wolverine Electric Cooperative, Inc. are joint applicants for an operating license for the Enrico Fermi Atomic Power Plant, Unit No. 2 ("Fermi 2") and are collectively referred to as "Applicants".

of the Rules. Accordingly, in setting out their objections to the document, Applicants treat some "interrogatories" as interrogatories and others as requests for the production of documents. The subparts of some "interrogatories", moreover, require separate treatment. Such objections are grouped, however, under CEE's original numbering for the convenience of the Board and the other parties.

By way of general objection, Applicants note that each of CEE's requests for production directs the Applicants to provide CEE with copies of the documents sought. Section 2.741 does not require Applicants to provide copies of requested documents to CEE. Rather, Applicants are only required to permit a person acting on CEE's behalf "to inspect and copy any designated documents." Even this obligation only exists, of course, to the extent that the requested documents are within the scope of §2.740 and in Applicant's possession, custody, or control. §2.741(a)(1).

Applicants make a number of specific objections below to the scope and nature of the requests for production made by CEE. To the extent that Applicants do not take issue with specific requests, however, Applicants are prepared to make the identified documents available for inspection and copying. CEE has not specified a time, place, and manner for this inspection as required by

§2.741(c). A mutually convenient time subsequent to the original June 29, 1979 date for response, however, can doubtless be found. Applicants are willing, moreover, to assist CEE, at the latter's expense, in the reproduction of whatever specific documents CEE determines it needs after it has inspected the documents Applicants make available.

A number of specific objections to the CEE interrogatories are also raised below. Like the requests for production, a number of the interrogatories are broader in scope than any of the contentions admitted into issue in this proceeding. At least two of the interrogatories seek information of a sensitive nature. Applicants intend to submit written answers to CEE to each interrogatory or portion of an interrogatory not specifically objected to by June 29, 1979 as required by the Board's Order of March 21, 1979.

Specific objections to the interrogatories and requests for production follow.

#### Interrogatory 1

The terms in which this set of requests is cast suggests that CEE does not properly understand certain aspects of the matters involved. The interrogatory asks for various information related to "intrusions on the plant site" from the beginning of construction. The term "plant

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site" is somewhat broader than the construction site, the latter being the only area for which security is maintained during construction. Available records concerning the areas for which security has been maintained will be made available to CEE.

The set of discovery requests made in this paragraph raises an objection that also applies to one or more of the other interrogatories made by CEE. CEE has requested, in effect, that Applicants make an exhaustive investigation of large numbers of records and compile for CEE various lists of intrusions, individuals involved, and suspected consequences. Applicants submit that such investigation and compilation is not the responsibility of a responding party. See, e.g., Luey v. Sterling Drug, Inc., 340 F. Supp. 632 (S.D. Mich. 1965) (party not required to abstract or summarize materials); Triangle Mfg. Co. v. Paramount Bag. Mfg. Co., 35 F.R.D. 540 (E.D.N.Y. 1964).<sup>2/</sup> This is particularly true in the present case since the information sought by CEE relates solely to concerns that it, rather than Applicants, have raised. See 4A Moore's Federal Practice ¶33.20 at n.9 and n.15. The compilations

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<sup>2/</sup> Discovery between parties to an NRC proceeding, except the Staff, follows the form of the Federal Rules of Civil Procedure. Allied General Nuclear Services (Barnwell Fuel Receiving and Storage Station), LBP-77-13, 5 NRC 489 (1977). Guidance therefore is available from legal authorities construing those rules. Boston Edison Electric Co. (Pilgrim Nuclear Generating Station, Unit 2), LBP-75-30, 1 NRC 579 (1975).

that CEE seeks, moreover, are not ones that Applicants could be expected to otherwise make in preparation for this proceeding. Contrast Radzik v. Chicagoland Recreational Vehicle Dealers Ass'n, 15 F.R. Serv. 2d 1606 (N.D. Ill. 1972).

Perhaps the most compelling basis for this objection is the fact that CEE does not intend that the compilations it seeks from Applicants will reduce, in any way, the scope of its requests for documents. In the same interrogatory that CEE requested the compilations, it has also requested all of the documents from which such lists would be developed. If Applicants are to comply with this production request, the relevant documents will be equally available to CEE for investigation. CEE will be at least as well situated as Applicants to derive the lists with which only it is concerned. Accordingly, Applicants object to the request that they make any lists, compilations, or summaries of materials for CEE. This objection applies equally, as will be seen below, to all the compilations and summaries requested in the other interrogatories. Therefore, no lists will be provided in Applicants' response.

The last request made in Interrogatory 1 is that Applicants produce "any security plans" the Applicants use now or have used previously. As Applicants' responses will show, no "security plan" as such exists for the construction

stage. The project instruction manuals that relate in part to security during this period will be made available.

If CEE is in fact seeking the security plan for the operation of Fermi 2, then Applicants object to this request. Such a security plan is sensitive information and subject to only very limited discovery. Pacific Gas and Electric Co. (Diablo Canyon, Units 1 and 2), ALAB-410, 5 NRC 1398 (1977). In Diablo Canyon the Appeal Board held that: 1) a security plan is deemed to be information subject to the protective provisions of 10 C.F.R. §2.790(d); 2) in most cases, release of the plan must be subject to a protective order; 3) the burden is on the party seeking discovery to show the relationship between the contentions and the specific portions of the plan to be examined; and 4) no representative of a party may review the plan (or any portion thereof) without first demonstrating technical expertise.

Clearly, CEE has not made the requisite showing necessary for discovery of Applicants' operating security plan. Applicants therefore object if such a request is within the meaning of the final sentence of Interrogatory 1.3/

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3/ CEE also requested the names of any employees of the Detroit Edison Company or its contractors who made unauthorized "intrusions" at the site. Applicants have no records of any employee "intrusions". If there were records of any such intrusions, Applicants would be compelled to object to this request for personally-identifiable employee information on much the same grounds put forth in connection with Interrogatory 4, infra at 9.

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### Interrogatory 2

The principal objection to this set of interrogatories is, simply, that it exceeds the scope of Contention 4(b) to which it obviously is addressed. This request seeks an unreasonably burdensome production of reinspection records. At least several thousands of documents are involved. The scope of the request made by CEE is not even arguably related to the specific concerns, large and small bore pipe hangers and welds of safety-related components, which CEE was required to identify in its contention. Requests phrased in terms of "all documents . . ." are not favored, Illinois Power Co. (Clinton Power Station, Unit Nos. 1 and 2), ALAB-340, 4 NRC 27 (1976), for the obvious reason that they invariably exceed the scope of the issues in the proceeding. Applicants object to these requests because they do, in fact, exceed the scope of the contention.

Applicants will provide CEE with the current Quality Assurance Inspection Program Plan and any previous plans to the extent that they are available.

### Interrogatory 3

This interrogatory asks an unreasonable and impossible task of Applicants. It is not possible to list, much less provide, all quality assurance documents that have ever been kept in connection with the Fermi 2

project. Documents that have been superseded are, as a matter of prudent engineering and business practice, routinely destroyed in order to prevent confusion or because they are required by NRC procedures to be destroyed.

Applicants submit that the only issue raised by Contention 4(c) is whether Applicants have maintained the records that are required, by NRC regulation, to be kept during the licensing of the Fermi 2 facility. The requests as made are clearly beyond the scope of this contention. Applicants object to the requests to the extent that they exceed the scope of Contention 4(c). Answers to specific questions contained within this interrogatory will be made with other responses.

#### Interrogatory 4

This interrogatory consists of a large number of questions and document requests loosely related to construction contracts and employment at the Fermi 2 site. Contention 4(d) to which this interrogatory obviously relates is limited to the issues of the replacement of the Ralph M. Parsons Company or of replacement of one or more of its supervisory teams. Any attempt to conduct discovery relating to "any other contractor" is obviously improper.

This interrogatory is overbroad in another respect. Contention 4(d) is not only limited to the Ralph

M. Parsons Company but only relates to that contractor insofar as "quality control" issues are raised. This interrogatory seeks information relating to any termination of employment of any contractor or employee for virtually any reason. Applicants object to such a request and intend initially to provide CEE only information and documents related to the Parsons Company "quality control" issues specifically raised in Contention 4(d).

The third principal objection to this set of interrogatories is based upon the interests of the employees of Detroit Edison and its contractors in the confidentiality of their individual employment records, which interest Applicants are uniquely situated to assert. CEE has requested the names and employment records of each employee who has, "for whatever reason", been dismissed from the Fermi 2 project. Applicants submit that these requests not only exceed the scope of Contention 4(d) but also seek confidential information for which no need has been demonstrated.

The need for an employer to assert the judicially cognizable privacy interests of employees in records in the employer's possession has recently been recognized by the United States Supreme Court in The Detroit Edison Company

v. National Labor Relations Board, \_\_\_\_ U.S. \_\_\_\_, 99 S. Ct. 1123, 1133 (1979). See also, Privacy Protection Study Commission, Personal Privacy in an Information Society (1977) (recommending that all employers should be under a duty to safeguard the confidentiality of employee records).

Matters relating to the termination of employment of an individual are, Applicants submit, particularly sensitive. Such records should not be made available by Applicants without (1) a specific showing of relevance to the admitted contentions and (2) a protective order from the Board insuring the maximum protection for the individuals that is consistent with the interests of this proceeding. Applicants specifically request that the Licensing Board rule that any records Applicants make available to CEE in connection with this interrogatory will, at least initially, be masked in a manner necessary to protect the identity of individual employees.

#### Interrogatory 5

The scope of this interrogatory should be limited to the specific deficiencies CEE alleged in Contention 4(e)(1) and (2). Applicants are prepared to make available the requested documents that relate to these two items.

#### Interrogatory 6

Once again, Applicants must object that CEE, either through design or failure to draft carefully their

requests, has attempted to exceed the scope of the issues admitted in this proceeding. This interrogatory seeks all documents relating to the radiation monitoring system "for the plant". Contention 5 presents an issue only with respect to perimeter or off-site monitoring of radioactive releases. In-plant monitoring has never been raised as an issue by CEE. Applicants object, therefore, to requests for documents not relating to Contention 5.

Interrogatories 7, 8, and 9

These interrogatories are not objectionable except insofar as they seek actual copies of documents rather than an opportunity to inspect and copy. In responding to these interrogatories, Applicants will resolve any questions as to the scope of the requests by reference to Contention 6, to which the interrogatories obviously relate.

Interrogatory 10

Contention 8 raises only the issue of a feasible evacuation route for the residents of the Stony Pointe area. Attempts to expand the scope of this issue to evacuation of "Southeast Michigan and Ohio" are patently improper. Accordingly, Applicants object to the interrogatories and production requests in this paragraph insofar as they do not relate to the evacuation of the Stony Pointe area.

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Interrogatory 11

This interrogatory is not objectionable except insofar as it seeks actual copies of documents rather than an opportunity to inspect and copy.

Interrogatory 12

CEE has requested a copy of the Preliminary Safety Analysis Report for the project. That document is not longer relevant because the Final Safety Analysis Report ("FSAR") has been issued. Applicants have provided CEE with a copy of the FSAR and will continue to provide CEE with all FSAR amendments as they are made.

Interrogatory 13

Applicants have no objection to this interrogatory except that it also requests copies of documents rather than opportunity to inspect and copy.

Respectfully submitted,  
LeBOEUF, LAMB, LEIBY & MacRAE

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June 25, 1979

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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In the Matter of )  
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CERTIFICATE OF SERVICE

I hereby certify that I have this 25th day of June, 1979 served the foregoing document entitled "Applicants' Objections to CEE's Interrogatories and Requests for Production of Documents" by mailing copies thereof, first class mail, postage prepaid and properly addressed, or by personal delivery, as so indicated, to the following persons:

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