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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 | ) | (Control Building |
| et al.                            | ) | Proceeding)       |
|                                   | ) |                   |
| <u>(Trojan Nuclear Plant)</u>     | ) |                   |

LICENSEE'S MOTION FOR ORDER  
COMPELLING INTERVENOR EUGENE ROSOLIE,  
PRO SE AND COALITION FOR SAFE POWER TO RESPOND  
FULLY TO LICENSEE'S SECOND SET OF INTERROGATORIES

Portland General Electric Company (Licensee) moves the Atomic Safety and Licensing Board (Board) for an order pursuant to 10 CFR §2.740(f) compelling Eugene Rosolie, acting pro se, and the Coalition for Safe Power (hereinafter collectively referred to as ("CFSP")) to respond fully to "Licensee's Second Set of Interrogatories To Eugene Rosolie, Pro Se, and Coalition for Safe Power," dated May 8, 1979, as set forth in more detail below.

On February 26, 1979, CFSP submitted 26 contentions for the second phase of this proceeding. On March 5, 1979 Licensee addressed to CFSP its First Set of Interrogatories designed to ascertain the bases, if any, of those contentions with reasonable specificity. None of Licensee's First Set of Interrogatories required any extensive effort for preparation of responses by

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CFSP; nevertheless, on March 19, 1979 CFSP filed wholly inadequate responses to Licensee's First Set of Interrogatories, and on March 23, 1979 Licensee filed a Motion to Compel CFSP to furnish adequate responses.

At the prehearing conference on March 29, the Licensing Board admitted eight of CFSP's contentions as issues in this proceeding, and also granted Licensee's Motion to Compel responses to the interrogatories relevant to the admitted contentions. Tr. 3132. In addition, because of its concern that CFSP might not understand its obligations, the Board also took great pains to instruct CFSP with respect to how to respond adequately to interrogatories. Tr. 3123-3132. On April 13, 1979 (one day late), CFSP served its responses to Licensee's First Set of Interrogatories.

After reviewing CFSP's April 13 responses, and its April 17 responses to Staff's First Set of Interrogatories, Licensee on May 9 personally served on CFSP 6 additional interrogatories ("Licensee's Second Set of Interrogatories"). All of those interrogatories were based on CFSP's contentions and its responses to Licensee's and Staff's interrogatories. Licensee's Second Set of Interrogatories did no more than to continue Licensee's attempt to discern the bases with reasonable specificity for some of CFSP's contentions which the Board has admitted as issues in this proceeding. The interrogatories were not elaborate. They attempted simply to ascertain further information which was readily available to CFSP, and on which, according to CFSP, it had relied in formulating its contentions.

On May 30, 1979 (one week after the due date) CFSP served its responses on Licensee. The majority of those responses, as Licensee will show below, are wholly inadequate. In sum, then, the situation is that more than three months after CFSP filed its contentions, CFSP is still evading its obligation to provide to Licensee adequate information with respect to those contentions, information which CFSP presumably had in its possession when it first formulated its contentions.

For the convenience of the Board, we set forth below each interrogatory and response thereto prior to providing our argument as to each response.

Interrogatory 14

This Interrogatory relates to your Contentions 12 and 14 and your responses to Licensee's Interrogatory 5 and Staff's Interrogatories C12 and C13:

- (a) With respect to your response to Licensee's Interrogatory 5(d):
  - (i) Specifically identify each item of information obtained during your site visit which leads you to each of the conclusions you expressed in your responses to 5(a), (b) and (c).
  - (ii) Identify the source of each item of information specified in (i) above.
- (b) With respect to your Contention 12 and your response to Staff's Interrogatory C12-3, identify each NRC regulation which you contend has not been met. State the bases for your belief that each has not been met.

- (c) With respect to your Contention 13 and your response to Staff's Interrogatory C13-1, identify each of the NRC regulations which you contend cannot be met. State the bases for your belief that each cannot be met.

Response

- (a) (i) Our site visit [sic] was done some months ago and our notes are of a general nature. However we do plan another site visit within a month and will supplement this interrogatory at that time.
- (ii) The source of our information during the site visit was Lief Erickson.
- (b) CFR Part 50 Sections 50.40, 50.57 and 50.91. As stated previously PGE 1020 and site visit.
- (c) Same as response to (b).

Interrogatory 14(a)

In its Interrogatory 5(d) Licensee sought information with respect to bases which CFSP alleged existed for its Contentions 12 and 13. Those contentions assert first that Licensee has not provided adequate information to demonstrate that the Plant can operate safely during the modification work and second, that irrespective of any showing by Licensee, the Plant cannot operate safely while the modification work is being done. CFSP had stated that, at

least in part, its bases for those contentions were information obtained on a site visit to the Trojan Plant. Therefore Licensee asked, in its Interrogatory 14(a), that CFSP identify each item of information obtained during its site visit which provided the bases for its Contentions 12 and 13.

This is information which Licensee is entitled to have; indeed information with respect to the bases for CFSP's contentions is essential if Licensee is to prepare adequately its case for trial and carry its burden of proof. Thus, Licensee is permitted to address inquiries, substantially without limitation, to CFSP with respect to the issues which CFSP affirmatively seeks to raise in this proceeding. 10 CFR 2.740(b)(1); Northern States Power Company, et al. (Tyrone Energy Park, Unit 1), LBP-77-37, 5 NRC 1298, 1300 (1977). If CFSP is not required to respond fully to Licensee's discovery requests with respect to the bases for its contentions then the effect will be that Licensee will not be on notice as to what it is supposed to litigate at trial. This will force Licensee to attempt to meet every conceivable thrust at trial; such a result is intolerable and is inconsistent with development of a sound record. Tyrone, 5 NRC 1300-1301.

CFSP's response is sheer evasion. Instead of a responsive answer to Licensee's interrogatory, CFSP claims that the site

visit was some time in the past and that its "notes" are of a general nature. Presumably, then, we are asked to believe that CFSP has "forgotten" the information obtained in its site visit of February 1979 which provided the bases for its Contentions 12 and 13 filed February 26, 1979. Such refusal to respond adequately to Licensee's interrogatory is particularly unacceptable in light of the pains which the Board took to instruct CFSP as to how to answer interrogatories properly. Tr. 3123-3132.

The fact that CFSP mentions that it intends to make a site visit in the future and will "update" its response at that time does not relieve it of its obligation now to respond fully and adequately to this interrogatory. CFSP misapprehends the purpose of the obligation to "update;" such obligation does not relieve CFSP of the responsibility to answer an interrogatory fully now on the basis of present knowledge. What Licensee seeks and is entitled to obtain is an adequate response to its request for information with respect to the bases for CFSP's contention which existed when CFSP filed the contentions more than three months ago. If CFSP does not presently have any bases for its contentions it should so state

For the reasons set forth above, Licensee requests that the Board order CFSP to submit specific, direct and responsive Answers to Licensee's Interrogatory 14(a).

Interrogatories 14(b) and (c)

The Staff also requested CFSP to provide the bases for its Contentions 12 and 13, which, as noted, allege that Licensee has not provided information to show that the Plant can be operated safely during modification work, and that in any event the Plant cannot not operate safely during modification work. CFSP responded to the Staff that its bases for such allegations were "[T]he Commission's own regulations which have not been met." Therefore, Licensee asked in Interrogatories 14(b) and (c) that CFSP identify the Commission's regulations which it believes have not been met, and state the bases for its belief that each cannot be met. As the bases for its belief that the Commission's regulations have not been met, CFSP lists, once again, its site visit. Rather than respond, CFSP says, in effect, that the bases for its belief that Commission regulations have not been met is information obtained from its site visit, but that it has "forgotten" what that information is. For all the reasons stated above, such a response is not adequate.

Therefore, Licensee requests that this Board order CFSP to submit specific, direct and responsive answers to Licensee's Interrogatories 14(b) and (c).

Interrogatories 15(c) and (d)

(c) With respect to your response to Licensee's Interrogatory 7(c):

(i) Specifically identify each item of information obtained during your site visit which leads you to each of the conclusions you expressed in your responses to 7(a) and (b).

(ii) Identify the source of each item of information specified in (i) above.

(d) With respect to your responses to Staff's Interrogatories C15-2 and C16-3:

(i) Specifically identify each item of information obtained during your site visit which leads you to each of the conclusions expressed in your responses to Staff's Interrogatories C15-1, C16-1 and C16-2.

(ii) Identify the source of each item of information specified in (i) above.

Response

(c)(i)(ii) See response to Interrogatory 14.

(d) Same as (c).



CFSP's Contentions Nos. 15 and 16 allege that Licensee has not identified all safety equipment that would be affected by the proposed modification and has not made adequate plans to protect safety equipment during the modification work.

CFSP had stated, in response to Licensee's Interrogatory 7(c), that the bases for its allegations were "Review of PGE 1020 and site visit." Thus, Licensee, in its Interrogatory 15(c) asked CFSP to identify each item of information obtained during its site visit which formed the bases for those contentions. Rather than provide the information sought, CFSP simply referenced its response to Licensee's Interrogatory 14.

CFSP also had stated, in response to a Staff interrogatory with respect to its Contentions 15 and 16, that its bases were "a review of PGE 1020 and a site visit. During that visit equipment was pointed out to us that was not mentioned in PGE 1020." Thus, Licensee asked CFSP in Interrogatory 15(d) to identify each item of information obtained during the site visit which lead it to the conclusions expressed.

Rather than provide the information requested in either interrogatory, CFSP's response was simply to refer Licensee to its response to Interrogatory 14.

As Licensee has shown, CFSP's response to Interrogatory 14 with respect to the site visit is wholly inadequate. Obviously

it is equally inadequate as a response to Interrogatories 15(c) and (d) as well. In effect, CFSP claims that it cannot now "remember" what items of safety equipment were pointed out on its site visit which prompted its Contentions 15 and 16. This assertion is particularly surprising in light of the fact that at the Prehearing Conference of March 23, CFSP's representative spoke to this precise point, naming several specific items of equipment which, he said, he had identified during his site visit but which were not mentioned in PGE-1020. Tr. 3059 - 3062. In fact, Mr. Rosolie indicated that he could be more specific with respect to those items of equipment after review of his notes. Tr. 3061. Now, however, when asked to name those items, CFSP claims that it has "forgotten" those items of equipment and that its notes are so "general" in nature that the specific equipment cannot be identified. Such behavior raises serious doubts as to whether CFSP is acting in good faith in responding to these interrogatories.

For the reasons set forth above, this Board should order CFSP to submit specific, direct and responsive answers to Licensee's Interrogatories 15(c) and (d).

Interrogatory 16

This Interrogatory relates to your Contention 17 and your responses to Licensee's Interrogatory 8(e) and Staff's Interrogatory C17-4:

- (a) Specifically identify each item of information obtained during your site visit which leads you to each of the conclusions you expressed in your responses to Licensee's Interrogatories 8(a), (b), (c) and (d).
- (b) Specifically identify each item of information obtained during your site visit which leads you to each of the conclusions you expressed in your responses to Staff's Interrogatories C17-1, C17-2 and C17-3.
- (c) Identify the source of each item of information specified in (a) and (b) above.

Interrogatory 17

This Interrogatory relates to your Contention 20 and your response to Licensee's Interrogatory 10(d):

- (a) Specifically identify each item of information obtained during your site visit which leads you to the conclusions you expressed in your responses to Licensee's Interrogatories 10(a), (b) and (c).
- (b) Identify the source of each item of information specified in (a) above.

Interrogatory 18

This Interrogatory relates to your Contention 22 (as combined with Consolidated Intervenor's No. 20) and your responses to Licensee's Interrogatory 12:

- (a) Specifically identify each item of information obtained during your site visit which leads you to each of the conclusions you expressed in response to Licensee's Interrogatories 12(a), (b) and (c).
- (b) Identify the source of each item of information specified in (a) above.

Responses

Interrogatory 16

"See response to Interrogatory 14"

Interrogatory 17

"See response to Interrogatory 14"

Interrogatory 18

"See response to Interrogatory 14."

In each of the above interrogatories Licensee also sought from [redacted] information with respect to the site visit which formed

part of the bases for its allegations. In each instance CFSP failed to furnish the information requested, and instead simply referred to its response to Interrogatory 14. As Licensee has shown above, CFSP's response to Interrogatory 14 is inadequate; obviously it is inadequate as a response to Interrogatories 16, 17, and 18(a) and (b), as well. Therefore, the Board should order CFSP to submit specific, direct and responsive answers to these interrogatories.

Interrogatory 18(c)

Please identify, by witness and transcript page, "the testimony given at Phase I hearings" referred to in your response to Licensee's Interrogatory 12(d).

Response

None

As support for its contention that Licensee has not completely analyzed the effect of the steel plate on displacement in the Complex, in responding to Licensee's Interrogatory 12(d), CFSP cited "testimony at Phase I hearings." Licensee therefore asked CFSP to identify that testimony by witness and transcript page. CFSP did not answer the question.

Licensee is entitled to this information. It is no more than a request to CFSP to identify the bases for its allegation. Therefore, Licensee requests the Board to issue an order to

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CFSP compelling it to respond adequately and fully to Licensee's Interrogatory 18(c).

Conclusion

For the reasons set forth above, Licensee respectfully requests that the Board order CFSP to submit specific, direct and responsive answers to Licensee's Interrogatories 14, 15(a), (b), 16, 17, and 18.

Respectfully submitted,

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Dated at Washington, D.C.  
this 11th day of June, 1979.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

I hereby certify that on June 11, 1979, I served a copy of the Licensee's Motion for Order Compelling Intervenor Eugene Rosolie, Pro Se and Coalition for Safe Power to Respond Fully to Licensee's Second Set of Interrogatories, dated June 11, 1979, by placing a true copy of said document in a sealed envelope with postage fully prepaid, in the United States mail at Washington, D.C. addressed as follows:

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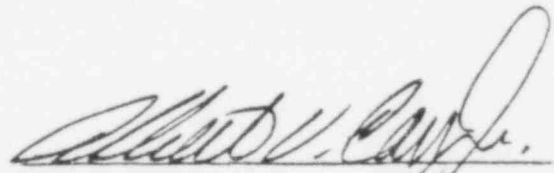
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