

4/24/13

ATOMIC ENERGY COMMISSION

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Docket Nos. 50-269A, ~~50-270A~~,  
50-287A, 50-369A,  
50-370A

On March 9, 1973, the Department, acting on a suggestion of the Board during the March 7, 1973, prehearing conference, filed a Special Request for Interrogatories regarding Applicant's filing system, to which Applicant objected in part and responded in part. On March 30, in light of the partial response, we reformulated our interrogatories in an effort to limit Applicant's task to a bare minimum. Applicant has once again objected.

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the same familiarity with the files as must Applicant, we nevertheless believe Applicant will be able to respond without undue burden. We limited our request to particular subjects so as to exclude consideration of such files as personnel, billing, and many others. Since these presumably constitute the great bulk of a power company's files, Applicant's task appears greatly reduced.

More important, Applicant, through its "fair and energetic effort" (described in detail in its objections and motion, p. 14 et seq.) to provide documents has apparently already expended many thousands of hours searching its files. It is inconceivable that during the course of this search Applicant has not obtained the information which the Revised Interrogatory seeks, i.e. a description of where documents on three specified subjects may be found, not, as Applicant would have the Board believe, a listing and description of 2,500,000 file folders. We merely request Applicant to report information it has already obtained and are not asking for a new file search.

Applicant's second ground for objection, "that no showing has been made that the information sought is 'reasonably calculated to lead to the discovery of admissible evidence' as required by Section 2.740(b)(1)" (Applicant's Objections and Motion, p. 2), is patently misconceived. First, the Board itself suggested this inquiry be made. Second, the entire purpose of the request is to ascertain the location

of documents or classes of documents with some degree of precision so as to enable the Department to comply with the Board's direction that further discovery requests be very specific. Third, Applicant, in alleging that the Department had an ulterior motive for propounding the interrogatory \*// concedes that admissible material may be uncovered.

The Department submits Applicant's further objections to the interrogatory are likewise totally without merit. First, the request regarding "policies toward adjacent electric systems" clearly is phrased with sufficient precision to enable Applicant to respond. Applicant's confusion apparently stems from its inability to comprehend the meaning of the word "policy." Webster's Third New International Dictionary defines the word "policy," inter alia, as "a definite course or method of action selected from among alternatives and in the light of given conditions to guide and usually determine present and future decisions." In other words, a policy is a decision-making criterion. To accept Applicant's confusion-objection would be to render all forms of communication inoperative. The interrogatory has a clear and unambiguous meaning.

Second, assuming arguendo that a request regarding "competing power systems" calls for legal characterization,

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\*/ "Applicant suspects that the Department of Justice hopes that a few file designations in the mass requested might point the Department to new directions in the inquiry, perhaps suggesting some significant incident of which the Department was previously unaware." (Objections and Motion, p. 12.)

this does not necessarily make the request defective. See for example United States v. Smith, 42 F.R.D. 338 (W.D.Mich. 1967); and Finman, The Request for Admission in Federal Civil Procedure, 71 Yale L.J. 371 (1962). In any event, the Department hereby specifies that the phrase "competing power systems," as used in our interrogatory, refers to the rural electric cooperatives and municipal electric systems within Applicant's service area. Clearly, a description of the files relating to these systems would in no way call upon Applicant to posit a legal characterization.

Finally, we believe that if Applicant is not compelled to make a proper answer to this interrogatory, it would be patently unfair for it to object, at some future date, to a discovery request by the Department on grounds that the request fails sufficiently to specify location or that it would require a burdensome search.

Respectfully submitted,



C. FORREST BANNAN

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Department of Justice

Washington, D. C.  
April 24, 1973

UNITED STATES OF AMERICA  
BEFORE THE  
ATOMIC ENERGY COMMISSION

In the Matter of	)	
	)	
DUKE POWER COMPANY	)	Docket Nos. 50-269A, 50-270A,
(Oconee Units 1, 2 and 3	)	50-287A, 50-369A,
McGuire Units 1 and 2)	)	50-370A

CERTIFICATE OF SERVICE

I hereby certify that copies of ANSWER OF THE DEPARTMENT OF JUSTICE TO APPLICANT'S OBJECTIONS AND MOTION; DEPARTMENT'S MOTION TO COMPEL APPLICANT TO ANSWER REVISED INTERROGATORY, dated April 24 1973, in the above-captioned matter have been served on the following by deposit in the United States mail, first class or air mail, this 24th day of April, 1973:

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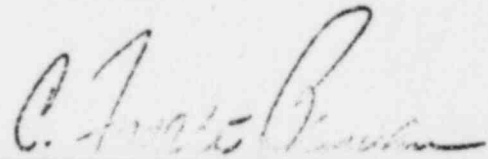


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