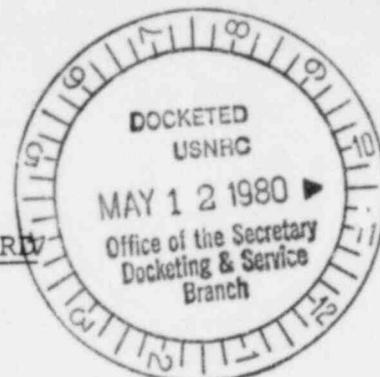


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



IN THE MATTER OF §
§
HOUSTON LIGHTING & POWER § DOCKET NOS. STN 50-498 OL
COMPANY, ET AL. § STN 50-499 OL
§
(South Texas Project §
Units 1 and 2) §

MOTION TO COMPEL CITIZENS FOR EQUITABLE UTILITIES TO PROVIDE FURTHER ANSWERS TO APPLICANTS' FIRST SET OF INTERROGATORIES

Introduction

On November 5, 1979, Houston Lighting & Power Company, Project Manager for the South Texas Project, acting on behalf of itself and the other Applicants, the City of San Antonio, Texas, acting by and through the City Public Service Board of the City of San Antonio, Central Power and Light Company and the City of Austin, Texas (hereinafter "Applicants") served its first set of interrogatories to intervenor Citizens for Equitable Utilities ("CEU"). Pursuant to a Memorandum and Order of this Board dated August 3, 1979, CEU was obligated to provide its answers or objections to these interrogatories by December 21, 1979, but did not do so until January 14, 1980. 1/ Believing that many of the answers

1/ CEU did not file a motion requesting an extension of time within which to file its responses, or otherwise inform the Board that it could not comply with the original filing date.

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provided by CEU were unresponsive and/or incomplete, Applicants thereupon filed a motion to compel CEU to respond further to their interrogatories. (Motion dated January 29, 1980). On March 7, 1980, the Board issued a "Memorandum and Order Ruling Upon Motions to Compel CEU to Respond to Interrogatories" in which it granted several of Applicants' requests for more complete and responsive answers. The Board's Memorandum and Order directed CEU to provide these further answers "within 30 days of the service of this Order." CEU filed its latest answers, which are the subject of this motion to compel, on April 23, 1980, some two weeks after the deadline imposed by the Board. Again, Applicants believe that CEU has not provided full and responsive answers to all of their interrogatories. Therefore, pursuant to 10 CFR §2.740(f), Applicants request the Board to grant this second motion and to issue an order compelling intervenor CEU to file new and complete responses to those of their first interrogatories specified below.

Identification of Individuals Furnishing Information
in Support of Contentions 1 and 2

In its initial response to Applicants' first set of interrogatories, CEU failed to provide any information relevant to contentions 1 and 2 regarding alleged QA/QC deficiencies at the South Texas Project site. Instead, CEU noted that it had encountered "an extremely emotional, almost irrational

fear" exhibited by past and present workers at the site who had "insisted that their names not be divulged" until a hearing date is set for this proceeding, and "their names [are] intermingled with a number of others to be called as witnesses." CEU's response to interrogatories relating to contention 4 reiterated that CEU had promised not to divulge the names of persons who had provided it with information. In its March 7 Memorandum and Order, the Board ruled that CEU could not properly base its failure to provide relevant information on the need to protect persons who were allegedly afraid of "reprisal" and directed that if CEU wished to protect such individuals it should seek a protective order from the Board.

CEU persists in its refusal to identify the individuals who furnished the information on which its contentions 1 and 2 apparently depend and fails to seek the protective order which the Board suggested might be appropriate in the circumstances. 2/ Applicants again move the Board for an order compelling CEU to answer the interrogatories relevant to contentions 1 and 2 which call for an identification of the individuals who furnished information to CEU which forms any part of the bases for such contentions.

2/ CEU's response appears to suggest that support for contentions 1 and 2 depends on information from persons whose identity is unknown to the intervenors. (CEU Response to Interrogatories p. 4 (April 23, 1980)). Whether this response is a substitute for its earlier answer which referred to individuals whose identity was known to CEU is unclear. If this response is such a substitution CEU should so state.

Contention 2, Interrogatories 2-4

In these interrogatories, Applicants sought to obtain the information in CEU's possession which forms the basis for this intervenor's contention that South Texas Project "construction records" have been falsified. As this Board pointed out in its March 7 Memorandum and Order, having proffered a contention alleging specific improper practices, an intervenor "presumably" would have information upon which it relied in submitting that contention. The Board ordered CEU to provide this information. CEU has now responded:

CEU has requested certain documents relating to the reports set out in contention 2. We were refused access to any of these documents during discovery. Applicants' attorney...refused said documents as "not relevant."

The documents in question were refused because they were not relevant to any contention in the proceeding. If CEU believed otherwise, its remedy is a motion pursuant to 10 CFR §2.740(f). In any event, Applicants' interrogatories sought only the most fundamental information forming the basis for CEU's contention concerning alleged falsification of records at the South Texas Project, including those persons alleged to have falsified records, the records actually falsified, and any prospective CEU witnesses. From the current state of the record, it appears that CEU proffered an unsupported contention hoping to later obtain evidence to support it by gaining general access to Applicants' files. To date, Applicants have not been provided any

information demonstrating that CEU had a basis for submitting contention 2. If CEU has no evidence to support its assertions of falsification of records in contention 2 it should so state. Applicants move the Board for an order compelling a response to Interrogatories 2-4.

Contention 4, Interrogatory 1

Applicants' interrogatory requested that CEU provide the names of all persons whom it intends to call as a witness on matters relating to contention 4. In its first set of answers, CEU responded that this contention is "integrated" with contentions 1 and 2 regarding alleged construction deficiencies at South Texas Project and that individuals who have provided information to CEU have requested that their names be withheld due to fear of retaliation. This fear, according to CEU, made it "imperative" that their names not be provided. In its March 7 Memorandum and Order, the Board, as in the case of CEU's refusal to answer interrogatories on contentions 1 and 2, ruled that CEU cannot on this basis withhold the names of individuals upon whom it relies, and stated that CEU should, if it wished, obtain an appropriate protective order.

CEU's latest answers make no mention of those individuals earlier claimed to have provided information to CEU relevant to this contention, nor has CEU requested a protective order

on their behalf. The Board has already ruled that Applicants have a right to obtain this information. It is therefore requested, again, that the Board compel CEU to provide their names and the information which they have provided to CEU regarding contention 4.

Contention 5, Interrogatories 3-7

In these interrogatories, Applicants sought some particularization of the basis for CEU's assertion that the Staff's treatment in the FES of bioaccumulation of radionuclides in aquatic organisms is inadequate or in error. Applicants also sought the identity of any person whom CEU intends to call as a witness on this contention. CEU earlier stated that "research and study has been initiated but not completed" and that the fruits of this ongoing work would be provided when concluded. As noted by the Board, CEU's response "failed to provide any substantive explanation for the claims it is making." The Board explained that CEU was not required to have completed its analysis and preparation of this contention but that it was at least expected to state the reasons why it concluded that the Staff's FES was in error.

CEU's latest response states that the real reason it has been unable to provide the requested information is that its offices have, twice (apparently in October and January), been entered and documents, calculations, and other unspecified relevant material stolen or destroyed.

Based upon CEU's own statements, it has been at least four months since this data was lost and CEU has made no effort to timely notify the Board of its difficulty. The Board has already had occasion to point out to this party that, if it finds itself unable to respond in accordance with the Board's orders it should so notify the Board and seek appropriate relief. (March 7 Memorandum and Order, fn. 1) CEU can no longer rest on the excuse that it is a pro se intervenor deserving of special treatment from the Board. At least, intervenor should have provided some specification of the material that was lost so that the parties and the Board could determine whether there is some basis for this contention.

CEU has now been requested twice to provide any information in its possession, or any calculations it has performed, which support its contention that the Staff has failed to properly consider the effects of bioaccumulation of radio-nuclides in aquatic organisms. Applicants again request that CEU be directed to provide a response to their interrogatories, setting forth any information in its possession which supports the allegation in contention 5.

Contention 6, Interrogatory 1

Applicants sought, in this interrogatory, all of the reasons, and the facts supporting them, upon which CEU relies

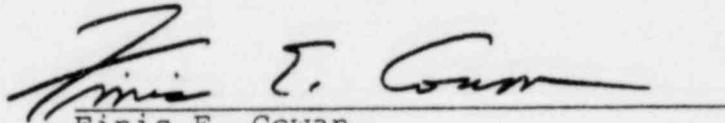
to support its assertion that the rate of deposition of radionuclides is affected by continuously high levels of humidity. CEU's answer is evasive and suggests that CEU is now attempting to substantially alter its contention. CEU's response wanders through various areas of concern. Initially intervenor states that it is concerned that due to "unusual" climate conditions at the site, the "generalized manner of calculating radionuclide deposition rates are [sic] in error." CEU then quotes from the "Geologic Atlas of the Texas Coastal Zone" which briefly discusses the interrelationship of wind, rains, evaporation and temperature on meteorological conditions in this area. The major portion of CEU's answer is designed to show that prevailing winds at the site for most of the year are from the southeast. Intervenor contends, in conclusion, "that the radionuclide deposition rate will vary in distance depending on which way the wind is blowing." The only subject not discussed in CEU's answer is the effect of high humidity on radionuclide deposition rates which is the subject of the contention. Applicants therefore request that CEU be directed to answer the interrogatory directly. The information provided is irrelevant and unresponsive. 3/

3/ If CEU wishes to change its contention to one alleging that the Staff and Applicants have not properly considered the effects of prevailing winds, or some other meteorological phenomenon in the vicinity of South Texas Project, it should submit a late-filed contention to that effect, addressing the five factors in 10 CFR §2.714(a).

Conclusion

Applicants hereby move the Board to grant this motion to compel further responses to interrogatories and to direct CEU to provide full and responsive answers to the interrogatories discussed above.

Respectfully submitted,



Finis E. Cowan
Melbert D. Schwarz
3000 One Shell Plaza
Houston, Texas 77002

Jack R. Newman
Robert H. Culp
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036

OF COUNSEL:
Baker & Botts
3000 One Shell Plaza
Houston, Texas 77002

Lowenstein, Newman, Reis,
Alexrad & Toll
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036

Attorneys for HOUSTON LIGHTING &
POWER COMPANY, Project Manager of
the South Texas Project, acting
herein on behalf of itself and
the other Applicants, THE CITY
OF SAN ANTONIO, TEXAS, acting by
and through the City Public Service
Board the City of San Antonio,
CENTRAL POWER AND LIGHT COMPANY
and THE CITY OF AUSTIN, TEXAS

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CERTIFICATE OF SERVICE

I hereby certify that copies of Applicants' Motion to Compel Citizens for Equitable Utilities to Provide Further Answers to Applicants' First Set of Interrogatories in the above-captioned proceeding, were served on the following by deposit in the United States mail, postage prepaid, or by hand delivery, this 8th day of May, 1980:

Charles Bechhoefer, Esq., Chairman
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. James C. Lamb, III
313 Woodhaven Road
Chapel Hill, North Carolina 27514

Dr. Emmeth A. Luebke
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Henry J. McGurren, Esq.
Hearing Attorney
Office of the Executive Legal Director
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Richard W. Lowerre, Esq.
Assistant Attorney General
for the State of Texas
P. O. Box 12548, Capitol Station
Austin, Texas 78711

Honorable Burt O'Connell
County Judge, Matagorda County
Matagorda County Court House
Bay City, Texas 77414

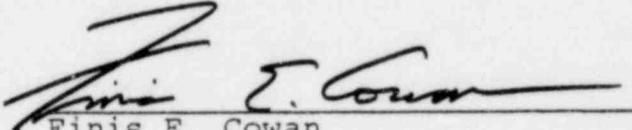
Mrs. Peggy Buchorn, Executive Director
Citizens for Equitable Utilities
Route 1, Box 432
Brazoria, Texas 77422

Steven A. Sinkin, Esq.
116 Villita
San Antonio, Texas 78205

Atomic Safety and Licensing Board Panel
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety and Licensing Appeal
Board Panel
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. Chase R. Stephens
Docketing and Service Section
Office of the Secretary of the
Commission


Finis E. Cowan

Dated: May 8, 1980