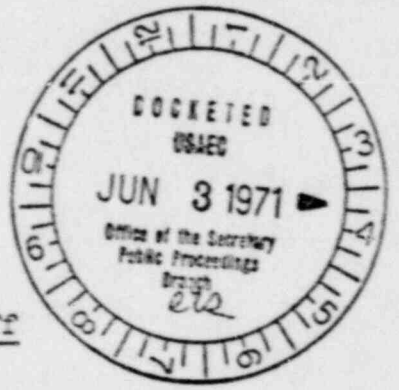
DOCKET NUMBER
PROD. & UTIL. FAC. 50-329 330

UNITED STATES OF AMERICA

ATOMIC ENERGY COMMISSION

In the Matter of	)	
	)	
CONSUMERS POWER COMPANY	)	Docket Nos. 50-329
	)	50-330
Midland Plant Units 1 and 2	)	



Rulings on Interrogatories Addressed to the AEC Staff

Intervenors have served a set of 336 interrogatories directed to the Atomic Energy Commission (AEC) and the Advisory Committee on Reactor Safeguards (ACRS).* The AEC staff, while conceding that it would be "willing to discuss a reasonable set of interrogatories," has generally objected on the ground that the interrogatories are "unreasonable and reflect a misconception as to the role of the staff" in a proceeding such as this. The basis of the staff position is the claim that to answer these interrogatories would require months of work and would disrupt the operation of the staff not only in this proceeding but in all other cases. The staff has also made specific objection to certain interrogatories. Applicant has supported the staff position and has also filed a

* These are in addition to interrogatories served on the applicant and other parties.

detailed set of objections. The staff, applicant and intervenors have filed extensive memoranda in support of their position. The Board has entered two interim orders directing that some of the interrogatories be answered and has reserved judgment on the rest.

The key to the problem posed by the interrogatories is that they are designed, in the main, not to elicit the underlying facts but to probe the staff's reason for their conclusion that the proposed reactor qualifies for a construction permit. The vice of the interrogatories is epitomized by No. 292 which would require the staff to "describe each fact, calculation and assumption" on the basis of which it concludes that fourteen separate systems "will be adequate to perform their intended functions." The interrogatory then goes on to require that the AEC make a detailed comparison of this to previously licensed reactors. In sum, what the intervenors seek in these interrogatories amounts to a written rationalization by the staff of each decision on safety which has been made in this and many other proceedings. To properly answer these interrogatories would, the Board is satisfied, require the staff to reexamine, rethink, and reconstruct at least two years of discussion, conferences, etc. on many diverse aspects of these complicated systems. It is perhaps not an exaggeration to say that complete answers to these interrogatories would require the staff to prepare a justification, intelligible to laymen, of

the whole history of the development of pressurized water reactors, without, in the Board's view making a significant contribution to safety.

Insofar as the interrogatories seek to probe the staff's decision process, Applicant has argued vigorously that they are objectionable under the so-called Morgan doctrine, as enunciated in United States v. Morgan, 313 U.S. 409 (1941). We believe that the reliance on the Morgan doctrine is misplaced. The conclusions of the staff here are not "agency decision" in the same sense as in the Morgan case. Nevertheless the Morgan and other cases are relevant as a recognition of the practical difficulties for administration posed by examinations into the underlying reasons for staff decisions. These difficulties are multiplied where a multitude of complex technical questions are involved. And the problems are exacerbated here by the fact that intervenors seem to be challenging not just this construction permit but the whole atomic energy program.

We conclude that whatever the permission to serve interrogatories contained in the regulations may mean, it cannot be construed to require that the staff prepare the kind of analysis that these interrogatories would impose.

On the other hand, the Board cannot accept the proposition that any inquiry into the adequacy of the staff review is inappropriate. Certainly the Board is not foreclosed from such an

inquiry because the proceeding is contested; and if the Board is not foreclosed neither are the intervenors. This does not mean that intervenors may examine into any such area to their hearts' content. The Board intends to control the degree of inquiry in line with the policies set forth in its order of March 3, 1971.

The Board's discussion of the general nature of the interrogatories does not, of course, dispose of the problem. In view of the failure of the staff to specifically object to most interrogatories, the Board is left with the choice between overly broad interrogatories and insufficiently detailed objections. At this stage of the proceeding it would not make sense to require intervenors to frame new, less burdensome, questions, or require the staff to file new objections. Given the expertise of the technical members it seems preferable for the Board to make its judgment on the basis of the documents already received. Accordingly the Board has carefully reviewed the interrogatories and has ordered certain interrogatories to be answered. Our criteria for decision included our view of the lines of inquiry likely to prove fruitful; consistency with the principles outlined earlier in this order; the availability of information from other sources; and the possibility of intervenors making their own calculations and analyses.

The interrogatories to be answered by the staff have been designated in earlier telegrams from the Board.

The objections to the remaining interrogatories are sustained. In addition to the general ground that many are overly broad and burdensome as outlined above, they are objectionable for the reasons set forth below.

1. Interrogatories 1-232. These interrogatories are duplicative of that served on applicant, the person with the primary obligation in this case.

2. All interrogatories addressed to the ACRS or to the staff involving its private communications to the ACRS. As indicated elsewhere, the value of the ACRS is, in the Board's view, wholly dependent on preserving uninhibited communication with the staff. It should also, of course, be noted that the ACRS is not a party to this proceeding and interrogatories addressed to it are improper.

3. All requests for the staff to make additional calculations and analyses are denied. Intervenors can make their own analyses and calculations if they feel the need.

4. A number of the interrogatories ask for detailed explanations and justifications of standard technical evaluations and judgments. For example, No. 254 would require a description in detail of considerations which underlie the conclusion that the

design is "acceptable with regard to core physics, thermal, hydraulic and mechanical design. Where appropriate, the Safety Evaluation Report describes the factors which the staff considered. If intervenors disagree with the conclusions reached, from the facts available they should demonstrate affirmatively why the conclusion was wrong. This observation is applicable to the following: 252, 253, 256-259, 261-264, 266, 269-275, 277, 278, 293, 295, 297, 298, 305-309, 311-315, 317.

5. No. 290, 291, 296, 301 and 302 ask for information which will be material at the operating license stage, or later, but need not be considered now.

6. No. 244-246, 248, 249, 276 and 281 ask for calculations as to theoretical doses and other matters which can be made by intervenors.

7. No. 233 is objectionable for the reasons given with respect to similar interrogatories addressed to other parties.

8. No. 239, 243 and 324 ask for information about matters not at issue in this proceeding.

9. No. 251, 279, 280, 282, 283, 285 and 286 seek information which the applicant is responsible for supplying.

10. No. 321, 323, 331 and 332 inquire about general AEC programs and are not specifically related to this proceeding.

11. No. 310, 327-330 ask for information contained in the Safety Evaluation Report.

12. No. 294 and 326 call for speculative answers on unknowable or hypothetical situations.

13. No. 287, 288 and 322 seek information pertinent to the basis for 10 CFR Part 20.

14. No. 260 and 300 would impose a substantial burden on the staff without any showing of need for further definition of the terms used by the staff.

15. No. 299 and 336 call for information available elsewhere and of doubtful materiality to this proceeding; 299(b) is objectionable, among other reasons, as overly-broad.

16. No. 335 has been answered.

17. No. 236, 238 and 337 are essentially a search for documents; the availability of documents and various assertions of privilege are the subject of separate motions. To the extent that No. 238 seeks the names of subordinates who performed evaluations, it is burdensome and unnecessary. Any questions can be asked of the panel of witnesses produced by the staff.

For the Atomic Safety and Licensing Board

June 1, 1971

Arthur W. Murphy, Chairman

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

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(Midland Plant, Units 1 and 2))

CERTIFICATE OF SERVICE

I hereby certify that copies of (1) Order with Respect to Environmental Defense Fund Offer of Proof dated June 1, 1971, and (2) Rulings on Interrogatories Addressed to the AEC Staff dated June 1, 1971, in the captioned matter have been served on the following by deposit in the United States mail, first class or air mail, this 3rd day of June 1971:

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