



September 30, 1980

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
TEXAS UTILITIES GENERATING)	Docket Nos. 50-445
COMPANY, <u>et al.</u>)	50-446
)	
(Comanche Peak Steam Electric)	(Application for
Station, Units 1 and 2))	Operating License)

APPLICANTS' (1) MOTIONS TO COMPEL AND TO REQUIRE
SUPPLEMENTATION OF CFUR'S ANSWERS TO
APPLICANTS' INTERROGATORIES AND REQUESTS
TO PRODUCE, AND (2) CLARIFICATION OF
CERTAIN INTERROGATORIES

Pursuant to 10 C.F.R. §§2.730(c) and 2.740(f), Texas Utilities Generating Company, et al. ("Applicants") hereby move the Atomic Safety and Licensing Board ("Board") in the captioned proceeding for an order compelling Citizens for Fair Utility Regulation ("CFUR") to respond to the Applicants' interrogatories and produce for inspection the documents requested in Applicants' First Set of Interrogatories to CFUR and Requests to Produce, filed August 13, 1980. Applicants also move that the Board order CFUR to supplement its responses to certain interrogatories and requests to produce. In addition, Applicants herein clarify certain interrogatories.

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I. Discovery

CFUR's responses and objections to Applicants' interrogatories and requests to produce reflect an apparent misconception of the purpose and scope of discovery in NRC licensing proceedings. Accordingly, Applicants summarize below important principles applicable to the discovery process which should serve as guidance to all parties in conducting discovery in this proceeding.

Discovery in litigation before the courts, as well as in NRC licensing proceedings, is intended to insure that "the parties have access to all relevant, unprivileged information prior to the hearing." Boston Edison Company (Pilgrim Nuclear Generating Station, Unit 2), LBP-75-30, 1 NRC 579, 582 (1975). Indeed, discovery in modern administrative practice is to be liberally granted "to enable the parties to ascertain the facts in complex litigation, refine the issues, and prepare adequately" for the hearing. Pacific Gas and Electric Company (Stanislaus Nuclear Project, Unit 1), LBP-78-20, 7 NRC 1038, 1040 (1978).

As to the scope of permissible discovery, it is well-settled that

interrogatories seeking specific information about the facts upon which a claim or contention is based are wholly proper, and that the party may be required to answer questions which attempt to ascertain the basis for his claim or, for example, what deficiencies or defects were claimed to exist with respect to a particular situation or cause.

[Pilgrim, supra, 1 NRC at 582 (footnote omitted).]

A party has the right to find out what the other parties know with respect to a particular contention, viz., the positions of adversary parties and the information available to those parties to support their position. Pennsylvania Power & Light Company, et al. (Susquehanna Steam Electric Station, Units 1 and 2), ASLB Memoranda and Orders, January 4, 1980, slip op. at p. 6 and August 27, 1979, slip op. at pp. 5-6. Discovery inquiries are limited only by the requirements that they be reasonably relevant to a sensible investigation, Pilgrim, LBP-75-30, supra at 582, and the information sought is reasonably calculated to lead to the discovery of admissible evidence, 10 C.F.R. §2.740(b)(1).

With respect to objections to discovery requests, the burden of persuasion is on the objecting party to show that the interrogatory should not be answered. Pilgrim, LBP-75-30, supra at 583. General objections are not sufficient. Id. Indeed, answers to discovery requests are important to a party's ability to prepare its case for trial, particularly in the case of an applicant's request for discovery because the applicant has the burden of proof. As was observed by the Licensing Board in Tyrone,

The Applicants in particular carry an unrelieved burden of proof in Commission proceedings. Unless they can effectively inquire into the positions of the intervenors, discharging that burden may be impossible. To permit a party to make skeletal contentions, keep the bases for them secret, then require

its adversaries to meet any conceivable thrust at hearing would be patently unfair, and inconsistent with a sound record. [Northern States Power Company, et al. (Tyrone Energy Park, Unit 1), LBP-77-37, 5 NRC 1298, 1300-01 (1977) (footnote omitted).]

Further, intervenors must be mindful of the distinction between the basis requirement regarding admission of Contentions (see 10 C.F.R. §2.741(b)), and the information necessary to avoid the disposition of issues on summary disposition (see 10 C.F.R. §2.749), or to win on the merits at the hearing. A Contention may be admitted in an NRC licensing proceeding even though it is not supported by sufficient bases or information (i.e., evidence) to overcome a motion for summary disposition or to succeed on the merits. See e.g., Houston Lighting & Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 549-51 (1980). Therefore, in responding to interrogatories concerning the basis for a particular Contention, intervenors should recognize that discovery requests in Commission proceedings apply to information and bases to support a claim or Contention in addition to whatever information served as a basis for admitting the Contention. Of course, if no further information is intended to be relied upon in support of a Contention, the intervenors should so respond.

Also, answers to interrogatories must be complete, explicit, and responsive. 4A Moore's Federal Practice

¶33.26. 1/ The Commission's Rules of Practice state that:

an evasive or incomplete answer
or response shall be treated as
a failure to answer or respond.
[10 C.F.R. §2.740(f).]

In particular, references by an intervenor, in response to specific interrogatories, to its petition to intervene in which is contained much argumentative and conclusory material, are not sufficient responses to discovery requests in NRC licensing proceedings. Pilgrim, supra, 1 NRC at 586. Intervenor's to these proceedings have a responsibility to specify the facts, i.e., the data, information and documents, if any, upon which they intend to rely so that parties may be advised in advance with regard to the nature of the intervenor's case. Id.

In addition, parties to an NRC licensing proceeding are under a duty to supplement their responses to discovery requests upon obtaining information not available at the time of the initial responses with respect to:

- (1) the identity and location of persons having knowledge of discoverable matters,...

1/ "The Commission's regulations are based upon and drawn generally from the Federal Rules of Civil Procedure governing discovery, Rules 26 through 33, and, in the main, employ language identical with, or similar to the language of the Federal Rules upon which the process is based. Accordingly, guidance may be had from the legal authorities and court decisions construing the Federal Rules on discovery." Pilgrim, supra, LBP-75-30, 1 NRC at 581.

- (2) the identity of each person expected to be called as an expert witness, including the subject matter...and substance of his testimony, and
- (3) responses which are found to be incorrect when made or which are no longer true (although correct when made) and a failure to amend those responses is in substance a knowing concealment.

[See 10 C.F.R. §2.740(e)]

This duty imposes a continuing burden to supplement responses to discovery requests with respect to the categories of information noted above. CFUR has evidently misinterpreted the above provision because it states that it is not waiving its "right" to supplement its incomplete answers to Applicants' discovery requests. Applicants urge CFUR to recognize its duty to supplement answers to discovery requests, and to do so consistent with the NRC Rules of Practice.

Finally, intervenors must conduct their participation in NRC licensing proceedings in a responsible manner. As the Supreme Court has stated, in a nuclear licensing proceeding:

. . . it is still incumbent upon intervenors who wish to participate to structure their participation so that it is meaningful, so that it alerts the agency to the intervenors' position and contentions. [Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978)].

Discovery is one of the principal means for achieving such

meaningful participation. Susquehanna, ASLB Memorandum and Order (January 4, 1980), supra, slip op. at 3.

II. Applicants' Motion to Compel

CFUR has objected to several interrogatories and its answers to other interrogatories are inadequate to satisfy the NRC Rules of Practice. Accordingly, Applicants move that the Board issue an order compelling CFUR to provide full and complete responses to Applicants' interrogatories, 2/ as follows:

A. Interrogatories 1, 64, 73, 88, 89, 93 and 133

These interrogatories involve the following request:

- a. Please state in your own words the meaning of Contention _____.
(Interrogatories 1, 64, 93 and 133)
- b. Please state in your own words the meaning of " _____".
(Interrogatories 88 and 89)
- c. What do you mean by "Applicants' failure to adhere?"
(Interrogatory 73)

CFUR responds to these interrogatories by stating that the Contention to which the interrogatory applies is already in

2/ CFUR responded to several interrogatories as being "not applicable" to its responses. In most of these instances the interrogatories are questions which build on answers to interrogatories which CFUR has not answered. Thus, where CFUR is ordered to respond to particular interrogatories, Applicants urge the Board to require CFUR to also respond to the follow-up interrogatories that CFUR has answered as being "not applicable".

its own words, CFUR merely repeats the language of the Contention or CFUR says these are the Board's words and CFUR does not know their meaning. CFUR does not state any objection to these interrogatories.

CFUR has evidently failed to recognize the distinction between the requirements for wording of Contentions for admission in this proceeding and for specification of the issues to be litigated at the hearing. While a Contention need only be set forth with reasonable specificity to be admitted (see 10 C.F.R. §2.714(b)), the precise issues and claims of admitted Contentions must be further specified to enable the Applicants to prepare their case. Pilgrim, supra, 1 NRC at 582. One of the principal purposes of discovery is to refine the issues for the hearing, Stanislaus, supra, 7 NRC at 1040, in more precise terms than set forth in the skeletal Contentions admitted by the Board, see Tyrone, supra, 5 NRC at 1300-01. The above interrogatories are clearly intended to determine the precise claims and issues to be raised by CFUR with respect to each Contention. CFUR's answers evade the obvious intent of the interrogatories and must be treated as a failure to repond. 10 C.F.R. §2.740(f).

For the foregoing reasons, Applicants move that the Board issue an order compelling CFUR to promptly respond to interrogatories 1, 64, 73, 88, 89, 93 and 133.

B. Interrogatory 12, et al.

Numerous interrogatories involving the following question receive identical answers from CFUR. The interrogatories provide, as follows:

What is your basis (legal and/or other) for your response to Interrogatory _____?

CFUR claims these interrogatories are "ambiguous and confusing." CFUR also objects to these interrogatories if they are intended to inquire about the legal theories of CFUR.

Applicants are requesting in these interrogatories that CFUR identify the legal or technical support for its positions in this proceeding. Applicants only seek the legal or technical bases for CFUR's claims, Pilgrim, supra, 1 NRC at 582, and the information available to CFUR to support its positions, Susquehanna, supra, ASLB Memoranda and Orders. Such bases or information may be in the form of technical information to support a particular technical position, or in the form of regulations or statutory requirements which CFUR claims Applicants have not, but must, satisfy. Applicants are entitled to such information to permit them fairly to prepare their case for the hearings. Tyrone, supra at 1300-01. Consequently, in that these interrogatories request in a clear and straight-forward manner information that is required to be supplied in NRC licensing proceedings, CFUR's claims of not being able to understand the interrogatory is simply evading a response.

For the foregoing reasons, Applicants move that the Board issue an order compelling CFUR to respond to these interrogatories.

C. Interrogatories 5, 67, 97 and 137

CFUR objects to four interrogatories posed with respect to each of four Contentions, which are, as follows:

What are the dates of the meetings or contacts you have had with the other intervening parties with respect to Contention ___? Please specify the purpose of such meetings or contacts and the results of such meetings or contacts.

CFUR generally objects to these interrogatories as not being relevant and as constituting an undue burden on and harassment of CFUR.

Contrary to CFUR assertions, each interrogatory is relevant to the subject matter involved in this proceeding. Each interrogatory relates only to meetings or contacts with respect to a specified Contention. The information sought clearly is intended to lead to the discovery of admissible evidence (see 10 C.F.R. §2.740(b)(1)) since it will enable Applicants to determine whether they should pursue discovery against parties other than CFUR with respect to CFUR's Contentions. Discovery from parties other than the party raising the Contention is permitted by Commission regulations. See 10 C.F.R. §2.740(b)(1). Applicants are asking only that CFUR indicate whether such meetings have occurred with respect to a particular Contention and whether such meetings or contacts resulted in agreements or understandings that

other parties would aid CFUR in preparing for the hearings, or provide information to CFUR regarding the particular Contention, and if so, the extent of such aid or the nature of such information. In other words, Applicants want to know if other parties may play some role in the presentation or preparation of CFUR's position on its Contentions so that Applicants can decide whether to pursue discovery against those parties. CFUR's generalized objections clearly fail to meet its burden of persuasion with respect to objecting to interrogatories. Pilgrim, supra, 1 NRC at 583.

For the foregoing reasons, Applicants move that the Board issue an order compelling CFUR to respond to interrogatories 5, 67, 97 and 137.

D. Interrogatories 6, 63, 98 and 138

These interrogatories each ask, in essence, the same question with respect to four Contentions, as follows:

Have you met with or contacted any other individual or group with respect to Contention ____? If so, please identify that individual or group and indicate the reason for those meetings or contacts, the dates of those meetings or contacts and the results of those meetings or contacts.

CFUR responds to these interrogatories by indicating either that no meetings or contacts have occurred or that one or more (unspecified) meetings or contacts took place with (unspecified) results that contributed to CFUR's position on the Contentions. CFUR indicates it will make

available the names of individuals who have substantive information and who agree to present direct testimony, yet CFUR objects to supplying the names of any consultants until they agree to present direct testimony. CFUR also claims that disclosure of the names of persons who have met with CFUR would subject those persons to an invasion of their privacy.

CFUR has misinterpreted the scope of these interrogatories. Applicants are seeking information regarding individuals or groups upon which Applicants may wish to conduct discovery. Applicants are entitled to seek discovery regarding the identity of persons who have knowledge of any discoverable matter, 10 C.F.R. §2.740(b)(1), including the names of persons from whom CFUR has obtained information or otherwise interviewed in the course of preparing for the hearing. 4 Moore's Federal Practice ¶26.57[1], p. 26-198. Discovery from persons other than parties is contemplated by Commission regulations. See 10 C.F.R. §2.740(c), (f)(3) and 2.720(f); see also, Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-118, 6 AEC 263; ALAB-122, 6 AEC 322 (1973). CFUR's stated intention to supply only the names of individuals who will present direct testimony is therefore contrary to the rules of discovery in this proceeding.

Further, CFUR's concern as to a potential for invasion of privacy of individuals with whom CFUR has met is

unfounded. CFUR fails to identify how the disclosure in this proceeding of the names of persons with knowledge of discoverable material could in any way lead to an invasion of their privacy. CFUR's general claims based on events involving one of its former members do not justify CFUR's refusal to respond to proper discovery requests. These objections do not satisfy CFUR's burden of proof for objecting to discovery requests. Pilgrim, supra, 1 NRC at 583.

For the foregoing reasons, Applicants move this Board to issue or order compelling CFUR to respond to Interrogatories 6, 68, 98 and 138.

E. Interrogatories 24, 25, 27, 28, 30, 31, 63, 74, 76(a) and (b), 80, 81, 82, 85 and 90.

Applicants posed several interrogatories which requested that CFUR specify the particular NRC licensing requirements which CFUR contends Applicants have not, but must, satisfy, or ask what CFUR contends Applicants must do to satisfy the allegations in particular Contentions. CFUR's responses consist of general assertions that Applicants must "comply with applicable statutes and regulations," (Interrogatories 24, 25, 27, 30, 31 and 74), that CFUR must complete discovery before it can respond (Interrogatories 81 and 82), that refer to CFUR's Petition to Intervene (Interrogatories 76(a), (b) and 90), that the interrogatory is ambiguous (Interrogatories 63 and 80) or the answer is not responsive to the question (Interrogatory 85).

Each of the above interrogatories seek information which Applicants may properly seek through discovery, viz., the precise deficiencies or defects which CFUR claims to exist. Pilgrim, supra, 1 NRC at 582. Interrogatories which seek to determine the positions of adversary parties on particular Contentions must be answered. Susquehanna, supra, ASLB Memoranda and Orders. Indeed, discovery requests consisting of interrogatories that are designed to ascertain the facts and refine the issues are to be liberally granted. Stanislaus, supra, 7 NRC at 1040. In any event, evasive and incomplete answers are to be treated as failures to respond, 10 C.F.R. §2.740(f), as are simple references to petitions to intervene, see Pilgrim, supra, 1 NRC at 586.

Each of CFUR's answers to these interrogatories is insufficient. Simple claims that applicable statutes and regulations must be complied with are clearly evasive responses. Asserting that discovery must be conducted before CFUR can respond is an incomplete response in that CFUR should have some position as to what NRC licensing requirements it claims are not satisfied. References to its petition to intervene are not adequate responses. CFUR's claim that Interrogatories 63 and 80 are ambiguous is also an evasive response. Both interrogatories clearly request CFUR to identify the requirements which NRC imposes as a condition of licensing that are not satisfied as alleged by CFUR in Contentions 2 and 5. Finally, CFUR's response to Interrogatory 85 is obviously evasive.

For the foregoing reasons, Applicants move that this Board issue an order compelling CFUR to provide complete responses to Interrogatories 24, 25, 27, 28, 30, 31, 63, 74, 76(a) and (b), 80, 81, 82, 85 and 90.

F. Interrogatories 33, 77, 104, 112(e), 115, 120, 122, 149 and 150.

CFUR has supplied incomplete, evasive or otherwise inadequate responses to several interrogatories with respect to four Contentions. While CFUR has provided responses to and has not objected to those interrogatories, the responses fail to properly answer the question posed in each interrogatory. Applicants hereby move this Board to issue an order compelling CFUR to submit complete and responsive answers to the interrogatories discussed below.

1. Interrogatory 33

Applicants seek to discover in this interrogatory the particular "conclusions" based upon the computer codes (which CFUR challenges in Contention 2) which CFUR claims are "invalid". CFUR responds by referring to an answer to a previous interrogatory, which involves CFUR's general concept of what should be the purpose of the computer codes. CFUR's response is evasive. Applicants clearly seek the specific deficiencies or defects, if any, that CFUR claims with regard to the challenged computer codes. Pilgrim, supra, 1 NRC at 582. CFUR's response is obviously an evasive and insufficient answer under the NRC Rules of Practice. See 10 C.F.R. §2.740(f).

2. Interrogatory 77

Applicants seek to discover in this interrogatory the specific actions CFUR claims in Contention 5 that Applicants must take, but which they have not taken, to satisfy 10 C.F.R. Part 50, Appendix B. CFUR simply responds that Applicants must "cease violations and take necessary and proper corrective action." Applicants clearly are asking in this interrogatory what are the "violations" and "corrective actions" to which CFUR vaguely refers. CFUR's response is obviously not sufficiently explicit to constitute a satisfactory response to this interrogatory. 10 C.F.R. §2.740(f).

3. Interrogatories 104, 112(e), 115, 120 and 122

Applicants are seeking in these interrogatories the precise actions CFUR claims in Contention 7 that Applicants must take, but which they have not taken, to "adequately evaluate" the impact of "fissure repair" and/or "rock overbreak." Applicants also seek specification of CFUR's allegations as to any improper actions already taken by Applicants. Applicants are clearly requesting that CFUR specify its claims, Pilgrim, supra, 1 NRC at 582, in order to refine the issues for the hearing, Stanislaus, supra, 7 NRC at 1040. CFUR only responds that Applicants should "conduct further seismic analysis," and CFUR "has reason to believe that loose rock material was thrown into the excavation prior to the pouring of concrete." CFUR's answers

are clearly incomplete and fail to respond completely to Applicants' inquiries as required by 10 C.F.R. §2.740. CFUR should identify the precise manner, scope and purpose of the "seismic analysis" it claims should be performed and the basis for and impact claimed with regard to its allegation concerning "loose rock material."

4. Interrogatories 149 and 150

These interrogatories seek specification of the substance of CFUR's claims in Contention 8 with regard to the drawdown of groundwater. Interrogatory 149 wants to know the precise effects CFUR claims will be caused by the drawdown of groundwater. CFUR responds that there would be "undesirable consequences". This answer is obviously not complete, explicit or responsive to Interrogatory 149. Interrogatory 150 wants to know how CFUR believes drawdown should be measured so that Applicants can determine if CFUR believes improper measurements are part of CFUR's claim of inadequate evaluation. CFUR simply responds generally as to the effects measurements should not have, regardless of how they are conducted. Again, CFUR has evaded the thrust of the interrogatory, and the response is obviously inadequate under 10 C.F.R. §2.740(f).

For the foregoing reasons, Applicants move this Board to issue an order compelling CFUR to provide complete, explicit and responsive answers to Interrogatories 33, 77, 104, 112(e), 115, 120, 122, 149 and 150.

III. Motion For Order Requiring Supplementation of Responses

Many of CFUR's responses to interrogatories merely state either that information is not available "at this time," the answer to the interrogatory is unknown "at this time" or CFUR must conduct discovery in order to supply an answer. CFUR does not otherwise object to the interrogatories. In order to promote efficient discovery in this proceeding, Applicants move that the Board issue an order pursuant to 10 C.F.R. §2.740(e)(3) requiring CFUR to supplement, as necessary, its response to the following interrogatories. 3/

A. Interrogatories 2, 65, 94 and 134

These interrogatories involve the following question:

What is your basis for Contention ___?
Please list all documents not elsewhere identified upon which you intend to rely with respect to Contention ___. Please provide copies of all such documents for inspection and copying.

CFUR responds to these interrogatories by claiming that in the absence of discovery from Applicants, CFUR is not able to respond fully at this time. CFUR lists,

3/ Applicants do not move for an order requiring supplementation of interrogatories which request the identity of witnesses, the subject matter of their testimony and the substance of that testimony in that CFUR is already clearly required to do so by the NRC Rules of Practice, 10 C.F.R. §2.740(e)(1), and Applicants assume CFUR will abide by that requirement. (Interrogatories 8, 9, 10, 69, 70, 71, 100, 101, 102, 140, 141 and 142.)

as documents upon which it intends to rely, CFUR's May 7, 1979 Petition For Leave To Intervene, its April 10, 1980 Report on Each Contention, and the Pre-Hearing Conference Transcript of April 30, 1980. CFUR does not object to these interrogatories.

CFUR's answers to these interrogatories are obviously incomplete and insufficient responses to proper discovery requests. Mere reference by an intervenor to its petition to intervene is not a sufficient response to discovery requests in NRC licensing proceedings. Pilgrim, supra, 1 NRC at 586. Applicants must be able to inquire into the bases for the intervenors' position on its Contentions (as distinct from the basis required for admitting a Contention (10 C.F.R. §2.714(b)) in order to prepare Applicants' case and to assure a sound record. Tyrone, supra, 5 NRC at 1300-01. Intervenors have a responsibility to supply in response to proper discovery requests the data, information and documents, if any, upon which they intend to rely for their position on each Contention so that parties can be advised in advance of the hearings as to the nature of Intervenor's case. Pilgrim, supra, 1 NRC at 586. CFUR's responses to these interrogatories are not, therefore, satisfactory under the NRC Rules of Practice.

Further, an order requiring CFUR to supplement its responses to these interrogatories would be desirable in

this proceeding because it would promote efficient discovery in that when, and if, CFUR further identifies its bases for its position on each Contention and obtains documents in support of its positions CFUR would merely respond to the interrogatories without necessitating unnecessary resubmission of the interrogatories and answers thereto.

For the foregoing reasons, Applicants move this Board, pursuant to 10 C.F.R. §2.740(e)(3), for an order requiring CFUR to supplement its responses to Interrogatories 2, 65, 94 and 134 as documents become available and CFUR determines the bases for its position at the hearing on each Contention.

- B. Interrogatories 3, 4, 7, 11, 13, 16, 18, 21, 34, 37, 38, 40(b), 50, 51, 57, 61 (response under first "62"), 66, 72(a), 76(a) and (b), 79, 81, 84, 92, 95, 96, 99, 103, 106, 109, 112(a) and (e), 113, 117, 119, 124, 128, 130, 131, 135, 136, 139, 143(a), 144, 146, 148, 153, 154, 158, 161 and 164.

These interrogatories seek information on a number of topics with regard to four Contentions. CFUR has responded to these interrogatories by indicating that it does not have the information requested, its answer is unknown or not determined (in whole or in part) at this time, the information requested is being developed but is not yet completed, or that it must conduct discovery before it will be able to supply an answer. CFUR does not object to these interrogatories except to the extent a request for

the basis for CFUR's response is also sought, which objections are dealt with above in Section II.B.

Each of these interrogatories seeks information necessary to enable Applicants to refine the issues, prepare adequately for the hearing, Stanislaus, supra, 7 NRC at 1040, and to ascertain the facts upon which CFUR's Contentions are based. Pilgrim, supra, 1 NRC at 582. Applicants are merely seeking to effectively inquire into the positions of CFUR on its Contentions. Tyrone, supra, 5 NRC at 1300-01.

While CFUR may nonetheless be required to supplement its responses to each of the above interrogatories pursuant to the requirements of 10 C.F.R. §2.740(e), Applicants believe that a clear and precise requirement imposed by order would serve to eliminate the potential for disagreement between CFUR and Applicants as to the timing and substance of supplementing responses. Further, a more efficient discovery process would be created if CFUR would supplement, as necessary, the information requested by Applicants in clearly proper interrogatoires as such information is developed and ascertained by CFUR. If the Board grants this motion, unnecessary resubmission of interrogatories would be avoided and CFUR would not have to resubmit responses to interrogatories until information became available for it to

do so. Granting this motion would clearly be a means to permit Applicants to effectively inquire into the positions of CFUR, to prepare its case for the hearing and to more likely assure the development of a sound record. Tyrone, supra, 5 NRC at 1300-01.

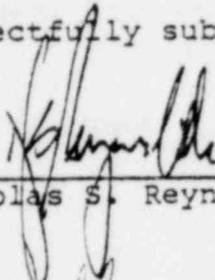
For the foregoing reasons, Applicants move that the Board issue an order requiring CFUR to supplement its responses as information is obtained or developed with regard to the above listed Interrogatories.

IV. Clarification of Certain Interrogatories

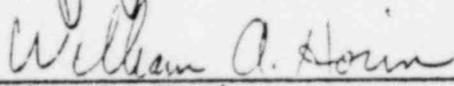
CFUR indicates that it is unable to respond to Interrogatory 43 (and evidently the follow-up Interrogatories 44 and 45) because it considers the wording ambiguous. Applicants seek in Interrogatories 41 through 46 to discover whether CFUR believes the Board should take any particular measures to review any of the computer codes and reports CFUR challenges in Contention 2. Applicants pursue this line of inquiry because CFUR indicated in its April 10, 1980, Report on Contentions that there has not been a "formal review" of the computer codes and reports challenged by CFUR and there is no basis for assuming that the Staff will "adequately review" the computer codes and reports. CFUR's

Report, Enclosure 1 at 1-3. Applicants are merely seeking to determine the type of "formal review" CFUR claims should be conducted with regard to computer codes and reports, including whether CFUR believes the Board should have some special role, if any, in that review.

Respectfully submitted,



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September 30, 1980

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Applicants' (1) Motion To Compel And To Require Supplementation Of CFUR's Answers To Applicants' Interrogatories And Requests To Produce, And (2) Clarification Of Certain Interrogatories," in the captioned matter were served upon the following persons by deposit in the United States mail, first class postage prepaid this 30th day of September, 1980:

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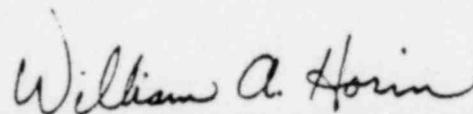
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