

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
CONSUMERS POWER COMPANY	)	Docket No. 50-155
	)	(Spent Fuel Pool Modification)
(Big Rock Point Plant)	)	

NRC STAFF OBJECTIONS TO  
INTERROGATORIES OF JOHN O'NEILL, II

The Staff of the Nuclear Regulatory Commission (Staff) objects to certain interrogatories on the grounds that:

- 1) They are not relevant to the matters in controversy in this proceeding and would be extremely burdensome to answer; and
- 2) They require the Staff to perform research or compile data not readily known to it.

I. RELEVANCE

According to the Commission's regulations the scope of discovery is limited to those matters relevant to the issues in controversy in a proceeding. 10 C.F.R. § 2.740(b)(1). Matters in controversy are those matters which have been identified by the Commission or the presiding officer in the prehearing order after the conclusion of the prehearing conference. Id. See Pennsylvania Power and Light Company and Alleghany

Electric Cooperative, Inc. (Susquehanna Steam Electric Station, Units 1 and 2) ALAB-613 (September 23, 1980), slip op. at 6;<sup>1/</sup> Allied General Nuclear Services (Barnwell Fuel Receiving and Storage Station), LBP-77-13, 5 NRC 489 (1977). See also 4A Moore's Federal Practice, Para. 33.20. The fact that the interrogatories in question would require the Staff to collate and present information on approximately 50 previous spent fuel pool modifications makes many of them extremely burdensome to answer. In the case where the relevancy of an interrogatory is questionable and the burden of answering them is heavy, the interrogatory is objectionable. See Moore, supra, at para. 33.20. "Where the burden is heavy, where a segregation and analysis of a great mass of material is necessary, or where data and information must be compiled and collated, some, and perhaps the greatest share, of that burden and effort should fall on the party seeking the information." Moore, supra, at para. 33.20, citing Tytel v. Richardson - Merrell, Inc. (SDNY 1965) 37 FRD 351, 9 FR Serv 2d 33.321.

Interrogatories 1(a), 1(b), 1(c), 1(i), 1(j), and 1(k) request information concerning other spent fuel pools for which modifications have been approved such as their names, ages, operators, original capacity, and expanded capacity. It is not readily apparent to the Staff that this information would be relevant to any of the contentions presently admitted as matters in controversy in this proceeding.<sup>2/</sup>

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<sup>1/</sup> For your information the term "slip op." means slip opinion. These are opinions which have been issued, but which are not yet published in the official NRC reporter.

<sup>2/</sup> Without waiving this objection the Staff is providing the information since it is readily available in summary form and has previously been provided to Congress and to Intervenor O'Neill.

Interrogatory 1(d) requests the names of owners of other spent fuel pools where expansions have been granted if they are different from the names of the operators of those pools. The Staff can find no contention to which names of these non-operating owners would be relevant.

Interrogatory 1(e) relates to the different types of fuel stored in other expanded spent fuel pools. There is no presently admitted contention in the Big Rock proceeding which relates to the fact that different types of fuel may be stored in the Big Rock pool, or in the spent fuel pool of any other facility. Therefore, the Staff does not believe that this interrogatory is relevant to a matter in controversy in this proceeding. In addition a response to this interrogatory would necessitate a search by the Staff of a large number of Staff and Applicant documents. This would be an extremely burdensome undertaking. Since this interrogatory is of questionable relevance, the burden would not be justified.

Interrogatory 1(g) asks for information as to whether the future storage of mixed oxide fuel will be permitted in other expanded fuel pools.

Interrogatory 1(f) asks whether mixed oxide fuel is stored in each of the spent fuel pools for which an expansion has been approved. Interrogatory 1(h) asks whether the storage of mixed oxide fuel is now permitted in other spent fuel pools for which expansions have been granted. There are no presently admitted contentions relating to the fact that mixed oxide fuel is stored in the Big Rock spent fuel pool or in the spent fuel pools of other facilities.

Therefore, the Staff objects to these interrogatories as not being relevant to any matters in controversy in this proceeding.<sup>3/</sup>

Interrogatory 1(l) requests information as to the type of racks used in other spent fuel pools for which expansions have been granted. Interrogatory 1(m) asks how these racks differ from the original racks used in those pools. Interrogatory 1(n) requests information as to whether the fact that different types of fuel are stored in a given pool means that a different rack design is employed to accommodate such fuel. Interrogatory 1(o) asks for the names of manufacturers of the racks used in other expanded spent fuel pools and Interrogatory 1(p) requests the names of the installers of such racks and Interrogatory 1(q) questions how the old racks in the other spent fuel pools were removed. It is not readily apparent to the Staff that these interrogatories are relevant to matters in controversy in this proceeding since they do not relate to the Big Rock spent fuel pool. In addition it would be extremely burdensome to respond to these interrogatories because the response would require a detailed search by the Staff of the documents relating to these individual cases. Since the interrogatories

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<sup>3/</sup> In the case of Interrogatory 1(f) the Staff has provided the names of those plants which have used mixed oxide fuel in order to aid Intervenor O'Neill in his future research. This information is provided without any intent to waive the Staff's relevance objection.

are of questionable relevance to the proceeding, the imposition of such a burden upon the Staff would be unjustified.

Interrogatories 1(s) and 1(t) relate to the times at which other spent fuel pool modifications were commenced and the times at which such modifications were finished. It is not apparent to the Staff that these interrogatories are relevant to any matters in controversy in this proceeding. To respond to such interrogatories would be extremely burdensome, since to respond would require a search of both the Applicant's and the Staff's documents pertaining to the individual cases. The performance of such a search by the Staff is not justified, since the interrogatories are of questionable relevance.

Interrogatories 1(u) through 1(y) relate to events occurring at other spent fuel pools, and possible releases of radioactivity. It is not readily apparent to the Staff how the occurrence of such events at other facilities relate to the admitted contentions in this proceeding. Therefore, these interrogatories are not relevant to matters in controversy. In addition such interrogatories would be extremely burdensome, in that they would require the search of massive amounts of material pertaining to each individual case. Since these interrogatories are of questionable relevance, such a burden would not be justified.

Interrogatories 1(z) and 1(ff) through 1(hh) request the names and addresses of Intervenor and witnesses in all other spent fuel pool modification proceedings, identification of the documentary evidence presented in those proceedings, and the appeals taken from those proceedings. The Staff does not believe that such information is relevant to any of the presently admitted contentions in this proceeding. In addition the gathering of such information would be extremely burdensome, in that it would require a search at least of the initial decisions in these other contested spent fuel pool modification cases, and perhaps a search of the record in each case. Since these interrogatories are of questionable relevance to matters in controversy in this proceeding, the Staff does not feel that the burden of responding to them is justified.

Interrogatory 1(aa) requests information concerning whether or not spent fuel pool expansion always requires a license amendment. This interrogatory is not relevant to any of the admitted contentions in this proceeding and is, therefore, objectionable.

Interrogatories 1(bb) through 1(ee) request information concerning whether any particular spent fuel pool is permitted to accept spent fuel pool from other facilities, and whether spent fuel from other facilities is actually being stored in any of the expanded spent fuel pools. There are no contentions admitted as matters in controversy in this proceeding which

relate to the storage of spent fuel from other facilities at Big Rock or at any other facility. Therefore, these interrogatories are not relevant to any matters in controversy in this proceeding. In addition the burden of reviewing at least the licenses involved in each spent fuel pool modification request would not be justified since these interrogatories are of questionable relevance.

Interrogatory 2 requests information concerning any spent fuel pool modifications which have been denied. It is not readily apparent to the Staff that this interrogatory is relevant to any of the matters in controversy in this proceeding. 4/

Interrogatory 3 requests detailed information concerning spent fuel pool modification requests which are still pending. It is not readily apparent that such information would be relevant to any admitted contentions in the Big Rock proceeding. In addition, it would be burdensome for the Staff to respond to Interrogatories 1(l) through 1(q) and 1(e) through 1(h) with regard to these applications since it would necessitate a search of the documents prepared in each individual case. Since this interrogatory is of questionable relevance, the imposition of such a burden is not justified. 5/

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4/ As indicated by the Staff's response to this interrogatory no spent fuel pool applications have been denied. The Staff has provided this information since it was readily available. This does not, however, constitute a waiver of the Staff's relevance objection.

5/ Certain information relating to the category of modification requests mentioned in Interrogatory 3 has been provided by the Staff since it was readily available. This does not, however, constitute a waiver of any objection to this interrogatory.

## II. COMPILATION OF DATA

The case law surrounding discovery, the Commission's regulations and Commission case law itself do not require the Staff to compile data not readily known to it, at least if the data in question is equally available to the interrogating party. Boston Edison Co. (Pilgrim Nuclear Generating Station, Unit 2), LBP-75-30, 1 NRC 579, 584 (1975). See also Houston Lighting and Power Company (South Texas Project, Units 1 and 2), LBP-80-11, 11 NRC 477, 478 (1980). The Commission's regulations require that documents relevant to licensing proceedings be made routinely available in the NRC Document Room. 10 C.F.R. § 2.790(a). This public document room is located at 1717 H Street, N.W., Washington, D. C. 20555. The Staff has done so with regard to the Big Rock spent fuel pool modification proceeding. There is also good reason to believe that all data relevant to other spent fuel pool modification requests is located in this same public document room. Therefore, the data in question in these interrogatories are equally available to the Staff and to the Intervenors. Pennsylvania Power and Light Company and Allegheny Electric Cooperative (Susquehanna Steam Electric Station, Units 1 and 2), LBP-79-31, 10 NRC 597, 605 (1979).

Interrogatory 1(e) requests information as to the types of fuel stored in each spent fuel pool for which an expansion has been approved. Such information is not maintained by the NRC in summary form. To gather this



information a search would have to be made of the docket file for each expansion. These files are found in the NRC Public Document Room in Washington, D.C., where they may be inspected and copied. This interrogatory would require research and compilation of data not required by the Commission's regulations or case law. Therefore, this interrogatory is objectionable.

Interrogatories 1(f) through 1(h) request information as to whether mixed oxide fuel is or will be stored in every expanded spent fuel pool. Such data is not readily known to the Staff, and would have to be compiled by reviewing every Applicant or Staff document relating to such an amendment request. These documents are available for inspection and copying in the Public Document Room, thus making them equally available to the Intervenors. Such a compilation of data is not required and thus, an interrogatory requiring such compilation is objectionable. 6/

Interrogatories 1(l) through 1(q) request information concerning the rack design for every expanded spent fuel pool, how these racks differ from the original racks in those pools, how the original racks were removed from other spent fuel pools, the names of the manufactures of such racks and the names of the installers of such racks. Such data are not maintained by the Staff in summary form and so would not be

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6/ With regard to Interrogatory 1(f) this objection is not waived by the Staff's response. See n. 3, supra.

readily known to the Staff. The data would have to be compiled from documents which are kept in the NRC Public Document Room. Since this is the case, the compilation of such data is not required, and these interrogatories are rendered objectionable.

Interrogatories 1(s) and 1(t) request information as to the commencement and completion of various spent fuel pool modifications. When a particular modification begins and when it is completed is not data readily known to the Staff. This information is more likely to be found in the Public Document Room in the semi-annual reports of licensees, if it is to be found anywhere at all. The Staff is not required to perform such research and compilation of data, thus rendering these interrogatories objectionable.

Interrogatories 1(u) through 1(y) relate to events which may have occurred at spent fuel pools for which expansions have been granted. Such information is not readily known to the Staff. To find the requested information would necessitate a search of the files of each licensee including licensee event reports dating back a number of years. The Staff is not required to do such research or compile such data, since these data are equally available to both Intervenors and the Staff in the NRC Public Document Room.

Interrogatories 1(z) and 1(ff) through 1(hh) request information relating to the Intervenors, witnesses, and documentary evidence in each spent fuel pool modification proceeding. This is not information readily known to the

NRC Staff. To compile such data would necessitate searches of various initial decisions and records of various proceedings which are located in the Public Document Room. Therefore, the Staff is not required to make such compilation.

Interrogatories 1(bb) through 1(ee) request information regarding whether a spent fuel pool for which an expansion has been granted is permitted to accept spent fuel from other facilities. This information is not readily known to the NRC Staff. To gather it would necessitate a review of documents such as individual licenses for each facility where a spent fuel pool expansion has been approved. These licenses are located in the Public Document Room. These interrogatories request the Staff to engage in research and compilation of data, an activity which the Staff is not required to perform.

Interrogatory 3 requests the Staff to provide the information in Interrogatory 1(a) through 1(r) for those spent fuel pool expansions still pending. As noted above the Staff considers Interrogatories 1(a) through 1(q) to be irrelevant to matters in controversy in this proceeding. In addition it is the Staff's view that these interrogatories would necessitate research and compilation of data which the Staff is not required by Commission regulations or case law to perform, especially since the information is equally available to the Intervenors in the Public Document Room. 7/

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7/ See n. 5, supra.

CONCLUSION

For the reasons set forth above, Interrogatories 1(a) through 1(q) and 1(s) through 1(hh), 2, and 3 are objected to on the grounds that:

- 1) The interrogatories are irrelevant to matters in controversy in this proceeding and are extremely burdensome; and
- 2) That all those interrogatories listed above except Interrogatories 1(a) through 1(d), 1(i) through 1(k), 2, and portions of 3 would require research and compilation of data which the Staff is not required by Commission regulations or case law to perform.

Respectfully submitted,



Janice E. Moore  
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Dated at Bethesda, Maryland  
this 5th day of November, 1980.