



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Atomic Safety and Licensing Board



Before Administrative Judges:

Valentine B. Deale, Chairman
Dr. Richard F. Cole
Dr. Forrest J. Remick

SERVED APR 14 1981

In the Matter of)	Docket Nos. 50-445
)	50-446
TEXAS UTILITIES GENERATING)	
COMPANY, et al.)	(Application for
)	Operating License)
(Comanche Peak Steam Electric)	
Station, Units 1 and 2))	
		April 13, 1981

MEMORANDUM AND ORDER

(Grant of Applicants' Modified Motions To Compel ACORN to Respond to and Also to Supplement Responses to Applicants' First Set of Interrogatories to ACORN and Requests to Produce)

1. On August 13, 1980, Applicants filed "Applicants' First Set of Interrogatories to ACORN and Requests to Produce." ACORN filed objections to Applicants' discovery requests and motions for protection and an extension of time. This ACORN filing was received September 11, 1980. Applicants filed on September 12, 1980 a motion to compel and answers to ACORN's motion for an extension of time and motion for protection. The NRC Staff filed on October 2, 1980 its answer to Applicants' motion to compel. ACORN did not respond to Applicants' motion to compel.

2. On December 19, 1980, the Board issued a memorandum and order overruling ACORN's objections to Applicants' discovery

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requests, denying ACORN's motion for protection, granting an extension of time to ACORN and dismissing as premature Applicants' motion to compel in view of the extra time until January 5, 1981 allowed ACORN to respond to Applicants' discovery requests. On January 5, 1981, ACORN served "ACORN's Answers to Applicants' First Set of Interrogatories." Deeming ACORN's January 5 response to be unresponsive, Applicants filed on January 30, 1981 a renewal of their motion for an order to compel ACORN to respond to certain discovery requests and a motion to require ACORN to supplement its responses to other discovery requests. By letter of February 18, 1981, the NRC Staff informed the Board that the NRC Staff does not intend to submit responses to Applicants' motions. No ACORN response to Applicants' motions of January 30, 1981 was received.

3. Applicants' motion to compel involve interrogatories which, except for just two, seek either the bases for ACORN's position on its contentions or the bases for ACORN's responses to certain interrogatories. The NRC Rules of Practice and applicable Licensing Board and Appeal Board decisions make it abundantly clear that parties to NRC licensing proceedings are entitled to obtain through discovery all information, not subject to particular privileges, which tend to support or negate allegations in the contentions, or which would enable the party serving the interrogatories to discover such information. Pennsylvania Power and Light Company (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 331 (1980). It is proper to seek

through discovery the bases for an intervenor's position on its contentions at the hearing stage which augment the bases used by the intervenor to support admission of its contentions under 10 CFR §2.714(b) at the intervention stage. Boston Edison Company, et al. (Pilgrim Nuclear Generating Station, Unit 2), LBP-75-30, 1 NRC 579, 586 (1975). In particular, a party to this proceeding has the responsibility to specify the facts, that is, data, information and documents, which will support that party's position at the hearings, if such information is sought through discovery, Pennsylvania Power and Light Company, supra at 322. Further, Applicants must be able to inquire effectively as to the positions of intervenors prior to the hearings in order to afford Applicants a fair opportunity to discharge the burden of proof which they carry in this proceeding. Northern States Power Company, et al. (Tyrone Energy Park, Unit 1), LBP-77-37, 5 NRC 1298, 1300 (1978).

4. Interrogatories 2, 32, 72, 102 and 190 in Applicants' First Set of Interrogatories to ACORN and Requests to Produce requests that ACORN provide the bases for its positions regarding Contention 5, 13, 16, 20 and 23, and such documents as ACORN intends to rely on in support thereof at the hearings. For each of the five referenced contentions, ACORN is the lead party-intervenor. In response to the five related interrogatories, ACORN refers to its previous pleadings with respect to all five of the interrogatories and also to unidentified former employees of Applicants' contractor with respect to Interrogatory 2 and to unidentified reports with respect to Interrogatory 32. Applicants contend ACORN's answers

are unresponsive and incomplete. The Board is of the opinion that answers to Interrogatories 2 and 32 are open to supplementation and answers to Interrogatories 72, 102 and 190 close out the interrogatories by in effect conceding there is nothing further to add to the presentation of contentions at the intervention stage.

5. Interrogatories 43, 114, 118, 124 and 127, relating to Contentions 5 and 20 for which ACORN is the lead party-intervenor, ask for the bases for ACORN's answers to certain interrogatories. Generally, ACORN rests with the record of previous pleadings -- i.e., development of contentions at the intervention stage -- and notes that it has not had the opportunity to consult with experts and it has not reviewed certain Research and Technical Assistance Reports. Applicants consider ACORN's answers to be unresponsive and incomplete. The Board believes ACORN's answers to the interrogatories, while unsatisfactory, are open to supplementation.

6. Interrogatory 10, relating to Contention 5 for which ACORN is the lead party intervenor, requests that ACORN specify the particular provisions in Applicants' construction permits which ACORN contends in Contention 5 have not been met. In response to Interrogatory 10, ACORN did no more than refer to 10 CFR Part 51, which details applicable environmental requirements. However, Part 51 does not relate to Contention 5, which is a quality assurance/quality control contention. Applicants contend that ACORN's answer is unresponsive, and the Board agrees.

7. Interrogatory 129 asks that ACORN specify what is meant by the term "ice storm." ACORN simply responded with the phrase "historic weather conditions." The Board agrees with Applicants that ACORN's answer is unresponsive.

8. In addition to renewing their motion for an order to compel ACORN to respond to certain discovery requests, Applicants also moved for an order pursuant to 10 CFR §2.740(e)(3) to direct ACORN to supplement its responses to the following interrogatories in Applicants' First Set of Interrogatories to ACORN and Requests to Produce immediately upon receipt or development of the requested information. The referenced interrogatories are numbered as follows: 3, 6, 12, 13, 14b, 15, 16, 18-25, 30, 40, 47-50, 52-70, 80-100, 103, 110-113, 115-117, 119-123, 126, 130-141, 195, 199, 200 and 203-213. The Board thoroughly agrees with Applicants that ACORN's responses to the foregoing interrogatories are incomplete and insufficient and that for the sake of efficient administration of the discovery request, an order pursuant to 10 CFR §2.740(e)(3) is appropriate.

9. Pursuant to the Board's position on Interrogatories 2 and 32 and on Interrogatories 43, 114, 118, 124 and 127, the Board believes that the Applicants' list of interrogatories subject to a supplementation order should be expanded to include the referenced seven interrogatories.

ORDER

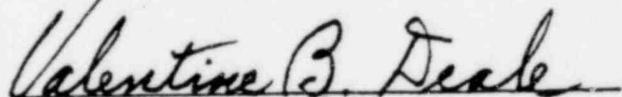
For the foregoing reasons and in consideration of the record in this matter, it is on this 13th day of April 1981,

ORDERED, That Applicants' motion to compel ACORN to respond to certain interrogatories and that Applicants' accompanying motion requiring ACORN to supplement its responses to certain other of Applicants' interrogatories are hereby granted, as follows:

1) ACORN shall file complete responses by April 30, 1981 to the following interrogatories in Applicants' "First Set of Interrogatories to ACORN and Requests to Produce," namely, Interrogatories 10 and 129; and

2) ACORN shall supplement its responses to the following interrogatories in Applicants' "First Set of Interrogatories to ACORN and Requests to Produce" as soon as the information requested is developed or obtained, namely, Interrogatories 2, 3, 6, 12, 13, 14b, 15, 16, 18-25, 30, 32, 40, 43, 47-50, 52-70, 80-100, 103, 110-124, 126-127, 130-141, 195, 199, 200 and 203-213.

For Atomic Safety and Licensing
Board



Valentine B. Deale
Chairman