6/29/81

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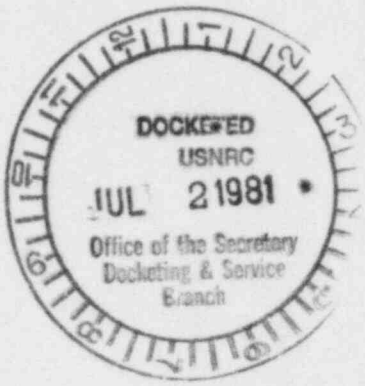

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (UCLA Research Reactor)	Docket No. 50-142 (Proposed Renewal of Facility License No. R-71) "INTERVENOR'S MEMORANDUM IN OPPOSITION TO APPLICANT'S MOTION TO COMPEL FURTHER ANSWERS TO ITS FIRST SET OF INTERROGATORIES"

I. THE POSITION

Intervenor opposes Applicant's Motion to Compel Further Answers to Interrogatories 19, 23, 34, and 39 of Applicant's First Set of Interrogatories on the grounds that said interrogatories were answered in full, Intervenor has no additional information in its possession, and that Applicant is attempting, after the fact, to rewrite the questions asked. Additionally, Intervenor opposes two additional "requests" included by Applicant in said Motion as over-broad, vague, unrelated to specific interrogatories, and contrary to discovery rules and procedures.

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II. INTRODUCTION

Applicant propounded its First Set of Interrogatories to Intervenor on April 20, 1981; answers were served on May 20. On June 12, 1981, Applicant served a Motion to Compel Further Answers as to Interrogatories 19, 23, 34, and 39. In addition, although not included in the statement of the Motion, two "requests" were included in the Conclusion (p. 4) of Applicant's filing, not referring to any specific interrogatory nor apparently even to any set of interrogatories generally. These two ancillary requests were "that the Board direct Intervenor to disclose all facts, and support for such facts, on which Intervenor intends to rely" and that "the Board direct Intervenor to supplement its written answers whenever it uncovers 'new' facts on which it intends to rely in any way in this proceeding." While not certain whether Applicant intended these two requests to be considered part of the formal Motion, Intervenor will nonetheless respond to them.

Discovery rules in NRC proceedings require that all interrogatories be answered fully and completely, unless objected to. 10 CFR 2.740b. Further answers to interrogatories may be compelled if interrogatories are not answered or are answered incompletely or evasively; a motion to compel further answers must set forth the nature of the questions to be further answered, the response or objection of the party upon whom the request was served, and arguments in support of the motion. 10 CFR 2.740(f)(1). As to supplementation of responses:

> A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

> (1) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to (i) the identity and location of persons having knowledge of discoverable matters, and (ii) the identity of each person expected to be called as an expert witness at the hearing, the subject matter on which he is expected to testify, and the substance of his testimony.
>
> (2) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which (i) he knows that the response was incorrect when made, or (ii) he knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.
>
> (3) A duty to supplement responses may be imposed by order of the presiding officer or agreement of the parties.
>
> 10 CFR 2.740(e)

Thus, necessary grounds for a Motion to Compel are failure to answer specific interrogatories, with evasive or incomplete answers being treated as failure to respond. Motions to compel must set forth the nature of the questions to be further answered. Answers to interrogatories need only be complete when made; a duty to supplement answers is limited to questions directly addressed to persons having knowledge of discoverable matters or persons expected to be called as witnesses, or subsequently discovered information indicating a past response was incorrect. A duty to supplement responses may be imposed by order of the presiding officer or by agreement of parties, but that supplementation, if ordered or agreed to, is limited to past responses to discovery requests and not all "new" facts on which a party intends to rely in any way in a proceeding. A Motion to Compel Further Answers can only request a party be compelled to answer past interrogatories or obey existing supplementation responsibilities. It cannot compel obedience to supplementation responsibilities not currently in place.

III. DISCUSSION

Applicant states on page 1 of its June 12 filing that its Motion is "for an order compelling Intervenor to provide further written answers to certain questions contained in 'Applicant's First Set of Interrogatories to Intervenor Committee to Bridge the Gap,' dated April 20, 1981." As the only questions identified in the Motion are Interrogatories 19,[1] 23, 34, and 39, Intervenor will treat those interrogatories as the sole subject of the Motion. Intervenor will, however, respond to the two additional "requests" made by Applicant regarding disclosure of "all facts" on any matter in the proceeding and supplementation whenever Intervenor "uncovers 'new' facts on which it intends to rely in any way in this proceeding." Motion, p. 4.

Interrogatories 19, 23, 34, and 39

These four interrogatories all go to the questions whether Intervenor "contend[s] that there did result any actual harm to the public health and safety" from any of the incidents identified regarding inadequate controls (interrogatory 19), violations (Interrogatory 23), unscheduled shutdowns, abnormal occurrences, and accidents (Interrogatory 34), and inadequately maintained and calibrated instruments (Interrogatory 39). The interrogatories further request that if Intervenor does so contend, it identify "the nature of the resulting harm, the individual(s) harmed and the supporting medical evidence", in addition to other related information.

1/ Applicant's "Conclusion" on page 4 refers to Interrogatories 13, 23, 34 and 39, whereas page 3 refers to Interrogatories 19, 23, 34, and 39. Intervenor assumes it is Interrogatory 19 which is meant and so directs its remarks thereto.

The four interrogatories in question should be seen in the context of the entire set of interrogatories. The bulk of Applicant's interrogatories begin by identifying the Contention to which they relate, paraphrase the contention or a part of it, and then ask whether Intervenor so contends. If the answer is affirmative, Applicant requests a recitation of the facts upon which the contention is based. On occasion, apparently to ascertain the boundaries of the matters at issue in the contentions, Applicant asks whether Intervenor contends, in the context of a particular Contention, an assertion Intervenor has not made. Some examples:

INTERROGATORY NO. 24 (CONTENTION V):

Do you contend that the amount of excess reactivity permitted by the technical specifications could lead to a serious power excursion which could bring about melting of the fuel or fuel cladding in applicant's reactor? If yes...

INTERROGATORY NO. 25 (CONTENTION VI):

Do you contend that applicant has in the past emitted "excessive radiation"? If yes...

INTERROGATORY NO. 27 (CONTENTION VI):

Do you contend that applicant has in the past violated radiation standards? If yes...

INTERROGATORY NO. 29 (CONTENTION VI):

Do you contend that applicant has in the past conducted "inadequate monitoring"? If yes...

INTERROGATORY NO. 8 (CONTENTION I):

Do you contend that the application contains any materially false statements? If yes...

INTERROGATORY NO. 9 (CONTENTION I):

Do you contend that in support of this license renewal application applicant has made materially false statement(s) to the NRC staff other than any that you may have alleged appear in the application? If yes...

Of the above questions, all but Interrogatory 9 merely paraphrase the contention after referring to it by number, then ask for the basis of the contention. Interrogatory 9, and several others in the First Set, asks something not part of the referenced contention, apparently to ascertain the limits on the issues involved in that contention.

Nowhere in the Applicant's Interrogatories is a definition provided for the phrase "do you contend?" Throughout those interrogatories Applicant used the phrase in the context of the admitted contentions. Now, in its Motion to Compel, Applicant asserts that the phrase "do you contend" used in Interrogatories 19, 23, 34, and 39 does not mean what it meant in virtually all of the other interrogatories in the set. Applicant now states that the phrase "do you contend" actually meant "whether Intervenor intends to claim." Motion, p. 3. Not only has Applicant rewritten the question with regards the term "contend," it has changed the tense from the present tense to dealing with an intention about the future.

The four interrogatories in question were answered fully and completely as written. In addition, Intervenor provided more information than was requested, so that even if Applicant's new version of the question had been asked initially, Intervenor is in possession of no additional information with which to answer. Intervenor has made no contention about past actual harm to individuals; Intervenor's contentions go merely to the issue of whether past practices indicate that Applicant can give reasonable assurance that public health and safety will be adequately protected in the future should the license be renewed. This is precisely what Intervenor said in response to the Interrogatories in question; it is true and correct; and even were Applicant's new version of the Interrogatories asked, the answer would remain the same: Intervenor at this time has no intention to claim that actual

harm has resulted or has not resulted from past practices. Intervenor's concern is whether those past practices provide the necessary assurance that grant of license will not be inimical to public health and safety in the future.

Intervenor explained in response to Interrogatory No. 19 why its contentions do not address the question of actual harm to individuals in the past and why supporting medical evidence of harm to specific individuals cannot, in radiation exposure cases other than those involving the acute radiation syndrome, be provided. As Intervenor said there, aside from Hiroshima-type radiation sickness at massive doses, radiation damage to individuals is a question of latent injuries appearing many years after exposure without any way of determining their etiology with certainty. Radiation increases the risk of cancer, leukemia, genetic defects, spontaneous abortion, etc.; but it is beyond the current state of medical knowledge, by and large, to determine whether a specific individual's cancer or leukemia was induced by a particular event of radiation exposure. For those reasons Intervenor has, as made clear in responses to Applicant's interrogatories, made no contention (and at this time has no intention to later claim) that actual public harm has or has not occurred. The medical basis of radiation injury, aside from Hiroshima-type injuries at extraordinarily high doses, simply does not permit, as Intervenor understands the matter, proof that someone's cancer or other effect resulted from or did not result from radiation exposure some years previous.

In sum, Intervenor answered the questions as asked in full; even were Applicant's new version of the questions asked, Intervenor has no additional information to provide beyond what it has already answered; and one cannot compel a party to provide information it doesn't possess.

The Two Ancillary Requests

1. "Applicant respectfully requests that the Board direct Intervenor to disclose all facts, and support for such facts, on which Intervenor intends to rely." Motion, p. 4

This request is completely non-specific, encompasses an entire universe of possible information related to 20 contentions and their 120 subparts without any relation to specific interrogatories. The proper procedure for Applicant to acquire information about Intervenor's factual basis for its contentions is through the discovery methods set out by NRC regulations and practice, e.g. interrogatories, depositions, document production requests. A blanket request for a blanket order directing disclosure of all facts about any matter on which Intervenor intends to rely in any way is so overbroad that it has no meaning. It is also not proper subject for a Motion to Compel; only if specific facts were not provided in response to specific interrogatories would a direction of disclosure be proper, and then only as to the interrogatories in question.

The only basis given for this request is contained on page 2 of the Motion, wherein Applicant complains that Intervenor in some answers stated that it had no information on either side of the question asked by Applicant, or that it had no information at this time. Applicant fails to specify which interrogatories this complaint refers to. Nonetheless, such answers are clearly proper. If a party requests information that another party does not possess, the simple answer that no information is in that party's possession is sufficient and proper. Nothing more can be said if nothing more is known. As to saying that no information is possessed

at present, since discovery is in process and new information may well be discovered in the future, such an answer is likewise sufficient and proper.

2. "Applicant also requests that the Board direct Intervenor to supplement its written answers whenever it uncovers 'new' facts on which it intends to rely in any way in this proceeding." Motion, p. 4

As discussed on page 2 and 3 above, a party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except with regards certain narrow classes of information described in 10 CFR 2.740(e) and reprinted on page 3 above. Applicant has presented no evidence that CBG has failed to obey supplementation responsibilities under 10 CFR 2.740(e) in the past or cannot reasonably be expected to in the future. Thus a motion to compel supplementation is not appropriate.

Since a Board can impose additional supplementation responsibilities, a remaining question is whether Applicant's request is suitable for such Board action. Intervenor suggests not. Applicant's request is vastly overbroad, requesting that CBG supplement answers whenever it uncovers any "new" facts whatsoever "on which it intends to rely in any way in this proceeding." It would appear that any "new" facts, whether related to interrogatories or not, would need to be provided. As CBG is uncovering new facts virtually daily, such a procedure would be vastly unwieldy. And since most of the new facts are acquired from UCLA's own records, these new facts acquired by CBG are already in UCLA's possession. Lastly, equity demands that such a drastic supplementation responsibility be imposed upon all parties alike.

IV. CONCLUSION

Intervenor respectfully submits that Applicant's Motion to Compel Further Answers as to Interrogatories 19, 23, 34, and 39 should be denied because Intervenor has answered said Interrogatories fully and completely as asked, has no additional information in its possession, and has been responsive even if Applicant's new version of the questions had been asked originally.

Intervenor further submits that Applicant's two ancillary "requests" should be denied because they are vague, overbroad, unrelated to specific interrogatories, have no basis in NRC discovery rules and procedures, and because no basis has been demonstrated for their need.

Dated: June 29, 1981
at Los Angeles, CA

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (UCLA Research Reactor)	Docket No. 50-142 (Proposed Renewal of Facility License)

CERTIFICATE OF SERVICE

I hereby certify that copies of "INTERVENOR'S MEMORANDUM IN OPPOSITION TO APPLICANT'S MOTION TO COMPEL FURTHER ANSWERS TO ITS FIRST SET OF INTERROGATORIES" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, this 29th day of June, 1981:

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