

June 29, 1981UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONBEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	Docket Nos. 50-445
)	50-446
TEXAS UTILITIES GENERATING)	
COMPANY, ET AL.)	(Application for
)	Operating License)
(Comanche Peak Stream Electric)	
Station Units 1 and 2))	
)	

CFUR'S RESPONSE TO APPLICANTS'
MOTION TO COMPEL RESPONSES
TO THIRD SET OF INTERROGATORIES

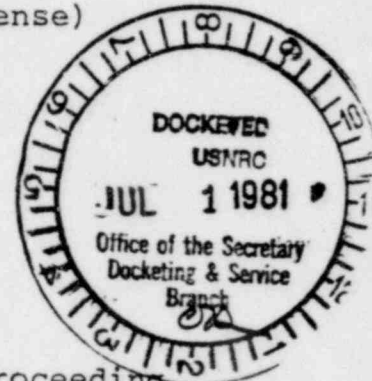
Comes now CFUR, one of the Intervenor in this proceeding, and files this Response to the Applicants Motions (1) To Compel Responses, and (2) To Require Supplementation of Responses to Interrogatories in Applicants' Third Set of Interrogatories to CFUR filed June 12, 1981.

I.

In the "Background" portion of their Motion, the Applicants allege that CFUR's Response to the Applicant's Third Set of Interrogatories was filed late. This allegation is a misstatement of the record.

As instructed by former Chairman Valentine B. Deale, Esq., all parties were strongly encouraged to negotiate and agree upon time tables for discovery in this proceeding. The parties were instructed that it was only necessary to notify the Board of any agreed upon deviation from the time tables set out in the Regulation. Only if the parties were unable to agree upon

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desired extensions of time would it then be necessary to file formal motions with the Board.

CFUR attempted to carry out the wishes of the Board with regard to the informal negotiations. Unfortunately, the Applicants have not.

As set out in CFUR's Motion for Extension of Time, CFUR contacted counsel for Applicants and requested an agreement to extend the time to answer Applicants' Third Set of Interrogatories. Counsel for Applicants, William A. Horin, Esq., stated that it would be necessary to confer with the Applicants' other counsel before any agreement could be made. Mr. Horin further stated that he would contact CFUR regarding the Applicants' position. No one from the Applicants ever contacted CFUR regarding the requested extension.

Consequently, it became necessary for CFUR to file a Motion for Extension of Time until June 2, 1981, to file its Response. On that date the Response was filed.

CFUR's Response to Applicants' Third Set of Interrogatories was timely filed. The Applicants have failed to comply with the Board's desire for informal negotiation and have acted in bad faith in seeking to misrepresent the timeliness of CFUR's Response.

II.

In Part II.1. of their Motion, the Applicants complain that CFUR's answers to Interrogatories 26-3, 28-3, 30-3, 32-3, 34-3, and 36-3 are inadequate in failing to describe "any of the consequences" which may result from the accepted TMI-2 parameters.

The Applicants do not challenge any of the parameters themselves which are listed in the response to these Interrogatories. The "consequences" Applicants refer to are the realistic prediction of plant behavior with the Applicants' computer codes under the TMI-2 parameters. These realistic predicted "consequences" are the ultimate object of CFUR's Contention 3. That Contention states:

The computer codes used in CPSES/FSAR must be tested and, if necessary, modified to accept the parameters reflecting the sequence of events at Three Mile Island and then to realistically predict plant behavior. (emphasis supplied)

It is in the Applicants' sole province to prove the "consequences" with which Contention 3 is concerned. The Applicants' computer codes are the means by which the "consequences" are predicted. CFUR contends that to realistically predict these "consequences", the Applicants must test and modify their computer codes to insure that the types of parameters experienced at TMI-2 are taken into account. It is only the Applicants who can perform these tests and modifications on their computer codes and certify the realistically predicted "consequences".

The fact that the TMI-2 accident occurred clearly demonstrates the significance of the types of parameters experienced there and the parameters with which Contention 3 is concerned. CFUR's position is that the Applicants must factor each of those parameters into its computer codes for CPSES and realistically predict the "consequences".

CFUR cannot definitively state the "consequences" which Applicants have inquired about in the above listed Interrogatories until the Applicants have factored the TMI-2 parameters into their

computer codes. To CFUR's knowledge the Applicants have not factored the types of parameters experienced at TMI-2 into their computer codes for CPSES.

The Applicants also complain that CFUR has only provided examples of the operator errors and maintenance errors involved in Contention 3. It is CFUR's position that the burden is on the Applicants to determine the full scope of anticipated TMI-2 , related operator errors and maintenance errors which could occur at CPSES. Clearly these types of errors are significant as demonstrated by the TMI-2 accident. It is the Applicants' burden to define these errors which could occur at CPSES and factor them into the CPSES computer codes.

CFUR has assisted the Applicants by providing certain examples of the errors involved. While the Applicants bear the burden of determining and defining these errors further, CFUR will provide further examples in the future as they are determined.

III.

In Part II.2 of their Motion, the Applicants complain of CFUR's inability to proceed with the Interrogatories addressed to Contention 4; to-wit, Interrogatories 45-3 through 83-3.

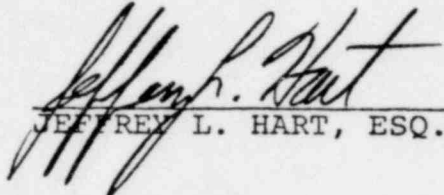
On January 2, 1981, CFUR was ordered to act as lead party-intervenors on Contention 4. On January 19, 1981, the NRC Staff addressed a number of interrogatories to CFUR concerning Contention 4. In its answer, CFUR responded to these interrogatories, but added that CFUR had not had an opportunity to consult with ACORN and that the answers are not to be construed as ACORN's responses. When, on April 23, 1981, the Applicants posed a number of interrogatories to CFUR concerning Contention 4, the situation was still

the same - CFUR had not had an opportunity to consult with ACORN. CFUR was of the opinion that supplying further answers could possibly jeopardize ACORN's position on Contention 4 and responded that CFUR was unable to proceed at this time.

ACORN has now filed a request to withdraw from this proceeding. Therefore, the obstacle for CFUR to proceed will be removed should ACORN be allowed to withdraw. CFUR prays that the Board establish a time table for it to proceed with discovery relating to Contention 4.

WHEREFORE, Applicant's Motion (1) to Compel Responses and (2) to Require Supplementation of Responses to Interrogatories in Applicant's Third Set of Interrogatories to CFUR should be denied.

Respectfully submitted,



JEFFREY L. HART, ESQ.

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NUCLEAR REGULATORY COMMISSION

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)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing CFUR's Response to Applicants' Motion to Compel Responses to Third Set of Interrogatories in the above captioned matter were served upon the following persons by deposit in the United States mail, first class postage prepaid this 29th day of June, 1981.

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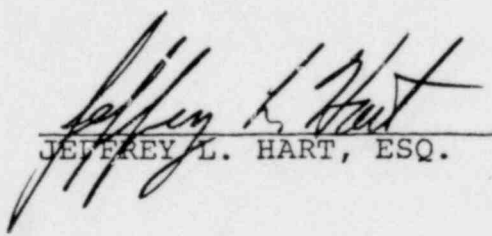
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