

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of )  
UNION ELECTRIC COMPANY )  
(Callaway Plant, Units 1 and 2) )

Docket Nos. STN 50-483  
STN 50-486

RESPONSE OF THE NRC STAFF TO JOINT INTERVENOR'S  
OBJECTIONS TO STAFF INTERROGATORIES AND MOTION TO COMPEL JOINT  
INTERVENORS TO RESPOND TO STAFF INTERROGATORIES 1(h)(a) AND (b) AND 13

I. INTRODUCTION

On June 24, 1981, the Joint Intervenors filed their ". . .  
Objections To Interrogatories And Requests For Production" (hereafter  
"Joint Intervenors' Objections"), of the separately filed Staff and  
Applicant discovery requests. In that pleading, Joint Intervenors  
objected to Staff Interrogatories 1(h)(a) - (b) and 13. The Joint  
Intervenors also objected to Applicant Interrogatories on Contention 1,  
1A-1, 1A-6(c), and General Interrogatory A, as well as Applicant  
Interrogatories on Contention 2, p. 2 A-1(c). The substance of these  
objections is the same: "Joint Intervenors object to identifying persons  
known to us to have first hand knowledge of the basis for our contentions  
and persons who participate in providing answers to interrogatories"  
(Joint Intervenors' Objections, p. 1). In accordance with the provisions  
of 10 C.F.R. § 2.740(f) of the Commission's Rules of Practice, the NRC  
Staff hereby moves the Licensing Board for an order compelling the Joint  
Intervenors to Answer Staff interrogatories 1(h)(a) - (b) and 13.

## II. DISCUSSION

The Staff interrogatories in question, which apply to Joint Intervenors' Contentions 1A-1F (alleged construction defects) and 2A-2E, 2G, (environmental contentions concerning radiological discharges) read as follows:

- "1(h)
- a. Upon what person or persons do you rely to substantiate in whole or in part your views on Contention No. 2A, 2B, etc.
  - b. Provide the addresses and education and professional qualifications of any persons named in response to 1(h)a above."

Staff Interrogatory 13 provides:

- "Q-13(a) List all individuals participating in answering these interrogatories. Provide their names, addresses, business, or occupation, if any, and telephone numbers. If the individual is a member of one or more of the "joint intervenors" organizations, list that membership. (Exclude clerical assistance in preparing answer).
- (b) For each such individual, list the approximate percentage of time that individual participated relative to other listed individuals."

Joint Intervenors state that the Staff and Applicant are seeking ". . . persons known to us to have first hand knowledge of the basis for our contentions and persons who participate in providing answers to interrogatories,"<sup>1/</sup> but argue that "in due course" when it "has been

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<sup>1/</sup> Joint Intervenors' Objections, p. 1.

determined" Joint Intervenors will provide the names of their witnesses.<sup>2/</sup> Joint Intervenors' claim that ". . . the Applicant and Staff have no legitimate need to know the names of persons who have first hand knowledge of the basis for Joint Intervenors' contentions and who are, or have assisted Joint Intervenors in this matter. (Joint Intervenors Objections, p. 1).

As to the identities of persons who admittedly have first hand knowledge of the basis for Joint Intervenors' contentions and persons who are assisting Intervenors in this proceeding, the question has been decided in General Electric Company (Vallecitos Nuclear Center, General Electric Test Reactor) LBP-78-33, 8 NRC 461, 466 (1978) where the licensing board held, after reviewing applicable Commission regulations and case law, ". . . that the identities of persons assisting intervenors are expressly discoverable under the Commission rules."<sup>3/</sup> In reaching this conclusion, the licensing board reviewed the pertinent language in 10 C.F.R. § 2.740(1), which provides in pertinent part:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject

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<sup>2/</sup> Id.

<sup>3/</sup> See also Pennsylvania Power and Light Company and Allegheny Electric Cooperative, Inc. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 340 (1980) where the Appeal Board concluded that interrogatories designed to discover what (if any) evidence underlies an intervenor's contentions are permissible.

matter involved in the proceeding, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.  
(emphasis added).

That provision remains in effect today and the Staff believes it disposes of the heart of Joint Intervenors' objections, as it clearly provides for the discovery of the identity of persons having first hand knowledge of Joint Intervenors' contentions as well as those individuals who are delineating Joint Intervenors' position in this proceeding by responding to discovery requests.

Application of the Vallecitos holding is, moreover, particularly appropriate here because many of Joint Intervenors' contentions present mixed questions of fact and law. For example, Joint Intervenors' Contention 1F states that "improper inspection techniques and defective welds were used in pre-assembly piping formations."<sup>4/</sup> Similarly Joint Intervenors' Contention 1B states that "several cracks in concrete structures . . . were not inspected and were accepted."<sup>5/</sup> If there are individuals who have first hand knowledge of these allegations, or who are making these allegations which the Joint Intervenors are sponsoring as contentions in this proceeding, the Staff (as well as the Applicant) has the right to

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4/ See "Special Prehearing Conference Order (April 21, 1981), p. 8.

5/ Id.

discover this information directly. Inherent in the discovery process is the right of the parties to consider all relevant information on these allegations. The Appeal Board has concluded that the ". . . courts have long recognized that parties are entitled to discover all matters not privileged that tend to support or negate the allegations in the pleadings, or which are reasonably calculated to reveal such matters." Susquehanna, supra, 12 NRC 317, 331 (1980). The application of this principle disposes of Joint Intervenor objections. For example, in support of Joint Intervenors' allegations that there were instances of honeycombing at the reactor building base mat, Joint Intervenors state:

On May 31, 1977, voids described by the NRC as up to six miles, but described by a worker as big enough for a man to crawl into, were found in the tendon access gallery of the reactor base mat.<sup>6/</sup>

The Staff is entitled to discover the identity of persons having first hand knowledge of these matters, or who are assisting in the preparation of interrogatory answers. The fact that at some point Joint Intervenors will designate expert witnesses to testify about such matters (see Joint Intervenors' Objections, p. 1) does not satisfy their discovery obligations now, especially since such "experts" may not themselves have the first hand knowledge that Joint Intervenors are now seeking to withhold.

Joint Intervenors make the blanket statement that "the Applicant and Staff can have no legitimate need to know the identity of other persons,

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<sup>6/</sup> See "Amended and Supplemental Joint Petition To Intervene," p. 8 (March 6, 1981).

not witnesses, who have assisted and are assisting Joint Intervenors in this matter" (Joint Intervenors' Objections, p. 1). Yet, Joint Intervenors have obviously forgotten that they have in their Interrogatory 111 requested the same information from the NRC Staff, and the Applicant, to which they now object.<sup>7/</sup>

In addition to seeking to withhold the names of individuals who admittedly have first hand knowledge of their contentions, the Joint Intervenors are apparently also withholding the identity of "experts" with whom they have consulted, but whom they already know are not those experts who are expected to testify at the hearing.<sup>8/</sup> In support of this position, Joint Intervenors simply make the blanket statement that "[T]he identity of experts who have been consulted informally in anticipation of trial is not discoverable."<sup>9/</sup>

The Vallecitos decision, supra also clearly dealt with this argument. Relying on Baki v. B. F. Diamond Construction Co., 71 F.R.D. 179 (U.S.D.C. Md., 1976), the Vallecitos Board initially noted that both the Federal Rules of Civil Procedure, and 10 C.F.R. § 2.740, required the identities and locations of persons having knowledge of any discoverable matter.

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<sup>7/</sup> Interrogatory 111 from Joint Intervenors to the NRC Staff, requests the names of the person(s) providing the answers to each interrogatory by subpart. This is in addition to Interrogatory 109 which requests an identification of "all expert witnesses that are expected to testify for the NRC Staff."

<sup>8/</sup> See Joint Intervenors' Objections, p. 2.

<sup>9/</sup> Id.

8 NRC at 467. The Board, as did the Court in Baki, supra, then concluded that the identity of experts who have been employed in anticipation of litigation, or in connection with litigation, but who are not expected to testify, may be obtained through interrogatories without any special showing of exceptional circumstances. 8 NRC at 467. Even if there has not been a retainer or special employment of such non-testifying but consulting experts, the Vallecitos Board reasoned that the identity of such experts could not be withheld if these experts possessed "information or knowledge concerning a specific case at hand," as opposed to nonspecific general information. There would appear to be no reason to depart from the Vallecitos holding here, as the non-testifying experts which Joint Intervenors now seek to withhold admittedly possess, and have consulted with, Joint Intervenors in this specific proceeding.<sup>10/</sup> Therefore, the Staff concludes that the identity of those persons who have first hand knowledge regarding the Joint Intervenors' contentions and who have assisted in the preparation of interrogatory answers should be disclosed. As aforementioned, the requested information is vital here inasmuch as many of the contentions consist of mixed questions of fact and law where the Joint Intervenors appear to be relying on sources of information which they claim, in part, factually and technically contradicts actions taken by the NRC Staff inspectors. Having made such allegations, Joint Intervenors cannot be seen to object to the efforts of the Staff to ascertain these "facts" and "opinions"

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<sup>10/</sup> The Staff would be willing to consider an exception to this if it is demonstrated that with respect to a given expert only "nonspecific general information" unrelated to this proceeding was sought.

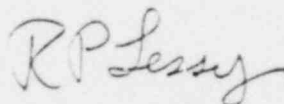
from those that possess first-hand "knowledge." And as indicated above, having submitted over a hundred multi-part interrogatories to the NRC Staff which includes requests for virtually the same information which Joint Intervenors now seek to withhold, the Staff believes that there is no equitable basis to sanction Joint Intervenors' objections.

Joint Intervenors' state the disclosure of these names of such persons will "expose them to possible reprisals" and "adverse employment actions." In that regard, the Staff would be willing to consider appropriate protective orders to limit the dissemination of such names, once Joint Intervenors' communicate the precise nature of their concerns to the Staff, and such concerns are evaluated by the Staff.

### III. CONCLUSION

For the reasons stated above, the Staff believes that Joint Intervenors' objections to Staff's Interrogatories 1(h)a and b and 13 should be overruled, and that the Staff's motion to compel answers to these interrogatories should be granted.

Respectfully submitted,



Roy P. Lessy  
Deputy Assistant Chief Hearing  
Counsel

Dated at Bethesda, Maryland  
this 6th day of July, 1981.



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CERTIFICATE OF SERVICE

I hereby certify that copies of "RESPONSE OF THE NRC STAFF TO JOINT INTERVENOR'S OBJECTIONS TO STAFF INTERROGATORIES AND MOTION TO COMPEL JOINT INTERVENORS TO RESPOND TO STAFF INTERROGATORIES 1(h)(a) AND (b) AND 13" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, by Express Mail Service, or, as indicated by a double asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 6th day of July, 1981:

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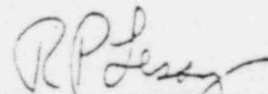
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