UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Marshall E. Miller, Chairman
Dr. Forrest J. Remick
Dr. Richard F. Cole

In the Matter of TEXAS UTILITIES GENERATING COMPANY, ET AL. (Comanche Peak Steam Electric Station, Units 1 and 2)	Docket Nos. 50-445 50-446 (Application for Operating License) July 30, 1981

ORDER

I.

CFUR's first set of interrogatories to the Applicants and requests for the production of documents was filed on February 26, 1981. Applicants responded to those interrogatories on April 13, 1981. CFUR's motion to compel responsive answers to such interrogatories was filed April 28, 1981 and the Applicants answered the motion on May 13, 1981.

The Applicants in their answers to CFUR's first set of interrogatories objected to large portions of the information requested, and failed to answer most of the questions. The disputes between the parties revolve around the interpretation of Contention 1 as asserted unilaterally by the Applicants. We hold that such interpretation is too narrow for discovery purposes, and overrule the Applicants' objections.

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Contention 1 reads as follows:

> Applicants have not demonstrated technical qualifications to operate CPSES in accordance with 10 CFR §50.57(a)(4) in that they have relied upon Westinghouse to prepare a portion of the Final Safety Analysis Report (FSAR).

In admitting Contention 1, the Board did not intend to limit the issue of the Applicants' technical qualifications to operate CPSES, to their reliance on Westinghouse to prepare portions of the FSAR. That was regarded as a possible example of alleged deficiencies in technical personnel available to Applicants for the operation of the plant. It was also not intended to limit such issue solely to matters involving the FSAR.

The thrust of Contention 1 is the issue of whether or not Applicants have personnel with sufficient expertise, training and experience to operate this nuclear power plant safely. If poorly stated, this contention could be refined by amendment after the conclusion of discovery. As we stated in the Stanislaus antitrust proceeding, in "modern administrative and legal practice, pretrial discovery is liberally granted to enable the parties to ascertain the facts in complex litigation, refine the issues, and prepare adequately for a more expeditious hearing or trial."[1/]

The interpretation placed by the Applicants on admitted Contention 1 is too narrow and crabbed to permit liberal pretrial discovery. The

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[1/] Pacific Gas and Electric Company (Stanislaus Nuclear Project, Unit 1), LBP-78-20, 7 NRC 1038, 1040 (1978), quoted in Pennsylvania Power and Light Company (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 322 (1980).

resulting disputes over the responsiveness of the answers are so interwoven with this fundamental error of construction, that it would be a waste of time for the Board to attempt to unravel them. We decline to undertake this tedious task.

Accordingly, the Applicants are directed to reformulate their answers in order to give full, direct and responsive answers to CFUR's first set of interrogatories. All parties are also directed in the future to include both the interrogatories and the answers in any motions or replies involving the adequacy of responses or the validity of objections.

II.

CFUR filed its second set of interrogatories to the Applicants on April 9, 1981. Answers were filed April 28 by Applicants, and CFUR filed a motion to compel more responsive answers on May 12, 1981. This motion was answered by Applicants on May 27, 1981.

The disputes over the second set of CFUR interrogatories are similar to those discussed above with reference to the first set. We do not agree with the standard of relevancy set forth by CFUR in its motion, namely, whether interrogatories are "relevant to the ultimate issue in this proceeding of whether the Applicants should be issued an operating license" (Motion, p. 2). Rather, interrogatories must have at least general relevancy, for discovery purposes, to the matters in controversy in the proceeding. Matters may be put into controversy by the parties,[2/]

[2/] 10 CFR §§2.714, 2.740 and 2.751a.

or under certain circumstances by the Board sua sponte.[3/] Contentions constitute the method by which the parties frame issues under NRC practice, similar to the use of pleadings in their judicial counterparts.[4/] Such contentions may be amended or refined as a result of additional information gained by discovery.

Contention 7, which is the center of the dispute over the second set of interrogatories, reads as follows:

> Applicants have failed to adequately evaluate whether rock "overbreak" and subsequent fissure repair using concrete grout have impaired the ability of category I structures to withstand seismic disturbances.

Here again the Applicants seek to apply too narrow and legalistic an interpretation to Contention 7 and the interrogatories in question. The issue of alleged rock "overbreak" and the seismic capabilities of CPSES is broad enough to encompass such related matters as the nature of concrete poured for its foundations, materials incorporated into the foundation itself or placed above the bedrock, as well as the use of loose rock materials. This contention should not be construed as being limited solely to the effects of "rock overbreak" and "fissure repair", as the Applicants contend.

Accordingly, the Applicants are directed to provide full, direct and responsive answers to CFUR's second set of interrogatories.

[3/] 10 CFR §2.760a. See also our Order entered July 24, 1981, at pp. 3-13.

[4/] Susquehanna, supra, 12 NRC at 331, 334.

III.

There remain a number of motions to compel by CFUR and replies by the Applicants which reflect a substantial and unnecessary amount of pointless bickering between these parties. In part this is caused by too narrow and legalistic positions taken unilaterally by the Applicants, and an insistence on unduly limiting requested discovery. However, CFUR also seeks to assert too expansive a scope of discovery by references to the "ultimate issues" of granting an operating license. Our discussion above concerning the first and second sets of interrogatories should provide guidance to those parties in resolving their discovery controversies.

The Board does not intend to take the time to go through all of the remaining motions and replies in order to referee these unnecessary quarrels. At one point, pages are spent arguing whether numerous documents are merely required to be identified, or whether a general request for inspection and copying constitutes a technical request for production, which careful practice requires to be made prior to a motion to compel. This kind of interminable fencing coupled with occasional ad hominem arguments constitutes an unacceptable imposition upon the Board.

Accordingly, under its power and responsibility to "manage and supervise all discovery,"[5/] the Board issues the following directives:

1. All pending motions by CFUR to compel answers to its third and fourth sets of interrogatories (with motions to find Applicants in default), and all of the

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5/ Commission's Statement of Policy on Conduct of Licensing Proceedings, May 20, 1981, pp. 5-6.

Applicants' responses to such motions, are stricken. CFUR's motion for protection and oral argument (included in response to Applicants' motion to strike), and Applicants' response, are also stricken. CFUR's motion to compel Applicants to hold design audit at Comanche Peak is moot, and it is stricken.

2. The Applicants' motion for protective order, filed together with their answers to CFUR's fifth set of interrogatories on July 20, 1981, is stricken.

3. CFUR and the Applicants are directed to meet and confer as soon as possible on the status of all interrogatories, responses, motions, and other discovery now pending between them. These parties shall negotiate in good faith on all of their pending disputes, using as guidelines the discussion contained in this Order, all of our prior Orders, and the nine principles stated in our Order entered July 23, 1981, at pages 9-12.

4. A written report shall be submitted to the Board by these parties as soon as reasonably possible, setting forth the results of their discovery conference and any agreements reached by them concerning the completion of pending discovery.

5. Any remaining disputes shall be fully described by each party, and the bases for their respective positions

shall be accompanied by points and authorities sufficient to enable the Board to rule on all matters in controversy. Copies of each interrogatory or response remaining in dispute shall be set forth verbatim in such statments of position.

6. This conference and written reports by CFUR and the Applicants shall be given priority and expedited treatment by the parties, in view of the accelerated schedule for the conclusion of discovery and the commencement of evidentiary hearings.

It is so ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

Marshall E. Miller

Marshall E. Miller, Chairman
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 30th day of July, 1981.