

Aug st 19, 1981

Mark Pollock, Esq.
Counsel for Committee to Bridge
the Gap
1724 North La Brea Avenue
Los Angeles, CA 90046



In the Matter of
The Regents of the University of California
(UCLA Research Reactor)
Docket No. 50-142
(Proposed Renewal of Facility License)

Dear Mr. Pollock:

NRC Staff has received the Intervenor's filing dated July 30, 1981, setting forth a large number of interrogatories directed to Staff and the Commission's consultants (five hundred and seventy-three interrogatories, some with sub-parts) as well as a request for production of NRC documents which request was pursuant to both the discovery rules and the Freedom of Information Act (FOIA). The filing does not comply with the procedural requirements of the Commission's regulations governing discovery against the Staff for the reasons discussed below. Because your service of interrogatories and request for documents pursuant to discovery procedures contravene the Commission's Rules of Practice, these requests will not be answered. However, the FOIA request has been transmitted to the proper NRC office for processing.

Please note that 10 CFR § 2.740b(a) specifically exempts the Staff from responding to interrogatories except as provided by 10 CFR § 2.720(h)(2)(ii). Limitations on discovery against the Staff are discussed in 10 CFR Part 2, Appendix A, § IV(d).

The provisions of 10 CFR § 2.720(h)(2)(ii) are as follows:

[A] party may file with the presiding officer written interrogatories to be answered by NRC personnel with knowledge of the facts designated by the Executive Director for Operations. Upon a finding by the presiding officer that answers to the interrogatories are necessary to a proper decision in the proceeding and

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that answers to the interrogatories are not reasonably obtainable from any other source, the presiding officer may require that the staff answer the interrogatories.

This rule, as well as other regulations relating to seeking discovery against the Staff, was explained by the Appeal Board as follows:

Discovery against the staff is on a different footing. With limited exceptions, Commission regulations make staff documents that are relevant to licensing proceedings routinely available in the NRC Public Document Room. 10 CFR 2.790(a). The contemplation is that these "should reasonably disclose the basis for the staff's position," thereby reducing any need for formal discovery. Reflective of that policy, the Rules of Practice limit documentary discovery against the staff to items not reasonably obtainable from other sources, 10 CFR 2.744; require a showing of "exceptional circumstances" to depose staff personnel, 10 CFR 2.720(h) and 2.740a(j); and allow interrogatories addressed to the staff only "where the information is necessary to a proper decision in the case and not obtainable elsewhere." See 10 CFR 2.720(h)(2)(ii). In addition, the licensing board's advance permission is needed to depose staff members or to require the staff to answer written interrogatories. (Citations omitted). Pennsylvania Power and Light Co. et al. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 323 (1980).

The procedure for discovery against the Staff was previously pointed out in the Staff response to Applicant's interrogatories, wherein Staff indicated that it waived the 10 CFR Part 2 procedures for discovery against Staff because of an informal agreement that Applicant's interrogatories would not require significant expenditure of Staff's time or resources and that no request for documents would be filed.^{1/} Such is not the case with the interrogatories you have filed. Responses to the excessively large number of interrogatories you submitted would require a great deal of Staff's time and resources. Therefore, since you have not filed the interrogatories to Staff with the Presiding officer of this proceeding for answers by NRC personnel designated by the Executive Director for Operations, you have failed to abide by procedures for discovery from the Staff, and the Staff declines to answer the submitted interrogatories.

In reading through your interrogatories, it also appears to Staff that many requests for information go beyond the subject matter involved in any admitted contention. These requests are, of course, objectionable for this reason (see 10 CFR § 2.740(b)) aside from the Staff's objection to your failure to

^{1/} NRC STAFF RESPONSE TO APPLICANT'S FIRST SET OF INTERROGATORIES TO STAFF, MAY 15, 1981.

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comply with the procedural requirements of the Commission's regulations. In the event you decide to refile any interrogatories in the manner which satisfies the Commission's procedural requirements, the Staff would have the right to review those interrogatories and make any appropriate objections.

Regarding your request for production of documents, you should note that 10 CFR § 2.741(e) states that production of NRC records and documents is subject to the provisions of 10 CFR § 2.744 (for initial licenses) and 10 CFR § 2.790.

The latter regulation states that, with the exceptions noted in the rule, final NRC records and documents are available for inspection and copying in the NRC Public Document Room (PDR) so that, except for material specifically exempted from public disclosure, all extant NRC records you have listed in request for documents are available for your inspection and copying at the PDR. I am enclosing a Public Document Room Users Guide to provide information on obtaining documents you wish.

The filing states that the request for production of documents is also made pursuant to the Freedom of Information Act. As a courtesy to you, I have transmitted the FOIA request to the appropriate NRC office for processing. In the future, any FOIA request should be directed to the agency official indicated in 10 CFR § 9.8(a) and not the Staff or Staff Counsel.

Finally, as comment on your request that "Staff answer the following interrogatories fully and separately under oath, pursuant to the Board Order of July 1, 1981" Staff notes that the subject Board Order in pertinent part merely stated the following:

At the prehearing conference on February 4, 1981, the Staff stated that it expected to issue the Safety Evaluation Report (SER) and the Environmental Impact Appraisal (EIA) in April 1981. Tr. 121. These documents together with "Analysis of Credible Accidents for Argonaut Reactors, NUREG/CR-2079, PNL-3691" and "Summary of Computer Model and Selected Results from Argonaut Design Basis Accident Evaluation, NUREG/CR-2198" were not issued until June 19, 1981. Because of the late release date they are outside the discovery schedule stipulated by the parties and adopted by the Board in its March 20, 1981 Order. Discovery requests based on these documents may be submitted no later than thirty (30) days from the date of this Order. Responses to any discovery requests must be served no later than sixty (60) days from the date of this Order.^{2/}

Nothing in this Order indicates to whom or by what rule of practice interrogatories may be served, nor does it order any matter other than the schedule

^{2/} ORDER RELATIVE TO APPLICANT'S MOTION FOR A PROTECTIVE ORDER, OTHER REQUESTS AND AN ADJUSTED DISCOVERY SCHEDULE, July 1, 1981, at 7.

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for submitting and responding to discovery based on the documents referenced in the Order.

I hope that the above cited regulations clarify the procedures for and limitations of discovery directed to Staff.

Sincerely,

Colleen P. Woodhead
Counsel for NRC Staff

cc: Elizabeth S. Bowers, Esq.
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