

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
UNION ELECTRIC COMPANY) Docket No. STN 50-483 OL
)
(Callaway Plant, Unit 1))

APPLICANT'S ANSWER IN OPPOSITION
TO JOINT INTERVENORS' MOTION TO COMPEL

Applicant UNION ELECTRIC COMPANY, submits this answer in opposition to the Joint Intervenors' Motion to Compel, dated September 25, 1981, which seeks to overrule Applicant's objections to Joint Intervenors' interrogatory no. 25(b) (Second Set) and document request no. 54 (Second Set). For the reasons set forth below Applicant submits that its objections should be upheld and Joint Intervenors' motion should be denied.

FACTUAL BACKGROUND OF DISCOVERY PROCEEDINGS

In two rounds of discovery requests Joint Intervenors have served 187 interrogatories and 113 requests for production of documents on Applicant. Many of the interrogatories were multi-part, containing as many as 14 separate questions. Of all these discovery requests, Applicant has objected to only three interrogatories in the first set of interrogatories (one of the three objections was subsequently withdrawn), one

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subpart of one interrogatory in the second set of interrogatories (no. 25(b), the subject of the pending motion) and one document request in the second set of document requests (no. 54, the subject of the pending motion). This is not to say that more of Joint Intervenors' discovery requests were not objectionable. The burden imposed by the requests and the effort required to investigate, search for, analyze, compile collate and present the information and documents requested was substantial--requiring the combined efforts of dozens of personnel from Applicant, its constructor, architect/engineer, suppliers and consultants, as well as legal counsel. Applicant's written responses to these interrogatories (including single-space repetition of the interrogatories) total 135 pages not including attachments. Voluminous documents have been produced in response to Joint Intervenors' document requests. Joint Intervenors have been provided access to these documents at Applicant's headquarters in St. Louis over a period of days and copies have been made and provided to Joint Intervenors as requested.

This enormous effort was undertaken notwithstanding the fact that many of Joint Intervenors' requests were of marginal, if any, relevance to the issues in this proceeding. Serious questions as to the propriety of such requests, even under the liberal standards of discovery in the Commission's Rules of

Practice, could have been raised. Applicant, nonetheless, decided to avoid disputes over discovery matters whenever possible and determined that the prompt and fair resolution of this proceeding would be best fostered by responding to the requests as fully as possible.

There were, however, a few isolated instances where the lack of relevance alone, or when coupled with the burden involved in responding, required Applicant to interpose an objection. It is to uphold two such objections that Applicant submits this opposition to Joint Intervenors' Motion to compel.

ARGUMENT

The two discovery requests at issue in Joint Intervenors' Motion to compel both pertain to Joint Intervenors' Contention II.A of Contention No. 1,^{1/} concerning alleged material manufacturing deficiencies in safety-related piping. This contention reads as follows:

Safety-related pipe installed at Callaway was manufactured by a company or companies which did not have adequate control of welding parameters. This resulted in known cases of defects which did not comply with the requirements

^{1/} In the Board's Special Prehearing Conference Order of April 21, 1981, this is referred to as Contention No. 1E.

of the American Society of Mechanical Engineers (ASME) Code. The evaluation and acceptance of those defects and deficiencies were not done in accordance with the ASME Code. The safety of pipe installed at Callaway remains in question and demands further investigation before an operating license should be issued. For example:

1. In May 1979 a pipefitter discovered and reported a substandard piece of ASME Class II SA-358 piping which had been installed in the emergency core cooling system. The pipe was substantially out-of-round, was machined below the minimum wall, and had rejectable weld defects on the inside of a longitudinal seam weld. (See, NRC Report No. 50-483/80-10). The piping was approved for shipment at the vendor's, was accepted on site, and was installed despite these deficiencies.

2. Substandard fusion welded SA-312 pipe manufactured by Youngstown Welding and Engineering Company and fabricated into safety-related pipe spools by Dravo Corporation has been installed at the Callaway Plant. (See, NRC/IE Bulletin 79-03 and 79-03A, and Union Electric letter ULNRC-314 dated May 11, 1979, to NRC - Region III). The evaluation and acceptance of this substandard SA-312 piping were not performed according to the requirements of Section III of the ASME Code.

- I. The Information Sought In Joint Intervenors' Interrogatory No. 25(b) Is Entirely Irrelevant, Is Not Likely To Lead To Discovery Of Admissible Evidence And Would Require An Extraordinary Burden To Provide.

Joint Intervenors' interrogatory no. 25(a) and (b) states as follows:

INTERROGATORY NO. 25. In response to Joint Intervenors' Interrogatory No. 94 Union Electric states, "In dealing with fittings made in accordance with SA-403, the fittings may be fusion welded or forged."

- a. Is Union Electric able to identify and locate fusion welded SA-403 fittings used in safety related piping at the Callaway plant?
- b. If the answer to the above question is affirmative, list the spool piece number, size of fitting and line number of all of the fusion welded SA-403 fittings used in safety related piping.

Applicant's response reads as follows:

OBJECTION: Applicant objects to subpart (b) of this Interrogatory on the grounds (1) that it is overly broad, burdensome and oppressive; and (2) that it seeks information which is irrelevant to the issues in this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. 2/

ANSWER: (a) Yes.

(b) Objected to.

Applicant submits that this objection should be upheld because

2/ Joint Intervenors correctly note that Applicant's objection to subpart (b) of this interrogatory was not served within 14 days after service of the interrogatory. The explanation for this is consistent with Applicant's efforts to avoid discovery disputes. The initial analysis of this interrogatory determined that the information sought was irrelevant to the issues in this proceeding (as is demonstrated in this answer). Nonetheless it was determined not to object and to provide the information if possible. Accordingly no objection was served in the first 14 days. It was only later during the process of compiling the information requested in Joint Intervenors' second set of discovery requests that it became apparent that an extraordinary effort would be required to obtain the information requested in interrogatory no. 25(b). Only then was it determined that an objection was not only appropriate but essential. It is important to note that Joint Intervenors have alleged no prejudice resulting from this "delay." Given the fact that Joint Intervenors intend to file no direct testimony in this proceeding no such prejudice is likely from this short delay.

of the lack of relevance of the specific information sought in the interrogatory and because of the burden which would be imposed upon Applicant to provide a response to the interrogatory.

A. Lack of Relevance

As Joint Intervenors indicate in their Motion to Compel, the concern for SA-403 fittings is relevant only within the context of that portion of Contention No. 1, subpart II.A.2, quoted above, concerning the possible presence of centerline-lack-of-penetration (CLP) in the longitudinal welds in SA-312 piping used in Class 2 or Class 3 safety-related piping systems in the Callaway Plant. As indicated in Applicant's responses to other Joint Intervenor interrogatories on this contention, the engineering and technical justification for the use of such SA-312 piping, not only in the Callaway Plant but in all U.S. nuclear power plants, is based on several analyses prepared by the Bechtel Group, Inc. ("Bechtel") and Aptech Engineering Services, Inc. ("Aptech"). The conclusion of these analyses, that SA-312 piping possibly containing CLP could safely be used if the design hoop stresses for the affected safety-related systems do not exceed 85% of the allowable ASME Code hoop stresses, was adopted and made mandatory by the NRC in IE Bulletin No. 79-03A. This Bulletin required licensees to analyze all such systems to determine if the design hoop stresses exceed 85% of the allowable Code stresses. Only if a system

exceeds this figure was the licensee to identify specifically the piping involved and take further corrective action.

In responding to this Bulletin, Applicant's architect/engineer, Bechtel Power Corporation, did not identify the specific safety-related systems containing SA-312 piping. Rather it found it less burdensome to do the analysis of hoop stresses for all Class 2 and 3 safety-related systems. 3/ This analysis determined that the design hoop stresses for such systems at the Callaway Plant are below the allowable 85% and Applicant responded accordingly to the NRC.

As stated in Applicant's responses to Joint Intervenors interrogatory no. 25(c) and (d), SA-403 fittings can be made from SA-312 piping with longitudinal seam welds as "starter" material. Therefore SA-403 fittings can possibly contain CLP to the same extent as SA-312 piping. The only safety-related piping systems in which such fittings might be used at the Callaway Plant are the same Class 2 and 3 systems analyzed by Applicant's architect/engineer and determined to have design hoop stresses of less than 85% of the Code allowable stresses. Therefore no further identification of the specific number, size or location of such fittings is required.

It is just such information, however, which Joint Intervenors' seek in their interrogatory no. 25(b). Applicant

3/ Class 1 safety-related systems use only seamless pipe. Therefore, CLP is not a concern in these systems.

has been requested to list "the spool piece number, size of fitting and line number" for every fusion-welded SA-403 fitting used in safety-related piping in the entire Callaway Plant. While the subject matter of SA-403 fittings is relevant to the CLP issue, this does not automatically mean that every possible piece of information concerning such fittings is relevant to the issues in this proceeding and is discoverable. Such an argument, however, is the only basis advanced by Joint Intervenors in their motion for compelling discovery of this information. (See final paragraph on the third page of Joint Intervenors' motion to compel). It is important to note that nowhere in their motion papers do Joint Intervenors indicate why they need this specific information or to what relevant admissible evidence it might lead. Contrary to the thrust of Joint Intervenors' argument, mere mention of SA-403 fittings in discovery responses or an indirect reference in an NRC IE Bulletin, does not in itself make the requested information concerning the specific number, size and location of such fittings relevant or discoverable. Indeed, as demonstrated above, such information is entirely irrelevant to the issue in this contention concerning the engineering and technical analyses performed by Bechtel and Aptech, and adopted by the NRC in its IE Bulletin No. 79-03A.

B. Burden to Applicant

Coupled with the inherent irrelevancy of this request is the extraordinary burden Applicant would be required to under-

take to provide the requested information for all fusion-welded SA-403 fittings in safety-related systems in the Callaway Plant. As indicated in Applicant's response to Joint Intervenors' interrogatory no. 94 (First Set), under the ASME Code, SA-403 fittings can also be forged (without longitudinal seam welds, and therefore without the possibility of CLP). In order to supply the requested information for all fusion-welded SA-403 fittings, Applicant has determined that the following effort would be required. Applicant's architect/engineer would have to undertake a costly, computer-assisted search to identify all SA-403 fittings in the safety-related piping systems. Under present scheduling requirements this could be obtained in one week. The printout would identify the Certified Material Test Reports (CMTR's) for all SA-403 fittings, both fusion-welded and forged. Applicant's personnel would then have to review manually all such CMTR's to determine which are fusion-welded. The requested information would have to be extracted from the selected CMTR's and prepared for presentation. While the exact number of CMTR's involved can only be determined after such a computer search is conducted, it has been conservatively estimated by Applicant's engineering personnel that in excess of 2000 CMTR's would be identified and that it would take in excess of 200 manhours to conduct the required review of the CMTR's.

It is submitted that in light of the demonstrated lack of relevance of the specific information requested by Joint

Intervenors in their interrogatory no. 25(b) and the tremendous burden which would be imposed on Applicant in order to provide such information, Applicant's objection should be upheld and Joint Intervenors' Motion to Compel should be denied.

II. Joint Intervenors' Document Request No. 54
Seeks A Document Unrelated To The Piping
Issues Which Have Been Admitted As Contentions
In This Proceeding.

Joint Intervenors' Document Request No. 54 (Second Set) seeks "Union Electric letter ULS-2198, dated May 1, 1978." Applicant has interposed the following objection to this request:

Applicant objects to the production of the requested document in that it is not relevant to the matters in controversy; further, production of the requested document will not lead to the discovery of admissible evidence.

The requested document is a one page letter concerning an investigation by Applicant's constructor, Daniel International Corporation ("Daniel"), into the discovery of certain non-destructive examination indications discovered in Class 3 A106 ESW (Essential Service Water System) piping. Attached to the letter is a Daniel Deviation Investigation Report and four (4) non-conformance reports relating to such piping.

Joint Intervenors claim this letter is relevant to the above quoted Contention No. 1, subpart II.A regarding the use of piping with welding deficiencies. The only specific

allegations in this Contention concern the CLP problem discussed above and the discovery of a "substandard" piece of ASME Class 2 SA-358 piping installed in the ECCS (Emergency Core Cooling System). There is no allegation concerning Class 3 A106 ESW piping. Applicant did not object to the admission of this or other subparts of Contention No. 1, except for an objection to the language in the contention to the effect that the alleged deficiencies listed were not intended to be exhaustive of all such allegations which Joint Intervenors might seek to place in issue. The Board in its April 21, 1981 Special Pre-hearing Conference Order, upheld this objection concluding that

...10 C.F.R. 2.714(b) requires that petitioner's contentions must be specified at the time of the special prehearing conference. This requirement is necessary so that controversies within the jurisdiction of the Board are framed and also to provide the applicant and other parties with knowledge of the issues they will face in the proceeding. If additional contentions are to be proposed in the future, they will have to receive the Board's approval at that time.

The document sought by Joint Intervenors concerns a matter unrelated to the specific allegations raised by Joint Intervenors and admitted by this Board in Contention II.A. Nor can Joint Intervenors assert that this is a newly discovered matter. Joint Intervenors claim to have learned of this letter and the related piping problem from NRC Report No. 50-483/80-04. This Report was issued on March 21, 1980 almost one year prior

to the filing of Joint Intervenors' contentions. They certainly had adequate opportunity to investigate this matter and present it as a possible allegation prior to the Special Prehearing Conference.

There must be some limits to discovery. Joint Intervenors cannot be allowed an unchecked "fishing expedition" through Applicant's files. The discovery rules "do not require, and the public interest does not warrant, an application which would make all documents and information possessed by a party...available to a discoverer." Commonwealth Edison Co. (Zion Station, Units 1 and 2), ALAB-196, 7 AEC 457, 461 (1974). "[D]iscovery, like all matters of procedure, has ultimate and necessary boundaries." Hickman v. Taylor, 329 U.S. 495, 507 (1947).

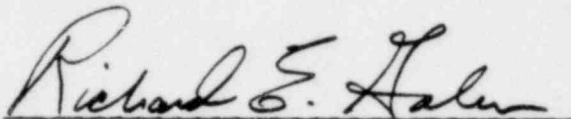
It is submitted that in regard to document request no. 54, such boundaries have been exceeded. The requested document is unrelated to the allegations of Contention II.A. Accordingly, Applicant's objection should be upheld.

CONCLUSION

By reason of the foregoing, it is submitted that Applicant's objections to Joint Intervenors' interrogatory

no. 25(b) (Second Set) and document request no. 54 (Second Set) should be upheld and Joint Intervenors' Motion to Compel should be denied.

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CERTIFICATE OF SERVICE

I hereby certify that copies of Applicant's Answer In Opposition To Joint Intervenors' Motion To Compel were served this 13th day of October, 1981 by deposit in the U.S. mail first class, postage prepaid, to the parties listed on the attached Service List.

Richard E. Galen
Richard E. Galen

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