

10/21/81

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of)
ARIZONA PUBLIC SERVICE COMPANY,)
ET AL.)
(Palo Verde Nuclear Generating)
Station, Units 1, 2 and 3))

Docket Nos. STN 50-528
STN 50-529
STN 50-530

NRC STAFF'S RESPONSE IN SUPPORT OF JOINT
APPLICANTS' MOTION TO DISMISS INTERVENOR'S CONTENTION NO. 8

On October 1, 1981 Joint Applicants' (Arizona Public Service Co. et al.) filed a Motion to Dismiss Intervenor's Contention No. 8. The motion is premised on the Intervenor's (Patricia Lee Hourihan) failure to comply with the Board Memorandum and Order of August 31, 1981, which required a reply to Interrogatories pertinent to Contention No. 8 by September 15, 1981.^{1/} The NRC Staff supports the motion.

1/ Contention 8 provides:

The base mats for Units 1 and 2 are not structurally able to support the systems and equipment inside containment, because some of the concrete slump tests performed by Engineering Testing Labs for Units 1 and 2 were falsified. (Safety).

The Board Memorandum and Order of August 31, 1981, provided in pertinent part:

not later than September 15, 1981, Intervenor Patricia Lee Hourihan serve her written answers, under oath or affirmation, to Joint Applicants' Interrogatories 63, 64 and 65.

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The authority of the Board to dismiss contentions for failure to comply with Board orders is set out in 10 C.F.R. § 2.707, which provides in part:

On failure of a party to . . . comply with any discovery order entered by the presiding officer pursuant to § 2.740, . . . the presiding officer may make such orders in regard to the failure as are just, including, among others, the following:

- (a) Without further notice, find the facts as to the matters regarding which the order was made in accordance with the claim of the party obtaining the order, and enter such order as may be appropriate; or
- (b) Proceed without further notice to take proof on the issues specified. (Footnote omitted.)

See Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), LBP-80-17, 11 NRC 893 (1980); Northern States Power Co. (Tyrone Energy Park, Unit 1), LBP-77-37, 5 NRC 1988 (1977) and cases there cited; see also Pennsylvania Power & Light Co. (Susquehanna Steam Electric Station, Units 1 & 2), 12 NRC 317 (1980).

In a "Statement of Policy on Conduct of Licensing Proceedings" of May 20, 1981, 46 Fed. Reg. 28533 (May 27, 1981), the Commission emphasized that the boards are to use all their powers to see that hearings are fairly and expeditiously conducted. It stated in part:

. . . When a participant fails to meet its obligations, a board should consider the imposition of sanctions against the offending party. A spectrum of sanctions from minor to severe is available to the boards to assist in the management of proceedings. For example, the boards could warn the offending party that such conduct will not be tolerated in

the future, refuse to consider a filing by the offending party, deny the right to cross-examine or present evidence, dismiss one or more of the party's contentions, impose appropriate sanctions on counsel for a party, or, in severe cases, dismiss the party from the proceeding . . . 2/

Here where the Intervenor did not answer the motion to compel an answer to the subject interrogatories, and then did not file an answer to

2/ Interrogatories 63, 64 and 65 were directly related to contention 8 alleging defects in the base mats for the facility because of falsified concrete slump tests (see fn. 1, supra), and are necessary to gather evidence to meet that contention. Interrogatories 63 and 64 ask for information on how Intervenor came to know slump tests were allegedly falsified, and evidence it may have on that subject. See "Joint Applicants' First Set of Interrogatories and Requests for Production of Documents to Intervenor," pp. 14-15, May 22, 1981. Interrogatory 65 asked:

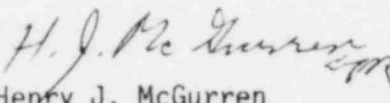
For each and every concrete slump test which you claim was falsified, explain what aspect or aspects of the test were falsified. If information was falsified, describe such information, and state what the false values of such information are. As to such information, state what the true value should be.

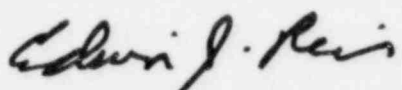
Joint Applicants' entire first set of interrogatories and the Intervenor's answers on Contention No. 8 are attached hereto. From an examination of this material it is patent that the basis of the allegation that slump tests were falsified cannot be ascertained.

Further, the Intervenor in answer to Staff's Interrogatories on Contention 8 merely referred to its answers to Joint Applicants' Interrogatories. See "Intervenor's Answers to NRC Staff's First Set of Interrogatories", p.7, June 26, 1981. Thus, the Staff has been prejudiced by Intervenor's failure to answer the Joint Applicants' interrogatories on Contention 8.

interrogatories upon order of the Board, Contention 8, to which these were directly addressed, should be dismissed.^{3/}

Respectfully submitted,


Henry J. McGurran
Counsel for NRC Staff


Edwin J. Reis
Assistant Chief Hearing Counsel

Dated at Bethesda, Maryland
this 21st day of October, 1981.

^{3/} It is noted that the Intervenor has also failed to respond to other interrogatories. See "NRC Staff Motion for Order Compelling Patricia Lee Hourihan to Respond to Staff's Second Set of Interrogatories and Request for Documents," dated August 27, 1981; "Joint Applicants' Motion to Compel Intervenor to Answer Second Set of Interrogatories," dated August 28, 1981; "Joint Applicants' Motion to Designate Time for Intervenor to Answer Request for Admissions," dated August 28, 1981.

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Palo Verde Nuclear Generating)	
Station, Units 1, 2 and 3)	

Pursuant to 10 CFR §§ 2.740b-2.741, and the Stipulation of Parties Regarding Contentions and Discovery ("Stipulation"), dated December 12, 1980, Joint Applicants hereby propound the following Interrogatories and Requests for Production of Documents to Intervenor.

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57. Explain in detail your understanding of the purpose of concrete slump tests for the concrete used in the containment base mats.

58. What information is obtained from a concrete slump test?

59. What measurements are made as part of a concrete slump test?

60. Explain in detail your understanding of the procedure followed in the performance of a concrete slump test.

61. Explain in detail how, if at all, the information obtained from the concrete slump test is related to the strength or integrity of the containment base mats.

62. For each concrete slump test performed on the concrete used in the containment base mats for Units 1 and 2 which you claim was falsified, give the lab number, date of report, placement number, ticket number, and any other means of identification.

63. Describe in detail how you came to learn that some of the concrete slump tests performed by Engineering Testing Labs for PVNGS Units 1 and 2 were falsified. Did you acquire such knowledge based upon conversations, consultations, correspondence or any other type of communications with one or more individuals? If so,

(a) Identify by name and address each such individual.

(b) Describe the nature of each communication with each such individual, when it occurred, and identify all other individuals involved.

(c) Describe the information received from each such individual.

(d) Identify each letter, memorandum, tape, note or other record related to each conversation, correspondence, or other communication with such individual.

64. Identify by name and address each and every individual who you know or have reason to believe participated in the falsification of the concrete slump tests. For each individual so identified, explain in detail how you came to learn that such individual participated or may have participated in the falsification of the concrete slump tests.

65. For each and every concrete slump test which you claim was falsified, explain what aspect or aspects of the test were falsified. If information was falsified, describe such information, and state what the false values of such information are. As to such information, state what the true value should be.

66. Describe in detail the basis for your conclusion that the base mats for the containments for Units 1 and 2 are not structurally able to support the systems and equipment inside containment because some of the concrete slump tests were falsified.

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(Palo Verde Nuclear Gener-)		
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and 3)		
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INTERVENORS ANSWERS TO
APPLICANT'S FIRST SET OF INTERROGATORIES

* * *

CONTENTION NO. 8.

Answer to Interrogatory No. 57.

A concrete slump test is an indicator of water/cement ratio, ambient air temperature, air content, cement temperature, and consistency of cement prior to pouring.

Answer to Interrogatory No. 58.

The information obtained from a concrete slump test includes the water/cement ratio, the ambient air temperature, the cement temperature and the consistency of the cement.

Answer to Interrogatory No. 59.

A concrete slump test measures the amount of water and air in the premixed cement.

Answer to Interrogatory No. 60.

When performing a concrete slump test, the premixed cement is poured into a 12" high by 6" wide metal cone or tube. The cone is then removed from the cement and the slump is measured.

Answer to Interrogatory No. 61.

If the slump is not of correct proportions, the cement will not meet its designed strength specifications.

Answer to Interrogatory No. 62.

The lab numbers, date of reports, placement numbers, ticket numbers, and any other means of identification will have to be supplied by Engineering Testing Laboratories, the Bechtel Corporation, or the Joint Applicants.

Answer to Interrogatory Nos. 63 through 65.

Object on the ground that the interrogatory calls for information which is irrelevant, immaterial, and not designed to lead to the discovery of admissible evidence.

Answer to Interrogatory No. 66.

The concrete slump test is an important indicator of the strength, integrity, and job specification proportions of the concrete which will support a system essential to reactor operation.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE IN SUPPORT OF JOINT APPLICANTS' MOTION TO DISMISS INTERVENOR'S CONTENTION NO. 8" 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, through deposit in the Nuclear Regulatory Commission's internal mail system, this 21st day of October, 1981:

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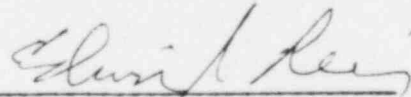
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