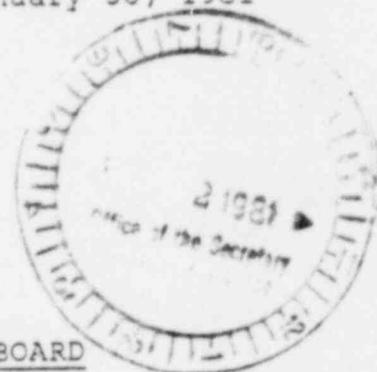


January 30, 1981



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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)

APPLICANTS' RENEWAL OF MOTION TO COMPEL
ACORN AND MOTION TO REQUIRE
SUPPLEMENTATION OF RESPONSES TO APPLICANTS'
FIRST SET OF INTERROGATORIES TO ACORN
AND REQUESTS TO PRODUCE

Pursuant to 10 C.F.R. §§2.730(c) and 2.740(f), Texas Utilities Generating Co., et al. ("Applicants") hereby renew their motion (originally filed September 12, 1980) to compel Texas Association of Community Organizations for Reform Now ("ACORN") to respond to Applicants' first set of interrogatories and requests to produce, filed August 13, 1980, with respect to certain interrogatories. Applicants also move the Board to issue an order directing that ACORN supplement its responses to certain of Applicants' discovery requests.^{1/}

1/ In accordance with the Board's suggestion in its December 19, 1980 Memorandum and Order, Applicants have attached a proposed Order granting the relief requested in the instant pleading. (Attachment A)

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I. Background

On August 13, 1980, Applicants filed their "First Set of Interrogatories to ACORN and Requests to Produce." ACORN filed objections to Applicants' discovery requests and motions for (1) protection and (2) an extension of time, on August 28, 1980. Applicants filed their motion to compel and answer to ACORN's motions on September 12, 1980. The NRC Staff submitted an answer to Applicants' motion to compel on October 2, 1980, urging that Applicants' motion to compel be granted if ACORN again refused to respond after a reasonable extension of time.

The Board issued a Memcrandum and Order on December 19, 1980, overruling ACORN's objections, denying ACORN's motion for protection and allowing ACORN until January 5, 1981 to respond to Applicants' discovery requests. The Board noted that Applicants' motion to compel was meritorious, but dismissed it as premature in light of the extension of time granted to ACORN.^{2/} ACORN subsequently served what it purported to be answers to interrogations on January 5, 1981 (which Applicants received on January 15, 1981). Many of ACORN's answers failed to respond to

^{2/} On September 30, 1980, Applicants filed a similar motion to compel CFUR to respond to Applicants' first set of interrogatories and requests to produce. To date CFUR has made no further response, and the Board has not disposed of Applicants' motion to compel. For the convenience of the Board, Applicants are attaching hereto a proposed Order compelling CFUR to respond. (Attachment B)

Applicants' discovery requests, were incomplete, or merely stated that ACORN does not know the answers "at this time." Applicants hereby renew their motion to compel with respect to certain interrogatories, and move that the Board issue an order requiring ACORN to supplement its answers to certain other interrogatories when ACORN develops or obtains the requested information.

II. Applicants' Motion to Compel

Applicants' hereby incorporate the discussion of law and NRC practice regarding discovery which was set forth in Applicants' September 12, 1980 motion to compel. In addition, after that motion was served, the Appeal Board issued a decision in Pennsylvania Power and Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), 12 NRC 317 (1980), which discussed the principles of discovery in NRC proceedings. That decision reinforces Applicants' summary of applicable discovery principles as stated in their September 12 motion.

Applicants submit that many of ACORN's answers to Applicants' discovery requests constitute inadequate responses under NRC Rules of Practice governing discovery and pertinent case law (including Susquehanna). Accordingly, Applicants renew their motion that the Board issue an order compelling ACORN to respond to the following interrogatories.

A. Interrogatories 2, 32, 72, 102 and 190.

These interrogatories ask ACORN to provide the bases for its position regarding Contentions 5, 13, 16, 20 and 23, and all documents on which ACORN relies to support its position which are not elsewhere identified in its responses.^{3/} ACORN has simply responded that its bases are the same as provided in its earlier pleadings. ACORN offers only two pieces of additional information which apparently serve as bases for its positions, viz., (1) unspecified conversations with unidentified "prior employees of Brown & Root" (Interrogatory 2), and (2) unidentified "Research and Technical Assistance Reports" (Interrogatory 32).

Applicants submit that ACORN's answers are not responsive. Applicants are entitled to discover the substantive bases (if any there be) for ACORN's claims, which bases are in addition to the bases set forth in ACORN's pleadings regarding admission of its contentions. See Boston Edison Company (Pilgrim Nuclear Generating Station, Unit 2), LBP-75-30, 1 NRC 579, 586 (1975). ACORN has not provided any additional information that could be used in the hearings in support of its position. Of course, if

^{3/} Applicants do not renew their motion to compel with respect to interrogatories involving Contentions 22(f) and 24a. In its Memorandum and Order dated December 31, 1980, the Board designated CASE as lead-party Intervenor for all purposes in this proceeding with respect to those contentions. Accordingly, Applicants will hereafter direct discovery on those contentions solely to CASE.

ACORN's bases for admission of the contentions constitute the sole bases and support for its contentions at this substantive, evidentiary stage of the proceeding, ACORN should so state. In any event, as the record now stands, ACORN's answers are not responsive. Accordingly, Applicants move the Board for an order compelling ACORN to supply the substantive bases, if any, it will use to support its positions at the hearings.

B. Interrogatories 43, 114, 118, 124 and 127.

These interrogatories seek the bases for ACORN's responses to certain interrogatories. ACORN has responded by stating that its bases are the same as set forth in previous pleadings (apparently the pleadings filed by ACORN earlier in this proceeding to support admission of its contentions), or that ACORN has not yet consulted with "experts" on the particular subjects. Applicants submit that those responses are incomplete and not responsive.

As noted above, Applicants are entitled to information which ACORN intends to use in support of its positions on contentions. Susquehanna, supra at 331. Such information is in addition to that used to support admission of the contentions. Pilgrim, supra at 586. Accordingly, Applicants move the Board for an order compelling ACORN to supply complete and responsive answers to the above interrogatories.

C. Interrogatory 10.

Applicants request in this interrogatory that ACORN identify the specific provisions of the construction permits for Comanche Peak which ACORN contends in Contention 5 Applicants have not followed. ACORN has responded by specifying only one particular provision, viz., provision 4 regarding compliance with "10 C.F.R. Part 51." Applicants submit that this answer is not responsive to the interrogatory. Contention 5 raises safety issues regarding Applicants' quality assurance/quality control program while Part 51 involves environmental standards for, inter alia, nuclear power reactors. Manifestly, ACORN's answer is not a proper response to Interrogatory 10. Applicants are entitled to information regarding the specific claims which ACORN intends to make in Contention 5. Pilgrim, supra at 582. Accordingly, Applicants move the Board for an order compelling ACORN to provide a proper response to Interrogatory 10.

D. Interrogatory 129.

This interrogatory requests that ACORN specify what it means by the term "ice storm." ACORN's answer is not responsive to the interrogatory. ACORN simply responds with the phrase "historic weather conditions." This answer does not identify the type of weather condition which ACORN considers to be an "ice storm" and is unresponsive. ACORN referred to such storms in its petition to intervene (May 7, 1979, at p. 21), but does

not elaborate. This interrogatory is clearly relevant to Contention 20. Accordingly, Applicants move the Board for an order compelling ACORN to provide a proper response to Interrogatory 129.

III. Applicants' Motion to Require Supplementation

Several of ACORN's responses to interrogatories merely state that the answer is "unknown," or is "unknown at this time" and/or that ACORN will supplement its responses when the information requested is developed or obtained. ACORN does not object to those interrogatories.

ACORN's answers to each of the interrogatories subject to this motion (identified at p. 9) are incomplete and insufficient responses to proper discovery requests. ACORN has provided no substantive information in response to those interrogatories and requests to produce. Intervenor's have a responsibility to supply in response to proper discovery requests the data, information and documents, if any, upon which they intend to rely for their position on each contention so that parties can be advised in advance of the hearings as to the nature of the Intervenor's case, and so that if no genuine issues of fact exist, the underlying contention can be disposed of summarily. Susquehanna, supra at 331; Pilgrim, supra, at 586; 10 CFR §2.749.

Further, while ACORN indicates its intent to supplement its responses with respect to most of the interrogatories

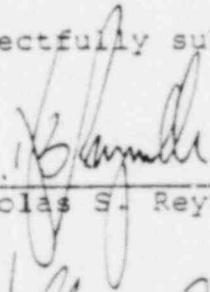
which are the subject of this motion, Applicants believe that a more efficient proceeding will be assured if the Board affirms ACORN's stated intentions by issuing an order clearly requiring supplementation as soon as ACORN obtains responsive information. With respect to those answers which do not indicate an intent to supplement responses, an order requiring such supplementation would promote the efficient conduct of the proceedings. Such an order would eliminate the need for Applicants to resubmit discovery requests with respect to the latter group, and would clarify the necessity for supplementation of both groups as soon as the information requested is available to ACORN.

For the foregoing reasons, Applicants move that the Board issue an order pursuant to 10 CFR §2.740(e)(3) requiring ACORN to supplement its responses as information is developed or obtained with respect to the following interrogatories:^{4/}

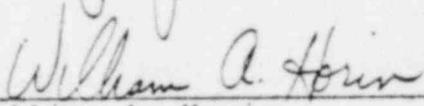
^{4/} Applicants do not move for an order requiring supplementation of interrogatories which request the identity of witnesses, the subject matter of their testimony and the substance of that testimony since ACORN is already clearly required to do so by the NRC Rules of Practice, 10 CFR §2.740(e)(1), and Applicants assume ACORN will abide by that requirement. (Interrogatories 7, 8, 9, 37, 38, 39, 77, 78, 79, 107, 108, 109, 196, 197 and 198.)

3, 6, 12, 13, 14(b), 15, 16, 18-25, 30, 40, 47-50, 52-70,
80-100, 103, 110-113, 115-117, 119-123, 126, 130-141, 195, 199,
200 and 203-213.

Respectfully submitted



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Counsel for Applicants

January 30, 1981

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Valentine B. Deale, Chairman
Dr. Richard F. Cole
Dr. Forrest J. Remick

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In the Matter of)	
TEXAS UTILITIES GENERATING)	Docket Nos. 50-445
COMPANY, et al.)	50-446
(Comanche Peak Steam Electric)	(Application for
Station, Units 1 and 2))	Operating License)
_____)	

February __, 1981

MEMORANDUM AND ORDER

(Granting Applicants' Motions to Compel ACORN to Respond and to Supplement Responses to Applicants' First Set of Interrogatories and Requests to Produce)

1. On August 13, 1980, Applicants filed their "First Set of Interrogatories to ACORN and Requests to Produce." On August 28, 1980, ACORN filed objections to Applicants' discovery requests and motions for protection and an extension of time. Applicants filed a motion to compel and answers to ACORN's motions on September 12, 1980. The NRC Staff filed its answer to Applicants' motion to compel on October 2, 1980. ACORN did not respond to the motion to compel.

2. On December 19, 1980, the Board issued a Memorandum and Order overruling ACORN's objections and denying ACORN's motion for protection but allowing ACORN until January 5, 1981, to respond to Applicants' discovery requests. The Board also dismissed as premature Applicants' motion to compel in view of the extension of time granted to ACORN. On January 5, 1981, ACORN served its "Answers to Applicants' First Set of Interrogatories." Deeming ACORN's January 5 response to be unresponsive, Applicants filed on January 30, 1981, a renewal of their motion for an order compelling ACORN to respond to certain discovery requests and a motion to require ACORN to supplement its responses to other requests. For the reasons set forth below, the Board hereby grants Applicants' motions.

Motion to Compel

3. Applicants' motion to compel involves in all but two instances interrogatories which seek the bases for (1) ACORN's positions on its contentions, and (2) ACORN's responses to certain interrogatories. The NRC Rules of Practice and applicable Licensing Board and Appeal Board decisions make it abundantly clear that parties to NRC licensing proceedings are entitled to obtain through discovery all information, not subject to particular privileges, which tends to support or negate the allegations in the contentions, or which would

permit the party serving the interrogatories to discover such information. Pennsylvania Power and Light Company (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 331 (1980). It is proper to seek through discovery the bases for an Intervenor's position on its contentions at the hearing stage which augment the bases used by the Intervenor to support admission of its contentions under to 10 C.F.R. §2.714(b) at the intervention stage. Boston Edison Company, et al. (Pilgrim Nuclear Generating Station, Unit 2), LBP-75-30, 1 NRC 579, 586 (1975). Specifically, a party to this proceeding has the responsibility to specify the facts (i.e., data, information and documents) which will support that party's position at the hearings, if such information is sought through discovery. Susquehanna, supra at 322. Further, Applicants in particular must be able to inquire effectively as to the positions of Interveners prior to the hearing, to afford Applicants a fair opportunity to discharge the burden of proof which they carry in this proceeding. Northern States Power Company, et al. (Tyrone Energy Park, Unit 1), LBP-77-37, 5 NRC 1298, 1300-01 (1978).

4. Interrogatories 2, 32, 72, 102 and 190 request that ACORN provide the bases for its positions regarding Contentions 5, 13, 16, 20 and 23, and such documents as ACORN intends to rely on in support of its position at the hearings. In response, ACORN merely refers the Applicants to its previous pleadings, to

unidentified former employees of Applicants' contractor, and to unidentified reports. Applicants contend ACORN's answers are unresponsive and incomplete, and the Board agrees. Accordingly, ACORN is directed to specify the factual bases for its positions on the merits of these contentions, and to identify any documents on which it will rely in support of those positions.

5. Interrogatories 43, 114, 118, 124 and 127 ask for the basis for ACORN's answers to certain interrogatories. In response, ACORN again merely refers to its previous pleadings or states that it has not yet consulted with experts on the particular subjects. For the reasons discussed above, ACORN is directed to specify the factual bases for its responses as requested in the above interrogatories. If ACORN intends to supplement its responses where the information sought is available it should so inform Applicants and supplement the answers as the information is developed or obtained.

6. Interrogatory 10 requests that ACORN specify the particular provisions in Applicants' construction permits which ACORN contends in Contention 5 have not been met. Applicants contend that ACORN's answer is unresponsive, and the Board agrees. In response to Interrogatory 10, ACORN merely referred to 10 C.F.R. Part 51, which details applicable environmental requirements. However, Part 51 does not relate to Contention 5, which is a quality assurance/quality control contention. The

Board finds, therefore, that ACORN's answer unresponsive. Accordingly, ACORN is directed to specify which, if any, of the provisions of the construction permit which relate to quality assurance/quality control ACORN believes Applicants have not satisfied.

7. Interrogatory 129 asks that ACORN specify what it means by the term "ice storm." ACORN simply responded with the phrase "historic weather conditions." Applicants contend that ACORN's answer is unresponsive, and the Board agrees. Accordingly, ACORN is directed to specify the meaning of the term as ACORN intends to use it in the proceeding.

Motion to Require Supplementation

8. Applicants also seek an Order pursuant to 10 C.F.R. §2.740(e)(3) directing ACORN to supplement its responses to certain interrogatories (specified below). ACORN responded to those interrogatories by stating (1) that it intends to supplement its responses when the requested information is obtained, or (2) that the information sought is unknown and/or unavailable "at this time." ACORN does not object to any of these interrogatories. Applicants argue that ACORN's responses are incomplete as they now stand, and that an order requiring supplementation would promote efficient conduct of these proceedings both by avoiding the delay involved if Applicants had to resubmit interrogatories with respect to the second category

above, and by making clear the necessity for ACORN to supplement its responses to both sets of answers as soon as responsive information is developed or obtained. The Board agrees that delay would be avoided in this manner, and pursuant to 10 C.F.R. §§2.718 and 2.740(e)(3), directs that ACORN supplement its responses to the interrogatories listed below immediately upon receipt or development of the requested information. Interrogatories 3, 6, 12, 13, 14(b), 15, 16, 18-25, 30, 40, 47-50, 52-70, 80-100, 103, 110-113, 115-117, 119-123, 126, 130-141, 195, 199, 200 and 203-213.

Board Observations

9. A final point is worth noting at this stage of the Comanche Peak Proceeding. The Board is dissatisfied with the apparent refusal of intervenors ACORN and CFUR to respond voluntarily to lawful discovery requests. Suffice it to say that such recalcitrance in the future will be dealt with by the Board firmly and without delay.

ORDER

For the foregoing reasons and in consideration of the record in this matter, it is on this ____ day of February, 1981

ORDERED

That Applicants' motion to compel and to require supplementation of responses with regard to Applicants' First Set of

Interrogatories to ACORN and Requests to Produce is hereby granted, as follows:

That ACORN provide complete responses by [two weeks from issuance of Order], to Interrogatories 2, 32, 72, 102 and 190; 43, 114, 118, 124 and 127; 10; and 129.

That ACORN supplement its responses to the following interrogatories as soon as the information requested is developed or obtained: Interrogatories 3, 6, 12, 13, 14(b), 15, 16, 18-25, 30, 40, 47-50, 52-70, 80-100, 103, 110-113, 115-117, 119-123, 126, 130-141, 195, 199, 200 and 203-213.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

Valentine B. Deale, Chairman

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
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(Comanche Peak Steam Electric)	(Application for
Station, Units 1 and 2))	Operating License)
_____)	

February __, 1981

MEMORANDUM AND ORDER

(Granting Applicants' Motion to Compel CFUR to Respond to Applicants' First Set of Interrogatories and Requests to Produce)

1. On August 13, 1980, Applicants served "Applicants' First Set of Interrogatories to CFUR and Requests to Produce." CFUR filed a motion for an extension of time to respond to Applicants' discovery requests on September 2, 1980. The Applicants and the NRC Staff responded to that motion, with filings dated September 9 and 11, respectively, not opposing CFUR's request for an extension of time. Subsequently, CFUR served its response to Applicants' first set of interrogatories and requests to produce on September 15, 1980, in accordance with its earlier request for an extension of time.

2. CFUR filed a Motion for Protection, on September 18, 1980. CFUR requested in that motion that (1) it not be required to supplement its answers to Applicants' first set of interrogatories (2) Applicants not conduct further discovery from CFUR until the Board so orders, (3) Applicants' future discovery against CFUR be limited to 30 interrogatories in any 45-day period, and (4) CFUR be awarded such further relief as it is entitled. The motion for protection was opposed in its entirety by the Applicants in their "Answer to CFUR's Motion for Protection," dated October 3, 1980. The NRC Staff also urged the Board to deny CFUR's motion in its entirety in a filing titled "NRC Staff Answer to CFUR's Motion for Protection," dated October 9, 1980. Upon consideration of CFUR's motion for protection and the Applicants' and NRC Staff's responses thereto, the Board issued a "Denial of CFUR's Motion for Protection" on December 5, 1980.

3. On September 30, 1980, Applicants filed "Applicants' (1) Motions to Compel and to Require Supplementation of CFUR's Answers to Applicants' Interrogatories and Requests to Produce, and (2) Clarification of Certain Interrogatories." The NRC Staff filed its "Answer to Applicants' Motions to Compel and to Require Supplementation" on October 20, 1980. CFUR did not file a response to Applicants' motion to compel. It is that motion to compel which is the subject of this Memorandum and Order.

4. The NRC Staff supports the motion to compel (except with respect to Interrogatory 6) and the motion to require supplementation (except with respect to interrogatories 76(a) and (b), 81, 82 and 112(e)). CFUR's responses to the interrogatories for which Applicants seek Board action appear to have been formulated without a clear understanding of the purpose and requirements of discovery in litigation regarding the complex and technical issues involved in this proceeding. This Board has previously forwarded to each Intervenor a copy of the Appeal Board decision in Pennsylvania Power & Light Company (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317 (1980). That decision sets forth a useful discussion regarding the nature and purpose of discovery in NRC proceedings, and CFUR would be well-advised to review it.

5. Upon consideration of Applicants' motions and the NRC Staff's responses, and pursuant to this Board's authority to order parties to comply with the NRC Rules of Practice regarding discovery, 10 C.F.R. §§2.740(e)(3) and (f), and to take appropriate action to regulate the course of the proceeding and to avoid delay, 10 C.F.R. §2.718, this Board grants Applicants' motions to compel and to require supplementation of CFUR's answers to Applicants' first set of interrogatories to CFUR and requests to produce. The Board's ruling on each interrogatory is set forth below.

Rulings on Interrogatories^{1/}

Interrogatories 1, 93 and 133: Applicants request CFUR to explain in its own words the meaning of Contentions 2, 7 and 8. CFUR states that the contentions are their own words. Applicants explain in their motion to compel that they seek specification of the broadly identified issues of those contentions. The Board directs that CFUR fully respond to these interrogatories to enable refinement of the issues, Susquehanna, supra at 322.

Interrogatory 12, etc.: Applicants request (initially in Interrogatory 12, and subsequently in numerous other interrogatories) that CFUR provide the bases for its responses to certain interrogatories. CFUR complains in its response to Interrogatory 12, and subsequently responds to similar interrogatories by referring to its answer to Interrogatory 12, that these interrogatories are ambiguous and confusing and objects if they are intended to inquire into CFUR's legal theories. Applicants point out in their motion to compel that they seek only the technical information or legal bases (i.e. regulatory

^{1/} Applicants' Interrogatories 64 through 92 dealt with Contention 5. In its Memorandum and Order of December 31, 1980 the Board designated ACORN as lead-party Intervenor for Contention 5. Accordingly, to the extent Applicants' motion to compel addresses any of those interrogatories, it is dismissed as moot.

requirements which CFUR claims Applicants have not satisfied) for CFUR's positions in this proceeding. Applicants are entitled to such information. See Susquehanna, supra at 322, 331. CFUR is directed to respond to these interrogatories.

Interrogatories 5, 97 and 137: These interrogatories seek the dates and purposes of meetings CFUR has had with the other intervening parties regarding each contention. CFUR objects to these interrogatories as being irrelevant. Applicants claim such information is necessary for them to decide whether to pursue discovery against the other Intervenor. In view of this Board's Order consolidating Intervenor for all purposes with respect to each contention, including discovery, Applicants' need for the information sought no longer exists. Accordingly, CFUR need not respond to these interrogatories.

Interrogatories 6, 98 and 138: These interrogatories seek the names of persons with whom CFUR has met in regard to Contentions 2, 7 and 8. CFUR responds to Interrogatory 6 by stating that there have been no such meetings, and to Interrogatories 98 and 138 by stating that it will only provide the names of persons who agree to testify at the hearings. Applicants indicate in their motion to compel that they seek only information regarding persons who may play a role in the preparation or presentation of CFUR's position at trial so that Applicants may pursue discovery against those persons. The

NRC Staff supports Applicants' motion except with respect to Interrogatory 6, which they note has been answered. CFUR's interpretation of the discovery rules is too restrictive. Parties may obtain the identity and location of persons having knowledge of any discoverable matter. 10 C.F.R. §2.740(b)(1). Accordingly, CFUR is directed to respond to Interrogatories 98 and 138, but need not further respond to Interrogatory 6.

Interrogatories 24, 25, 27, 28, 30, 31, and 63: These interrogatories request that CFUR identify the particular licensing requirements which CFUR contends Applicants have not met with respect to Contention 2. CFUR responds that Applicants must comply with "applicable statutes and regulations," or that the interrogatory is ambiguous (Interrogatory 63). Applicants assert that CFUR's responses are insufficient. NRC Staff believes the responses are inadequate. The Board finds CFUR's responses are not responsive and the interrogatories are proper. Applicants are entitled to information specifying the claims raised in CFUR's contentions. Susquehanna, supra at 322, 331. CFUR is directed to provide the information requested.

Interrogatory 33: This interrogatory requests CFUR to identify computer code "conclusions" which it claims are invalid. CFUR responds by referring to a previous response regarding the purpose of the codes. Applicants state that the answer is evasive and insufficient. The NRC Staff finds the answer to be

incomplete. The Board finds CFUR's answer is not responsive and the interrogatory is proper. Applicants are entitled to information specifying the claims raised in CFUR's contentions. Susquehanna, supra at 322, 331. CFUR is directed to provide the information requested.

Interrogatories 104, 112(e), 115, 120 and 122: These interrogatories request information regarding the actions or evaluations CFUR contends Applicants should undertake, or whether CFUR contends certain actions or evaluations already completed are inadequate, with respect to Contention 7. CFUR's only responses are that further seismic analysis should be done and CFUR believes "loose rock material" was thrown into the excavation. Applicants argue that CFUR's answers are incomplete. The NRC Staff supports the Applicants' position. The Board finds that CFUR is not responsive to the interrogatories and directs that CFUR specify the nature of the seismic analysis that should be performed as well as the basis and impact claimed with regard to the loose rock material.

Interrogatories 149 and 150: These interrogatories seek the effects and the method of measurement CFUR believes should be used with respect to the drawdown of groundwater. CFUR responds that there would be "undesirable consequences," and measurements should not infringe "on neighbors [sic] access." Applicants and NRC Staff argue these answers are not responsive. The

Board finds that CFUR's answers are incomplete and evasive. CFUR is directed to identify the specific effects it contends would be caused and the methods of measurement it believes should be used.

Supplementation of Responses

Applicants also move this Board for an order, pursuant to 10 C.F.R. §2.740(e)(3), directing CFUR to supplement its responses to certain discovery requests which CFUR claims it is unable to respond to at this time. The NRC Staff supports Applicants' motion except with respect to Interrogatory 112(e).

Because CFUR does not otherwise object to the interrogatories and indicates it intends to obtain the information requested at some time, it would be pointless to require Applicants to resubmit the interrogatories at a later time. Accordingly, and since the Board finds that Applicants' discovery requests are proper, efficient conduct of this proceeding would be promoted if CFUR would supplement its responses to those interrogatories which it claims it cannot answer "at this time."

The Board grants Applicants' motion except with respect to Interrogatory 112(e), as follows:

Interrogatories 2, 94 and 134: These interrogatories seek CFUR's bases for Contentions 2, 7 and 8 and any documents on which CFUR relies for its position on those contentions,

which bases and documents are not provided in responses to other discovery requests from Applicants. CFUR does not object to the interrogatories, but states that in the absence of discovery from Applicants it is not able to respond "at this time." CFUR lists as supporting documents its petition to intervene, its report on contentions and the prehearing conference transcript. References to petitions to intervene are not sufficient responses to discovery requests. Boston Edison Company (Pilgrim Nuclear Generating Station, Unit 2), LBP-75-30, 1 NRC 579, 586. Further, Applicants are entitled to obtain the information on which CFUR relies for its position on contentions. Accordingly, and for the reasons discussed above, an order requiring supplementation of these interrogatories when CFUR obtains the information requested is appropriate.

Interrogatories 3, 4, 7, 11, 13, 16, 18, 21, 34, 37, 38, 40(b), 50, 51, 57, 61 (response under the first "62"), 95, 96, 99, 103, 106, 109, 112(a) and (e), 113, 117, 119, 124, 128, 130, 131, 135, 136, 139, 143(a), 144, 146, 148, 153, 154, 158, 161 and 164: These interrogatories cover a variety of topics regarding Contentions 2, 7 and 8. CFUR does not object to any of these interrogatories (except to the extent they seek a basis for responses, which objections are treated above under the discussion of the motion to compel.) CFUR indicates for each of these interrogatories that it does not have an answer "at this

time," the information is being developed, or it must conduct discovery before it will have an answer. Accordingly, and for the reasons discussed above, an order requiring CFUR to supplement these interrogatories is appropriate (except with respect to Interrogatory 112(e) which is the subject of the order compelling responses and therefore an order requiring supplementation is not appropriate at this time).

ORDER

For the foregoing reasons and in consideration of the record in this matter, it is on this ____ day of February, 1981

ORDERED

That Applicants' motions to compel and to require supplementation of responses with regard to Applicants' First Set of Interrogatories to CFUR and Requests to Produce is hereby granted, as follows:

That CFUR provide full and complete responses by [two weeks from issuance of Order], to the following interrogatories: 1, 93, and 133; 12 (and all interrogatories to which CFUR responds by referring to its answer to 12); 5, 97 and 137; 6, 98 and 138; 24, 25, 27, 28, 30, 31 and 63; 33; 104, 112(e), 115, 120 and 122; 149 and 150.

That CFUR supplement its responses to the following interrogatories when the information requested becomes available: 2, 94 and 134; 3, 4, 7, 11, 13, 16, 18, 21, 34, 37, 38, 40(b), 50,

51, 57, 61 (response under the first "62"), 95, 96, 99, 103,
106, 109, 112(a), 113, 117, 119, 124, 128, 130, 131, 135, 136,
139, 143(a), 144, 146, 148, 153, 154, 158, 161 and 164.

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tation, Units 1 and 2)) Operating License)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Applicants' Renewal of Motion to Compel ACORN and Motion to Require Supplementation of Responses to Applicants' First Set of Interrogatories to ACORN and Requests to Produce", in the above captioned matter were served upon the following persons by deposit in the United States mail, first class postage prepaid this 30th day of January, 1981:

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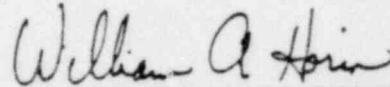
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