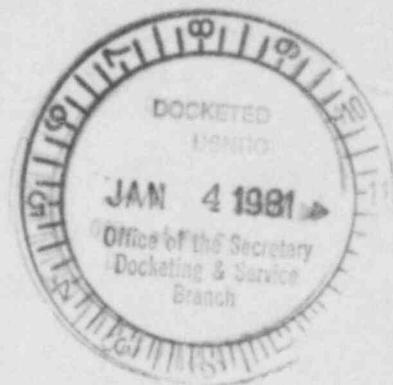


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



IN THE MATTER OF
ILLINOIS POWER COMPANY,
SOYLAND POWER COOPERATIVE,
INC. and WESTERN ILLINOIS
POWER COOPERATIVE, INC.

(Operating License for
Clinton Power Station,
Unit 1)

Docket No. 50-461 OL



ILLINOIS' MOTION TO COMPEL
ANSWERS TO ITS SECOND SET
OF INTERROGATORIES AND
REQUEST FOR PRODUCTION OF
DOCUMENTS TO APPLICANTS

The State of Illinois (Illinois), by its attorney,
TYRONE C. FAHNER, Attorney General of the State of Illinois,
moves the presiding officer, pursuant to 10 C.F.R. § 2.740 (f),
for an order compelling applicants, Illinois Power Company,
Soyland Power Company, and Western Illinois Power Cooperative,
Inc. (IP), to answer interrogatories and produce documents. In
support of this motion Illinois states as follows:

I.

Procedural History

On November 16, 1981 Illinois served IP with Illinois'
Second Set of Interrogatories and Request for Production of
Documents. Illinois did so pursuant to a Discovery Schedule

8201060073 811231
PDR ADOCK 05000461
G PDR

DS03
50/1

set by a Board Order, filed on October 29, 1981, which in turn approved the parties' Joint Motion for Establishing Discovery Schedule, filed with the Board on October 13, 1981. On December 15, 1981 IP served on Illinois by mail its response to Illinois' discovery requests. On December 21, 1981 Illinois received IP's response.

In its response IP objected to all the interrogatories propounded by Illinois, except for Interrogatories Nos. 25-27, 52, 54, 56 and 58. IP also objected to all of Illinois' document production requests, except for Request No. 1. This motion requests an order compelling answers to all interrogatories and production requests to which IP objected, and certain others to which incomplete answers were given.

II.

Illinois' Response To IP's General Objections

A. The Scope of First Round Discovery

IP objected to many or most of Illinois' discovery requests on the assertion that Illinois is now foreclosed from receiving the information requested in second round discovery because IP already made it available to Illinois in response to more general first round discovery requests. IP believes that it satisfied its obligations in first round discovery because it allowed Illinois' attorneys to search for several days through a file room full of

documents, with only a general index as a guide to where information might be found. The issue here is whether this general attempt at compliance with first round discovery requests now forecloses Illinois from more specific second round discovery requests.

Illinois' second round requests focus on and seek clarification of matters raised by the Prairie Alliance Contentions and touched upon in the first round of discovery requests. As IP acknowledges, the second round requests seek much more specific information concerning events, positions and documents than did previous requests. Nevertheless, IP argues that much of the information sought in Illinois' second round requests has already been provided in the first round, such that further inquiry now should be barred. That argument, while having some superficial appeal, rests on a faulty premise. Concerning the matters for which discovery is sought in the second round, IP in the first round chose to respond in vague terms by announcing that the "documents were available for inspection". In its Memorandum and Order of December 17, 1981 ruling upon Prairie Alliance's and Illinois' Motions to Compel, the Board properly chastised IP for failing to comply with the specificity requirements 10 CFR § 2.740(b)(1) regarding discovery, and ordered IP to more fully respond to certain first round requests in accordance with that regulation. IP's shotgun

approach to production, without identifying and specifying documents pertinent to a particular discovery request, has resulted in far less than full disclosure, as Illinois' attorneys have had to try to locate and identify the relevant documents.

Granted, IP has supplied Illinois with an index to its files, ostensibly pertaining to matters raised by Contention 2. However, this index was provided very late in the first round of discovery and only at the request of Illinois. IP has yet to attempt to identify and correlate specific files with the requests made. Thus, to the extent that IP has chosen an improper and unduly burdensome approach to production in the first round and given that IP remains ordered by the Board to answer certain first round requests, it cannot be said that the information in dispute has "already been provided". For its part, Illinois in the second discovery round has formulated very narrow and specific requests in hopes of both avoiding the avalanche-like response IP has made previously and expediting discovery. However, IP has unreasonably withheld information on the basis of its insufficient first round response.

B. The Scope of Second Round Discovery

IP's second general objection is that Illinois' discovery requests are beyond the scope of second round discovery because the information requested is not necessary for clarification of

responses to first round discovery. IP asserts that Illinois is attempting to broaden discovery in the second round, rather than clarify responses made in the first round. At issue here, first, is whether all of IP's responses in the first round were specific enough so that Illinois could ask for information that would clarify those responses. If so, then the issue becomes whether Illinois's more specific second round discovery requests do in fact clarify those matters.

Many of IP's responses to first round discovery requests, were so lacking in specificity that no substantive matters were raised which could be clarified in second round. This is particularly true for IP's document production, which, as stated earlier, consisted of access to all possibly relevant documents. IP cannot now claim that the second round of discovery is broader than the first round, when IP's response to the first round was so unspecified.

Some of the second round requests made by Illinois are clearly related to the few specific responses IP gave in the first round. As can be seen below, Illinois has indeed asked for information to explain or refine IP's previous answers.

In any event, Illinois's second round discovery is essential for clarification of matters raised in the Prairie Alliance Contentions. In contrast to the more general requests of the first round, Illinois has asked for more specific informa-

tion in the second round on a range of issues related to the contentions. The purpose here is to narrow the broad allegations found within the contentions. Without the information requested the contentions will continue to consist of almost boundless allegations.

The need for the information requested in second round discovery is heightened by the lack of specificity in IP's responses to first round discovery. As the Board has pointed out in its Memorandum and Order of December 17, 1981, IP's answer does not comply with the requirements of 10 CFR § 2.740(b)(1) as to specificity. The lack of specificity in IP's first round responses was magnified by the burdensome nature of IP's document production. Illinois' attorneys spent several days in IP's Decatur office, searching through a room full of documents, with a general index the only guide at hand as to where the desired information might be found. Having discovered little of the information sought in first round, Illinois now pursues particularized answers - including information on the existence, description, nature, custody, condition and location of documents - to questions that are relevant to this proceeding.

IP misconstrues the agreement, reached by the parties in the Joint Motion for Establishing a Discovery Schedule, that the scope of second round discovery is "limited to clarification of matters raised in the first round." The purpose of that agreement is to narrow the exact nature of each contention by the use

of more specific discovery requests. The purpose of the agreement is not to set arbitrary limits on discovery that is otherwise permissible under the NRC Rules of Practice and Procedure. IP's objection frustrates the purpose of the discovery schedule in this proceeding, which is to refine each contention in each round by the use of more specific discovery requests.

III.

Illinois' Response to IP's Specific Objections

A. Contention 2

1. Interrogatories Nos. 5 and 8. Illinois repeats its argument found in Section II-B. In addition, Illinois points out that the Board, in its Memorandum and Order of December 16, 1981, has already ordered IP to make a categorical response to Interrogatory 3d in the first round.
2. Interrogatories Nos. 6, 7, 9, 10, and 13. Illinois repeats its argument found in Section II-B. In addition, the response to Interrogatory 9. C. is incomplete in that reference is made to written complaints only.

IP is obliged to supply information concerning complaints of any kind or form.

3. Interrogatories Nos. 11 and 12, 14 - 19. IP states that the information requested was provided in response to Interrogatory No. 4 of the first round. IP's response in that instance was that relevant documents are available for inspection at the IP offices. Illinois did not find the information it sought. In light of this general response Illinois now makes a specific request for the information concerning Inspection Report 50-461/81-05. These requests are clearly meant to clarify matters discovered in first round, in that Illinois is asking IP to further explain what changes, if any, it has made in response to the findings of that report.
4. Interrogatories Nos. 20-24. Illinois repeats its argument found in Section II-B. In addition, IP has objected to these Interrogatories on grounds of "vagueness". Interroga-

tory 20 simply seeks information designed to identify factors contributing to overruns, delays or other construction-related problems. Interrogatories 21-24 seek documents or other information relating to specific criticisms of IP management capabilities.

B. Contention 3

1. Interrogatories 25-27. Contrary to the specification requirements of 10 CFR Section 2.740(b)(1) and to the instructions preceding the Second Set of Interrogatories, IP has failed to fully identify the documentation relied upon in making its responses.
2. Interrogatories 28-34. Illinois repeats its argument found in Section II-B.

C. Contention 10.

1. Interrogatories Nos. 35-48,51. Illinois repeats its argument found in Section II-B. In addition, Illinois states that these interrogatories ask for further explanation of statements IP has made in the FSAR and its

amendments, statements made by the NRC Staff in discovery, or statements made by IP in discovery.

2. Interrogatories Nos. 49 and 50. Illinois repeats its argument found in Section II-B. Illinois also states that it would not find the answer in the documents IP purportedly produced in response to Interrogatory No. 46d of the first round.

D. Contention 12

1. Interrogatory 52. Contrary to the specification requirements of 10 CFR § 2.740(b)(1) and to the Instructions preceding the Second Set of Interrogatories, IP has failed to fully identify the documentation relied upon in making its responses.
2. Interrogatories Nos. 53, 55, and 59. Illinois repeats its argument found in Section II-B. In addition, Illinois states that these interrogatories ask for further explanation of IP statements made in the FSAR and its amendments.
3. Interrogatory No. 57. IP's answer is unresponsive. Illinois asks IP what it will do if a spent fuel load becomes stuck in the

tube during transfer. IP's statement that it will take the necessary steps to correct the malfunction or remove the fuel is vague and incomplete.

IV.

IP's Response to Request
for Production of Documents

1. Document Requests Nos. 2-8. Illinois repeats its argument found in Section II-A.
2. Document Request No. 9. Illinois repeats its argument found in Sections II-A and B.
3. Document Requests Nos. 10 and 11. Illinois repeats its argument found in Section II-A.
4. Document Requests Nos. 12-17. Illinois repeats its argument found in Sections II-A and B.

WHEREFORE, for the reasons stated above Illinois asks the Board to order IP to answer the Interrogatories and produce documents in response to the Document Requests listed above.

Respectfully submitted,

TYRONE C. FAHNER
ATTORNEY GENERAL
STATE OF ILLINOIS

OF COUNSEL:
Reed W. Neuman
Philip L. Willman
Assistant Attorneys General

DATED: December 31, 1981

BY:

Reed W. Neuman
Reed W. Neuman
Assistant Attorney General
Environmental Control Division
500 South Second St.
Springfield, IL 62706
(217) 782-9031

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF)
ILLINOIS POWER COMPANY,)
SOYLAND POWER COOPERATIVE,)
INC. and WESTERN ILLINOIS)
POWER COOPERATIVE, INC.)
(Operating License for Clinton))
Power Station, Unit 1))

Docket No. 50-461 OL

CERTIFICATE OF SERVICE

I hereby certify that I served copies of Illinois' Motion To Compel Answers To Its Second Set Of Interrogatories and Second Request for Production of Documents to Illinois Power Company on the persons listed on the attached Notice by causing same to be deposited in the United States Mail, first class, postage prepaid, on this 31st day of December, 1981.

Reed W. Neuman
REED W. NEUMAN

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'82 JAN -4 11:18

IN THE MATTER OF)
ILLINOIS POWER COMPANY,)
SOYLAND POWER COOPERATIVE,)
INC. and WESTERN ILLINOIS)
POWER COOPERATIVE, INC.)
(Operating License for Clinton)
Power Station, Unit 1))

OFFICE OF SECRETARY
DOCKETING DIVISION

Docket No. 50-461 OL

N O T I C E

TO: Hugh K. Clark, Esq., Chairman
P.O. Box 127A
Kennedyville, Maryland 21645

Dr. George A. Ferguson
School of Engineering
Howard University
2300 Sixth Street, N.W.
Washington, D.C. 20059

Dr. Oscar H. Paris
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Richard J. Goddard
Office of the Executive Legal Director
United States Nuclear Regulatory Commission
Washington, D.C. 20555

Peter V. Fazio, Jr.
Schiff, Hardin, & Waite
7200 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606

Prairie Alliance
P.O. Box 2424
Station A
Champaign, Illinois 61820

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety and Licensing Appeal Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

PLEASE TAKE NOTICE that I have today mailed for filing with the Secretary, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Chief, Docketing and Service Section, one original and two conformed copies of Illinois' Motion To Compel Answers To Its Second Set of Interrogatories and Second Request for Production of Documents to Illinois Power Company. A copy of this document is attached and served upon you.

Reed W. Neuman

REED W. NEUMAN
Assistant Attorney General
Environmental Control Division
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

DATED: December 31, 1981