

Although, based on 10 CFR § 2.720(h)(2)(ii,) objections to these interrogatories in their entirety may properly lie,^{2/} the Staff, in keeping with the Licensing Board's direction,^{3/} contacted NRDC after reviewing the interrogatories to discuss the NRC responses to the discovery requests. Although considered, no agreement was reached on a reply date for the interrogatory and admission requests to the Staff. The updating of the previous 21 sets of interrogatories, as well as the previous admission requests, is consuming most of the Staff's effort. As a result of this continuing effort, a letter was sent to NRDC on March 30, 1982 indicating a number of prior discovery responses which will not require updating by the Staff. This updating effort is continuing. The Staff will, however, answer the new NRDC admissions and

^{2/} The Commission's Rules of Practice specifically exempt the Staff from responding to interrogatories except as provided by 10 CFR 2.720(h)(2)(ii). See 10 CFR 2.740b(a). 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 interrogatories are necessary to a proper decision in the proceeding and 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 discovery against the Staff was explained by the Appeal Board in Pennsylvania Power and Light Co., et. al. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 323 (1980).

As discussed below, the Staff specifically objects to certain interrogatories in NRDC's 22nd set of Interrogatories to the Staff.

^{3/} The Licensing Board's Prehearing Conference Order of February 11, 1982 directed the parties to make good faith efforts to resolve any discovery disputes.

interrogatories as soon as possible, with the exception of those inquiries to which the Staff objects as indicated in section II below. In any event, the Staff intends to update all prior responses to interrogatories, answer all prior interrogatories not previously answered and answer the interrogatories in the twenty-second set not objected to, by April 30, 1982.^{4/} The Staff will forward any responses which are finalized on a continuous basis as they are finalized.

II. OBJECTIONS

The Staff objects to the following interrogatories for the reasons set forth below, and as indicated in Section III., seeks a protective order.

NRDC's Twenty-Second set of Interrogatories to the NRC Staff Contention 5

Interrogatory 4(a-e)

This interrogatory asks the Staff for information on facilities of the "type likely to be used in the CRBR fuel cycle."

The Staff finds this interrogatory objectionable since it requests information which 1) is not relevant to the issue raised by Contention 5 and 2) is not necessary to a proper decision in this proceeding. Contention 5 addresses the adequacy of the environmental review of the

^{4/} The Staff has also recently received NRDC's Twenty-third set of interrogatories, dated March 26, 1982, which relate to Contention 5. Although the Staff has not yet determined which of these interrogatories may be objectionable, the Staff will be prepared to discuss any objections with NRDC and the Board at the April 5-6, 1982 Pre-hearing Conference.

safeguards for the Clinch River Breeder Reactor fuel cycle. This interrogatory does not limit itself to information about DOE facilities which it is planned will be used, or considered for use, in the Clinch River Breeder Reactor fuel cycle. The Staff finds it impossible to provide the requested information for subsections a-e for DOE facilities which have been identified as possibly being used in the Clinch River fuel cycle since NRC inspection information is only available for commercial facilities. None of the facilities which have been identified for possible use in the CRBR fuel cycle are commercial facilities. To the extent the interrogatory goes beyond those facilities the Staff objects to the interrogatory.

Interrogatory 5 (a and b)

This interrogatory is a blanket request for all reports of the NRC or known to the NRC that assess the adequacy of safeguards at NRC-licensed and DOD facilities. The Staff finds this interrogatory objectionable since it requests information which 1) is not relevant to the issue raised by Contention 5 and 2) is not necessary to a proper decision in this proceeding. This request is not limited to safeguards at Clinch River and its associated fuel cycle facilities, but encompasses all NRC-licensed and DOD facilities. This far exceeds the scope of information relevant to the environmental review of CRBR. It is not apparent how the adequacy of safeguards at some other location can be relevant to resolving the adequacy of the environmental review of the CRBR. In negotiation with NRDC the Staff agreed to provide the requested information with respect to any facility which is presently being considered for use for the CRBR and the CRBR fuel cycle. Discussions with NRDC failed to yield any agreement on

limiting the interrogatory. For the reasons discussed above the Staff objects to providing information for facilities other than those which are planned to be used in the CRBR fuel cycle and the CRBR.

Interrogatory 7 d. iii.

This interrogatory asks for the Staff's belief as to the adequacy of safeguards at the Idaho National Engineering Laboratory. That facility is no longer being considered for use in the Clinch River Breeder Reactor Fuel Cycle. In discussions with NRDC an agreement was reached that this subpart of Interrogatory 7 will be withdrawn by NRDC and need not be responded to by the Staff.

Contention 8

Interrogatories 3, 4, and 5.

These interrogatories ask for information related to the basis for certain exposure limits in 10 CFR Part 100. The Staff objects to these interrogatories since they ask for information which is 1) not relevant to the issue in Contention 8 and 2) is not necessary to a proper decision in this proceeding. In admitting Contention 8 the Licensing Board specifically noted that, as originally written, the contention appeared to challenge the limits set out in 10 CFR Part 100 for occupational radiation exposure. The Board stated that this would be an uncognizable challenge to the regulations. The Board admitted the contention only on the issue of whether the residual effects of radiological exposure, even when the regulations were complied with, were adequately considered in the Staff's environmental review. Special Prehearing Conference Memorandum and Order, April 6, 1976, pp. 11-12. The above interrogatories do not ask for information related to what is necessary to comply with the

regulations or what will be the residual effects even if the regulations are complied with. As such, they ask for information which is not relevant to the contention as admitted by the Board. The Staff therefore, objects to these interrogatories in their entirety.

Interrogatories 7, 8, and 9.

These interrogatories relate to various organizations' positions as to what are acceptable occupational exposure limits. As discussed above, the Licensing Board specifically limited Contention 8 to discussing the adequacy of the Staff's consideration of the residual effects after compliance with the regulatory limits. These interrogatories deal with limits other than those which appear in the present NRC regulations. They are, therefore, irrelevant to the issue raised in the contention as it was limited by the Licensing Board. The Staff objects to these interrogatories in their entirety.

Contention 8

Interrogatories 10-12

Contention 23

All Interrogatories

Contention 24

All Interrogatories

The above interrogatories all relate to contentions or portions of contentions which have recently been proposed by NRDC and to which the

Staff has objected in its March 19, 1982 filing entitled "NRC Staff Response to Intervenor's Revised Statement of Contentions and Proposed Areas of Discovery." Under 10 CFR 2.740(b)(1) discovery is to be had only as to "those matters in controversy which have been identified by the Commission or the presiding officer..." There has been no indication from either the Commission or the Licensing Board that the proposed contentions will be accepted as matters in controversy for this proceeding. In fact, one of the purposes of the prehearing conference scheduled for April 5th and 6th, 1982 is to determine whether these contentions are appropriate for litigation in this proceeding. The Licensing Board specifically provided a separate, later due date for discovery related to the pending contentions. Prehearing Conference Order, February 11, 1982. The Staff, therefore, opposes instituting discovery on the proposed contentions prior to the Board's determination of the admissibility of the contentions.

III. MOTION FOR PROTECTIVE ORDER

On the basis of the above stated objections, based primarily on 10 CFR 2.720(h)(2)(ii), and for good cause shown, the Staff respectfully requests the Licensing Board to issue a protective order pursuant to 10 CFR 2.740(c) that further discovery not be had as to Contention 5, Interrogatories 4 and 5; Contention 8 Interrogatories 3, 4, 5, 7, 8, 9,

10, 11 and 12; Contention 23, all interrogatories; and Contention 24, all interrogatories, to which the Staff has objected.

Respectfully submitted,

A handwritten signature in cursive script that reads "Bradley W. Jones". The signature is written in dark ink and is positioned above the typed name and title.

Bradley W. Jones
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 2nd day of April, 1982

Contention 5

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4. For each facility that is of a type likely to be utilized in the CRBR fuel cycle, identify fully each safeguards inspection of such facility conducted from April 23, 1977, to date by NRC and the General

Accounting Office which has identified failure(s) to meet the requirements of:

- a. federal law(s);
 - b. agency regulations;
 - c. license conditions;
 - d. other agency guidance; or
 - e. prudent safety practice.
5. Identify all reports in possession of Staff or know to Staff, issued since April 23, 1977, that assess the adequacy of safeguards at:
- a. NRC-licensed facilities;
 - b. DOD facilities.

Contention 8

3. Were the limits on whole body and thyroid exposure under 10 CFR Part 100 based on limiting the occurrence of stochastic effects to an acceptable level, or were they also intended to prevent non-stochastic effects?
4. Provide the supporting basis for Staff's answer to question 3 above.
5. If the current dose limits in 10 CFR Part 100 were intended to prevent non-stochastic effects, explain how a limitation of 300 rems to the thyroid is intended to prevent non-stochastic effects.

- annual dose equivalent limit for whole body exposure.)
7. Identify the latest EPA position with respect to proposed occupational exposure limits.
 8. Identify the latest Staff position with regard to proposed occupational exposure limits.
 9. If the approach taken in ICRP 26 at ¶104 and ¶110 for limiting stochastic effects were adopted, what is Staff's position with regard to the most appropriate values for the tissue weighting functions? For example, does Staff favor the recommendations of ¶105 of ICRP 26, or does it favor the weighting factors currently being proposed by EPA, or does Staff recommend some other weighting factors?
 10. Does Staff believe that the risks associated with whole body exposure of 25 rems is equivalent to the risk of irradiating the thyroid only to 300 rems?
 11. If the answer to Question 10 is yes, please provide the source of data which Staff believes best represents mortality or morbidity risk data for whole body and thyroid exposures.
 12. If Staff believes that the risks associated with 25 rems to the whole body are not equivalent to the risks associated with irradiating the thyroid to 300 rems,

(The Staff is also objecting to all interrogatories on Contentions 23 and 24.)

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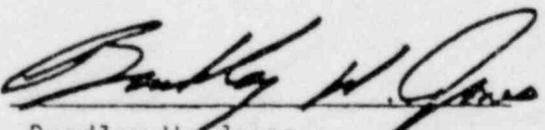
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