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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	Docket No. 50-170
ARMED FORCES RADIOBIOLOGY	)	
RESEARCH INSTITUTE	)	(Application to Renew
	)	Facility License No. R-84)
(TRIGA-Type Reactor)	)	

INTERVENOR CNRS'S REPLY TO LICENSEE'S RESPONSE  
TO MOTION FOR LEAVE TO FURTHER SUPPLEMENT  
INTERROGATORY RESPONSES

Procedural Background

In December, 1981, Intervenor CNRS (hereinafter "CNRS") filed two sets of detailed responses, numbering approximately forty-six pages, to interrogatories (and requests for admissions) propounded by both the Licensee and the NRC staff. The Licensee was not satisfied with the responses, and sought additional information and clarification of some of the responses, by filing a motion to compel on January 15, 1982, and meeting with counsel for CNRS (and counsel for the NRC staff) on February 2, 1982.

At that meeting all counsel present participated in a lengthy, question-by-question review of the interrogatories and a discussion of the further information and clarification which Licensee sought. During that review of the interrogatories, counsel for CNRS explained that some of the additional information (and analysis) could not be provided by CNRS unless and

until the Licensee itself furnished further information concerning the reactor facility and its operations -- information within the exclusive possession and control of the Licensee. Counsel for the Licensee agreed that CNRS could first seek the additional information from the Licensee during the second round of interrogatories, and subsequently provide the further answers Licensee sought.

During that meeting counsel for CNRS also acknowledged that CNRS would attempt, with the assistance of one or more technical experts, to answer certain of the other interrogatories in more detail, providing additional information of the type Licensee sought.

On August 2, 1982,, following the Licensing Board's July 12, 1982 order, Intervenor CNRS filed a set of supplementary responses numbering approximately twenty-eight pages. As CNRS explained in an accompanying motion for leave to further supplement certain of its interrogatory answers, some of the answers were not yet complete because its consulting expert witness, Dr. Irving Stillman, had been unable to finish the responses by August 2nd because of professional and personal commitments and a brief period of ill health.

CNRS also explained in its August 2nd motion that it would make prompt, good faith efforts to ascertain and inform the Board and the parties as to when its supplementary responses would be ready, and to file those responses. Counsel for CNRS met with Dr. Stillman on August 25th to review the outstanding

interrogatories in detail. The further responses are being prepared, and will be reviewed and ready for filing on October 4, 1982.

CNRS submits that in light of the lengthy and detailed answers it has already provided to many of the Licensee's (and the NRC Staff's) interrogatories and requests for admissions, and its willingness to provide additional, even more detailed information at the Licensee's request, the Licensing Board can and must conclude that CNRS is responding in good faith and as fully as possible to the discovery requests in this proceeding. Therefore, CNRS submits that the Licensing Board should grant its motion for leave to further supplement its interrogatory responses, and allow CNRS to file such responses on or before October 4, 1982. A proposed order to this effect is attached.

CNRS strongly urges the Board to reject the Licensee's request for harsh and inappropriate sanctions, a request embodied in Licensee's August 17th response to the CNRS motion and in its proposed order. CNRS does not oppose the setting of a date certain for completion of supplementary answers to the first round of interrogatories, and is proposing October 4, 1982, for such a deadline. However, CNRS strenuously objects to all other aspects of the Licensee's recent response and the proposed order which accompanies it. By ignoring all of the discovery responses which the Intervenor CNRS has supplied to both the

Licensee and the NRC Staff, and by referring instead only to those interrogatories which could still be answered in further detail, the Licensee argues for Board action which would be unduly harsh and wholly inappropriate.

Moreover, there are four serious factual and legal errors in the Licensee's response on this discovery issue: First, the Licensee is insisting that CNRS further answer or be severely penalized for failing to further answer several interrogatories which cannot be further answered unless the Licensee itself first provides information necessary to preparation of those answers.<sup>1/</sup> Second, the Licensee has erred in stating that the answers to certain of the interrogatories propounded are "incomplete or evasive."<sup>2/</sup> Intervenor, CNRS respectfully submits that it has fully answered these interrogatories, in good faith.<sup>3/</sup>

Third, the Licensee is asking the Board to find, in the first paragraph of its proposed order, that a large number of CNRS' responses are "incomplete, evasive, or both." However,

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1/ Interrogatories numbered 12a,c,d; 13; 14; 15b-d; 16a,b,f; 17c,d; 18a,c,d; 19a,c,f; 20a,b,d; 21a,e; 22a,d,e; 26g,l; 27a-c, d-f; 28b,e-k; 29b,d-f; 30; 31b,c; 32b; 36a(2)-(4). As noted below, these interrogatories are the subject of a motion for a protective order, filed this same date.

2/ Interrogatories numbered 8c, 12b, 22b, 24i, 25c, 28c, 29a, 29c.

3/ Id., and responses and supplementary responses thereto.

in addition to being wrong about the completeness of several of those responses, the Licensee wholly fails to allege or explain, anywhere in its response, how and/or why each of the responses listed is either incomplete or evasive.

The fourth, and perhaps most serious, error in the Licensee's response is that it asks for a disproportionate and wholly inappropriate sanction -- the striking of each and every contention related to its request for further supplementation of interrogatory responses, notwithstanding the substantial body of discovery material already provided by the Intervenor CNRS on many of these contentions.

The first of these four errors is the subject of a separate request by CNRS (filed this same date) for a protective order, and will not be discussed in this reply. The other three errors are explained in greater detail in the following paragraphs of this reply.

#### Discussion

##### The Licensee's Characterization of Several Responses as Incomplete, or "Evasive, "or Both" Is Wrong.

On page four of its August 17th response to the CNRS motion, the Licensee states that CNRS' response "did not answer or address" certain interrogatories. The interrogatories listed in this paragraph, and other interrogatories referred to in the Licensee's response, are grouped in the first paragraph

of the proposed order in a sentence in which the Licensing Board is urged to "find[s] . . . that Intervenor CNRS' Responses . . . as supplemented. . ., are incomplete, evasive, or both. . . ." CNRS respectfully submits that the Licensee, in both its August 17th response and its accompanying proposed order, wholly mischaracterizes the CNRS responses to interrogatories numbered 8c, 12b, 22b, 24i, 25c, 28c, 29a and 29c. In fact, the CNRS responses to these interrogatories are both complete and direct.

For example, in Interrogatory 24i, the Licensee asks CNRS to specify the natural or "act of God" accident(s) referred to in the contention that multiple fuel element cladding failure accidents have not been considered in the hazards summary report, and could result from, inter alia, natural accident(s). The CNRS responses (contained in the supplementary responses filed August 2d) explain that natural or "act of God" accidents include "earth tremors, earthquakes, hurricanes, tornadoes, and other severe weather conditions and geological events that threaten the physical integrity of the reactor parts and/or the structures and building surrounding them." This answer is detailed, specific, and certainly not evasive. The responses to Licensee's interrogatories 8c, 12b, 22b, 25c, 28c, 29a and 29c are similarly detailed and direct. Further responses are not necessary.

The Licensee Proffers No Explanation  
of How CNRS' Interrogatory Responses  
Are "Evasive."

The Licensee asks the Board to find, in the first paragraph of its proposed order, that a large number of CNRS' interrogatory responses are "incomplete, evasive, or both." However, in addition to being wrong about the completeness of several of the responses (see the foregoing paragraphs), the Licensee fails to explain how and/or why the CNRS responses to those interrogatories should be deemed "incomplete, evasive, or both." CNRS has acknowledged that some of its responses are incomplete, and has requested the right to supplement those responses with assistance from its technical expert, on or before October 4, 1982. CNRS respectfully submits that its responses have not been evasive. Yet the Licensee urges the Board to label large numbers of the responses "incomplete, evasive, or both" now, without any explanation of how or why the Licensee or the Board believes those responses are evasive, and without any review or analysis of the further, more detailed responses CNRS will be providing to several of those interrogatories in the next month.

The order the Licensee urges upon the Board is premature, and drafted in imprecise and overly broad terms. It is both unfair and procedurally improper for the Licensee to assert that merely because interrogatory answers are incomplete they are also "evasive," or to seek to attach the label "evasive" without explanation or justification.

The Licensee's Proposed Sanction is  
Unduly Harsh and Wholly Inappropriate.

In its August 17th response and accompanying proposed order, the Licensee asks the Board to strike the contentions to which any disputed interrogatories relate. Although it fails to specify which contentions would be struck, both the wording of the proposed order and the large number of interrogatory responses which the Licensee disputes suggest that the result might well be the dismissal of virtually all of CNRS' contentions in this proceeding.

This sanction, the dismissal of virtually all of CNRS' contentions in this proceeding, is a highly improper and grossly disproportionate penalty for the delays which have occurred to date in the completion of certain interrogatory responses. Such a sanction is unfair and improper for two reasons.

First, CNRS has responded in a detailed and timely manner to the majority of discovery requests propounded by the Licensee and by the NRC staff. It has submitted detailed and carefully thought out responses to interrogatories relating to all of its contentions. For example, it has provided a careful, specific, sixteen-page analysis of inadequacies in the Emergency Plan for the facility, in response to Licensee's Interrogatory 25. Now the Licensee urges the board to strike the contention relating to emergency planning -- a contention crucial to CNRS members and the community residents they represent -- because the Licensee asserts that it is not satisfied with the answer to the minor sub-part of Interrogatory 25 -- a dissatisfaction which CNRS members are at a loss to understand.



CNRS respectfully submits that the volume, and the quality, of the information which it has already provided in interrogatory responses far outweigh the supplementary information which it has yet to provide in response to the first round of interrogatories and the Licensee's motion to compel. Under these circumstances, where it has substantiated virtually all of its contentions with detailed interrogatory responses and answers to requests for admissions, CNRS submits that its contentions should not be dismissed.

Second, the Licensee has not given a sufficient justification for requesting such a harsh sanction -- a sanction which would foreclose the sole citizens group participating in this relicensing from litigating important health and safety issues. The Licensee has conceded that "this sanction may seem extreme" (Licensee's August 17th Response at 5), and has conceded that it has been permitted to continue operation under the terms and conditions of its license (id. at 2). Although the Licensee now alleges for the first time that it has suffered by not being "able to perform vital experiments which are dependent upon amendments sought in this renewal proceeding" (id.), it has never previously informed CNRS or its representatives -- either formally or informally -- that prejudice was resulting from any delay in the discovery proceeding. In fact, when asked to specify the types of experiments carried out at the facility, the Licensee has previously to do so. See CNRS Interrogatories 43, 44, 45 and Licensee's Responses thereto, filed October 30, 1981.

Conclusion

For the foregoing reasons, Intervenor CNRS respectfully submits that the Licensing Board should grant it leave to further supplement its responses to Licensee's Interrogatories numbered 7b-d, e1-2, 4, h, j; 9a, 12a, c, d; 13; 14; 15b-d; 16a, b, f; 17c, d; 18a, c, d; 19a, c, f; 20a, b, d; 21a, e; 22a, d, e; 23a-d, g-i; 24a, c, g, h; 26g, l; 27a-c, e-g; 28a, b, e-k; 29b, d-f; 30; 31b, c; 32b, c; 34a-g; 35e-i; 36a(2)-(4), c, d, and g on or before October 4, 1982. A proposed order to this effect is attached.

Respectfully submitted,

*Elizabeth B. Entwisle - by L.M.*  
Elizabeth B. Entwisle  
8118 Hartford Avenue  
Silver Spring, Maryland 20910

*Laura Macklin*  
Laura Macklin  
Institute for Public Representation  
600 New Jersey Avenue, N.W.  
Washington, D.C. 20001  
(202) 624-8390

Counsel for Intervenor CNRS

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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RESEARCH INSTITUTE	)	(Application to Renew
	)	Facility License No. R-84)
(TRIGA-Type Reactor)	)	

ORDER

Upon consideration of the Intervenor CNRS' Motion for Leave to Further Supplement its Interrogatory Responses (filed August 2, 1982), the Licensee's Response to the Motion (filed August 17, 1982), and the Intervenor CNRS' Reply thereto (filed August 30, 1982), it is hereby

ORDERED that the Intervenor CNRS shall have until and including October 4, 1982 to further supplement its responses to Licensee's Interrogatories numbered 7b-d,e1-2,4,h,j; 9a, 12a, c,d; 13; 14; 15b-d; 16a,b,f; 17c,d; 18a,c,d; 19a,c,f; 20a,b,d; 21a,e; 22a,d,e; 23a-d,g-i; 24a,c,g,h; 26g,l; 27a-c,e-g; 28a-b,e-k; 29b,d-f; 30; 31b,c; 32b-c; 34a-g; 35e-i; 36a(2)-(4),c,d, and g.

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