

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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USNRC

ATOMIC SAFETY AND LICENSING BOARD '82 DEC 10 A10:05

Before Administrative Judges

James P. Gleason, Chairman
Glenn O. Bright
Jerry R. Kline

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In the Matter of
Union Electric Company
(Callaway Plant, Unit 1)

Docket No. STN 50-483 OL
ASLB No. 81-449-01 OL

December 9, 1982

MEMORANDUM AND ORDER
(Applicant's Motion to Compel)

The Applicant has moved the Board to compel the Intervenor John G. Reed to answer certain interrogatories submitted on October 20, 1982. The Intervenor objected to the discovery requests on October 27, 1982 and the Applicant filed the motion to compel on November 8, 1982.

The Commission's general provisions concerning discovery are found in 10 CFR 2.740. The applicable section for the disposition of Intervenor's objections reads as follows:

(b)(1)...Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter....It is not grounds for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

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The Intervenor's objections to twenty-four (24) interrogatories or parts thereof are grounded on claims of relevancy that subjective judgments or conclusions or a resolution of problems not the Intervenor's responsibility are requested, frivolousness and materiality and several other claims that cannot be categorized. On review of the claims, it is clear to the Board that none of Intervenor objections can be sustained and we can only conclude that Intervenor misunderstands the nature of the discovery process. As the Appeals Board has pointed out succinctly, "Discovery is the descriptive term for procedures available to help litigants learn the nature of an adversary's case in advance of trial." Pennsylvania Power & Light Co. (Susquehanna Steam Electric Station, Units 1 and 2, ALAB-613, 12 NRC 317, 321 (1980)).

There is no purpose served by repeating here the principles applicable to discovery proceedings which are cited by the Applicant in NRC regulatory proceedings except to reemphasize that since its inception, prehearing discovery has been afforded a wide latitude in its application. Hickman v. Taylor 329 U.S. 495, 501 (1947).

In ruling on Intervenor's objections, we group below, where possible, those challenges to Applicant's interrogatories that raise identical issues:

1. In a series of interrogatories, numbered 4, 5, 8 (last part), 20, 21, 29, 30, 36 and 76, the Applicant sought to obtain

information from the Intervenor about the adequacy of local government response capabilities during disasters of a non-radiological nature. The Intervenor's objection is based on the argument that his contentions on local government's inadequacies only deal with radiological emergencies. The interrogatories are relevant, however, since the capabilities could provide a basis for comparison and could disprove Intervenor's claims.

2. In another series of interrogatories, numbered 33, 41, 45, 58, 59, 60, 66, 77 and 90, the Applicant sought to uncover the grounds for a number of Intervenor's contentions. The questions were objected to on the basis that they call for conclusions or possible resolutions to problems that are not the responsibility of the Intervenor. In the Intervenor's view, he has only to prove the validity of a contention and not provide answers as to how emergency planning deficiencies should be resolved. The discovery process would be meaningless if it did not permit parties to probe the foundation or basis of a litigant's claim. One acceptable method for such probing is to solicit positive solutions from the litigant for deficiencies alleged to exist. This is what the Applicant has attempted to do here and the interrogatories are appropriate, as a means of determining the strengths and weaknesses of an opponent's case.

3. The Intervenor objected to answering part of interrogatory numbered 74 as well as interrogatory numbered 75 on the grounds the questions were immaterial and frivolous. The Board considers this

response as constituting a general and inadequate objection and unacceptable in carrying out Intervenor's responsibility to justify his objections. Words such as "frivolous" and "immaterial" do not satisfy the regulatory requirement of stating reasons for objecting to interrogatories. 10 CFR 2.740b(b)

4. On Interrogatory numbered 44, the Intervenor objected to answering questions on the distribution of potassium iodide ("KI") which referred to information on KI submitted previously by the State of Missouri and the Applicant. Since this interrogatory merely seeks to determine the basis for part of one of the Intervenor's contentions, he is compelled to respond.

5. On Interrogatory numbered 67, the Intervenor poses his objection on the basis he is being required to respond based on the Applicant's view of the Intervenor's position presented during a deposition. Irrespective of the origin of Applicant's question, the interrogatory relates to one of the Intervenor's contentions. Accordingly, the basis of that contention can be explored through the discovery process.

6. On Interrogatory numbered 71, the Intervenor objects to answering on the ground that the question is without any basis, meaning as we understand his words, that the question was pointless. Without trying to draw too fine a line on interpreting Intervenor's reasons for objecting, it suffices for us to conclude that the Applicant is attempting to discover the basis for intervenors contention 14. And this he is entitled to do.

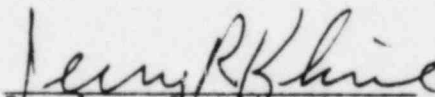
7. Intervenor objects to answering Interrogatory numbered 80 stating that he cannot identify that which he does not know to be in existence. In contention 17.A, Intervenor questioned the availability of methods of communication or knowledge of them to organizations receiving field monitoring reports. The Applicant merely asks what those methods of communication are and this he is entitled to do in exploring the basis of the contention.

For the reasons stated herein, the Applicant's motion is granted and the Intervenor shall answer within ten (10) days from receipt of this Order Applicants Interrogatories numbered 4, 5, 8, 20, 21, 29, 20, 33, 36, 41, 44, 45, 58, 59, 60, 66, 67, 71, 74, 75, 76, 77, 80 and 90.

ORDERED

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

Glenn O. Bright*
ADMINISTRATIVE JUDGE


Dr. Jerry R. Kline
ADMINISTRATIVE JUDGE


James P. Gleason, Chairman
ADMINISTRATIVE JUDGE

*Judge Bright was not available to sign this order but concurs with it.