UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

LICENSEE'S RESPONSE TO INTERVENOR'S MOTION FOR A PROTECTIVE ORDER

Intervenor CNRS's Motion for a Protective Order seeks the Board's permission to avoid, for the present, answering 59 sub-parts of Licensee's First Interrogatories which were filed nearly one year ago on September 30, 1981.[1] Intervenor would have the Board exercise its authority under 10 C.F.R. 2.740(c) by entering an order which will serve to delay even further the ultimate termination of these now protracted proceedings.

The Commission's rules of practice (10 C.F.R. 2.740(c)) provide a mechanism by which the presiding officer can enter an order which will protect a party "... from annoyance, embarrassment, oppression, or undue burden or expense ..." in connection with the discovery phase of license proceedings. Entry of such an order must be predicated on the showing of good cause by the party requesting it.

1/ In addition, CNRS proposes that it be permitted to continue into the second round of discovery and that the Licensee be given an additional round of discovery regarding the 59 sub-parts listed in the proposed order.

The Licensee submits that the Intervenor has failed to demonstrate that providing unevasive and complete responses to Licensee's First Interrogatories is in some manner annoying, embarrassing, oppressive, or unduly burdensome or expensive. Indeed, the Intervenor has neglected to indicate which of the regulatory bases it is relying upon. Instead, the Intervenor asserts that it should not be required to answer interrogatories because it has not as yet received sufficient information from the Licensee to permit a response.

There are several difficulties with the Intervenor's position. The first and most fundamental difficulty relates not to the source of the answers (as Intervenor would have it) but to the source of the questions. That is, the interrogatories filed by the Licensee were constructed by converting the assertions in the Intervenor's contentions into questions. Now, the Intervenor is telling the Board (by implication) that at the time it propounded its contentions, it did not possess a basis in fact for the issues it was raising. In other words, the Intervenor is suggesting to the Board that it did not have at the time of its original pleading any basis for its assertions aside from that which it hoped to obtain from the Licensee during discovery. This is a troubling suggestion and raises the possibility that the Intervenor intended from the outset to engage

in a "fishing expedition" in an effort to develop its case. Permitting the Intervenor to continue along this path does not square well with the proscription contained in Part 2, Appendix A, Section IV(a) of 10 C.F.R.: "In no event should the parties be permitted to use discovery procedures to conduct a 'fishing expedition' or to delay a proceeding."

While the above approach may be (and perhaps should be) excusable in the initial stages of a proceeding, the Licensee submits that it becomes less understandable and less excusable as time passes and the volume of information increases. A license renewal proceeding is different from both an ordinary civil lawsuit and an initial licensing proceeding. The critical difference relates to the amount of information which becomes publicly available as part and parcel of the process regardless of an intervenor's involvement. In contrast to a civil lawsuit, one party to the proceeding (the licensee) is required to disclose publicly virtually the entire basis for its case. In contrast to an initial licensing proceeding, a complete operating history (including problems or abnormal occurrences reported by the licensee) is available. Moreover, in this particular case the Licensee is a U.S. Government agency and is subject, therefore, to the Freedom of Information Act, 5 U.S.C. 552a. In short, substantial information is available to the Intervenor as part of the record in

this case. While the information has not been recorded in a form so as to produce the precise results the Intervenor seeks, it is nevertheless available and it is the Intervenor's re-ponsibility to subject the available information to whatever variety of analysis it deems appropriate.

Aside from the substantial amount of information available in the historical portion of Docket 50-170, two recently filed documents, the Licensee's "Safety Analysis Report" (SAR) and the NRC Staff's "Safety Evaluation Report" (SER), provide a significant source of technical information relevant to this proceeding. In addition, the Intervenor has been in possession of Licensee's answers to interrogatories for quite some time. While these sources may not have been prepared in the style necessary or desirable to assist the Intervenor in answering Licensee's Interrogatories, they are comprehensive and contain as much information as necessary to enable the Intervenor to prepare responses.

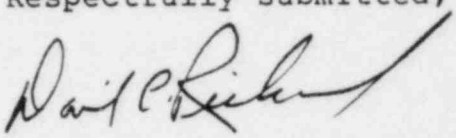
The Licensee submits that on the record developed to date and in light of the publicly available information, the Intervenor is not entitled to a protective order. Moreover, allowing the Intervenor to continue to assert its inability to respond to interrogatories on the theory that it has insufficient detailed information will serve only to delay progress toward the ultimate conclusion of this matter.

There is one final matter that must be addressed. The Intervenor asserts in the last portion of its motion that an agreement among counsel somehow serves to obviate the need to provide answers to those interrogatories for which the Intervenor has insufficient detailed information. Counsel for the Licensee simply do not recall that any such agreement was ever entered into. While the possibility of such an approach was indeed discussed at the February, 1982, meeting, it never proceeded beyond informal discussion. If, as the Intervenor suggests, such an agreement was made, the Licensee is at a loss to explain why the agreement was not mentioned until now. Certainly, the Licensee should have been reminded by the Intervenor of its existence in response to Licensee's Supplemental Memorandum in Support of Motion to Compel Answers to Licensee's First Interrogatories filed on February 24, 1982; or in Intervenor's Motion for Leave to Further Supplement Interrogatory Responses filed on August 2, 1982; or by receiving Intervenor's second set of interrogatories.

In summary, the Licensee respectfully requests that the Board deny the Intervenor's Motion for a Protective Order and grant the relief requested in the proposed form of order accompanying Licensee's Response to Intervenor's

Motion for Leave to Further Supplement Responses and Intervenor CNRS' Supplementary Response to Licensee's First Set of Interrogatories.

Respectfully submitted,



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CERTIFICATE OF SERVICE OF DUPLICATE SIGNED COPIES OF 15 SEPTEMBER 1982 FILING

I hereby certify that true and correct copies of the foregoing "LICENSEE'S RESPONSE TO INTERVENOR'S MOTION FOR A PROTECTIVE ORDER" were mailed this 15th day of September, 1982, by United States Mail, First Class, to the following:

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