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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	Docket No. 70-3070-ML
	)	
LOUISIANA ENERGY SERVICES, L.P.	)	ASLBP No. 91-641-02-ML
	)	
(Claiborne Enrichment Center	)	(Special Nuclear Materials License)

REPLY BY CITIZENS AGAINST NUCLEAR TRASH ("CANT") TO APPLICANT'S ANSWER TO INTERVENOR'S MOTION TO COMPEL ANSWERS TO INTERROGATORIES Q-4 AND Q-5

I. INTRODUCTION

Pursuant to the Board's order of May 23, 1994, Intervenor, Citizens Against Nuclear Trash ("CANT"), hereby submits this reply to Applicant's ("LES") answer of May 17, 1994 to CANT's motion to compel responses to interrogatories Q-4 and Q-5. However, as directed by the Board's order, this reply is limited to that portion of LES's answer dealing with interrogatory Q-5 and the question of whether discovery of information from parent corporations of LES's general partners is permissible.

Interrogatory Q-5 asks LES to:

> Indicate whether and when you have and/or intend to seek permission to recover any costs associated with the licensing of the CEC facility from the rate base of any of the entities who are members of the LES partnership.

LES argues that an interrogatory seeking information from a general partner's parent corporation regarding a decision to recover licensing costs from the parent corporation's rate base is inappropriate because (1) such information is not within an "area of direct management" of the LES partners, and (2) requires an

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internal investigation into the internal affairs of the parent corporation.[1]

However, as set forth more fully below, the "area of direct management" limitation comes from a case which pertains to depositions of corporate entities, not interrogatories, and the restriction on investigations of the internal affairs of parent corporations comes from a case which dealt with an older version of the currently relevant discovery rules. In short, and contrary to LES's assertions, the law is clear that the information sought by CANT in interrogatory Q-5 is discoverable.

II.

ARGUMENT

Rule 33 of the Federal Rules of Civil Procedure[2] requires a party who has been served with a written interrogatory to "furnish such information that is available to the party." Fed. Rule Civ. Proc. 33(a). The fundamental issue is whether the information is available to the answering party, and courts have held that the information is available if the information is under the control of the parent corporation. "Discovery and Inspection: Compelling Party to Disclose Information in Hands of Affiliated or Subsidiary

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[1] "Applicant's Answer to Intervenor's Motion to Compel Answers to Interrogatories Q-4 and Q-5" at 9, May 17, 1994.

[2] 10 C.F.R. § 2.740 and 2.740b, which govern interrogatories to parties in NRC proceedings, are similar to Rule 33 of the Federal Rules of Civil Procedure. "[W]here an NRC rule of practice is based on a federal rule of civil procedure, judicial interpretations of that federal rule can serve as guidance for the interpretation of the analogous NRC rule." Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-83-17, 17 NRC 490, 494-95 (1983).

Corporation, or Independent Contractor, Not Made Party to the Suit," 19 A.L.R 3d, 1134, at 1138-39, citing, Greenbie v. Noble, 18 F.R.D. 414 (S.D.N.Y. 1955); Leonia Amusement Corp. v. Loew's Inc., 18 F.R.D. 503 (S.D.N.Y 1955); Erone Corp. v. Skouras Theatres Corp., 22 F.R.D. 494 (S.D.N.Y. 1958). See also, Transcontinental Fertilizer Company v. Samsung Company, 108 F.R.D. 650 (E.D. Pa. 1985); Brunswick Corporation v. Suzuki Motor Company, 96 F.R.D. 684 (E.D. Wis. 1983).

LES misplaces its reliance on Stanzler v. Loew's Theatre and Realty Corp., 19 F.R.D. 286 (D.R.I. 1955), in which the court interpreted Rule 33 as requiring the answering officer of a corporation to furnish only that information within the knowledge of the officers of the corporation. The Stanzler Court held that such officers may not be compelled to "undertake an investigation of the personal affairs of any other corporation." Stanzler, 19 F.R.D. at 289.

However, this is the only case that has interpreted Rule 33 to allow the answering party to restrict interrogatory responses to information that is within the knowledge of the officers of the corporation.[3] Many courts h. e specifically taken issue with the Stanzler decision. For instance, Erone Corp. v. Skouras Theatres Corp., 22 F.R.D. 494 (S.D.N.Y. 1958) directly criticizes Stanzler, noting that the Stanzler interpretation of Rule 33 was based on an

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[3] Discovery and Inspection: Compelling Party to Disclose Information in Hands of Affiliated or Subsidiary Corporation, or Independent Contractor, Not Made Party to the Suit, 19 A.L.R. 3d 1134, at 1140.

earlier case,[4] and did not take into account the fact that Rule 33 had since been amended to widen the scope of information that should be given in discovery. Id. at 498 n. 4. The earlier language of the Rule implied that a corporate officer could only give information that he personally knew to be true. The amended language made it clear that all knowledge is discoverable, whether it comes from another source or is simply hearsay. Id. at 498. See also, Sol S. Turnoff Drug Dist. v. N.V. Nederlandsche C.V.C. Ind., 55 F.R.D. 347 (E.D. Penn. 1972); Hudgins v. Georgia So. & Fla. Ry. Co., 16 F.R.D. 244, 244 (M.D. Ga. 1954); B & S Drilling Co. v. Halliburton Oil Well Cementing Co., 24 F.R.D. 1, 4 (S.D. Tex. 1959); Bollard v. Volkswagen of America, Inc., 56 F.R.D. 569, 582 (W.D. Mo. 1971).

Accordingly, pursuant to Rule 33, the correct inquiry is whether the information CANT seeks is "available" to LES. If it is available, then LES may not refuse to answer by virtue of the fact that the source of the information is a separate corporate entity. And "availability" hinges on whether the answering party has control over the information. LES has conceded in its answer that "it is generally true that parent or subsidiary corporations are considered to possess or control information available to each other."[5] LES then proceeds to take exception to this rule by quoting one sentence from Garshol v. Atlantic Refining Co., 12

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[4] Savannah Theatre Company v. Lucas & Jenkins, 10 F.R.D. 461 (N.D. Ga. 1943).

[5] "Applicant's Answer to Intervenor's Motion to Compel Answers to Interrogatories Q-4 and Q-5" at 9, May 17, 1994.

F.R.D. 204 (S.D.N.Y 1951) -- namely, that a corporation "is not required to produce witnesses to testify to circumstances attending the occurrence of an act not connected with the conduct of a party's area of direct management"[6] -- and argues that because any decision by the parent corporations to recover CEC licensing costs from their rate bases is not an area within the direct management of the LES partners, LES need not answer the interrogatory.

However, the Garshol case is clearly distinguishable from the circumstances involved in CANT's discovery request, in that the Garshol decision deals with the types of persons through which a corporate party may be deposed. As the court in Garshol noted, there are special rules for such depositions. A corporate party may not be examined through a person not an officer at the time of taking the deposition, and the examination must be restricted to "affairs of the corporation" so that a corporation "is not required to produce witnesses to testify to circumstances attending the occurrence of an act not connected with the conduct of a party's area of direct management." Garshol, supra, 12 F.R.D. at 205.

The facts in Garshol are inapposite to the facts of this case, and LES' reliance on one sentence taken out of context is inappropriate. Although the "area of direct management" limitation may apply to deposing corporations in circumstances similar to those in the Garshol case, this limitation does not extend to interrogatories. This is clearly evidenced by the fact that the

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[6] Garshol, supra, 12 F.R.D. at 205.

Erone case[7], which was decided by the same court four years after Garshol, references no such limitation on interrogatories, and in fact acknowledges the trend at the time to widen the scope of discovery.

Accordingly, LES should be compelled to answer CANT's interrogatory Q-5.

Respectfully submitted,

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[7] 22 F.R.D. 494 (S.D.N.Y. 1955).

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LOUISIANA ENERGY SERVICES, L.P.	)	ASLBP No. 91-641-02-ML
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(Claiborne Enrichment Center	)	(Special Nuclear Materials License)

CERTIFICATE OF SERVICE

I hereby certify that copies of the "REPLY BY CITIZENS AGAINST NUCLEAR TRASH ("CANT") TO APPLICANT'S ANSWER TO INTERVENOR'S MOTION TO COMPEL ANSWERS TO INTERROGATORIES Q-4 AND Q-5" have been served on this 27th day of May, 1994, as follows:

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