

drift from the NRC Staff to West Valley ("West Valley's General Objection No. 1").

Subsequent to the filing of the motion for protective order, during telephone conversations between counsel for West Valley and Joint Applicants, counsel for West Valley stated his intent not to call any of the West Valley members as witnesses at the hearing. Counsel for West Valley also represented during such conversations and in West Valley's Supplemental Answer to Interrogatories that, with respect to crops grown within the relevant area, acreage devoted to agriculture, and yield data, the information sought by Joint Applicants is available from the public records identified in West Valley's Supplemental Answers to Interrogatories, and that he intends to rely solely on such records. In reliance on such representations, Joint Applicants are not filing within the stipulated time a motion to compel answers to their interrogatories bearing on such matters which were objected to by West Valley.^{1/} Ac-

^{1/} Interrogatories which in Joint Applicants' view fall in this category are nos. 4, 9-17, 27-32 and 59 from Joint Applicants' Second Set of Non-Uniform Interrogatories to West Valley Agricultural Protection Council, Inc., dated April 27, 1983. If any of such representations prove to be not supportable, specifically the availability in public records of requested data on crops, acreage and yields in the relevant area, Joint Applicants may seek relief through a motion to compel. Any argument for a protective order respecting such interrogatories can be made if and when such motion is filed by Joint Applicants.

(Footnote continued on following page.)

cordingly, there is no need for the Board to grant the protective order sought by West Valley.

It is also noted, however, that West Valley used its General Objection No. 1 in objecting to several additional interrogatories to those listed in footnote 1 supra. Such interrogatories deal with, in addition to the identity of West Valley members, the identity of its directors, the amount of drift that will be deposited on West Valley members' land, the irrigation methods used by West Valley members, and the quality of such irrigation water.^{2/} These interrogatories cover subject matters not identified in West Valley's Motion for Protective Order. Moreover, since they are relevant to the issues to be litigated at the hearing, Joint Applicants are filing a motion to compel answers to such interrogatories with the Board.

Because West Valley's Motion for Protective Order may be viewed to cover all interrogatories objected to based on West Valley's General Objection No. 1, a view which would be unwarranted, Joint Applicants hereby notice their opposition to the Motion for the reasons that (1) it fails to

^{1/} (Footnote continued from previous page.)

Notwithstanding West Valley's intent not to call any of its members as witnesses, Joint Applicants are still seeking the identity of West Valley members. The reasons for doing so are set forth in Joint Applicants' Motion to Compel filed concurrently herewith.

^{2/} These interrogatories would include nos. 1, 3, 5-7, 18-26, and 33.

identify the specific interrogatories for which a protective order is sought and (2) the Commission's regulations entitle Joint Applicants to the information sought.

As to the first reason, and as noted previously, West Valley asserts that the discovery of "detailed information concerning West Valley members, their acreage, their crop yields and their profits" is inappropriate. Motion at 1. Nowhere in its Motion or accompanying Memorandum does West Valley identify the specific interrogatories propounded by Joint Applicants which it finds to be objectionable. Such omission by West Valley makes it impossible for either the Board or Joint Applicants to do other than guess at which interrogatories are covered by the Motion. It seems inappropriate to include all interrogatories objected to based on West Valley's General Objection No. 1 because such was not requested by West Valley and because many of such interrogatories deal with subject matters outside of those recited by West Valley as "inappropriate for discovery." Accordingly, there can be no firm basis upon which this Board could decide which interrogatories should be considered in ruling on the motion.

As to the second reason, it is well-established that the discovery rules applicable to Commission proceedings are to be construed liberally. As stated in Pacific Gas and Electric Company (Stanislaus Nuclear Project, Unit 1), LBP-78-20, 7 NRC 1038, 1040 (1978):

In modern administrative and legal practice, pretrial discovery is liberally granted to enable the parties to ascertain the facts in complex litigation, refine the issues, and prepare adequately for a more expeditious hearing or trial.

If the information sought is relevant to the contentions being litigated or is reasonably calculated to lead to the discovery of admissible evidence, then the information should be provided. 10 CFR §2.740(b)(1); see Illinois Power Company, et al. (Clinton Power Station, Unit 1), LBP-81-61, 14 NRC 1735, 1742 (1981). As discussed in Joint Applicants' Motion to Compel West Valley Agricultural Protection Council, Inc. to Answer Interrogatories, dated July 15, 1983, which is incorporated herein by this reference, the interrogatories to which Joint Applicants are seeking answers are relevant to the contentions being litigated in this proceeding or are reasonably calculated to lead to the discovery of admissible evidence. Under the Commission's rules, therefore, Joint Applicants are entitled to the information sought.

West Valley asserts basically two arguments in support of its Motion. The first is that information about West Valley members and their farms constitutes only a portion of the information needed to resolve the issues to be litigated. Even assuming that West Valley's position is correct, that is not a reason for denying discovery to Joint Applicants. The interrogatories discussed in Joint Appli-

cants' Motion to Compel seek information which is not in the public records referenced by West Valley; nor is it available from other public documents examined thus far. The information, however, is known to the West Valley members. The fact that similar information about non-West Valley members and their farms may also be relevant to the issues to be litigated is not a reason why West Valley should not be responsive. How Joint Applicants proceed in preparing their case is a matter for them to decide, not West Valley. If other information is needed to resolve the issues in this proceeding, Joint Applicants and/or the Staff will obtain it. That task, however, is entirely separate from Joint Applicants' right to have West Valley provide relevant information in its possession.

West Valley's second argument is that it is the NRC Staff's responsibility to develop information necessary to an environmental analysis, and that Joint Applicants' interrogatories seek to shift that responsibility to West Valley. West Valley's argument is totally lacking in foundation. This is a contested proceeding with several issues to be litigated.^{3/} As to those issues involving factual disputes not requiring the development of new information or data, Joint Applicants are entitled to learn what the position of West Valley is and the basis for such position. As

^{3/} See Stipulation dated March 30, 1983, transmitted to the Board by NRC Staff letter dated April 4, 1983.


to the issues involving the development of additional information, i.e., what is the tolerance of crops grown within the vicinity of PVNGS, and whether salt deposition will cause crop yield reduction, if West Valley members have relevant information and if such information is not available elsewhere, it should be provided by West Valley members. West Valley is not being requested to develop or prepare new information. They are simply being requested to provide information which they already possess. That is a reasonable request and is clearly authorized by the Commission's rules.

For the foregoing reasons, Joint Applicants respectfully request that the Board find that there is no need for a protective order respecting the matters of concern to West Valley, or, if West Valley's Motion is viewed as extending to those interrogatories which are the subject of Joint Applicants' Motion to Compel, that the Board deny the Motion.

RESPECTFULLY SUBMITTED this 15th day of July,
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