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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
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In the Matter of	:	
	:	
PUBLIC SERVICE ELECTRIC AND	:	Docket No. 50-354-OL
GAS COMPANY	:	
	:	
(Hope Creek Generating Station)	:	

INTERVENOR'S MOTION TO COMPEL A
RESPONSIVE ANSWER TO INTERROGATORY
III. 7 OF THE INTERVENOR'S SECOND SET
OF INTERROGATORIES AND REQUEST FOR
PRODUCTION OF DOCUMENTS

I. INTRODUCTION

On December 13, 1984, the Public Advocate served upon the Applicants his "Second Set of Interrogatories and Request for Production of Documents." Pursuant to this Board's directive, the Public Advocate and the Applicants attempted to resolve their discovery disputes regarding this second set of interrogatories in an informal manner. Counsel for the Intervenor engaged in two lengthy telephone conversations with counsel for the Applicants on December 18 and 19, 1984. These discussions were designed to resolve informally all disputes relating to the scope of the Public Advocate's second set of interrogatories and requests for production of documents. In over thirty instances, the Intervenor rephrased or narrowed the scope of interrogatories and document requests in response to the Applicants' objections. (Letter dated December 20, 1984, from Jessica Laverty to Richard Shapiro; Letter dated December 28, 1984 from Richard Shapiro to Jessica Laverty).

Significantly, the Applicants did not even raise any objection to Interrogatory III 7 of the Intervenor's second set of interrogatories and request for production of documents during any of the phone conversations or letters exchanged between the parties from December 18, 1984 to December 28, 1984.

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The Intervenor's understanding was that the Applicants' only objection that could not be resolved informally concerned document request IV. 25. That request sought information relevant to job evaluations of key Nuclear Department and Hope Creek management officials. Since the Applicants believed the requested information in IV. 25 was confidential, they filed a motion for a protective order with this Board on December 21, 1984. However, the Applicants never filed a motion for a protective order concerning the information requested in Interrogatory III. 7.

On December 31, 1984, the Intervenor received the Applicants' responses to the second set of interrogatories and request for production of documents. In ten instances, the Intervenor concluded that the Applicants' responses were evasive, incomplete, or unresponsive. Pursuant to the Board's directive, on December 31, 1984, John Thurber, one of the Intervenor's counsel, telephoned Jessica Laverty, one of the Applicants' counsel, to try to resolve these disputed answers in an informal manner. On January 2, 1985, the Intervenor arranged a conference call between John Thurber, Jessica Laverty, and Richard Fryling, of PSE&G to further discuss the ten answers. At that time, the parties resolved 9 of the 10 areas of dispute based upon the Applicants' representation that all requested information either had been or will be provided.

The only question that Applicants refused to completely answer was Interrogatory III. 7. This question reads as follows:

7. Identify each instance in which P.S.E.&G. has been fined or cited for any deficiency by the NRC. For each such instance, identify (a) the reason for the NRC's action; (b) P.S.E.&G.'s response to the notice of violation; (c) P.S.E.&G.'s response to the proposed fine; and (d) any and all corrective measures undertaken by P.S.E.&G. in response to the NRC's action.

Although Interrogatory III. 7 is clearly focused on P.S.E.&G.'s managerial performance at both the Salem and the Hope Creek facility, the Applicants responded in the following manner:

Response: No civil penalties proposed by the NRC for Hope Creek Generating Station. Documents related to deficiencies identified during NRC inspections will be made available in response to the request for documents.

The Applicants refused Intervenor's request to discuss their response to this interrogatory, stating that P.S.E.&G.'s performance at Salem is in no way relevant to the Intervenor's contentions. When the Intervenor asked the Applicants if there was any room for discussion on this point, the Applicants responded in the negative.

The Intervenor once again telephoned the Applicants on January 4, 1985 to explore ways to resolve the parties' dispute on Interrogatory III 7, but counsel for the Intervenor was informed that the Applicants' answer was final.

In this motion, the Intervenor respectfully requests that this Board compel the Applicants to fully answer Interrogatory III. 7 of the Intervenor's second set of interrogatories and request for production of documents.

II. ARGUMENT

THE REQUESTED INFORMATION RELATING TO P.S.E.&G.'s FINES AND DEFICIENCIES ARE DISCOVERABLE SINCE THE INFORMATION IS CLEARLY RELEVANT TO A CONTENTION BEFORE THE BOARD.

As this Licensing Board recently noted in its order of December 31, 1984, "[d]iscovery is liberally granted to enable the parties to ascertain necessary facts, refine and narrow the relevant issues, and prepare adequately for trial." Public Service Electric and Gas Company (Hope Creek Generating Station), Docket 50-354-OL at 2 (Order of December 31, 1984). See also Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 455 (1981). Moreover, discovery is permissible even if the information requested is

inadmissible at the hearing provided that the material being sought appears reasonably calculated to lead to the discovery of relevant admissible evidence. 10 C.F.R. §2.704(b)(1).

Interrogatory III. 7 requests P.S.E.&G. to identify each instance in which it was fined or found deficient by the NRC and to describe the corrective measures it took in response to the NRC's action. Admitted Contention 2 concerns management competence to operate the Hope Creek nuclear facility; the NRC's identification of deficiencies and the Applicants' corrective actions in response to NRC's determinations are critical to an assessment of the performance and responsiveness of Applicants' management officials. Moreover, if P.S.E.&G.'s operation of the Salem Generating Station was found deficient by the NRC even after the ATWS events of February 22 and 25, 1983, this would bear directly on whether P.S.E.&G. "learned the lessons of Salem" and can apply those lessons to operating the Hope Creek reactor pursuant to 10 C.F.R. 50.57. The continued existence of fines and deficiencies is clearly relevant to test the effectiveness of changes that P.S.E.&G. made in response to the ATWS events -- changes in management policies, practices, and attitudes, and changes in operations, training, surveillance, maintenance, procurement, control of vendor activities and information, and quality assurance. Similarly, it is essential that P.S.E.&G. provide full information on its fines and noted deficiencies to enable the Intervenor to evaluate whether P.S.E.&G.'s Action Plan for Improvement on Nuclear Department Operations, is sufficient to correct all the management deficiencies identified by the NRC.

Finally, this Licensing Board itself has specifically noted the relevance of the requested information. In its special prehearing conference order that "if there were fines levied for certain conduct or reasons, there may be issues concerning management competence that are admissible in this proceeding." (Special Prehearing Conference Order at 11).

In light of the Board's clear statement of the relevance of the requested information in Interrogatory III. 7, it is remarkable that P.S.E.&G. can nevertheless maintain that its fines and deficiencies at Salem are somehow irrelevant to the Intervenor's second contention. A very strong link connects the operation of Salem and Hope Creek since P.S.E.&G. will oversee the operation of Hope Creek using the same upper management, policies, procedures, and philosophy. Indeed, the very heart of the Intervenor's second contention lies in an examination of the Salem events as they bear on P.S.E.&G.'s ability to safely operate the Hope Creek reactor.

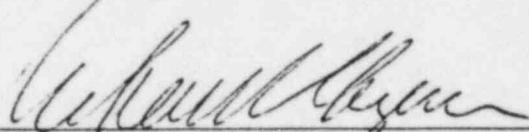
Since the information requested in Interrogatory III. 7 is relevant, this interrogatory requires a full and complete response from the Applicants. P.S.E.&G.'s limited and incomplete response is simply that "no civil penalties [were] proposed by the NRC for Hope Creek Generating Station." (Applicant's (sic) Response to Intervenor's Second Set of Interrogatories III. 7. For purposes of a motion to compel discovery, this evasive and incomplete answer must be treated as a complete failure to answer or respond. 10 C.F.R. §2.740 (f)(1). Moreover, since P.S.E.&G. never applied for a protective order concerning this interrogatory, their incomplete and evasive answer is wholly inexcusable.

In sum, the information requested in Interrogatory III. 7 is highly relevant and necessary to enable Intervenor to present its "Management Competence" Contention before this Licensing Board.

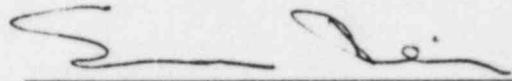
CONCLUSION

For the above reasons, the Intervenor respectfully requests that this Board enter an order which requires the Applicants to answer fully and completely Interrogatory III. 7 of the Intervenor's Second Set of Interrogatories and Request for Production of Documents.

Respectfully submitted,



RICHARD E. SHAPIRO



SUSAN REMIS



JOHN P. THURBER
Counsel for Intervenor

Dated: January 7, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
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PUBLIC SERVICE ELECTRIC AND) Docket No. 50-354-OL
GAS CO., et al.)
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Intervenor's Motion To Compel A Responsive Answer To Interrogatory III. 7 of the Intervenor's Second Set of Interrogatories and Request For Production of Documents to Applicants." dated January 7, 1985, in the above-captioned matter have been served upon the following by deposit in the United States mail on this 7th day of January, 1985:

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January 7, 1985

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