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RELATED CORRESPONDENCE

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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  
DIVISION  
BRANCH

Public Service Electric and	)	
Gas Company	)	
	)	Docket No. 50-354-OL
(Hope Creek Generating	)	
Station)	)	

APPLICANTS' RESPONSE TO 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

On January 7, 1985, the Public Advocate, intervenor in the captioned proceeding, filed "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." The motion requests that Applicants be compelled to provide a response to an interrogatory calling for an identification of each instance in which PSE&G has been fined or cited for any deficiency by the NRC. There are no subject matter or temporal limits in the request. For the reasons stated below, the Public Advocate's motion to compel should be denied.

Applicants have already provided responsive information on the subject concerning the Hope Creek Generating Station ("Hope Creek"), the subject of the instant hearing, discussing the fact that no civil penalty for activities associated with Hope Creek has been levied. In conjunction with that

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response, Applicants have made available to the Public Advocate documents describing NRC violations and the responses. Taken together, Applicants submit that they have fully responded to the subject interrogatory as it relates to civil penalties and violations at Hope Creek.<sup>1/</sup>

Applicants submit that no response to this interrogatory as it relates to Salem Nuclear Generating Station should be required. Contention 2 states:

Prior to operation, PSE&G must demonstrate that it has fully resolved the management implications of the Salem events of February 22 and 25, 1983, which resulted in the NRC civil penalty, and that it has taken all steps necessary to achieve and maintain the technical qualifications required for the safe operation of Hope Creek as a result of these incidents. (Emphasis supplied.)

This Board was careful to limit the contention to the implications of the Salem events of February 22 and 25, 1983 on the operation of Hope Creek. In its Special Prehearing Conference Order, dated December 21, 1983, the Licensing Board's analysis of this contention and its basis related solely to the February 22 and 25, 1983 incidents. The Public Advocate had itself also clearly limited the basis for this contention to the incidents which occurred at Salem on February 22 and 25, 1983. These were the sole matters raised by the Public Advocate in support of its

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<sup>1/</sup> Documents have been provided for the period January 1, 1982 to the present.

contention.<sup>2/</sup> It was in this context that the Board stated it did not even intend to retry the Salem events as such.<sup>3/</sup> It noted that "if there were fines levied for certain conduct or reasons, there may be issues concerning management competence that are admissible in this proceeding."<sup>4/</sup> It is clear from the context that the Board was referring solely to the two Salem events of February 22 and 25 as the basis for an inquiry into management competence as it relates to Hope Creek and not to any other civil penalties which may have occurred previous or subsequent to that time, let alone every violation which occurred over the lifetime of the units.

It was for just this reason that during oral argument on this contention, Staff counsel, which agreed to its admission because he believed the contention had been limited, noted "by limiting the management implications to just [February 23 and 25] incident, we have certainly limited this contention to a very great extent. Otherwise, it would have been an unlimited number of aspects concerning

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2/ See Memorandum of Law in Support of Intervenor's Contentions (November 7, 1983), Appendix I at 9.

3/ Special Prehearing Conference Order (December 2, 1983) at 11.

4/ Id.

every violation of I&E since the plant started construction."<sup>5/</sup>

Applicants have attempted to reach agreement with the Public Advocate concerning an acceptable response to this contention both before and after the submission of the motion to compel,<sup>6/</sup> but without success. Applicants bring to the attention of the Licensing Board Interrogatory 35 at page 19 of Intervenor's Third Set of Interrogatories and Request for Production of Documents to Applicant, (January 4, 1985). Therein, the following interrogatory was propounded:

List and describe all NRC violations at the Salem or Hope Creek Generating Stations in 1983 and 1984. For each, include the date of the violation, the level of severity, and any penalty imposed.

It was presumed that an attempt was being made by the Public Advocate to reach an acceptable compromise to limit the inquiry. In the interests of an amicable settlement without Board involvement, Applicants were willing to provide the information requested in Interrogatory 35 of the

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<sup>5/</sup> Tr. 178.

<sup>6/</sup> Applicants had thought that an understanding had been reached with the Public Advocate that provision of the material regarding Hope Creek was to be considered a complete reply. Thus, no protective order was necessary. Without attempting to get in a useless discussion, the assertion that Applicants refused to discuss this matter is simply incorrect.

Intervenor's Third Set of Interrogatories, and so informed counsel for the Public Advocate, notwithstanding any objection they might have to the appropriateness of the latest interrogatory or the admissibility of any resulting evidence. However, notwithstanding that the Public Advocate had seemingly limited its interrogatory which is the subject of this motion, it refused to accept such offer. During that same discussion, counsel for the Public Advocate also indicated that all NRC violations prior to the two Salem incidents of February 22 and February 25, 1983 should be considered relevant to the Board's inquiry with regard to Contention 2.

The Public Advocate argues that "[t]he continued existence of fines and deficiencies is clearly relevant to test the effectiveness 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."<sup>7/</sup> However, as discussed previously, the sole focus of the Board's inquiry is the effect of the Salem February 22 and 25, 1983 incidents on the management qualifications to operate Hope Creek. The Public Advocate seemingly recognizes this in its motion when it states that "the very heart of the

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<sup>7/</sup> Intervenor's Motion at 4.



Intervenor's second contention lies in examination of the Salem events as they bear on P.S.E.&G.'s ability to safely operate the Hope Creek reactor."<sup>8/</sup> The reference is to the February 22 and 25, 1983 events.

The Public Advocate has made no attempt to limit this interrogatory to violations or civil penalties associated with deficiencies in the management that will be overseeing operation of Hope Creek. Despite his protestations to the contrary, the Public Advocate apparently wishes to retry the Salem ATWS events and their causes. If the Public Advocate's expansive interpretation of this contention is adopted, it, in effect, would require the examination of the totality of Salem operation, possibly even prior to 1983, because of some possible indirect and speculative effect on Hope Creek operation. Applicants submit that this interpretation is not warranted by the statement of the contention, its stated basis, and the limitations imposed by the Board in admitting it.

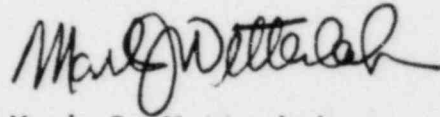
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<sup>8/</sup> Id. at 5 (emphasis supplied).

Therefore, to the extent not already answered by Applicants, the instant interrogatory is objectionable and the motion to compel should be denied.

Respectfully submitted,

CONNER & WETTERHAHN, P.C.

A handwritten signature in black ink, appearing to read "Mark J. Wetterhahn". The signature is written in a cursive style with a large initial "M".

Mark J. Wetterhahn  
Counsel for the Applicants

January 10, 1985

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

Public Service Electric and )  
Gas Company )  
(Hope Creek Generating ) Docket No. 50-354-OL  
Station) )

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Response to 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," dated January 10, 1985 in the captioned matter have been served upon the following by deposit in the United States mail on this 10th day of January, 1985:

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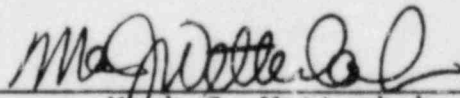


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