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RELATED CORRESPONDENCE

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

PUBLIC SERVICE ELECTRIC AND :
GAS COMPANY : Docket No. 50-354-OL
(Hope Creek Generating Station) :

RESPONSE TO THE APPLICANTS' OBJECTIONS TO
INTERVENOR'S THIRD SET OF INTERROGATORIES
AND REQUEST FOR PRODUCTION OF DOCUMENTS
AND MOTION FOR PROTECTIVE ORDER

1. INTRODUCTION

On January 4, 1985, the Public Advocate served upon Applicants his "Third Set of Interrogatories and Request for Production of Documents." This discovery request consisted of interrogatories and document requests relating to Contention I ("Pipe Cracks") and Contention II ("Management Competence") designed to elicit specific facts and documents that the Applicants referred to in general terms in their response to Intervenor's Second Set of Interrogatories.

Pursuant to the Board's directive, counsel for Intervenor expressed a willingness to attempt to resolve informally any disputes relating to the scope or phrasing of this discovery request. On January 9, 1985, counsel for Applicants raised twenty objections to Intervenor's Third Set of Interrogatories. Not one of these objections was based on a claim that any

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discovery request was too broad. Indeed, with two exceptions,* all Applicants' specific objections were based on the grounds that the requested discovery was irrelevant to the issues raised by Intervenor's management competence contention. On January 10, 1985, in the interests of facilitating a settlement of the Applicants' objections, counsel for Intervenor agreed to withdraw Interrogatory I. 29 and Document Request IV. 12, and agreed to await the Board's decision on Intervenor's then pending motion regarding Interrogatory III. 7 of Intervenor's Second Set of Interrogatories. Counsel for both parties also agreed to limit all Pipe Crack document requests to materials related to recirculation piping. However, because of the compelling need to probe the substance of Applicants' prior responses to interrogatories, the Intervenor refused to withdraw a series of follow-up questions. Moreover, despite counsel for Intervenor's expressed willingness to discuss any proposed limiting language, counsel for Applicants refused to make any such suggestions or other proposals to resolve these discovery disputes.**

On January 14, 1985, Applicants served their "Objections to Intervenor's Third Set of Interrogatories and Request for Production of Documents to Applicants and Motion for Protective Order" (hereinafter "Applicants' Objections"). In this submission to the Board, Intervenor will briefly outline the

* Applicants objected to Interrogatory I. 29 on the ground that because the referenced standards did not constitute NRC requirements they had no obligation to make the requested comparison. Applicants also objected to Interrogatory III. 35, stating that they would await the Board's decision on the Intervenor's motion to compel a responsive answer to Interrogatory III. 7 of Intervenor's Second Set of Interrogatories. Applicants objected to Interrogatories III. 6, III. 7, III. 19, III. 20, III. 21, III. 49, III. 50, III. 59, III. 61, III. 67, III. 68, III. 69, III. 70 and Documents Requests IV. 12, IV. 16, IV. 17, IV. 20 and IV. 24 on the ground that the requested discovery was irrelevant to the management competence contention.

** On January 14, 1985, counsel for Applicants informed Intervenor that Applicants had withdrawn their objection to Interrogatory III. 61.

reasons why the Applicants should provide the information or documents requested in each of the sixteen disputed discovery requests.

ARGUMENT

SINCE APPLICANTS HAVE RESPONDED TO INTERROGATORIES RELATING TO MANAGEMENT COMPETENCE BY PURPORTING TO TAKE CERTAIN ADMINISTRATIVE, MANAGERIAL, OR ORGANIZATIONAL ACTIONS, THE REQUESTED DISCOVERY IS CLEARLY RELEVANT TO PROBE THE FACTUAL BASIS AND SUBSTANCE OF PSE&G's CLAIM THAT THE MANAGEMENT ISSUES RAISED BY CONTENTION II HAVE BEEN PROPERLY RESOLVED BY THE APPLICANT

It is well established that discovery is liberally granted in operating license proceedings to enable the parties to ascertain necessary facts, refine and narrow the relevant issues, and adequately prepare for complex litigation. Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 455 (1981); Public Service Company of New Hampshire, (Seabrook Station, Units 1 and 2), LPB-83-17, 17 NRC 490, 494 (1983); 10 C.F.R. §2.740(b). 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).

Discovery is also liberally granted if the requested information relates to the basis for a prior interrogatory response. "To the extent the interrogatory seeks to uncover and examine the foundation upon which an answer to a specific interrogatory is based, it is proper . . ." Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), supra, 17 NRC at 493. This vital principle of discovery is controlling here, since intervenor "seeks to uncover and examine the foundations" of a variety of

Applicants' assertions that the actions taken since February 1983 adequately respond to the management competence allegation in admitted Contention II.

The great majority of discovery requests to which Applicants' object seek to obtain and test the substance of Applicants' responses to Intervenor's Second Set of Interrogatories. In these responses, the Applicants made only general or vague reference to programs or activities that PSE&G implemented in response to the management-related suggestions made by either its own consultants or the NRC. Ten of the discovery requests at issue in this motion merely seek to "examine the foundation" of the Applicants' previous responses by discerning the nature, substance and effectiveness of PSE&G's programs and actions. Without the ability to ask these questions, the Intervenor will be severely hampered in its ability to gather relevant information which is essential to presenting his contentions before this Board. Indeed, without the ability to obtain the underlying basis for Applicants' assertions, Intervenor will be forced to accept on faith the allegations of Applicants. Surely, this both undermines the ability of the Intervenor to prepare for the operating license hearing and the opportunity for the Board to explore the contentions in a substantial and meaningful fashion.

Interrogatory III. 19 requests information regarding the trend analysis program that PSE&G initiated in response to a Salem-inspired recommendation of its consultant, the Management Analysis Company (MAC). In their response to Interrogatory III. 24 of Intervenor's Second Set of Interrogatories, Applicants asserted that "a formal trend analysis program was established [for Hope Creek] to identify recurring deficiencies and to initiate corrective action(s)." This trend analysis program may constitute one of the corrective actions upon which Applicants will rely in arguing that they have 'learned the lessons of Salem.'

In an attempt to examine the substance and foundation for this response, Interrogatory III. 19 requests that Applicants "[i]dentify and describe each 'recurring deficienc[y]' identified by the formal trend analysis program" Thus this interrogatory simply seeks to discover whether the trend analysis program has actually had some beneficial effect, or whether in reality it is nothing more than a mere formality.

Similarly, Interrogatories III. 20 and III. 21 seek to ascertain the substance of two other programs referred to by Applicants in their response to Interrogatory III. 24 of Intervenor's prior set of discovery requests. Specifically, Interrogatory III. 20 asks Applicants to "[i]dentify and describe each recurring problem identified by the Nonconformance Report trend analysis program performed by Bechtel Quality Assurance Engineers assigned to the Hope Creek jobsite," while Interrogatory III. 21 requests them to "[l]ist and identify each 'trend' identified as a result of all investigations of 'potential trends' identified from the periodic reviews of the 'trend analysis log' of all validated NCRs [nonconformance reports]." Additionally, both interrogatories request Applicants to identify and describe all corrective action taken as a result. Again, these interrogatories seek to determine the substance of Applicants' actions pursuant to these programs. Without such questions, it will be impossible for the Intervenor to determine whether the Applicants' programs are even functioning, let alone whether they are effective.

Interrogatory III. 49 is also of the same character. In response to Interrogatory III. 29 of Intervenor's Second Set of Interrogatories, Applicants described several actions and programs that PSE&G initiated to implement one of the recommendations made by another of PSE&G's post-Salem management consultants, Basic Energy Technology Associates, Incorporated (BETA). In describing how PSE&G implemented these key recommendations, Applicants'

response identified another "trend analysis" program, this one involving preventive and corrective maintenance and surveillance testing. Thus, in an effort to examine the factual foundation of this response, Interrogatory III. 49 requested Applicants to "[l]ist and describe all 'recurring failures and problems' identified as a result of the '[t]rend analysis of periodic preventive maintenance, corrective maintenance and surveillance testing activities'. . . ." Here again, Intervenor seeks merely to establish whether this particular management/operations feedback program -- initiated by PSE&G in response to the Salem events -- has, in fact, functioned as described.

Interrogatory III. 50 tests the foundation of another key post-Salem management program. In their answer to Interrogatory III. 29 of Intervenor's Second Set of Interrogatories, Applicants stated that in response to BETA's recommendations, PSE&G's management initiated a program by which "[i]ndustry operating experience, including Salem Generating Station, is evaluated for potential applicability to Hope Creek." Applicants further stated that "[c]orrective actions are identified and tracked to completion." Certainly specific factual information relating to PSE&G management's ability to successfully extract, distill and learn from applicable industry operating experience would have a direct bearing on Applicants' ability to manage Hope Creek safely and effectively. Thus, in order to determine the factual underpinnings of Applicants' asserted efforts in this area, Interrogatory III. 50 requested that Applicants "[l]ist and describe all the '[i]ndustry operating experience' that has been evaluated and found to be potentially applicable to Hope Creek. . . ." The interrogatory also requests a description of how each such experience is or will be applicable to Hope Creek. This interrogatory addresses an issue of critical importance in evaluating PSE&G's management abilities. Here is a management program initiated by PSE&G in response to the

Salem events that Applicants have identified as one example of a lesson PSE&G has learned from its Salem operating experience. As in the case of the other disputed interrogatories, the factual basis of Applicants' bald assertions about a program is essential to ascertain whether or not this program has any real substance -- a determination that goes to the heart of the management competence contention.

This same theme is repeated in Interrogatory III. 59. In their response to Interrogatory III. 40 of Intervenor's Second Set of Interrogatories, Applicants identified the steps PSE&G has taken to become "proactive" rather than "reactive" in its approach to the kinds of problems resulting in the February 22 and 25, 1983 events at Salem Unit I, as suggested by NRC Region I Administrator Thomas Murley. Applicants stated that one program they specifically implemented at the Hope Creek facility was the "Safe Team Program which encourages the identification of alleged problems by all site personnel." Whether or not such a program exists and functions as described would clearly have a bearing on PSE&G management's ability to act in an aggressive and appropriate manner. Thus Interrogatory III. 59 requests Applicants to "[i]dentify and describe all alleged problems identified by site personnel under the 'Safe Team program'" Clearly the requested information regarding the efficacy of this program speaks directly to whether PSE&G's management has, in fact, become "proactive" or not, and thus is certainly relevant to the issues raised by Intervenor in Contention II.

The four Requests for Documents to which Applicants object* also fall

* As previously noted, all of Applicants' objections are based on an asserted lack of relevance. Intervenor remains prepared to discuss any legitimate objections Applicants may have on the grounds of burdensomeness or overbreadth if the Board determines to deny their motion for a protective order.

within the same category. Requests IV. 16 and IV. 17 both seek documentation related to the trend identification programs discussed in relation to Applicants' objections to Interrogatories III. 19, III. 20 and III. 21, supra. Requests IV. 16 specifically seeks copies of the "corrective action requests resulting from the identification of a trend, while Request IV. 17 seeks copies of "all 'documentation' of the corrective action process" as referred to by Applicants in their response to Interrogatory III. 24 of Intervenor's Second Set of Interrogatories. These documents will establish the factual dimension and substance of the underlying programs and are, therefore, discoverable. Request IV. 20 similarly seeks copies of all documents related to the "scram minimization program" referred to by Applicants in their response to Interrogatory III. 29 of Intervenor's Second Set of Interrogatories. Again, this request seeks factual substantiation to determine how much of this Salem-inspired PSE&G management program is real and how much is a mere "shell."

Finally, as to Request IV. 24, in their response to Interrogatory III. 32 of Intervenor's Second Set of Interrogatories, Applicants pointed to several examples of how PSE&G management displays an "aggressive effort to self-evaluate and redirect efforts to correct internally identified problems," an area in which PSE&G had been found lacking by the NRC staff in the Salem Restart SER. As Applicants stated, one such "example of self initiated efforts to resolve problems in this way is the task force on capacity factor improvement." Because Applicants have highlighted this task force as their example of how PSE&G has responded to the NRC staff's criticism regarding the aggressiveness of its management's efforts in these areas, the underlying factual information that would enable the Intervenor and Board to determine whether the task force actually functions as described is vitally important.

To assist in making such a determination, Request IV. 24 seeks "copies of all documents relating to the 'task force on capacity factor improvement'" In this context, the requested documents have an immediate relationship to the management competence contention.

The remaining six disputed interrogatories fall into two categories. The first, encompassing Interrogatories III. 6 and III. 7, are based on the NRC staff's June 25 - August 5, 1984 inspection of Hope Creek. That report discussed allegations by site personnel of records falsification by an Authorized Nuclear Inspector (ANI). In an attempt to determine both how PSE&G management had responded to these allegations and what, if anything, PSE&G management did to prevent such records falsification in the future, Interrogatory III. 12(f) of Intervenor's Second Set of Interrogatories requested Applicants to identify all documents relating to "allegations or reports of records falsification at either the Hope Creek or Salem generating station." In response to this request, Applicants overlooked the ANI incident but did identify three documents relating to an allegation of records falsification by a soils testing technician employed by GEO Construction Testing, Inc. Thus Intervenor propounded two additional interrogatories: the first, III. 6, which specifically requests Applicants to identify all documents relating to the allegation of records falsification by ANIs, and the second, III. 7, which requests Applicants to identify all steps taken by PSE&G or Bechtel in response to the allegation of records falsification by the GEO soils testing technician. These questions are directly relevant to several of the central "lessons" of Salem. As the NRC staff stated in the Salem Restart SER, PSE&G's management has no in the past exerted "the expected aggressive effort to self evaluate and redirect efforts to correct internally identified problems," *id.* at 37, nor has it displayed an appropriate 'safety perspective.'

Id. at 39. The NRC staff also found a "lack of resolve on the part of [PSE&G] managers and supervisors in enforcing adherence to procedures."

Id. The nature and extent of the actions PSE&G has taken in response to these allegations of records falsifications would shed considerable light on whether certain management deficiencies identified at Salem have been resolved by the Applicants. The information requested by these two interrogatories are thus clearly relevant to the management competence contention.

The remaining four interrogatories each relate to PSE&G's Plan for Improvement of Nuclear Department Operations (Action Plan). The Applicants themselves identified this Action Plan as the primary vehicle by which PSE&G will attempt to incorporate the "lessons" of Salem into its management practices. See, e.g., Applicants' responses to Interrogatories III. 3, III. 5, III. 8, III. 9 and III. 17 of Intervenor's Second Set of Interrogatories. PSE&G's progress in implementing this Action Plan must therefore be considered an issue of critical importance to the management competence contention. Any delay in scheduled completion dates for any Action Plan item is certainly probative evidence of a more substantial underlying failure by PSE&G's management to make the required changes to which they have committed themselves in the Action Plan. Further, any delay may in and of itself suggest a lack of management resolve or ability to fully implement the Action Plan process, particularly since PSE&G is obliged by the NRC's order of May 6, 1983 to complete each Action Plan item by a specified date. Previous discovery made available by the Applicants has revealed that the PSE&G Nuclear Oversight Committee, which was created by its Board of Directors following the Salem events to provide independent expert advice to upper level management, has on several occasions expressed concern over the pace of PSE&G's efforts to complete Action Plan items. At each of its meetings, the Oversight Committee

received a briefing on this issue, including statistics on the percentage of total person/days scheduled to be applied toward the Action Plan by that date, compared to the actual percentage of person/days that were applied. The PSE&G Nuclear Oversight Committee also expressed concern over the conflicting obligations placed on middle-level management personnel in the Nuclear Department by the Action Plan. The Committee raised the question of whether many of these individuals, in effect, face a choice between completing their usual "operational" responsibilities or devoting themselves to their newly-assigned Action Plan obligations.

In an attempt to develop the factual information to document these matters of central importance to the management competence contention, Intervenor submitted Interrogatories III. 67, III. through III. 70. Interrogatory III. 67 requests Applicants to identify "each instance in which PSE&G has requested an extension of time from the NRC within which to complete its obligations under the May 6, 1985 NRC Confirmatory Order." This interrogatory also requested them to identify, inter alia, the reason for the request and the NRC's response. Interrogatory III. 68 requests Applicants to state the total number of person/days estimated to be required to complete all Action Plan items, as well as the actual versus projected percentages of this total that were applied for each half-year period in 1983 and 1984. Interrogatory III. 69 requests Applicants to identify all changes in expected completion dates for all Action Plan items, including a description of the reason for such changes. Finally, Interrogatory III. 70 requests Applicants to identify by name and job title all persons assigned to complete tasks included in any Action Plan item, and, for each such individual, to identify all non-Action Plan responsibilities assigned as well.

Each of these interrogatories seeks information which would corroborate the expressed concerns of the PSE&G Nuclear Oversight Committee. Certainly, such factual evidence will be essential to demonstrate whether either Applicants' position that the Action Plan is capable of resolving the PSE&G management problems that caused the Salem events should be rejected by the Board. Intervenor certainly has no interest in retrying the Salem events; nor do these interrogatories attempt to do so. While the NRC accepted the adequacy of the Action Plan on paper, the issue remains whether it has been actually implemented in a timely and appropriate manner by PSE&G. The Applicants' failure to do so will have the most serious implications for whether PSE&G has actually learned the lessons of Salem or has merely created a mass of paper and organizational shells that mask the unwillingness or inability of the company to respond to the "management implications" of the Salem ATWS -- the essence of Intervenor's admitted Contention II.

CONCLUSION

For the above reasons, the Public Advocate respectfully requests that the Applicants' objections to the Interrogatories and Requests for Production of Documents noted above and their motion for a protective order be denied. Intervenor's discovery requests are clearly relevant to the issues raised in the management competence contention, and Applicants have failed to state any good cause for the issuance of a protective order.

Respectfully submitted,

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Dated: January 17, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
PUBLIC SERVICE ELECTRIC AND) Docket No. 50-354-OL
GAS CO., et al.)
)
(Hope Creek Generating Station))
)

CERTIFICATE OF SERVICE

I hereby certify that copies of "Response To The Applicants' Objections To Intervenor's Third Set Of Interrogatories And Request For Production Of Documents And Motion For Protective Order", dated January 17, 1985, in the above-captioned matter have been served upon the following by deposit in the United States mail on this 17th day of January, 1985:

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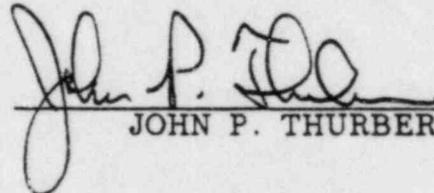
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