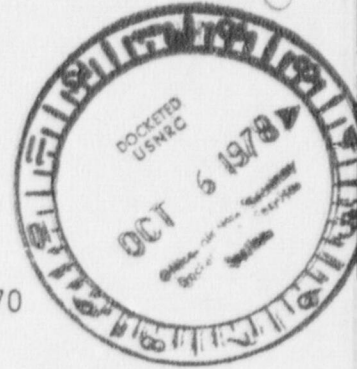


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONBEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

GENERAL ELECTRIC COMPANY

(Vallecitos Nuclear Center -
General Electric Test Reactor,
Operating License No. TR-1)Docket Nos. 50-70
(Show Cause)NRC STAFF'S ANSWER TO INTERVENORS' MOTION
FOR REFERENCE OF QUESTIONS

By motion dated September 13, 1978^{1/}, Intervenor Friends of the Earth (FOE) and Congressman Dellums^{2/} (Intervenors), jointly requested "reference of General Electric's interrogatory No. 1, June 26, 1978, all responses of all parties thereto, and the disposition thereof by the Atomic Safety and Licensing Board to the Nuclear Regulatory Commission" pursuant to 10 CFR §2.730(f).

For the following reasons, the NRC Staff opposes the Intervenor's motion and urges that it be denied.

I. BACKGROUND

On June 26, 1978, the Licensee, General Electric Company (GE), served interrogatories upon each of the consolidated Intervenor. In interrogatory No. 1 to Intervenor, the Licensee requested, inter alia, that

^{1/} We observe that although so dated, the attached certificate of service is dated September 14, 1978 and the document was postmarked September 15, 1978.

^{2/} We presume that, in addition to Friends of the Earth and Congressman Dellums, this motion is also filed on behalf of Ms. Barbara Shockley and Congressmen John and Phillip Burton, the other parties to this proceeding, who have been consolidated with FOE and Congressman Dellums, respectively.

Intervenors provide the Licensee with certain specified information regarding each person that the Intervenors have engaged or utilized to conduct any review, analysis, test, or studies related to the three issues to be considered in this proceeding. The Licensee asked the Intervenors to provide the subject matter of such reviews or analyses, and a description and identification of the reviews or analyses, or any written reports prepared as a result of such reviews or analyses. The Licensee also requested, in other interrogatories, information regarding potential witnesses and positions that the Intervenors would likely take at the hearing for this proceeding.

Intervenors' initial response to the interrogatories was to indicate that such information would be given as soon as it is available (see responses of Intervenors FOE and Congressman Dellums to the interrogatories, both dated July 10, 1978).

On July 18, 1978, GE moved for an order compelling responses to its interrogatories, among them interrogatory No. 1. The Staff supported the motion^{3/} and the Intervenors opposed it. On August 7, 1978, Intervenor FOE filed objections to GE's interrogatory No. 1. By Memorandum and Order dated August 14, 1978, this Licensing Board granted GE's motion and directed responses to, inter alia, interrogatory No. 1. On September 18 and 19, 1978, Congressman Dellums and FOE, respectively,

^{3/} See NRC Staff's Response to Licensee's Motion to Compel Discovery, dated August 7, 1978.

filed answers to GE's June 26 interrogatories, noting their objection to interrogatory No. 1.^{4/}

II. ARGUMENT

In accordance with 10 CFR §2.730(f),

when in the judgment of the presiding officer prompt decision is necessary to prevent detriment to the public interest or unusual delay or expense, the presiding officer may refer the ruling promptly to the Commission....^{5/}

The Intervenor's motion is totally devoid of explanation why referral of the Licensing Board's ruling compelling responses to GE's interrogatory No. 1 "is necessary to prevent detriment to the public interest or unusual delay or expense." Such an unsupported and vague request is contrary to the clear requirements of 10 CFR §2.730(b) which provides that a motion must state with particularity the grounds upon which it is based. For this reason alone, the motion should be denied.

Moreover, the Licensing Board's ruling on this matter did not involve consideration of any important or overriding issue of law or policy which might require scrutiny by the Appeal Board in furtherance of the public interest. Rather, its determination simply applied accepted principles concerning discovery on a very fundamental matter - disclosure of the names of individuals participating on behalf of the Intervenor's.

^{4/} Such objections reflect, in the Staff's view, a direct violation of the duty placed on Intervenor's to respond to GE's interrogatories pursuant to the Licensing Board's August 14 Memorandum and Order.

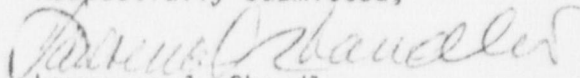
^{5/} Pursuant to 10 CFR §2.785(b)(1), referral is to the Atomic Safety and Licensing Appeal Board.

In addition, the mere possibility of finding error in this ruling upon appeal of the Licensing Board's initial decision thereby necessitating a further proceeding is in no way an "unusual" occurrence as contemplated by 10 CFR §2.730(f). Commonwealth Edison Company (Zion Station, Units 1 and 2), ALAB-116, 6 AEC 258 (1973). Under the rule of the Zion case Intervenor's instant motion would be considered an impermissible interlocutory appeal warranting denial.

III. CONCLUSION

For the foregoing reasons, the Staff opposes Intervenor's motion and urges that it be denied.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Lawrence J. Chandler".

Lawrence J. Chandler
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 5th day of October, 1978

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
GENERAL ELECTRIC COMPANY)	Docket No. 50-70
)	(Show Cause)
(Vallecitos Nuclear Center -)	
General Electric Test Reactor,)	
Operating License No. TR-1))	

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWER TO INTERVENORS' MOTION FOR REFERENCE OF QUESTIONS" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 5th day of October, 1978:

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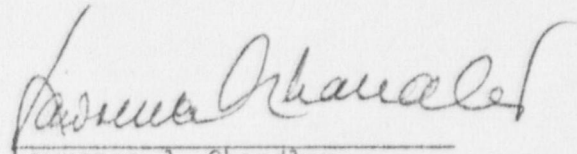
The Honorable Phillip Burton
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The Honorable John L. Burton
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U.S. Nuclear Regulatory Commission
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Docketing and Service Section (3)*
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A handwritten signature in cursive script, appearing to read "Lawrence J. Chandler", written over a horizontal line.

Lawrence J. Chandler
Counsel for NRC Staff