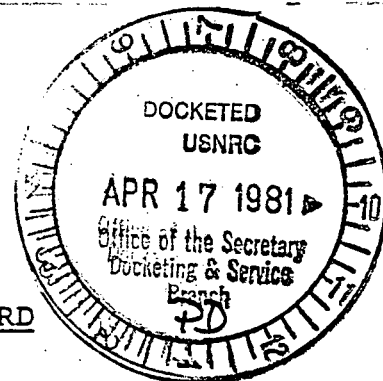


4/16/81

RELATED CORRESPONDENCE



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

In the Matter of

SOUTHERN CALIFORNIA EDISON COMPANY,
ET AL.

(San Onofre Nuclear Generating Station,
Units 2 and 3)

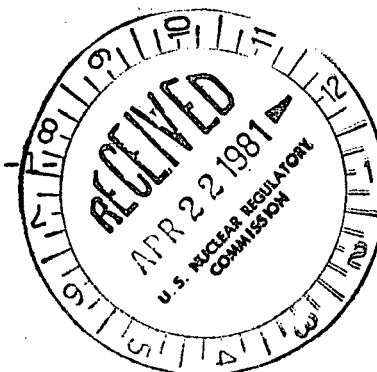
) Docket No. 50-361 OL
) 50-362 OL

) MEMORANDUM OF POINTS AND AUTHORITIES
) IN SUPPORT OF MOTION TO COMPEL
) FURTHER ANSWERS TO INTERROGATORIES
) FROM INTERVENORS TO NRC STAFF SERVED
) FEBRUARY 19, 1981
)

INTRODUCTION

This memorandum is submitted pursuant to 10 C.F.R. § 2.730(b), in support of Intervenor F.O.E., et al., Motion to Compel Further Answers to Interrogatories Propounded by Intervenor to NRC Staff Served on February 19, 1981. On February 19, 1981, Intervenor served their Interrogatories on the NRC Staff. NRC Staff served their responses by mail on April 1, 1981.

The form of some of the interrogatories submitted by Intervenor to the NRC Staff was established in this proceeding by the Applicant in its interrogatories to Intervenor. Intervenor submitted interrogatories to Applicants and Applicants have submitted interrogatories to Intervenor which are essentially the same as those propounded by Intervenor to the NRC Staff. Those interrogatories were answered by both the Applicant and the Intervenor. They were not objected to as burdensome and oppressive and Intervenor, despite their lack of resources, answered the questions specifically. The



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interrogatories propounded to the NRC Staff are relevant and relate directly to the matters in controversy in this proceeding.

The Staff's introduction to its Responses to Interrogatories propounded by Intervenor indicates that "the interrogatories are responded to voluntarily to by the Staff in the interest of assuring the development of an adequate record in this proceeding." (Page 1) The Staff then proceeds to object, evade or otherwise fail to answer approximately 80% of the questions propounded by Intervenor. Intervenor had postponed and deferred discovery from the NRC Staff in reliance on statements made by NRC Staff prior to the Prehearing Conference on July 17, 1980. The Prehearing Conference Transcript reflects the following, beginning at Page 197, Line 17:

MR. CHANDLER: I wanted to just clarify for a moment our position with respect to discovery from the staff.

MR. SMITH: You notice raised eyebrows from the Board members.

MR. CHANDLER: One or two. Lest it be misunderstood, we did not indicate to the intervenors that they should not. What we suggested to the intervenors was that from the standpoint of maximizing the response that they would be able to obtain from the staff, that discovery would best be postponed or deferred, if you will, until the staff was in such a position as to have completed its review.

At this point in time, there would be little benefit in going to the staff and asking for the basis for its position it has not yet reached on matters it has not yet finished reviewing.

So, with that in mind, we suggested to the intervenors that it would perhaps be in everyone's best interest, in the applicant's as well, in letting the staff conduct its review, if discovery were to wait the passage of time so that the staff's review could be completed.

MR. SMITH: Mr. Chandler, the cases I have been in, the staff sometimes takes differing views as to whether it would stand on the particular privileges given to them under the discovery rules under 2.7520 and 2.7524.

While in some cases they just quite easily provide information, I for one as a member of the Board would be somewhat disturbed if, at the staff's urging, an intervenor deferred discovery, only then to find that the staff was saying, hey, look, this is not necessary to the decision, this is privileged, everything else.

MR. CHANDLER: No, sir. Let me assure the Board that we will be as cooperative and as informal as possible. Indeed, with the passage of time, we have provided intervenors with numerous documents on a very informal basis, documents which perhaps could be characterized as discovery.

What I have suggested to Mr. Wharton is that he defer formal style discovery in the nature of either depositions, requests for production of documents, interrogatories to the staff, until such time as the staff could in fact respond to them.

We do not intend to inject formality into the proceeding, except to the extent it is absolutely necessary.

MR. SMITH: Do you represent the Executive Director for Operations in that decision?

MR. CHANDLER: I represent the staff of the NRC. (End Page 199, Line 11) (emphasis added)

Intervenors have relied on NRC Staff's representation that they would be as cooperative and as informal as possible and that if Intervenors deferred, Staff could, in fact, respond to the questions. The responses to Intervenors Interrogatories are not indicative of cooperation by the NRC Staff.

The specific interrogatories for which Intervenors request an Order compelling further answers are set forth below.

I

CHALLENGES TO INTERROGATORIES MUST BE SPECIFIC ENOUGH THAT THE TRIBUNAL CAN UNDERSTAND IN WHAT WAY THE INTERROGATORIES ARE CLAIMED OBJECTIONABLE. GENERAL OBJECTIONS THAT THEY ARE BURDENSOME OR OPPRESSIVE ARE INSUFFICIENT.

Pennsylvania Power and Light Company and Alleghany Electric Cooperative Inc. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, (1980)

NRC Staff, in response to Interrogatories 1, 2, 3, 4, 5, 7, 12, 13, 14, 15, 16, 17, 19, 21, 22, and 24, generally objected to the questions propounded on the basis that it was "burdensome and oppressive". These interrogatories are the same as those propounded by Applicant to Intervenors and Intervenors to Applicants none of which were objected to as "burdensome and oppressive" by either party. These interrogatories are designed to elicit information from the NRC Staff in order to refine the issues in this proceeding and fully comprehend the position of the NRC Staff.

The majority of these interrogatories relate to the specification of documents, facts, persons with knowledge of the facts and persons the Staff expects to call as witnesses with regard to the various questions. Staff generally objects to the interrogatory and then proceeds to state its position and refers Intervenors to its "NRC Staff Supplement to Answers to Interrogatories and Identification of Witnesses" dated February 20, 1981 for information regarding Staff's witnesses. The document referred to does not specify the experts expected to testify with regard to specific information requested in the interrogatories and Intervenors contend they are entitled to specificity. It is one thing for

Intervenors to know the position of the Staff on a given issue and it is quite another to know, with specificity, the facts, documents and persons upon which Staff relies in basing its position. The questions raised by these interrogatories concern the essential issues to be litigated in this proceeding and specificity of answers to interrogatories from Applicant, Intervenors and the NRC Staff are essential to defining and refining the positions of the various parties on the issues to be litigated.

The Staff, in its general objections to these interrogatories do not state why they consider the interrogatory "burdensome and oppressive", there is no real showing that it is. The Staff simply makes the statement that it is "burdensome and oppressive", then gives a perfunctory summary of their position and does not in any way disclose the facts, documents or persons upon which they rely.

This objection to these interrogatories is insufficient according to Pennsylvania Power and Light Company and Alleghany Electric Cooperative Inc. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317 (1980) and Intervenors, therefore, request that the Board compel the NRC Staff to answer with specificity the interrogatories above listed.

II

AN EVASIVE OR INCOMPLETE ANSWER OR
RESPONSE SHALL BE TREATED AS A FAILURE
TO ANSWER OR RESPOND

10 C.F.R. § 2.740(f)

A. Interrogatory No. 8 propounded by Intervenor to the NRC Staff requests Staff's contention of the maximum magnitude earthquake that could occur on the geological structural relationship between the Offshore Zone of Deformation (OZD) and the Cristianitos Zone of Deformation. The Staff responds that the question is unanswerable "Since earthquakes do not occur on relationships." This unresponsive to the question in that the question relates to geologic structural relationships, if it does not agree, it should set forth the facts and specificity requested in the interrogatory. Intervenor request the Board to compel the NRC Staff to respond to the question in that this information relates to Staff's position and directly pertains to Contention 1 of the Intervenor.

B. The nature of Interrogatory No. 45 propounded by Intervenor to the NRC Staff relates to when, where, how and who among USGS scientists was asked to conduct research independently of the Applicant's consultants prior to 1980 during the operating license review of the SER.

The Staff objects to the interrogatory on the ground that it seeks information with respect to USGS involvement in the NRC Staff's review and thus is not a matter of controversy. Staff also objects that it is not reasonably calculated to lead to discovery of admissible evidence.

Intervenor believe that Staff is evading the question by objecting. Intervenor are asking for information about people who reviewed and conducted research for Staff which would specifically relate to Intervenor's Contention No. 1. Intervenor

are asking for discovery that may lead to admissible evidence. They are entitled to know the people involved as they may be possible witnesses. Therefore, Intervenor request that the Board compel Staff to respond to Interrogatory No. 45.

C. The nature of Interrogatory No. 46 propounded by the Intervenor to the NRC Staff is to provide names and qualifications of any USGS scientists who reviewed Applicant's consultants reports regarding earthquake hazards at SONGS 2 and 3 between 1963 and 1964.

Staff objects on the ground that the information sought concerns a review conducted "many years ago" which culminated in a construction permit and, therefore, does not relate to a matter in controversy.

Staff's objection is an evasion of the question. Contention No. 1, which is a matter of controversy, relates to the adequacy of the seismic design basis of SONGS and the information requested as to who reviewed Applicant's consultants' reports in 1963 and 1964 is relevant to the matter in controversy, especially in assigning the Safe Shutdown Earthquake. Intervenor are entitled to know the people and their qualifications as they may be possible witnesses or have facts not otherwise obtainable. Therefore, Intervenor request the Board to compel NRC Staff to inform Intervenor of these people.

D. Interrogatory No. 47 propounded by Intervenor to Staff is to provide names and qualifications of any USGS Scientists who reviewed Applicant's consultants' reports regarding earthquake hazards at SONGS 2 and 3 since 1973.

Staff's response to this interrogatory is unresponsive and evasive in that they indicate they have not and do not request review assistance of specific USGS scientists. That a USGS-NRC coordinator selects the specific USGS reviewers.

The Intervenor has not requested information as to whether or not the Staff requests reviews by specific USGS scientists, but rather asks for the names and qualifications of those who have been requested to review Applicant's Consultants' reports since 1973. The Staff asks the USGS-NRC coordinator to have USGS scientists review information, Intervenor's inquiry goes to who these people are. Intervenor is entitled to this information and therefore request the Board to compel Staff to respond to the question.

III

IN MODERN ADMINISTRATIVE AND LEGAL PRACTICE, PRE-TRIAL DISCOVERY IS LIBERALLY GRANTED TO ENABLE PARTIES TO ASCERTAIN FACTS IN COMPLEX LITIGATION, REFINE THE ISSUES AND PREPARE ADEQUATELY FOR A MORE EXPEDITIOUS HEARING OR TRIAL.

Pacific Gas & Electric Company (Stanislaus Project)
LBP-78-20, 7 NRC 1038,1040 (1978)

A. Interrogatory No. 20 propounded by Intervenor to Staff desires to establish if Staff's contention is that there is possibility of ground displacement within the plant site and, if so, specificity of facts, documents and persons upon which Staff bases such contention.

Staff objects to this inquiry on the ground that it is not a matter in contention in this case. The Board found Contention No. 1 adequate for discovery purposes indicating at page 3 of its Memorandum and Order of January 27, 1978 that after discovery the Board will consider parties' suggestions to limit the scope of this contention. Intervenors argue that the Staff's position on the possibility of ground displacement within the plant site is relevant to Intervenors' contention regarding the adequacy of the seismic design basis for SONGS 2 and 3 because Intervenors contend that ground displacement within the plant site is possible, based on the mapping of faults under Unit 2 during the excavation phase of construction in 1974 as noted in Staff's SER (1980) and because of the mapping of the Cristianitos Zone of Deformation in 1980 which revealed that the Cristianitos Zone of Deformation may project directly beneath the reactors. Ground displacement on either of those faults could cause ground motions in excess of the design criteria. In order to refine the issues for the Board, all relevant positions and specific bases for those positions are necessary in order to eliminate matters not in contention.

B. The nature of Interrogatories No. 28, 29, 30, 31 and 32 propounded by Intervenors to the NRC Staff relate to a report published in October, 1967 by the Department of the Interior (hereinafter referred to as the Bolsa Island Report) regarding the requirement that the Bolsa Island reactor be designed for an SSE of magnitude 8. The Bolsa Island reactor was to be built near the Newport-Ingelwood fault zone. Intervenors ask Staff if they provided notice

of this report to the Board or Commissioner (Interrogatory No. 28), whether it was introduced into evidence at the construction licensing proceedings and if not, why not (Interrogatory No. 29), were they aware of its existence at that time (Interrogatory No. 30), if they were aware of its existence, whether they informed Intervenor (Interrogatory No. 31), and whether the Staff admits that it is relevant evidence and admissible in this proceeding and if not, to state the legal arguments as to why it is not admissible evidence (Interrogatory No. 32).

Staff objects to these interrogatories on the ground that the Bolsa Island Report is "out of date", deals with a facility other than San Onofre which is not relevant to a matter in contention in this case, and does not seek information related to matters in controversy and does not otherwise lead to the discovery of admissible evidence.

Intervenors point out that the Bolsa Island Report is not "out of date" and while it does deal with a facility other than SONGS 2 and 3, information contained in this official government report, published by the Department of the Interior, relates to the Newport-Inglewood Fault Zone which is a matter relevant to Intervenor's contentions. The Newport-Inglewood Fault Zone is four miles from SONGS and the Bolsa Island Report deals with a maximum magnitude of 8 on that fault zone. This plant was to be located approximately 35 miles north of the San Onofre site.

Intervenors argue that "Relevant Evidence" means evidence having any tendency to make the existence of any fact that is of

consequence to the determination of the action more probable or less probable than it would be without the evidence. Fed. Rules Evid., Rule 401. All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by Act of Congress or by these rules, or by other rules prescribed by the Supreme Court pursuant to statutory authority. Fed. Rules Evid., Rule 402. Intervenors believe this report has probative value with regard to the Newport-Inglewood Fault Zone and is relevant, admissible evidence in this proceeding. Intervenors request the Board to compel the NRC Staff to respond to Interrogatories 28, 29, 30, 31 and 32 with regard to this independent report by the Department of the Interior. Intervenors contend that if this report was not introduced into evidence at the construction licensing stage, it is "relevant new evidence" and admissible at the operative licensing stage.

C. The nature of Interrogatory No. 36 propounded by Intervenors to the NRC Staff relates to Intervenors' Contention 1a with regard to the dewatering cavities at the SONGS site. In that regard, Intervenors inquire into Staff's position on the possibility that the plant design will not withstand an earthquake on the OZD that is greater than a magnitude 6.5 and/or ground motion in excess of .67g.

Staff objects to this interrogatory on the ground that the information sought is not in issue in this case and that Contention 1 does not go to the adequacy of the facility to withstand the SSE.

Intervenors point out that their Contention 1a deals with Contention 1 and the adequacy of the SONGS units. The Board itself has already recognized that the ability of the plant to withstand ground motion is in issue. In its Memorandum and Order of January 26, 1981, the Board stated that Contention 1a, regarding the dewatering cavaties:

. . . is part of a larger Contention, No. 1, which alleges that the earthquack which could cause the maximum vibratory ground motions has not been assigned as the safe shutdown earthquake. We agree with FOE that if, after hearing, it has been established that the correct safe shutdown earthquake has not been assigned to SONGS units 2 and 3, there will remain a genuine issue of material fact as to whether the cavaties, as treated, will have an adverse affect on the capabilities of the structure and equipment to withstand the correct safe shutdoen earthquake. . .the issue may be considered under FOE Contention 1. At pp. 27-28 (emphasis added)

The Board's comments indicate that the capability of the structure is relevant and for that reason Intervenors request the Board to compel the NRC Staff to respond to Interrogatory No. 36.

D. Interrogatories No. 37, 38 and 39 propounded by Intervenors to the NRC Staff relate to whether the Staff has evidence, information and/or studies upon which it relies regarding activities of plant personnel in the event of an earthquake at SONGS.

Staff objects to these interrogatories on the ground that Intervenors seek information concerning human behavior during an earthquake which Staff alleges is not in contention in this

matter. Staff further objects that the question does not appear to lead to discovery of admissible evidence. Staff states that the issue, as presently framed, relates to the adequacy of the SSE assigned to SONGS.

Intervenors agree that Contention 1, as presently framed, is that the seismic design basis is inadequate to protect the public health and safety. Intervenors argue that according to 10 C.F.R. Part 100, Appendix A, which states in part:

The nuclear power plant shall be designed so that, if the Safe Shutdown Earthquake occurs certain structures, systems and components will remain functional. These structures, systems and components are those necessary to assure the (i) the integrity of the reactor coolant pressure boundary, (ii) the capability to shut down the reactor and maintain it in a safe condition, or (iii) the capability to prevent or mitigate consequences of accidents which could result in potential offsite exposures comparable to the guideline exposures of this part. (Part VI, (a))

A nuclear power plant is not automated. In assigning a Safe Shutdown Earthquake, all measures necessary to assure that the integrity of the reactor, the capability to shut down the reactor and maintain it in a safe condition or to prevent or mitigate consequences of accidents should be considered. It is plant personnel who operate the structures, the systems and the components. There are certain functions to be performed during the occurrence of an SSE in order to maintain the integrity of the reactor. The entire sequence of events at Three Mile Island have shown the necessity of taking into consideration the human element

at nuclear power plants. As the TMI-2 Task Force noted in NUREG-0585: "Our role - nuclear safety regulation - is primarily at the criteria setting level rather than the component design level."

(4-4). While 10 C.F.R. Part 100, Appendix A does not specifically refer to the human element, Intervenor point out again that a nuclear power plant is not automated and must be run and maintained by plant personnel. The TMI-2 Task Force in NUREG-0585 also noted that "technical reviewers. . . spend too much time verifying that safety analysis reports have addressed all required aspects of the design rather than concentrating and collecting their efforts to challenge the adequacy of the overall design, particularly across systems interface and the man-machine interface. . ." (4-5) (emphasis added)

Intervenors contend that any evidence, information and/or studies upon which Staff relies regarding plant personnel activities in the event of an earthquake at SONGS is relevant to Contention 1 and that in this complex litigation discovery to ascertain facts and to refine issues is necessary to adequately prepare for an expeditious hearing. Therefore, Intervenor respectfully request the Board to compel Staff to respond to this interrogatory.

E. The nature of Interrogatory No.40 propounded by Intervenor to the NRC Staff is the peak and effective ground acceleration that the spent fuel rod pools were designed and built for.

Staff objects to this interrogatory on the ground that it is not a matter of contention and that the question does not appear to lead to the discovery of admissible evidence.

It has already been established that the information requested from the Staff on spent fuel rods is at issue in this matter. The issue was raised, discussed and agreed upon as evidenced from the transcript of the Pre-Hearing Conference at San Diego, California on July 17, 1980. The transcript indicates the following, beginning at Page 239, Line 14:

MR. WHARTON: Before we leave the area of contentions, I would like to address the Board on one area I talked to Mr. Pigott about concerning what I am referring to now as contingent new issues. I am doing this for purposes of the record, and for purposes of satisfying 10 C.F.R. 2.7143, which, if the contingencies arise, I think it is appropriate for us to raise these now so we are not just sitting on certain issues, not bringing them to the attention of the Board and the other parties.

MR. SMITH: Excuse me. I do not have my rules of practice before me. I see Mr. Chandler looking at 2.1743.

MR. WHARTON: We look at those for bringing in new contentions later on in the proceeding or amending our petition. (End Page 240, Line 2)

Thereafter, at Page 242, Line 23, Mr. Wharton speaking:

The other area is in the area of spent fuel storage, and this is an area that I believe in the time of hearing could be incorporated into the seismic issue, and basically what the information we have right now, that raises this issue, and the fairly recent rules regarding storage of spent fuel on site -- it raises an issue of seismic design of the spent fuel storage pond... The question I have here is whether this can be incorporated as a seismic issue or whether the Board would indicate if it is to be accepted as an issue at all. It is to be presented to the Board as a separate issue.

Thereafter, at Page 245, Line 1, Mr. Pigott speaking:

With respect to the spent fuel storage, I think that falls into the area of something that Mr. Wharton is at complete liberty to do discovery on. If there is a seismic concern concerning

that portion of the facility, then I think that it is certainly legitimate for him to bring up in further delineation of the issues in the future.

(Whereupon, the Board conferred.)

Thereafter, at Page 246, Line 20, Mr. Wharton speaking:

I believe -- my understanding is, there is -- the spent fuel pond for Unit 1 is also used -- will be used for Units 2 and 3, expanded, but used for Units 2 and 3. If I am wrong on that point, I would stand corrected.

MR. PIGOTT: My understanding -- this is the lawyer talking, not the technical person -- was, the spent fuel facility for Units 2 and 3 was expanded and configured in a manner that would also take fuel from Unit 1. My understanding is, it is a portion of Units 2 and 3 facility, designed to the Units 2 and 3 seismic criteria.

MR. WHARTON: Mr. Chairman, I accept Mr. Pigott's representations as to the spent fuel ponds being a seismic concern, and that further discovery can be had on that. I think we will proceed in that manner. It does clarify the questions that I have. Thank you Mr. Pigott. (End at Page 247, Line 12)

There was agreement by Mr. Pigott that this was a seismic concern and there was no objection by Mr. Chandler as to Intervenor's statement through its counsel, Mr. Wharton. Mr. Wharton's last statement, above, with regard to the spent fuel ponds, in clarification of the issue was not objected to by Mr. Pigott or Mr. Chandler and there was nothing further from the Board on that topic. Intervenor brought this issue before the Board and has justifiably relied upon the acceptance of this clarification of the issue. NRC Staff would be estopped to deny that this issue was raised.

Intervenor, therefore, request that the Board compel

the NRC Staff to respond to the question as it was agreed to be a discoverable matter to help in refining the issues to be presented to the Board.

F. Interrogatories 41, 42 and 43 propounded by Intervenor to the NRC Staff requested names and qualifications of Staff geologists, seismologists and geophysicists in any way involved in the analysis of the siting of SONGS, between 1963 and 1964 (Interrogatory No. 41), 1965 and 1968 (Interrogatory No. 42), and names and qualifications of any independent consultants in the fields of geology, seismology and geophysics or USGS scientists between 1963 and 1973 (Interrogatory No. 43).

Staff objects to these interrogatories on the ground that this is "past history" and therefore does not relate to a matter in controversy and is impermissible discovery. Staff also objects on the ground that it would require extensive data gathering.

Contention 1 as presently framed involves in part the adequacy of the seismic design basis for SONGS. Intervenor by this interrogatory are requesting the names and qualifications of people who had knowledge and/or might be able to testify as to the selection of the SONGS site or the geology-seismology at that time. This is not "past history" and directly relates to a matter in controversy. Intervenor need to know who these people were, are entitled to know who they are as they may be names of possible witnesses. This information would not require extensive data gathering. This information should be readily available in the

Staff's records and files.

Therefore, Intervenors request the Board to compel the Staff to respond to Interrogatory No. 41, 42 and 43.

G. Interrogatories No. 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59 and 60 propounded by Intervenors to the NRC Staff are objected to by Staff on the grounds that the information requested can be attested to by Intervenors of its own accord, seeks information concerning matters not in issue, and does not appear to Staff to be reasonably calculated to lead to discovery of admissible evidence.

The interrogatories are in the form of requests for admissions. They are calculated to avoid further controversy or having to present further evidence on these issues at the time of hearing which are relevant to this proceeding. Intervenors request if Staff agrees that a meeting between Staff and Intervenors was requested by Intervenors (Interrogatory No. 49), that Intervenors requested Staff to require Applicant to conduct research offshore (Interrogatory No. 50), that Intervenors based their hypothesis of a new structural relationship between two fault zones on a new map published in November, 1979 (Interrogatory No. 51), that the authors of the map had not yet been consulted by Staff at the time of the meeting with Intervenors (Interrogatory No. 52), that after Staff's meeting with Intervenors, Staff requested Applicant to provide Staff with copies of offshore seismic reflection profiles (Interrogatory No. 53), that NRC conducted a meeting about this issue on May 21, 1980

(Interrogatory No. 54), that a certain statement was made by NRC Staff Geosciences Branch Chief Bob Jackson at the conclusion of that meeting (Interrogatory No. 55), that thereafter Staff requested USGS scientists Greene and Kennedy to write a report and produce a map making use of all available data (Interrogatory No. 56), that Applicant agreed to conduct more seismic profiles offshore and that they hired NEKTON, Inc. (Interrogatory No. 57, that Greene and Kennedy produced a report mailed to NRC on August 13, 1980 (Interrogatory No. 58), that Applicant requested a meeting in Bethesda, Maryland on August 14, 1980 to present their consultants' report (Interrogatory No. 59), and that the Greene and Kennedy report mailed to the NRC on August 13, 1980 was written independently of the Applicant's report by NEKTON (Interrogatory No. 60).

Intervenors are asking for Staff's understanding on these issues in order to adequately prepare for a more expeditious hearing, their understanding is relevant to the proceedings and therefore request the Board to compel the Staff to respond to Interrogatories 49 through 60.

CONCLUSION

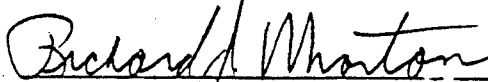
It is interesting to note that Intervenor prior to and after the Prehearing Conference in July, 1980, postponed and deferred discovery in order to maximize the response that would be available from the Staff. Mr. Smith, Chairman of the Board, indicated at that time that he, as a member of the Board "would be somewhat disturbed if, at the Staff's urging, an Intervenor deferred discovery, only to find the Staff saying, hey, look, this is not necessary to the decision, this is privileged, everything else." (Transcript of Prehearing Conference, July 17, 1980, Page 198, Lines 18-22) The Staff, in response to Intervenor Interrogatories served February 19, 1981 objected to, evaded or otherwise failed to answer 80% of the questions.

Intervenor have requested the Staff to specify with particularity the witnesses they will call and the areas they will testify to. Intervenor responded with particularity to which of their witnesses will speak to what issues and Intervenor are entitled to this information from the NRC Staff. Intervenor have cooperated to the best of their ability in expediting these proceedings. This cooperation has been met by refusal to answer interrogatories based on questionable and in some cases bad faith objections.

Intervenor re-emphasize the liberal discovery in complex litigation is necessary to obtain facts, refine issues and adequately prepare for an expeditious hearing. Intervenor request the Board to compel Staff to respond as requested.

DATED: April 16, 1981

Respectfully submitted,



RICHARD J. WHARTON

Attorney for Intervenor F.O.E., et al.