UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board 5/13/76

In the Matter of	)	
	)	
TENNESSEE VALLEY AUTHORITY	)	Docket Nos. 50-259
	)	50-260
(Browns Ferry Nuclear Plant Units 1 and 2)	)	
	)	

LICENSEE'S MOTION FOR AN ORDER TO COMPEL WILLIAM E. GARNER TO RESPOND TO CERTAIN INTERROGATORIES

Pursuant to 10 C.F.R. § 2.740(f) (1975), Licensee moves the Board for an Order to compel Intervenor William E. Garner to respond to Licensee's interrogatories 1(b) and (c); 4(e), (f), and (g); 5(d), (e), and (h); 6(d); and 7(d) and (e) filed April 16, 1976, on the grounds that

1. Licensee's interrogatories are within the scope of admissible discovery;

2. William E. Garner has raised no valid objections to those interrogatories; and

3. Intervenor's lack of response constitutes a failure to answer under 10 C.F.R. § 2.740(f) (1975).

A supporting brief and proposed form of order are enclosed.

Respectfully submitted,

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May 13, 1976

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LICENSEE'S BRIEF IN SUPPORT OF MOTION FOR AN ORDER TO COMPEL WILLIAM E. GARNER TO RESPOND TO CERTAIN INTERROGATORIES

On April 26, 1976, the Atomic Safety and Licensing Board issued its Prehearing Conference Order accepting and adopting for the purposes of discovery three contentions as stipulated by the parties at the Special Prehearing Conference of April 1, 1976, and establishing a schedule for discovery proceedings. In accordance with the stipulated schedule, Licensee served a set of interrogatories on Intervenor William E. Garner on April 16, 1976.

All of Licensee's interrogatories concern specific stipulated contentions of Garner which were admitted by the Board's Order of April 26, 1976, for the purposes of discovery. Each interrogatory requests information seeking the factual basis for the contention and clarification of specific phrases used in those contentions.

On May 3, 1976, Garner filed Intervenor's Objections to Applicant's Interrogatories to Intervenor objecting to interrogatories 1(b) and (c); 4(e), (f), and (g); 5(d), (e), and (h); 6(d); and 7(d) and (e).

This brief is in support of a motion for an order to compel Intervenor to respond to the above interrogatories on the grounds that such interrogatories are within the scope of permissible discovery and no valid objections have been raised to those interrogatories.

ARGUMENT

Licensee's Interrogatories Are Within the Scope of Permissible Discovery.

The Rules of Practice regarding discovery state:

> Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party . . . [10 C.F.R. § 2.740(b)(1) (1975)].

Licensee's interrogatories 1(b), 1(c), 5(d), 5(e), 6(d), 7(d), and 7(e) all refer explicitly to Intervenor's contentions and merely request further explanation of the various phrases used by Intervenor in his contentions. For example, contention 1 reads in part:

> Intervenor contends that the presently proposed modifications at Browns Ferry, Units 1 and 2, will be inadequate to provide adequate protection against the functional damage of both redundant components of engineered safeguards equipment from postulated future fires, unless the following necessary modifications are also made . . . .

Interrogatories 1(b) and 1(c) seek to elicit particularization of that contention and request as follows:

> 1(b) Identify with particularity and by system name each of the "engineered safeguards equipment" referred to in contention 1 . ... .

and

> 1(c) Specify what is meant by the phrase "functional damage of both redundant components of engineered safeguards equipment."

Intervenor responded with the following objections to those interrogatories:

> 1(b) The system names and identity of the "Engineered Safeguards Equipment" are more available to Applicant than they are to Intervenor.

and

> 1(c) It is not Intervenor's job to define technical terms for the Applicant.

Similarly, interrogatories 5(d) and (e) relate to contention 1(D) which states "TVA should be required to have the power supply to the ventilation system for all potential fire areas outside the fire areas." Interrogatories 5(d) and (e) request the Intervenor to explain the term "outside the fire areas" and identify specifically each "potential fire area" to which this contention is applicable. Intervenor objected to these interrogatories replying "It is not Intervenor's role to explain" these terms.

Interrogatory 6(d) relates to contention 1(E) which states "[a]ll redundant Class IE circuits and the equipment served by these circuits should be separated by a fire barrier wall." Interrogatory 6(d) requests the Intervenor to define and explain what is meant by "redundant Class IE circuits." The Intervenor objected merely replying that that definition "is equally available to Applicant."

Interrogatories 7(d) and (e) relate to contention 1(F) which states:

> A standard installation of open-head, water spray sprinklers controlled by an automatic deluge valve and products-of-combustion actuated detectors should be provided in each cable spreading room. The deluge valve should be located outside the room and connected to the plant's annunciator system.

Interrogatories 7(d) and (e) request an explanation of the terms "automatic deluge valve" and "products-of-combustion actuated detectors" as used in that contention.

Intervenor objected simply replying that explanations of those terms "are equally available to the Applicant."

Thus Intervenor objects to providing any explanation of the terms used in his contentions essentially on the grounds that such information is "more available to Applicant than to the Intervenor" or "it is not Intervenor's job to define technical terms for the Applicant." These responses are totally inappropriate and in complete disregard of the Rules of Practice. In addition, Intervenor appears to badly misconstrue his role in this proceeding.

As stated by the Board in the Pilgrim case,

> [I]t has been uniformly recognized that the discovery rules are to be accorded a broad and liberal treatment so that parties may obtain the fullest possible knowledge of the issues and facts before trial . . . .
>
> * * *
>
> As to the permissible areas of discovery, the authorities are clear that interrogatories seeking specification of the facts upon which a claim or contention is based are wholly proper, and that the party may be required to answer questions which attempt to ascertain the basis for his claim or, for example, what deficiencies or defects were claimed to exist with respect

> to a particular situation or cause [Boston Edison Co. (Pilgrim Nuclear Generating Station, Unit 2) LBP-75-30, NRCI-75/6 579, 582 (June 6, 1975); footnote omitted].

By this motion, what the Licensee is seeking is merely some explanation and elaboration of the technical terms used in Intervenor's contentions. It is totally nonresponsive to reply that "the definition is equally available" to the Licensee or that it is "not Intervenor's job" to define such terms. It is clear that the Intervenor carries the burden of going forward with his contentions, Commonwealth Edison Co. (Zion Station, Units 1 and 2) ALAB-226, RAI-74-9 381, 388 (Sept. 5, 1974), and, likewise, carries the burden of defining what is meant by each contention.

Intervenor's objections to these interrogatories indicate an attitude that an intervenor has a right to make allegations without even explaining those allegations. Licensee's interrogatories seek to establish the meaning and scope of those contentions.

As the Appeal Board in Midland stated:

> One of the justifications for public participation in [the adjudicatory] process is the additional input which intervenors may contribute to the identification and resolution of relevant issues, and the assistance they may provide an agency in fulfilling its statutory mandates [citing Office of Communication of the Church of Christ v. F.C.C., 359 F.2d 994, 1005 (D.C. Cir. 1966)]. In short, the right of participation in an administrative proceeding carries with it the obligation of a party to assist in "making the system work" and to aid the agency in discharging the statutory obligatons with which it is charged [Consumers Power Co. (Midland Plant, Units 1 and 2) ALAB-123, RAI-73-5 331, 332 (May 18, 1973)].

Here Intervenor appears to believe he possesses a right to make allegations but bears no duty to substantiate or even explain those allegations. That certainly does not assist in resolving any issues in this proceeding or in "making the system work." Licensee has a right to have the

terms explained. It is entirely possible that the Intervenor's concept of the meanings of the terms could differ widely from the Licensee's use of such terms.

Interrogatories 4(e), (f), and (g) relate to contention 1(C) which states "TVA should be required to use cables that do not liberate corrosive gases." Interrogatories 4(e), (f), and (g) seek to elicit the information known by the Intervenor concerning the existence of commercially manufactured electrical cable that does not liberate corrosive gases and Intervenor's opinion of whether such cables are suitable for use in the Browns Ferry Nuclear Plant.

Interrogatories 4(e), (f), and (g) provide as follows:

> (e) What type of cable insulation currently manufactured does not liberate corrosive gases?
>
> (f) Identify the specific types of cables and their respective manufacturers.
>
> (g) Are such cables suitable for use in the Browns Ferry Nuclear Plant, Units 1 and 2?

Intervenor objected to these interrogatories on the grounds that

> It is not Intervenor's role to do research for Applicant that Applicant should do itself . . . .

This interrogatory, however, in no way requires Intervenor to do research for TVA. It merely seeks to elicit what information is known by the Intervenor. If no such information is known, Intervenor should respond accordingly.

Interrogatory 5(h) relates to contention 1(D) which states "TVA should be required to have the power supply to the ventilation system for all potential fire areas outside the fire areas." Interrogatory 5(h) seeks to elicit the Intervenor's opinion concerning the necessity for compliance

with contention 1(D) regardless of other safety precautions already taken and regardless of economic costs involved. Intervenor objected to interrogatory 5(h) replying: "This interrogatory is too general and garbled to respond to."

This interrogatory is in no way "general" but is specifically addressed to contention 1(D). The purpose of the interrogatory is to elicit Intervenor's opinion concerning whether he believes conformance with the design requirements of contention 1(D) is necessary regardless of other safety precautions already taken and regardless of the economic costs involved. The interrogatory then requests the Intervenor to "particularize your reasons and specify your factual bases." This interrogatory is specific and understandable. Accordingly, Intervenor should be compelled to respond.

CONCLUSION

In view of the foregoing, Licensee requests that the Board grant Licensee's motion and order Intervenor to respond fully in writing, under oath or affirmation, to the above interrogatories.

Respectfully submitted,

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PROPOSED FORM OF ORDER COMPELLING DISCOVERY

Applicant has moved pursuant to 10 C.F.R. § 2.740(f) (1975) for an order to compel Intervenor William E. Garner to respond to certain interrogatories propounded by Licensee.

Licensee's interrogatories were served on Intervenor on April 16, 1976. The Board has examined the interrogatories and determined that they are reasonable and within the scope of permissible discovery as set forth in 10 C.F.R. § 2.740 (1975).

Several of the interrogatories (1(b) and (c); 5(d) and (e); 6(d); and 7(d) and (e)) seek an explanation of certain terms as used by Intervenor in contention 1 (tr. 10-11). Intervenor generally responded that that information is "more available" to the Licensee or it is "not Intervenor's job" to explain such terms. Insofar as those interrogatories merely seek an explanation of the terms used in the Intervenor's own contentions, such interrogatories are entirely appropriate.

It is well settled that the burden of going forward with specific allegations made by an intervenor is on that party. Commonwealth Edison Co. (Zion Station, Units 1 and 2) ALAB-226, RAI-74-9 381, 388 (Sept. 5, 1974). Accordingly, there is no doubt that a party advancing a contention is required to fully explain and specify the meaning of that contention.

The Licensee's interrogatories 4(e), (f), and (g) relate to contention 1(C) which states "TVA should be required to use cables that do not liberate corrosive gases." Interrogatories 4(e), (f), and (g) seek to elicit the information known by the Intervenor concerning the existence of commercially manufactured electrical cable that does not liberate corrosive gases and Intervenor's opinion of whether such cables are suitable for use in the Browns Ferry Nuclear Plant. If Intervenor has no such knowledge, he should respond accordingly.

Interrogatory 5(h) relates to contention 1(D) (tr. 10) which states "TVA should be required to have the power supply to the ventilation system for all potential fire areas outside the fire areas." Interrogatory 5(h) seeks to elicit Intervenor's opinion concerning the necessity for compliance with contention 1(D) regardless of other safety precautions already taken and regardless of economic costs involved. Despite Intervenor's objection that "[t]his interrogatory is too general and garbled to respond to," the Board finds this interrogatory specifically addressed to contention 1(D) and readily understandable.

The Board has reviewed the pleadings in this matter and finds as follows:

(1) Licensee's interrogatories 1(b) and (c); 4(e), (f), and (g); 5(d), (e), and (h); 6(d); and 7(d) and (e) are reasonable and within the scope of permissible discovery;

(2) Intervenor's objections are not well founded and are without merit.

Accordingly, the Board directs Intervenor William E. Garner to respond fully to Licensee's interrogatories as stated above no later than five days from the date of this order and such responses shall be in writing and under oath or affirmation.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY AND LICENSING BOARD

Thomas W. Reilly, Esq., Chairman

Issued at Bethesda, Maryland
this _____ day of _____, 1976

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CERTIFICATE OF SERVICE

I hereby certify that I have served the original and 20 conformed copies of the following documents on the Nuclear Regulatory Commission by depositing them in the United States mail, postage prepaid and addressed to Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Chief, Docketing and Service Section:

Licensee's Motion for an Order to Compel William E. Garner to Respond to Certain Interrogatories

Licensee's Brief in Support of Motion for an Order to Compel William E. Garner to Respond to Certain Interrogatories

and that I have served a copy of each of the above documents upon the persons listed below by depositing it in the United States mail, postage prepaid and addressed:

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This 13th day of May, 1976.

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