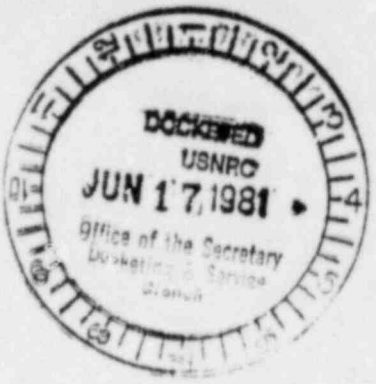
RELATED CORRESPONDENCE



UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (UCLA Research Reactor)	Docket No. 50-142 (Proposed Renewal of Facility License Number R-71)

MOTION TO COMPEL FURTHER ANSWERS FROM APPLICANT TO INTERVENOR'S SECOND SET OF INTERROGATORIES; AND RESPONSE TO APPLICANT'S MOTION FOR A PROTECTIVE ORDER

Dated: June 12, 1981

NUCLEAR LAW CENTER
c/o 1724 N. La Brea Avenue
Los Angeles, CA 90046
(213) 876-4700

Attorneys for Intervenor
COMMITTEE TO BRIDGE THE GAP

DS03
S 0/1

8106220299

G

TABLE OF CONTENTS

I. PRELIMINARY STATEMENT

Intervenor hereby moves the Atomic Safety and Licensing Board to compel further answers by Applicant to certain of Intervenor's Second Set of Interrogatories. Intervenor hereby concurrently opposes Applicant's Motion for a Protective Order, dated May 28, 1981, as to objections to answering certain of said Interrogatories. Furthermore, Intervenor hereby opposes those portions of Applicant's Motion proposing to limit documents to be produced in the proceeding to those offered to date by Applicant and additionally proposing to substantially limit the number of follow-up interrogatories. Finally, the Board is requested to adjust the discovery schedule so as to accommodate the situation attendant to Applicant's Protective Order Motion and Intervenor's current Motion to Compel.

II. BACKGROUND

On September 25, 1980, the Atomic Safety and Licensing Board granted the Committee to Bridge the Gap (CBG) intervenor status and discovery rights as to four contentions admitted at that time as issues in the relicensing proceedings. On October 20, Intervenor submitted its First Set of Interrogatories. Applicant's answers were served on November 25. Intervenor found the answers to be incomplete, non-responsive, and evasive, and therefore moved the Board to compel further answers to certain of those Interrogatories. The Board granted said Motion on December 22, 1980.

On January 22, 1981, Applicant made Further Answers to said Interrogatories, answers which Intervenor found as fully inadequate as the previous answers. In particular, information as to reactor usage which Applicant, in response to CBG's Interrogatories, had denied possessing, was found to have been submitted some months earlier by Applicant to NRC Staff. Therefore, Intervenor submitted a Supplemental Motion to Compel, which was granted by the Board on March 10.

When Applicant indicated in a May 1 letter that, despite the Board Order of March 10, no further answers would be forthcoming, Intervenor moved the Board for a Third Order and for sanctions. On May 29 the Board granted the Third Motion to Compel and directed Applicant to show cause within 10 days of receipt of the Order why a sanction should not be imposed under 10 CFR 2.707 and why its counsel should not be cited under 10 CFR 2.713 for refusal to comply with a Board direction.

Intervenor submitted its Second Set of Interrogatories on April 20, 1981. Unlike its First Set, which went only to Contention II, the Second Set went to the twenty (20) contentions that had been admitted by that date and the roughly one hundred and twenty (120) subparts of those contentions.

Applicant served its responses to those Interrogatories on or about May 21, 1980, having requested and receiving a brief extension of time in which to respond.

Over half of the Interrogatories submitted by CBG in its Second Set were either objected to by Applicant, not answered at all, or answered in a fashion Intervenor views as evasive, non-responsive, or incomplete.

A week after serving its response to the Interrogatories, Set Two, Applicant served its Motion for a Protective Order as to certain of those Interrogatories to which it had objected. The Motion in addition requested a sharp curtailment of discovery (practically speaking, virtually ending it) by restricting document production for the entire proceeding to the 41 items it has offered to date for inspection and copying and by limiting follow-up interrogatories (already served by Intervenor) to a total of 50 questions, determined by counting each subpart as an individual question.

Because Applicant filed its Motion for a Protective Order a week after its Interrogatory Answers, Intervenor's Motion to Compel Further Answers to those interrogatories and its Response to the Protective Order Motion were due a week apart, absent agreement by the parties otherwise. By phone conversation June 2, confirmed by letter on June 3, the parties agreed to having Intervenor combine its Motion to Compel and its Response to the Protective Order Motion into one filing to be served on June 12. What follows, thus, is a combination of the two.

III. DISCUSSION

Discovery in NRC proceedings is given broad and liberal scope. In general, 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, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter." 10 CFR 2.740(b)(1).

Furthermore, "it is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." 10 CFR 2.740(b)(1).

The scope of discovery under the Commission's Rules of Practice is similar to discovery under the Federal Rules of Civil Procedure. Pacific Gas and Electric Company (Stanislaus Nuclear Project, Unit 1). LBP-78-20, 7 NRC 1038, 1040 (1978). Part of the purpose of discovery in such proceedings is to ensure that parties have access to the facts they need for proper litigation of the issues, and to reduce the possibility of surprise at hearing: "Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation. To that end, either party may compel the other to disgorge whatever facts he has in his possession. The deposition-discovery procedure simply advances the stage at which the disclosure can be compelled from the time of trial to the period preceding it, thus reducing the possibility of surprise." Hickman v. Taylor, 329 U.S. 495, 91 L. Ed. 451 (1947).

Interrogatories are to be answered separately and fully in writing under oath or affirmation, unless objected to, in which case the reasons for objection shall be stated in lieu of an answer. 10 CFR 2.740b(b). An evasive or incomplete answer or response is to be treated as a failure to answer or respond. 10 CFR 2.740(f).

Intervenor contends that numerous questions in its Second Set of Interrogatories have not been answered fully and completely, and that other answers are evasive, constituting a failure to respond.

Intervenor will deal with said inadequate answers in two broad categories: those for which a protective order has been sought by Applicant, and those for which no protective order has been requested. The latter category will be addressed first, as 10 CFR 2.740(f) makes clear that failure to answer or respond to an interrogatory "shall not be excused on the ground that the discovery sought is objectionable unless the person or party failing to answer or respond has applied for a protective order pursuant to 10 CFR 2.740(c)."

Intervenor will, after detailing inadequate answers for which no protection has been sought by Applicant and for which an Order compelling further answers is sought by Intervenor, detail those interrogatories for which a Protective Order has been requested, grant of which Intervenor opposes and a Compelling Order Intervenor requests. Intervenor does not oppose all items for which Applicant has requested protection from answering. However, those which Intervenor does oppose are interrogatories for which Applicant has failed to meet its burden of showing why discovery should be denied or are so generally applied as to fail to meet the standards of specificity for such objections. Under liberal discovery rules, those opposing discovery are required to carry a heavy burden of showing why discovery should be denied. Blankenship v. Hearst Corp. CA CAL. 1975 519 FS 967. Objections to interrogatories must be specific and supported by detailed explanation as to why the specific interrogatory is objectionable. In re Folding Carton Antitrust Litigation DC Ill. 1979 83 FRD 260. Intervenor will demonstrate that Applicant has failed to meet such standards, and will in conclusion, after dealing with Applicant's proposal to prematurely end discovery for all intents and purposes, propose a Board ruling that would, in Intervenor's view, ensure that discovery is conducted

in such a way as to produce an adequate record on which to base an effective judgment on the licensing application before the Board.

CBG views its role in these proceedings as bringing to the Board's attention information useful in making such a judgment. CBG notes that a wide range of issues have been admitted as contentions in these proceedings and that, unlike licensing hearings prior to construction or operation, the facility in question here has a twenty-year operating history of which many aspects are of probable relevance to the matters before the Board. Thus, with twenty years of operating history and records and a wide range of admitted contentions, with their attendant subparts, the pool of discoverable evidence of potential importance at hearing is very large.

In addition, although the amount of discoverable evidence, for the reasons stated above, may be very large, the amount of information to be presented at hearing by the other parties is likely to be considerably less detailed than what is normally produced by Applicants and Staff at licensing hearings. UCLA's Application is but one volume compared to the many volumes of other facilities in licensing proceedings; furthermore Intervenor has raised numerous questions about the adequacy of that Application. Staff has to date submitted no written interrogatories to Applicant during the current discovery period, and to Intervenor's knowledge only submitted a total of four pages of written questions about the Application prior to this time.

Thus, Intervenor has a substantial role to play, if so permitted, in gathering, analyzing, and entering before the Board evidence that may be of substantial usefulness in the Board arriving at an informed judgment about the matters before it. Intervenor, however, cannot perform that function if other parties do not meet their discovery obligations.

And it appears to Intervenor that the failure of Applicant to meet its discovery obligations evidenced in the protracted struggle to get adequate answers as to the First Set of Interrogatories has carried over, with little change, to its answers to the Second Set.

Therefore, while Intervenor is reluctant to burden the Board with another tedious discovery dispute--and it has chosen to let slide a large number of interrogatory answers it views as inadequate but which it has chosen not to burden the Board, the other parties, or itself with trying to compel answers to--Intervenor sees no way that an adequate decisional record can otherwise be obtained. Without answers to these questions, Intervenor's case will be severely constrained and the evidence possible to be placed before the Board for its consideration will be unduly limited.

It seems to Intervenor that Applicant has spent more time and energy evading Interrogatories than in answering them. The pattern of resisting disclosure evident in Applicant's performance regarding the First Set of Interrogatories has continued into the Second Set. Intervenor respectfully submits that without Board intervention at this juncture, this pattern of not cooperating fully in responding to discovery requests will continue in the future and the quantity and quality of potential evidence to be eventually placed before the Board may be unduly limited. As the Board said in its March 10, 1981, Order:

> This Board is charged with the responsibility of obtaining a complete record on which to base a decision. We will not allow this duty to be compromised, or the proceeding to be further delayed, by gamemanship. Failure of the parties to fully cooperate in responding to discovery requests in the future may well result in the imposition of sanctions by the Board under 10 CFR 2.707.

Intervenor has no desire to engage in protracted discovery disputes with Applicant. All Intervenor wants is the information necessary for it to

perform a useful role at hearing.

IV. ITEMS TO WHICH CBG REQUESTS AN ORDER COMPELLING FURTHER ANSWERS

A. Items for Which Applicant has not requested a Protective Order

Intervenor found a very large portion of Applicant's answers to the Second Set of Interrogatories evasive, incomplete, and non-responsive. To detail them all here would be an unreasonable burden on all parties, so Intervenor has chosen to focus on a small fraction of the questions which it believes were not adequately answered. This should in no way be seen as an indication that Intervenor views the answers it did not request a Compelling Order on as adequate or responsive. It should more correctly be seen as reflecting the limited resources and patience of Intervenor, especially the latter, coming as this filing does after three previous Motions to Compel.

There are several main kinds of inadequate answers outlined in what follows. Some questions were not answered at all, just skipped over without any response whatsoever. Some questions had part of a question answered, at least minimally, but another part of the question was ignored. Some answers referred to equally unresponsive answers to other Interrogatories. Many responses gave no information as to the question, but referred the reader to an entire class of documents (for example, 20 years of operating logs) without so much as a volume number and page number. Some answers were circular, defining a term in a quotation by citing the quotation as the answer. Some didn't provide an answer, merely stated "Not Applicable," when the question was clearly applicable. Some said Applicant's staff had no knowledge, or the answer was unknown, or that staff didn't have the resources to do a study to find out, when it was quite apparent that some UCLA staff

must have some personal knowledge that could answer the question at least in part. Repeatedly Applicant failed to give what information it did have, referring instead to a class of documents or asserting it didn't have the resources to do an exhaustive study, when some information must have been in Applicant's possession, whether complete or not. And repeatedly Applicant appeared to play word games, claiming to not understand terms it was hard to believe its staffpeople did not recognize and comprehend.

The discovery process to date with Applicant has been characterized by unceasing resistance to discovery, evasive and unresponsive answers, and gamesmanship as to how much work Intervenor can be forced to do in order to get minimal bits of information, minute fractions of what it asked and of what the Board has a right to see. When a party resists discovery it can be presumed that the withheld material does not support its case. But presumptions are not of much use at hearing, only admissible evidence, and Applicant seems committed, despite the three Board Orders regarding cooperation with discovery, to obstructing discovery wherever possible.

Since Applicant has not requested a Protective Order on the Interrogatories that follow, they cannot be objected to. The only question is whether they were fully, responsively, and truthfully answered. As will be demonstrated below, a great many of the answers are far less than adequate.

Intervenor hereby respectfully requests that the Board issue an Order compelling further answers to the following Interrogatories:

Contention I

24e. Unresponsive. Intervenor finds it hard to believe that none of Applicant's Staff knows or has information about the original purpose of any of these requirements.

26d Unresponsive. Doesn't say what is considered "negligible"; what the largest core damage and fission product release possible is.

26e Doesn't answer. Says "not applicable"; clearly is applicable; no showing to the contrary.

27e Evasion. The referenced page and paragraph are the precise statement Intervenor asked the question about. Purely circular answer.

28k Evasive; circular. Question asks for all studies, articles, etc. which support the statement in the 1980 Application; answer is the 1980 Application. Should either state directly that they know of no supporting studies, articles, etc. aside from the Application or identify those other studies, etc.

Contention II

4 Answer doesn't answer the question.

4a Says not applicable when it is; no answer provided.

5,6, 8 No protective order requested for this question, although answer to which reader is referred is objected to. One cannot answer an interrogatory by reference to an equally evasive or unresponsive answer. See discussion of XVIII.3-7.

9a,b Not answered at all. No response

41 Unresponsive and evasive. Question asked specifically for table updated using same categories UCLA used when it made table, including "Commercial." UCLA's substitution of the evasive phrase "Extramural Users" violates the question and the interrogatory instructions.

42 No response given at all; question skipped.

46 No response given at all; question skipped.

50,a.b Substitutes the evasive phrase "extramural users" for the term asked of it in the question and defined in the introduction.

51,a Same as above.

Contention III

20 Skipped completely; no response given.

38 Date of meeting(s) not given.

43d No answer given at all; question skipped.

55-57, 59, 62, 63 Response is exact same in each case, referring Intervenor to operating logs and visitors logs, without volume number, page number, date, or other identifying feature; some members of Applicant's staff must have personal knowledge; if they could answer 54, they are likely to be able to provide at least some info to at least one of these questions

62a-d No answers given at all.

63a No answer at all.

68 Applicant doesn't answer part of question: "detail all facts which support such a contention."

Contention IV

9a Refers to an equally evasive answer. Simple question as to why no report to the NRC, Intervenor is instead referred to 5 documents, without volume or page number, that are collectively thousands of pages long. Some member of Applicant's staff could answer question 9, thus has some info re 9a.

13a-c Skipped; no answers given. Reference to Interrogatory 3 is equally evasive; no answer, merely a reference to documents without page number and volume

15a-e Not answered at all; skipped over. Reference to equally evasive answer.

17 Reference to equally unresponsive answer.

17a With several key staffpeople at NEL having been there for far in excess of a decade, answer of ignorance is difficult to believe.

18 No details given; reference to Int. 3 equally unresponsive. These interrogatories evidence a pattern of evasion.

22 Evasive and unresponsive; implies they have knowledge but no records; likely some staffperson(s) have personal knowledge, can provide at least some information.

24a Staffpeople who were at facility during that period are still there today; it is unlikely that no staffperson has any information about the referenced statement.

Contention V

13-18 UCLA makes no showing as to what is assertedly "vaguely described" about the interrogatories; they are, to the contrary, quite specific; some information relevant to the questions asked must be in possession of Applicant, or else they are running the reactor with massive unknowns about highly dangerous safety matters.

44 This question calls for information in the possession of NEL Director Catton; he must have the information because it was he who made the cited statement. Answer is evasive and unresponsive.

Contention VI

8c Evasive. Statement says nothing about the data nor its interpretation. An empty answer.

11a question skipped; no answer.

21a,b question skipped; no answer

25a question skipped; no answer

36c Intervenor asked a simple question; obviously in personal knowledge of some staffperson, for NEL staff was involved in determining stafftime; reference to documents is without title of document, date, page, as required by interrogatory intro.

40,a evasive; info in staffpeople's knowledge, but not provided; referred to a file without title of particular document nor page.

40c only answers for partitions, not for walls, ceilings and floors.

40d doesn't answer why it need not be considered.

41b claims not applicable hen it is; no contrary showing.

47a the fact that a calculation has not been done does not mean it cannot readily be done; some information is likely to be available to at least partly answer the question

52,a,b. evasion as to other liquid effluents; if they can answer for secondary, they can answer for other effluents; reference to annual reports without citation to year is unresponsive; staff likely has info beyond what is in annual reports, because they write the annual reports.

Contention VII

5,6,7 unresponsive; if no precise definitions, provide such general definitions as can and the terms used; refers to general english or general nuclear engineering usage, but doesn't tell us what that is; evasive; Intervenor needs to know Applicant's operating terms to understand and request relevant documents.

9c skipped; no answer at all

Contention VIII

5a unresponsive; refers to previous answer which doesn't provide the information requested.

7d,e-h some information must be available by which the question can be answered in part; it is very hard to believe that UCLA has virtually no information about maximum fission product inventory for its reactor.

11,12 evasive and unresponsive; phrase about technical judgment provides no information.

14. Doesn't answer question (yes/no.)

18,a-h Intervenor finds it astonishing that Applicant would have no information with which to provide even a partial answer to this most central of question about its own reactor--the maximum fission product inventory. Some information must be in its possession.

19b,c Same as above.

30 unresponsive, evasive; phrase about technical judgment provides no information.

B. Items for which Applicant has requested a Protective Order

Applicant has requested a Protective Order to protect itself from being required to answer certain Interrogatories to which it objects. Many of these objections Intervenor finds to be without foundation; furthermore Applicant has not made the requisite showing, in Intervenor's view, to qualify for said Protective Order. A discussion of the standards to be met for qualifying for a Protective Order in discovery follows.

The procedures for resolving discovery disputes set forth in the Code of Federal Regulations, Title X, and in the Federal Rules of Civil Procedure provide a system of objections, protective orders and motions to compel by which the information necessary to notify the parties of the dispute and necessary to allow the arbiter to resolve the dispute in an informed fashion is placed before the Board. This system requires that a party moving for a protective order in support of its objections to interrogatories must establish "good cause" for the granting of the protective order. 10 CFR 2.740 (c). General objections do not establish good cause and will not support the issuance of a protective order. Pennsylvania Power & Light Co. and Allegheny Electric Cooperative Inc. 12 NRC 317 (1980).

As will be demonstrated in the following recitation, the Applicant has repeatedly based its protection request on general maxims and non-specific recitations of legal rote. Such answers have been found insufficient in NRC proceedings /Boston Edison Co. 1 NRC 579 (1075)/ and catch-all language such as "vague, oppressive and burdensome" has been found to be virtually meaningless by other federal courts. In re Folding Carton

Antitrust Litigation 83 FRD 260, (D.C. ILL. 1979). Consistent with that ruling Intervenor hereby requests that the Board at each such general objection, where specific showing of relevance to the interrogatory in question is not made, treat such general language as a waiver of the objection.

Although in many instances the Applicant has not even made a showing sufficient to support the protective request it is necessary in response to those other instances to set forth the applicable standards by which such a request should be judged:

Relevancy

10 CFR 2.740(b) states that relevancy is measured by whether information appears reasonably calculated to lead to the discovery of admissible evidence. Relevancy is satisfied when it relates to the claim or defense of any other party in addition to the claims or defenses of the party seeking discovery. Pacific Gas and Electric Company 7 NRC 1038 (1978). While the requesting party has the burden of showing minimal relevance [Jupiter Painting Contracting Company, Inc. v. U.S., 87 FRD 593 (D.C. E.D. Pa. 1980)] the objecting party has the burden of clarifying and explaining its objections and providing support therefor. Roesberg Corp. v Johns Manville 85 FRD 292 (D.C. Pa 1980). Unless the objecting party can clearly show that the evidence sought can have no possible bearing on the issue the test for relevancy will be easily satisfied. Commonwealth Edison Co. (Zion Station Units 1 & 2) 6 AEC 240 (1979).

Undue Burden

Applicant has made a general objection to the interrogatories as burdensome and has made the same objection to several specific objections. The number of detail of the questions and the fact that answering them

will be burdensome is not in itself reasons for refusing discovery which is otherwise appropriate. In re Folding Carton supra, Roesberg v Johns Manville supra. To evaluate the burden of interrogatories the Board should balance the interests of the parties in obtaining the information with the burden involved in securing the information. In striking this balance relevancy carries more weight than mere fact of burden. Boston Edison Co. supra. 10 CFR 2.740 indicates that to qualify for a protective order a showing of undue burden is required. All interrogatory answers involve some burden; all are burdensome in some fashion. The question at hand is whether the burden is an undue burden; if relevant, significant burdens may be required.

Extensive Study Necessary

Where Applicant complains that extensive study and analysis is needed, which it doesn't have the resources to undertake, said objection as used in response to the Interrogatories, Set Two, is generally improper. As stated in Pennsylvania Power, supra: "Where a party being interrogated would have to gather such information before trial in any event the only burden imposed is to advance that compilation date to an earlier (time)." (pg. 334). Further, the court in Flour Mills of America Inc. v Pace, 75 FRD 676 D.C. E.DOkl. 1977), held that "a party cannot refuse to answer an interrogatory simply because he would have to consult books or documents in order to prepare a response."

Production of Records in Lieu of Answer

Where Applicant states it exercises its option to answer pursuant to Rule 33(c) by producing business records in lieu of a direct answer,

Applicant has failed to follow the Rule in that it has failed to specify the records sufficiently and uses the offer of records as evasion of responsibility to provide additional information not in those records.

In connection with the option of producing records, Applicant asserted on page 6:20-21 of its protective order motion that "intervenor is in the best position to search for that information which it finds interesting."

This is incorrect. A respondant may not impose on the interrogating party a mass of records as to which research is feasible only for one familiar with the records. U.S. v. 58.16 Acres of Land, 66 FRD 570, 573 (D.C. Ill. 1975). Specification of documents shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained, and shall be produced in lieu of interrogatory answers only if the burden of deriving the answer is substantially the same for the party serving the interrogatory as for the party served. F.R.C.P. 33(c).

Applicant has, however, offered in place of answers 20 volumes of logs, without reference to volume or page, in many responses. Furthermore, Applicant has apparently withheld information in the possession of its Staff, or of their personal knowledge, substituting instead reference to a broad class of unspecified documents which do not have all the information requested. Rule 33(c) cannot be used to shift the obligation of ascertaining information from one party to another. The respondent must identify which documents will provide the information from which the answer may be obtained. Budget Rent-A-Car of Missouri v. Hertz Corp., 55 FRD 354 (W.D. Miss. 1972).

Privilege

Applicant objects to some interrogatories on the basis of privilege. Once again, blanket objections based on privilege are insufficient to sustain a protective order. General Dynamics Corp. v. Selb Manufacturing Co., 481 F. 2 1205 (C.A. Mo. 1973) (cert. denied).

The party must set forth with enough particularlity to enable the Court to make an informed decision the nature of the material withheld and of the threat should it be revealed. Kinoy v. Mitchell, 67 FRD 1 (1975).

Regarding Applicant's assertion of privilege based on "invasion of privacy" of students, it must be demonstrated that:

1) the information in question is of a type customarily held in confidence by its originator;

2) there is a rational basis for having customarily held it in confidence;

3) it has, in fact, been kept in confidence; and

4) it is not found in public sources. Kansas Gas & Electric Co., ALAB-327, 3 NRC 408 (1976)

Intervenor notes that the identity and research projects of students associated with the UCLA reactor have been routinely published by UCLA in Annual Reports to the NRC, by location of their theses in public sections of libraries, and phone numbers and addresses of students published by the university. The "confidentiality" assertion does not meet the above four standards.

MOTION TO COMPEL ANSWERS TO CERTAIN INTERROGATORIES FOR WHICH A PROTECTIVE ORDER HAS BEEN REQUESTED BY APPLICANT

Intervenor hereby requests a compelling Order as to the following Interrogatories for which Applicant has requested protection from answering. Intervenor considers the objections improper and the withheld information likely to lead to admissible evidence.

So as to reduce the burden to both it and the Board, Intervenor hereby only requests a compelling Order for a portion of the Interrogatories objected to by Applicant. Intervenor considers some of the unopposed objections to be merely attempts at resisting legitimate discovery, but will rephrase interrogatories so as to attempt to meet objections and resubmit them; for others Intervenor will attempt to obtain the necessary information through other means. Some, however, require in Intervenor's view assistance from the Board in compelling answers from Applicant. Those interrogatories are identified below. Intervenor respectfully requests a compelling Order as to the following Interrogatries:

Contention I

18 Identity of potential witnesses is not privileged; identity of particular students doing research at the reactor is not normally kept confidential by Applicant (it has in the past published some of their names and projects in Annual Reports; and is not irrelevant in that Applicant has requested a class 104 license, claiming in the Application quotation at issue in this contention that the reactor will be used for education of graduate students and for their research projects. Confirmation of that claim is made very difficult without knowledge of potential witnesses to those alleged facts.

28h Applicant relies heavily on the Borax and Spert tests to demonstrate the safety of its facility. How can Applicant's assertion of safety due to those tests have validity if it says it does not know the similarities and differences between the Spert and Borax reactors and the UCLA reactor and claims it doesn't have the resources to find out? Applicant must have some information relevant to the question, short of having to conduct a comprehensive analysis and study.

Contention II

54 and 55 Applicant claims the students received educational benefit from the paid employment for Uranium West and Emil Kalil. How can validity of said claim be checked without contacting those students to determine precisely what the supposed educational activity was? Identity of prospective witnesses is not privileged.

60 Applicant makes no showing that the burden is unduly burdensome as required by 10 CFR 2.740(c); data on trends and levels of student research use is clearly highly relevant to the contention; if it was not unduly burdensome to produce charts for 1960-1968, it can't be unduly burdensome to report the data for 1968-1980.

Contention III

43 the normal location within the facility and the means by which a staffperson obtains access to key safety written procedures is clearly relevant to the Contention; if the procedures are inaccessible the managerial controls are poor; custodian of said records is relevant to document production request.

58 Applicant claims unlicensed operators haven't run the reactor and that controls during tours are adequate; interrogatory is clearly relevant to contention, no specific showing of undue burden has been made, and not even partial information personally known to Applicant's staff has been provided.

Contention IV

20 What was not admitted as an issue in the hearings was whether Applicant's shipment precautions are adequate. Non-compliance with regulations is clearly relevant to this contention, which was admitted, and is calculated to lead to potentially admissable evidence regarding the contention.

Contention V

11 Clearly relevant to question of whether large reactivity insertions are possible at this reactor; if facility staff doesn't know the answer, or at least have some information as way of partial answer, then this constitutes an awesome admission as to their inability to determine whether a particular sample is dangerous; objection does not specify what information is lacking, burden of proof thus not met.

39, 43, 45, 47, 48, and 50 If Applicant cannot presently answer the questions without extensive studies which it doesn't have the resources to

undertake, such information should not be permitted at hearing without showing of "good cause."

Contention VI

53-61 The Board made no ruling about the admissibility of evidence related to the basis for the original shipment contention being admissible or not admissible regarding other contentions that were admitted. This contention goes to the question of protection of the public from radiation in regards to excessive exposures and poor radiation monitoring. The cause of the Applicant's alleged failure to detect 100,000 cpm of Co-60 in an unrestricted area of its facility, and questions as to whether Applicant was responsible for the contamination incident to begin with, and radiation protection measures and monitoring & notification efforts undertaken after being notified of the incident are all relevant to the admitted contention as to radiation exposures to the public through inadequate radiation control and monitoring.

66 if Applicant's radiation protection practices are inadequate at one facility that may readily lead to admissible evidence as to lax radiation practices that make license of another facility unwise. If indeed Applicant's control of Argon-41 at one of its research reactors outside of Los Angeles has led to dangerous exposures to the public. then that raises significant questions about its abilities to control Argon-41 emissions at its UCLA reactor, which is a central issue here.

Contention VII

3,4,8(c) and 15--The question is by no means vague, but very specific. It asks which of a series of terms are used by Applicant and for definitions and related documents as to those terms. Intervenor does not ask Applicant to convert its experience into Intervenor's categories, but to tell Intervenor what are Applicant's categories.

Contention VIII

8 Precisely the opposite of vague; specific conditions indicated; Applicant has made no showing as to what is vague in the question; to claim that Applicant doesn't know what its license permits but only the NRC Staff know raises serious questions about how Applicant's staff can be capable of obeying its license; answer does not indicate that the license or tech specs prohibit any condition; "applicant's method of annual averaging" does not address question of license or tech spec limitation, and 'practical matter...' portion of answer does not go to question.

22(e), 23(c) and (d), and 24 If Applicant cannot answer the question, or provide a partial answer, without doing "extensives studies" which it "has neither the time, nor the personnel, nor the resources to conduct", then how can it possibly make a showing as to acceptability of dose rates in an accident? If you don't know the maximum radioactive core inventory, you can't predict in any fashion environmental effects of accidents. Applicant should either answer or be constrained from providing said answers at hearing absent a showing of "good cause."

28 not vague, does not deal with general engineering principles but with properties of this particular reactor and its particular fuel to minimize fission product escape. The answer given does not inform Intervenor whether that is the sole information Applicant possesses or only part of it; if it possesses other information, that should be provided.

35 Applicant makes generic claim of vagueness but gives no support nor identify what is vague; question is clear; if Applicant doesn't have the resources to get the answer, that information should not be admissable at hearing absent a showing of good cause.

SECURITY
CONTENTION XX

Interrogatories 1-66

Applicant has objected to all Interrogatories as to Contention XX and has requested a Protective Order for all said Interrogatories. While Protective Orders as to security matters are common practice in NRC proceedings where a security contention has been admitted, the form of Protective Order requested by Applicant--not permitting the discovery in any fashion--has no basis in law or practice.

Commission regulations contemplate that sensitive information such as matters related to physical security may be turned over to intervenors in the proceeding under appropriate protective orders. 10 CFR 2.790. Security plans are subject to discovery in Commission adjudicatory proceedings but only under certain conditions. ALAB-410, 5 NRC 1398 (1977). Those conditions may be proper subject of a Protective Order, but no such Protective Order has been requested by Applicant; rather Applicant requests total protection from disclosure of such information, and has done so without showing as to why such total protection is legal or proper. Security plans are sensitive documents, and information about security issues is likewise sensitive, but not "classified."

Intervenor is cognizant of the sensitive nature of the information being sought and would entertain discussion among parties and the Board as to a Protective Order that would adequately protect the information while ensuring that the discovery rights of Intervenor are protected or the security concerns of Intervenor adequately addressed.

Applicant also objects to the security interrogatories on the grounds that "this information is not relevant to the proceeding." No specific basis for this assertion is given with regards any specific interrogatory. However, Applicant bases its entire argument on the assertion that the Board may at some time in the future rule on the NRC Staff Motion for Summary Disposition as to Contention XX, and if ruled on favorably, the contention would no longer be in the proceeding.

Such a convoluted argument could, of course, be raised about any contention, for all are subject to summary disposition motions; discovery ceases to exist if it is denied on the basis that the matter at issue to which discovery is relevant may at some future time cease to be at issue. Furthermore, waiting until resolution of summary disposition motions would, by virtue of the discovery schedule in force for this proceeding, mandate that no discovery at all would exist even were the summary motion denied, which Intervenor has confidence will be the case, given the nature of the opposing facts in the matter.

In short, security matters are sensitive, but not classified. They are subject to discovery in NRC proceedings, under appropriate safeguards. Protective orders relative to security information are necessary to protect the sensitive information; but the form of protective order proposed by Applicant, which would eliminate discovery for all intents and purposes on security matters admitted as contentions in this proceeding, is an improper form of protection that does not properly balance discovery rights with the need to protect sensitive information. The two rights must meet somewhere; Applicant's proposal throws out one set of the rights entire.

V. OPPOSITION TO APPLICANT'S MOTION FOR LIMITATION OR ELIMINATION OF FUTURE DISCOVERY

A. Introduction

Applicant, in its Motion for a Protective Order, makes two requests that would amount to a virtual elimination of future discovery. Applicant requests that it not be required to produce any documents besides those 41 items it has offered in "Attachment A" of its Answers to the Second Set of Interrogatories. And Applicant requests that follow-up Interrogatories be limited to a total of 50 questions, each subpart counting as a separate question. Intervenor suggests that these proposals represent an attempt by Applicant to prevent disclosure of information potentially damaging to its case. The only result of such a drastic limitation on discovery can be a diminution in the quality and quantity of admissible evidence available for Board review in coming to its rulings.

B. The Proposed Limitation on Documents to be Produced

This proposal is completely contrary to normal discovery rules. Applicant is attempting to be permitted to produce for review and copying only those documents which it wishes to produce. It attempts to obtain the equivalent of a protective order on all documents CBG has requested to date that do not appear on Applicant's list of "offered documents" without following the required procedure of objecting to each individually and specifying valid reason for production being denied. It also attempts to obtain the equivalent of a "blank check" protective order for all documents CBG may request in the future, "short-cutting" the required procedure of showing valid reason for each item not been produced. The proposal amounts to a kind of prior restraint on future document production requests,

without regard to the specifics of the discoverable material requested. It is an extraordinarily speculative proposal, assuming without any basis that no document requested for production, aside from those Applicant offers for production, can have any possible evidentiary value or lead to any admissible evidence. Furthermore, Applicant has in now way met its burden of showing why it should be protected from these future discovery requests and current discovery requests, nor can it possibly so demonstrate, at least with regards the former, absent some kind of foolproof "crystal ball" that can give assurance that no possible future request for production of documents can relate to relevant information useful at hearing. A more detailed discussion of Applicant's burden regarding such a request is found in Section C below, which applies equally to the document limitation proposal.

C. The Proposed Limitation on Follow-Up Interrogatories

On March 10, 1981, the Board admitted sixteen (16) contentions, bringing to a total of twenty (20) the contentions admitted to date in this proceeding. Each of these 20 contentions has an average of 6 subparts each for a total of considerably more than one hundred separate cognizable issues in this proceeding. It is eminently reasonable that Intervenor in discharge of its role in this proceeding and in preparation of its case would have questions to ask of Applicant concerning its twenty years of operation as they relate to the admitted contentions.

In fact, an Appeals Board, ruling on remarkably similar circumstances held that "2700" interrogatories were not objectionable circumstances. Pennsylvania Power and Light Co and Allegheny Elec. Cooperative, Inc. 12 NRC 317 (1980). In that case a party claimed that 2700 separate questions (Applicant here has through its own method of counting charged Intervenor with asking 2280) were "extraordinarily burdensome, oppressive, and utterly pointless." In denying the requested protective order and upholding the Motion to Compel, the Board found that a mere statement of numbers of subparts to questions was meaningless without consideration of the number and seriousness of the contentions. They found that there might be 10 subjects per contention and 12 separate contentions. Furthermore, a substantive count of the questions numbered only about 150.

Intervenor in the UCLA case has 20 major contentions and roughly 120 subcontentions. Intervenor asked its interrogatories in the following fashion:

1. Question?
    a. What facts support the answer to the above question?
    b. What studies, reports, calculations, references and other reports document the answers above?
    d. Who is the custodian of said records?
    e. Will Applicant produce said records absent a formal Motion to Produce?

Applicant counts the above Interrogatory as 5 Interrogatories. And proposes to limit follow-up Interrogatories to 50, using the same method of calculation.

The point here is not to play numbers games but to recognize that these proceedings and therefore the discovery process is extremely broad in its scope of issues and time. Applicant's assertions that the Interrogatories as a whole are burdensome and should be limited merely

begs the issue and does not properly relate to the fact that the NRC rules give them the right and procedure to not answer those questions that are legitimately objectionable.

Applicant has numerous remedies other than the pre-emptive proposal it has made. Applicant stipulated to a discovery schedule at the pre-hearing conference and propo[illegible] limit Interrogatories should rightly have been raised there. Certainly it is inappropriate to raise the request for limitation as to numbers of follow-up interrogatories a party may serve so late as to necessitate parties serving follow-up interrogatories prior to the Board's ruling on the protective order motion. If subsequent interrogatories are properly objectionable, the time to object and request protection from the Board is when the objection is real, not hypothetical.

Furthermore, Applicant has done nothing in the course of this proceeding to reduce its own burden or that of Intervenor or the Board as to discovery workload. Intervenor prepared its interrogatories with the knowledge that its first set of Interrogatories on Contention II, a relatively clear area of issues, had never been adequately answered. Over the preceding six months and through three motions to compel the Applicant has managed to avoid and evade complete disclosure to Intervenor. In the face of this attitude by the Applicant Intervenor has been forced to be very meticulous in the manner in which it asks its questions and in its attempts to be sure that every avenue of objection is anticipated. Naturally, this takes time and space. To illustrate this phenomenon and the fact that there is no justification in this case for setting artificial limits on discovery, the Applicant has succeeded in adequately and responsively answering only a very small portion of the interrogatories in the Second Set.

In sum, Intervenor has asked reasonable questions designed to illicit relevant information from the Applicant. Such quantities of interrogatories have been upheld in prior proceedings. The real issue is the quality of the questions, the seriousness of the issues, and not the quantity of questions. Intervenor has not in this motion asked for compulsion on even a small fraction of the interrogatories that were objected to or inadequately answered. There is no effort to burden, only a lawful effort to obtain relevant information under the rules governing this proceeding. For an adequate record to be made for the Board to base its decisions on, discovery should be strictly enforced, compelling answers where responses were evasive of inadequate; restricted discovery at this juncture can only have the effect of reducing the quality and quantity of evidence available for Board to pass judgment on.

MOTION TO COMPEL FURTHER ANSWERS AS TO THE FOLLOWING INTERROGATORIES
(Applicant has requested no Protective Order as to These)

I.24e,26d,26e,273,28k II.4,4a,5,6,8,9a,9b,41,42,46,50,a,b, 51,a

III.20,38,43d,55-57,69,62,63,62a-d,63a,68 IV.9a, I3a-c,I5a-e,I7,I7a,I8,22,24a

V.I3-I8,44 VI.8c,IIa,2Ia.b,25a,36c,40,a,40c,40d,4Ib,47a,52,a,b,

VII.5,6,7,9c, VIII.6a,7d,e-h,II,I2,I4,I8,a-h,I9b-c,30

MOTION TO COMPEL FURTHER ANSWERS AS TO THE FOLLOWING INTERROGATORIES
(Applicant has requested Protective Order as to These)

I.18,28h II.54,55,60 III.43,58 IV.20 V.11,39,43,45,47,48,50

VI.53-61,66 VII.3,4,8 c,15 VIII.8,22e,23c,d,24,28,35

XX.1-66

VI. CONCLUSION

Intervenor respectfully moves the Board for a Compelling Order as to the Interrogatories identified on the previous page. Certain of these Interrogatories were the subject of a Motion for a Protective Order submitted by Applicant; Intervenor asserts Applicant has not met its burden with regard its objections and answers should be compelled. Others of these Interrogatories were not covered by the Protective Order Motion, are unresponsive, incomplete, or evasive, and should likewise be faced with an Order Compelling Further Answers. The remainder of the Interrogatories that were subject to Applicant's Motion for a Protective Order are not the subject of an attempt to compel further answers by Intervenor, thus making that aspect of Applicant's request for protection from answering those particular Interrogatories moot. Intervenor moves the Board for a Compelling Order reluctantly and would hope that parties will begin to meet discovery obligations more rigorously, making future such motions unnecessary.

Intervenor opposes Applicant's Protective Order request with regards its proposal to limit production of documents in the proceeding to those offered to date by Applicant. Intervenor has outstanding document production requests that have not been met by Applicant, requesting documents not included in the "Attachment A" Applicant offers; elimination of future document production can do nothing but lower the quality and quantity of the evidentiary base from which the Board will draw its decisions. Intervenor likewise opposes the Applicant's request for limit on follow-up interrogatories, interrogatories which were served two days previous to service of this response.

Finally, Intervenor requests that the Board adjust the discovery schedule to accommodate the strains placed on it by this current discovery dispute between Applicant and Intervenor. As Board said in its May 29, 1981, Order:

> A tight discovery schedule can remain in place without adjustment only if no disputes develop between parties. If disputes arise and motions to compel are filed with response time permitted, then the schedule must be adjusted. If a party does not get answers to interrogatories and is forced to file a motion to compel, there is no way that party can file follow up questions within a short time schedule. An adjustment will have to be made to the schedule to accommodate each situation. It is always the expectation of a Board that discovery requests will be answered in a timely and complete manner and disputes will not arise.

Since a dispute has arise, Intervenor requests that the schedule be adjusted accordingly so that Intervenor's right to follow-up questions on any further answers that the Board chooses to compel is not waived.

Respectfully submitted,

Mark Pollock
Attorney for Intervenor
COMMITTEE TO BRIDGE THE GAP

Dated at Los Angeles, CA

June 12, 1981

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (UCLA Research Reactor)	Docket No. 50-142 (Proposed Renewal of Facility License)

CERTIFICATE OF SERVICE

I hereby certify that copies of "MOTION TO COMPEL FURTHER ANSWERS FROM APPLICANT TO INTERVENOR'S SECOND SET OF INTERROGATORIES; AND RESPONSE TO APPLICANT'S MOTION FOR A PROTECTIVE ORDER" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, this 12th day of June, 1981:

Elizabeth S. Bowers, Esq., Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Emmeth A. Luebke, Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Oscar H. Paris, Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

William H. Cormier, Esq.
Office of Administrative Vice Chancellor
University of California
405 Hilgard
Los Angeles, CA 90024

Christine Helwick, Esq.,
Glenn R. Woods, Esq.
Office of General Counsel
2200 University Avenue
590 University Hall
Berkeley, CA 94720

Docketing and Service Section (3)
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington D.C. 20555

Counsel for NRC Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Rodger Holt, Esq.
Office of City Attorney
200 North Main Street
City Hall East, Room 1700
Los Angeles, CA 90012

MARK POLLOCK
Counsel for Intervenor
COMMITTEE TO BRIDGE THE GAP