

NUCLEAR LAW CENTER  
c/o 1724 North La Brea Avenue  
Los Angeles, California 90045  
(213) 876-4700

Attorneys for Intervenor  
COMMITTEE TO BRIDGE THE GAP

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

9/14/81

RELATED CORRESPONDENCE



In the Matter of  
  
THE REGENTS OF THE UNIVERSITY  
OF CALIFORNIA  
  
(UCLA Research Reactor)

Docket No. 50-142

(Proposed Renewal of  
Facility License)

"INTERVENOR'S MOTION REQUESTING  
THAT STAFF BE REQUIRED TO ANSWER  
INTERVENOR'S INTERROGATORIES"

I. THE MOTION

Intervenor respectfully moves the presiding officer of the above-captioned proceeding to require the Staff to answer certain interrogatories submitted by Intervenor as to four recently released Staff documents (the Safety Evaluation Report, the Environmental Impact Appraisal, NUREG/CR-2079, and NUREG/CR-2198.)

II. BACKGROUND

On July 1, 1981, the Board issued an Order directing that discovery be opened on four recently released Staff documents, identified above. Discovery requests based on those documents were directed to be submitted no later than July 31, with responses due thirty (30) days thereafter.

On July 31, Intervenor served on NRC Staff, the presiding officer and the other members of the Board in this proceeding, and the rest of the service list, interrogatories directed to Staff and its consultants

as to the four documents identified in the Board's July 1 Order. In addition, a one-page request for document production was also included.

On August 25, Intervenor received from Staff a letter dated August 19, in which Staff declined to answer any of the interrogatories. The grounds for said refusal to answer were procedural. As stated at page 2 of the Staff letter:

Therefore, since you have not filed the interrogatories to Staff with the presiding officer of this proceeding for answers by NRC personnel designated by the Executive Director for Operations, you have failed to abide by procedures for discovery from the Staff, and the Staff declines to answer the submitted interrogatories.

Staff had earlier waived, "by informal agreement with Applicant," the provisions of 10 CFR 2.720(h)(2)(ii) referred to in the Staff letter to Intervenor.<sup>1</sup>

On August 24, 1981, the Board issued an Order in which it directed parties to attempt to resolve discovery disputes among themselves, filing motions with the Board only after informal efforts fail:

We repeat, parties must make every effort to resolve differences before motions are filed with the Board.

August 24 Order. p. 5

Therefore, because Staff had waived the requirement in question with regards interrogatories from UCLA, and because Intervenor believes that the Board Order of July 1 opening discovery as to the four Staff documents in question provided the Board direction Staff requests in its August 19 letter, Intervenor attempted unsuccessfully

<sup>1/</sup> Intervenor was not informed of this "informal agreement" until Staff filed its May 15 responses to UCLA's interrogatories. Thus Intervenor was not even informed of this agreement until after the deadline established for submitting first-round interrogatories had passed.

to contact Staff to determine whether it would reconsider its demand that this matter be taken to the presiding officer for action in order for Intervenor to obtain any answers to its interrogatories. Two messages were not returned, so Intervenor reluctantly places this matter before the presiding officer at this time. Simultaneously, Intervenor has written Staff suggesting that it reconsider its position; should Staff agree hereafter, this motion will thus become moot.

### III. DISCUSSION

#### A. Have the Provisions of 10 CFR 2.720(h)(2)(ii) Already Been Met and/or Waived?

The Board's July 1 Order reads, in pertinent part:

At the prehearing conference on February 4, 1981, the Staff stated that it expected to issue the Safety Evaluation Report (SER) and the Environmental Impact Appraisal (EIA) in April, 1981. Tr. 121. These documents together with "Analysis of Credible Accidents for Argonaut Reactors, NUREG/CR-2079, PNL-3691" and "Summary of Computer Model and Selected Results from Argonaut Design Basis Accident Evaluation, NUREG/CR-2198" were not issued until June 19, 1981. Because of the late release date, they are outside the discovery schedule stipulated by the parties and adopted by the Board in its March 20, 1981 order. Discovery requests based on these documents may be submitted no later than thirty (30) days from the date of this order. Responses to any discovery requests must be served no later than sixty (60) days from the date of this Order.

The Board's Order was specifically focused on Staff and the four documents Staff had released; because of the importance of the four documents to proper resolution of the proceeding, discovery as to those documents was specifically and specifically opened, even though outside the previously-arranged discovery schedule, and a time frame established that obviously did not contemplate discovery requests first having to be filed with the presiding officer and answers directed (such a procedure being virtually impossible with discovery requests due July 31 and responses due thirty days later).

Furthermore, Staff had previously waived the provisions of 10 CFR 2.720(h)(2)(11) in its response to interrogatories by UCLA. We note further that UCLA's interrogatories, to which Staff did respond, occurred before the filing of the four documents in question and were merely general questions regarding Staff position, answers to most of which would be available to UCLA through another source (publication of the SER and EIA), whereas Intervenor's interrogatories go, by and large, to specific factual information which forms the basis of conclusions found in Staff's documents and where the underlying basis is not found therein, thus presenting Intervenor with no other source from which to obtain the required information. The question of the extent of Applicant's interrogatories as opposed to those of Intervenor appears irrelevant, as Applicant filed its interrogatories before the publication of any Staff document in this proceeding about which to request additional information.

Staff relies in its position that Intervenor must first request and obtain the direction of the presiding officer of this proceeding on 10 CFR 2.720 (h)(2)(11), which states:

[A] party may file with the presiding officer written interrogatories to be answered by NRC personnel with knowledge of the facts designated by the Executive Director for Operations. Upon a finding by the presiding officer that answers to the interrogatories are necessary to a proper decision in the proceeding and that answers to the interrogatories are not reasonably obtainable from any other source, the presiding officer may require that the staff answer the interrogatories.

Intervenor did, of course, file the interrogatories with the presiding officer of this proceeding. It did not request that said officer direct Staff to answer the interrogatories as Intervenor believed that direction to have already been provided in the ~~order~~ <sup>order</sup> of July 1 and a request for additional direction would be redundant and an unnecessary expenditure of effort by both the presiding officer and the Intervenor, particularly

in light of Staff's having waived that procedure with the other party to this the proceeding. Staff might have objections to specific interrogatories, but aside from those questions successfully objected to, it was Intervenor's view that Staff's sought-for Board direction to answer had already been provided. The discovery permitted by the Board Order of July 1 on the four Staff documents of necessity must be directed primarily at Staff, for clarification of Staff documents and explication of the bases therefor can only come from those responsible for the documents themselves.

B. In the Alternative, Should the Direction Mandated in 10 CFR 2.720(h)(2)(ii) Be Given?

Because of Staff's declining to answer any of the interrogatories absent direction from the presiding officer (in Intervenor's view, a duplicative direction), and absent reconsideration of this demand by Staff, we are faced with a situation where, one way or another, the presiding officer must be asked to act: either to state that its Board Order of July 1 already provides the direction being sought, or, in the alternative, to provide that direction at this time. Should the second course be necessitated, Intervenor herewith outlines briefly why the interrogatories taken together meet the requirements of 10 CFR 2.720(h)(2)(ii) permitting a direction to Staff to answer. As Staff has indicated that it may have unspecified objections to individual interrogatories, Intervenor cannot, of course, at this time, respond to objections to specific questions not yet identified, but respectfully requests that it be permitted to make such response should the Staff take specific objections to the presiding officer for action. Intervenor is, of course, willing to confer with Staff in an attempt to resolve any disputes about the interrogatories and has, as indicated above, already attempted to do so.

There are two tests interrogatories to Staff must meet, beyond the normal requirements of interrogatories, according to 10 CFR 2.720 (h)(2)(ii): 1) that the interrogatories are necessary to a proper decision in the proceeding, and 2) that answers to the interrogatories are not reasonably obtainable from any other source. Upon a finding by the presiding officer that these two tests are met, the presiding officer may require that the Staff answer the interrogatories. As Staff has to this date raised no objection to specific interrogatories, this discussion must of necessity be limited to whether the interrogatories as a whole meet the two tests outlined above.

1. The interrogatories are necessary to a proper decision in this proceeding. The SER and EIA are absolutely pivotal to a resolution of the matters in contention in this proceeding. The SER represents the Staff's position on the safety matters before this Board, and the EIA the environmental matters. In fact, the conclusions of the EIA (that no EIS need be prepared) are directly contested in Contention X. The safety issues examined in the SER are contested in numerous contentions (e.g. III, IV, V, VI, VII, VIII, IX, XII, XIV, XV, XVI, XVII, XIX, and so on). The Board has a duty in this proceeding to review the adequacy and import of the SER and EIA. The interrogatories submitted by Intervenor are intended in large measure to clarify apparently contradictory or unclear parts of these documents and to elucidate the factual basis of conclusory remarks therein. Absent the kind of information requested in the interrogatories, the Board's evidentiary base for making the judgments demanded of it in this proceeding will be limited.

The four Staff documents recently released are extremely important both for discovery and hearing. It was, Intervenor believes, for this reason that the Board on July 1 specifically opened discovery as to the four documents, even though discovery on these items was outside the

discovery schedule previously ordered. As another Board said in a case in which discovery was extended for the purpose of including the SER and environmental statement in discovery, "The importance of the DES and the SER in relation to discovery in this case can scarcely be overemphasized. . . . Similarly, the SER is a significant document for hearing purposes and antecedent safety discovery. . . . Many of the contentions and issues sought to be raised by the movants and other intervenors will be dealt with by the DES and the SER." New England Power Company, et al (NEP, Units 1 and 2), LEP-78-9, 7 NRC 271 (1978) at 292-3 .

The two documents released by Staff (the Los Alamos and Battelle studies) at the time of release of the SER and EIA are similarly central to this proceeding. The EIA and SER rely heavily on these studies. The Staff at the February 4, 1981, prehearing conference admitted as much. TR 123.

The interrogatories propounded by Intervenor thus go to four documents absolutely central to the proceeding before this Board. But beyond that, the interrogatories themselves request information which is essential for full Board review before conclusions can be drawn about the matters in controversy. They request details about complex specific safety and environmental matters at issue in these proceedings. Should the Staff be permitted to introduce into evidence documents containing conclusions, details of the bases therefor which are lacking from said documents, absent right for parties to attempt to obtain specific information about said bases, the Board will not have before it crucial information upon which to judge the adequacy of Staff's position. Staff has submitted extensive interrogatories to Intervenor about the bases for its positions; should Intervenor have no route through which to obtain specific information about the bases for Staff's conclusionary statements, an extraordinary imbalance would exist, permitting Staff to introduce as evidence material for which details are lacking and scrutiny not permitted.

2. Answers to the interrogatories are not reasonably obtainable from any other source. Again, in the absence of Staff objections to specific interrogatories, the availability or lack thereof of specific answers from other sources cannot be detailed. As a general proposition, however, it is clear that answers about the Staff's SER and EIA can only come from Staff; and that the source of answers to the two reports written by Staff's consultants must of necessity be those consultants. There is only one exception to this, to wit the questions about the Los Alamos study (NUREG/CR-2198), which was written by an employee of the Applicant in this case. Technically, those interrogatories could therefore be sent to the Applicant. The result, of course, would be the same--an individual who is both an employee of the Applicant and a consultant to Staff would answer the interrogatories. Aside from that peculiar case, only Staff and its consultants can explain where a specific unreferenced figure came from, whether two passages of the same document contradict each other, how a particular assumption was arrived at. No other source is thus available to provide the required information.

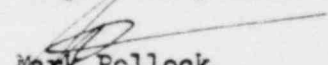
#### IV. CONCLUSION

Intervenor respectfully requests, in the absence of Staff withdrawing its objections to answering, that the presiding officer of this proceeding direct Staff and its consultants to answer the interrogatories submitted to them by Intervenor on July 31. Intervenor proposes two reasons for so doing: 1) that the Board Order of July 1 in effect already provided said direction, and Staff had waived 2.720(h)(2)(ii) with Applicant, and 2) in the alternative, that, pursuant to 10 CFR 2.720(h)(2)(ii), the two tests of necessity to a proper decision in the case and lack of reasonable other sources from which to obtain the information have been met, permitting direction to Staff to answer.

Intervenor hopes that reconsideration of this matter by Staff will make this motion moot. However, should Staff not reconsider and, further, absent informal resolution by the parties, raise additional objections with the Board regarding specific interrogatories, Intervenor respectfully requests opportunity to respond to those new objections.

Respectfully submitted,

Dated: September 14, 1981

  
Mark Pollock  
Attorney for Intervenor  
COMMITTEE TO BRIDGE THE GAP

---

NOTE: After this motion was typed, Intervenor received Board Order of September 4 (served September 8), in which it is stated: "We have determined that the unconditional reliance on the Staff reports stated by UCLA in the filing of June 29 renders it unnecessary for UCLA to repeat the information contained in the Staff documents." This determination further underlines the importance of those Staff documents, because not just Staff is relying upon them, but Applicant has stated its own "unconditional reliance" upon them. To take such key documents, central to the case of both other parties, out of the discovery process would gravely limit the Board's decisional base as well as Intervenor's ability to respond to the cases presented by Staff and Applicant. Furthermore, the Board's ruling of September 4 makes clear that answers to interrogatories about the Staff documents cannot be expected from Applicant, leaving Staff as the only reasonable source for the requested information.

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

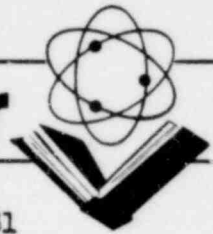
(Proposed Renewal of Facility License)

Wendy Schnelker  
Wendy Schnelker

# the nuclear law center

1724 NORTH LA BREA AVENUE • LOS ANGELES, CALIFORNIA 90046 • 213/851-9201

September 14, 1981



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

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

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

RELATED CORRESPONDENCE

In the Matter of  
The Regents of the University of California  
(UCLA Research Reactor)  
Docket No. 50-142  
(Proposed Renewal of Facility License)



RE: REPORT ON PROGRESS TOWARD COMPLETION OF DISCOVERY

Dear Administrative Judges:

On September 17, 1981, Applicant and Intervenor will meet and confer, as per your Order of August 24, in an attempt to resolve any disputes that may arise regarding answers to Intervenor's interrogatories of June 10. Answers are to be provided within twenty (20) days of that meeting.

Furthermore, Applicant and Intervenor have agreed to meet and confer shortly after the September 17 meeting with regards certain other interrogatories, answers to which Applicant has indicated will be forthcoming on September 16.

Intervenor has indicated both to Applicant and Staff that it is willing to confer as to any outstanding discovery request about which there may arise dispute. The enclosed motion regarding the interrogatories as to the four recently released Staff documents is filed only after unsuccessful attempts to contact Staff by phone and in the hope that Staff will reconsider its insistence that the matter be brought before the presiding officer of this Board. A letter to that effect, addressed to Staff, is enclosed herein.

Aside from the final, consolidated follow-up interrogatories authorized by your Order of September 4 (served September 3 and received today), all of Intervenor's contemplated discovery requests (other than those related to Contention XX) have been previously served and either answered or answers are being awaited. Intervenor will serve those final interrogatories (follow-up questions on material released by UCLA after June 10) by October 5, answers to which are to be served within twenty days thereafter.

Respectfully submitted,

Mark Pollock  
Attorney for Intervenor  
COMMITTEE TO BRIDGE THE GAP

cc: service list

DS03  
s  
1/1

840924 117