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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY
AND LICENSING BOARD

In the Matter of)
)
WASHINGTON PUBLIC POWER)
SUPPLY SYSTEM) Docket No. 50-460-CPA
)
(WPPSS Nuclear Project No. 1))

LICENSEE'S MOTION TO COMPEL

I. Introduction

On May 3, 1983, the Washington Public Power Supply System ("Licensee") served the intervenor with Licensee's First Set of Interrogatories and Requests to Produce. Such discovery request was designed to elicit from intervenor the complete factual basis for its single contention in this construction permit amendment proceeding. Intervenor responded to the discovery request on May 23. Because in many instances that response was incomplete or evasive, Licensee hereby moves, pursuant to 10 C.F.R. Section 2.740(f), that intervenor be compelled to respond to Licensee's interrogatories as set forth below. The instant Motion to Compel applies to interrogatories seven, eight, eleven, thirteen, fourteen, fifteen, eighteen, nineteen and twenty-three.

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II. Standards Governing Discovery

A number of well-established standards govern discovery in NRC proceedings. First, discovery "is intended to insure that the parties . . . have access to all relevant, unprivileged information prior to the hearing. . . ." ¹ Indeed, discovery in modern administrative practice is to be liberally granted "to enable the parties to ascertain the facts in complex litigation, refine the issues, and prepare adequately" for the hearing. ²

Second, as to the scope of permissible discovery, it is well-settled 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. ³

This is particularly the case because contentions provide only general notice to a licensee of the issues an intervenor seeks to raise. "It is left to the parties to

¹ Boston Edison Co. (Pilgrim Nuclear Generating Station, Unit 2), LBP-75-30, 1 NRC 579, 582 (1975).

² Pacific Gas & Electric Co. (Stanislaus Nuclear Project, Unit 1), LBP-78-20, 7 NRC 1038, 1040 (1978).

³ Pilgrim, supra, 1 NRC at 582 (footnote omitted).

narrow those issues through use of various discovery devices so that evidence need be produced at the hearing only on matters actually controverted"4

Third, intervenor must be mindful of the difference between the amount of information needed to support the admission of a contention⁵ and the amount of information necessary to dispose of issues on summary disposition⁶ or on the merits at the hearing. A contention may be admitted in an NRC licensing proceeding even though it is not supported by sufficient bases or information (i.e., evidence) to overcome a motion for summary disposition or to succeed on the merits.⁷ Therefore, in responding to interrogatories concerning the basis for a particular contention, intervenor should recognize that discovery requests in NRC proceedings apply to information and bases to support a claim or contention in addition to whatever information served as a basis for admitting the

4 Pennsylvania Power & Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 334-35 (1980).

5 See 10 C.F.R. §2.714(b).

6 See 10 C.F.R. §2.749.

7 See, e.g., Washington Public Power Supply System (WPPSS Nuclear Project No. 2), ALAB-722, NRC ___, April 11, 1983, slip op. at p. 9, n. 5; Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 549-51 (1980).

contention. Of course, if no further information is intended to be relied upon in support of a contention, the intervenor should so respond.

Fourth, answers to interrogatories must be complete, explicit and responsive.⁸ The Commission's Rules of Practice state that "an evasive or incomplete answer or response shall be treated as a failure to answer or respond."⁹ In particular, references by an intervenor in response to specific interrogatories to its petition to intervene are not by themselves sufficient responses to discovery requests in NRC licensing proceedings.¹⁰ Intervenors in NRC proceedings have a responsibility to specify the facts, i.e., the data, information and documents, if

⁸ 4A Moore's Federal Practice ¶33.26, at 33-150. "The Commission's regulations are based upon and drawn generally from the Federal Rules of Civil Procedure governing discovery, Rules 26 through 33, and, in the main, employ language identical with, or similar to the language of the Federal Rules upon which the process is based. Accordingly, guidance may be had from the legal authorities and court decisions construing the Federal Rules on discovery." Pilgrim, supra, LBP-75-30, 1 NRC at 581.

⁹ 10 C.F.R. §2.740(f).

¹⁰ Pilgrim, supra, 1 NRC at 586 ("[R]eferences by Intervenor, in response to specific interrogatories, to the pages of its petition to intervene in which is contained much argumentative and conclusory material, is not sufficient in terms of the discovery process." (footnote omitted)).

any, upon which they intend to rely so that parties may be advised in advance with regard to the nature of the intervenor's case.¹¹

Finally, when applying these principles, the Board should keep in mind this observation of a sister licensing board:

The Applicants in particular carry an unrelieved burden of proof in Commission proceedings. Unless they can effectively inquire into the positions of the intervenors, discharging that burden may be impossible. To permit a party to make skeletal contentions, keep the bases for them secret, then require its adversaries to meet any conceivable thrust at hearing would be patently unfair, and inconsistent with a sound record.¹²

As set forth below, intervenor's response to a number of interrogatories served upon it by Licensee fails to satisfy these principles. Accordingly, intervenor should be compelled to respond to them.

III. Inadequacy of Intervenor Responses

Intervenor's responses to a number of Licensee's interrogatories are clearly inadequate when viewed against the standards set forth above. First, in interrogatories seven, eleven and nineteen, Licensee sought to ascertain the complete basis for a number of factual assertions made

¹¹ Id.

¹² Northern States Power Co. (Tyrone Energy Park Unit 1), LBP-77-37, 5 NRC 1298, 1300-1301 (1977) (citations omitted).

by intervenor in its contention. These assertions were that the construction deferral at WNP-1 was dilatory; that licensee failed to establish good cause for an extension of the WNP-1 construction permit; and that the modified construction permit extension request was not for a "reasonable" period of time.¹³

Intervenor in each case responded that the complete basis for its contention is included in that contention or the amended supplemental petition to intervene.¹⁴ In light of the standards governing discovery discussed above, one conclusion to draw from these responses is that intervenor's evidentiary case will be limited to the argumentative statement made in its amended supplemental petition to intervene filed last February 11, 1983¹⁵ and that intervenor has no evidence to support its claim beyond that reflected in its amended supplemental petition to intervene. If this is the case, the intervenor should so state.

¹³ Licensee's First Set of Interrogatories and Requests to Produce to Intervenor, May 3, 1983 ("Licensee's First Set of Interrogatories") at interrogatories 7, 11 and 19.

¹⁴ Coalition for Safe Power Responses to Applicant's First Set of Interrogatories, May 23, 1983 ("Intervenor's Response to Licensee's First Set of Interrogatories") at interrogatories 7, 11 and 19.

¹⁵ Coalition for Safe Power Amended Contention No. 2 -- Feb. 11, 1983 ("amended supplemental petition").

However, other responses to Licensee's First Set of Interrogatories suggest that intervenor failed to disclose the full evidentiary basis of its allegations and, as such, did not respond adequately to interrogatories seven, eleven and nineteen. In response to interrogatories sixteen and seventeen, intervenor asserts for the first time that the reasons offered by Licensee in support of its showing of good cause are not in fact the reasons why Licensee deferred construction of WNP-1. For example, intervenor asserts that one reason why Licensee deferred construction at WNP-1 rather than WNP-3 was its belief that "anti-nuclear" activity in the vicinity of WNP-3 would make a resumption of construction at that site more difficult than at WNP-1.¹⁶

This claim and its supporting basis were not included in intervenor's amended supplemental petition or contention. Yet it appears that intervenor's case (and presumably its evidentiary showing) will go beyond that set forth in its amended supplemental petition to intervene. As a result, it is evident that intervenor did not respond fully to Licensee's interrogatories seven, eleven and nineteen, when it stated in response to those interrogatories that the complete basis for the allegations in

¹⁶ Intervenor's Response to Licensee's First Set of Interrogatories at interrogatory 17 (See n. 22, infra).

question was set forth in its contention and amended supplemental petition. Accordingly, intervenor should now be compelled to do so.

Second, intervenor's responses to interrogatories eight, thirteen, fourteen, fifteen and eighteen are evasive. Interrogatory eight requested that intervenor explain fully what it meant by the word "defer" as used in its contention. Intervenor responded as follows:

"Defer", [sic] as used in the contention, means to put off; we believe, however, that it means a permanent halt to construction of the plant.¹⁷

It is impossible to ascertain from this answer what intervenor means by the word "defer" in its proposed contention. If intervenor contends that the construction deferral at WNP-1 is permanent, it is obliged to so state clearly and unequivocally and provide the evidentiary foundation for this claim. However, it may not "explain" in one breath what a word means in its own contention, and then proceed to disavow that meaning by suggesting another in its response to an interrogatory.

Intervenor was also evasive in responding to interrogatory fourteen. First, intervenor stated in response to interrogatory twelve that Licensee offered the recommendation of the Bonneville Power Administration

¹⁷ Id. at interrogatory 8.

("BPA") in support of a showing of good cause.¹⁸ Then, in response to interrogatory fourteen, which asked if the reasons offered by Licensee to support a showing of good cause were factually correct, intervenor stated simply that "BPA did make a recommendation."¹⁹

The response to interrogatory fourteen, when read with the response to interrogatory twelve, is evasive and unresponsive. On the one hand, it suggests that there is no dispute as to whether the reason offered by Licensee in support of its showing of good cause was factually correct. However, intervenor takes the opposite position in its supplemental petition to intervene.²⁰ If intervenor contends that the reasons offered by Licensee in support of its showing of good cause are factually incorrect, it has an obligation to articulate that position in its response to interrogatory fourteen. Applicant should not be required to prepare its case based on a guess as to what position intervenor has taken or will take on this question.

Interrogatory fifteen sought the basis for intervenor's response to interrogatory fourteen. Intervenor responded to interrogatory fifteen by stating that the

¹⁸ Id. at interrogatory 12.

¹⁹ Id. at interrogatory 14.

²⁰ See amended supplemental petition at 2.

basis for its response to interrogatory fourteen was "[p]ersonal knowledge of events surrounding the deferral of WNP-1 and filings by the Licensee."²¹ However, to state that a response is based on "personal knowledge" provides no meaningful information to which Licensee may respond or to the evidentiary basis of intervenor's contention.

Similarly, intervenor's statement that its response to interrogatory fourteen was based on "filings by the licensee" is unacceptably vague and evasive. It is impossible to tell whether intervenor is referring to filings in this (or another) NRC proceeding, submittals to the NRC Staff, or a combination of both.

This same deficiency is apparent in intervenor's response to interrogatory thirteen, which seeks the basis for intervenor's statement that Licensee advanced the BPA recommendation to defer WNP-1 in support of its showing of good cause. As was the case with interrogatory fourteen, it is impossible to ascertain to which filings before NRC the intervenor is referring. As such, this response is wholly inadequate.

Interrogatory eighteen sought the basis for intervenor's answers to interrogatories sixteen and seventeen. Interrogatories sixteen and seventeen asked whether

²¹ Intervenor's Response to Licensee's First Set of Interrogatories at interrogatory 15.

intervenor contends that the reasons offered by Licensee to support a showing of good cause were not in fact the reasons why Licensee requested an extension of its construction permit for WNP-1.²² In response to interrogatory eighteen, intervenor stated that, "[t]he basis for response to interrogatories is common knowledge [sic] in the region as to the financial situation of WPPSS, news articles, and the BPA report submitted by Licensee in this proceeding."²³ As discussed earlier, to invoke "common knowledge" falls far short of providing a meaningful response to this interrogatory. Similarly, referencing "news articles" without identifying where and when those articles appeared does little to disclose the evidentiary foundation of intervenor's claims in this proceeding, assuming that such news articles even constitute evidence.

22 Intervenor stated in response to interrogatory 17, as follow: "It is our belief that WNP-1 was deferred to due [sic] several factors. WPPSS had a choice to either defer WNP-1 or WNP-3. Even though construction on WNP-1 was ahead of WNP-3 and the construction permit on WNP-3 does not expire until 1986 WNP-1 was chosen because (1) private utilities were involved in WNP-3 and would not agree to deferral of that plant and (2) WNP-3 is located in Western Washington where there is strong anti-nuclear sentiment making the restart of construction on WNP-3 more difficult. Furthermore, there is no need for the power from WNP-1 or WNP-3 nor or [sic] at any time in the future nor will there ever be adequate financing for the projects." Id. at interrogatory 17.

23 Id. at interrogatory 18.

Finally, Licensee sought in interrogatory twenty-three the basis for intervenor's response to interrogatories twenty through twenty-two, which addressed intervenor's assertion that the requested construction permit extension was not sought for a reasonable period of time.²⁴ Intervenor has not responded in any manner to this interrogatory. Clearly its failure to do so was improper.

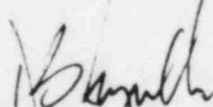
III. Conclusion

Intervenor was obligated to respond fully to each interrogatory propounded by Licensee which sought information relevant to the single contention raised in this proceeding. However, its responses to interrogatories seven, eleven and nineteen, which sought the basis for much of that contention, were incomplete. In addition, its responses to interrogatories, eight, thirteen, fourteen, fifteen and eighteen were evasive and incomplete.

²⁴ See Licensee's First Set of Interrogatories at Interrogatories 20-22.

Lastly, intervenor failed entirely to respond to interrogatory twenty-three. Accordingly, Licensee urges that the Board grant its Motion to Compel intervenor to respond fully to these interrogatories.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing
"Licensee's Motion to Compel" in the captioned matter were
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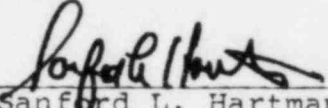
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