

RELATED CORRESPONDENCE

DOCKETED
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
HOUSTON LIGHTING & POWER)	Docket Nos. 50-498 OL
COMPANY, <u>ET AL.</u>)	50-499 OL
)	
(South Texas Project,)	
Units 1 and 2))	

APPLICANTS' MOTION TO COMPEL
ANSWERS TO ITS SIXTH SET OF
INTERROGATORIES AND FOR LEAVE TO FILE
ADDITIONAL INTERROGATORIES TO CCANP

I. Introduction

Applicants hereby move the Atomic Safety and Licensing Board (Board), pursuant to 10 CFR § 2.740(f), for an order compelling Citizens Concerned About Nuclear Power (CCANP) to provide more responsive answers to Applicants' Sixth Set of Interrogatories and Requests for Production of Documents to CCANP, dated March 10, 1983. On April 5, 1983, eight days after its answers were due, CCANP submitted incomplete and evasive answers to Applicants' interrogatories.^{*/} For the

^{*/} CCANP Response to Applicants' Sixth Set of Interrogatories And Requests For Production Of Documents To CCANP, April 4, 1983 (Response). Although CCANP's Response refers to a conversation with Applicants' attorneys (Response at 1), Applicants' counsel did not in any way authorize either CCANP's late submission or its failure to fully respond to Applicants' questions.

reasons discussed below, the Board should order CCANP to provide complete and responsive answers to those interrogatories.

In addition, Applicants hereby move the Board for leave to file an additional set of interrogatories on the ground that CCANP's late response has effectively deprived Applicants of the right, to which they would have otherwise been entitled, to file additional interrogatories within the discovery period established by the Board.

II. The Board Should Compel CCANP To Provide Complete Answers To Applicants' Interrogatories

Applicants have propounded a number of interrogatories to CCANP in an effort to determine its positions with respect to the various Quadrex-related issues to be addressed in Phase II, and to ascertain the bases for those positions. Those interrogatories generally request CCANP to indicate whether or not it contends that HL&P failed to comply with any NRC requirements within the scope of the Phase II Quadrex-related issues, and whether it contends that there are significant errors or omissions in the Bechtel Report on the Quadrex findings (EN-619), or the Quadrex-related I&E reports (82-02 and 82-12). CCANP is also requested to identify, in specific terms, the bases for its conclusions, including the particular NRC requirements upon which it relies. This Board has recognized that such an inquiry is entirely proper under applicable NRC discovery regulations.

In its "Memorandum And Order Ruling Upon Motions To Compel CEU To Respond To Interrogatories," LBP-80-11, 11

NRC 477, 482 (1980), the Board held that "[u]nder the NRC discovery rules, [parties] are entitled to inquire comprehensively, prior to hearing, concerning the bases for a party's claim and the sources of information upon which it is relying." See also, Pennsylvania Power and Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), LBP-79-31, 10 NRC 597, 599 (1979). Furthermore, such information is necessary for a party to adequately prepare its case for hearing, "and particularly so for an applicant which has the burden of proof" Susquehanna, 10 NRC at 599-600.

A party to which interrogatories are propounded is not permitted to provide evasive or incomplete answers, but must respond "separately and fully" to the inquiries, unless a specific objection is made thereto. 10 CFR §§ 2.740(f), 2.740b(b). Mere general objections, such as CCANP has provided, that the interrogatories are burdensome or will require it to conduct analyses, are an insufficient basis for refusing to respond fairly and fully to a discovery request. Pennsylvania Power and Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 323 (1980). A party "may not make serious allegations against another party and then refuse to reveal whether those allegations have any basis." Id. at 339.

Moreover, CCANP appears to misunderstand its responsibility in responding to interrogatories. It is not required to perform any analyses beyond those already conducted, instead,

it is simply required to reveal the results of those analyses it has performed. Thus, for example, if CCANP has neither identified the Quadrex findings which allegedly violate NRC regulations, nor identified those specific regulations which have allegedly been violated, it need only admit that it has no such information, and that it has no support for its allegations.^{*/} If, on the other hand, CCANP does possess such information, it must disclose that information with specificity. In either case, no undue burden is involved and no new analyses need be performed.

Furthermore, in responding to Applicants' interrogatories CCANP has confused its responsibilities as a party to this proceeding with the Applicants' ultimate burden of proof. It apparently believes that because Applicants retain that burden, CCANP need not "direct[ly] answer" Applicants' interrogatories. Response at 2. Applicants do bear the ultimate burden of proof, however, this does not discharge CCANP from meeting its own "evidentiary responsibilities." Susquehanna, 12 NRC at 340.

^{*/} It is worthy of note, however, that CCANP has had over five months to review EN-619, over nine months to review I&E Report 82-02, over two months to review I&E Report 82-12, and almost three months to serve discovery requests on Applicants and the NRC staff to help establish its case. In fact, Applicants waited to serve their interrogatories in order to permit CCANP to review the relevant documents, obtain discovery, and establish its position. With the time for serving discovery requests now expired, CCANP has sought no discovery, yet it fails to explain its position in this processing.

As discussed below, many of CCANP's responses are evasive, incomplete and unresponsive to Applicants' inquiries. Failure to obtain full and fair responses from CCANP will impair Applicants' ability to adequately prepare their case for hearing. For the reasons set forth in more detail below, Applicants move the Board to compel CCANP to provide complete responses to Interrogatories 1-6, 9-13 and 18 from their Sixth Set of Interrogatories and Requests for Production of Documents.

Interrogatories 1 and 2

In Interrogatories 1 and 2, Applicants asked CCANP whether it contends that HL&P failed to comply with any NRC reporting requirements regarding the Quadrex Report and if so, to identify each aspect of the Report that should have been reported, the NRC reporting requirement which was violated thereby, the basis for CCANP's belief that the requirement was violated, and any experts CCANP expects to call to testify on point. CCANP responded only that HL&P had "violated every regulation on the books regarding notification to the NRC . . . including but not limited to 10 CFR Part 50, Appendices A and B; 10 CFR Part 20 [sic]; and 10 CFR § 50.55(e)." Response at 3.

CCANP should be required to identify, with specificity the particular aspects or findings in the Quadrex Report it deems reportable, the specific provisions of NRC regulations that require reporting, and the reasons it contends such pro-

visions are applicable.* / CCANP's broad reference to the regulations encompassing such diverse subjects as the NRC's General Design Criteria and Quality Assurance Criteria is a disingenuous and grossly inadequate response to Applicants' specific questions.

Interrogatories 3 and 4

In Interrogatories 3 and 4, Applicants asked CCANP whether it contends that any aspect of HL&P's "commissioning" or "handling" of the Quadrex Report failed to comply with NRC requirements and if so, to identify, inter alia, each allegedly improper act or failure to act, the person(s) involved, the legal requirement alleged to have been violated, and the experts CCANP expects to call to testify on point. CCANP responded that Applicants should have commissioned the Quadrex Report sooner and that they deliberately hid the Report from the NRC, that "Jerome Goldberg and the others he consulted" were the persons involved in these allegedly improper acts, and that the legal requirements violated were to be found in Appendices A and B to 10 CFR Part 50, 10 CFR Part 21 and the Licensing Board's decision in Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-81-63, 14 NRC 1768 (1981). Response at 3.

* / Furthermore, CCANP's answers to this interrogatory as well as Applicants' other interrogatories fail to identify a single expert witness it intends to call at the hearing. Thus, in the absence of prefiled testimony or responsive answers to their interrogatories, Applicants will be left entirely in the dark regarding CCANP's positions prior to commencement of the hearing.

CCANP should be required to specifically identify what provisions of 10 CFR Part 50, Appendices A and B and Part 21 it contends were violated by HL&P's alleged failure to commission the Quadrex Report "sooner," and by its alleged efforts to "deflect NRC attention" from the Report. Id. Once again, CCANP broadly refers to regulations (the vast majority of which bear no relationship to reporting requirements), rather than focusing on specific NRC reporting provisions. Thus, its answers are evasive and unresponsive to Applicants' questions. Furthermore, CCANP should be required to describe with particularity those "principles of disclosure" set forth in the Midland decision to which it refers. Bare reference to this case does not permit Applicants to determine how they are alleged to have failed to comply with that decision. This is particularly so where, as here, the Appeal Board has disagreed with certain aspects of the Licensing Board's decision. Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-691, ___ NRC ___ (September 9, 1982).

Interrogatories 5 and 6

In Interrogatories 5 and 6, Applicants asked CCANP if it contends that any statement or finding in the Quadrex Report indicated that any aspect of either the STP design or engineering, or the design or engineering process, failed to satisfy any applicable NRC requirement. If so, CCANP was requested to identify those particular aspects failing to meet NRC requirements, the

particular NRC requirements not satisfied, the basis for CCANP's position that the requirement had not been met in each case, and the experts CCANP expects to call to testify on point. In response, however, CCANP simply stated that the Quadrex Report documents "a chaotic and error-ridden design and engineering process as well as a non-functioning quality assurance program," and that the Report "speaks for itself as to the chaos, errors, and quality assurance failures." Response at 3.

CCANP's answer is entirely unresponsive. It fails to identify a single Quadrex finding or NRC requirement which would support its bare allegations regarding the "chaotic" nature of the design process and the "failures" in the quality assurance program. Id. CCANP should be required to identify those particular Quadrex findings and correlative NRC requirements which support its broad assertions, as well as explain the basis for its belief that those requirements have not been met in the particular instances.

Interrogatories 9 and 10

In Interrogatories 9 and 10, Applicants asked CCANP if it contends that EN-619 fails to properly address any significant concern in the Quadrex Report and if so, to identify that concern, the basis for CCANP's position, and the resolution CCANP deems appropriate. Applicants also asked CCANP to identify any other disagreements it may have with EN-619, the bases for those disagreements, and any experts it expects to call as witnesses. Although CCANP indicated that it currently has no

disagreement with EN-619 and that it does not contend that EN-619 failed to address any significant Quadrex concern, CCANP does state that it is interested in litigating "those areas where Bechtel disagreed with a Quadrex finding." Id. at 4.

In Interrogatories 9 and 10, Applicants have requested CCANP to describe, with particularity, any aspects of EN-619 to which it takes issue. CCANP's mere reference to unidentified areas of disagreement between Bechtel and Quadrex is inadequate. CCANP should be required to specifically identify those aspects of EN-619 to which it takes issue, i.e., those areas in which it believes Bechtel has disagreed with Quadrex, its position with respect to those areas, and the bases for its positions.

Interrogatories 11, 12 and 13

In these Interrogatories, Applicants asked CCANP if it contends that there are any significant errors or omissions in I&E Report 82-02, if it contends that that Report fails to properly address any significant concerns regarding the handling of the Quadrex Report, or if it has any other disagreement with any aspect of I&E Report 82-02. In each instance, CCANP is requested to identify the basis for its position, and any experts it expects to call as witnesses. CCANP responded that the NRC Staff should have identified a violation in I&E Report 82-02 and undertaken various enforcement measures as a result of HL&P's "failure to make a required 50.55(e) report." Id.

CCANP, however, fails to identify a single finding or aspect of the Quadrex Report which it believes required reporting. CCANP also refers to "the nature of the omitted findings as constituting a material false statement," but fails to identify the "omitted findings" it has in mind. Id. Again, if CCANP believes that there are Quadrex findings which should have been reported under 10 CFR § 50.55(e) and were not, it should be required to identify those findings, and describe why they should have been reported.

Interrogatory 18

In this Interrogatory, Applicants asked CCANP to identify any non-expert witnesses it intends to call at the hearing and to state the substance of their testimony. In response, CCANP stated that it did not intend to call any witnesses but may request the NRC or the Board to call certain witnesses. Id.

Applicants are entitled to discover which witness will appear at the hearing on CCANP's behalf regardless of the procedural mechanism CCANP intends to use to obtain their attendance.

III. The Board Should Permit Applicants To File An Additional Set Of Interrogatories To CCANP

CCANP served its answers to Applicants' interrogatories on April 5, 1983, eight days after those answers were due. Had CCANP's answers been submitted in a timely fashion, Applicants would have had the opportunity to file an

additional set of follow-up interrogatories prior to the expiration of the discovery period established by the Board.* /

Thus, should their Motion to Compel be granted, Applicants request that the Board grant them leave to file an additional set of interrogatories within 14 days after CCANP has served complete responses pursuant to the Board's order.

Should Applicants' Motion to Compel be denied, Applicants request that the Board grant them leave to file additional interrogatories within 14 days after service of

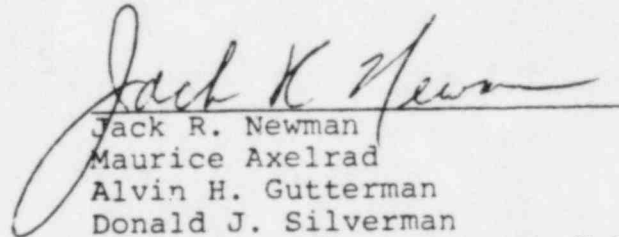
* / The Board's June 24, 1982 Memorandum (Memorializing Certain Rulings Announced During Evidentiary Hearing Sessions of June 15-17, 1982) established a ninety-day discovery period which will expire on April 22, 1983. Applicants' interrogatories were personally served on CCANP no later than March 12, 1983. CCANP's answers were therefore due on March 28. Had CCANP's answers been filed when due, Applicants could have submitted an additional set of interrogatories and CCANP could have responded prior to expiration of the discovery period. Applicants' desire to have the opportunity to file a follow-up set of interrogatories was explained to Mr. Sinkin by Applicants' counsel in a telephone conversation on March 15. Nevertheless, CCANP's answers were not received until April 6. In order to have complied with the Board's discovery order, Applicants would have had to review CCANP's answers, prepare additional interrogatories and effect personal service on CCANP within two days.

the Board's denial, so that they will not be deprived of an opportunity to follow-up on CCANP's answers by virtue of CCANP's untimely response.

Dated: April 18, 1983

Respectfully submitted,

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NUCLEAR REGULATORY COMMISSION

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HOUSTON LIGHTING AND POWER)
COMPANY, ET AL.)
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(South Texas Project, Units 1)
and 2))

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CERTIFICATE OF SERVICE

I hereby certify that copies of Applicants' Motion To Compel Answers To Its Sixth Set Of Interrogatories And For Leave To File Additional Interrogatories To CCANP dated April 18, 1983, have been served on the following individuals and entities by deposit in the U. S. Mail, first class, postage prepaid on this 18th day of April, 1983.

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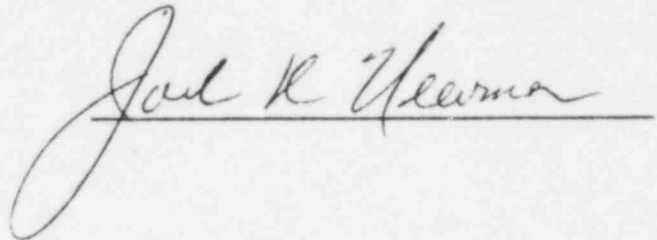
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A handwritten signature in cursive script, reading "Joel R. Ueberman", is written over a horizontal line.