

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

In the Matter of	)	
	)	
ARIZONA PUBLIC SERVICE	)	Docket Nos. STN 50-529
COMPANY, et al.	)	STN 50-530
	)	
(Palo Verde Nuclear	)	
Generating Station,	)	
Units 2 and 3)	)	
	)	

JOINT APPLICANTS' MOTION TO COMPEL  
WEST VALLEY AGRICULTURAL PROTECTION  
COUNCIL, INC. TO ANSWER INTERROGATORIES

Pursuant to 10 CFR §2.740(f) and the schedule set forth in the Board's Order of June 14, 1983, Joint Applicants hereby move the Board for an Order compelling West Valley Agricultural Protection Council, Inc. ("West Valley") to respond to certain interrogatories served on West Valley on April 27, 1983. The interrogatories to which Joint Applicants seek responsive answers are set forth in Attachment A hereto and consist of Interrogatories 1, 3, 5-7, 21-26, 33 and 75 from Joint Applicants' Second Set of Non-Uniform Interrogatories to West Valley Agricultural Protection Council, Inc. With the exception of Interrogatory No. 75, which is addressed at pages 8-9, infra, West Valley objects to each of the attached interrogatories on the grounds that they are burdensome and irrelevant. West Valley further argues in support of and as part of its objection that the NRC Staff

has the burden of assessing the environmental effects associated with salt drift from PVNGS and that Joint Applicants through their interrogatories seek to shift that burden from the Staff to West Valley. See West Valley Agricultural Protection Council, Inc.'s Response to Joint Applicants' Second Set of Interrogatories at 1 (June 1, 1983); West Valley Agricultural Protection Council, Inc.'s Motion for Protective Order (June 29, 1983).<sup>1/</sup>

In response to West Valley's objection, each of the foregoing interrogatories is relevant to the issues to be litigated at the hearing or is reasonably calculated to lead to the discovery of admissible evidence. Furthermore, and contrary to West Valley's assertion, the problem is not that Joint Applicants are attempting through their interrogatories to shift responsibility to West Valley; the problem is that West Valley is trying to avoid its responsibil-

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<sup>1/</sup> West Valley also objected to Interrogatories 4, 9-17, 27-32 and 59 on the same grounds. Joint Applicants are not seeking answers to these interrogatories at this time, however, based on representations by counsel for West Valley to the effect that West Valley does not intend to call any of West Valley's members as witnesses at the hearing, that information sought by Joint Applicants concerning crops grown, acreage devoted to agriculture, specific yields or similar data relating to farming activities in the vicinity of PVNGS is contained in public records identified by West Valley in its Supplemental Answers to Interrogatories dated June 30, 1983, and that West Valley intends to rely solely upon such records. Should Joint Applicants subsequently learn that the foregoing representations are not supportable, specifically, the availability in public records of requested data on crops, acreage and yields in the relevant area, Joint Applicants may seek relief through a motion to compel.

ity as an intervenor in this contested proceeding by refusing to respond. The scope of discovery permitted in NRC proceedings is defined by the Commission's regulations in pertinent part as follows:

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). Testing the interrogatories by this standard, it is clear that Joint Applicants are entitled to the requested information.

Interrogatory 1 asks whether certain named individuals are current directors of West Valley. Joint Applicants are entitled to an answer to this interrogatory because the directors of West Valley may have knowledge of discoverable matter. Interrogatory 3 seeks the identity and address of each member of West Valley. The basis for requiring an answer to Interrogatory 1 also applies to this interrogatory. It is not of particular concern that West Valley will not call its members to testify or that West Valley intends to rely on public documents respecting crops grown, yield data, etc. The fact is that not all of the information which is relevant or necessary for a proper deci-

sion in this proceeding is contained in public documents. See, e.g., discussion at pages 5-7, infra. In addition, Joint Applicants need to know which farmers in the area of PVNGS are members of West Valley and which are not in order to proceed with acquiring relevant information. Information possessed by members of West Valley would be obtained through counsel for West Valley; information possessed by non-West Valley farmers may be obtained through direct communications with such farmers.

Interrogatory 5 asks for a description of those parcels of land owned by West Valley members which will be or may be affected by salt drift deposition; Interrogatory 6 asks West Valley to state the amount of drift per acre that will be deposited upon such parcels; and Interrogatory 7 asks for a description of the methods by which such deposition figures were calculated. Each of these interrogatories is relevant to Issue No. 4 stipulated to by the parties,<sup>2/</sup> which reads as follows:

What is the quantity of salt deposited per acre as a function of time, distance and direction from the PVNGS (includes consideration of the predictability of the analytical model used)?

This issue relates to the dispersion and deposition of salt drift from PVNGS, a matter which received substantial attention by both Joint Applicants in their Environmental Report

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<sup>2/</sup> See Stipulation dated March 30, 1983, transmitted to the Board by NRC Staff letter dated April 4, 1983.

("ER-OL") and the Staff in its Final Environmental Statement ("FES"). See, e.g., ER-OL §5.1.4.4; FES §§4.2.6.2, 5.4.1. Obviously, this is not a matter requiring the development of new information or data. West Valley simply does not agree with the analysis performed by Joint Applicants and the Staff. It is totally unreasonable for West Valley to assert in this instance that Joint Applicants and the Staff are attempting to shift the burden for preparing information to West Valley. West Valley is challenging the analysis performed by Joint Applicants and the Staff. Joint Applicants are therefore entitled to discovery of the basis for such challenge. To the extent that West Valley may claim that Interrogatories 5 and 6 may be burdensome, Joint Applicants would be satisfied, as to Interrogatory 5, with the level or levels of salt drift deposition which, according to West Valley, may cause adverse impacts to agricultural productivity, and, as to Interrogatory 6, with isopleths of predicted salt drift particle deposition.

Interrogatory 21 requests, for each parcel of property owned by West Valley members and for each crop grown during the past three years, that the irrigation method used be identified as well as the frequency of irrigation. The interrogatory also asks for the quantity of water used and the source of the irrigation water. There can be no doubt that the information sought by this interrogatory is relevant to the issues to be litigated at the



hearing. The irrigation method is relevant in determining the quantity of salt deposited per acre. For example, if spray irrigation is used, this may increase the total amount of salt deposited on the leaves of the crops. Spray irrigation may also have the effect of washing off any salt particles which have accumulated on the leaves of the crops. Joint Applicants' review of the documents cited in West Valley's Supplemental Answers to Interrogatories, dated June 29, 1983, has not disclosed the type of information sought by Interrogatory 21. At this point, therefore, it appears that the only way such information can be obtained is from the farmers. This request should not entail the development or preparation of new information. Rather, the information sought should already be known to West Valley members. Joint Applicants are simply asking that it be provided. Interrogatories 22 and 23 ask for the identification of persons having knowledge of and documents which refer to the information set forth in the answer to Interrogatory 21, respectively. These interrogatories also clearly seek discoverable matter.<sup>3/</sup>

Interrogatory 24 requests information on the water quality of the irrigation water used by West Valley members.

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<sup>3/</sup> Interrogatories 18-20 are similar to Interrogatories 21-23 except that the former set seeks information for the last ten years. Joint Applicants are not pursuing information covering the entire ten-year period in order to reduce the effort required of West Valley in responding.

In an effort to reduce the burden in responding to this interrogatory, Joint Applicants would be satisfied if the requested information is provided for the irrigation water referred to in the answer to Interrogatory 21 rather than Interrogatory 18. See footnote 3, supra. The information sought by this interrogatory is clearly relevant to the issue respecting how much salt is deposited per acre. If a spray irrigation method is used by the farmers in the vicinity of PVNGS, the amount of salt deposited per acre may be dependent upon the salinity of the irrigation water used. As was the case with Interrogatory 21, Joint Applicants' review of the documents identified by counsel for West Valley has not disclosed the type of information requested by Interrogatory 24. Also, the information sought should already be known to West Valley members. Interrogatories 25 and 26 ask for identification of persons having knowledge of and documents which refer to the facts set forth in the answer to Interrogatory 24. Such information is clearly discoverable.

Interrogatory 33 refers to West Valley's allegation in its Petition to Intervene that all West Valley members are located "within the area likely to be affected" by salt deposition and asks for information concerning the area referred to by West Valley. As was the case with Interrogatories 5, 6 and 7, this interrogatory is relevant to the questions of how much salt will be deposited per acre as well

as the tolerance of crops to salt deposition, questions which have been stipulated to as issues in this proceeding. Furthermore, the interrogatory was asked based on one of West Valley's own allegations. Joint Applicants simply seek to uncover the basis for the allegation and thus are entitled to an answer.

Interrogatory 75 asks for a precise definition of the term "near the plant" as utilized by West Valley in its Contention III.C(ii) of its original Petition to Intervene. That contention alleged that in the area surrounding PVNGS, deposition levels of 2-4 pounds per acre per week would occur near the plant. In answer to Joint Applicants' Interrogatory 169 from their First Set of Non-Uniform Interrogatories, West Valley explained that initial estimates of salt drift deposition from the PVNGS cooling towers are provided in the model utilized by Professor Davis, one of the West Valley consultants, and described in his report. Notwithstanding the fact that Professor Davis has apparently performed some analysis, West Valley, in responding to Interrogatory 75, states that it cannot at this time provide a precise description of the term "near the plant." West Valley's response obviously cannot be reconciled with the fact that the analysis performed by Professor Davis identified areas where 2-4 pounds per acre per week would be deposited. It would seem to Joint Applicants that West Valley would simply have to look at the results of Professor Davis' analysis to



determine the extent of the area where 2-4 pounds per acre per week would be deposited. That area presumably would constitute the area referred to by West Valley as "near the plant." The information must be available and Joint Applicants are entitled to know what it is.


As noted at the outset of this discussion, each of the interrogatories fall within the scope of discovery permitted under the Commission's rules. Such rules are to be liberally construed. Pacific Gas & Electric Company (Stanislaus Nuclear Project, Unit 1), LBP-78-20, 7 NRC 1038, 1040 (1978). Joint Applicants urge the Board to reject West Valley's transparent attempt to frustrate Joint Applicants' legitimate and reasonable discovery requests.

WHEREFORE, Joint Applicants move this Board for an immediate order compelling Intervenor West Valley to respond to the Interrogatories set forth in Attachment A hereto.

RESPECTFULLY SUBMITTED this 15th day of July, 1983.

SNELL & WILMER

By

  
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Attorneys for Joint  
Applicants

ATTACHMENT A

1. State whether each of the following individuals is a current director of West Valley:

- (a) Dan Saylor
- (b) Rick Ladra
- (c) Phil Ladra
- (d) Paul Perry
- (e) Harry W. Porterfield
- (f) Gary Accomazzo
- (g) Bob Sheppard
- (h) Jim Gladden
- (i) Delbert Beyer
- (j) Don Narramore
- (k) Bill Odom
- (l) F. Ronald Rayner
- (m) Stephen P. Pavich
- (n) Jackie Meck
- (o) W. T. Gladden

3. In your Petition, you allege that West Valley has 56 farmer members. Identify the 56 members who comprise West Valley and state, for each, his or her address.

5. For each parcel of property described in answer to the preceding interrogatory, state whether you claim that such parcel, or any part thereof, will be affected or may potentially be affected by salt drift deposition from the PVNGS. If you claim that only a portion of

any parcel listed herein will or may be affected, describe specifically the part thereof which you claim will or may be affected.

6. For each parcel of property listed in answer to the preceding interrogatory, state the amount of drift per acre which you claim will be deposited thereon on a daily, monthly and annual basis.

7. Describe the precise method by which the deposition figures given in response to the preceding interrogatory were calculated. Include in your answer all facts, assumptions, and calculations upon which such figures are based.

21. For each parcel of property listed in response to Interrogatory No. 4, and for each crop which you claim was grown thereon during the past three years, identify the irrigation method used for each such crop and the frequency with which such crop was irrigated. Your answer should include, but not be limited to, the total quantity of water applied per acre per day, per month, and per growing season, and the source of the irrigation water.

22. Identify each person having knowledge, or claiming to have knowledge, of the facts set forth in your answer to the preceding interrogatory. As to each such person, state the specific facts concerning which they have knowledge or claim to have knowledge.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Joint Applicants' Answer to West Valley Agricultural Protection Council, Inc.'s Motion for Protective Order" and "Joint Applicants' Motion to Compel West Valley Agricultural Protection Council, Inc. to Answer Interrogatories" have been served upon the following listed persons by deposit in the United States mail, properly addressed and with postage prepaid, this 15th day of July, 1983.

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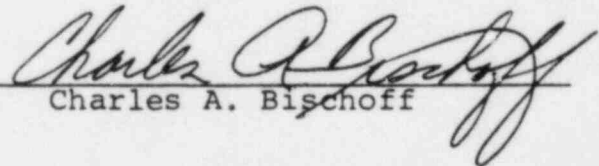
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