RELATED CORRESPONDENCE

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of	)	
	)	Docket No. 50-275 O.L.
PACIFIC GAS AND ELECTRIC COMPANY	)	Docket No. 50-323 O.L.
	)	
Diablo Canyon Nuclear Power Plant	)	(Reopened Hearing --
Units Nos. 1 and 2	)	Design Quality
	)	Assurance)

MOTION TO COMPEL
ANSWERS TO INTERROGATORIES
TO JOINT INTERVENORS

Pursuant to 10 CFR § 2.740(f)(1), Licensee moves the presiding member of this board, and members thereof for an order compelling Joint Intervenors to answer the interrogatories set forth below. The Interrogatories to Joint Intervenors were served by Licensee on June 10, 1983 and were responded to by Joint Intervenors by service by mail on June 27, 1983.

Without obtaining a protective order pursuant to 10 CFR 2.740(f)(1), Joint Intervenors objected to and failed

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to answer, or answered in an unresponsive manner, a majority of the interrogatories propounded to them.

In Pennsylvania Power and Light Company and Alleghany Electric Cooperative, Inc. (Susquehanna Steam Electric Station Units 1 and 2), ALAB-613, 12 NRC 317 (1980), the Atomic Safety and Licensing Appeal Board discussed in great length the discovery responsibilities of an intervenor in the regulatory process. As noted by the Board,

> ". . . Discovery is the descriptive term for procedures available to help litigants learn the nature of an adversary's case in advance of trial. . . . An important reason for allowing discovery is to eliminate, so far as possible, the element of surprise in modern litigation. The underlying concept is to shorten the actual trial, with its attendant expense and inconvenience for all concerned, while increasing the parties' ability to develop a complete record for decisional purposes." 12 NRC at 322.

As can be seen from the responses to the interrogatories propounded by the Licensee, the Joint Intervenors have totally disregarded their responsibilities in the discovery process and have sought to undermine the preparation for and the conduct of an expeditious hearing in this matter.

INTERROGATORIES

1. As to each person employed by PG&E, Bechtel, the PG&E/Bechtel "Project", or any of those entities' subcontractors working on Diablo Canyon that you have had

communication with since November 21, 1981, regarding Diablo Canyon, state:

(a) The name of each employee or representative with whom you have communicated. (This interrogatory is not intended to cover any administrative communications regarding announced meetings between the NRC Staff and/or the IDVP and/or PG&E).

(b) The name of each person involved on your behalf in each communication.

(c) The date of each such communication.

(d) How the communication was made, i.e., whether by telephone, written instrument, personal meeting, or otherwise.

(e) Who initiated each such communication.

(f) The substance of information exchanged during each such communication.

Response to Interrogatory No. 1:

Joint Intervenors object to this interrogatory on the ground that it is overly broad, burdensome and oppressive, and not reasonably calculated to lead to the discovery of relevant or admissible evidence, and it calls for privileged information (e.g., attorney work product; informant). In addition, the information requested is fully available to the Applicant at any time since the subject employees are employed by the Applicant or its contractors.

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Thus, the requested information can be obtained simply by asking the employees themselves.

Argument

Other than the portion of the answer claiming privileges this objection is merely a general objection. General objections of this nature are insufficient to support an objection to a discovery request.

As noted by the Board in Pennsylvania Power, supra,

> "It is not proper for a party to ignore a discovery request. Interrogatories, for example, must either be answered or objected to in the time allowed. 10 CFR 2.740b(b). Objections may be accompanied by a motion for a "protective order" to modify or eliminate the obligation to respond, but the movant must establish "good cause" for issuing such an order. 10 CFR 2.740(c). And as in judicial practice, general objections do not provide that cause. Challenges to interrogatories must be
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> > 'specific enough so that the [tribunal] can understand in what way the interrogatories are claimed to be objectionable. General objections, such as the objection that the interrogatories will require the party to conduct research and compile data, or that they are unreasonably burdensome, oppressive, or vexatious, or that they seek information that is as easily available to the interrogating as to the interrogated party, or that they would cause annoyance, expense, and oppression to the objecting party without serving any purpose relevant to

> the action, or that they are duplicative of material already discovered through depositions, or that they are irrelevant and immaterial, or that they call for opinions and conclusions, are insufficient.' (Citing 4A Moore's Federal Practice (1980 ed). ¶ 33.27 (at pp. 33-151 and 33-152.)" 12 NRC at 322-323.

Since the Intervenors have not articulated any specific objection other than the alleged privileges the general objections must be disregarded in a determination of the necessity of their responding to this interrogatory.

The claims of privilege made by the Intervenors have less basis than the general objections made above.

The work-product privilege applies only to the discovery of documents and tangible things. 10 C.F.R. § 2.740(b)(2); See, Wright & Miller, Federal Practice and Procedure: Civil § 2024. It does not protect the identity of individuals, the dates of communications, the manner of contact or the substance of the communication such as sought in this interrogatory. See, Lincoln Gateway Realty Co. v. Carri-Craft, Inc. 53 F.R.D. 303 (1971). While the privilege does protect against the disclosure of the mental impressions, conclusions, opinions or legal theories of an attorney, nothing in Interrogatory No. 1 even remotely requests such information. As a result the claim of work product privilege must fail.

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Finally, the Joint Intervenors claim the shield of the informants privilege to preclude responding to this interrogatory. While it is true that protection of informants has the full support of the Commission, by definition, one can only be an informant if one provides information to a governmental agency. See, Houston Lighting & Power Company, ALAB-639, 13 NRC 469 (1981). The Joint Intervenors are clearly not a governmental agency. Therefore, the informant's privilege has no application to the information requested in Interrogatory No. 1.

5. Identify each and every structure at Diablo Canyon that you believe to be "important-to-safety", but which is not classified as design Class I. As to each such structure identified, state:

(a) The bases for your opinion that the structure should be considered "important-to-safety".

(b) Each regulation which, in your opinion, requires each such structure to be classified as "important-to-safety".

(c) The date upon which each such regulation required each such structure to be so classified.

Response to Interrogatory No. 5:

To the extent that this interrogatory requests identification of each individual structure that is "important to safety" but not Class I, Joint Intervenors object to this interrogatory as overly broad, burdensome and

oppressive, and not reasonably calculated to lead to the discovery of relevant or admissible evidence. Without waiving such objections, Joint Intervenors state that they are unable to provide the information requested because the Applicant's FSAR for Diablo Canyon fails to distinguish between structures that are "important to safety" and structures that are "safety-related." Those terms are apparently used interchangeably by the Applicant.

Argument

As noted above general objections of the type made in the first sentence of the Joint Intervenors' response are not a sufficient basis upon which to refuse to answer.

The remainder of the response is simply unresponsive to the interrogatory. The interrogatory clearly requests the Intervenors to state their belief concerning structures at Diablo "important-to-safety" but not classified as design Class I. The characterization of structures by the Licensee in its FSAR has absolutely no relevance to this interrogatory.

This interrogatory is designed to determine the Intervenors' basis for the positions they have asserted concerning structures "important-to-safety." In order to prepare for its case Licensee needs to know the structures claimed by the Joint Intervenors to be "important-to-safety." Information necessary to the preparation of one's case is discoverable. In re Folding Carton Anti-Trust Case

83 F.R.D. 256 (N.D.Ill. 1979); Flour Mills of America v. Pace 75 F.R.D. 676 (E.D.Okla. 1977); See, 4 Moore's Federal Practice Section 33.14.

6. Identify specifically each and every system at Diablo Canyon that you believe to be "important-to-safety", but which is not classified as design Class I. As to each such system identified, state:

(a) The bases for your opinion that each such system should be considered "important-to-safety".

(b) Each regulation which, in your opinion, requires each such system to be classified as "important-to-safety".

(c) The date upon which each such regulation required each such system to be so classified.

Response to Interrogatory No. 6:

To the extent that this interrogatory requests identification of each individual system that is "important to safety" but not Class I, Joint Intervenors object to this interrogatory as overly broad, burdensome and oppressive, and not reasonably calculated to lead to the discovery of relevant or admissible evidence. Without waiving such objections, Joint Intervenors state that they are unable to provide the information requested because the Applicant's FSAR for Diablo Canyon fails to distinguish between systems that are "important to safety" and systems that are

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"safety-grade." Those terms are apparently used interchangeably by the Applicant.

Argument

The arguments to compel discovery of the information sought by Interrogatory No. 6 are the same as those made in support of the argument to compel the answers to No. 5 and are incorporated herein by reference.

7. Identify specifically each and every component at Diablo Canyon that you believe to be "important-to-safety", but which is not classified as design Class I. As to each such component identified, state:

(a) The bases for your opinion that each such component should be considered "important-to-safety".

(b) Each regulation which, in your opinion, requires each such component to be classified as "important-to-safety".

(c) The date upon which each such regulation required each such component to be so classified.

Response to Interrogatory No. 7:

To the extent that this interrogatory requests identification of each individual component that is "important to safety" but not Class I, Joint Intervenors object to this interrogatory as overly broad, burdensome and oppressive, and not reasonably calculated to lead to the discovery of relevant or admissible evidence. Without waiving such objections, Joint Intervenors state that they

are unable to provide the information requested because the Applicant's FSAR for Diablo Canyon fails to distinguish between components that are "important to safety" and components that are "safety-grade." Those terms are apparently used interchangeably by the Applicant.

Argument

The arguments to compel discovery of the information sought by Interrogatory No. 7 are the same as those made in support of the argument to compel the answers to Nos. 5 and 6 and are incorporated herein by reference.

13. Mr. Hubbard, in his affidavits and/or his declaration uses the following terms:

(a) "safety-significance"
(b) "errors"
(c) "deficiencies"
(d) "safety implications"
(e) "design QA"
(f) "safety hazard"
(g) "quality control"
(h) "root cause"
(i) "basic cause"
(j) "QA breakdown"
(k) "extreme likelihood"
(l) "major errors"
(m) "rigorous and thorough design verification program"
(n) "design product"
(o) "minor QA breakdown"
(p) "QA finding"
(q) "QA observation"

As to each term, please:

(a) Give your definition of the term.

(b) Identify the regulation or other source upon which you base your definition.

(c) Give your explanation of the difference between "safety-significance" and the terms "important-to-safety" and "safety-related".

(d) Give your explanation of the difference between "major errors" and "errors".

(e) Give your explanation of the differenc between "deficiencies" and "errors".

(f) Give your explanation of the difference between a "QA breakdown" and a "major QA breakdown".

(g) Give your explanation of the difference between a "QA breakdown" and a "QA finding".

(h) Give your explanation of the difference between a "QA breakdown" and a "QA observation".

Response to Interrogatory No. 13:

Joint Intervenors object to this interrogatory on the ground that Mr. Hubbard is not employed by the Joint Intervenors, and thus the request should be directed either to Mr. Hubbard or to the Governor of California. To the extent that this interrogatory calls for the Joint Intervenors' definition of terms used by Mr. Hubbard, Joint Intervenors object that such information is irrelevant and not reasonably calculated to lead to the discovery of relevant or admissible evidence. Without waiving such objections, Joint Intervenors supply the following responses:

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(a), (b). The following definitions are based on standard English usage as expressed in Webster's New Collegiate Dictionary:

(1) "safety-significance": that which is materially relevant to safety;

(2) "errors": acts or beliefs which involve a departure from accuracy; mistakes; discrepancies; deficiencies;

(3) "deficiencies": acts or states of being which are inadequate in scope or extent to comply with a specified program or to accomplish a specified objective;

(4) "safety implications": that which has import or relevance with respect to a condition of safety;

(5) "design QA": see 10 C.F.R. Part 50, Appendix B, Introduction, as applied to the design process;

(6) "safety hazard": a condition or state of being which imposes or threatens to impose a danger of harm.

(7) "quality control": see 10 C.F.R. Part 50, Appendix B, Introduction;

(8) "root cause": an occurrence or state of being which accurately could be characterized as having been the precursor to a specific result or condition;

(9) "basic cause": an occurrence or state of being which accurately could be characterized as having been the necessary precursor to a specific result or condition;

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(10) "QA breakdown": the failure of a program, action or series of actions designed or intended to provide adequate confidence that a structure, system, or component will perform satisfactorily in service;

(11) "extreme likelihood": a condition of being which strongly militates towards a specified result.

(12) "major errors": mistakes of material significance which are extreme in character.

(13) "rigorous and thorough design verification program": a program as described in Response to Interrogatory No. 21 infra;

(14) "design product": the ability of a program of quality assurance to attain certain levels of performance and safety.

(15) "minor QA breakdown": a potentially damaging but relatively less significant failure to comply with a program as described in subparagraph (10) above;

(16) "QA finding": an error, deficiency, discrepancy, or other failure to comply with a prescribed QA program;

(17) "QA observation": the gathering of data or conclusion of fact as a result of inquiry mandated by a program or system designed to monitor and assure certain levels of performance.

(c) The term "safety-significance" differs from the term "important to safety" and "safety-related" insofar as

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the latter have specific meanings as outlined in Response to Interrogatory No. 4, supra.

(d) See answers 13(a)(2) and 13(a)(12) above.

(e) See answers 13(a)(2) and 13(a)(3) above.

(f) The term "major QA breakdown" refers to the occurrence of a more serious failure to comply with prescribed QA requirements or procedures than does the term "QA breakdown."

(g) See answers 13(a)(10) and 13(a)(16).

(h) See answers 13(a)(10) and 13(a)(17).

Argument

The arguments as to general objections made above are incorporated herein by reference.

While it may be true that Mr. Hubbard is no longer employed by Joint Intervenors the original Motion to Reopen filed by the Joint Intervenors on June 7, 1982 had attached thereto a one hundred and one page affidavit with thirty exhibits prepared by Mr. Hubbard. The Joint Intervenors have continued to rely upon this affidavit in the myriad of other pleadings filed in this proceeding.

If the Joint Intervenors no longer intend to rely upon Mr. Hubbard and his definition of those terms then the Licensee is entitled to know this. If on the other hand these are definitions the Joint Intervenors intend to rely upon then the definitions are clearly discoverable to assist in the preparation of the Licensee's case. Folding Carton,

supra. It is interesting to note that the Governor, in his response to Licensee's interrogatories, claims no responsibility for anything prior to January 3, 1983. Mr. Hubbard's June 7, 1982 affidavit is apparently being disavowed by both Joint Intervenors and the Governor. Unfortunately, Licensee is left with no answers to which it can turn in preparation for hearing.

14. List each ITR, with revision number, that you have reviewed to date. As to each ITR, state specifically:

(a) Each fact stated therein with which you disagree.

(b) The specific page(s) of each ITR where the fact(s) set forth in your answer to 14(a) is located.

(c) Each conclusion or opinion stated therein with which you disagree.

(d) The specific page(s) of each ITR where the conclusion(s) or opinion(s) set forth in your answer to 14(c) is located.

(e) The specific bases for your disagreement with each such fact, conclusion or opinion.

Response to Interrogatory No. 14:

Joint Intervenors object to this interrogatory as vague and ambiguous, overly broad, burdensome, oppressive, and not reasonably calculated to lead to the discovery of relevant or admissible evidence. Without waiving such objections, Joint Intervenors state that given the

significant number of ITRs, the cryptic manner in which they are written, the complexity of the subjects being reviewed, and the fact that Joint Intervenors' review of the ITRs is continuing and not yet complete, they are unable to respond to this interrogatory at this time.

Argument

The arguments as to general objections made above are incorporated herein by reference.

While it may be true that the Joint Intervenors have not totally completed their review of the ITRs at this time, it is highly unlikely, if not outright fraudulent for them to claim that they have not reached opinions on portions of some ITRs. This response clearly indicates an attempt on the part of the Joint Intervenors to delay the discovery process with the resultant effect of delaying the hearing. If, at this late date, Joint Intervenors, or, for that matter, the Governor, are unable to identify even one single conclusion or statement of fact from even one single ITR with which they disagree, it is respectfully submitted that a hearing is patently unnecessary.

15. With respect to the PG&E Phase I Final Report, identify:

(a) Each fact stated therein with which you disagree.

(b) The specific page(s) of the Report where the fact(s) set forth in your answer to 15(a) is located.

(c) Each conclusion or opinion stated therein with which you disagree.

(d) The specific page(s) of the Report where the conclusion(s) or opinion(s) set forth in your answer to 15(c) is located.

(e) The specific bases for your disagreement with each such fact, conclusion or opinion.

Response to Interrogatory No. 15:

Joint Intervenors object to this interrogatory as vague and ambiguous, overly broad, burdensome, oppressive, and not reasonably calculated to lead to the discovery of relevant or admissible evidence. Without waiving such objections, Joint Intervenors state that given the size of the Final Report, the complexity of the subjects reviewed, and the fact that Joint Intervenors' review of the Phase I Final Report is continuing and not yet complete, they are unable to respond to this interrogatory at this time.

Argument

The arguments as to general objections made above are incorporated herein by reference.

While it may be true that the Joint Intervenors have not completed their review of the PGandE Phase I Final Report at this time, it is highly unlikely that they have not completed reviews of some portions of the PGandE Phase I Final Report which have been available for many months. This response clearly indicates an attempt on the part of

the Joint Intervenors to delay the discovery process with the natural effect being to delay the hearing date. As stated in the preceding argument, it is inconceivable that Joint Intervenors have no negative opinions regarding the Final Report at this time.

16. State specifically all direct personal knowledge that you have regarding:

(a) The design of Diablo Canyon.

(b) The design quality assurance programs for Diablo Canyon.

(c) How such direct personal knowledge was acquired.

Response to Interrogatory No. 16:

Joint Intervenors have direct knowledge only of items viewed during site tours of the Diablo Canyon Nuclear Power Plant.

Argument

This interrogatory asks a foundational question concerning direct personal knowledge of the Joint Intervenors. It goes directly to the competency of potential witnesses of the Joint Intervenors. Rather than provide the information requested the response merely alludes to items viewed during site tours.

The interrogatory is not difficult. If the Joint Intervenors have direct personal knowlege of the design of Diablo Canyon and/or the design quality assurance programs,

then the Licensee is entitled to know it. If the Joint Intervenors have no such knowledge, then the Licensee is entitled to know.

18. In paragraph 9 of the Hubbard affidavit attached to Joint Intervenors' Motion to Reopen of June 7, 1982, Mr. Hubbard lists categories of items that he reviewed. Identify specifically:

(a) The industry QA/QC standards prior to 1970 that Mr. Hubbard reviewed.

(b) The "regulatory developments" examined.

(c) All documents examined by Mr. Hubbard in his examination of the NRC's implementation of QA/QC regulations.

Response to Interrogatory No. 18:

See Response to Interrogatory No. 17(a).

Argument

The arguments made in support of the motion to compel the answer to Interrogatory No. 13 are incorporated herein by reference.

23. Identify specifically each document upon which you rely as support for your contentions or positions as stated in your answers to these interrogatories. As to each such document, identify the precise portion relied upon as to each such contention or position.

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Response to Interrogatory No. 23:

The documents relied upon include, but are not necessarily limited to, those documents referred to in or attached as exhibits to Joint Intervenors' June 7, 1982 Motion; Joint Intervenors' May 10, 1982 Motion; Joint Intervenors' May 31, 1983 Response to Motion of Governor Deukmejian to Reopen the Record on Construction Quality Assurance; and the various affidavits of Richard B. Hubbard, each of which has been filed in this proceeding. As Joint Intervenors' review of the documents issued by the IDVP, DCP, and NRC progresses, the foregoing list will obviously increase.

Argument

The purpose of pretrial discovery in complex litigation is to enable parties to ascertain facts, refine the issues and prepare adequately for a more expeditious hearing. Pennsylvania Power, supra. As this Board is well aware there are literally thousands of documents which contain information about the upcoming hearings.

This interrogatory is designed to focus in on those documents which the Joint Intervenors specifically intend to rely upon at the hearings. This will assist in the preparation of the Licensee for the hearing by eliminating unnecessary preparation and enable the Licensee to concentrate on those areas upon which the Joint

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Intervenors rely. Clearly, this information is discoverable.

CONCLUSION

In the absence of a motion for a protective order the Board may not excuse failures to respond to discovery regardless of how objectionable the discovery may be. Illinois Power Company, LBP-81-61, 14 NRC 1735 (1981). General objections such as those contained throughout the responses of the Joint Intervenors are insufficient to provide good cause not to respond. Pennsylvania Power, supra. Finally, the obvious attempt by the Joint Intervenors to avoid their discovery responsibilities by making unfounded objections and failing to fully respond to the interrogatories propounded by the Licensee leaves this

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Board no alternative but to grant the Licensee's motion to compel.

Respectfully submitted,

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DATED: July 12, 1983.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
PACIFIC GAS AND ELECTRIC COMPANY	)	Docket No. 50-275
	)	Docket No. 50-323
Diablo Canyon Nuclear Power Plant, Units 1 and 2	)	
	)	

CERTIFICATE OF SERVICE

The foregoing document(s) of Pacific Gas and Electric Company has (have) been served today on the following by deposit in the United States mail, properly stamped and addressed:

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Date: July 12, 1983

Pacific Gas and Electric Company