

November 15, 1979

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
TEXAS UTILITIES GENERATING	)	Docket Nos. 50-445
COMPANY, <u>et al.</u>	)	50-446
	)	
(Comanche Peak Steam Electric	)	
Station, Units 1 and 2)	)	

APPLICANTS' RESPONSE TO CFUR MOTION  
TO ADD CONTENTION

On October 30, 1979, Citizens for Fair Utility Regulation ("CFUR") filed a motion requesting that the Atomic Safety and Licensing Board ("Board") accept the following new contention as an issue in this proceeding:

Contention IX

Applicants have failed to make any effort to determine the effect of radioactive releases on the general public other than at the exclusion boundary. Various transport mechanisms may cause, in certain cases, the bulk of the health effects to occur some distance from the exclusion boundary.

CFUR cites as the basis for their request that certain information "has just come to [their] attention", viz., a draft report circulated to the Council on Environmental Quality, authored by Jan Beyea and Frank Von Hippel of Princeton University, entitled "Some Long Term Consequences

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of Hypothetical Major Releases of Radioactivity to the Atmosphere from Three Mile Island."

Applicants oppose the instant motion. CFUR's original petition for leave to intervene in this proceeding and its supplement thereto relating to contentions were timely filed on March 3, 1979 and May 7, 1979, respectively. Subsequently, on May 22, 1979, the day of the prehearing conference to rule on petitions to intervene, CFUR filed an untimely motion to amend in which it recast several of its proposed contentions. Thereafter, on May 29, 1979, CFUR again attempted to amend its petition and to recast all of its proposed contentions. Now, over five months after the prehearing conference, CFUR seeks to yet again amend its contentions by adding a new one.

This disorderly process by which CFUR continually seeks to amend and reamend its contentions is totally inconsistent with the procedures contemplated by 10 CFR §2.714(b), which require that amendments to contentions be filed 15 days prior to the prehearing conference. While 10 CFR §2.714(b) provides that additional time to file a supplement relating to contentions may be granted if warranted by a balancing of the five factors set forth in

10 CFR §2.714(a)(i), \*/ CFUR has made no attempt to demonstrate that the five factors weigh in its favor. In any event, Applicants submit that such a balancing clearly weighs against the granting of CFUR's instant motion.

With respect to the first factor, CFUR might arguably rely on the recent draft report noted above as showing good cause for its untimely filing. CFUR apparently maintains that this report contains information previously unknown to CFUR "on offsite consequences [of radioactive releases] at long distances from the plant. . . ." However, even if CFUR had been unfamiliar with this issue, it certainly has been common knowledge to the nuclear industry and the scientific community, and to any members of the public who have researched the subject. The effects of low level radiation have been studied and analyzed for many years.

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\*/ These factors are:

(i) Good cause, if any, for failure to file on time.

(ii) The availability of other means whereby the petitioner's interest will be protected.

(iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.

(iv) The extent to which the petitioner's interest will be represented by existing parties.

(v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

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CFUR's attempt here to establish good cause to supplement its contentions whenever information which is commonly known throughout the scientific community first becomes known to it is contrary to NRC practice and sound administrative policy. Thus, Applicants contend that CFUR has failed to provide a substantial showing of good cause for its untimely filing.

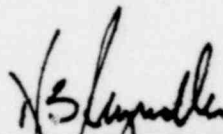
With respect to the other four factors cited in 10 CFR §2.714(a)(1), Applicants submit that none weigh in favor of granting the instant motion. As to the second and fourth factors, the issue presented in CFUR's additional proposed contention has been raised by both Texas Association of Community Organizations for Reform Now ("ACORN") in its Contention 32, and Citizens Association for Sound Energy ("CASE") in its Contention 9. As to the third factor, CFUR has made no demonstration that it is qualified to assist in developing a sound record. Thus, Applicants submit that CFUR's motion to add another contention should be denied.

In any event, the contention which CFUR is attempting to add here questions the adequacy of Commission regulations with respect to permissible releases of radioactive effluents from a nuclear power facility. CFUR is either unaware of or chooses to ignore the detailed NRC regulations and guidelines relating to such emissions (e.g., 10 CFR Part 20). CFUR is not alleging that the Applicant will not comply with all NRC regulations. Rather, CFUR's contention apparently

is that such regulations will not provide adequate protection for those located at distances from the proposed facility. If CFUR's proposed contention is so construed, it challenges the adequacy of existing NRC regulations and pursuant to 10 CFR §2.758 is proscribed. E.g., Union of Concerned Scientists v. AEC, 499 F.2d 1069 (D.C. Cir. 1974); Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 89 (1974).

From the foregoing, Applicant maintains that CFUR has failed to sustain the burdens imposed by the Rules of Practice on those who attempt to raise untimely issues. As recounted above, this intervenor has already evidenced a troublesome tendency in this proceeding to disregard the Rules of Practice and to merely file pleadings at its convenience. We urge the Board to halt this trend and to admonish CFUR that it too must abide by the Rules. In any event, CFUR is attempting to raise a contention which is a proscribed challenge to NRC regulations, and thus CFUR's motion should be denied for that reason alone.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Response To CFUR Motion To Add Contention," dated November 15, 1979, in the captioned matter have been served upon the following by deposit in the United States mail this 15th day of November 1979:

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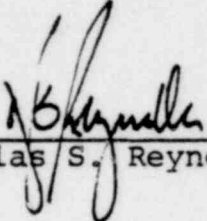
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