

NRC PUBLIC DOCUMENT ROOM

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION



In the Matter of )  
 )  
TEXAS UTILITIES GENERATING ) Docket Nos. 50-445  
COMPANY, ET AL. ) 50-446  
 )  
(Comanche Peak Steam Electric )  
Station, Units 1 and 2) )

APPLICANTS' MEMORANDUM REGARDING  
INTEREST AND CONTENTIONS OF PETITIONERS

By Order dated May 9, 1979, the Atomic Safety and Licensing Board ("Board") directed the Applicants and NRC Staff "to address in writing prior to the prehearing conference any additional plea they may wish to submit on interest and their position as to whether they believe there is one or more acceptable contentions for each of the petitioners." In response to the Board's Order, the Applicants hereby confirm, clarify or set forth their position regarding the interest of each petitioner and the adequacy of contentions.

We wish to urge at the outset that as to the proposed contentions of the three petitioners, the Board should not equate their laborious and voluminous recounts of newspaper articles, NRC Inspection and Enforcement correspondence, NRC NUREG documents, and records of other NRC proceedings unrelated to Comanche Peak, as providing the specificity and supporting basis which 10 CFR §2.714(b) requires for proposed contentions to be valid. Proposed contentions to

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be acceptable should be succinct, specific, directly related to the facility at bar, and supported by a concise basis. The contentions proposed by all three petitioners here fail to meet these standards.

I. Interest and Contentions of Citizens Association for Sound Energy

Petitioner Citizens Association for Sound Energy ("CASE") has failed to set forth the requisite showing of interest necessary to support intervention in this proceeding. Applicants' position in this regard is as set forth in our answer dated March 15, 1979 to the CASE petition. In its supplement served on May 7, 1979, CASE added nothing to alter the discussion of interest set forth in its original petition. Thus, CASE apparently is relying on the original petition to support its claim of interest.

In these circumstances, we have little to add to our answer to the CASE petition. We note that the CASE petition apparently relies upon the Stinson affidavit and the Ellis affidavit to demonstrate interest. As to the Ellis affidavit, it reflects that the affiant resides in Dallas, Texas, at a distance beyond that accepted by NRC tribunals in the past as within the appropriate geographic zone to confer standing.

As to the Stinson affidavit, a significant question exists as to whether those affiants are members of CASE such

that they may lawfully authorize CASE to represent them in this proceeding. Absent a clear demonstration that the Stinsons were members (or functionally equivalent to members) of CASE at the time they executed the affidavit, the rationale of the Supreme Court in Hunt v. Washington Apple Advertising Comm'n, 432 U.S. 333 (1977), precludes the representation of the Stinsons by CASE. A detailed discussion of Hunt and other related cases is set forth in the Applicants' answer dated April 13, 1979, to the petition to intervene of ACORN and WTLS. We incorporate that discussion herein by reference. In any event, we submit that the Stinson affidavit fails to set forth with particularity the interest of the affiants in the proceeding, how that interest may be affected by the results of the proceeding, and the specific aspects of the subject matter of the proceeding as to which intervention is sought.

As to contentions, we have reviewed the filing of CASE dated May 7, 1979, and are unable to glean from that document any proposed contention which meets the requirement of 10 CFR §2.714(b) that such contentions be presented with specificity and supporting basis. The proposed contentions are in general vague, unsupported, irrelevant, or based upon hearsay, or are proscribed challenges to NRC regulations. Thus, in sum, we find not one acceptable contention proposed by CASE.

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II. Interest and Contentions of Citizens  
for Fair Utility Regulation

Petitioner Citizens for Fair Utility Regulation ("CFUR") has failed to set forth the requisite showing of interest necessary to support intervention in this proceeding. Applicants' position in this regard is as set forth in our answer dated March 19, 1979 to the CFUR petition. In its supplement dated May 7, 1979, CFUR included two general affidavits of residents of Fort Worth and Arlington, Texas. These affidavits apparently supplement the petition to intervene, to which was attached the affidavit of another Fort Worth resident. Thus, the two new affidavits are cumulative, and add nothing which serves to alter the Applicants' position in our answer to the CFUR petition that the general allegations and statements by the affiants are unsatisfactory to confer standing. In short, the affidavits fail to set forth with particularity the interest of the affiants in the proceeding, how that interest may be affected by the results of the proceeding, and the specific aspects of the subject matter of the proceeding as to which intervention is sought.

As to contentions, we have reviewed the filing of CFUR dated May 7, 1979, and find no contention which meets the requirements of 10 CFR §2.714(b) as to specificity and supporting basis. As with the proposed contentions of CASE,

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those set forth by CFUR are in general vague, unsupported, irrelevant, or based upon hearsay, or are proscribed challenges to NRC regulations.

III. Interest and Contentions of Association  
of Community Organizations for Reform  
Now, et al.

Petitioner Community Organizations for Reform Now ("ACORN"), attempted in its May 7 filing to recast its approach in this proceeding in view of the responses to its amended petition filed by the Applicants and NRC Staff. Apparently the West Texas Legal Services ("WTLS") has withdrawn its request to participate as a party, and is now content to serve as counsel to ACORN. This withdrawal of WTLS is consistent with the discussion of pertinent legal precedent set forth in Applicants' answer dated April 13, 1979 to the ACORN/WTLS amended petition. In addition, William Wood, Oda Wood, Clyde Bishop and Mary Bishop ("Woods and Bishops") apparently have been raised to the level of named petitioners for intervention, rather than as individuals represented by ACORN. We suspect that this change was made in response to Applicants' demonstration that the question of membership in ACORN of the Woods and Bishops had not been resolved consistent with Hunt v. Washington Apple Advertising Comm'n, supra.

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These modifications notwithstanding, the petition of ACORN and the Woods and Bishops remains deficient for the reasons set forth in Applicants' answer to ACORN's amended petition, viz., that ACORN has failed to establish standing on its own behalf, that ACORN's organizational purpose is not germane to the interests it seeks to protect in this proceeding, and that the entry of the Woods and Bishops into this proceeding was non-timely (in violation of 10 CFR §2.714). As to the Woods and Bishops, we find germane and likely on point the teachings of the Licensing Board in Washington Public Power Supply System (WPPSS Nuclear Project No. 2) "Order Subsequent to the Prehearing Conference on January 25, 1979" (March 6, 1979), where that Board refused to interpret 10 CFR §2.715(a)(3) as "an open invitation for an organization . . . to later try to recruit individuals in the vicinity as members and gain retroactive recognition of interest." Slip Opinion at 14.

We assume that ACORN relies exclusively on the affidavits of Terry Thompson (who submitted a timely affidavit with the original petition) and Ruth Martin (who was not mentioned in the original petition) to obtain standing. However, since Ms. Martin's affidavits were dated March 29 and May 7, 1979, well after the deadline for the initial filing, the ACORN petition as to her likewise is a non-timely filing.

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Thus, the Applicants' position on the interest of ACORN (through Mr. Thompson), and now the Woods and Bishops, is basically as set forth in our answer to the ACORN/WTLS amended petition. We incorporate that discussion herein by reference. In sum, the affidavits fail to set forth with particularity the interest of the affiants in the proceeding, how that interest may be affected by the results of the proceeding, and the specific aspects of the subject matter of the proceeding as to which intervention is sought.

As to contentions, we have reviewed the filing of ACORN and the Woods and Bishops dated May 7, 1979, and find no contention which meets the requirements of 10 CFR §2.714(b) as to specificity and basis. As with the proposed contentions of CASE and CFUR, those set forth by ACORN and the Woods and Bishops are in general vague, unsupported, irrelevant, or based on hearsay, or are proscribed challenges to NRC regulations.

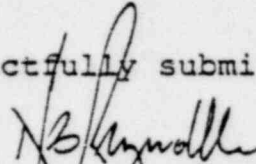
#### IV. Conclusion

Based upon the foregoing, the Applicants submit that none of the petitioners has set forth the requisite showing of interest or a valid contention necessary to support intervention in this proceeding. We understand that the Board will receive argument at the prehearing conference on the issues of interest and whether one valid contention

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has been set forth by each petitioner. We assume that the foregoing provides the Board with an adequate summary of Applicants' position on these issues. We of course reserve the right to reply to all contentions specifically at the appropriate time.

Respectfully submitted,



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DEBEVOISE & LIBERMAN  
Counsel for the Applicants

May 17, 1979

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Memorandum Regarding Interest And Contentions Of Petitioners," dated May 17, 1979, in the captioned matter have been served upon the following by deposit in the United States mail this 17th day of May, 1979:

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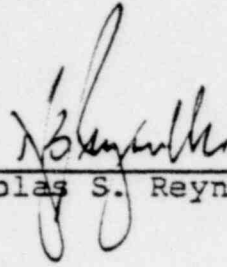
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