

7/21/80

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))	

NRC STAFF'S ANSWER TO "ACORN'S MOTION FOR RECONSIDERATION OR IN THE ALTERNATIVE MOTION FOR CERTIFICATION OF CONTENTIONS DENIED IN THE BOARD'S ORDER SUBSEQUENT TO THE PREHEARING CONFERENCE OF APRIL 30, 1980 AND MOTION FOR RECONSIDERATION OF THE WORDING OF CERTAIN ACCEPTED CONTENTIONS ALONG WITH AN OFFER OF PROOF"

Introduction

On June 16, 1980, the Atomic Safety and Licensing Board (the "Licensing Board") issued its "Order Subsequent to the Prehearing Conference of April 30, 1980" ("Order"), in which the Licensing Board ruled on the admissibility of contentions proposed by the three Intervenor^{1/} and formulated three "Board Questions" to be addressed by Applicants and the NRC Staff ("Staff") in forthcoming evidentiary sessions. In its Order, the

^{1/} The Intervenor^s in this proceeding are Citizens Association for Sound Energy (CASE), Citizens for Fair Utility Regulation (CFUR), and Texas Association for Community Organizations for Reform Now (ACORN), all of which were admitted pursuant to the Licensing Board's Order Relative to Standing of Petitioners to Intervene, dated June 27, 1979. See Texas Utilities Generating Co., et al. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-79-18, 9 NRC 728 (1979).

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Licensing Board accepted numerous contentions advanced by the Intervenors, which it modified and/or consolidated in part with other contentions, and which it then set forth in a list of 25 "Accepted Contentions".

On July 1, 1980, Intervenor ACORN filed its "Motion for Reconsideration or In the Alternative Motion for Certification of Contentions Denied in the Board's Order Subsequent to the Prehearing Conference of April 30, 1980, and Motion for Reconsideration of the Wording of Certain Accepted Contentions Along with an Offer of Proof" ("Motion").^{2/} In its Motion, ACORN notes that the Licensing Board admitted 17 of its contentions and denied the remaining 14 contentions. ACORN objects to the Order, claiming that "each of its contentions should have been accepted" (Motion, at 1), and that the Licensing Board erred in rewording ACORN's contentions 14 and 25, renumbered by the Licensing Board as Contentions 5 and 23 (Motion, at 4). ACORN further moves that certain documents "be accepted in an offer of proof" (Motion, at 5), and finally requests that "if the Board chooses not to admit those [14 previously denied] contentions that it certify them to the Appeal Board" (Motion, at 6).

^{2/} Pursuant to 10 CFR § 2.752, objections to an order which has been entered following a prehearing conference are to be filed "within five (5) days after service of the order." The Staff notes that, pursuant to 10 CFR §§ 2.752 and 2.710, the time for the filing of objections to the Licensing Board's Order of June 16, 1980 expired on June 26, 1980; ACORN's Motion was filed five days late, on July 1, 1980. Notwithstanding the lateness of ACORN's Motion, the Staff is of the view that the Motion should be denied on substantive, rather than procedural grounds.

The Staff files this Answer in response to ACORN's Motion. At the outset, we note that ACORN has failed to set forth any information or to raise any arguments other than those it had already presented to the Licensing Board for consideration.^{3/} For this reason, and for the reasons more fully set forth below, the Staff is of the view that ACORN's Motion is devoid of merit in its entirety. Accordingly, it is the Staff's position that ACORN's Motion should be denied.

Discussion

In essence, the present Motion filed by ACORN does no more than reassert the contentions and bases which ACORN previously had presented to the Licensing Board. Nowhere does ACORN present any new information which might justify reconsideration and admission of these contentions, nor is any attempt made by ACORN to present new arguments to the Licensing Board which would support such admission. In the Staff's view, ACORN's Motion fails to "state with particularity the grounds and the relief sought" (10 CFR § 2.730(b)) and accordingly fails to sustain the burden imposed upon it by NRC regulations. Under 10 CFR § 2.732, "the proponent of an order has the burden of proof." Cf. Consolidated Edison Co. of New York, Inc. (Indian Point Station, Units 1, 2 & 3), CLI-77-2, 5 NRC 13, 14 (1977). By merely alleging that all of its contentions should have been admitted in their entirety and without modification, ACORN has failed to sustain its burden with respect to the motion.

^{3/} The only new information contained in ACORN's Motion concerns its quality assurance/quality control contention, renumbered by the Licensing Board as Accepted Contention 5. There, ACORN presents a list of I&E Inspection Reports to which it had not referred earlier (Motion, at 5). In this regard, see our discussion infra, at 21.

In the discussion which follows, the Staff sets out, first, for each of ACORN's contentions which were rejected by the Licensing Board, a brief summary as to why ACORN's Motion for Reconsideration is inadequate; second, an explanation as to why certification to the Atomic Safety and Licensing Appeal Board is inappropriate; and, third, a summary as to why there is no reason for the Licensing Board to reconsider the wording of Accepted Contentions 5 and 23.

I

NO REASON EXISTS FOR RECONSIDERATION OF THE REJECTED CONTENTIONS

ACORN Contention 2

NRC Staff review is inadequate to identify and correct modes of interaction between reactor systems in the CPSES design which can adversely affect the redundancy or independence of safety systems.

In its discussion of this contention, the Licensing Board stated that the contention was denied in part because ACORN had failed to provide the requisite basis, and because the contention was "impermissibly vague" and "lacked specificity" (Order, at 6). ACORN does not dispute the validity of the Licensing Board's conclusion, but rather argues that

[Contention 2] deal[s] with NRC policy and by [its] very nature cannot be articulated in a narrow fashion. The most one can do is to provide examples which explain the contention. ACORN provided examples . . . to illustrate the concern and safety significance involved in the issue. [The] contention . . . could not be more specifically worded and should not be excluded merely because [it has] a broad effect and go[es] to NRC policy (Motion, at 3).

The NRC Staff is of the view that this argument is without merit and merely constitutes a claim that ACORN cannot articulate its concerns with more specificity. This is not sufficient cause for the Licensing Board to reverse the determination that the contention fails to meet the regulatory requirements for admissibility. ACORN has not presented any new basis or specificity which cures the defects originally found by the Licensing Board. Further, as we discuss infra at 17-19, no reason exists or is presented by ACORN, as to why the Licensing Board should certify this contention to the Atomic Safety and Licensing Appeal Board. (Motion, at 3). Accordingly, ACORN's Motion with respect to this contention should be denied.

ACORN Contention 8

The CPSES design does not adequately account for failure of passive components in fluid systems important to safety.

In its Order, the Licensing Board based its denial of this contention on the grounds that (a) ACORN had failed to provide the requisite basis in support of the contention and (b) the contention "failed to demonstrate the requisite nexus to the CPSES facility" (Order, at 6). In contesting this decision, ACORN asserts that the contention "specifically refers to CPSES design" and that "ACORN's Statement of Position on Contentions," filed April 10, 1980, similarly provides nexus, in that it "quotes the Comanche Peak Design Review Team finding which supports ACORN's contention" (Motion, at 2-3).

An examination of ACORN's Contention 8 and ACORN's "Statement of Position on Contentions" demonstrates the correctness of the Licensing Board's rejection

of this Contention. In its Motion, ACORN claims to have previously provided sufficient basis in support of the contention (Motion, at 2-3). In the Staff's view, ACORN's reiteration of its previous statements does not provide the basis and nexus which the Licensing Board found was lacking. Accordingly, ACORN's motion for reconsideration and for certification of this contention should be denied.^{4/}

ACORN Contention 12

Applicants lack the ability to detect and size flaws within (1) the reactor vessel and (2) pipes within the containment.

In rejecting this contention, the Licensing Board noted that ACORN had failed to provide the requisite basis, that the contention was "impermissibly vague" and that ACORN's basis that this was an unresolved safety issue "dissolved with publication of NUREG-0510 which removed these items from the unresolved safety issue category" (Order, at 6-7) (footnote omitted). ACORN nowhere disagrees with the Licensing Board's conclusions, but merely argues, in essence, that the NRC Staff continues to consider that this issue has safety significance, and therefore the matter should be litigated in this proceeding. ACORN states:

^{4/} ACORN reasserts for Contention 8 the same argument which it asserted with respect to Contention 2, as to the alleged impossibility of providing a more specifically worded contention (Motion, at 3). Inasmuch as the Licensing Board's rejection of Contention 8 was not based on the ground of failure to provide specificity, ACORN's argument in this regard is wholly inapposite. In any event, as we indicated supra at 5, this argument is without merit.

The fact that the NRC has unilaterally withdrawn the issue from the unresolved category is not dispositive of the validity of the issue for litigation in this proceeding. The fact that the NRC changed its mind as to categorization does not mean that the NRC changed its mind as to safety significance.

(Motion, at 2). In the Staff's view, this argument is without merit and altogether ignores the discussion and conclusions of NUREG-0510.^{5/} There, it is specifically stated with respect to this issue as follows:

Generic Task A-14 Flaw Detection

* * *

Although improvements may be possible, current regulations are considered to be adequate from a safety standpoint and this task does not involve a "major reduction in the degree of protection of the health and safety of the public." . . . Therefore, this task does not involve an "Unresolved Safety Issue."

(NUREG-0510, at 19-20). As is obvious from this report, the NRC Staff has indeed "changed its mind," contrary to ACORN's assertion, and no longer considers this matter to involve a generic unresolved safety issue. Although a matter of safety significance could be litigated regardless of whether it is on the generic unresolved safety issue list, there must be a basis for believing that the issue is of specific concern for the facility in question. ACORN fails to provide any further basis in support of its contention or to indicate in what way this issue will be of significance in this proceeding. Accordingly, the Staff is of the view that ACORN's motion with respect to this contention should be denied.

^{5/} "Identification of Unresolved Safety Issues Relating to Nuclear Power Plants, Report to Congress," issued by the Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission (January 1979).

ACORN Contention 16

The CPSES design is inadequate to prevent a water hammer problem which could affect a number of critical safety components.

The Licensing Board rejected this contention on the grounds that it was not supported by the requisite basis, that it lacked specificity, and that it "failed to demonstrate the requisite nexus to the CPSES facility" (Order, at 6). ACORN nowhere contests these findings and, in fact, fails to provide any reason whatsoever as to why reconsideration or certification of this contention is appropriate, other than to state in general that the Licensing Board's Order "is conclusory" (Motion, at 1). In the Staff's view, the Licensing Board correctly rejected this contention, and no reason exists why reconsideration or certification of the contention is appropriate. Accordingly, ACORN's motion with respect to this contention should be denied.

ACORN Contention 17

The CPSES design does not adequately address the possibility of a steam line break inside containment, nor does it insure the ability of equipment within containment to survive such an event so as to assure safe shutdown of the plant.

In rejecting this contention, the Licensing Board noted that the contention lacked the requisite basis, that it failed to demonstrate the requisite nexus to the CPSES facility, and that ACORN's asserted basis that the contention constituted an unresolved safety issue "dissolved with publication of NUREG-0510 which removed these items from the unresolved safety issue category" (Order, at 6-7). ACORN's objection here is identical to its

objection to the Licensing Board's rejection of ACORN's Contentions 12, 18, 21 and 23. In essence, ACORN argues that these issues, identified as Tasks A-21 and A-22, are still considered to be of safety significance and should be litigated in this proceeding. Although a matter of safety significance could be litigated regardless of whether it is on the generic unresolved safety issue list, there must be a basis for believing that the issue is of specific concern for the facility in question. ACORN fails to provide any additional facts in support of its motion and fails to provide any reason to believe that the subject matter of the contention is of safety significance to the CPSES facility. Accordingly, ACORN's motion with respect to this contention should be denied.

ACORN Contention 18

The CPSES design does not adequately insure the reliable operation of on-site emergency power.

In rejecting this contention, the Licensing Board noted that the contention lacked the requisite basis, that it lacked specificity, and that ACORN's basis "that these issues were unresolved safety issues dissolved with publication of NUREG-0510 which removed these items from the unresolved safety issue category" (Order at 6-7). ACORN's objection here is identical to its objection to the Licensing Board's rejection of ACORN's Contentions 12, 17, 21 and 23. ACORN argues that these issues, identified as Tasks A-25 and B-56 in NUREG-0410, are still considered to be of safety significance and should be litigated in this proceeding. Although a matter of safety significance could be litigated regardless of whether it is on the generic unresolved

safety issue list, there must be a basis for believing that the issue is of specific concern for the facility in question. ACORN fails to provide any additional facts in support of its motion and fails to provide any reason to believe that the subject matter of the contention is of safety significance to the CPSES facility. Accordingly, ACORN's motion with respect to this contention should be denied.

ACORN Contention 19

The CPSES design has not adequately resolved a generic safety problem for pressurized water reactors wherein the steam generator and reactor coolant pump support materials are subject to lamellar tearing and low fracture toughness.

The Licensing Board predicated its denial of this contention on the grounds that ACORN failed to provide the requisite basis in support of the contention, and that the contention "failed to demonstrate the requisite nexus to the CPSES facility" (Order, at 6). ACORN does not dispute the correctness of this finding and, in fact, altogether fails to discuss the denial of this contention other than to protest that the Licensing Board's Order, overall, is conclusory (Motion, at 1). ACORN has not provided any facts which would demonstrate a basis or "nexus" in support of this contention. Accordingly, it is the Staff's view that ACORN's motion with respect to this contention should be denied.

ACORN Contention 21

The CPSES design has not given due consideration to the need to withstand an act of sabotage.

The Licensing Board rejected this contention on the grounds that ACORN's purported basis, that it was an unresolved safety issue, "dissolved with publication of NUREG-0510 which removed these items from the unresolved safety issue category" (Order, at 6-7). ACORN's objection to this finding is identical to its objection to the denial of ACORN's Contentions 12, 17, 18 and 23. In essence, it argues that the issue identified in Task A-29 continues to be of safety significance despite the fact that the Staff has removed this item from the unresolved safety issue category (Motion, at 2). Although a matter of safety significance could be litigated regardless of whether it is on the generic unresolved safety issue list, there must be a basis for believing that the issue is of specific concern for the facility in question. The Staff notes that ACORN has not provided any other basis or reason to believe that the CPSES plant will not be adequately protected against acts of sabotage upon Applicants' compliance with the provisions of 10 CFR § 73.55. Accordingly, ACORN's motion with respect to this contention should be denied.

ACORN Contention 23

The CPSES design does not adequately protect against potential damage from turbine missiles to systems essential to the cooling and safe shutdown of the plant.

In rejecting this contention, the Licensing Board observed that ACORN had failed to provide the requisite basis, that the contention "failed to demonstrate the requisite nexus to the CPSES facility," and that ACORN's basis that this issue was an unresolved safety issue "dissolved with publication

of NUREG-0510 which removed these items from the unresolved safety issue category" (Order, at 6-7). This decision was correct. ACORN's purported basis for this contention was (a) that an issue was presented by the turbine missile problem experienced by Westinghouse turbines, despite the fact that the CPSES turbines were manufactured by Allis Chalmers, and (b) that this issue was referred to in NUREG-0410 (Tasks A-32 and A-37) as an unresolved safety issue. ACORN's objection to the Licensing Board's rejection of this contention is identical to its objections with respect to the denial of ACORN's contentions 12, 17, 18, and 21 -- it asserts that the issue is of safety significance despite the NRC Staff's decision to remove this item from the unresolved safety issue category. Although a matter of safety significance could be litigated regardless of whether it is on the generic unresolved safety issue list, there must be a basis for believing that the issue is of specific concern for the facility in question. Nowhere, however, does ACORN provide any facts which would indicate why this issue is of significance in this proceeding. Similarly, nowhere does ACORN dispute the Licensing Board's finding that ACORN had not provided the requisite basis and nexus, and nowhere does ACORN point to facts which would contradict this finding. Accordingly, the Staff is of the view that ACORN's motion with respect to this contention should be denied.

ACORN Contention 26

The energy to be generated by CPSES is unneeded, unsalable and uneconomically priced in view of the order of the Texas Public Utility Commission in Docket No. 14, and thus a favorable cost-benefit balance cannot be struck.

ACORN Contention 27

Applicants have failed to demonstrate a need for the power to be generated by CPSES because:

- a. The reserve margins presented in the ER reflect adequate margins through 1985 without CPSES.
- b. The figures for the Applicants' capabilities, demands and reserves set forth in the ER are inaccurate, incomplete and out of date.

The Licensing Board rejected these contentions on the grounds that ACORN had failed to provide the requisite basis. The Licensing Board observed that these contentions raise an issue which previously was addressed at the Construction Permit stage, and that where an intervenor seeks to relitigate such an issue in an Operating License proceeding the intervenor must present "significant new information developed after the Construction Permit review" (Order, at 7). The Licensing Board, having been presented with ACORN's asserted basis for these contentions, concluded that ACORN had failed to present any 'significant new information that would establish that the 'need for power' has changed from the information available to the Licensing Board at the Construction Permit proceeding", and accordingly rejected ACORN's contentions (Order, at 8).

ACORN objects to the denial of these contentions on the ground that the information which it supplied "did constitute significant new information" (Motion, at 4). ACORN argues that the Applicants had provided an "unreasonable forecast" of power demands, and contends that:

The reserve margin situation and the fact that power generated at Comanche Peak cannot be sold outside the State of Texas presents significant new information, and a need for power contention should be admitted in this proceeding.

(Motion, at 4).

In the view of the Staff, the Licensing Board correctly rejected these contentions. The information relied upon by ACORN in support of the contentions concerned a period of time much shorter than the 40-year period for which the Operating License would be in effect. Thus, ACORN stated in Contention 26 that Applicants' present reserve margins "approximate 50 percent, and those margins are expected to remain at that level until well past 1981";^{6/} ACORN similarly stated in Contention 27 that Applicants' reserve margins appeared to be adequate "through 1985."^{7/} ACORN nowhere cites any other "reasonable forecast" as to the need for power, despite the fact that the Operating License would be in effect for 35 to 40 years after the period cited by ACORN. Further, ACORN does not indicate any connection between its allegation and issues material to determining the benefits to be derived from the operation of CPSES under the proposed license.

These contentions are substantially different from the contention admitted in Pennsylvania Power & Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), LBP-79-6, 9 NRC 291 (1979), relied upon by ACORN (Motion, at 4). There, the Licensing Board admitted a contention which read as follows:

^{6/} "Supplemental Petition and Contentions of Intervenors, ACORN, Mary and Clyde Bishop and Oda and William Wood", dated May 7, 1979, at 37.

^{7/} "ACORN's Statement of Position on Contentions", dated April 10, 1980, at 39.

Latest projections of energy use and requirements during the next 30 years for the Applicants' service area, the period equal to the projected plants' "useful life," show that the Applicants can meet the needs of their customers through existing facilities and sources." (Id., at 305) (emphasis added).

In Susquehanna, the intervenor presented a contention which did contain significant new information, in that it presented a forecast of a significantly lower power demand for a period equal to the projected life of the plant --a period significantly longer than that cited by ACORN. ACORN's reference to Applicants' inability to sell power "outside the State of Texas" does not present any significant or new information which was not available during the Construction Permit proceeding. Accordingly, the Staff is of the view that ACORN's motion with respect to these contentions should be denied.

ACORN Contention 28

The Applicants have not considered the costs of replacement of major pieces of equipment and their disposal in their cost-benefit balance.

In rejecting this contention, the Licensing Board noted that ACORN had failed to provide the requisite basis (Order, at 6). ACORN complains that the Licensing Board failed to "provide information as to the Board's view on why those contentions lacked basis" (Motion, at 3), and argues that the basis for this contention is "as valid as the basis provided on any of the four items listed in [the] cost benefit contention admitted as contention 24 in the Board's order" (Id.). In the view of the NRC Staff, ACORN has failed

to provide any information sufficient to constitute a basis for this contention and, whatever may be the correctness of the Licensing Board's decision in admitting other cost benefit contentions,^{8/} this particular contention is not supported by an adequate basis and was properly rejected by the Licensing Board. Indeed, ACORN does not point to any such basis in its objection to the Licensing Board's denial of this contention. Accordingly, the Staff submits that ACORN's motion with respect to this contention should be denied.

ACORN Contention 29

Applicants have not considered the environmental effects of storage and ultimate disposal of nuclear waste in their cost-benefit balance.

The Licensing Board rejected this contention on the ground that it lacked basis. ACORN does not appear seriously to contest this finding -- nowhere in ACORN's Motion is this contention specifically discussed. The NRC Staff is of the view that the contention was properly rejected by the Licensing Board and, accordingly, ACORN's motion with respect to this contention should be denied.

ACORN Contention 30

The Applicants have failed to postulate the possibilities, the effect on the environment, and the cost of "cleanups" which necessarily follow a nuclear accident such that a favorable cost-benefit balance cannot be struck.

^{8/} The Staff notes that the other cost benefit contentions admitted by the Licensing Board were originally framed as CASE Contentions 6(a), (c), (d), and 7, and ACORN Contention 31 (Order, at 17).

This contention was rejected by the Licensing Board on the ground that it lacked basis (Order, at 6). ACORN's Motion objecting to the Licensing Board's decision fails to point to any information sufficient to establish a basis for the contention. Rather, ACORN complains that the Licensing Board did not "provide information as to the Board's view on why those contentions lacked basis," and ACORN argues that the basis for this issue is "as valid as the basis provided on any of the four items listed in the cost benefit contention admitted as contention 24 in the Board's order" (Motion, at 3). In the view of the NRC Staff, ACORN has failed to provide the requisite basis in support of this contention. As we discussed supra with respect to ACORN's Contention 28, whatever may be the correctness of the Licensing Board's admission of other cost benefit contentions, this particular contention was not supported by adequate basis, and it was properly rejected by the Licensing Board. Accordingly, the Staff recommends that ACORN's motion with respect to this contention should be denied.

II

NO REASON EXISTS FOR THE CERTIFICATION OF THESE
CONTENTIONS TO THE APPEAL BOARD

ACORN has requested that each and every one of its contentions, to the extent that they are not reconsidered and admitted by the Licensing Board, be certified to the Appeal Board for review (Motion, at 6). The NRC Staff opposes ACORN's motion, and recommends that it be denied.

A motion for certification must demonstrate (a) that certification is necessary to avoid detriment to the public interest or (b) that failure to certify the issue will result in unusual delay or expense to be incurred by a party in the proceeding.^{9/} While Commission regulations do not specifically set out the requirements for motions for certification to the Appeal Board, this issue has been discussed in numerous Appeal Board decisions. E.g., Project Management Corp. (Clinch River Breeder Reactor Plant), ALAB-326, 3 NRC 406, reconsid. denied, ALAB-330, 3 NRC 613, rev'd in part sub nom. USERDA (Clinch River Breeder Reactor Plant), CLI-76-13, 4 NRC 67 (1976). As a general matter, interlocutory appeals are disfavored and will not be permitted. 10 CFR § 2.730(f). Thus, while appeals are permitted from an order which denies all of a petitioner's contentions, an appeal may not be taken where some of the petitioner's contentions have been accepted. 10 CFR § 2.714(a) and (b); Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), ALAB-599, 11 NRC ____ (slip op., July 3, 1980); Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-339, 4 NRC 20 (1976). The pending motion filed by ACORN altogether fails to demonstrate that the issues therein raise a question which, absent certification, would result in detriment to the

^{9/} Pursuant to 10 CFR § 2.730(f), only "[w]hen in the judgment of the presiding officer prompt decision is necessary to prevent detriment to the public interest or unusual delay or expense, the presiding officer may refer the ruling promptly to the Commission" Also, while the Appeal Board has the power to direct certification pursuant to 10 CFR § 2.718(i), it generally will do so only where the party requesting such directed certification has shown that without certification, (a) the public interest will suffer or (b) unusual delay and expense will be experienced. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-271, 1 NRC 478, 483 (1975). Accord, Puerto Rico Water Resources Authority (North Coast Nuclear Plant, Unit 1), ALAB-361, 4 NRC 625 (1976); Toledo Edison Co. (Davis-Besse Nuclear Power Station), ALAB-300, 2 NRC 752, 759 (1975).

public interest or unusual delay and expense to a party to this proceeding. In sum, no reason is presented which would indicate that certification of ACORN's contentions to the Appeal Board is appropriate. All that appears in ACORN's motion is an attempt to circumvent Commission regulations by seeking to have the Licensing Board "certify" an interlocutory appeal to the Appeal Board. In the view of the NRC Staff, ACORN's motion for certification is baseless and should be denied.

III

NO REASON EXISTS FOR RECONSIDERING THE WORDING OF
CERTAIN ACCEPTED CONTENTIONS OR FOR ACCEPTING ACORN'S OFFER OF PROOF

The remaining portion of ACORN's pending motion requests that the Licensing Board reconsider its rewording of ACORN's Contentions 14 and 25, renumbered by the Licensing Board as Contentions 5 and 23, respectively. The NRC Staff opposes ACORN's motion and recommends that it be denied.

ACORN Contention 14 (Renumbered as Accepted Contention 5)

Prior to arriving at the present reformulation of the intervenors' quality assurance-quality control (QA/QC) contentions in its Order of June 16, 1980, the Licensing Board once before had attempted to formulate a comprehensive contention which would consolidate all of the QA/QC contentions advanced by the three intervenors in this proceeding. That previous formulation, adopted by the Licensing Board sua sponte in its "Order Relative to Standing of Petitioners for Leave to Intervene," dated June 27, 1979 (p. 11), read as follows:

The Applicants have failed to establish and execute a quality assurance/quality control program which adheres to the criteria in 10 CFR Part 50, Appendix B.

Subsequently, the Licensing Board adopted the present reformulation of the QA/QC contention, upon the recommendation of the Staff, in an effort to narrow the QA/QC contention to one which was more amenable to litigation while, at the same time, assuring that each of ACORN's concerns (as well as those of the other intervenors) would be properly addressed. In the view of the NRC Staff, the present reformulation encompasses all of the QA/QC contentions which have been advanced by the intervenors in this proceeding.

Indeed, a reading of the presently accepted QA/QC contention demonstrates that each of ACORN's QA/QC contentions is encompassed therein -- and ACORN fails to point out in what manner this reformulation does not reflect its own QA/QC contentions.^{10/}

10/ ACORN initially advanced the following QA/QC contentions:

- (1) "The Comanche Peak Containment units are structurally deficient for the safe operation of the plant" (ACORN Safety Contention 16);
- (2) "Walls of a Seismic One category in the control room are unstable and unsafe" (ACORN Safety Contention 17);
- (3) "Construction of the Comanche Peak facility has been marred by a lack of observance of quality assurance-quality control" (ACORN Safety Contention 18); and
- (4) "Brown and Root has failed to adequately supervise and guarantee the safe construction of the Comanche Peak facility" (ACORN Safety Contention 19).

The bases for all of these contentions related entirely to concrete work, welding, mortar blocks, and QA/QC inspection and testing. See "Supplemental Petition and Contentions of Intervenors, ACORN, Mary and Clyde Bishop and Oda and William Wood," dated May 7, 1979, at 16-19, Paras. 31-38.

ACORN now complains that the Licensing Board's present reformulation of the QA/QC contention is inadequate, and urges that the Licensing Board's earlier formulation be re-adopted. ACORN's objection that the present reformulation of the QA/QC contentions "severely limits the scrutiny of significant deviations, violations and other problems," as identified in various I&E Inspection Reports cited by ACORN (Motion, at 4-5), is incorrect. Thus, while ACORN never previously referred to those reports in support of its contentions, another intervenor, Citizens for Fair Utility Regulation (CFUR), did rely upon many of these materials, referring to information taken from "IE Inspection Reports 73-02 - 78-18" in support of its QA/QC contentions.^{11/} As a result, many of the I&E reports now cited by ACORN already have been referred to and may become the subject of litigation in this proceeding.

In its Motion, ACORN seeks to present an "offer of proof" (Motion, at 5), in an attempt to expand the basis for its QA/QC contention. To the extent that ACORN's "offer of proof" seeks to expand the basis for this contention, it comes too late in time, and should be denied without prejudice to submitting such motion during evidentiary stages of this proceeding. Furthermore, to the extent that ACORN's "offer of proof" seeks to introduce evidence into this proceeding, in accordance with the provisions of 10 CFR § 2.743, it is premature at this stage of the proceeding and should be denied. Finally, the NRC Staff is of the view that no reason has been presented that would support

^{11/} "First Corrections to Supplement to Petition for Leave to Intervene By Citizens for Fair Utility Regulation (CFUR)," dated May 22, 1979, at 3 (amending "Supplement to Petition for Leave to Intervene Filed by . . . (CFUR)," dated May 7, 1979).

a revision of the presently accepted QA/QC contention and, accordingly, the Staff recommends that this aspect of ACORN's motion be denied.

ACORN Contention 25 (Renumbered as Accepted Contention 23)

The Licensing Board accepted ACORN's Contention 25, concerning health effects on the population surrounding the CPSES plant site, and consolidated this contention with that of another intervenor, Citizens Association for Sound Energy (CASE). The Licensing Board then modified the contention as follows:

Neither the Applicants nor the Staff has adequately considered the health effects of low-level radiation on the population surrounding CPSES inasmuch that the CPSES design does not assure that radioactive emissions will be as low as is reasonably achievable.

ACORN now objects to the present formulation of this contention, insofar as it includes the portion underlined above, on the ground that "its original contention 25 was admissible as worded and should be admitted in that form" (Motion, at 4). The Staff opposes ACORN's motion, and notes that ACORN, itself, previously sought to limit its contention in the very manner that the Licensing Board has now done. Thus, in "ACORN's Statement of Position on Contentions," dated April 10, 1980, ACORN distinguished its contention from the contention involved in Black Fox,^{12/} and argued as follows (p. 36):

[I]n the question certified out of the Oklahoma proceeding, it was assumed that radioactive emissions would be kept "as low as is reasonably achievable". ACORN's contention makes no such assumption. ACORN's contention implies that the CPSES design does not insure that emissions are "as low as is reasonably achievable". In fact, ACORN's Original Contentions Thirty-Two and Thirty-Three specifically articulated that position. Rather than attacking the present regulatory standards, ACORN is contending that the Staff and Applicant

^{12/} Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-573, 10 NRC 775, 790 (1979).

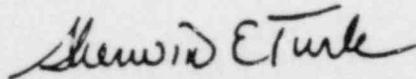
have not adequately insured that CPSES meets the present regulatory standards. (Emphasis added.)

In light of ACORN's prior statement, the Staff is of the view that ACORN's motion with respect to this contention should be denied.

Conclusion

For the foregoing reasons, the NRC Staff respectfully submits that ACORN's "Motion for Reconsideration or in the Alternative Motion for Certification," and its "Motion for Reconsideration of the Wording of Certain Accepted Contentions Along with an Offer of Proof," are totally without merit in all respects. Accordingly, the Staff opposes ACORN's motions, and urges that they be denied.

Respectfully submitted,



Sherwin E. Turk
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 21st day of July, 1980

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWER TO ACORN'S MOTION FOR RECONSIDERATION OR IN THE ALTERNATIVE MOTION FOR CERTIFICATION OF CONTENTIONS DENIED IN THE BOARD'S ORDER SUBSEQUENT TO THE PREHEARING CONFERENCE OF APRIL 30, 1980 AND MOTION FOR RECONSIDERATION OF THE WORDING OF CERTAIN ACCEPTED CONTENTIONS ALONG WITH AN OFFER OF PROOF" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 21st day of July, 1980:

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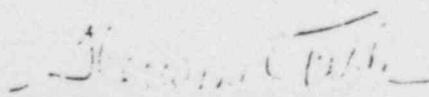
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