

July 29, 1980

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, et al.) 50-446
)
(Comanche Peak Steam Electric) (Application for
 Station, Units 1 and 2)) Operating License)

APPLICANTS' ANSWER OPPOSING CASE'S
MOTIONS AND SUPPLEMENT FOR RECONSIDERATION
OF DENIED OR REWORDED CONTENTIONS AND FOR
CERTIFICATION OF CONTENTIONS

Pursuant to 10 C.F.R. §2.730(c), Texas Utilities Generating Company, et al. ("Applicants"), hereby submit an answer in opposition to the Motions and Supplement thereto filed by Citizens Association for Sound Energy ("CASE") on July 14, 1980 ("CASE Motions") with the Atomic Safety and Licensing Board ("Board") in the captioned proceeding. CASE moved that the Board reconsider its denial of certain CASE proposed contentions and the wording of certain admitted CASE proposed contentions in the Board's June 16, 1980, "Order Subsequent to the Prehearing Conference of April 30, 1980" ("Order"). CASE also moved in the alternative that the Board certify to the Atomic Safety and Licensing Appeal Board ("Appeal Board") or to the Nuclear Regulatory Commission ("Commission") itself each of CASE's proposed contentions which were denied or reworded. Applicants hereby submit that the Board should deny each of CASE's motions.

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I. ARGUMENT

CASE has failed to raise any new information or set forth any arguments which would warrant reconsideration of this Board's Order. Generally, CASE merely asserts the same arguments and points raised in its April 10, 1980, Position on Contentions and at the prehearing conference. Absent substantive reasons not heretofore presented or reasonably meritorious arguments, the Board should not reconsider its Order. CASE's unfounded and insulting attack upon the Board's integrity and conduct l/ evidences at a minimum a lack of respect for this Board and the Commission's Rules of Practice and flirts with contumacy. CASE should be cautioned that such attacks upon the Board are serious matters which are proscribed by NRC Rules of Practice. Such contemptuous conduct could warrant dismissal of a party from the proceeding. 10 C.F.R. §2.713(c); see Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 2), ALAB-474, 7 NRC 746, 749 (1978).

A. CASE Proposed Contention 1 Was Properly Denied Admission.

As to proposed Contention 1, CASE merely asserts that the Board was wrong in denying the proposed contention. CASE simply states, in part, that the Board's reason for denying admission of the contention is not "adequate

l/ See CASE Motion at pp. 6, 11.

"grounds" for doing so. To the contrary, the Board properly ruled on proposed Contention 1. In short, the purported basis for the proposed contention lacks a factual or logical nexus to the Comanche Peak facility and the contention is unacceptably vague. 2/

Further, CASE argues that "the Board and/or the NRC Staff" should work with CASE to assure the issues raised in its proposed Contention 1 are addressed in the hearings. CASE evidently fails to comprehend the applicable processes and requirements for raising issues in this proceeding.

CASE is required to set forth the contentions it wants litigated and CASE must set forth the basis for each contention with reasonable specificity. 10 C.F.R. §2.714(b). It is not the duty or function of the Board or the Staff to lead this intervenor through the proceeding. Clearly, under the Administrative Procedure Act ("APA"), 5 U.S.C. §551 et seq., and the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2011 et seq. and the regulations promulgated thereunder, the Board has no duty to recast proposed contentions to make them admissible. Commonwealth Edison Co. (Zion

2/ In its Supplement (dated July 14, 1980) to its Motions, CASE cited letters that it suggests indicate the Applicants have withdrawn from leasing agreements concerning use of the Squaw Creek Reservoir for recreational purposes. To the contrary, as CASE briefly stated, Applicants still intend to make provisions for such use. See July 3, 1980 letter from Billy R. Clements (TUGCO) to David J. Preister (Texas Attorney General's Office).

Station, Units 1 & 2), ALAB-226, 8 AEC 381, 406 (1974).

CASE's request in that regard is, therefore, inappropriate and should be denied.

CASE's arguments relying on statements made by the Staff during unfruitful negotiations on stipulations of contentions are without substance. Discussions and tentative ~~proposals~~ of any party developed during such negotiations are irrelevant now.

In addition, CASE raises in its Supplement to its Motions mere allegations regarding lignite plant operations which are wholly unrelated to Comanche Peak, and thus constitute pure speculation by CASE. CASE does not show the requisite factual and legal nexus between the allegations and Comanche Peak to justify use of this information as a basis for reconsideration of the contention. Nor does CASE satisfy the requirements of 10 C.F.R. §2.714(a)(1)(i-v) for amending its purported basis for proposed Contention 1.

B. CASE Proposed Contention 3 Was Properly Denied Admission.

The Board need not address every specific factual and legal argument raised by the parties in issuing a decision. The Administrative Procedure Act ("APA"), 5 U.S.C. §551 et seq., and the Commission's Rules of Practice require only that a decision by this Board make clear its basis and sufficiently inform the parties of the disposition of their contentions. See Boston Edison Company (Pilgrim Nuclear Power Station), ALAB-83, 5 AEC 354, 371 (1972), aff'd, Union

of Concerned Scientists v. AEC, 499 F.2d 1069, 1094 (D.C. Cir. 1974); Wisconsin Electric Power Company (Point Beach Nuclear Plant, Unit 2), ALAB-78, 5 AEC 319, 321 (1972). The Appeal Board in Prairie Island aptly stated this principle, as follows:

We deem it to be the general duty of licensing boards to insure that initial decisions and miscellaneous memoranda and orders contain a sufficient exposition of any ruling on a contested issue of law or fact to enable the parties, and this Board on its own review, readily to apprehend the foundation for the ruling. [Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-104, 6 AEC 179, 179 n.2 (1973) (emphasis added).]

The Board's Order clearly satisfied these standards. The Board set forth in its Order the foundation for the denial of each of CASE's proposed contentions so rejected.

Regarding CASE proposed Contention 3, the Board set forth the applicable legal standards and specifically found that CASE did not fulfill those standards. Accordingly, CASE's argument that the Board should reconsider CASE proposed Contention 3 because the Board's Order did not directly address every aspect raised by CASE is inadequate as a matter of law to warrant reconsideration of the Board's decision.

CASE also challenges the Board's interpretation of the law regarding the admissibility of need for power contentions at the operating license stage. However, the Board correctly

applied the law to CASE proposed Contention 3. Further, as to CASE's requests that the Board recast the contention by setting forth the information CASE must provide to warrant consideration of the contention, it is not the Board's obligation to make this Intervenor's case for it.

C. CASE Proposed Contention 8 Was Properly
Denied Admission.

The Commission's Statement of Interim Policy on Accident Considerations Under NEPA 3/ is intended to be "immediately effective." 45 Fed. Reg. 40101 (emphasis added). The Policy Statement is "interim" only in the sense that upon completion of ongoing related rulemaking activities, and upon consideration of the experience gained with this interim statement, the Commission intends to pursue possible codification in Commission regulations of its position on the role of accident risks in NEPA reviews. 45 Fed. Reg. at 40104. Clearly, the Statement is labeled "interim" because the subject matter may later be dealt with by regulation rather than in a Policy Statement.

In any event, the Policy Statement is binding upon this Board. Accordingly, CASE's suggestion that this Board should certify proposed Contention 8 to the Commission because the

3/ U.S. Nuclear Regulatory Commission Statement of Interim Policy, "Nuclear Power Plant Accident Considerations Under the National Environmental Policy Act of 1969." 45 Fed. Reg. 40101 (June 13, 1980).

Policy Statement is labeled "interim", is based upon a misunderstanding of the effect of the Policy Statement on this proceeding. CASE's request for certification should, therefore, be denied.

CASE's further objections as to the denial of its proposed Contention 8 go solely to the substance of the Policy Statement. In short, CASE is quibbling with the Commission's determination that Applicants which filed Environmental Reports prior to July 1, 1980, need not amend those Reports to address Class 9 accidents. The Commission will, however, require the NRC Staff to consider such accidents fully in Final Environmental Impact Statements which have not yet been issued. If CASE objects to this approach, the proper method for addressing its concerns is through submission of comments to the Commission on the Statement. Indeed, CASE states that it intends to file comments with the Commission on this point. 4/ CASE's objections to the Policy Statement are not, therefore, proper for consideration by this Board, which is bound by the Commission's pronouncement of policy.

D. CASE Has Not Demonstrated That The Board
Abused Its Discretion In Establishing
The Wording of Contentions 5 and 23.

The NRC Rules of Practice authorize this Board to define the issues to be addressed in licensing proceedings. 10 C.F.R.

4/ As CASE notes, the period for comment on the Policy Statement extends until September 11, 1980. 45 Fed. Reg. 40101.

§§2.714(f), 2.715a(d) and 2.752(a)(1)(c). CASE has failed to demonstrate that the Board abused its discretion in establishing the wording of Contentions 5 and 23 in order to define the issues for this proceeding. Further, CASE raises no new information or arguments with respect to either contention not already before the Board when it issued its Order. 5/ In fact, the wording of Contention 5 has been the subject of lengthy debate in which CASE participated in its April 10, 1980 Statement of Positions, at the prehearing conference, and in its May 12, 1980, motion regarding the wording of Contention 5. CASE has thus had ample opportunity to state its position on these contentions and does no more now than reiterate its previously stated positions. The Board worded Contention 5 as it saw fit in the exercise of its authority to establish the issues for trial.

As to Contention 23, CASE suggests that its allegations regarding the health effects of low-level radiation include a separate and distinct concern as to the adequacy of the Commission's current Standards for Protection Against Radiation, 10 C.F.R. Part 20, in light of an "increase in knowledge regarding the health effects of radiation." This constitutes a proscribed challenge to Commission regulations. 10 C.F.R. §2.758. Further, contrary to CASE's assertion,

5/ In its discussion of Contention 23, CASE maintains erroneously that Applicants used an outdated version of Regulatory Guide 1.109 for evaluating compliance with 10 C.F.R. Part 50, Appendix I. CASE apparently overlooked FSAR page 1A(B)-46 where it states that Revision 1 (October 1977) of Regulatory Guide 1.109 was used to evaluate compliance with Appendix I.

the ongoing rulemaking regarding 10 C.F.R. Part 20 is grounds for denying consideration of such a contention in this individual licensing proceeding. Potomac Electric Power Company (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 85 (1974).

Accordingly, the Board should deny CASE's motion for reconsideration of the wording of Contentions 5 and 23, and with respect to Contention 23 should reword the contention to confine it to an examination of compliance with the ALARA standard, as Applicants requested in our July 1, 1980 Statement of Objections.

E. The Board Should Summarily Deny CASE's Request For Consideration Of Other Denied Contentions.

The Rules of Practice require that a motion state with particularity the grounds for the motion. 10 C.F.R. §2.730(b). With respect to the Board's denial of CASE proposed Contentions 6(b), 6(e) and 10, CASE sets forth no reasons for the Board to reconsider that denial. CASE thus fails to satisfy applicable Commission rules for the relief sought. Accordingly, the Board should summarily deny CASE's motion with respect to proposed Contentions 6(b), 6(e) and 10.

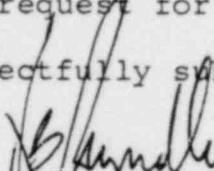
F. The Board Should Not Certify the Denial of CASE Proposed Contentions or the Wording of Accepted Contentions to the Commission or the Appeal Board.

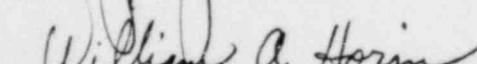
Certification of a Licensing Board's decision is the exception and not the rule. Toledo Edison Company (Davis-Besse Nuclear Power Station), ALAB-300, 2 NRC 752, 759 (1975). The Licensing Board should certify a question to

the Commission or the Appeal Board only when "a prompt decision is necessary to prevent detriment to the public interest or unusual delay or expense." 10 C.F.R. §§2.730(f), 2.758(b)(1); see Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-271, 1 NRC 478, 483 (1975).

CASE has not demonstrated that any of its requests for certification satisfy the above requirements. Indeed, CASE merely asserts, without demonstration, that the standard for certification set forth in 10 C.F.R. §2.730(f) is met. To the contrary, Applicants submit that the public interest will be advanced if piecemeal consideration by the Commission or the Appeal Board of this Board's decisions at this stage in the proceeding is avoided. It is precisely this type of request for certification (seeking interlocutory review of Licensing Board action) which the appellate tribunals of this agency have made clear should be avoided. Accordingly, the Board should deny the CASE request for certification.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Applicants' Answers Opposing CASE's Motions And Supplement For Reconsideration Of Denied Or Reworded Contentions And For Certification Of Contentions," in the captioned matter were served upon the following persons by deposit in the United States mail, first class postage prepaid this 29th day of July, 1980:

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