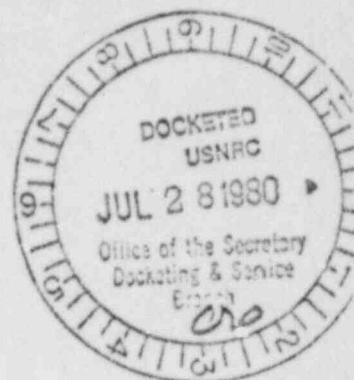


July 23, 1980

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY 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)	)	

CFUR'S (1) OBJECTION TO APPLICANTS' STATEMENT OF OBJECTIONS TO PREHEARING CONFERENCE ORDER FOR LACK OF TIMELINESS (2) MOTION REQUESTING APPLICANTS' COMPLIANCE WITH REGULATIONS REGARDING EXTENSIONS OF TIME (3) MOTION FOR EQUAL-TIME EXTENSION FOR RESPONDING TO APPLICANTS' STATEMENT OF OBJECTIONS AND MOTION AND (4) CFUR'S PARTIAL SUBSTANTIVE OBJECTIONS TO APPLICANTS' STATEMENT OF OBJECTIONS AND MOTION FOR MODIFICATION

I.

On June 16, 1980, the Atomic Safety and Licensing Board "Board" issued its "Order Subsequent to the Prehearing Conference of April 30, 1980" ("Order"). That Order defined certain contentions proposed by intervenors and questions from the Board which would be included and considered as relevant issues at the hearings in this proceeding. Applicants have objected and have requested modification of certain of its portions.

It is reasonable to conclude that Texas Utilities Company, et al. ("Applicants") received a copy of the June 16, 1980 Order during the week of June 18, 1980 if not on June 16, 1980. Applicants, however, failed to file any Objections to that Order within five (5) days as required by 10 CFR §2.752(c). Instead,

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they filed Applicants' Statement of Objections to Prehearing Conference Order and Motion for Modification ("Applicants' Objections") on or after July 1, 1980, at least (6) days late. Due to this late filing, the Board is without authority to consider Applicants' Objections or use them as a basis for revising or modifying the Order of June 16, 1980, as explained herein.

The regulations promulgated by the Commission are the essential framework for proceeding before the Commission and its Boards. Not only do the regulations provide guidelines for proceeding, they also serve as constraints on the power exercised by the Commission. In its actions, the Commission must strictly adhere to the procedures established by its own regulations in carrying out its authorities. It is clear that the failure of a governmental agency to follow its regulations voids all action resulting from that deviation. Service v. Dallas, 354 U.S. 363 (1957).

Should the Board modify or revise its June 16, 1980 Order pursuant to Applicants' Objections, it would be violating 10 CFR §2.752(c) which empowers the Board to revise such orders only upon the timely filing of objections. Consequently, any modification of the Order would be improper and void unless certain procedures are first followed.

In Applicants' Objections it is alleged that they were given oral authorization to file the Objections out of time. Such an extension, however, is improper. Should Applicants have desired

an extension of time to file objections under 10 CFR §2.752(c), their remedy was to petition for a waiver or exception as specified by 10 CFR §2.758. Clearly, Applicants have made no effort to comply with Section 2.758 in requesting a waiver or exception to that section or otherwise shown good cause for the late filing of their Objections.

The exclusive remedies for a party to seek modification of the Commission's regulations are 10 CFR §2.758 and 10 CFR §2.802. Citizens for Safe Power, Inc. v. NRC, 524 F.2d 1291, 1298 (D.C. Cir. 1975). Since Applicants have made no effort to seek either of these remedies, there is no authority for allowing them to file their Objections out-of-time in contravention of 10 CFR §2.752(c). Consequently, Applicants' Objections are not timely filed and the Board cannot properly modify or revise its Order of June 16, 1980 without the Applicants having following certain specified procedures. Should 10 CFR §2.758(c) be ignored in the proceeding, the Board will have engaged in improper de facto rulemaking in effectively recinding that Section. Oglala Sioux Tribe of Indians v. Andrus, 603 F.2d 707 (8th Cir. 1979); Lavitareilli v. Seaton, 359 U.S. 535 (1959); Dilley v. Alexander, 603 F.2d 914 (D.C. Cir 1979).

## II.

As a consequence of the Board's condoning the failure of the Applicants to file a petition for exception or waiver to the filing deadline and the Board's granting, ex parte, an oral

request for exception, CFUR was denied the ability to respond to the Applicants' request for an untimely filing. The opportunity for CFUR to respond to the Applicants' request for untimeliness is specifically set forth in Section 2.758 and is consistent with the procedural protections of notice and the opportunity for a hearing regarding the suspension of rules regulating administrative proceedings as guaranteed by the Due Process Clause of the Fourteenth Amendment of the United States Constitution. CFUR now moves the Board to require the Applicants to conform with 10 CFR §2.758 including an affidavit accompanying the petition as required by the regulation.

Alternatively, CFUR would request that the Applicants follow the procedures prescribed in 10 CFR §2.802, "Petition for Rule Making." Under either procedure, CFUR will have guaranteed to it the opportunity to object to any request for a waiver of any of the regulations under which this proceeding is being conducted. CFUR specifically objects to the ex parte oral exception which was given to the Applicants without notice or opportunity to object in violation of Section 2.730(b), which specifically requires that

Unless made orally on the record during a hearing, or the presiding officer directs otherwise, a motion shall be in writing, shall state with particularity the grounds and the relief sought, and shall be accompanied by any affidavits or other evidence relied on, and, as appropriate, a proposed form or order.

There is no order reflecting that the presiding officer

directed "otherwise." Because this ex parte granting of an extension will affect substantive due process rights of CFR, as explained below in Paragraphs III and IV, CFUR would respectfully submit that the action of the presiding officer was arbitrary and capricious. CFUR respectfully requests that the Applicants be required to comply with the regulations respecting exceptions to the rules so that CFUR may have an adequate opportunity to respond to any such motion for exception to filing deadlines.

III.

The papers in this cause will reflect that while the Applicants have had approximately fifteen (15) days to review the NUREG-0694, by virtue of having "advance copies" (Exhibit A), CFUR, on the other hand, has had only five days to review that thirty-eight page document and file a response to the Applicants' Objections and Motion for Modification. Specifically, CFUR has reason to believe and does believe that the Applicants received an "advance copy" of NUREG-0694 on June 16, 1980. The Applicants filed their Objections to the Prehearing Order and Motion for Modification on July 1, fifteen (15) days following their receipt of NUREG-0694. CFUR received a copy of said document from the Applicants on July 8, and made a request on July 9 for five days' additional time to respond to the Applicants' motion of July 1. CFUR requested a copy of NUREG-0694 and received it on July 13 (See attached affidavit of Dick Fouke). CFUR was given only five days to review NUREG-0694 & was required to file a response by

July 23. Applicants, on the other hand, were given three times as long, i.e., fifteen days to review that same regulation and file their objections and motions. CFUR would respectfully request equal time as was granted the Applicants in order to review and to respond to the Applicants' Objections and Motion. The Applicants would specifically object to this inequality of review and response time on the basis of the Equal Protection and Due Process clauses of the Fourteenth Amendment of the United States Constitution. On that same legal basis, but without waiving any prior objections, CFUR would respectfully move the Board at this time to grant it an extension of ten days, until August 4, 1980, to file a response to the Applicants' out-of-time Objections and Motion.

#### IV.

Without waiving any of the foregoing objections and motions, if they be denied, CFUR, in the alternative, presents this partial response to the Applicants' Objections and Motion. Due to the unequal constraints of time, as enumerated in Paragraph III above, CFUR was not able to respond completely to the Applicants' objections and motions.

CFUR'S ANSWER OPPOSING APPLICANTS'  
MOTION FOR MODIFICATION

Citizens for Fair Utility Regulation (CFUR) hereby submits an answer in opposition to the Motion For Modification filed by Texas Utilities Generating Company, et. al (Applicants) on July 16, 1980.<sup>1</sup> The Applicants moved that the Atomic Safety and Licensing Board (Board) modify its Order of June 16, 1980 with regard to Contentions 3, 4 and 9. CFUR submits that the Board should deny each of the Applicants' motions.

A. Contention 3. The computer codes used in the CPSES/FSAR must be tested and, if necessary, modified to accept the parameters reflecting the sequence of events at Three Mile Island and then to realistically predict plant behavior.

CFUR'S Initial Answer:

The Applicants state that this contention clearly seeks imposition of requirements in addition to the requirements of NUREG-0694. This statement is evidently based on requirement I.C.1 on page 13 of NUREG-0694. That portion of requirement I.C.1 stated on page 13 and which shall be met before fuel loading directs the Applicant and Staff to analyze small break LOCA's and inadequate

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<sup>1</sup> The Board authorized CFUR to file this answer out of time; "Order Relative to Additional Time For CFUR and CASE," July 10, 1980.

core cooling which encompass a significant portion of the design basis accident scenarios.

Additional requirements of NUREC-069<sup>1</sup> are also pertinent. Requirement I.C.8 on page 21 directs the NRC Staff to audit small-break LOCA's, loss of feedwater, restart of engineered safety features following a loss of AC power, steam-line break, or steam-generator tube rupture. These scenarios include additional design basis accidents. A properly conducted audit requires an analysis of these accidents. This action must be completed prior to issuance of a full-power license.

Requirement II.B.1.1 on page 23 specifies that design basis accidents and transients and corresponding acceptance criteria for the AFWS must be analyzed before issuance of a full-power license. This requires consideration of additional design basis criteria.

Requirement I.A.1.1 on page 28 specifies that the Shift Technical Advisor receive specific training in the design, function, arrangement and operation of plant systems and in the expected response of the plant and instruments to normal operation, transients and accidents including multiple failures of equipment and operator errors. Specific training implies that someone somewhere has been able to analyze these events -- simple exposure does not constitute training. This requirement shall be met by January 1, 1981 -- prior to the scheduled issuance of the CPSES operating license.

Additional I.C.1 requirements on page 30 direct the Applicant and Staff to analyze the design basis transients and accidents,



including single active failures and considering additional equipment failures and operator errors. This requirement was intended to be completed in early 1980; however, some difficulty in completing this requirement has been experienced. Clarification of the scope and revision of the schedule are being developed and will be issued by July, 1980. CFUR has no information concerning possible schedules for this requirement.

The extent of the deficiencies in present analyses of design and off-normal transients and accidents is reflected in the NRC Lessons Learned Task Force Short-Term Recommendations (emphasis added). A partial list compiled from pages A-42 through A-45 of NUREG-0578 follows:

"The experience of the TMI-2 accident indicates further analyses of transients and small LOCAs are needed."

"Even for those cases in which guidelines are supplied, the guidelines are usually based on the transient and accident analyses from Section 15 of the Final Safety Analysis Report used in the licensing design review. This is not satisfactory since the Section 15 FSAR analyses are performed to demonstrate the acceptability of various system designs pursuant to specific and prescriptive design basis events derived from the Commission regulations. More and a different kind of analysis is needed for use in developing emergency procedures and operator training."

"The analyses of transients and accidents shall include the design basis events specified in Section 15 of each FSAR. The analyses shall include a single active failure... Consequential failures shall also be considered. Failures of the operators to perform required control manipulations shall be given consideration for permutations of the analyses. Operator actions that could cause the complete loss of function of a safety system shall also be considered."

"In addition to the analyses performed by the reactor vendors, analyses of selected transients should be performed by the NRC Office of Research, using the best available computer codes... These data together with comparisons to data, including LOFT small break test data, will constitute the short-term verification effort to assure the adequacy of the analytical methods being used to generate emergency procedures."

These recommendations do not in any way or manner conflict with CFUR's contention. It is noted by the Task Force that the Section 15 FSAR analyses are in themselves deficient in that ostensibly the analyses performed in Section 15 are supposed to demonstrate acceptability of design but that they only address specific and prescriptive design basis accidents derived from the Commission's regulations. Even though deficient in the range of accidents addressed, it is evident that the Task Force considers the degree of analysis to be deficient as well -- which is the subject matter of this contention.

What is not clear from the information available to this intervenor is when the Commission intends for these deficiencies to be corrected. In the view of CFUR, Requirements I.C.1 as stated on page 13 of NUREG-0694 together with requirements I.C.3, II.E.1.1 and I.A.1.1 constitute a requirement to analyze essentially all of the design basis accidents taking into consideration human interfaces. In particular, there is no way CFUR can think of to train an individual in the expected response of the plant and instruments to transients and accidents without performing an adequate analysis. In addition, there is no way to demonstrate acceptability of design

for any range of accidents unless it is demonstrated that the equipment can be maintained and operated by available persons (reasonable intelligence, proper pay scale, appropriately challenging, attainable training, etc.). The computer codes used in the CPSES/FSAR do not accomplish this.

It is clear that these requirements must be accomplished before the scheduled issuance of the CPSES operating license. CFUR maintains that Contention 3, as worded, is an acceptable contention based solely on these considerations.

CFUR wishes to point out that the contention, however, does not rely solely on TMI-related matters. A GAO report, EMD-79-67, documents that human error accounted for 18 percent of all reportable incidents in 1978, with specific operator error accounting for one-third of that percentage. Although TMI-2 was the event which dramatized these problems and is the event suggested to be used as a reference, TMI-2 was not the precursor and does not constitute the total basis for this contention.

Although CFUR maintains otherwise, if the Board decides only Requirement I.C.1 on page 30 of NUREG-0694 addresses all of the computer codes used in the CPSES/FSAR, the contention, as worded, is clearly acceptable and must be addressed before issuance of an operating license in the event that the Commission schedule is compatible with the short-term recommendations of the Task Force.

In the event that the Commission decides that requirement I.C.1 does not need to be addressed in the short-term and the Board decides as stated in the previous paragraph, CFUR takes the following positions:

1) CFUR should be allowed to intervene with respect to this contention to the extent allowed by the applicable portions of requirements I.C.1, I.C.8, II.E.1.1 and I.A.1.1 prior to issuance of an operating license and with respect to the balance of I.C.1 at the proper time.

2) The above requirements are for the purpose of assuring the adequacy of emergency procedures and operator training. Adequacy of design is an ancillary concern. The CPSES/FSAR purports to document adequacy of design but is clearly deficient. This deficiency should not be allowed to continue. This consideration alone should be sufficient reason to admit this contention.

B. Contention 4. The Applicants have not raised any new or intervening information which was not before the Board when it issued its Order. Rather, the Applicants are merely quibbling with the Board.

C. Contention 9. The Applicants, again, have not raised any new or intervening information which was not before the Board when it issued its Order. The Applicants continue to offer specious arguments. Reference is made to requirements set forth in 10 CFR part 50, Appendix I.

Section 20.106, "Radioactivity in Effluents to Unrestricted Areas," of the Commission's regulations in 10 CFR Part 20,

"Standards for Protection Against Radiation," establishes limits on concentrations of radioactive material in effluents to unrestricted areas. Paragraph 20.1(c) of 10 CFR Part 20 states that, in addition to complying within the limits set forth in that part, licensees should make every reasonable effort to maintain releases of radioactive materials in effluents to unrestricted areas as far below the limits specified as is reasonably achievable (ALARA).

This implies that the cumulative man-rem dosage should be minimized consistent with the measurement criteria established for ALARA purposes and is consistent with the basis for this contention. CFUR urges the Board to deny the Applicants' motion.

PRAYER

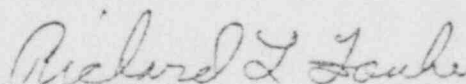
WHEREFORE, PREMISES CONSIDERED, CFUR respectfully prays that the Court grant its motion in the following respects:

(1) The Applicants be ordered by the Board to petition the Board for an exception or waiver pursuant to 10 CFR §2.758 or 10 CFR §2.802;

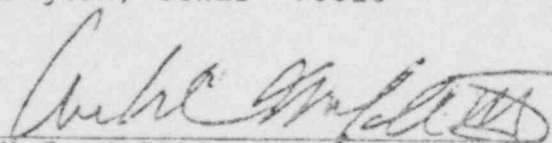
(2) The Board grant CFUR's motion for extension of time to file their response to the Applicants' Statement of Objections and Motion for Modification of Prehearing Conference Order, the extension being ten (10) days, until August 4, 1980;

(3) The Board sustain the partial objections by CFUR to the Applicants' Objections and Motion for Modification.

Respectfully submitted,



RICHARD FOUKE  
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Arlington, Texas 76010



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(214) 744-5044

JEFFERY L. HART  
4021 Prescott Avenue  
Dallas, Texas 75219

CERTIFICATE OF SERVICE

I hereby certify that copies of CFUR'S Objection to Applicants' Statement Of Objections To Prehearing Conference Order For Lack Of Timeliness, Etc. in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, this 23rd day of July, 1980.

Elizabeth S. Bowers, Esq., Chairman  
Atomic Safety and Licensing Board  
U. S. Nuclear Regulatory Commission  
Washington, DC 20555

Dr. Forrest J. Remick, Member  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

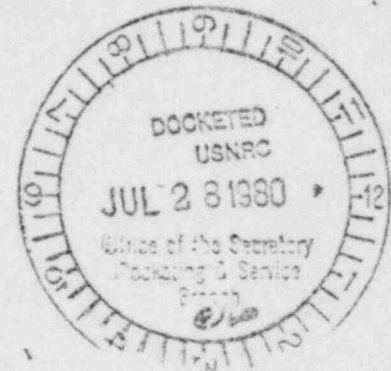
Richard Cole, Esq., Member  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Marjorie Ulman Rothschild, Esq.  
Office of Executive Legal Director  
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Mrs. Juanita Ellis  
President, CASE  
1426 South Polk Street  
Dallas, Texas 75224

Mr. Geoffrey M. Gay  
West Texas Legal Services  
100 Main Street (Lawyers Building)  
Fort Worth, Texas 76102



David J. Preister, Esq.  
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Austin, Texas 78711

Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Atomic Safety and Licensing Appeal Panel  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Docketing and Service Section  
Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

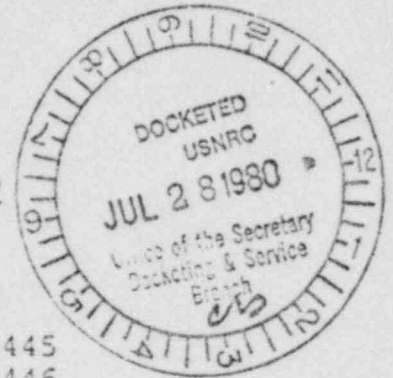
*Richard L. Fouke*

Richard L. Fouke  
CFUR



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY LICENSING BOARD



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

ORDER

On this day, the Board having received CFUR's (1) Objection to Applicants' Statement Of Objections To Prehearing Conference Order For Lack Of Timeliness (2) Motion Requesting Applicants' Compliance With Regulations Regarding Extensions Of Time (3) Motion For Equal Time Extension for Responding To Applicants' Statement Of Objections and Motion for Modification and (4) CFUR's Partial Objection To Applicants' Statement Of Objections On The Merits, is of the opinion that the motion is meritorious and should be granted in the following respects:

(1) The Applicants are ordered by the Board to petition the Board for an exception or waiver pursuant to 10 CFR §2.758 or 10 CFR §2.802 regarding its out-of-time Objections and Motion.

(2) The Board hereby grants CFUR's motion for extension of time to file their response to the Applicants' Statement of Objections and Motion for Modification of Prehearing Conference Order, the extension being ten (10) days, until August 4, 1980;

(3) The Board hereby sustains the partial objections by CFUR to the Applicants' Objections and Motion for Modification in the following respects:

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IT IS SO ORDERED.

FOR THE ATOMIC SAFETY AND  
LICENSING BOARD

Elizabeth S. Bowers, Chairman

Dated at Bethesda, Maryland, this \_\_\_\_\_ day of \_\_\_\_\_,  
1980.

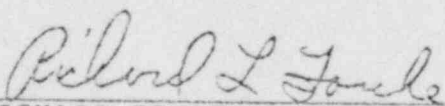
THE STATE OF TEXAS )  
                              )  
COUNTY OF DALLAS )

On this day personally appeared before me RICHARD FOUKE, to me well known, who on his oath deposes and says as follows:


My name is Richard Fouke. I have been active as an intervenor in a matter before the Nuclear Regulatory Commission styled In The Matter of TEXAS UTILITIES GENERATING COMPANY, ET AL. (Comanche Peak Steam Electric Station, Units 1 and 2), Dockets Nos. 50-445 and 50-446. I received NUREG-0694 on July 18, 1980, and had only five (5) days after receipt of same to respond even though the document is quite lengthy.

I found that due to the technical nature of the document, I was unable to complete my Objections on behalf of CFUR to the Objections of the Applicants, and I would respectfully request a ten-day extension so that I might have the same amount of time that the Applicants had to review the documents.

Respectfully submitted,

  
RICHARD FOUKE

SUBSCRIBED AND SWORN TO BEFORE ME this 23 day of  
July, 1980.

  
Notary Public in and for  
Dallas, County, Texas



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

July 11, 1980

Mrs. Juanita Ellis  
President, CASE  
1426 South Polk Street  
Dallas, TX 75224

In the Matter of  
Texas Utilities Generating Company, et al.  
(Comanche Peak Steam Electric Station, Units 1 and 2)  
Docket Nos. 50-445 and 50-446

Dear Mrs. Ellis:

Pursuant to our telephone conversation of yesterday, I am enclosing a copy of NUREG-0694, entitled "TMI-Related Requirements for New Operating Licenses," dated June 1980.

As I advised you, our office has not yet received our own copies of this publication, in as much as the publication thus far has been reproduced only in a limited number of advance copies. I received the enclosed copy only yesterday, upon making a special request to the NRC's publications office.

By copy of this letter, I am forwarding copies of the enclosed NUREG-0694 to Intervenor CFUR and ACORN.

Sincerely,

A handwritten signature in cursive script that reads "Sherwin E. Turk".

Sherwin E. Turk  
Counsel for NRC Staff

Enclosure: NUREG-0694

cc w/encl: Mr. Richard Fouke  
Mr. Geoffrey M. Gay

cc w/o encl: Rest of Service List

Exhibit "A"