



September 18, 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, <u>et al.</u>)	50-446
)	
(Comanche Peak Steam Electric)	(Application for
Station, Units 1 and 2))	Operating License)

APPLICANTS' MOTION TO COMPEL AND ANSWERS TO CASE'S
REQUEST FOR CLARIFICATION OF CERTAIN
INTERROGATORIES AND TO CASE'S
MOTION FOR AN EXTENSION OF TIME

Pursuant to 10 C.F.R. §§2.730(c) and 2.740(f), Texas Utilities Generating Company, et al. ("Applicants") hereby move the Atomic Safety and Licensing Board ("Board") in the captioned proceeding for an order compelling Citizens Association for Sound Energy ("CASE") to respond to the Applicants' interrogatories and produce for inspection the documents requested in Applicants' First Set of Interrogatories to CASE and Requests to Produce, filed August 1, 1980. Applicants also oppose CASE's motion for an extension of time set forth in its September 3, 1980, Answers to Applicants' First Set of Interrogatories and Requests to Produce.

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I. Discovery

CASE's objections to Applicants' interrogatories and requests to produce appear to be founded in substantial part on a misconception of the purpose and scope of discovery in NRC licensing proceedings. Accordingly, Applicants summarize below important principles applicable to the discovery process which should serve as guidance to all parties in conducting discovery in this proceeding.

Discovery in litigation before the courts, as well as in NRC licensing proceedings, is intended to insure that "the parties have access to all relevant, unprivileged information prior to the hearing." Boston Edison Company (Pilgrim Nuclear Generating Station, Unit 2), LBP-75-30, 1 NRC 579, 582 (1975). Indeed, discovery in modern administrative practice is to be liberally granted "to enable the parties to ascertain the facts in complex litigation, refine the issues, and prepare adequately" for the hearing. Pacific Gas and Electric Company (Stanislaus Nuclear Project, Unit 1), LBP-78-20, 7 NRC 1038, 1040 (1978).

As to the scope of permissible discovery, it is well-settled that

interrogatories seeking specification of the facts upon which a claim or contention is based are wholly proper, and that the party may be required to answer questions which attempt to ascertain the basis for his claim or, for example, what deficiencies or defects were claimed to exist with respect to a particular situation or cause.
[Pilgrim, supra, 1 NRC at 582 (footnote omitted).]

A party has the right to find out what the other parties know with respect to a particular contention, viz., the positions of adversary parties and the information available to those parties to support their position. Pennsylvania Power & Light Company, et al. (Susquehanna Steam Electric Station, Units 1 and 2), ASLB Memoranda and Orders, January 4, 1980, slip op. at p. 6 and August 27, 1979, slip op. at pp. 5-6. Discovery inquiries are limited only by the requirements that they be reasonably relevant to a sensible investigation, Pilgrim, LBP-75-30, supra at 582, and the information sought is reasonably calculated to lead to the discovery of admissible evidence, 10 C.F.R. §2.740(b)(1).

With respect to objections to discovery requests, the burden of persuasion is on the objecting party to show that the interrogatory should not be answered. Pilgrim, LBP-75-30, supra at 583. General objections are not sufficient. Id. Indeed, answers to discovery requests are important to a party's ability to prepare its case for trial, particularly in the case of an applicant's request for discovery because the applicant has the burden of proof. As was observed by the Licensing Board in Tyrone,

The Applicants in particular carry an unrelieved burden of proof in Commission proceedings. Unless they can effectively inquire into the positions of the intervenors, discharging that burden may be impossible. To permit a party to make skeletal contentions, keep the bases for them secret, then require

its adversaries to meet any conceivable thrust at hearing would be patently unfair, and inconsistent with a sound record. [Northern States Power Company, et al. (Tyrone Energy Park, Unit 1), LBP-77-37, 5 NRC 1298, 1300-01 (1977) (footnote omitted).]

In addition, while there is no requirement that a party to an NRC licensing proceeding be represented by counsel, all parties, whether with or without counsel, are required to comply with the NRC Rules of Practice. This requirement extends to supplying answers to interrogatories and requests to produce filed by adverse parties, in a diligent and timely fashion. Offshore Power Systems (Manufacturing License for Floating Nuclear Power Plants), LBP-75-67, 2 NRC 813, 817 (1975); see Tyrone, supra, 5 NRC at 1300-02.

Further, intervenors must be mindful of the distinction between the basis requirement regarding admission of Contentions (see 10 C.F.R. §2.741(b)), and the information necessary to avoid the disposition of issues on summary disposition (see 10 C.F.R. §2.749), or to win on the merits at the hearing. A Contention may be admitted in an NRC licensing proceeding even though it is not supported by sufficient bases or information (i.e., evidence) to overcome a motion for summary disposition or to succeed on the merits. See e.g., Houston Lighting & Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 549-51 (1980). Therefore, in responding to interrogatories concerning the basis for a particular Contention, intervenors should recognize that

discovery requests in Commission proceedings apply to information and bases to support a claim or Contention in addition to whatever information served as a basis for admitting the Contention. Of course, if no further information is intended to be relied upon in support of a Contention, the intervenors should so respond.

Finally, intervenors must conduct their participation in NRC licensing proceedings in a responsible manner. As the Supreme Court has stated, in a nuclear licensing proceeding:

. . . it is still incumbent upon intervenors who wish to participate to structure their participation so that it is meaningful, so that it alerts the agency to the intervenors' position and contentions. [Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978)].

Discovery is one of the principal means for achieving such meaningful participation. Susquehanna, ASLB Memorandum and Order (January 4, 1980), supra, slip op. at 3.

II. Applicants' Motion to Compel

CASE specifically objects to 49 of Applicants' interrogatories, dealing with three Contentions. Those specific objections basically focus on five different types of interrogatories. CASE has not specified any objections with respect to any other interrogatories 1/. Applicants move that the Board

1/ CASE did set forth partial responses to some interrogatories and requested an extension of time to respond to others. Applicants deal with those responses and the request for an extension of time below, see Sections III and IV.

compel CASE to respond to all interrogatories and requests to produce discussed below.

- A. Interrogatories 1, 10, 25, 26, 30, 66, 87, 98, 140 and 171.

The first set of interrogatories to which CASE objects involve, in essence, the following questions:

- a. Please explain in your own words the meaning of Contention _____. (Interrogatories 1, 30, 66, 98, 140 and 171.)
- b. What do you mean by "_____"? Or please explain in your own words what the term "_____" means. (Interrogatories 10, 25, 26, 87).

CASE objects to these interrogatories as unnecessary to the preparation of Applicants' case and as unduly burdensome, time-consuming and expensive to answer. CASE would have Applicants refer to CASE's previous pleadings, the prehearing conferences and Webster's Dictionary for the answers to these interrogatories.

With respect to CASE's claim that responses to these interrogatories are "not necessary", CASE obviously fails to recognize two of the paramount purposes of discovery in NRC licensing proceedings, viz, to refine the issues, Stanislaus, supra, 7 NRC at 1040, and determine exactly what deficiencies or defects are claimed to exist, Pilgrim, supra, 1 NRC at 582. Each of the above interrogatories is clearly intended to discover the precise issues which CASE will raise at the hearings with respect to each particular Contention and to determine the deficiencies or defects which CASE claims to

exist. Contrary to CASE's assertions, such inquiries are necessary to the preparation of Applicants' case and are properly the subject of interrogatories. Tyrone, supra, 5 NRC at 1300-01. CASE's objection is, therefore, without merit.

Further, CASE confuses the requirements regarding specification of the wording of Contentions for admission in this proceeding, with identification of the issues to be litigated at the hearing. While a Contention need only be set forth with reasonable specificity to be admitted (see 10 CFR §2.714(b)), the precise issues to be raised by CASE with respect to each Contention must necessarily be further specified to enable the Applicants to prepare their case. Pilgrim, supra, 1 NRC at 582. Referring Applicants to the information contained in CASE's previous pleadings or presented at the prehearing conference does not serve to specify the issues CASE intends to raise at the hearing. Nor are definitions in Webster's Dictionary adequate to identify, in such a highly technical regulatory context, the deficiencies or defects CASE claims to exist. Applicants merely seek in these interrogatories to inquire into the positions of CASE on each of its Contentions. To prevent such inquiries would be patently unfair. Tyrone, supra, 5 NRC at 1300-01.

In addition, CASE's objections that to answer these interrogatories would be unduly burdensome, time consuming and expensive are without merit. CASE fails to explain how these interrogatories, which are all relevant to CASE's Contentions (a fact that CASE does not dispute), and which seek information properly discoverable (viz., the precise claims which CASE will raise with respect to each Contention), are unduly burdensome, time consuming or expensive. CASE has entered this proceeding on its own volition and must be prepared to fashion its participation so that it is meaningful. Vermont Yankee, supra, 435 U.S. at 553. CASE must assume the responsibilities it accepted when it was admitted as a party to this proceeding, including responding to proper interrogatories. Offshore Power Systems, supra, 2 NRC at 817. These objections must also, therefore, fail.

Finally, CASE has not sustained its burden of persuasion with respect to any of its objections. CASE has only provided general statements in support of its objections, without specifying how the information called for is not the proper subject of an interrogatory. Such general objections are insufficient in NRC licensing proceedings. Pilgrim, supra, 1 NRC at 583.

For the foregoing reasons, Applicants move that the Board issue an order compelling CASE to promptly respond to interrogatories 1, 10, 25, 26, 30, 66, 87, 98, 140 and 171.

B. Interrogatories 2, 31, 67, 99, 141 and 172.

This group of interrogatories that are the subject of CASE's objections involve, in essence, the following question:

What is your basis for Contention ____?
Please list all documents not elsewhere identified on which you rely with respect to Contention _____. Please provide copies of all such documents for inspection and copying.

CASE objects to these interrogatories as asking for information which CASE believes has already been provided, i.e., the bases for admission of its Contentions. CASE complains that to answer those interrogatories would be unduly burdensome, time-consuming and expensive, and that the answers are readily obtainable from CASE's previous pleadings and the prehearing conferences and are not necessary to the preparation of Applicants' case.

CASE's objections to these interrogatories again demonstrate a lack of understanding as to the role of discovery with respect to admitted Contentions. The basis required for admitting a Contention in an NRC proceeding (see 10 CFR §2.714(b)) is distinct from the basis or information required to overcome a motion for summary disposition (see 10 CFR § 2.749), or to succeed on the merits. See e.g., Allens Creek, supra, ALAB-590, 11 NRC at 549-51. In asking for CASE's basis for a particular Contention, Applicants are seeking the information CASE intends to use to support its position with respect to that

Contention, Susquehanna, supra, ASLB Memoranda and Orders, August 27, 1979 and January 4, 1980. In other words, Applicants are attempting to ascertain the substantive bases for CASE's claims. Pilgrim, supra, 1 NRC at 582. Contrary to CASE's assertion, such information is properly the subject of discovery in this proceeding and is essential for the preparation of Applicants' case. Tyrone, supra, 5 NRC at 1300-01. Of course, if CASE does not intend to rely at the hearings on any further information besides that submitted in support of its petition for admission of its Contentions, it may so respond.

Finally, CASE's objections that to respond to these interrogatories would be unduly burdensome, time consuming and expensive are again without merit. While responsible participation in this proceeding may require substantial effort on CASE's part, CASE must assume the duties and responsibilities it undertook when it was admitted in this proceeding, including the duty to respond to relevant and wholly proper interrogatories. Offshore Power Systems, supra, 2 NRC at 817. In any event, CASE's claim that such responses would be unduly burdensome, time-consuming and expensive are merely general, unsupported assertions, and thus are insufficient to sustain CASE's burden of persuasion. Pilgrim, supra, 1 NRC at 583.

For the foregoing reasons, Applicants move that the Board issue an order compelling CASE to promptly respond to Interrogatories 2, 31, 67, 99, 141 and 172.

C. Interrogatories 4, 5, 34, 35, 70, 102, 144 and 175.

These interrogatories involve, in essence, two questions which CASE objects to, as follows:

- a. What are the dates of the meetings or contacts you have had with the other intervening parties with respect to Contention ____? Please specify the purpose of such meetings or contacts, and the results of such meetings or contacts. (Interrogatories 4, 34, 70, 102, 144 and 175).
- b. What are the dates of the meetings or contacts you have had with persons other than the intervening parties with respect to Contention ____? Please specify the purpose of such meetings or contacts, and the results of such meetings or contacts. (Interrogatories 5, 35, 70, 102, 144 and 175.)

CASE objects to these interrogatories as being irrelevant, immaterial and unnecessary for Applicants to prepare their case. In addition, CASE claims that the interrogatories seek disclosure of the mental impressions, conclusions, opinions, or legal theories of representatives of the parties, in conflict with the provisions of the NRC Rules of Practice, 10 CFR §2.740(b)(2).

Contrary to CASE's assertions, each interrogatory is relevant to the subject matter involved in this proceeding. Each interrogatory relates only to meetings or contacts with respect to a specified Contention. The information sought clearly will lead to the discovery of admissible evidence

(see 10 CFR §2.740(b)(1)) since it will enable Applicants to determine whether they should pursue discovery against persons or groups (parties or third parties) other than CASE with respect to CASE's Contentions. Discovery from persons other than parties is contemplated by Commission regulations. See 10 CFR §§2.740(c), (f)(3) and 2.720(f); see also, Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-118, 6 AEC 263; ALAB-122, 6 AEC 322 (1973). CASE's generalized objections clearly fail to meet its burden of persuasion with respect to objecting to interrogatories. Pilgrim, supra, 1 NRC at 583.

Further, CASE's suggestion that responses to these interrogatories would require divulgence of mental impressions, conclusions, opinions or legal theories of representatives of parties in contravention of 10 CFR §2.740(b)(2) is erroneous. Applicants do not seek any privileged information. Applicants ask only that CASE indicate whether such meetings have occurred with respect to a particular Contention and whether such meetings or contacts resulted in agreements or understandings that other parties or persons would aid CASE in preparing for the hearings, or provide information to CASE regarding the particular Contention, and if so, the extent of such aid or the nature of such information. In other words, Applicants want to know if other parties or persons may play some role in the presentation or preparation of CASE's position on its Contentions so that

Applicants can decide whether to pursue discovery against those persons or other parties. Supplying such information is not proscribed by 10 CFR §2.740(b)(2).

For the foregoing reasons, Applicants move that the Board issue an order compelling CASE to promptly respond to Interrogatories 4, 5, 34, 35, 70, 102, 144 and 175.

D. Interrogatories 9, 13, 40, 41, 82, 114, 155 and 186.

CASE objects to these interrogatories which involve, in essence, the following questions:

1. Have you read the construction permits for Comanche Peak or 10 CFR Part 50, Appendix B. If not, why not? If so, please answer the following:
 - a. What provisions thereof do you contend Applicants have not satisfied.
 - b. In what way do you contend Applicants have not satisfied those provisions.

(Interrogatories 9 and 13).

2. Have you read the Final Safety Analysis Report (FSAR) or the Environmental Report - Operating License Stage (ER-OL)? If not, why not. If so, please answer the following:
 - a. Do you object to any of the information, data or analysis contained or referenced therein with respect to _____?

- b. If your answer to a. is in the affirmative, please specify those objections by identifying the sections of the FSAR (or ER-OL) to which you object and the substance of your objections.

(Interrogatories 40, 41, 82, 114, 155 and 186).

- c. If your answer to a. is in the affirmative, please identify with specificity the information, data or analysis which you contend Applicants must consider to satisfy your objections in Contention ____.

(Interrogatories 82, 114, 155 and 186).

CASE objects to the initial questions in these interrogatories (e.g., "Have you read ___? If not, why not? If so...") as being irrelevant, immaterial and unnecessary for Applicants to prepare their case. CASE refers to its response to another group of interrogatories (CASE's response at p. 41 of its Answers, with regard to the remaining portions of these interrogatories. That response, however, does not appear to have any relation to the remaining portions of these interrogatories. Applicants can only conclude that CASE objects to all portions of these interrogatories.

Applicants believe the information sought in all portions of the above interrogatories is relevant to the subject matter involved in this proceeding or is reasonably calculated to lead to the discovery of admissible evidence. 10 CFR §2.740(b)(1). The Contentions to which these

interrogatories apply question either Applicants' compliance with the terms of the construction permits for Comanche Peak or the requirements of 10 CFR Part 50, Appendix B, or they involve a claim as to, or are based on, alleged inadequacies in the FSAR or ER-OL. These interrogatories are clearly designed to determine the particular claims or deficiencies to be litigated by CASE with respect to each Contention, Pilgrim, supra, 1 NRC at 582, and to refine the issues to be raised by CASE, Stanislaus, supra, 7 NRC at 1040. CASE's objections are, therefore, without merit.

Further, if CASE intends to support its position regarding particular Contentions by some means other than as appears on the face of the Contentions, or other than by challenging information included in the FSAR or ER-OL, the responses to these interrogatories should so indicate to the Applicants. Applicants must be permitted to inquire into the positions of the intervenors to permit adequate preparation of Applicants' case for the hearings. Tyrone, supra, 5 NRC at 1300-01. Sustaining CASE's objections to these interrogatories would be patently unfair and inconsistent with the goal of developing a sound record. Id.

For the foregoing reasons, Applicants move that the Board issue an order compelling CASE to promptly respond to Interrogatories 9, 13, 40, 41, 82, 114, 155 and 186.

E. Interrogatories 11, 14, 19, 23, 29, 40(c), 44, 46, 47, 83, 85, 115, 117, 156, 158, 187 and 189.

Each of these Interrogatories to which CASE objects involves, in essence, the following question:

What do you contend Applicants must do to comply with, or to demonstrate compliance with, [particular NRC licensing requirements]?

CASE responds that applicable statutes and NRC Regulations answer these interrogatories and that a "humble" intervenor is not required to do so.

CASE has raised numerous general issues in this proceeding in admitted Contentions which allege that the Applicants have not complied with NRC regulations and applicable statutes. CASE seeks to have the application for the Comanche Peak operating license denied because of those alleged instances of non-compliance with NRC licensing requirements. Applicants have submitted substantial and voluminous materials in support of the application. Those materials are intended to demonstrate that Comanche Peak does comply with all NRC licensing requirements. If CASE believes Applicants have not satisfied applicable licensing requirements, then CASE must indicate precisely in what respects Applicants fail to satisfy such requirements. These interrogatories are designed to elicit identification

of the deficiencies or defects which CASE claims exist in the application. Pilgrim, supra, 1 NRC at 582. Applicants must be permitted to effectively inquire into the positions of intervenors to determine precisely what their position is, prior to the hearings. Tyrone, supra, 5 NRC at 1300-01.

In any event, CASE offers no further support for its objections. Even "humble" intervenors are required to meet their burden of persuasion when objecting to interrogatories. See Pilgrim, supra, 1 NRC at 582; see also Offshore Power Systems, supra, 2 NRC at 817. CASE has failed to carry its burden of persuasion.

For the foregoing reasons Applicants move that the Board issue an order compelling CASE to promptly respond to Interrogatories 11, 14, 19, 23, 29, 40(c), 44, 46, 47, 83, 85, 115, 117, 156, 158, 187 and 189.

F. Remaining Interrogatories.

CASE does not object to any interrogatories or requests to produce other than those identified above. As to most of the remaining interrogatories, 2/ CASE has responded affirmatively only to a few which seek reports prepared or caused to be prepared by CASE and information concerning

2/ CASE seeks clarification as to some interrogatories and request an extension of time in which to respond to others. We address those aspects in Sections III and IV, infra.

the extent to which CASE intends to participate in the hearings. Numerous other interrogatories and requests to produce remain unanswered. Applicants assume that CASE does not intend to respond to them.

CASE has patently failed, with respect to the remaining interrogatories and requests to produce, to carry its burden of persuasion regarding objections to discovery requests, see Pilgrim, supra, 1 NRC at 583, and has also failed to comply with the NRC Rules of Practice, 10 CFR § 2.740b(b) and § 2.741(d). Those regulations require that CASE must timely respond or state its objections with respect to each interrogatory or request to produce. CASE has not done so.

For the foregoing reasons, Applicants move that the Board issue an order compelling CASE to promptly respond to all of Applicants' First Set of Interrogatories to CASE and Request to Produce, except as discussed in Section IV, infra.

III. Applicants' Answer to CASE's
Request for Clarification

CASE requests that Applicants clarify those interrogatories which involve, in essence, the following question:

What is your basis (legal and/or other) for your response/answer/objections...?

CASE argues that these interrogatories are ambiguous and vague.

Applicants are requesting in those interrogatories that CASE identify the legal or technical support for its positions in this proceeding. Applicants only seek the legal or technical bases for CASE's claims, Pilgrim, supra, 1 NRC at 582, and the information available to CASE to support its positions, Susquehanna, supra, ASLB Memoranda and Orders. Such bases or information may be in the form of technical information to support a particular technical position, or in the form of regulations or statutory requirements which CASE claims Applicants have not, but must, satisfy. Applicants are entitled to such information to permit them fairly to prepare their case for the hearings. Tyrone, supra, at 1300-01.

CASE also sought clarification with respect to interrogatory 23. That interrogatory contained a typographical error. It should refer to interrogatory 22, rather than 82.

IV. Applicants' Answer to CASE's
Motion for an Extension of Time

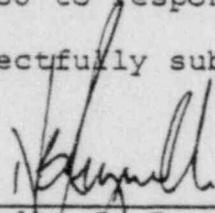
CASE requests an extension of time for 60 days to further respond to Interrogatories 55, 57, 59, 61, 62 and 64. An extension of time may be granted upon a showing of

good cause. 10 CFR § 2.711. CASE argues that the 60 day extension of time is necessary to permit more analysis of these interrogatories. We submit that CASE has not demonstrated good cause for a 60 day extension of time.

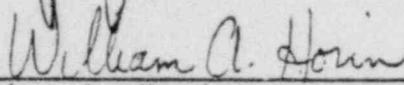
Applicants note that CASE has already taken two weeks beyond the time required to respond to these interrogatories (August 20, 1980). Nevertheless, since it appears that CASE intends to make an honest effort to respond substantively to these interrogatories, Applicants would not object to an extension of time until September 30, 1980, for CASE to respond to these interrogatories. Such an extension would afford CASE a six-week extension beyond the date (August 20) on which responses were due.

For the foregoing reasons, Applicants request that the Board deny CASE's motion for a sixty day extension of time to respond to Interrogatories 55, 57, 59, 61, 62 and 64, but allow CASE until September 30, 1980 to respond.

Respectfully submitted,



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September 18, 1980

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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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)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Applicants' Motion To Compel And Answers To CASE's Request For Clarification Of Certain Interrogatories And To CASE's Motion For An Extension Of Time," in the captioned matter were served upon the following persons by deposit in the United States mail, first class postage prepaid this 18th day of September, 1980:

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