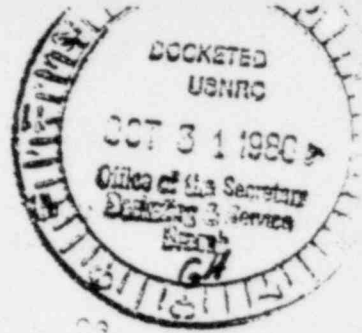


Oct 31, 1980



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

Valentine B. Deale, Chairman
Dr. Richard F. Cole
Dr. Forrest J. Remick

In the Matters of)
)
TEXAS UTILITIES GENERATING COMPANY)
ET AL.)
)
(Comanche Peak Steam Electric Station,)
Units 1 and 2))

Docket Nos. 50-445
50-446

SERVED NOV 3 1980

RULINGS ON OBJECTIONS TO BOARD'S ORDER
OF JUNE 16, 1980 AND ON MISCELLANEOUS MOTIONS

1. The Applicants and the three intervenors, namely, ACORN, CASE, and CFUR, presented numerous objections to the Board's Order Subsequent to the Prehearing Conference of April 30, 1980 (June 16, 1980). The Board's Order listed 25 accepted contentions of the intervening parties and enumerated three questions of the Board for consideration by the Applicants and the NRC Staff at the forthcoming evidentiary hearings. Various replies or answers to the objections and related miscellaneous motions were also presented. The objections and miscellaneous motions are dealt with according to their source, the first source here being the Applicants.

APPLICANTS' OBJECTIONS AND MOTION

2. The Applicants objected to the Board's Order of June 16, 1980 with respect to Contentions 3, 4, 9, 11, 17 and 23 and moved that the Board modify its Order consistent with their objections. The Board's determinations with respect to the Applicants' objections are identified below under the headings of the contentions in question. In keeping with these determinations, the Board rules on the Applicants' motion that Contention 11 of the accepted

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contentions under the Order of June 16, 1980 is hereby dropped and the remaining contentions objected to by the Applicants are affirmed.

Contention 3: According to the Applicants, the Commission's Statement of Policy, "Further Commission Guidance for Power Reactor Operating Licenses", issued June 16, 1980, 45 Fed. Reg. 41738 (June 20, 1980), and NUREG-0694, "TMI-Related Requirements for New Operating Licenses", (June 1980), require that Contention 3 not be admitted in this proceeding.

The Board differs. Rather, it agrees with the NRC Staff for the reasons in the NRC Staff's Answer to the Applicants' Statement of Objections that Contention 3 may be litigated within the parameters prescribed by the Commission's Statement of Policy.

Contention 4: According to the Applicants, the Commission's Statement of Interim Policy issued June 9, 1980 on "Nuclear Power Plant Accident Consideration Under the National Environmental Policy Act of 1969", 45 Fed. Reg. 40101 (June 13, 1980), should occasion the rejection of Contention 4 and the portion of Contention 4 seeking evaluation of a hydrogen explosion should be dismissed because that issue is about to be addressed in rulemaking.

As the Board views the contention, while the Commission's Interim Policy obviously embraces environmental matters, it does not exclude safety considerations. Further, in Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CL1-80-116, 11 NRC 674 (May 16, 1980), the Com-

mission ruled that a hydrogen gas control issue may be properly litigated in individual licensing proceedings under 10 C.F.R. Part 100 even though the Commission is intending to address the hydrogen generation issue in a general rulemaking proceeding.

Contention 9: The Applicants submit that this contention should be dismissed as a challenge to Commission regulations and also because it is in part the subject of rulemaking.

In the Board's view, the contention need not be regarded as a challenge to Commission regulations or an attempt to litigate a generic issue now in rulemaking but may be looked upon as raising a question of the Applicants' compliance to Commission regulations.

Contention 11 and Contention 17: Applicants argue that Contention 11 ought to be dropped since the method of satisfying General Design Criterion-4 has already been established and that since Contention 17 is within the scope of Contention 11, it too ought to be dropped.

In its consideration of the Petition for Emergency and Remedial Action filed by the Union of Concerned Scientists, the Commission ordered that certain Guidelines and NUREG-0588 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR 50, Appendix A, General Design Criteria (GDC)-4, which relates to environmental qualification of safety related electrical equipment". Petition for Emergency and Remedial Action, CL1-80-21, 11 NRC 707 at 711, May 27, 1980. The issue of

the existence of standards which must be met under GDC-4 has therefore been eliminated, and accordingly Contention 11 is dropped from the list of accepted contentions.

From the Board's standpoint, Contention 17 continues as an acceptable contention to the extent that it relates to compliance with existing standards.

Contention 23: Applicants maintain that the contention should be dismissed as a challenge to Commission regulations and that if the contention is retained, it ought to be reworded as follows: "The CPSES design does not assure that radioactive emissions will be as low as is reasonably achievable."

The Board agrees with the Staff that Contention 23, as presently worded, is admissible to the extent that it challenges Applicants' compliance with Commission regulations governing the release of radiation and/or radioactive materials.

ACORN'S OBJECTIONS AND MOTIONS

3. With respect to ACORN's objections to the Board's Order of June 16, 1980 and related ACORN's motions and offer of proof, the Board rules as follows:

a) Upon reconsidering its determinations with respect to ACORN's contentions, the Board affirms its Order of June 16, 1980 denying ACORN's Contentions 2, 8, 12, 16, 17, 18, 19, 21, 23, 26, 27, 28, 29 and 30 for the reasons stated

in the Order. ACORN failed to offer the Board a sufficient basis for arriving at different conclusions than heretofore.

b) After considering the evolution of Contention 5, which relates to ACORN Contention 14, the Board has decided to construe Contention 5 so as to cover the Inspection and Enforcement Report subjects which ACORN specifically identified at Appendix A of its Offer of Proof served August 29, 1980.

c) The Board affirms Contention 23 in its Order of June 16, 1980 as compared with ACORN's original Contention 25, no reason for changing to ACORN's wording having been advanced.

d) ACORN would construe Contention 11 (previously ACORN Contention 3) as embracing the issue of the Applicants' compliance to the newly designated standards by the Commission when Contention 11 raised only the question of whether there were any applicable standards in existence. ACORN's construction of Contention 11 is unacceptable. For ACORN's viewpoint, to prevail, Contention 11 would require amendment under Commission Rules and Regulations.

e) ACORN's objection to the application in the CPSES licensing proceeding of NUREG-0694 and the Commission policy statement, "Further Commission Guidance for Power Reactor Operating Licenses," June 16, 1980, is without merit. The Board is bound to adhere to applicable Commission policy.

f) ACORN's motion for certification of the Board's rejection or rewording of various contentions of ACORN

is denied as circumstances, in the Board's judgment, do not warrant certification.

g) ACORN's motion to order both the Applicants and the NRC Staff to provide all parties with their views on how the Commission's order in CLL-80-21 will affect the further construction, completions and licensing of CPSES is denied. ACORN's motion is without legal foundation. Further the Commission's position in CLL-80-21 is a clear, self-explanatory statement calling for no special elucidation.

CASE's OBJECTIONS AND MOTIONS

4. After review of CASE's objections to the Board's Order of June 16, 1980 and the related motions, the Board affirms its position with respect to each of the CASE contentions which the Board has denied. In its filings objecting to the Board's Order of June 16, 1980, CASE failed to raise significant new information or points of view which would warrant a change in the Board's original determinations. More specifically --

CASE Contention 1: The contention is too speculative to be litigated. Moreover, CASE's references to allegations by the State of Texas of Texas Utilities Generating Company's noncompliance with Federal and State Environmental laws and to rumination about the reason for Texas Utilities Generating Company not presently entering into a certain lease agreement with Texas Parks and Wildlife Department do not bear upon the integrity of the CPSES facility and such references involve issues hopelessly remote from the main focus of this

proceeding. Contrary to CASE's position, neither the NRC Staff nor the Board has any obligation to recast contentions of a litigant so that they might be acceptable.

CASE Contention 3: In affirming its previous position of turning down CASE Contention 3, the Board notes the absence of any basis for addressing once more the long range demand for power over the 40 year term of the CPSES' proposed operating license and the availability of alternative sources of power. Both subjects were considered at the CPSES Construction Permit proceeding.

CASE Contention 6(b) and 6(e): CASE's mere assertion that these are "valid contentions" is not sufficient reason for the Board to change its mind in rejecting these contentions.

CASE Contention 8: Since the Board is bound by statements of policy and statements of interim policy by the Commission, it is bound by the Commission Statement of Interim Policy, "Nuclear Power Plant Accident Considerations Under the National Environmental Policy Act of 1969," June 9, 1980.

The Commission specifically provides in said Interim Policy Statement that reports submitted by applicants on or after July 1, 1980 shall include a discussion of the environmental risks associated with serious accidents. It is not for a licensing board to impose upon applicants who filed their environmental reports before July 1, 1980, the obligation to include in those reports a discussion of such environmental risks.

CASE Contention 10: CASE offered the Board no reason for changing its mind in rejecting this contention. The Board affirms its rejection of the contentions.

5. CASE requested the rewording of accepted Contention 5. The specific subjects which CASE raised relating to the QA/QC contention are covered in Contention 5; other possible subjects not specifically identified by CASE or others are omitted. The Board's construing of Contention 5 to include subjects of the Inspection and Enforcement Reports included in ACORN's offer of proof served August 29, 1980 is noted.

6. CASE also requested the rewording of accepted Contention 23. In standing by the wording of Contention 23 and in turning down CASE's request, the Board rejects the view that because of the asserted "increase in knowledge regarding the health effects of radiation" new requirements beyond the ALARA standards of the Commission ought to be imposed upon the Applicants.

7. CASE's request for certification to the Appeal Board or Commission of CASE's contentions which were denied or reworded by the Board is denied. In the judgment of the Board, circumstances do not warrant certification.

CFUR's OBJECTIONS AND MOTIONS

8. With respect to CFUR's objections to the Board's Order of June 16, 1980, and related motions, the Board rules or finds as follows:

- a) CFUR's objection to the time of filing by the Applicants of their objections to the prehearing conference

order is devoid of merit. As the Applicants noted in their filing, they had received authorization from the Board to file their objections out of time, and in granting such authorization, the Board was well within its rights under 10 CFR §2.711(a).

b) With respect to the Applicants' filing on July 1, 1980 of objections to the Board's Order of June 16, 1980, CFUR's motion to require the Applicants to conform to 10 CFR §2.758 is without merit, and similarly with CFUR's alternative request that the Applicants follow the procedure prescribed in 10 CFR §2.802, "Petition for rule making."

c) CFUR made no showing that it was meaningfully prejudiced by the Board exercising its discretion of orally permitting the Applicants to file their objections a few days later than the generally prescribed time.

d) CFUR objected to the Applicants' proposed elimination of Contention 3, Contention 4 and Contention 9 in the Board's Order of June 16, 1980. As noted earlier, under the hearing APPLICANTS' OBJECTIONS AND MOTION, the Board retained Contention 3, Contention 4 and Contention 9.

e) CFUR's motion that it be granted an extension of 10 days, until August 4, 1980, to file additional response to Applicants' objections has been mooted; CFUR's response, shown to have been served on August 4, 1980, was received and considered by the Board.

f) The Board affirms its previous denial of CFUR Contention 4B, along with "special operating conditions" which CFUR has proposed. CFUR's premise that the Quality Assurance/Quality Control problems at the CPSES construction stage - when numerous subcontractors were employed at the site - are a measure of what is likely to happen at the CPSES operating stage involves too much speculation for the Board to accept. And the twofold action program of CFUR is without basis in NRC regulations. Moreover, the general subject of CFUR's interest, namely, managerial or administrative controls over quality assurance is given special consideration by the Board through Board Question No. 2 of the Board Order of June 16, 1980.

g) The Board affirms its denial of CFUR's Contention 9 concerning Anticipated Transients Without Scram (ATWS) and adheres to its proposed treatment of the subject in evidentiary hearing through responses by the Applicants and the NRC Staff to Board Question 3 of the Board Order of June 16, 1980. CFUR failed to establish the nexus between the unresolved safety issue of ATWS and the CPSES license application except on an "iffy" basis. The Board is neither required nor disposed to develop a contingency record to assure that issues which may be raised later will have already been litigated.

h) The Board rejects CFUR's Proposed Contention 26 dealing with the physical security and safeguards contingency aspects of CPSES. CFUR has failed to satisfy the basis and specificity requirements of 10 CFR §2.714(b). Also, CFUR has failed to make

the requisite showing of good cause or to address in any manner the factors required to be considered upon the late filing of a contention pursuant to 10 CFR §2.714(a). Clearly, CFUR's reference to two newspaper articles of July 6 and July 13, 1980, is not sufficient for CFUR's intended purpose.

FILINGS RELATING TO BOARD'S ORDER OF JUNE 16, 1980

9. The numerous filings relating to the Board's Order of June 16, 1980, including objections, motions, responses and answers, which were filed by the Applicants and the NRC Staff and by the intervenors, ACORN, CASE and CFUR, are listed below. These filings, which were taken into account by the Board in its formulation of the present Rulings, are identified in chronological order according to their dates of service as follows:

"Exceptions by CASE to Atomic Safety and Licensing Board's Order Subsequent to the Prehearing Conference of April 30, 1980 (June 16, 1980)", served June 30, 1980.

"Applicants' Statement of Objections to Prehearing Conference Order and Motion for Modification", served July 1, 1980.

"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 Warding of Certain Accepted Contentions along with an Offer of Proof", served July 1, 1980.

"CASE Motion for Reconsideration of Certain CASE Contentions Denied or Reworded in the Board's Order Subsequent to the Prehearing Conference of April 30, 1980 or in the Alternative Motion for Certification of Contentions Denied in the Board's Order", served July 14, 1980.

"Supplement to Item 1. (CASE Contention 1) of CASE Motion for Reconsideration of Certain CASE Contentions Denied or Reworded in the Board's Order Subsequent to the Prehearing Conference of April 30, 1980 or in the Alternative Motion for Certification of Contentions Denied in the Board's Order:", served July 14, 1980.

"Applicants' Answer Opposing ACORN's Motion for Reconsideration, for Certification of Contentions and for Reconsideration of the Wording of Contentions", served July 16, 1980.

"NRC Staff's Answer to Applicants' Statement of Objections to Prehearing Conference Order and Motion for Modification", served July 21, 1980.

"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'", served July 21, 1980.

"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 Extension 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", served July 23, 1980.

"Applicants' Answer Opposing CASE's Motions and Supplement for Reconsideration of Denied or Reworded Contentions and for Certification of Contentions", served July 29, 1980.

"Applicants' Answer to CFUR's Motion for Extension of Time", served July 29, 1980.

"NRC Staff Answer to 'CASE Motion for Reconsideration of Certain CASE Contentions Denied or Reworded in the Board's Order Subsequent to the Prehearing Conference of April 30, 1980 or in the Alternative Motion for Certification of Contentions Denied in the Board's Order' and to 'Supplement to Item 1. (CASE Contention 1)'", served August 4, 1980.

"ACORN's Objection to the Application of NUREG-0694 to the CPSES Licensing Proceeding", served August 4, 1980.

"ACORN's Reply to NRC Staff's Answer to Applicants' Statement of Objections to Prehearing Conference Order and Motion for Modification and ACORN's Motion to Have the NRC Staff and the Applicants Provide Detailed Information on the Effects of the Commission's Decision in Petition for Emergency and Remedial Action (UCS), CLL-80-21 (slip op., May 23, 1980) on the Licensing of CPSES", served August 4, 1980.

CFUR's Motion To Reconsider June 16, 1980 Order and Supplemental Response to the Applicant's [sic] Objections, served August 4, 1980.

"Applicants' Answer to CFUR's Motion Requesting Applicants' Compliance with Regulations Regarding Extension of Time", served August 7, 1980.

NRC Staff's (1) Motion for Extension of Time in Which To Respond to CFUR's Motions and Objections concerning Applicants' Statement of Objections and (2) Answer to CFUR's Motion for an Extension of Time, served August 11, 1980.

"Applicants' Answer to CFUR's Motion to Reconsider the Prehearing Conference Order; and Objection to Admission of Late Filed Contention", served August 14, 1980.

"Applicants' Answer to ACORN's Motion to Have the Applicants and NRC Staff Submit Briefs on the Effect of CLI-80-21 on this Proceeding; and to ACORN's Request that Contention 11 be Amended", served August 14, 1980.

"Applicants' Response to ACORN's Objection to the Application of NUREG-0694 to the Comanche Peak Licensing Proceeding", served August 14, 1980.


NRC Staff's Answer to ACORN's Motion To Have the Applicants and NRC Staff Submit Briefs on the Effect of CLI-80-21 on This Proceeding and to ACORN's Position on the Admissibility of ACORN Contention 11, served August 25, 1980.

NRC Staff's Answer to CFUR's Motions and Objections concerning Applicants' Statement of Objections, CFUR's Motion To Reconsider, and CFUR's Proposal of a New Contention, served August 25, 1980.

"ACORN's Offer of Proof in Support of its Motion for Reconsideration of the QA-QC Contention", served August 29, 1980.

Done on this 31st day of October 1980 at Washington, D.C.

Atomic Safety and Licensing Board

By 
Valentine B. Deale, Chairman