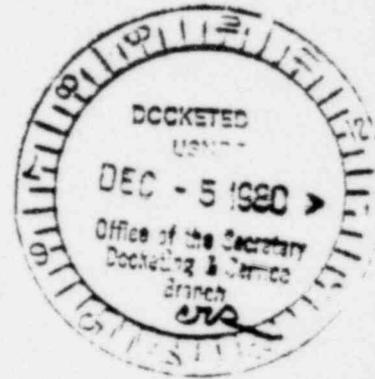


Dec 5, 1980



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.)
)
(Commanche Peak Steam Electric Station,)
Units 1 and 2)

Docket Nos. 50-445
50-446

DENIAL OF CFUR'S
MOTION FOR PROTECTION

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1. On September 18, 1980, CFUR filed "CFUR's Motion for Protection". By the filing, CFUR sought an order under 10 CFR §2.740(c) pursuant to which --

(1) CFUR would be relieved of any responsibility to supplement its Answers to "Applicants' First Set of Interrogatories to CFUR and Requests To Produce", served August 13, 1980;

(2) Applicants would conduct no discovery from CFUR until allowed to do so by subsequent Order of this Board;

(3) Applicants would limit future discovery requests to CFUR to not more than thirty (30) Interrogatories and Requests To Produce, including subparts, for any forty-five (45) day period; and

(4) CFUR would be awarded such further relief to which it may be entitled.

2. Applicants filed "Applicants' Answer to CFUR's Motion for Protection" on October 3, 1980 and NRC Staff filed "NRC Staff Answer to CFUR's Motion for Protection" on October 9, 1980. Both Applicants and NRC Staff opposed CFUR's motion for protection in its entirety.

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3. CFUR made the claim that Applicants' discovery was premature. Though the Board at the time had pending objections to the then effective contentions, CFUR's claim of prematurity is without substance. Objections to contentions already defined by the Board afforded no excuse for the parties not to carry on with discovery in the absence of direction from the Board negating the urging in its Order of June 16, 1980 to submit and respond to discovery requests "with reasonable promptness." Also, should any change of a contention by the Board render desirable new interrogatories or answers, the way is open to the parties to bring about modification in the discovery record.

4. The central basis for CFUR's motion was its allegation of "substantial burden on CFUR to respond to such voluminous and burdensome Interrogatories as were served on it by Applicants." CFUR further alleges that in view of its "limited manpower and even more limited financial resources, it is impossible to respond to Applicants' interrogatories and also to prepare discovery requests of its own and otherwise prepare for anticipated hearings. CFUR argues that should CFUR receive other discovery requests like Applicants' First Set of Interrogatories to CFUR and Requests To Produce, either the hearings will be delayed or CFUR will be effectively precluded from any meaningful participation. CFUR regards the first eventuality as undesirable and views the second eventuality as involving violation of NRC regulations and CFUR's Constitutional rights of due process and free speech. CFUR concludes that it therefore must be protected against further discovery from Applicants.

5. The general charge that Applicants' interrogatories and requests to produce imposed upon CFUR a "substantial burden" to the extent of warranting CFUR's motion or any part thereof simply lacks support. The blanket claim of burdensomeness alone is not enough. CFUR's motion does not specify any part of Applicants' discovery requests as objectionable or explain why it is so. CFUR's only comment about Applicants' discovery request which conceivably might be construed as supportive of the "substantial burden" charge is CFUR's bare reference to the number of the Applicants' discovery requests, namely, one hundred sixty seven (167) not counting subparts and multiple inquiries. But CFUR makes no claim or showing that Applicants' discovery requests about four contentions, including contentions 5 and 6 with their numerous issues, are excessive. Moreover, CFUR was closely identified with each of the four contentions about which the discovery requests to CFUR were made.

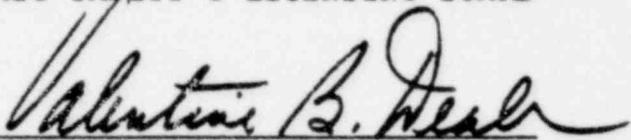
6. CFUR's motion for protection is denied. CFUR's motion failed to state "with particularity" its grounds, as required under 10 CFR §2.730(b) and it fails to show "good cause", as specified under 10 CFR §2.740(c). The general claim, for example, of violation by NRC regulations and of CFUR's constitutional rights is completely without back-up or attempt at development. Also, the fourth part of CFUR's motion is vague and indefinite. In summary, CFUR's motion has supported no basis for restricting or cutting down Applicants' right to discovery. CFUR's motion indicates a lack of understanding of the principles of discovery

in NRC licensing proceedings, as set out in the recent decision by the Atomic Safety and Licensing Appeal Board in Pennsylvania Power and Light Co. et al. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, _____ NRC _____ (September 23, 1980).

Done on this 5th day of December 1980 at Washington, D.C.

ATOMIC SAFETY & LICENSING BOARD

By


Valentine B. Deale, Chairman