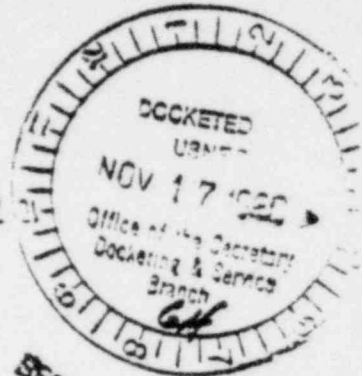


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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)

DOCKETED UNIT
NOV 17 1980
Office of the Secretary
Docketing & Service
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NOV 18 1980
Docket Nos. 50-445
50-446

DISMISSAL OF CASE MOTION
TO COMPEL APPLICANTS

1. On July 7, 1980, CASE filed "CASE First Set of Interrogatories to Applicant." On July 28, 1980, Applicants filed "Applicants' Answer to CASE's First Set of Interrogatories and Requests for Clarification." Then, on August 4, 1980, CASE filed "CASE's Responses to and Motion regarding Applicants' Answers to CASE's First Set of Interrogatories and Requests for Clarification." On August 14, 1980, Applicants filed "Applicants' Answer to CASE's Motion To Compel."

2. In addition, Applicants filed, in a timely manner, on August 11, 1980, "Applicants' Response to CASE's Requests for Production of Documents." Also, upon receiving clarification through CASE's filing of August 4, 1980, Applicants filed on September 8, 1980 "Applicants' Response to CASE's Requests for Production of Documents as Clarified by CASE."

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3. On the basis of the computation-of-time provision at 10 CFR §2.710 along with the schedule of time for answering interrogatories at 10 CFR §2.740b(b), Applicants' answer of July 28, 1980 to "CASE's First Set of Interrogatories to Applicants", declared by CASE to have been served by mail on July 7, 1980, was timely. CASE erred in assuming that Applicants' answer of July 28, 1980 was untimely.

4. The pertinent part of the Commission regulation on discovery appears at subparagraph (f) (1) of 10 CFR §2.740, "General provisions governing discovery," as follows:

"(f) Motion to compel discovery. (1) If a deponent or party upon whom a request for production of documents or answers to interrogatories is served fails to respond or objects to the request, or fails to permit inspection as requested, the deposing party or the party submitting the request may move the presiding officer, within ten (10) days after the date of the response or after failure of a party to respond to the request for an order compelling a response or inspection in accordance with the request. The motion shall set forth the nature of the question or the request, the response or objection of the party upon whom the request was served, and arguments in support of the motion..."

5. In CASE's filing of August 4, 1980, CASE "urges that the Applicant [sic] answer all of CASE's Interrogatory Questions and moves that, if necessary, the Board compel the Applicant [sic] to do so." In this filing, CASE set forth certain interrogatories and requests for documents (namely, Questions 3, 5, 9, 10, 12, and 13), together with Applicants' and CASE's positions with respect thereto. CASE also related Question 11 to Questions 9 and 10.

6. Applicants' answer to CASE's motion to compel was simply that the motion was premature. Claiming that they properly and timely responded to CASE's interrogatories and requests for production, Applicants argued that the prerequisite for filing a motion to compel under 10 CFR §2.740(f) was not present.

7. With respect to Questions 3 and 5, CASE's motion to compel is dismissed as premature. Applicants' time for response under 10 CFR §2.741(d) had not yet run out.


8. With respect to Questions 9 and 10, Applicants regarded the questions "as being overly broad and as requesting information not relevant to the matters at issue in Contention 5" and sought more details about the questions. In its filing of August 4, 1980, CASE provided further orientation about what it was seeking by the two questions. By its filing of September 8, 1980, Applicants offered for inspection and copying the documents within the scope of the two questions and thereby presumably satisfied Question 11. By the same filing, Applicants also offered for inspection and copying the documents sought through Questions 3 and 5.

9. With respect to Questions 12 and 13, Applicants offered their answers to these interrogatories after indicating that they thought the interrogatories were irrelevant to Contention 5, to which CASE had related Questions 12 and 13. CASE argued that the two interrogatories were relevant without explaining any other objection to the Applicants' answers. The matter rests there.

10. In view of Applicants' answers to the CASE's interrogatories and requests to produce and in view of the referenced NRC regulations on discovery, the Board dismisses CASE's conditional motion to compel.

Done this *17th* day of November 1980 at Washington,
D.C.

Atomic Safety and Licensing Board

By 
Valentine B. Deale, Chairman