

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) )

SERVED NOV 21 1980  
Docket Nos. 50-445  
50-446

DENIAL OF CASE'S MOTION FOR PROTECTIVE  
ORDER AND MOTION FOR AN EXTENSION OF TIME

1. On October 2, 1980, CASE filed "CASE's Response to Applicants' Motion To Compel and Motion for Protection." The motion for a protective order pursuant to 10 CFR §2.740(c) sought an order which would provide as follows:

- (1) CASE be relieved of any responsibility to supplement its Answers to Applicants' First Set of Interrogatories to CASE and Requests to Produce with regard to Contentions 5 and 23 until such time as the Board has ruled on the final wording of those contentions; and that CASE be given adequate time following such ruling to prepare its answers to applicable interrogatories on those contentions;
- (2) CASE be relieved of any responsibility to supplement its Answers to Applicants First Set of Interrogatories to CASE and Requests to Produce with regard to all of CASE's Contentions which are affected by Amendment 1 to the ER (OLS) for a period of ninety (90) days in order to allow CASE adequate time to review Amendment 1 and to prepare its response;
- (3) CASE be given a period of one hundred twenty (120) days in which to conduct discovery before being required to reply further to discovery from Applicants;

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- (4) Any future written discovery requests to CASE from Applicants be limited to not more than thirty (30) Interrogatories and Requests to Produce, including subparts, for any forty-five (45) day period; and
- (5) Applicants be enjoined from misquoting or misstating CASE's intent or statements, a practice which currently is placing an oppressive extra burden on CASE because it is forced to correct such misquotes and misstatements in addition to responding to interrogatories in order to avoid Applicants' prejudicing the Board and the record in these proceedings against CASE.

2. Applicants filed "Applicants' Answer to CASE's Motion for Protection," served October 17, 1980 and NRC Staff filed "NRC Staff Answer to CASE's Motion for Protection," served October 22, 1980. Applicants opposed all five parts of CASE's motion except that with respect to Part(1) thereof Applicants would not object to CASE not responding to Interrogatories 42, 43, 47 and 48 (but responding to the first question of 47 and 48) until the Board ruled on the motions concerning Contention 23. NRC Staff opposed the first four parts of CASE's motion with effectively the same qualification with respect to Part (1) thereof as accepted by Applicants. On the last part of CASE's motion, NRC Staff refrained from taking any position.

3. The Board rules on the five parts of CASE's motion as follows:

Part (1): When Applicants filed their discovery requests during the time the Board was reviewing various objections by Applicants and

intervenors to contentions already defined by the Board, there was no cause for CASE to withhold its response to Applicants' discovery requests which related to Contentions 5 and 23. Further, since the Board issued on October 31, 1980 its rulings on the objections to the Board's earlier statement of contentions, CASE's reasoning for delaying its response to Applicants' discovery requests bearing upon Contentions 5 and 23 no longer applies. CASE may respond to such discovery requests on or before December 1, 1980 under Board's earlier grant of additional time to CASE to respond to Applicants' interrogatories and requests to produce; otherwise, as CASE established no basis for further relief, Part (1) of its motion is denied.

Part (2): This part of CASE's motion does not specify the particular interrogatories for which CASE seeks a protective order. The mere allusion by CASE that the Environmental Report-Operating License Stage, which CASE stated it received on October 1, 1980, "pertains to many of CASE's contentions, including Contention 23 and 24 and the cost/benefit analysis," is not enough. CASE did not make the required showing of "good cause" under 10 CFR §2.740(c) to sustain Part (2) of its motion; CASE failed to meet its burden of proof called for by 10 CFR §2.732. See also 10 CFR §2.740(e).

Part (2) of CASE's motion is denied; however, under Board's "Grant of Time Extension to CASE," served November 19, 1980, CASE may supplement on or before December 1, 1980 its answer to the "Applicants' First Set of Interrogatories to CASE and Requests To Produce," served August 1, 1980.

Part (3): CASE made no showing of "good cause" pursuant to 10 CFR §2.740(c) to support this part of its motion for protection, and so Part (3) of CASE's motion is denied.

Part (4): Similarly, CASE made no showing of "good cause" pursuant to 10 CFR §2.740(c) to support Part (4) of its motion for protection, and so Part (4) is denied.

Part (5): CASE did not sustain its claim that Applicants misquoted and misstated CASE's intent or statements so as to warrant Applicants being enjoined as requested by CASE. When read together with "CASE's Answers to Applicants' First Set of Interrogatories and Requests to Produce," served September 3, 1980, and "Applicants Motion To Compel," etc., served September 18, 1980, "CASE's Response to Applicants' Motion To Compel and Motion for Protection," served October 2, 1980, does not support CASE's position that "the effect [of Applicants' statements] is clearly to prejudice the Board against CASE ..." A main point of CASE

was the difference between CASE's count of its objections (19) to Applicants' interrogatories and Applicants' higher count (49). Obviously the two parties used a different basis for counting objections, and as the Board views the total matter, including the incompleteness of CASE's answers, Applicants' explanation of their counting method was reasonable. Part (5) of CASE's motion for protection is accordingly denied.

4. In "CASE's Answers to Applicants' First Set of Interrogatories and Requests to Produce," served September 3, 1980, CASE moved for an extension of time for 60 days in order that CASE might prepare answers to the following interrogatories of Applicants, namely 55, 57, 59, 61, 62 and 64. In "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," served September 18, 1980, Applicants stated that CASE had not demonstrated good cause for a 60-day extension of time but that Applicants would not object to an extension of time until September 30, 1980 for CASE to respond to the referenced interrogatories.

5. The Board is of the opinion that CASE did not make a showing of good cause to warrant a 60 days extension of time to respond to Applicants' interrogatories 55, 57, 59, 61, 62 and 64, and so CASE's motion is denied. Nevertheless, under

the Board's earlier grant of additional time for CASE to respond to Applicants' interrogatories, CASE may respond to the referenced interrogatories on or before December 1, 1980.

Done on this 21<sup>st</sup> day of November 1980 at Washington, D.C.

ATOMIC SAFETY AND LICENSING BOARD

By

Valentine B. Deale  
Valentine B. Deale, Chairman