11/20/80

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	
APPLICATION OF TEXAS UTILITIES GENERATING COMPANY, ET AL. FOR AN OPERATING LICENSE FOR COMANCHE PEAK STEAM ELECTRIC STATION UNITS #1 AND #2 (CPSES)	Docket Nos. 50-445 and 50-446

MOTION TO GRANT CASE
SEPARATE INTERVENOR STATUS

COMES NOW CASE (Citizens Association for Sound Energy), Intervenor herein, and moves this Board to grant CASE separate Intervenor status rather than combining CASE with other Intervenors in any or all of the contentions raised in these hearings.

On November 7, 1980, CASE received the Board's October 31, 1980 Announcement of Plans for Consolidation of Parties, wherein the Board advised of its plans to consolidate the intervening parties (ACORN, CASE and CFUR), pursuant to 10 CFR 2.715a so that for each accepted contention, one intervenor will represent itself and the other two intervenors throughout the proceeding.

CASE most strenuously objects to such consolidation. 10 CFR 2.715a states:

> "...the presiding officer may order any parties...in a proceeding for the issuance of...an operating license...who have substantially the same interest that may be affected by the proceeding and who raise substantially the same questions, to consolidate their presentation of evidence, cross-examination, briefs, proposed findings of fact, and conclusions of law and argument. However, it may not order any consolidation that would prejudice the rights of any party." (Emphasis added.)

D503
5 0/1

019

G

CASE would show that the proposed consolidation of CASE with either or both of the other two Intervenors in these proceedings would violate the provisions of 10 CFR 2.715a in that such consolidation would prejudice the rights of Intervenor CASE. Such consolidation would place an unfair, unwarranted, and unnecessary burden on Intervenor CASE for the following reasons:

1. Such consolidation would force CASE unwillingly and unnecessarily to be represented by an individual who is not and cannot be thoroughly familiar with CASE's concerns, emphases, and approaches to issues. Such an individual would therefore necessarily be unable to adequately follow through in cross-examination of Applicant's witnesses or the witnesses of the other Intervenor (if CASE were joined with only one of the other Intervenors) as well as could CASE's own representative. Since cross-examination questions can raise other questions which need to be explored and pursued, there is no way the designated representative of the combined Intervenors could be adequately briefed and prepared in advance to assure that such representative could fully explore and pursue questions which CASE's own representative would.

Further, in order for the designated spokesperson of the consolidated parties to be made fully aware of CASE's concerns, emphases, and approaches to issues, CASE would have to spend an inordinate amount of time and effort. This extra expenditure of time and effort is totally unnecessary, since the CASE representative is already thoroughly familiar with such CASE concerns, emphases, and approaches to issues; therefore, no amount of time and effort

would be required in this regard if the CASE representative is not forced to consolidate with other Intervenors.

CASE submits that such consolidation, for the reasons above, would be contrary to 10 CFR 2.743, which states:

> "Every party to a proceeding shall have the right to...conduct such cross-examination as may be required for full and true disclosure of the facts."

2. Such consolidation would necessitate long-distance telephone calls to other Intervenors, with resulting extra cost to Intervenor CASE, thus placing an unanticipated additional financial burden on CASE.

3. Such consolidation would require trips of 30 miles (CASE/CFUR) or 60 miles (CASE/ACORN) roundtrip for each meeting of the consolidated parties. This in turn would require unnecessary driving time unproductive to preparation of Intervenor's case; it should be emphasized that this would not just add extra time to CASE's requirements for participating in these proceedings, but that it would actually be deducted from the already limited time we have available. Such trips would also burn extra amounts of gasoline which would add extra cost, be contrary to the country's call for energy conservation, and force CASE unwillingly and unnecessarily to violate its avowed commitment to energy conservation, in addition to placing another unanticipated financial burden on CASE's limited resources.

4. Such consolidation would place an unfair additional burden on the party selected to represent the two or three combined Intervenors. It would require extra time and effort on the part of the designated representative to familiarize

himself (or herself) with the concerns, perspectives and priorities of the other Intervenors he or she would be representing. Since each of the three citizen Intervenor groups already have heavy burdens as Intervenors in regard to their own contentions, it would be unfair to the designated representative (whoever that representative might be) to impose any additional burden upon him or her without there clearly being outweighing clear-cut benefits and reasons for doing so. CASE maintains that such benefits and reasons do not exist.

5. CASE has taken certain positions and certain approaches which the other Intervenors have not taken. No other Intervenor or its representative could better articulate and define such positions and approaches than CASE's own representative. There is no guarantee that another party's representative would adequately represent CASE's interests in these proceedings.

6. Since CASE is the only party not represented by counsel, the forced consolidation with other Intervenors would be discriminatory and prejudicial, in effect if not in intent. It is unrealistic to assume that there is even the remote possibility that the attorneys for CFUR and ACORN would consider having CASE's representative act as the designated spokesperson for the two or three Intervenors. Indeed, there is a question in CASE's mind whether or not it is even fair to ask them to do so. Conversely, we do not believe it is fair to ask CASE to relinquish any portion of its rights as an Intervenor because the CASE representative is not an attorney; to do so would be discriminatory and prejudicial and contrary to the provisions of 10 CFR 2.715a.

7. Such consolidation produces no recognizable benefits and any such

alleged benefits are far outweighed by the costs discussed herein. CASE sees no benefits of such consolidation of Intervenors. Should the Board be concerned that allowing CASE to be a separate and independent Intervenor in these proceedings (rather than being consolidated with other Intervenors) would result in unnecessary delays or an unnecessarily large record, there are already rules in place which would take care of such problems. Thus, CASE's being allowed to operate as a separate Intervenor would not prolong or delay the proceedings in any way.

8. CASE's being allowed to operate as a separate Intervenor will work to achieve a better record in these proceedings. If we are forced to consolidate with other Intervenors, we are convinced that the additional burdens of such consolidation as outlined in this pleading will necessarily lessen the participation of this Intervenor, that a few questions may go unasked and answered on cross-examination, that some facets of some issues will not be raised, that Applicants will be relieved of some of their rightful burden in these proceedings. Conversely, CASE's being a separate Intervenor will help guarantee that such questions are asked and answered, that such issues are raised, and that therefore a better record will be achieved in these hearings.

9. Such consolidation would force CASE unwillingly and unnecessarily into a position of having to coordinate closely with other individuals, thereby adding to the already heavy burdens of limitation of funds, personnel, and deadlines the additional burden of having to interface with other Intervenors with different perspectives, concerns and priorities from CASE. Also, it always takes longer for decisions to be made by a group of people than by a single individual.

Such consolidation would place an unnecessary and inequitable burden on CASE because it would force us to work within time frames not of our choosing, which will burden us further. The CASE members who are working on the intervention all work part-time or full-time and must work on these proceedings primarily at odd hours, at night, or on week-ends. Consolidation would impose an additional burden because it would necessitate trying to find a time when the two or three consolidated Intervenors can meet; this in turn will impose a heavy personal burden on such CASE members because it will at times interfere with times set aside for normal family life. In many instances, while a CASE member may be able to work at home on the intervention, it will be difficult if not impossible to extend such work to outside meetings, which will in turn place an even heavier burden on those CASE members who are left to carry the load, and especially on CASE's primary representative.

While we realize that CASE and its members must expect some sacrifices and burdens in participating in these proceedings, the consolidation with other Intervenors places a completely unnecessary additional burden, with no recognizable benefits, on this citizen Intervenor group.

10. CASE does not wish to get into personalities in these proceedings, but the fact is that with a public interest, totally volunteer, non-profit group such as CASE, people are the backbone of our organization. The consolidation of CASE with other Intervenors would place a heavy and inequitable burden on the writer, as CASE's primary representative, not common to other Intervenors.

The writer does not expect or ask for preferential treatment because of her sex. However, the fact remains that I am a woman, and as such, I consider the trips alone at night 30 or 60 miles round-trip to each meeting with other Intervenors which would be necessitated by consolidation to be ill advised and perhaps dangerous. To force CASE's primary representative to make such trips would unnecessarily and prejudicially subject the writer to possible bodily harm and mental anguish, in a manner not common to other Intervenors.

11. Not only is there no guarantee that another party's representative would adequately represent CASE's interests in these proceedings, as pointed out in item 5 preceding, but there is the additional possibility and probability that the designated spokesperson will, given human nature, favor the views, perspectives, concerns and priorities of his particular organization to the detriment of this Intervenor.

12. Such consolidation would increase the amount of time required for the preparation of this Intervenor's case, since the limited amount of time available to CASE is already being used to the fullest possible extent. The extra unnecessary burdens of expense, time, and travel necessitated by consolidation would necessarily take away from the time we have available for preparation of our case.

13. Such consolidation would impose a restriction of supplying only one copy of pleadings, response to interrogatories, copies of documents supplied in response to interrogatories, etc., which would impose an additional unnecessary burden because of extra time and costs involved for copying, mailing, and/or driving in order to provide copies to each of the consolidated parties should this be

necessary for each party to be able to actively and fully participate in these proceedings.

14. Such consolidation would preclude Intervenor CASE from cross-examining other consolidated parties' witnesses, even though there were good and valid reasons for such cross-examination. This might preclude CASE from having all its concerns addressed. Consolidation could preclude CASE from being able to speak on its own behalf should the designated spokesperson for the consolidated intervenors be unavailable for reasons which were no fault of CASE's.

15. Such consolidation could make the job of this Intervenor more difficult because of the quality of copies of documents, if the designated spokesperson has possession of the copies supplied by Applicants in response to interrogatories and requests for documents, since CASE would then have to make copies of copies with attendant poorer copy quality.

16. Such consolidation would unnecessarily increase the already heavy financial burden of intervention in these proceedings. The costs of the items previously listed may seem relatively small to the reader, but to an Intervenor group such as CASE, with already limited funds, they add up to an extra burden which we believe is totally unnecessary and uncalled for. As you are well aware, the Nuclear Regulatory Commission has no funding for Intervenors, although such funding is commonplace in other government agencies. It is unfair for this Board to place any unnecessary additional financial burden on this Intervenor in these proceedings, including consolidation with other Intervenors. To the contrary, we urge that this Board use this opportunity to assist CASE in making an effective contribution to creating a better record in these proceedings.

As pointed out in the Rogovin Report:

> "...intervenors have made an important impact on safety in some instances --sometimes as a catalyst in the prehearing stage of proceedings, sometimes by forcing more thorough review of an issue or improved review procedures on a reluctant agency. More important, the promotion of effective citizen participation is a necessary goal of the regulatory system, appropriately demanded by the public." (Emphasis in the original.)
>
> --"Three Mile Island -- A Report to the Commissioners and to the Public," Mitchell Rogovin, Director, Nuclear Regulatory Commission Special Inquiry Group (NUREG/CR-1250, Vol. 1, page 139)

17. The reasons against consolidation as set forth in the preceding items are not mere speculation of what can happen; to the contrary, they are based in many instances on what has happened to CASE in the past as an Intervenor in Dallas Power & Light rate hearings. CASE knows very well the myriad of problems which can accompany forced consolidation of Intervenors, based on past experience. We would advise the Board that ACORN, CFUR and CASE have been in existence within 30 miles of each other and in the same city (in the instance of CASE and ACORN) for several years; CASE also has members in Fort Worth and the Dallas/Fort Worth metroplex area. Had our interests, porspectives, priorities and goals been the same, we would have already been consolidated into one group. We are not. CASE submits that to force us to assume such consolidated status in these hearings is unnecessary, unfair, and extremely burdensome.

Further, we would advise the Board that CASE has sought and received separate intervenor status in all Dallas Power & Light rate hearings since 1976, that the attorney for DP&L (which is one of the Applicants in this proceeding) has not objected to such separate Intervenor status for CASE even though ACORN has been an Intervenor in such proceedings and even though DP&L has attempted to have

ACORN joined with other intervenors, and that DP&L has acknowledged that CASE does indeed have different perspectives, approaches and constituents from ACORN. (Since CASE and CFUR are in different cities, there has never been an occasion when we have been involved in the same rate case.)

CASE has outlined numerous specific reasons for our not being consolidated with other Intervenors in these proceedings, we have stated specific reasons why our not being consolidated would be beneficial, and we perceive no real benefits of such consolidation with its attendant unnecessary burdens for this Intervenor.

WHEREFORE, PREMISES CONSIDERED, CASE moves that this Board grant our Motion that CASE not be consolidated with other Intervenor(s) in these proceedings and that CASE be accorded separate Intervenor status in all aspects of these proceedings.

Respectfully submitted,

Juanita Ellis

(Mrs.) Juanita Ellis, President
CASE (Citizens Association for Sound Energy)
1426 S. Polk
Dallas, Texas 75224
214/946-9446

11/20/80

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

APPLICATION OF TEXAS UTILITIES GENERATING COMPANY, ET AL. FOR AN OPERATING LICENSE FOR COMANCHE PEAK STEAM ELECTRIC STATION UNITS #1 AND #2 (CPSES)

Docket Nos. 50-445 and 50-446

CERTIFICATE OF SERVICE

By my signature below, I certify that copies of "CASE's Motion to Grant CASE Separate Intervenor Status" and "Contingent Motion to Appoint CASE as Lead Party for Consolidated Contentions" has been sent this 20th day of November, 1980, to all parties on the service list below by deposit in the U. S. Mail, First Class Mail:

Valentine B. Deale, Esq., Chairman
Atomic Safety and Licensing Board
1001 Connecticut Avenue, N. W.
Washington, D. C. 20036

Dr. Forrest J. Remick, Member
Atomic Safety and Licensing Board
305 E. Hamilton Avenue
State College, PA 16801

Dr. Richard Cole, Member
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Nicholas S. Reynolds, Esq.
Debevoise & Liberman
1200 - 17th St., N. W.
Washington, D. C. 20036

Marjorie Rothschild
Counsel for NRC Staff
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Mr. Geoffrey M. Gay
West Texas Legal Services
100 Main Street (Lawyers Bldg.)
Fort Worth, TX 76102

Jeffery L. Hart, Esq.
4021 Prescott Avenue
Dallas, TX 75219

David J. Preister, Esq.
Assistant Attorney General
Environmental Protection Division
P. O. Box 12548, Capitol Station
Austin, Texas 78711

Mr. Richard Fouke
1668-B Carter Drive
Arlington, TX 76010

Atomic Safety and Licensing Board Panel
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Atomic Safety and Licensing Appeal Panel
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Docketing and Service Section
Office of the Secretary
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Arch C. McColl, III, Esq.
701 Commerce Street, Suite 302
Dallas, TX 75202

Juanita Ellis

(Mrs.) Juanita Ellis, President
CASE (CITIZENS ASSOCIATION FOR SOUND ENERGY)