

November 20, 1980

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
TEXAS UTILITIES GENERATING)	Docket Nos. 50-445
COMPANY, <u>et al.</u>)	50-446
)	
(Comanche Peak Steam Electric)	
Station, Units 1 and 2))	

APPLICANTS' COMMENTS ON
CONSOLIDATION OF INTERVENORS

Pursuant to the invitation by the Atomic Safety and Licensing Board ("Board") for comments regarding the Board's plans for consolidation of the parties, as set forth in the Board's October 31, 1980, "Announcement of Plans for Consolidation of Parties", Texas Utilities Generating Company, et al. ("Applicants") hereby submit their comments on consolidation. In sum, Applicants support consolidation of the Intervenor on certain contentions and suggest, in the absence of agreement among Intervenor, that the Board designate the Intervenor to be the lead party on those contentions.

I . APPLICANTS' COMMENTS ON CONSOLIDATION

A. Consolidation of Intervenor Is Within
the Board's Authority.

Section 2.715a of 10 C.F.R. Part 2 provides that the presiding officer may order any parties "who have substantially the same interest . . . and who raise substantially the same questions" to consolidate their participation in the proceeding

8011280

065

G

D503
50/1

"for all purposes", so long as consolidation would not prejudice the rights of any party.^{1/} Further, 10 C.F.R. §2.718 authorizes the presiding officer to regulate the course of the hearing and the conduct of the participants, and 10. C.F.R. §§2.714(e) and (f) authorize the presiding officer, inter alia, to require representation of common interests by a common spokesman. See also 10 C.F.R. §2.757.

B. The Parties Have Substantially the Same Interests

Intervenors Citizens for Fair Utility Regulation ("CFUR"), Citizens Association for Sound Energy ("CASE"), and Texas Association of Community Organizations for Reform Now ("ACORN") were granted party-intervenor status on the basis of the same interests, viz, proximity of the residence of a member to the Comanche Peak facility.^{2/} Where intervenors' interests are based on proximity to the plant, the "substantially the same interest" requirement of 10 C.F.R. §2.715a is satisfied. See Portland General Electric Co. (Trojan Nuclear Plant) ALAB-496, 8 NRC 308 (1978); and ASLB Unpublished Decision, "Order Concerning Requests for Hearing and Intervention Petitions" (July 27, 1978), at p. 7. On the basis of the record before

^{1/} The Board may exercise the powers of the presiding officer granted by 10 C.F.R. Part 2. 10 C.F.R. §2.721(d).

^{2/} See this Board's "Order Relative to Standing to Intervene" (June 27, 1979), at pp. 7, 8 and 10.

this Board, it should conclude that the interests of the Intervenorers are "substantially the same" for purposes of consolidation pursuant to 10 C.F.R. §2.715a.

C. Consolidation Would Not Prejudice the Rights of Any Party.

The rights of the Intervenorers would not be prejudiced by consolidating certain aspects of their participation in this proceeding. As evidenced at the prehearing conferences, all Intervenorers are represented by capable spokesmen in this proceeding. In addition, these Intervenorers know each other and are all located within reasonable proximity of each other. Thus, coordination of efforts with regard to the conduct of the proceeding will not impose undue burdens on them. Also, effective participation in the resolution of the contentions discussed in Part I.D., infra, does not depend upon or require the full and direct participation of every party which raised the contentions. Conversely, the efficient administration of this proceeding will be enhanced by requiring that contentions common to two or more Intervenorers be presented by a single spokesman.

There is no basis for concluding that Intervenorers' interests would be prejudiced by consolidation, or that the Intervenorers would be able to contribute more fully or efficiently to the resolution of issues individually rather than through consolidation. See Trojan, ASLB decision, supra, at 7-8. Clearly, there is no indication that consolidation would "turn out in

practice to be necessarily and significantly prejudicial to the protection of their interests." Portland General Electric Co. (Trojan Nuclear Plant), ALAB-496, 8 NRC 308, 311 (1978). Accordingly, the Board should find that consolidation of the Intervenor's participation on the specified contentions would not prejudice their rights in this proceeding.

D. Certain Contentions of the Parties Raise Substantially the Same Issues.

1. Contention 4

In Contention 4, both ACORN and CFUR raise substantially the same issue of consideration of hypothetical accident sequences at Comanche Peak. ACORN and CFUR both contend that accident sequences such as occurred at TMI-2 should be considered "credible" or "probable" and thus evaluated in the Comanche Peak operating license proceeding. The concerns expressed in CFUR proposed contentions 3A, 3B and ACORN proposed contention 11 (which contentions were combined into Contention 4) clearly raise substantially the same issue. This substantial similarity of issue, coupled with the commonality of Intervenor's interests and the absence of prejudice to their rights, as discussed above, demonstrates that Contention 4 is appropriate for consolidation pursuant to 10 C.F.R. §2.715a.

Applicants submit that in the event the Intervenor's do not agree among themselves upon a lead party for Contention 4, the Board should designate CFUR as lead party on Contention 4. CFUR

has included among its concerns regarding consideration of accident sequences at Comanche Peak a specific question which the Board included in Contention 4 with respect to a hydrogen explosion accident. ACORN has not raised this particular issue. Accordingly, as the party which has raised all specific issues in Contention 4, CFUR would be the logical choice as the lead party on that Contention.

2. Contention 5

All Intervenors raise substantially the same issue with regard to Applicants' quality assurance/quality control program. The Board has designated language for this contention which reflects the Intervenors' substantially similar allegations concerning compliance with 10 C.F.R. Part 50, Appendix B. Each Intervenor alleges that construction practices at Comanche Peak were inadequate and thus the Board cannot make the findings of 10 C.F.R. §50.57(a) necessary for issuance of an operating license. In fact, each of the specific items raised in Contention 5 are merely part of the same broader issue (viz., construction practices) which each Intervenor raised and which was reflected in Contention 5. Accordingly, this substantial similarity of issues, the absence of prejudice to Intervenors' rights and the commonality of their interests, as discussed above, demonstrates that Contention 5 is appropriate for consolidation pursuant to 10 C.F.R. §2.715a.

Applicants submit that in the event the Intervenor do not agree among themselves upon a lead party for Contention 5, the Board should designate ACORN as lead party with respect to Contention 5. While all Intervenor have raised substantially the same questions, the Board has decided to construe Contention 5 to include issues raised by the NRC Inspection and Enforcement Reports submitted by ACORN in its August 29, 1980 Offer of Proof.^{3/} Accordingly, ACORN will be best suited to litigate the issues previously specifically included in Contention 5 as well as whatever issues it deems to be raised in its Offer of Proof, and would appear to be the logical choice for lead party with regard to Contention 5.

3. Contention 9 and Contention 23

Both Contention 9, raised by CFUR, and Contention 23, raised by CASE and ACORN, involve the issue of health effects of low-level (i.e. routine) radioactive releases. As articulated by the Intervenor, the issue in both Contentions 9 and 23 is Applicants' compliance with the as low as is reasonably achievable ("ALARA") standard. Accordingly, based upon the foregoing rationale, these contentions are appropriate for consolidation pursuant to 10 C.F.R. §2.715a.

^{3/} See this Board's "Rulings on Objections to Board's Order of June 16, 1980 and on Miscellaneous Motions" (October 31, 1980), at p. 5.

Applicants submit that in the event the Intervenor do not agree to consolidate their participation with respect to Contentions 9 and 23, and to designate a lead party for those combined contentions, the Board should consolidate the contentions and designate CFUR as lead party for Contentions 9 and 23. CFUR has articulated particular questions with respect to the issue of compliance with the ALARA standard (viz., whether proper consideration has been given to the effect of certain meteorological data on planning routine releases), while ACORN and CASE have not particularized their concerns to the extent of CFUR. Accordingly, CFUR appears to be better prepared to act as lead party for Contentions 9 and 23.

4. Contention 22(f)

Contention 22(f) raises the issue of emergency planning in the Dallas/Ft. Worth area. Both CASE and ACORN raise precisely the same issue (viz., that there is no provision for emergency planning in the Glen Rose or the Dallas/Ft. Worth metroplex). Clearly, the identity of the issue satisfies the test for consolidation under 10 C.F.R. §2.715a of "substantially the same question." Accordingly, and based upon the foregoing rationale, Applicants submit that consolidation of CASE and ACORN's participation in this proceeding with respect to Contention 22(f) would be appropriate pursuant to 10 CFR §2.715a.

Applicants' submit that in the event Intervenor do not agree upon a lead party for Contention 22(f), the Board should designate CASE as lead party on Contention 22(f). CASE will be litigating Contentions 22(a) through (e), which also deal with emergency planning, and thus would be the logical choice as lead party with respect to all issues involving emergency planning.

5. Contention 24(a)

Contention 24(a) raises the issue of the adequacy of Applicants' consideration in the cost/benefit balance for Comanche Peak of the costs of decommissioning the facility after its useful life. ACORN and CASE both seek resolution of the same issue regarding decommissioning, and thus Contention 24(a) meets the requirements of 10 C.F.R. §2.715a regarding similarity of issues. Accordingly, and based upon the foregoing rationale, Applicants submit that consolidation of CASE and ACORN's participation with regard to Contention 24(a) in this proceeding would be appropriate under 10 C.F.R. §2.715a.

Applicants submit that in the event Intervenor do not agree among themselves upon a lead party for Contention 24(a), the Board should designate CASE as lead party on Contention 24(a). As with respect to Contention 22, efficient conduct of this proceeding would best be achieved if one Intervenor acted as lead party on contentions which involve the same topic.

In this instance, CASE has also raised Contentions 24(b) through (d), dealing with the cost/benefit balance for Comanche Peak. Thus, CASE would be the appropriate Intervenor to act as lead party with respect to the decommissioning contention.

6. Remaining Contentions

The Board's October 31 Order invited the Intervenor to designate a lead party for "each accepted contention." Applicants assume with respect to each contention raised by a single Intervenor (except Contention 9 dealt with in Part I. D. 3, supra), that the Intervenor raising the contention should conduct the aspect of the proceeding dealing with that contention. Accordingly, the Board should designate the single Intervenor which raised each remaining contention as "lead party" on that contention.

E. Consolidation Should be For All Purposes

Section 2.715a of 10 C.F.R. Part 2 provides that consolidation "may be for all purposes of the proceeding." Applicants submit that to promote the efficient conduct of this proceeding, consolidation of Intervenor's participation should indeed be for "all purposes." Thus, the Intervenor designated as lead party for each contention should handle that contention through all facets of the proceeding, including the conduct of discovery (both for submission of discovery requests and for responding to Applicants' or Staff's discovery requests), presentation of

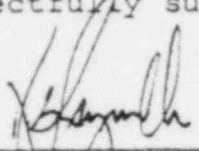
evidence, cross-examination,^{4/} presentation of argument, and submission of briefs, proposed findings of fact and conclusions of law. Consolidation of Intervenor's participation with respect to each contention for all aspects of this proceeding is within the Board's discretion. See 10 C.F.R. §2.715a and discussion supra at Section I. A.; see also Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), Docket No. 50-446, ASLB Unpublished "Order" (March 10, 1980) at p. 110; Trojan, ASLB Unpublished Order, supra, at p. 8.

^{4/} Cross-examination by an Intervenor on contentions raised by other Intervenor's may be conducted only upon a clear demonstration by that particular Intervenor that such cross-examination will be confined to the scope of the direct examination and will not be irrelevant, repetitious, cumulative or otherwise of no value to the ventilation of issues in the proceeding. Northern States Power Co. (Prairie Island Nuclear Plant, Units 1 and 2), ALAB-244, 8 AEC 857, 868-69 (1974), aff'd, CLI-75-1, 1 NRC 1 (1975).

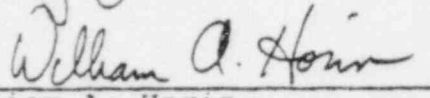
II. CONCLUSION

For the foregoing reasons, Applicants support consolidation of Intervenor's participation with respect to all contentions and for all facets of this proceeding.

Respectfully submitted,



Nicholas S. Reynolds



William A. Horin

Debevoise & Liberman
1200 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 857-9817

Counsel for Applicants

November 20, 1980

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
TEXAS UTILITIES GENERATING)	Docket Nos. 50-445
COMPANY, <u>et al.</u>)	50-446
)	
(Comanche Peak Steam Electric)	(Application for
Station, Units 1 and 2))	Operating License)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Applicants' Comments on Consolidation of Intervenor", in the above captioned matter were served upon the following persons by deposit in the United States mail, first class postage prepaid this 20th day of November, 1980:

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

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

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

Marjorie Ulman Rothschild, Esq.
Office of the Executive
Legal Director
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

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

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

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

Mr. Richard L. Fouke
CFUR
1668B Carter Drive
Arlington, Texas 76010

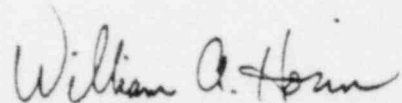
Arch C. McColl, III, Esq.
701 Commerce Street
Suite 302
Dallas, Texas 75202

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

Mrs. Juanita Ellis
President, CASE
1426 South Polk Street
Dallas, Texas 75224

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

Mr. Chase R. Stephens
Docketing & Service Branch
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555



William A. Horin

cc: Homer C. Schmidt
Spencer C. Relyea, Esq.