

RELATED CORRESPONDENCE

June 12, 1981



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )

TEXAS UTILITIES GENERATING )  
COMPANY, et al. )

(Comanche Peak Steam Electric )  
Station, Units 1 and 2) )

Docket Nos. 50-445  
50-446

(Application for  
Operating Licenses)

APPLICANTS' MOTIONS (1) TO COMPEL RESPONSES,  
AND (2) TO REQUIRE SUPPLEMENTATION OF  
RESPONSES TO INTERROGATORIES IN APPLICANTS'  
THIRD SET OF INTERROGATORIES TO CFUR

Pursuant to 10 C.F.R. §2.740(f), Texas Utilities  
Generating Co., et al. ("Applicants") hereby move the Atomic  
Safety and Licensing Board ("Board") in the captioned proceed-  
ing to order Citizens for Fair Utility Regulation ("CFUR")  
(1) to provide responsive answers to certain interrogatories  
in Applicants' Third Set of Interrogatories to CFUR, filed  
April 23, 1981, and (2) to supplement its responses to certain  
of those interrogatories when the information requested is  
developed or obtained.

I. Background

On April 23, 1981 Applicants served their third set  
of interrogatories and requests to produce on CFUR. Those in-  
terrogatories concerned Contention 3 (computer code prediction

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of the TMI sequence of events), Contention 4 (accident sequence probabilities and analysis), and Contention 9 (health effects of radioactive releases). On May 12, 1981, CFUR filed a motion for a three-week extension of time (until June 2, 1981) in which to respond to Applicants' third set of interrogatories. Applicants opposed that motion in their May 18, 1981 answer. The Board did not rule on that motion, and CFUR filed its answers on June 2, 1981, three weeks late.

## II. Applicants' Motion to Compel

Applicants hereby incorporate by reference the discussion of law and NRC practice regarding discovery that was set forth in Applicants' September 30, 1980 motions to compel and to require supplementation of responses to Applicants' first set of interrogatories to CFUR. In addition, the decision by the Appeal Board in Pennsylvania Power and Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-619, 12 NRC 317 (1980), discusses the principles of discovery in NRC proceedings and reinforces Applicants' summary of applicable principles in their September 30 motion.<sup>1/</sup>

Further, the Board, in its April 13, 1981 Memorandum and Order granting Applicants' modified motions to compel

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<sup>1/</sup> Copies of that decision were forwarded to the Intervenor on November 17, 1980 by the NRC Office of the Secretary at the request of the present Board Chairman.

CFUR to respond to Applicants' first set of interrogatories, noted its general approval of the Applicants' summary discussion of discovery in their September 30 motion and commended that discussion to CFUR. Memorandum and Order at 3. The Board also referred CFUR to the Susquehanna decision cited above. Accordingly, CFUR should be well-informed of its responsibilities regarding responses to discovery requests in this proceeding.

Applicants submit that many of CFUR's answers to Applicants' discovery requests are inadequate responses under pertinent case law and the NRC Rules of Practice governing discovery. Accordingly, Applicants move the Board to issue an order compelling CFUR to respond to the following interrogatories.

1. Interrogatories 26-3, 28-3, 30-3, 32-3, 34-3 and 36-3

These interrogatories request that CFUR describe the details and consequences of certain "parameters" which it contends should be included in the computer codes which are the subject of Contention 3. These parameters are "operator error" (Interrogatory 26-3), "maintenance error" (Interrogatory 28-3), "hydrogen formation" (Interrogatory 30-3), "single failure criterion interpretation" (Interrogatory 32-3), "PORV problems" (Interrogatory 34-3), and "misleading indications" (Interrogatory 36-3). CFUR's responses to these interrogatories fail to describe any of the consequences which it

attributes to these "parameters." Thus, CFUR's responses are incomplete. Accordingly, Applicants' move the Board to order CFUR to provide complete and responsive answers to Interrogatories 26-3, 28-3, 30-3, 32-3, 34-3, and 36-3.

In addition, Interrogatories 26-3 and 28-3 request that CFUR identify the particular operator errors and maintenance errors with which CFUR is concerned in Contention 3. CFUR's answer merely provides "examples" of such errors. Such an answer is obviously an incomplete response. Accordingly, Applicants also move the Board to order CFUR to identify all operator errors and maintenance errors with which CFUR is concerned.

2. Interrogatories 45-3 through 83-3.

These interrogatories all deal with Contention 4. The interrogatories seek specification of the issues in Contention 4 and request information concerning the bases for CFUR's claims. CFUR has responded to these interrogatories, as a group, as follows:

CFUR is unable to proceed at this time with responses to Applicant's [sic] Interrogatories pertaining to Contention 4.

CFUR provides no justification for its total failure to provide responses to Applicants' interrogatories addressed to Contention 4. Neither does CFUR object to any of these interrogatories.

Applicants are entitled to seek the particular deficiencies which CFUR claims in Contention 4 to exist, and

to ascertain the bases for CFUR's claims. Boston Edison Co. (Pilgrim Nuclear Generating Station, Unit 2), LBP-75-30, 1 NRC 579, 582 (1975). To permit CFUR to make skeletal contentions, to keep the bases for them secret, then require the Applicants to meet any conceivable thrust at the hearing would be patently unfair. Northern States Power Co. (Tyrone Energy Park, Unit 1), LBP-77-37, 5 NRC 1298, 1301 (1977). In any event, CFUR is required either to answer or to object to each interrogatory in a timely manner. 10 C.F.R. §2.740b(b). CFUR's response to Interrogatories 45-3 through 83-3 is, therefore, completely inadequate. Accordingly, Applicants move the Board to order CFUR to provide complete and responsive answers to each of Interrogatories 45-3 through 83-3.

III. Applicants' Motion to Require Supplementation

CFUR responds to numerous interrogatories (listed below) involving Contentions 3 and 9 by stating that the answers are "unknown at this time" or that further information or the balance of the requested information will be provided at a later date. Also, some answers rely on responses to previous interrogatories for which CFUR indicates it will provide information at a later time. CFUR does not object to any of those interrogatories.

The subject interrogatories all request the bases for CFUR's claims in Contentions 3 and 9 and/or seek specification of the issues which CFUR intends to raise. Applicants

are entitled to such information. Pilgrim, supra at 582. Further, Applicants must be able to inquire effectively into the positions of CFUR on its own contentions. Tyrone, supra at 1301. Without supplementation of CFUR's response to these interrogatories, Applicants will be precluded from making such an inquiry.

In order to promote the effective inquiry into CFUR's positions on Contention 3 and 9, Applicants move the Board to order CFUR to supplement its responses to the interrogatories listed below as soon as the information requested is developed or obtained.<sup>2/</sup> The Board is vested with the authority to issue the requested order in its discretion. 10 C.F.R. §2.740(e)(3). Such an order would be proper in these circumstances since a general requirement for supplementation of responses should eliminate the need for Applicants to resubmit interrogatories on a periodic basis in order to determine the status of CFUR's position. Accordingly, Applicants' move the Board to order

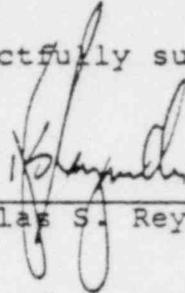
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<sup>2/</sup> Applicants do not move to require CFUR to supplement responses for which a duty to supplement is already clearly imposed pursuant to 10 C.F.R. §§2.740(e)(1) and (2).

CFUR to supplement its responses to the following interrogatories whenever the requested information is developed or obtained.<sup>3/</sup>

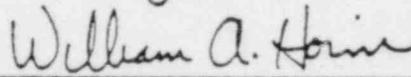
Interrogatories 6-3, 11-3, 12-3, 15-3, 19-3, 20-3 through 23-3, 27-3, 29-3, 31-3, 33-3, 35-3, 37-3, 39-3, 96-3, 104-3, and 115-3.

Respectfully submitted,



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June 12, 1981

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<sup>3/</sup> Applicants are merely requesting that the Board require CFUR to supplement its answers to the subject interrogatories in the same manner in which the Board has ordered CFUR to supplement its answers to interrogatories which concern Contentions 2, 7 and 8. See April 13, 1981 Memorandum and Order regarding CFUR, at pp. 10-13.

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(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' Motions (1) To Compel Responses, and (2) To Require Supplementation of Responses to Interrogatories in Applicants' Third Set of Interrogatories to CFUR" in the above-captioned matter were served upon the following persons by deposit in the United States mail, first class postage prepaid this 12th day of June, 1981:

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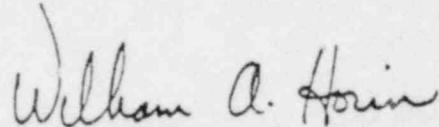
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