

6/10/81



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, ET AL.	§	50-446
	§	
(Comanche Peak Stream Electric	§	(Application for
Station, Units 1 and 2)	§	Operating License)

CFUR'S RESPONSE TO APPLICANTS' MOTION
TO STRIKE, MOTION FOR PROTECTION
AND REQUEST FOR ORAL ARGUMENT

COMES NOW, CFUR, one of the intervenors in this proceeding, and files this Response to the Applicants' Motion to Strike CFUR Contentions for Default and further moves the Board to enter an order pursuant to 10 CFR § 2.740(c) protecting CFUR from unjustified actions by the Applicants as hereinafter stated. CFUR also requests that it be allowed oral argument before the Board on its response and motion.

The Applicants' Motion to Strike CFUR Contentions for Default ("Applicants' Motion") contains critical misstatements of the discovery at issue and attempts to mislead the Board as to the applicable law. Not only should the Board deny the Applicants' Motion, but the Applicants should be sanctioned for their false representations in this proceeding.

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Applicants complain that CFUR's answer, "inadequate discovery at this time," in response to Interrogatories 15, 20, 23, 39, 46, 52, 54, 56, 62, 108, 111, 112, 114, 125, 127, 129 and 132 is inadequate to the point of violating the Board's Order of April 13, 1981. The Applicants' complaint about these Interrogatories is unmeritorious. Moreover, the Applicants' arguments are extremely misleading

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unless one examines the series of Interrogatories in which each falls. To facilitate a true understanding of what is involved, attached hereto as Appendix 1 are the relevant series of Interrogatories and CFUR's answers thereto for each above-listed Interrogatory.

A. As is shown by Appendix 1, each of the Interrogatories in question inquires about CFUR's basis for a previous answer. However, what the Applicants fail to state in their Motion is that with the exception of Interrogatories 46 and 62 (which are discussed below) each of the previous answers involved is, in substance, "unknown at this time." See Appendix 1. Moreover, each of these answers of "unknown at this time" (to wit, Interrogatories 13, 18, 21, 38, 50, 51, 106, 109, 112a, 113, 124, 128 and 131) was considered by the Board to be adequate at this time. (See April 13, 1981 Order, p. 14.) Since CFUR has not developed additional facts which warrant supplementing those answers, they are still proper. Furthermore, it is well established that a truthful response of lack of knowledge is always an adequate answer to an interrogatory. Pennsylvania Power and Light Company, et al. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 334 (1980).

Returning to the Interrogatories complained of by the Applicants, each one is asking for the basis of CFUR's lack of knowledge responses. Since CFUR has been denied meaningful discovery from the Applicants to this point, inadequate discovery is a truthful and proper reason for its lack of knowledge. CFUR's answers fully comply with the Board's Order and reflect CFUR's good faith attempts to provide truthful discovery.

B. The Applicants' arguments with regard to Interrogatory 46 is likewise misleading. As Appendix 1 demonstrates, Interrogatory 46 asks for the basis of the answer to Interrogatory 45, which in turn is based on affirmative answers to Interrogatories 41 and 43. Since Interrogatories 41 and 43 were not answered

affirmatively, Interrogatory 45 was not applicable. Interrogatory 46 therefore is not applicable either. Nevertheless, since ordered to do so, CFUR answered it. CFUR's response of inadequate discovery is proper since its previous premising answers could change, and therefore so could their bases, through the discovery process. CFUR's answer to Interrogatory 46 is in all things proper.

C. CFUR's response to Interrogatory 62 of inadequate discovery is proper also. As set out in the answer to Interrogatory 61, reference is made to a previous document which gives CFUR's current basis in this context. CFUR also responds that it may include or delete reports and/or computer codes. (See Appendix 1.) The reason those reports and codes may change is that CFUR may develop information through the discovery process. Therefore, CFUR's answer of inadequate discovery in response to Interrogatory 62 is in all things proper and in compliance with the Board's Order.

II.

With regard to Interrogatories 27, 29, 30 and 32, the Applicants are attempting to mislead the Board as to the full extent of CFUR's responses. Again, to demonstrate the true nature of the discovery in question, Appendix 2, attached hereto, sets out the full series and answers thereto of the Interrogatories complained of.

A. Interrogatories 27 and 30 inquire about what Applicants must do to get reports and computer codes "suitably verified and formally accepted." CFUR's answer to Interrogatory 24, which is referenced by its answer to Interrogatory 30, states explicitly CFUR's position on this issue.

Interrogatories 24, 27 and 30 are duplicative shades of the same inquiry. CFUR's responses to those Interrogatories more than adequately provide a specific answer to that inquiry. It is simply not justified for the Applicants to ignore CFUR's answer to Interrogatory 24 and thereby misrepresent that CFUR is in

noncompliance with the Board's Order. CFUR's answers are in all things specific and proper.

B. Applicants complain of CFUR's response to Interrogatories 29 and 32 which inquire about certain of CFUR's bases. However, Applicants fail to acknowledge CFUR's answer to Interrogatory 26 which details CFUR's basis for its position with regard to suitably verifying and formally accepting the reports and computer codes. The answer to Interrogatory 26 is clearly referenced in CFUR's answer to Interrogatory 32. See Appendix 2.

Again, Applicants are asking duplicative Interrogatories. It is highly improper for them to ignore one of CFUR's answers to such Interrogatories and thereby misrepresent that CFUR has not provided full discovery. To the contrary, CFUR's responses are complete and proper.

III.

The Applicants' complaint about CFUR's answers to Interrogatories 33 and 35 is also baseless. These Interrogatories and the CFUR's answers thereto are set out in Appendix 3.

Initially, Applicants misrepresent the inquiry contained in their Interrogatory 33. As is their practice, Applicants seek to have CFUR define the meaning of its Contentions. Interrogatory 33 is a rhetorical inquiry based on the wording of Contention 2, the only place where the quoted words in that Interrogatory appear. As the Contention sets out, all conclusions based on reports and computer codes which have not been suitably verified and formally accepted are invalid. The concept involved is tautological. Reports and codes properly verified and accepted will have valid conclusions based on them. Conversely, should any report or computer code not be so verified and accepted, the consequence will be that "conclusions" based on it will be "invalid." CFUR makes this point abundantly clear in its response to Interrogatory 33.

Similarly, CFUR's response to Interrogatory 35 defines the same concept interrelating the basis for reports and computer codes suitably verified and formally accepted, and valid conclusions based thereon. In its answers, CFUR has properly advised the Applicants of its position under Contention 2.

IV.

The Applicants' argument with regard to Interrogatories 105, 112f, 116, 118, 121 and 123 fails to state with particularity how CFUR's responses are alleged to be deficient. For that reason alone, the Applicants' Motion should be denied.

As Appendix 4 attached hereto shows, CFUR has fully set out its bases for supporting problems resulting from the overexcavation of bedrock and the placing of foreign material in the foundation of CPSES. Applicants do not show how any of these answers are improper; indeed, each of CFUR's answers are proper.

V.

With respect to Contention 8, CFUR will defer to the efforts of the Staff on the issue of drawdown due to use of groundwater by CPSES.

It appears that the Staff is adequately examining the problems with which CFUR is concerned in this area. See Draft Environmental Statement NUREG-0775, pp. 5-3 through 5-6. Paraphrasing from the EIS, CFUR approves of the recommendations by the Staff:

The maximum drawdown due to station operation would occur if the total demand were met by using groundwater. The effects of drawdown due to operational pumpage will be minimized by supplemental water supply from the reverse-osmosis surface-water-treatment facility but the applicant has not provided any specifications to define the conditions under which treated surface water will be used to supplement or replace groundwater.

The staff concludes that the groundwater-level decline due to CPSES usage of groundwater would aggravate an already serious regional groundwater-level decline and recommends that a condition be imposed in the operating license restricting use of groundwater by CPSES to potable and sanitary purposes and to supplementing the supply of treated surface water during short periods of peak demand when station requirements exceed the capacity of the reverse-osmosis surface-water-treatment plant.

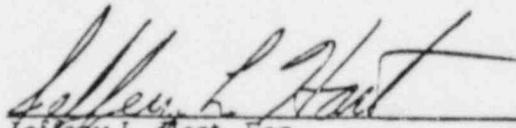
VI.

As demonstrated above, CFUR has fully and completely complied with the Board's Order of April 13, 1981, and has provided full and complete answers to all of the Interrogatories in question. The Applicants have failed to show that CFUR is in default in any way with regard to Contentions 2 and 7. Wherefore, CFUR prays that the Applicants' Motion to Strike CFUR Contentions for Default be in all things denied.

As the Board can see, the Applicants have in many instances misrepresented the true nature of the interrogatories and answers complained of in their Motion. Instead, the Applicants have presented a very distorted and misleading image of the discovery in question. The only explanation for the Applicants' actions is to harass CFUR and cause it unfair prejudice in the eyes of the Board. Consequently, CFUR renews its Motion for Protection filed September 18, 1980 and further moves the Board to enter an Order protecting CFUR from being subjected to misleading and patently unmeritorious motions by the Applicants.

CFUR further prays that it be given an opportunity to present oral argument at the July 8, 1981 Prehearing Conference on this Response to Applicants' Motion to Strike, Motion for Protection and Request for Oral Argument.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing CFUR's Response to Applicants' Motion to Strike, Motion for Protection and Request for Oral Argument has been forwarded to all parties and counsel of record this 10th day of June, 1981 by first class mail.

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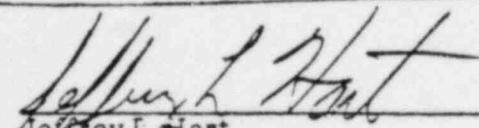
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APPENDIX I

Pertinent Questions and Answers Concerning
"Inadequate Discovery At This Time"

A. Pertaining to Question 15 - Contention 2

Q-13. Do you contend that any of the reports identified in your response to Interrogatory 11 are inaccurate?

CFUR Answer. Unknown at this time.

Q-14. If your response to Interrogatory 13 is in the affirmative, please identify those reports and specify the nature and substance of each inaccuracy.

CFUR Answer. Not applicable.

Q-15. What is your basis for your response to Interrogatory 14?

CFUR Answer. Inadequate discovery at this time.

B. Pertaining to Question 20 - Contention 2.

Q-18. Do you contend that any of the computer codes identified in Interrogatory 16 are inaccurate?

CFUR Answer. Unknown at this time.

Q-19. If your response to Interrogatory 18 is in the affirmative, please specify each alleged inaccuracy.

CFUR Answer. Not applicable.

Q-20. What is your basis for your response to Interrogatory 19?

CFUR Answer. Inadequate discovery at this time.

C. Pertaining to Question 23 - Contention 2.

Q-21. Do you contend that the NRC Staff should not verify and accept any of the reports or computer codes identified above?

CFUR Answer. Unknown at this time.

Q-22. If your response to Interrogatory 21 is in the affirmative, please specify those reports or computer codes . . .

CFUR Answer. Not applicable.

Q-23. What is your basis for your response to Interrogatory 22?

CFUR Answer. Inadequate discovery at this time.

D. Pertaining to Question 39 - Contention 2

Q-36. Do you intend to challenge in the upcoming hearings the accuracy of any of the reports or computer codes identified above?

CFUR Answer. Yes.

Q-38. If your response to Interrogatory 36 is in the affirmative, please set forth with specificity the nature and substance of your challenge(s).

CFUR Answer. The details of the nature and substance of CFUR's challenges are not complete and are contingent upon CFUR's discovery which has not begun.

Q-39. What is your basis for your response to Interrogatory 38?

CFUR Answer. Inadequate discovery at this time.

E. Pertaining to Question 46 - Contention 2.

Q-41. Do you contend the Licensing Board must review each computer code and applicable report used in the FSAR?

CFUR Answer. No.

Q-43. If your response to Interrogatory 41 is in the negative, do you contend the Board must review any of the computer codes and applicable reports set forth in the FSAR?

CFUR Answer. CFUR is unable to answer this Interrogatory because the word "review" is ambiguous in this context.

Q-45. If your response to Interrogatories 41 and 43 are in the affirmative, what kind of review do you contend the Board must conduct? Please specify the roles and responsibilities of the Applicants, the Staff and the Board in that review.

CFUR Answer. Not applicable.

Q-46. What is your basis for your response to Interrogatory 45?

CFUR Answer. Inadequate discovery at this time.

F. Pertaining to Question 52 - Contention 2.

Q-50. Do you contend that any of the computer codes used in the FSAR are not applicable to Comanche Peak? If so, please specify.

CFUR Answer. Unknown at this time.

Q-51. Do you contend that any of the reports used in the FSAR are not applicable to Comanche Peak? If so, please specify.

CFUR Answer. Unknown at this time.

Q-52. What are your bases for your responses to Interrogatories 50 and 51?

CFUR Answer. Inadequate discovery at this time.

G. Pertaining to Question 54 - Contention 2.

Q-53. If your response to either Interrogatory 50 or 51 was in the affirmative, do you contend . . . ?

CFUR Answer. Not applicable.

Q-54. What is your basis for your response to Interrogatory 53?

CFUR Answer. Inadequate discovery at this time.

H. Pertaining to Question 56 - Contention 2.

Q-55. If your response to either Interrogatory 50 or 51 was in the affirmative, do you contend . . . ?

CFUR Answer. Not applicable.

Q-56. What is your basis for your response to Interrogatory 55?

CFUR Answer. Inadequate discovery at this time.

I. Pertaining to Question 62 - Contention 2.

Q-60. Do you agree that all computer codes and reports used in the Applicants' FSAR which are not identified in your response to Interrogatories 11 and 16 have been suitably verified and formally accepted and provide valid conclusions?

CFUR Answer. No.

Q-61. If your response to Interrogatory 60 is in the negative, please explain . . .

CFUR Answer. Supplement to Petition for Leave to Intervene by Citizens for Fair Utility Regulation (CFUR), May 7, 1980, and Report of CFUR's Position on Each Contention, April 10, 1980. CFUR has not ruled out the possibility of including computer codes and/or deleting reports and/or computer codes.

Q-62. What is your basis for your response to Interrogatory 61?

CFUR Answer. Inadequate discovery at this time.

J. Pertaining to Question 108 - Contention 7.

Q-106. Are there any other instances of rock overbreak and subsequent fissure repair other than those identified in I & E Inspection Report 75-05 which you intend to challenge?

CFUR Answer. Correlation of rock overbreaks has not been accomplished at this time.

Q-107. If your response to Interrogatory 106 is in the affirmative, please identify . . .

CFUR Answer. Not applicable.

Q-108. What is your basis for your response to Interrogatory 107?

CFUR Answer. Inadequate discovery at this time.

K. Pertaining to Question 111 - Contention 7.

Q-109. Do you contend that the NRC Staff is unable to "adequately evaluate" rock overbreak and subsequent fissure repair?

CFUR Answer. Unknown at this time.

Q-110. If your response to Interrogatory 109 is in the affirmative, please explain your response.

CFUR Answer. Not applicable.

Q-111. What is your basis for your response to Interrogatory 110?

CFUR Answer. Inadequate discovery at this time.

L. Pertaining to Question 112.c - Contention 7.

Q-112a. Do you object to any of the information, data or analysis contained or referenced in the FSAR with respect to the evaluation of rock overbreak and subsequent fissure repair?

CFUR Answer. Unknown at this time.

Q-112b. If your answer to a is in the affirmative, please specify . . .

CFUR Answer. Not applicable.

Q-112c. What are your bases for your answers to a and b?

CFUR Answer. Inadequate discovery at this time.

M. Pertaining to Question 114 - Contention 7.

Q-113. Do you contend that Applicants' evaluation and determination of the static, dynamic and engineering properties of the materials underlying the site are inadequate?

CFUR Answer. Unknown at this time.

Q-114. What is your basis for your response to Interrogatory 113?

CFUR Answer. Inadequate discovery at this time.

N. Pertaining to Question 125 - Contention 7.

Q-124. Do you contend that any tests must be done to evaluate the concerns which you have with respect to Contention 7? . . .

CFUR Answer. Unknown at this time.

Q-125. What is your basis for your response to Interrogatory 124?

CFUR Answer. Inadequate discovery at this time.

O. Pertaining to Question 127 - Contention 7.

Q-126. If your response to Interrogatory 124 is in the affirmative, please identify . . .

CFUR Answer. Not applicable.

Q-127. What is your basis for your response to Interrogatory 126?

CFUR Answer. Inadequate discovery at this time.

P. Pertaining to Question 129 - Contention 7.

Q-128. Do you contend that reports and/or analyses must be done with respect to your concerns expressed in Contention 7? . . .

CFUR Answer. Unknown at this time.

Q-129. What is your basis for your response to Interrogatory 128?

CFUR Answer. Inadequate discovery at this time.

Q. Pertaining to Question 132 - Contention 7.

Q-130. What structures do you contend are affected by the rock overbreak and subsequent fissure repair? . . .

CFUR Answer. Unknown at this time.

Q-131. Do any of your responses to the above Interrogatories differ from the various structures identified in your response to Interrogatory 130? . . .

CFUR Answer. Unknown at this time.

Q-132. What is your basis for your response to Interrogatory 131?

CFUR Answer. Inadequate discovery at this time.

APPENDIX 2

Pertinent Questions and Answers Relating To Questions 27, 29, 30 and 32 of Contention 2

A. Pertaining to Questions 27 and 30 - Contention 2

Q-24. Precisely what do you contend the Applicants must do to have the reports or computer codes identified above "suitably verified"?

CFUR Answer. Demonstrate absolute accuracy of the prediction of the computer codes. Prove that the physical realm of operation is replicable and predictable in accordance with what is stated in the report and/or computer code.

Q-27. What do you contend the Applicants must do to have the reports and computer codes identified above "formally accepted"?

CFUR Answer. Provide suitable verification to Staff with proof.

Q-30. What do you contend the Applicants must do to demonstrate that the reports and computer codes identified above have been "suitably verified and formally accepted"?

CFUR Answer. See responses to 24 and 27.

B. Pertaining to Questions 29 and 32 - Contention 2.

Q-26. What are your bases for your responses to Interrogatories 24 and 25?

CFUR Answer. In order to verify a mathematical representation of the real world, it is necessary to establish the accuracy of the predictions of the math model as measured from some recognized standard. The most recognized standard is the results of a controlled experiment. Both large and small break experiments have been conducted at the LOFT facility. CFUR contends that the results of these experiments should represent, in part, the recognized standard referred to above.

See answers to Interrogatory 1; IEEE Std. 100-1977 and IEEE Std. 268-1979; 10 CFR § 50.34(b).

Q-29. What are your bases for your responses to Interrogatories 27 and 28?

CFUR Answer. The only way for the reports and codes to be used in the regulatory process is for the Applicants to prove suitable verification and the NRC Staff to evaluate the proof and independently verify the results.

Q-32. What are your bases for your responses to Interrogatories 30 and 31?

CFUR Answer. See responses to 26 and 29.

APPENDIX 3

Pertinent Questions and Answers Concerning Questions 33 and 35 of Contention 2

Q-33. What are the "conclusions" based upon the computer codes identified above which you contend are "invalid"?

CFUR Answer. The term "conclusions" refers to final decisions, reasoned deductions or reasoned inferences, both prospective and retrospective in nature. Taken in context with the statement "thus conclusions based upon these computer codes are invalid," the term "conclusions" refers in particular to prospective reasoned deductions or inferences reached from use of the computer codes which would lead to erroneous final decisions.

The conclusions CFUR is most concerned with are those to be made by the Hearings Examiner in regard to compliance with 10 CFR § 50.57(a). However, CFUR does not acknowledge the validity of any conclusion, retrospective or prospective, based on computer codes incorporating reports not suitably verified and formally accepted, whether they are or have been made by the Applicants, Staff or anyone else.

Q-35. What is your bases for your response to Interrogatory 35?

CFUR Answer. The only way conclusions can be valid is if the premises upon which the conclusions are based are proper and verifiable.

APPENDIX 4

Pertinent Questions and Answers Concerning
Questions 105, 112.f, 116, 118, 121 and 123 of Contention 7

104? Q-105. What are your bases for your responses to Interrogatories 103 and

Q-116. What is your basis for your response to Interrogatory 115?

Q-123. What is your basis for your response to Interrogatory 122.

CFUR Answer. Since loose rock, avi pockets and other foreign material have different structural properties than does solid concrete, their incorporation and formation in the foundation of CPSES will affect the static, dynamic and engineering properties of the structure.

Q-112.f. What are your bases for your responses to d and e?

CFUR Answer. Due to the overexcavation of the bedrock beneath the foundation of CPSES, CFUR suspects that to save money through the use of less concrete, Applicants incorporated loose rock and other material into the foundation of CPSES.

Q-118. What is your basis for your response to Interrogatory 117?

CFUR Answer. Loose rock, avi pockets and other foreign material modify the determination of the static and dynamic engineering properties of the material underlying the site.

Q-121. What are your bases for your responses to Interrogatories 119 and 120?

CFUR Answer. Because there appears to be extraordinary fissure repair to CPSES, CFUR suspects that Applicants' computer codes do not adequately predict the behavior of the CPSES during an earthquake. Contention 7 is broader than fissure repair.