

April 24, 1981

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

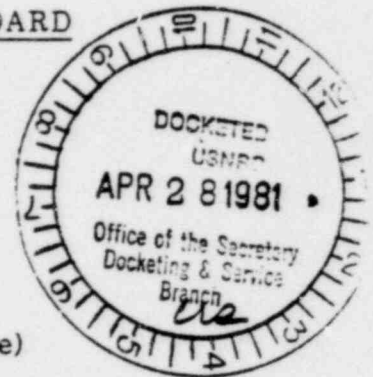
TEXAS UTILITIES GENERATING
COMPANY, et al

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

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Docket Nos. 50-445
50-446

(Application for
Operating license)



CFUR'S RESPONSE TO NRC STAFF'S MOTION TO COMPEL RESPONSIVE
ANSWERS TO CERTAIN STAFF INTERROGATORIES OF JANUARY 19, 1981

COMES NOW CFUR, one of the Intervenor in the above-styled and numbered proceeding, and files this its Response in opposition to the Staff's Motion to Compel dated March 31, 1981, pursuant to 10 C.F.R. § 2.740(f), and states:

I.

By its Motion of March 31, 1981, the staff seeks an Order of the Board compelling responsive answers to certain interrogatories filed by the Staff on January 19, 1981, and answered by CFUR on March 11, 1981. CFUR now files this response in opposition to the Staff's Motion and request that the Board deny the Staff's Motion and grant certain relief requested herein.¹ CFUR will address each point in the Staff's Motion as it is raised therein.

II.

The Staff, in paragraph IIA of its Motion, objects to CFUR's mischaracterization of its "responsibility" (nee its "right") to supplement its answers interrogatories. CFUR takes this opportunity to state that it does appreciate its obligations under 10 CFR §2.740(e), and to reiterate its good faith intentions to



¹ CFUR's Response to the Staff's Motion was due originally on April 15, 1981. After failing to get an agreed extension of time in which to respond from the Staff, CFUR secured an extension until April 27, 1981, from Mr. Valentine Deale.

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supplement its answers as contemplated by the regulations when, and if, substantive discovery by the Intervenor of the Applicant and Staff becomes more productive.

CFUR also takes this opportunity to clarify a mischaracterization in the Staff's Motion to the effect that discovery has been actively engaged in by CFUR since July of 1979. To the contrary, efforts to do so were virtually futile. For example, see the Staff's letter denying the bulk of CFUR's early request for discovery of documents on the ground that the request was "beyond the scope of the Staff's offer."² In an arbitrary fashion, the Staff furnished CFUR with a few finalized documents once they became available elsewhere. Even that taken "discovery" was more than the Applicant agreed to.

Further, during this period of alleged discovery, CFUR's requests for copies of the Draft Staff Action Plan (NUREG-0660) were ignored by the Staff. It was not until many months later, and only after the final release was issued, that a copy was forwarded to CFUR. In the interim, CFUR found itself at an obvious disadvantage when the Applicant kept quoting from NUREG-0660 at the Comanche Peak prehearing of April 30, 1980. Accordingly, CFUR strongly differs with the Staff's characterization of the extent of "informal discovery" engaged in to date. (Of course, CFUR may not have been privy to that conducted between the Applicant and the Staff.)

III.

Contrary to the implication of the Staff's Motion to Compel, CFUR does not seek to have discovery by the Staff and Applicant abated pending CFUR's affirmative discovery efforts. Rather, CFUR was simply unable to respond in greater detail to certain Staff interrogatories — a condition which will be

² See April 10, 1980, Report of CFUR's Position on Each Contention in Response to ASLB's "Order Scheduling Prehearing Conference" dated March 10, 1980.

ameliorated as discovery progresses. In light of the fact that no discovery cut-off date has been set (at least not to CFUR's knowledge), the Staff's urgency in seeking an order to compel CFUR to do that which it intends to do with reasonable promptness appears a bit premature.

On June 16, 1980, the Board's "Order Subsequent to the Prehearing Conference of April 30, 1980" stated as follows:

We are aware that to a degree informal discovery has been proceeding for some months. Considering the fact that the Staff documents are not expected to be released until 'early 1981,' we do not believe that a tight schedule is required or appropriate at this time. We have not been asked by the parties to adopt a set schedule for discovery requests and responses but would urge that discovery requests be submitted with reasonable promptness and also responses thereto.

There has been no subsequent indication from the Board regarding this subject. The schedule that the United States Regulatory Commission has established for Comanche Peak states that the Start of Hearings is March 1982; NRC Decision Date is February 1983; and the NRC Completion of Construction Date is December 1982.

CFUR is aware that a proposal has been made to drastically compress the Comanche Peak hearing schedule. A proposal into which CFUR had no input. It would be unreasonable for the Board to penalize CFUR for not anticipating that its rights might be truncated in this fashion. Under the original schedule which is still in force and effect, CFUR has acted with reasonable promptness during the relatively short period of true discovery engaged in thus far.

IV.

With regard to the Staff's specific requests for full, direct and responsive answers to certain interrogatories beginning with Paragraph IIB, CFUR objects to the Staff's interrogatories insofar as they request CFUR to state all "facts and opinions" upon which it bases certain allegations on the ground that such requests, in addition to being overly broad and unreasonably burdensome, improperly seeks to require CFUR to prepare the Staff's and Applicants' cases.

CFUR does concede that it failed to recite the appropriate litany cited on Page 4 of the Staff's Motion and will endeavor, by way of supplementation, to state its inability to respond due to lack of discovery in more precise terms whenever possible. Boston Edison Company (Pilgrim Nuclear Generating Station, Unit 2), LBP-75-30, 7 NRC 579, 587 (1975)].

V.

CFUR further objects to the Staff's Motion to Compel since the bulk of the Staff's interrogatories demand a more particularized statement of the bases for the assertions made in CFUR's contentions. In order to respond more fully, CFUR must attain further facts, i.e. the data, information and documents upon which it intends to rely. CFUR is attempting to gain this information through discovery; thus, quite simply, CFUR's answers are candidates for supplementing but do not warrant a Motion to Compel.

VI.

CFUR vigorously objects to the Staff's Motion to Compel in its entirety on the grounds that the Staff is pursuing its discovery in a fashion that is oppressive and unduly burdensome. The Staff does not contend (nor could it) that CFUR is not participating in these proceedings in good faith and to the best of its ability.³ The Staff has not shown how it has been prejudiced (nor could it) by the fact that

³ Although the Staff has displayed a misunderstanding of the nature of "pro se" participation by citizens in these proceedings — citizens who are not reimbursed for their efforts and who have obligations on a full-time basis to other endeavors. CFUR also notes that the Board rejected CFUR's Motion for Protection. Consequently, CFUR has had no alternative but to refer to anticipated answers from the staff and Applicant in its initial responses to interrogatories. It is common-sensical that the primary substantive information which must be revealed through discovery is in the possession of the Applicant, not the Intervenor. Having gotten the cart before the horse in denying CFUR's Motion for Protection, it is no surprise that discovery has generated an abundance of paperwork while producing very little in the way of useful information with which CFUR can proceed to support its contentions.

CFUR's initial responses to interrogatories will need to be supplemented through a course of timely and hopefully amicable discovery.

CFUR respectfully suggests that discovery should be a cooperative effort to search openly and fully for the truth; it should not be perverted into a means of harrassment nor used as a deterrent to citizen participation in a decision-making process by which we are all profoundly affected.

Accordingly, CFUR requests that the Staff's Motion to Compel be denied and that the parties be ordered to proceed by argument in a sequence of discovery which is in keeping with the applicable regulations, the convenience of the parties, in the interest of justice, and subject to the Board's approval.

Respectfully submitted,

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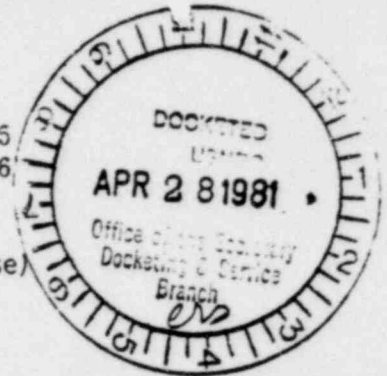
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "CFUR's RESPONSE TO NRC STAFF'S MOTION TO COMPEL RESPONSIVE ANSWERS TO CERTAIN STAFF INTERROGATORIES OF JANURAY 19, 1981" were served upon the following persons by deposit in the United States mail, first class postage prepaid this 15th day of April, 1981:

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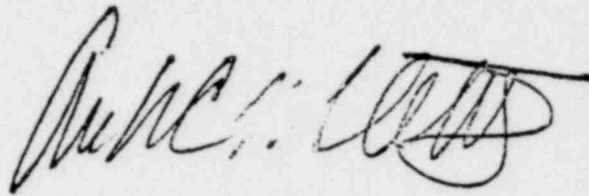
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A handwritten signature in dark ink, appearing to read "Arch C. McColl, III". The signature is fluid and cursive, with a large, stylized "M" and "C" at the end.

ARCH C. McCOLL, III