

RELATED CORRESPONDENCE

April 28, 1981

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

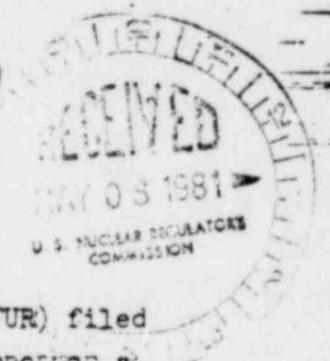
TEXAS UTILITIES GENERATING
COMPANY, et al

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

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Docket Nos. 50-445 and 50-446

(Application for
Operating License)



CFUR'S MOTION TO COMPEL RESPONSIVE
ANSWERS TO CFUR INTERROGATORIES
TO APPLICANT OF FEBRUARY 26, 1981

On February 26, 1981, Citizens for Fair Utility Regulation (CFUR) filed "CFUR'S FIRST SET OF INTERROGATORIES TO APPLICANT AND REQUESTS TO PRODUCE." (CFUR's Interrogatories). On April 13, 1981, the Applicant filed "APPLICANTS' ANSWERS TO CFUR'S FIRST SET OF INTERROGATORIES" (Applicants' Answers)¹, in accordance with our previous discussion.

Applicants have essentially registered a blanket objection to all of CFUR's interrogatories which seek information concerning entities other than Westinghouse and matters other than the Final Safety Analysis Report (FSAR). In addition, some of the answers supplied by the Applicant are not responsive and do not comply with CFUR's request that the Applicant, pursuant to 10 CFR 2.740b and 2.741, answer separately and fully each interrogatory. Accordingly, CFUR now seeks an order compelling responsive answers concerning both situations as set forth below.

I.

Initially, Applicants seek to impose a blanket limitation on CFUR's Interrogatories in refusing to answer any interrogatory relating to any entity other than Westinghouse. As stated in the "General Comments" and the objection

¹ Applicants had been unintentionally omitted from the service list of the original mailing of CFUR's Interrogatories. A copy was mailed to the Applicant on March 24, 1981 and, therefore, the Applicants' Answers were provided on a timely basis.

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stated in the response No. 1 in Applicants' Answers, Applicants have unilaterally decided that they will answer only those portions of interrogatories which are raised by Contention 1. Further, Applicants have unilaterally sought to place an unreasonably narrow construction on Contention 1 by asserting it is limited to matters relating to Westinghouse.

In propounding interrogatories to the Applicants, CFUR is entitled to inquire about "any matter, not privileged, which is relevant to the subject matter involved in the proceeding." 10 CFR Part 50, paragraph 2.740(b)(1). Applicants do not contend that the inquiries of CFUR's Interrogatories, in so far as they relate to entities other than Westinghouse, are irrelevant to the subject matter of this proceeding, which is, the issuance of an operating license for CPSES. It must be conceded that the degree to which Applicants have relied on the suppliers of CPSES components for preparation of safety analysis is highly relevant to the issue of whether the Applicants are qualified to operate CPSES safely. Therefore, on the basis of relevance, the Applicants' objection to inquiries regarding entities other than Westinghouse should be overruled.

CFUR also disputes the Applicants' attempt to place a strained and narrow construction on Contention 1. The operative portion of that Contention concerns the Applicants' demonstration of "technical qualifications to operate CPSES in accordance with 10 CFR 50.57(a)(4)." The dependent clause identifying Westinghouse is only one example of how CFUR contends Applicants are deficient in demonstrating technical qualifications. It is CFUR's position that the Applicants' blanket objection that under the wording of Contention 1, CFUR's Interrogatories should be limited to inquiries about Westinghouse, should be overruled.

One must be mindful of the overall objective in conducting discovery in this phase of the licensing process; that is, to insure full and fair disclosure of all relevant facts prior to the commencement of the hearing. Boston Edison Company (Pilgrim Nuclear Generating Station, Unit 2), LDP-75-30, 1 NRC 579, 582 (1975). Discovery should be liberally granted "to enable the parties to ascertain the facts in complex litigation, refine the issues, and prepare adequately" for the hearing. Pacific Gas and Electric Company (Stanislaus Nuclear Project,

Unit 1), LBP-78-20, 7 NRC 1038, 1040 (1978). The hypertechnical and erroneous construction Applicants seek to place on Contention 1, and thereby avoid providing relevant discovery, flies in the face of the enunciated discovery objectives applicable to this proceeding.

Moreover, the Applicants' attempt to limit the scope of the discovery available under Contention 1 would defeat one of the main purposes of interrogatories, which is to further define the issues raised by a contention. See Pacific Gas and Electric Company, supra; Boston Edison Company, supra.

"Pleadings" and "contentions" no longer describe in voluminous detail everything the parties expect to prove and how they plan to go about doing so. Rather they provide general notice of the issues. It is left to the parties to narrow those issues through use of various discovery devices Pennsylvania Power & Light Company and Allegheny Electric Cooperative, Inc. (Susquehanna Steam Electric Station, Units 1 and 2), AIAE-613, NRC (September 23, 1980), slip op. at 30.

The Applicants should not be allowed to limit by unilateral action the scope of CFUR's discovery. Instead, CFUR's discovery should be the vehicle by which the scope of the Contentions to be presented at the hearing is determined. The Applicants' general objections to CFUR's Interrogatories should be overruled.

Should the Board overrule the Applicants' blanket objection to CFUR's Interrogatories (as CFUR respectfully submits it should do), the Applicants should be ordered to provide full and complete answers to the following interrogatories: 1, 2a, 2b, 2c, 2d, 3, 5, 7, 9, 11, 12a, 12b, 12c, 13, 15, and 17.

The responses to the following interrogatories are, at present, "not applicable" but may change when the previous interrogatories are completely answered. Therefore, the Applicants should be ordered to provide full and complete answers to the following interrogatories as well: 4a, 4b, 4c, 6a, 6b, 6c, 8a, 8b, 8c, 8d, 8e, 10a, 10b, 10c, 10d, 14a, 14b, 14c, 16a, 16b, 16c.

II.

In response to CFUR's Interrogatory 2b, the Applicants have failed to provide a meaningful answer. They have merely restated the interrogatory and referenced the FSAR which contains approximately 10,000 pages. It is impossible for CFUR to derive any useful information from the Applicants' response.

The evasive and incomplete answer by the Applicants should be treated as a failure to answer and the Board should order the Applicants to list separately and with particularity all documents, representations and other information upon which Applicants have relied in the context of Interrogatories 1 and 2.

For the same reasons as set out above, the Applicants, by merely referencing Response 2b, have failed to answer Interrogatory 2d. The Board should order the Applicants to answer fully Interrogatory 2d.

The Board should also order the Applicants to provide a meaningful response to CFUR's Interrogatory 2c. In its present form, the Applicants' response is overly and unnecessarily broad. The Applicants should be ordered to provide separately the time of reliance for each document, representation and other information involved.

III.

CFUR is not able to fully comprehend the Applicants' responses to Interrogatories 4 through 8. The confusion arises with the Applicants' failure to answer Interrogatories 4, 6, and 8.

Since Applicants have not answered Interrogatory 4, it appears that they are content with an unqualified "no" as their answer to Interrogatory 3. Accordingly, CFUR prays that the Board order the Applicants either to amend their answer to Interrogatory 3 to be "no," or to provide full and complete answers to all parts of Interrogatory 4.

Similar problems arise with Applicants' responses to Interrogatories 5 and 6. The present answer to Interrogatory 5 appears to be in the affirmative. However, Interrogatory 6, which is predicated on an affirmative answer to Interrogatory 5, is unanswered. Because of these conflicting and incomplete answers, CFUR prays that the Board order the Applicants either to amend their answer to Interrogatory 5 to be "no," or to provide full and complete answers to all parts of Interrogatory 6.

The Applicants' answer to Interrogatory 7 is nonresponsive and evasive. Again, however, it appears by their failure to answer Interrogatory 8, which is predicated on a negative answer to Interrogatory 7, Applicants intend that their answer to Interrogatory 7 is "yes." CFUR prays that the Board order the

Applicants either to amend their response to Interrogatory 7 to be "yes," or to provide full and complete answers to all parts of Interrogatory 9.

IV.

Applicants again have provided an evasive and dilatory response to Interrogatory 9 in stating that the word "review" is vague and without "relevancy." Certainly that term is understood to the Applicants since it is used by them in similar contexts in their responses to Interrogatories 3 and 11. While CFUR does not fully comprehend the Applicants' failure to provide any answer whatsoever based on the lack of relevancy, CFUR would respond by saying that the reliance of the Applicants on other entities to review equipment, analysis, procedures and training is highly relevant as to whether the Applicants can safely operate CPSES.

The Applicants have failed to answer Interrogatory 10 which is predicated on an affirmative response to Interrogatory 9. Again CFUR prays that the Board order the Applicants either to amend their answer to Interrogatory 9 to be "no," or to provide full and complete answers to all parts of Interrogatory 10.

V.

The Applicants' response to Interrogatory 10 is not responsive to the question asked. The Interrogatory is addressed to the Applicants' independent reviews and investigations relating to the safe operation of CPSES. The Applicants' answer is directed to the "applicability" of Westinghouse analyses. The Board should order the Applicants to provide a full and complete response directly answering CFUR's Interrogatory 11.

Interrogatory 12, which is predicated on Interrogatory 11, also is not answered by Applicants. As with Interrogatory 11, Applicants' response to Interrogatory 12 deals with "applicability" of Westinghouse information when the Interrogatory is directed to review and investigation of analyses to insure safe operation of CPSES. The Applicants should be compelled to answer Interrogatory 12 fully and directly.

While Applicants pretend not to understand the phrase "safety review or investigation" as used in Interrogatory 12, they made no objection to substantially the same concept which was used in Interrogatory 11 and upon which

Interrogatory 12 is based. CFUR would also point out that such safety evaluations are basic concepts in this context. See 10 CFR Part 50, paragraph 50.34(b)(2). Interrogatory 12 should be answered.

VI.

The Applicants again have provided incomplete and evasive answers to Interrogatories 13 through 16. With regard to the Applicants' complaints about the inquiries relating to safety function, CFUR again contends the Applicants are playing games with well understood concepts.

"Each application for a license to operate a facility shall include a final safety analysis report...shall include the following:...(2) ...evaluations required to show that safety functions will be accomplished." (10 CFR Part 50, paragraph 50.34(b))

With regard to the complete failure to answer Interrogatory 14, CFUR prays that the Board order the Applicants either to amend their response to Interrogatory 13 to be "no," or to provide full and complete answers to all parts of Interrogatory 14.

While Applicants' response to Interrogatory 15 appears to be in the affirmative, Applicants have not answered Interrogatory 16 which is predicated on an affirmative answer to Interrogatory 15. Again, CFUR prays that the Board order the Applicants either to amend their answer to Interrogatory 15 to be "no," or to provide full and complete answers to all parts of Interrogatory 16.

VII.

In their response to Interrogatory 17, Applicants have identified Westinghouse as the only entity which has prepared any portion of the FSAR. Do the Applicants state that they have prepared no portion of the FSAR? In addition to the other vendors (which is addressed in Part I of this Motion to Compel), the Applicants should also be compelled to identify which portions of the FSAR they have prepared, if any.

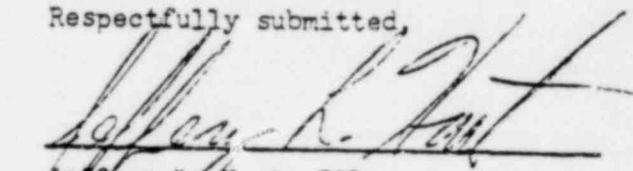
VIII.

With regard to Interrogatory 20, Applicants should be compelled to answer why they will not voluntarily attach to their answers the documents requested by Interrogatory 19.

IX.

The oath taken by Mr. Homer C. Schmidt in answering CFUR's Interrogatories is deficient. As set out in 10 CFR Part 50, paragraph 2.740b(b), answers to interrogatories must be "under oath or affirmation." There is no provision for answering based on information and belief. Accordingly, the Board should order the Applicants to provide answers to CFUR's Interrogatories which are sworn to as being true and correct based on the personal knowledge of the affiant or affiants. In the alternative, CFUR prays that the Applicants be ordered to identify each person (including employer and business address) who has provided personal knowledge upon which its answers are based.

Respectfully submitted,



Jeffrey L. Hart, ESQ.
4071 Prescott Avenue
Dallas, TX 75219

214/521-4852

CERTIFICATE OF SERVICE

RELATED CORRESPONDENCE

I hereby certify that copies of "CFUR'S MOTION TO COMPEL RESPONSIVE ANSWERS TO CFUR INTERROGATORIES TO APPLICANT OF FEBRUARY 26, 1981" have been served on the following by deposit in the United States mail, first class, this 28th day of April, 1981.

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

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

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

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

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

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

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

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

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

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



Richard L. Fouke

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