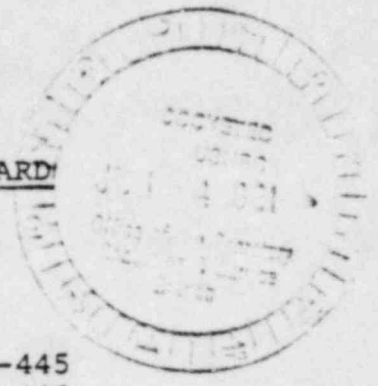


June 3, 1981

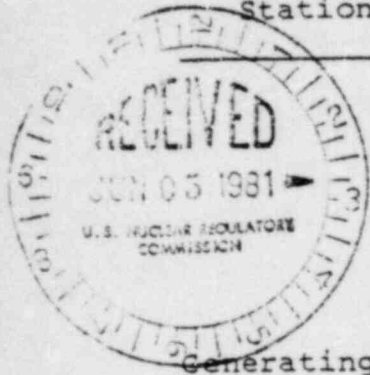
UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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' ANSWER TO CFUR'S  
MOTION TO COMPEL RESPONSIVE ANSWERS  
TO CFUR'S THIRD SET OF INTERROGATORIES

Pursuant to 10 C.F.R. §2.730(c), Texas Utilities  
Generating Co., et al. ("Applicants"), hereby submit their  
answer to the motion to compel filed on May 19, 1981 by Cit-  
izens for Fair Utility Regulation ("CFUR") regarding CFUR's  
third set of interrogatories to Applicants, filed April 15,  
1981. Applicants responded to those interrogatories on  
May 4, 1981. For the reasons set forth below, Applicants  
urge the Atomic Safety and Licensing Board ("Board") to deny  
CFUR's motion.

CFUR raises in the subject motion to compel sev-  
eral general objections to Applicants' responses which ob-  
jections are identical to the positions taken by CFUR in  
its motions to compel responsive answers to its first and  
second sets of interrogatories, dated April 28 and May 12,  
1981, respectively. As discussed below, CFUR's objections

8106080 327 G D503  
5/1

represent a continued attempt to broaden the scope of its contentions impermissibly. Accordingly, Applicants urge the Board to deny promptly the subject motion (as well as CFUR's previous motions to compel) in order to facilitate the expeditious conduct of meaningful discovery in this proceeding.

I. PERMISSIBLE DISCOVERY

CFUR again misrepresents the permissible scope of discovery in this proceeding. CFUR argues that so long as its interrogatories are relevant to whether Applicants are qualified to be issued an operating license, the interrogatories should be answered. To the contrary, CFUR's interrogatories must be relevant to the matters in controversy identified by the presiding officer, viz., the contentions admitted in the prehearing order (June 16, 1980 Order). 10 C.F.R. §2.740(b)(1). Applicants hereby adopt and incorporate by reference its discussion on this point set out in their May 13, 1981 response to CFUR's first motion to compel at pp. 3-4.

Further, in the ~~same~~ motion CFUR (for the first time in any of its interrogatories to Applicants or its motions to compel) identifies particular contentions at which it claims its interrogatories are directed. CFUR states that its third set of interrogatories "has direct applicability to Contentions 2 and 4." 1/ CFUR does not state which specific interrogatories

---

1/ CFUR also states that "the quality of the Applicants' answers have some bearing on Contention 1." Since this is not a claim that the interrogatories are relevant to Contention 1, and thus has no bearing on the instant motion to compel, Applicants do not respond to that statement.

are directly applicable to those Contentions, nor does it discuss in what manner it contends those interrogatories are relevant to Contentions 2 and 4. Applicants submit that their interpretation of CFUR's third set of interrogatories as being solely applicable to Contention 3 is reasonable and, in the absence of any demonstration to the contrary by CFUR, should be upheld. Neither the Board nor the Applicants should have to make CFUR's arguments for it since, as the proponent of an order to compel, CFUR has the burden of proof. 10 C.F.R. §2.732.

In any event, Applicants submit that those interrogatories are not relevant to either Contentions 2 or 4. Contention 4 is concerned with the probability of certain types of accidents which CFUR claims should be evaluated as credible accidents at Comanche Peak. CFUR's third set of interrogatories on the other hand concern the question of whether Applicants' accident sequence analysis computer codes accurately predict the results of certain tests of accident sequences or predictions made by the NRC Staff codes, without regard to the probability of such accident sequences ever occurring. CFUR does not mention once in its interrogatories the question of accident probabilities. Further, Contention 2 concerns acceptance and verification of the reports used in the computer codes for Comanche Peak. Yet CFUR's third set of interrogatories address the accurate prediction of plant behavior, which Applicants interpret as

directly applicable to Contention 3 which concerns prediction of plant behavior for accidents involving the sequence of events at TMI. Specifically, in interpreting the relevancy of CFUR's interrogatories to Contention 3, Applicants objected to interrogatories which were not relevant to the sequence of events at TMI. (Interrogatories 1 through 6). Notably, CFUR does not contradict those specific objections or identify those interrogatories as being relevant to any other contention. (CFUR simply argues generally as to the relevance of "many" (unspecified) interrogatories to Contentions 2 and 4). Thus, CFUR fails to dispute the Applicants' interpretation of the thrust of CFUR's interrogatories.

Accordingly, Applicants submit that their interpretation of CFUR's third set of interrogatories as being applicable solely to Contention 3 is reasonable.

## II. REQUESTS FOR PRODUCTION OF DOCUMENTS

CFUR contends that Applicants should produce for inspection and copying all documents which were the subject of interrogatories seeking identification of documents. CFUR argues that its statement in the introduction to its interrogatories that Applicants should "make available for inspection and copying all documents subject to the requests set forth below," coupled with its interrogatories regarding identification of documents, constitute requests for production of documents. CFUR's position is contrary to usual discovery practice and past practice in its own previous discovery requests.

First, it is standard discovery practice that an interrogatory as to the existence of documents is not pro tanto a request for their production, and careful practice requires that the request for production be made prior to filing a motion to compel production. See Howard v. Seaboard Coastline Railroad Co., 60 F.R.D. 638 (N.D. Ga. 1973). 2/ Thus, in the absence of a request for production of documents, as opposed to an interrogatory seeking identification of documents, Applicants properly responded to CFUR's third set of interrogatories.

Second, Applicants note that each of CFUR's previous sets of interrogatories also contained the same language regarding Applicants making available for inspection and copying the documents "subject to the requests set forth below." However, in each of those earlier sets of interrogatories CFUR had included separate requests for the production of documents, which documents CFUR had also asked Applicants to identify in separate interrogatories. Thus, Applicants reasonably believed that CFUR distinguished, as it should, between identification of documents and requests to produce. In short, there were no specific "requests" for production of documents set forth by CFUR in its third set of interrogatories, and CFUR's failure

---

2/ Judicial interpretations of analogous provisions of the Federal Rules of Civil Procedure ("FRCP") serve as guidance for interpreting particular NRC rules of practice. Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-37, 8 NRC 575, 581 (1978). In this instance, 10 C.F.R. §2.741 is analogous to FRCP 34.

to do so cannot be corrected by a motion to compel the production of documents for which proper requests to produce have not been submitted to the Applicants.

III. OBJECTIONS TO SPECIFIC INTERROGATORIES

A. Interrogatories 7 through 12.

CFUR objects to Applicants' responses to interrogatories 7 through 12 as being "wholy [sic] inadequate." Specifically CFUR argues that Applicants' did not answer those interrogatories separately and did not answer "many of the inquiries" in those interrogatories. Applicants submit that their answers were proper and responsive to each of Interrogatories 7 through 12.

To begin with, Applicants provided separate responses to each of CFUR's interrogatories. In response to Interrogatories 8, 10 and 11, Applicants referred to the answer to Interrogatory 7. It is proper to refer to answers to previous interrogatories in a particular response where the reference readily permits evaluation of the response for adequacy, particularly where the objecting party has itself used that technique (see CFUR's May 8, 1981 Supplement to Answers to Applicants' First Set of Interrogatories). See 4A Moore's Federal Practice ¶33.25[1], p. 33-130, n.9., and cases cited therein. Applicants' answers to these interrogatories are sufficient in that they are readily seen to be adequate and responsive.

With regard to Interrogatories 7 and 10, CFUR contends that Applicants should have responded simply "yes", "no" or "do not know" to the questions as to whether there are "any inconsistencies" between Applicants' computer codes and the Semiscale (Interrogatory 7) and LOFT (Interrogatory 10) small break test series. Applicants' response to those interrogatories is obviously in the affirmative, although Applicants provide additional information for clarification. Specifically, Applicants note that the subject computer codes conservatively predict the results of the LOFT and Semiscale small break test series, and a report on the differences between the predicted result of the codes and the actual results of the tests is to be transmitted to the NRC by the Westinghouse Owners Group. Applicants' answer to these interrogatories is adequate and responsive.

CFUR also argues that Applicants should provide "full and complete" answers to Interrogatories 8, 9, 11 and 12 as appropriate depending on whether Applicants' answers to Interrogatories 7 and 10 are in the affirmative (answer Interrogatories 8 and 11) or negative (answer Interrogatories 9 and 12). As explained above, Applicants' responses to Interrogatories 7 and 10 are in the affirmative. Thus, responses to Interrogatories 9 and 12 are not necessary and Applicants properly answered those interrogatories as "not applicable." Applicants responded to Interrogatories 8 and 11, which seek specific information concerning the "inconsistencies" between

the code predictions and the Semiscale and LOFT small break test results by referring to the response to Interrogatory 7, where it is explained that a report on that subject is to be submitted to the NRC. Since that report should provide the information requested in Interrogatories 8 and 11, Applicants will supplement their responses when the requested information becomes available. Accordingly, Applicants' responses to Interrogatories 8, 9, 11 and 12 are proper and responsive and CFUR's objections should not be sustained.

B. Interrogatories 19 and 20.

CFUR objects to Applicants' answers to Interrogatories 19 and 20 on several grounds, each of which is without merit and CFUR's motion to compel with respect to these interrogatories should be denied.

First, CFUR argues that the Applicants should identify and produce all documents "inquired about" in Interrogatories 19 and 20. As Applicants' answer to Interrogatory 19 clearly indicates, to the extent that interrogatory is relevant to Contention 3, Applicants are not aware of any documents which fall within the scope of that request for identification of documents. Thus, Applicants' answer to Interrogatory 19 is completely responsive, as is the response to Interrogatory 20 ("not applicable"), which seeks information only if there are any documents which fall within the scope of Interrogatory 19. As for CFUR's argument for producing the documents requested in Interrogatories 19 and 20, since there are no documents to be



identified, that argument is meaningless. Even if there were such documents Applicants need not provide for inspection and copying documents which CFUR merely requests be identified. See Section II, supra.

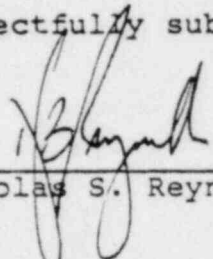
CFUR further argues that Applicants have failed to answer Interrogatory 19 with respect to documents pertinent to Interrogatories 2, 3, 5, 6, 8, 9, 11 and 12. Interrogatory 19 asks whether there are any other documents (not previously identified) which concern the consistency or inconsistency between the Applicants' computer codes and the "inquired about" categories of test series, experiments and NRC Staff codes. Applicants' response to Interrogatory 19 addresses each such test series ("inquired about" in Interrogatories 1, 4, 7 and 10) and NRC Staff codes ("inquired about" in Interrogatories 13 and 16). There were no interrogatories addressed to other "experiments." CFUR's argument is puzzling in that Interrogatories 2, 3, 5, 6, 8, 9, 11 and 12 are merely four sets of follow-up questions to Interrogatories 1, 4, 7 and 10, and concern the same test series addressed in Interrogatories 1, 4, 7 and 10. Thus Applicants' answer to Interrogatory 19 does address each test series, experiment and NRC Staff code which CFUR has "inquired about." Accordingly, CFUR's objection is without merit.

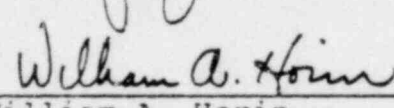
Finally, CFUR also asserts that insofar as Applicants' response to Interrogatory 19 concerns Interrogatories

7, 10, 13 and 15, that response "bears heavily on Applicants' qualifications to receive an operating license." This statement does not raise any further objections to Applicants' answer to Interrogatory 19 and thus requires no response from Applicants.

For the foregoing reasons, Applicants urge the Board to deny in its entirety CFUR's motion to compel responsive answers to its third set of interrogatories.

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

June 3, 1981

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' Answer to CFUR's Motion to Compel Responsive Answers to CFUR's Third Set of Interrogatories" in the above captioned matter were served upon the following persons by deposit in the United States mail, first class postage prepaid this 3rd day of June, 1981:

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. Dwight H. Moore, Esq.  
West Texas Legal Services  
100 Main Street (Lawyers  
Building)  
Fort Worth, Texas 76102

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

*William A. Horin*

---

William A. Horin

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