

July 6, 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' ANSWERS TO CFUR'S MOTIONS
(1) TO COMPEL RESPONSIVE ANSWERS TO
CFUR'S FOURTH SET OF INTERROGATORIES
AND (2) TO FIND APPLICANTS IN DEFAULT
AND REQUEST FOR ORAL ARGUMENT

Pursuant to 10 C.F.R. §2.730(c), Texas Utilities Generating Co., et al. ("Applicants") hereby serve their answers to the motions filed on June 18, 1981 by Citizens for Fair Utility Regulation ("CFUR") seeking an order by the Atomic Safety and Licensing Board ("Board") compelling the Applicants to provide "responsive answers" to CFUR's fourth set of interrogatories and finding the Applicants in default. In addition, CFUR requests that the Board afford CFUR the opportunity to present oral argument on its motions at the prehearing conference which was scheduled for July 8 and 9, 1981.^{1/} For the

1/ Since the Board has now cancelled the prehearing conference, CFUR's request for oral argument is moot.

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reasons set forth below, Applicants urge the Board to deny CFUR's motions in their entirety.

I. Background

For the convenience of the Board, and in the interest of placing the instant dispute between the Applicants and CFUR in perspective, Applicants discuss below the scope of Contention 3, as admitted by the Board. The scope of all proposed contentions by CFUR in the proceeding, including Contention 3, was the subject of many discussions between the NRC Staff, CFUR and the Applicants over a lengthy period of time prior to the Board's June 16, 1980 Order^{2/} admitting contentions. However, the Board's June 16, 1980 Order framed the scope of all contentions, and subsequent disagreements regarding the scope of Contention 3 as admitted by the Board stem simply from a misunderstanding on the part of CFUR of the effect of that Order.

On May 22, 1979, the Board held a prehearing conference to consider the admission of the petitioners for intervention. At that prehearing conference the Board heard oral arguments and examined supplements to the petitions to intervene, filed on May 7, 1979 by the petitioners, to determine whether each petitioner had demonstrated the required interest and had set forth at least one admissible contention as required for admission as a party pursuant to 10 C.F.R. §2.714. On June 27,

2/ Order Subsequent to the Prehearing Conference of April 30, 1980, June 16, 1980 ("June 16, 1980 Order").

1979, the Board issued its Order Relative to Standing of Petitioners to Intervene in which it admitted three petitioners as Intervenors and admitted a single contention which was raised by all three Intervenors, viz., the sufficiency of the Applicants' quality assurance/quality control program. The Board did not address the admissibility of any of the remaining proposed contentions (including CFUR's proposed Contention 2B which was later modified and admitted as Contention 3).

During the subsequent nine months, the Applicants, the NRC Staff and the Intervenors met and held telephone conferences in an attempt to reach agreement on the admissibility and wording of the remaining proposed contentions. On March 19, 1980, the Board issued an Order scheduling a prehearing conference for April 30, 1980 and requesting a statement of position by each party with respect to those contentions. The NRC Staff, the Applicants and CFUR signed a stipulation which was submitted to the Board for approval on April 22, 1980, in which those parties set forth their positions on the admissibility and wording of CFUR's proposed contentions. The Board did not find it necessary to approve the proposed Stipulation (see June 16, 1980 Order at 3, n.2).

At the prehearing conference of April 30, 1980, the parties presented their views on each proposed contention. The discussion of CFUR's proposed Contention 2B is found at pages 166 through 179 of the prehearing transcript ("Tr."). The admission of proposed Contention 2B was opposed by the

Applicants and the NRC Staff, and the acceptable scope of the proposed contention was at issue and was the subject of careful inquiry by the Board. The Board did not rule at the prehearing conference on the admission of the remaining proposed contentions.

On June 16, 1980, the Board issued its Order Subsequent to the Prehearing Conference of April 30, 1980 which addressed the admission of the remaining proposed contentions. In that Order, the Board for the first time commented on the scope of proposed Contention 2B, as modified and admitted in the form of Contention 3. See discussion infra, Section II.A. The Applicants filed objections to that Order on July 1, 1980, arguing, inter alia, that Contention 3 should be dismissed from the proceeding in view of the Commission's June 16, 1980 Statement of Policy ^{3/} and the new requirements imposed as of that time on applicants for operating licenses as a result of the accident at Three Mile Island, Unit 2. ^{4/} Both CFUR and the NRC Staff opposed Applicants' position on Contention 3 in filings dated July 23 and July 21, 1980, respectively. See discussion infra, Section II.B.3. On October 31, 1980 the Board issued its Rulings ^{5/} on the parties' objections to the June 16, 1980

^{3/} 45 Fed. Reg. 41738 (June 20, 1980). The Commission later revised its Statement of Policy. CLI-80-42, December 18, 1980.

^{4/} "TMI-Related Requirements for New Operating Licenses," NUREG-0694 (June 1980).

^{5/} Rulings on Objections to Board's Order of June 16, 1980 and on Miscellaneous Motions, October 31, 1980 ("Rulings" or "Rulings on Objections").

Order. The Board rejected the Applicants' arguments regarding Contention 3 and retained the contention, noting its agreement with the Staff's position that the Commission's Statement of Policy did not preclude litigation of Contention 3. See Rulings at p. 2, NRC Staff Answer to Applicants' Objections, July 21, 1980 at pp. 2-5.

II. Applicants' Answer to
CFUR Motion to Compel

At issue in this dispute is the scope of Contention 3 as admitted by the Board. As demonstrated below, the Board has defined the bounds of Contention 3 in its June 16, 1980 Order and its October 31, 1980 Rulings on Objections. Applicants submit that CFUR's interpretation of the scope of Contention 3 goes beyond the bounds of the issues admitted by the Board when it modified and accepted CFUR's proposed Contention 2B. On the other hand, Applicants' interpretation of the scope of Contention 3 is consistent with the Board's pronouncements, and Applicants' answers to CFUR's interrogatories on Contention 3 are proper. Accordingly, and for the reasons discussed more fully below, CFUR's motion to compel should be denied.

A. The Board's Rulings on Contention 3

1. Prehearing Conference of April 30, 1980.

At the prehearing conference of April 30, 1980, CFUR, the Applicants and the NRC Staff orally presented their positions on CFUR proposed Contention 2B,^{6/} which positions were taken

^{6/} Tr. at 166-179.

generally from the parties' statements of position on the proposed contentions, filed April 10, 1980.^{7/} As can be readily noted from the prehearing conference transcript, there was substantial discussion as to exactly what issues CFUR intended to raise with its proposed Contention 2B. See, e.g., Questions of Dr. Remick at pp. 176-179. The Board did not decide at the prehearing conference as to the admissibility of any of the proposed contentions or portions thereof. Thus, the scope of Contention 3 was not determined at the prehearing conference and the parties' positions on that contention were simply that — positions that had not been accepted by the Board.

2. June 16, 1980 Order and October 31, 1980 Rulings on Objections.

The issues which are admitted as contentions in NRC licensing proceedings pursuant to 10 C.F.R. §2.714(b) are determined by the Licensing Board established to rule on petitions to intervene. 10 C.F.R. §§2.714(e)-(h). Specifically, the issues to be considered in each proceeding are established by the Board's order following a prehearing conference held pursuant to 10 C.F.R. §2.751a. 10 C.F.R. §2.751a(d). The parties are bound to the terms of that order (unless modified for good cause) for the remainder of the proceeding. Id.

^{7/} See "Report of CFUR's Position on Each Contention," pp. 9-12; "Applicants' Statement of Positions on Proposed CFUR Contentions," pp. 6-7; and "NRC Staff's Report on its Position Concerning the Admissibility of Intervenors' Contentions," pp. 12-13.

On June 16, 1980, the Board issued its Order admitting the contentions and establishing the issues for this proceeding. In its Order, the Board made findings relative to each proposed contention and admitted contentions in whole (as proposed by the Intervenors) or as modified by the Board. With respect to CFUR's proposed Contention 2B, the Board admitted the contention "as modified" by the Order. The Board stated, as follows:

CFUR contention 2B was modified to provide for realistic prediction of the CPSES Westinghouse reactor system response to the sequence of events at TMI-2.
[Order at 3.]

The Board made no other statements in its Order with respect to the scope of Contention 3.

Applicants filed on July 1, 1980 a statement of objections to the Board's June 16, 1980 Order, and moved that it be modified with respect to the decision to admit Contention 3. Applicants based their position on the Commission's Statement of Policy regarding litigation of TMI-related issues in individual licensing proceedings, issued the same day as the Board's Order. Applicants argued that since Contention 3, as admitted, would require computer analyses of the sequence of events which occurred at TMI-2, the contention went beyond the requirements imposed by the Commission in NUREG-0694 and should have been precluded from the proceeding by the June 16, 1980 policy statement.

The NRC Staff disagreed with the Applicants' assessment of the status of Contention 3 in view of the Commission's policy statement, and filed an answer to the Applicants' statement of objections on July 21, 1980. The Staff stated its position, as follows:

In the Staff's view, Contention 3 is not, on its face, incompatible with the Commission's Statement of Policy. The contention raises the issue of whether computer codes used in the design of CPSES properly take account of the conditions experienced at TMI-2. This appears to be generally consistent with NUREG-0694.

[NRC Staff Answer at pp. 4-5.]

On October 31, 1980, the Board issued its Rulings on Objections to the Board's June 16, 1980 Order. The Board found that "for the reasons in the NRC Staff's Answer to Applicants' Statement of Objections"^{8/} Contention 3 should not be dismissed from the proceeding. Thus, the Board did not by its Rulings alter the scope of Contention 3 as admitted but merely determined that the scope did not exceed the bounds of litigable TMI-related issues as established by the Commission's June 16, 1980 policy statement.

As discussed above, the scope of Contention 3 is determined by the Board's June 16, 1980 Order. 10 C.F.R. §2.751a(d). It is apparent from that Order that Contention 3 is concerned with the ability of the computer codes

^{8/} CFUR also filed an answer to Applicants' statement of objections on July 23, 1980. However, since the Board did not rely on any of CFUR's arguments in ruling on Contention 3 that answer is not recounted here.

used in the accident analyses for Comanche Peak to realistically predict the Westinghouse reactor system response to the sequence of events at TMI-2. Order at 3. Applicants believe that the Board's statement of the scope of the contention limits the issues to be addressed to the analyses of the type of accident which occurred at TMI-2, viz, a small-break LOCA event. CFUR, on the other hand, apparently maintains that Contention 3 is concerned with all accident sequence analyses, regardless of whether the accident sequence is related to or reflects the events at TMI-2. Applicants contend that this interpretation of Contention 3 is inconsistent with the Board's description in its Order of the scope of that contention, as admitted.

Applicants have relied on the Board's statement at p. 3 of its June 16, 1980 Order as defining the scope of Contention 3, and have responded to CFUR's discovery requests accordingly. CFUR'S objections are based on CFUR's erroneous interpretation of the scope of Contention 3 as admitted to this proceeding. Accordingly, Applicants urge the Board to deny CFUR's motion to compel.

B. CFUR's Arguments Are Without Merit

1. The wording of Contention 3.

CFUR argues that the wording of Contention 3 indicates that the contention is not limited to "the specific series of events that occurred at TMI." In addition, CFUR states that the contention is "addressed to the types of events that

occurred at TMI." However, while Contention 3 is concerned with the consideration of certain "parameters" that were present at TMI, e.g., operator actions or misleading indications, the Board did not intend that Contention 3 involve the evaluation of such "parameters" in each and every accident sequence analyses performed for Comanche Peak. When Contention 3 is read in the context of the Board's statement in its June 16, 1980 Order concerning the admission of the contention (Order at p. 3) (which CFUR does not discuss in its motion), it is apparent that Contention 3 is concerned with the sequence of events which occurred at TMI-2 and not with all conceivable accident sequences, as CFUR contends.

2. CFUR's statements regarding the scope of Contention 3.

CFUR apparently contends that Contention 3 encompasses the types of failures which occurred at TMI rather than the specific sequence of events which occurred at TMI, and that those types of failures should be evaluated in the context of all accident sequences. In support of its position, CFUR cites its petition to intervene, its report of position on each contention, and a portion of the discussion at the pre-hearing conference of proposed Contention 2B. CFUR also cites its responses to interrogatories of both the NRC Staff and the Applicants.

However, as discussed above in Section I., those statements are merely CFUR's position on the scope of the proposed contention. They do not reflect the scope of Contention 3

as accepted by the Board. The Board modified the proposed contention and, as admitted, the scope of Contention 3 is not coextensive with the scope of proposed Contention 2B. No doubt the Board narrowed the scope of CFUR's proposed Contention 2B in view of the absence of supporting basis for that overly-broad proposed contention. 10 C.F.R. §2.714(b).

Further, as for CFUR's responses to the NRC Staff's and Applicants' interrogatories, those statements cannot serve to expand the scope of Contention 3 as admitted by the Board. It is the Board's June 16, 1980 Order which controls the scope of the issues admitted to this proceeding, not CFUR's opinion as to the scope of those issues. While CFUR's answers to interrogatories serve to specify the issues it sought to raise in its contentions, those answers cannot broaden the scope of the contentions admitted by the Board. Thus, CFUR's statements on Contention 3 which are inconsistent with or broaden the scope of the Board's view of Contention 3 are irrelevant.

3. The Staff's statements on Contention 3.

CFUR contends that the NRC Staff "has understood the true scope of Contention 3." CFUR cites a sentence from the Staff's answer to the Applicants' objections to the Board's June 16, 1980 Order, evidently to demonstrate that the Staff's interpretation of Contention 3 is the same as CFUR's. However, it appears that CFUR's argument is without merit in two respects. First, the sentence cited does not state that Contention 3

concerns all accident analyses performed by computer codes for Comanche Peak. In fact, it does not even address which accident analyses are "to take account of" the conditions experienced at TMI-2. Second, when read in context (see quotation at p. 8, supra), the sentence is merely a generally descriptive statement intended to support the Staff's position that the contention was "generally consistent" with the TMI-related requirements and "not, on its face, incompatible" with the policy statement on TMI-related requirements. Thus, the purpose of the sentence was not to define the scope of Contention 3, as CFUR implies. Accordingly, the Staff's statement quoted by CFUR does not support CFUR's position.

4. The Applicants' statements on Contention 3.

CFUR argues that the Applicants' interrogatories and statements in their June 12, 1981 motion to compel evidence an "understanding of the true scope of Contention 3." On the contrary, Applicants' interrogatories are entirely consistent with Applicants' interpretation of the contention as admitted by Board. Also, Applicants' motion to compel is consistent with that interpretation. While Contention 3 concerns the evaluation of certain "parameters", it applies only to the extent those parameters affect the sequence of events which occurred at TMI-2 and the computer codes which model those accident sequences. Thus, CFUR's argument in this regard is also without merit.

For the foregoing reasons, CFUR's arguments with respect to Applicants' answers to Interrogatories 1-5, 7-19, 21-25, 28-30, 32-44 and 46 are without merit. Accordingly, the Board should deny CFUR's motion to compel with respect to those interrogatories.

5. Interrogatory 21.

This interrogatory seeks to probe the analyses of "accident sequences other than the analyses listed in Exhibit 'A'" to CFUR's interrogatories.^{9/} Applicants objected to the interrogatory as not being sufficiently specific for a response in that it does not identify the accident sequences with which it is concerned. CFUR's motion to compel merely reiterates the wording of the interrogatory and does not specify any particular accident sequences. Thus, the interrogatory is still open-ended and not sufficiently specific for Applicants to provide a response. Accordingly, Applicants renew their objection and urge the Board to deny CFUR's motion with respect to Interrogatory 21.

6. Interrogatory 20.

Interrogatory 20 reads, as follows:

Describe in detail your justification for excluding human error and error due to following erroneous procedures in analyzing small break accidents.

^{9/} Exhibit A to CFUR's interrogatories is a list of 42 postulated accidents which apparently was compiled based upon the Accident Analysis chapter of the Comanche Peak FSAR (Chapter 15).

This interrogatory is premised on the assumption that Applicants preclude human error or error due to following erroneous procedures in its analyses of small break accidents. As Applicants' response demonstrates, that assumption is false. Thus, no further response is required. Applicants nevertheless refer CFUR to the answer to Interrogatory 3 in which Applicants explain how human error is accounted for in accident analyses. As for the question of human error caused by following erroneous procedures, again Applicants' answer to Interrogatory 3 explains that Applicants' accident analyses assume a particular initiating event followed by the subsequent failure of a single active component. The single failure is not assumed to result from any particular cause. Thus, human error may be assumed to be the mechanism for such component failure, and such human error may stem from any cause, including the following erroneous procedures. Thus, Applicants have provided an adequate response to Interrogatory 20, and CFUR's motion to compel with respect to Interrogatory 20 should be denied.

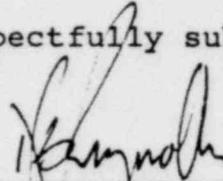
III. Applicants' Answer to
CFUR's Motion to Find
Applicants in Default

CFUR moves that the Board find the Applicants in default, pursuant to 10 C.F.R. §2.707, arguing that Applicants' answers to CFUR's fourth set of interrogatories "are so evasive and incomplete that they should be treated as a failure to answer or respond." As a sanction for this alleged default, CFUR urges the Board to condition the issuance of the operating license

for Comanche Peak on the Applicants having modelled "the types of parameters experienced at TMI for each of the design basis accident sequences considered for CPSES."

As demonstrated above, either Applicants' answers to CFUR's interrogatories are proper and complete, or their objections are well-founded, in view of the scope of Contention 3 admitted by the Board. It is clear from the sanction which CFUR seeks that CFUR's motion is premised on its erroneous interpretation of the scope of Contention 3. Thus, CFUR's motion to find Applicants in default is without merit and should be denied.^{10/}

Respectfully submitted,



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July 6, 1981

^{10/} CFUR also objects to the form of the oath taken by Homer C. Schmidt. Applicants hereby incorporate their answer to a similar objection previously filed by CFUR, which answer is set forth at page 10 of Applicants' May 13, 1981 answer to CFUR's motion to compel with respect to its first set of interrogatories.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
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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 Licenses)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Applicants' Answers To CFUR's Motion (1) To Compel Responsive Answers To CFUR's Fourth Set of Interrogatories and (2) To Find Applicants In Default And Request For Oral Argument," in the above-captioned matter were served upon the following persons by deposit in the United States mail, first class postage prepaid this 6th day of July, 1981:

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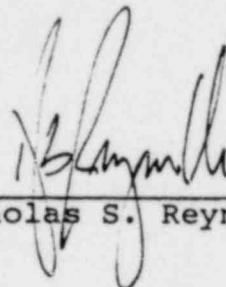
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