

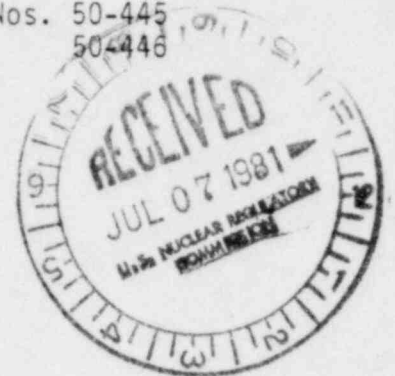
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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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



NRC STAFF'S RESPONSE TO ACORN'S MOTION  
FOR VOLUNTARY DISMISSAL

On June 16, 1981, Intervenor Texas Association of Community Organizations for Reform Now ("ACORN") filed with the Atomic Safety and Licensing Board ("Licensing Board") a "Motion for Voluntary Dismissal" ("Motion"). In its Motion, ACORN stated that it "has limited funds and cannot afford to pay" what it described as "the consultants and expert witnesses who are necessary to continue this litigation." ACORN concluded that "[i]t has therefore become necessary for Intervenor ACORN to ask this Board for a voluntary dismissal from this proceeding." For the reasons set forth below, the NRC Staff ("Staff") does not oppose the Motion filed by ACORN, and recommends that ACORN be dismissed from this proceeding along with each of the contentions which had been sponsored solely by ACORN and which have been admitted for the purpose of litigation herein.

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### Discussion

ACORN timely filed its petition for leave to intervene in this proceeding in March 1979,<sup>1/</sup> and filed its initial set of contentions on May 7, 1979.<sup>2/</sup> On June 27, 1979, ACORN was admitted to the proceeding as an Intervenor.<sup>3/</sup>

On June 16, 1980, the Licensing Board issued its ruling on the admissibility of the Intervenor's contentions, in which it admitted 17 of ACORN's contentions.<sup>4/</sup> Those contentions were somewhat modified and were combined, in part, with contentions filed by the two other Intervenor's in this proceeding.<sup>5/</sup> ACORN's contentions were then renumbered as Accepted Contentions 4 (jointly with CFUR), 5 (jointly with CFUR and CASE), 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22(f) (jointly with CASE), 23 (jointly with CASE), and 24(a) (jointly with CASE).<sup>6/</sup> Accepted Contention 11 was

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<sup>1/</sup> The notice of opportunity for hearing, published in the Federal Register on February 5, 1979 (44 Fed. Reg. 6995), required petitions for leave to intervene to be filed by March 5, 1979. ACORN filed its "Petition for Leave to Intervene and Request for Hearing" on March 2, 1979, and filed its "First Amended Petition for Leave to Intervene and Request for Hearing" on March 29, 1979, pursuant to an extension of time granted by the Licensing Board.

<sup>2/</sup> "Supplemental Petition and Contentions of Intervenor's, ACORN, Mary and Clyde Bishop and Oda and William Wood", dated May 7, 1979.

<sup>3/</sup> "Order Relative to Standing of Petitioners to Intervene", dated June 27, 1979 (at 10).

<sup>4/</sup> "Order Subsequent to the Prehearing Conference of April 30, 1980", dated June 16, 1980 (at 6).

<sup>5/</sup> The other Intervenor's are Citizens for Fair Utility Regulation ("CFUR") and Citizens Association for Sound Energy ("CASE").

<sup>6/</sup> See "Order Subsequent to the Prehearing Conference of April 30, 1980", n.4 supra, at 10-17.

subsequently "dropped" by the Licensing Board, by Order of October 31, 1980.<sup>7/</sup>

The Intervenor was consolidated for those contentions asserted by more than one Intervenor, and each Intervenor was designated as the "lead party-intervenor" for all contentions which that intervenor, alone, had sponsored.<sup>8/</sup> ACORN was designated as "lead party-intervenor" for contentions 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21, which it, alone, had asserted, as well as for contentions 5 and 23 which it had sponsored jointly with other intervenors.<sup>9/</sup> The Licensing Board explained that "the lead party-intervenor for a particular contention is for all purposes in this proceeding unless specifically provided otherwise by the Board".<sup>10/</sup>

After the Licensing Board had ruled upon contentions and consolidated the Intervenor, ACORN failed to take virtually any action whatsoever to litigate its contentions in this proceeding. While the other Intervenor have actively filed numerous discovery requests in connection with their contentions, the Staff is not aware of any such requests having been filed by ACORN. Similarly, while the other Intervenor have filed responses and/or objections to the discovery requests filed by the Applicant and the

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<sup>7/</sup> "Rulings on Objections to Board's Order of June 16, 1980 and on Miscellaneous Motions", dated October 31, 1980 (at 1-2, 4).

<sup>8/</sup> "Memorandum and Order (Rulings on Consolidation of Parties, Appointments of Lead Party-Intervenor, Miscellaneous Motions and other Matters)", dated December 31, 1980 (at 12-13).

<sup>9/</sup> Id.

<sup>10/</sup> Id., at 13.

Staff, ACORN has virtually ignored those requests,<sup>11/</sup> despite having been ordered to provide responses to some of them by the Licensing Board.<sup>12/</sup>

ACORN's failure to provide responses to legitimate discovery requests, depriving the Staff and the Applicant of necessary information as to ACORN's contentions and its positions prior to hearing, is in clear contravention of this Licensing Board's directive as expressed in the Order Granting Motion to Compel of April 13, 1981 (n.11, supra). The Staff believes that had ACORN not filed its "Motion for Voluntary Dismissal", the Licensing Board would have been justified in dismissing ACORN as a party and in dismissing some or all of its contentions, pursuant to 10 CFR §§ 2.707 and 2.718. See, e.g., Northern States Power Co. (Tyrone Energy Park, Unit 1), LBP-77-37, 5 NRC 1298 (1977); Offshore Power Systems (Floating Nuclear Power Plants), LBP-75-67, 2 NRC 813 (1975); Public Service Electric & Gas Co. (Atlantic Nuclear Generating Station, Units 1 and 2), LBP-75-62, 2 NRC 702 (1975). Cf. Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-358, 4 NRC 558 (1976).

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<sup>11/</sup> ACORN provided no response whatsoever to the Staff's discovery request, other than filing a motion for a one-month extension of time on February 6, 1981. No further response was filed by ACORN to the Staff's discovery requests and the Staff, accordingly, has filed a motion to compel responses. That motion has not yet been ruled upon by the Licensing Board.

While ACORN did file a response to the Applicant's initial discovery requests, it provided no response whatsoever to the Applicant's subsequent discovery requests. Moreover, even the responses which ACORN did file were later deemed to be largely inadequate or unresponsive by the Licensing Board. See "Memorandum and Order (Grant of Applicants' Modified Motions to Compel ACORN to Respond to and Also to Supplement Responses to Applicants' First Set of Interrogatories to ACORN and Requests to Produce)" ("Order Granting Motion to Compel"), dated April 13, 1981.

<sup>12/</sup> See Order Granting Motion to Compel, n.11 supra.

The Staff believes that ACORN's failure to provide virtually any information in response to legitimate discovery requests, which would support or elucidate its contentions -- notwithstanding the fact that it was ordered to do so by the Licensing Board -- effectively precludes the Licensing Board from being able to "determine that a serious safety, environmental, or common defense and security matter exists" (10 CFR § 2.760a), and precludes the Staff and the Applicant from being able to litigate the merits of ACORN's contentions. Cf. Tyrone Energy Park, supra, 5 NRC at 1301. Accordingly, the Staff believes that each of the contentions which were sponsored solely by ACORN -- i.e., contentions 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21 -- should be dismissed from this proceeding.<sup>13/</sup> In addition, the Licensing Board should designate a new "lead party-intervenor" for contentions 5 and 23, which were sponsored jointly by ACORN and other Intervenor, and for which ACORN had previously been designated lead party-intervenor.

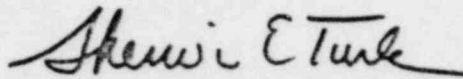
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<sup>13/</sup> In an operating license proceeding where a hearing is convened as a result of intervention, the Licensing Board will resolve all issues raised by the parties and any issues which it raises sua sponte. 10 CFR § 2.760a; Consolidation Edison Co. of New York (Indian Point Nuclear Generating Station, Units 1, 2 & 3), ALAB-319, 3 NRC 188, 190 (1976). The decision as to whether any other matters need to be considered prior to issuance of the operating license is the responsibility of the NRC Staff alone. Indian Point, supra, 3 NRC at 190; Portland General Electric Co. (Trojan Nuclear Plant), ALAB-181, 7 AEC 207, 209 n.7 (1974). In the event that ACORN's Motion for Voluntary Dismissal is granted, the contentions solely advanced by ACORN would no longer be issues raised by a party and for the reasons stated in the text above, the Board lacks sufficient information to make the determination necessary to exercise its sua sponte jurisdiction. Accordingly, the contentions sponsored solely by ACORN should be dismissed.

Conclusion

For the reasons set forth in more detail above, the Staff does not oppose ACORN's Motion, and recommends that ACORN be dismissed from this proceeding along with each of the eleven contentions which had been sponsored solely by ACORN.

Respectfully submitted,



Sherwin E. Turk  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 6th day of July, 1981

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO ACORN'S MOTION FOR VOLUNTARY DISMISSAL" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 6th day of July, 1981:

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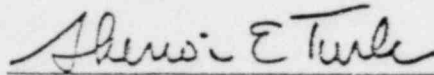
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Washington, DC 20555

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