

10/22/80

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 ANSWER TO CASE'S  
MOTION FOR PROTECTION

INTRODUCTION

On October 2, 1980, CASE (Citizens Association for Sound Energy) filed "CASE's Response to Applicants' Motion to Compel and Motion for Protection." In this pleading, CASE responds to "Applicants' Motion to Compel and Answers to CASE's Request for Clarification of Certain Interrogatories and to CASE's Motion for an Extension of Time," filed on September 18, 1980.<sup>1/</sup> CASE also requests that the Atomic Safety and Licensing Board (the Board) enter a Protective Order pursuant to 10 CFR § 2.740(c) which would:

1. Relieve CASE of "any responsibility to supplement its Answers to Applicants [sic] First Set of Interrogatories to CASE and Requests to Produce with regard to Contentions 5 and 23 until such time as the Board has ruled on the final wording of those contentions;" and give CASE "adequate

<sup>1/</sup> The NRC Staff responded to Applicants' motion in "NRC Staff's Answer to Applicants' Motion to Compel," dated October 8, 1980.

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time following such ruling to prepare its answers to applicable interrogatories on those contentions."

2. Relieve CASE of "any responsibility to supplement its Answers to Applicants [sic] First Set of Interrogatories to CASE and Requests to Produce with regard to all of CASE's Contentions which are affected by Amendment 1 to the ER (OLS) for a period of ninety (90) days in order to allow CASE adequate time to review Amendment 1 and to prepare its responses."
3. Give CASE "a period of one hundred twenty (120) days in which to conduct discovery before being required to reply further to discovery from Applicants."
4. Require that "any future written discovery requests to CASE from Applicants be limited to not more than thirty (30) Interrogatories and Requests to Produce, including subparts, for any forty-five (45) day period."
5. Prohibit Applicants "from misquoting or misstating CASE's intent or statements, a practice which currently is placing an oppressive extra burden on CASE because we are forced to correct such misquotes and misstatements in addition to responding to interrogatories in order to avoid Applicants' prejudicing the Board and the record in these proceedings against CASE."

STAFF POSITION

In items 3. and 4., CASE seeks essentially the same relief which CFUR (Citizens for Fair Utility Regulation), another Intervenor in this proceeding, seeks in items 2. and 3. of its Motion For Protection, filed on September 18, 1980. The NRC Staff's position as to what constitutes "good cause" under 10 CFR § 2.740(c) for issuing an order granting this type of relief is as stated in "NRC Staff Answer to CFUR's Motion for Protection," dated October 9, 1980, pp. 7-9. For the reasons there stated, the NRC Staff also opposes the relief sought by CASE in items 3. and 4. of its Motion for Protection and urges that the Board deny CASE's Motion for Protection, insofar as these items are concerned.

With respect to the relief sought by CASE in items 1. and 2., the Staff has received and reviewed "Applicants' Answer to CASE's Motion for Protection," dated October 17, 1980, and the Staff agrees with Applicants' position as stated on pp. 7, 8, 9, 12, 13 and 14, concerning these aspects of CASE's Motion. Accordingly, the Staff urges that the Board 1) deny CASE's request in item 1. that it be temporarily relieved of the responsibility to supplement responses to interrogatories with respect to Contentions 5 and 23, except with respect to the interrogatories identified by Applicants in section II.A.2 of their Answer and 2) deny CASE's request in item 2. that it not be required to supplement its responses to interrogatories regarding contentions affected by Amendment 1 to the Environmental Report - Operating License for 90 days.

Insofar as item 5. of CASE's Motion is concerned, the Staff believes that this aspect of CASE's Motion involves a disagreement solely between Applicants and CASE. Accordingly, the Staff has no position regarding the relief sought by CASE in this part of its Motion.

CONCLUSION

Based on the foregoing, it is the Staff's position that CASE's request for relief with regard to supplementation of interrogatory responses (relief items 1 and 2) should be denied in part and that its requests for relief limiting Applicant's discovery (relief items 3 and 4) should be denied in their entirety. The Staff takes no position on CASE's request with regard to alleged misstatements by Applicants (relief item 5).

Respectfully submitted,

*Marjorie Ulman Rothschild*

Marjorie Ulman Rothschild  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 22nd day of October, 1980

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF ANSWER TO CASE'S MOTION FOR PROTECTION" 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 22nd day of October, 1980:

Valentine B. Deale, Esq., Chairman  
Atomic Safety and Licensing Board  
1001 Connecticut Avenue, N.W.  
Washington, DC 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, DC 20555

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

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

Mr. Geoffrey M. Gay  
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

Mr. Richard Fouke  
1668-B Carter Drive  
Arlington, TX 76010

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

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

Atomic Safety and Licensing  
Board Panel\*  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Atomic Safety and Licensing Appeal  
Panel (5)\*  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Docketing and Service Section (7)\*  
Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

*Marjorie Ulman Rothschild*  

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Marjorie Ulman Rothschild  
Counsel for NRC Staff