



UNITED STATES OF AMERICA
 NUCLEAR REGULATORY COMMISSION
 ATOMIC SAFETY AND LICENSING BOARD
 Before Administrative Judges:
 Marshall E. Miller, Chairman
 Dr. Kenneth A. McCoolom
 Dr. Richard F. Cole



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 License)

September 25, 1981

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ORDER CONCERNING SUA SPONTE ISSUES

By our Order issued July 24, 1981, the Intervenor ACORN was granted voluntary dismissal from this proceeding. Eight of ACORN's eleven admitted contentions were adopted sua sponte by the Board pursuant to the provisions of 10 CFR 2.760a. This Order noted that ACORN's "Contentions 12 through 19 are related to issues which the Staff is still reviewing," which issues may have significant health and safety consequences. The order was forwarded to the Commission in accordance with the latter's Memorandum dated June 30, 1981.

The Commission entered an Order dated September 22, 1981 (CLI-81-24), directing the Board to describe as to the sua sponte contentions the "particular factors beyond the mere pendency of staff review" upon which it based its determination of the existence of "a serious safety, environmental, or common defense and security matter." Part of the reason

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for our sua sponte action results from serious delays in the hearing caused by frequent slippages in the issuance of Staff-generated documents. Accordingly, the following background information is brought to the attention of the Commission.

A 10-month delay is projected between the completion of Comanche Peak construction and the issuance of an operating license (August 28, 1981, Tenth Beville Committee Report, p. 8). The cost of such delay is estimated at \$185,000,000 by the Applicant, or \$145,000,000 by the DOE analysis (Ibid., Table 2).

The Licensing Board has exerted its best efforts to expedite the hearing schedule to reduce delays. A hearing on NEPA and other selected issues, to commence December 2, 1981, was established by the Scheduling Order of July 23, 1981, enclosed herewith as Attachment 1. The Notice of Evidentiary Hearing on those issues has been published in the Federal Register, and is enclosed herewith as Attachment 2. Thirteen separate orders resolving various discovery controversies and motions were issued between July 20, 1981 and August 21, 1981.

However, efforts to expedite the hearing have been frustrated by unreported and unexplained slippages. The DES slipped from March 6, 1981, to May 6, 1981, to May 22, 1981. The FES slipped from August 12, 1981 to September 24, 1981. The SER was scheduled for June 11, but was issued July 15, 1981, with over 40 open items. The latest SER supplement (SSER) has slipped from August 12, 1981 to October 18, 1981, to December 12, 1981 (May 29, 1981 Blue Book; August 7, 1981 Blue Book; August 28, 1981 Beville

Committee Report). The ACRS meeting and review has been deferred from July 9 to November 12, 1981 (Id.).

In view of the unusually large number of open items (40) in the Staff's SER, the Board was exercising prudence in retaining Contentions 12-19, "at least until the Staff arrives at a position via supplements to the SER." All of these open item contentions involve safety considerations. Since they were admitted issues, the Board could better monitor their resolution and prevent them from getting lost in the shuffle of 40 open items subject to slippage, by retaining them sua sponte.

The substantial Staff slippages described above now put in jeopardy the date of the principal evidentiary hearing, which the Bevill Committee has consistently been informed will commence in March, 1982. As a result, the 10-month delay now projected could well have an even greater impact on licensing completion dates. These serious and unexplained slippages which impair the published schedule are very similar to changing circumstances or new information during the course of adjudication.

The Appeal Board has held that the Staff and other parties cannot leave the Board "in the dark" about changes or new information; "Changes may take place but they must be disclosed" (Duke Power Company (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-143, 6 AEC 623 at 625). It was held in another case that "it cannot be overemphasized that it is of utmost importance for parties to keep the board abreast of changing circumstances bearing on their cases" (Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 397 at 406, fn. 26).

Inasmuch as Contentions 12 through 19 involve open issues, their retention will enable the Board to ascertain why there continue to be 40 open issues. This is unusual, and it has already adversely affected the timeliness of ACRS review. No information or explanation has been furnished to the Board by the Staff. The Appeal Board has analyzed the independent responsibilities of licensing boards and the Staff, noting that "It is one thing to recognize that the staff must have both independence and time to fulfill its environmental obligations. It is quite another to infer that the staff's responsibilities override or dilute the Licensing Board's."^{1/}

The Appeal Board then established the following procedure to handle significant delays that impact on licensing hearings:

"One thing the Board may do is ascertain why the staff document in question has not been forthcoming. Certainly if it is to conduct the hearing in accordance with responsibilities assigned to it, the Board must at a minimum be entitled to look behind the staff's explanation for delay in submitting the environmental statement. If the staff can provide adequate assurance that it is acting as quickly and reasonably as the circumstances permit—and we emphasize the word reasonably—then the Board can ask no more and should reschedule the filing date accordingly.

"Where the Board finds, however, that the staff cannot demonstrate a reasonable cause for its delay, the Board may issue a ruling (with appropriate findings supported by the record) noting the staff's unjustified failure to meet a publication schedule. It may then either proceed to hear other matters or, if there be none, suspend the proceedings until the staff files the necessary documents. In either situation the Board, on its own motion or on that of one of the parties, may refer the ruling to us. See 10 CFR 2.730(f). We would hear such referrals

^{1/}Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 202, 206-07 (1978).

expeditiously; and, were we to agree with the Board, we would certify the matter to the Commission. Its authority to rectify the situation is undoubted.

"This procedure has several things to commend it. First it does not impinge on the staff's independent responsibility for preparing impact statements. Second, it would bring to the Commission's attention only those cases where boards at the licensing and appeal levels agreed about the cause of the delay. Cf., 10 CFR 2.786(b)(4)(ii). And, third, it can aid in pinpointing responsibility for delays in the licensing process, a matter of concern to all." (8 NRC at 207; footnotes omitted)

Retention by the Board of Contentions 12-19 will enable it to review the causes of delay and to make a reasoned judgment on the record, whether or not to invoke the procedures described in Offshore Power, supra.

In its Order of July 24, 1981, the Board reviewed each of ACORN's Contentions 12 through 19 and for each contention specifically identified by number and description the related open items pending in the Staff Review (Order at pp. 15 through 19). It is precisely because the Staff had not completed its review and reached its final position in these areas that the Board declined to dismiss the contentions. The Board stated that it "...prefers to retain Contentions 12 through 19, at least until the Staff arrives at a position via supplements to the SER." (Emphasis supplied)

In its SER, the Staff stated with respect to open issues that "the staff review of these items will be completed prior to a decision on issuance of an Operating License and will be reported in a supplement to this report" (pp. 1-7, NUREG-0797, July 1981). In the Board's view, to dismiss contentions and in effect sign off on these issues prior to even a statement from the Staff as to whether the issues can be resolved, would be neither prudent nor conservative.

It was anticipated by the Board that a favorable Staff review would result in dismissal of these contentions, as was the case with ACORN Contentions 10 and 21 which even though listed as unresolved safety issues (Task Action Plan Nos. A-2 and A-36), were dismissed as issues. The Board considered Contentions 10 and 21 to be sufficiently resolved on the basis of the Staff's information and description of their status, that it declined to raise them sua sponte. The Board also dismissed Contention 20 on the basis that the stated issue did not reach the status of a problem requiring sua sponte adoption. However, such is not the case for Contentions 12 through 18, for which very little information is available either in Applicant's filings or admittedly in the Staff's filings.

The issues raised in Contentions 12 through 19 were not initiated by the Board. They were duly raised by an intervenor party (ACORN), and after thorough Board review they were admitted as viable issues in this case. It is the Board's view that there is a significant difference between the Board's dismissal of an accepted contention, and the assertion of a previously unraised issue sua sponte.

Admitted contentions have necessarily satisfied the threshold pleading requirements of the Commission's Rules of Practice (10 CFR §2.714). They have achieved the status of cognizable issues after Board analysis, and they have been available for discovery as to their bases by the opposing parties (10 CFR §2.740 et seq.). The voluntary dismissal for financial reasons of the party which pleaded these contentions, for reasons not

connected with a disposition of these issues on their merits, should not necessarily compel the automatic rejection of otherwise viable issues involving significant health and safety consequences.

In order to dismiss an accepted contention, it is the Board's view that some threshold level of informational justification should be satisfied. Absent such threshold, the contention must be addressed directly by the Board and any relegation of that responsibility would in our opinion, be dereliction of duty.

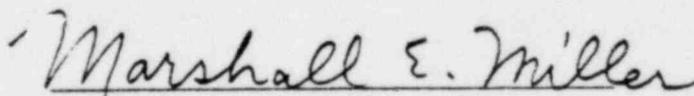
In the case of Contentions 12 through 19, the Board does not have the required Applicant or Staff input upon which to base an informed decision to dismiss. Accordingly, the Board wishes to retain Contentions 12 through 19 at this time.

Dr. Kenneth A. McCollom, who recently succeeded Dr. Forrest J. Remick as a Board Member, did not participate in this Order.

It is so ORDERED.

THE ATOMIC SAFETY & LICENSING BOARD


Dr. Richard F. Cole
ADMINISTRATIVE JUDGE

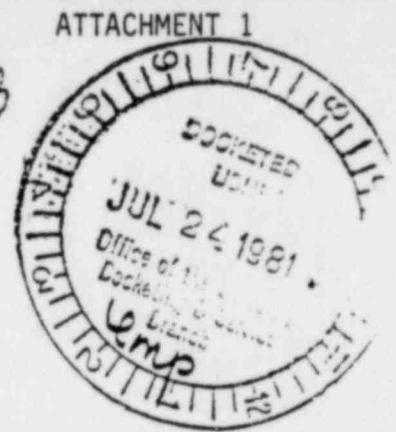

Marshall E. Miller, Chairman
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 25th day of September, 1981.

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Marshall E. Miller, Chairman
Dr. Forrest J. Remick
Dr. Richard F. Cole



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 License)

July 23, 1981

SCHEDULING ORDER

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The Board hereby adopts the following schedule for the conduct of this proceeding. This schedule shall control the course of discovery, motions, trial preparation and the evidentiary hearing involving the following matters:

Schedule For NEPA and Other Selected Issues

(Contentions 9, 22, 23, 24 and 25, and Board Question No. 2)^{1/}

May 15, 1981	DES issued.
July 1981	SER issued.
August 17, 1981	Last date for filing DES interrogatories, document requests and other discovery.
September 11, 1981	Last date for filing answers to DES discovery.
September 17, 1981	All DES discovery to be completed.

^{1/}Order Subsequent to the Prehearing Conference of April 30, 1980, entered June 16, 1980, pp. 6, 10-17.

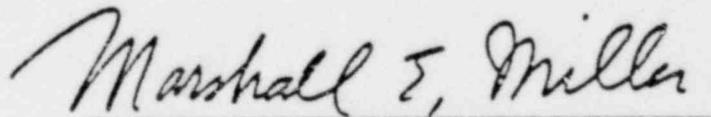
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September 18, 1981	FES to be issued (Staff revised estimate).
September 30, 1981	FES - related interrogatories and discovery to be filed.
October 23, 1981	All FES - related discovery to be completed.
October 29, 1981	Last day to file motions for summary disposition the above-described issues.
November 23, 1981	Last day to file answers to summary disposition motions.
	Written testimony (Q and A form) to be filed.
November 25, 1981	Trial briefs, including witness and exhibit lists and summaries, to be filed.
December 1, 1981	Final prehearing conference.
December 2, 1981	Evidentiary hearing on above issues to commence.

ORDER

The parties are directed to comply strictly with the above schedule regarding Contentions 9, 22, 23, 24, 25 and Board Question No. 2. They shall also conduct seasonably and conclude discovery on the remaining FER-related issues.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD



Marshall E. Miller, Chairman
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 23rd day of July, 1981.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Marshall E. Miller, Chairman
Dr. Kenneth A. McCollom
Dr. Richard F. Cole

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
License)

September 17, 1981

NOTICE OF EVIDENTIARY HEARING AND
PREHEARING CONFERENCE

PLEASE TAKE NOTICE that an evidentiary hearing will be held in this operating license proceeding before an Atomic Safety and Licensing Board (Board), pursuant to the Atomic Energy Act of 1954 as amended (the Act), and the regulations in Title 10, Code of Federal Regulations (CFR), Part 50, "Licensing of Production and Utilization Facilities," Part 51, "Licensing and Regulatory Policy and Procedures for Environmental Protection," and Part 2, "Rules of Practice."

The evidentiary hearing will commence on December 2, 1981, at 9:00 a.m., local time at the Interstate Commerce Commission, Neil P. Anderson Building, Room 400A, located at 411 West 7th Street, Fort Worth, Texas 76102, and will continue until completion of taking evidence on the issues and contentions described hereafter. This evidentiary hearing will

address the matters in controversy resulting from Contentions 9, 22, 24 and 25, and Board Question No. 2, infra.

A final prehearing conference, pursuant to 10 CFR §2.752, will be held at the same location at 9:00 a.m., local time, December 1, 1981.

On February 5, 1979, the Nuclear Regulatory Commission (NRC) issued a notice in the Federal Register of the "Availability of Applicants' Environmental Report, Consideration of Issuance of Facility Operating Licenses, and Opportunity for Hearing" for Comanche Peak (44 Fed. Reg. 6995). The notice stated that a petition for leave to intervene must be filed by March 5, 1979. Timely petitions were received from the State of Texas for participation as an interested state under 10 CFR §2.715(c), and from Citizens Association for Sound Energy (CASE), Citizens for Fair Utility Regulation (CFUR) and the Texas Association of Community Organizations for Reform Now/West Texas Legal Services (ACORN)

By its Order Relative to Standing of Petitioners to Intervene, entered June 27, 1979, the Board admitted these petitioners as Intervenors in this proceeding. Subsequently, ACORN's motion for its voluntary dismissal as a party was granted by Memorandum and Order entered July 24, 1981.

By our Scheduling Order entered July 23, 1981, the evidentiary hearing to commence on December 2, 1981, was to cover the issues involved in admitted Contentions 9, 22, 24 and 25, and Board Question No. 2. These contentions and issues are as follows:

Contention 9

Applicants have failed to make any effort to determine the effect of radioactive releases on the general public other than at the exclusion boundary. Various transport mechanisms may cause, in certain cases, the bulk of the health effects to occur some distance from the exclusion boundary.

Contention 22

Applicants have failed to comply with 10 CFR Part 50, Appendix E, regarding emergency planning, for the following reasons:

- a. The FSAR does not identify state or regional authorities responsible for emergency planning or who have special qualifications for dealing with emergencies.
- b. No agreements have been reached with local and state officials and agencies for the early warning and evacuation of the public, including the identification of the principal officials by titles and agencies.
- c. There is no description of the arrangements for services of physicians and other medical personnel qualified to handle radiation emergencies and arrangements for the transportation of injured or contaminated individuals beyond the site boundary.
- d. There are no adequate plans for testing by periodic drills of emergency plans and provisions for participation in the drills by persons whose assistance may be needed, other than employees of the Applicant.
- e. There is no provision for medical facilities in the immediate vicinity of the site, which includes Glen Rose.
- f. There is no provision for emergency planning for Glen Rose or the Dallas/Ft. Worth metroplex.

Contention 24

A favorable cost/benefit balance cannot be made because the Applicant has failed to adequately consider:

- a. The costs of safely decommissioning the facility after its useful life.
- b. The costs in terms of health, as well as the economic costs of a possible accident in the on-site storage of spent fuel.
- c. The fuel costs and supply.
- d. The costs of waste storage.

Contention 25.

The requirements of the Atomic Energy Act, as amended, 10 CFR 50.57(a)(4) and 10 CFR 50 Appendix C have not been met in that the Applicant is not financially qualified to operate the proposed facility.

Board Question No. 2

Applicant and Staff should describe in detail the operating quality assurance program for CPSES. A description of the provisions for conduct of QA audits should be provided, including a description of how reactor operations and reactor operator training will be audited.

This evidentiary hearing will be conducted by a Board which has been duly designated by the Chairman of the Atomic Safety and Licensing Board Panel, consisting of Dr. Richard F. Cole, Dr. Kenneth A. McCollom, Members and Marshall E. Miller, Esq., Chairman.

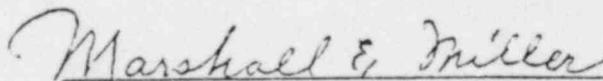
Any person who wishes to make an oral or written statement in this proceeding but who has not filed a petition for leave to intervene, may request in writing permission to make a limited appearance pursuant to the provisions of 10 CFR §2.715 of the Commission's Rules of Practice. Limited appearances will be permitted in this proceeding at the discretion of the Board, at times, within such limits and on such conditions as may

be determined by the Board. Persons desiring to make a limited appearance are requested to inform in writing the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D. C. 20555, no. later than thirty (30) days from the date of publication of this notice in the Federal Register. A person permitted to make a limited appearance does not become a party, but may state his or her position and raise questions which he or she would like to have answered to the extent that the questions are within the scope of the hearing as specified above. A member of the public does not have the right to participate unless granted the right to intervene as a party or the right of limited appearance.

Written limited appearance statements may be submitted to the Board at any time prior to closing the record in this phase of the proceeding. Oral statements will only be received at times designated by the Board in order not to interfere with the taking of evidence in this adjudicatory proceeding. Oral limited appearance statements may be made on December 1, 1981, immediately following the scheduled final prehearing conference, and at such other times as the Board shall specify. Both oral and written statements will be made a part of the official record of this proceeding.

It is so ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD



Marshall E. Miller, Chairman
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 17th day of September, 1981.