

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING APPEAL BOARD '82 NOV -4 P2:41

Administrative Judges:

Alan S. Rosenthal, Chairman
Dr. W. Reed Johnson
Thomas S. Moore

OFFICE OF SECRETARY
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BRANCH

SERVED NOV 04 1982

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

Mr. Sherwin E. Turk for the Nuclear Regulatory
Commission staff.

ORDER

November 4, 1982

1. On August 4, 1982, the Licensing Board issued an order in this operating license proceeding requiring the NRC staff to show cause why sanctions should not be imposed against it for the failure to have complied with prior Board directives. Those directives had called upon the staff to disclose on the record the identity of certain individuals interviewed in connection with the staff investigation of allegations by an informer relating to quality assurance/quality control practices during Comanche Peak construction. Additionally, the staff was instructed to produce unexpurgated copies of signed witness statements procured during the investigation.

In its August 24 response to the show cause order, the staff sought reconsideration of the order. On September 30, the Licensing Board denied that relief and renewed its prior directives. It added that, "[i]f the Staff fails either to obey this order promptly or to seek appellate review, the Licensing Board will use its authority pursuant to 10 CFR § 2.713(c) to impose sanctions upon Staff counsel." Order, p. 14; emphasis supplied.

Electing to pursue the second option given it by the Licensing Board, the staff has filed exceptions to the September 30 order. Additionally, it has applied for a stay of the effectiveness of the order pending the outcome of the appeal. No other party to the proceeding has responded to the stay application.

2. In its stay papers (at p. 5 fn. 10), the staff acknowledged that at least a question exists respecting whether the September 30 order is appealable. Accordingly, we were told, the staff proposes to accompany its brief in support of the exceptions to that order with an alternative request for directed certification of the order.

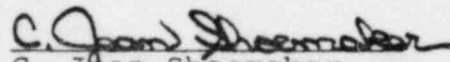
We agree with the staff that doubt exists as to the appealability of the order. Kansas Gas and Electric Co. (Wolf Creek Nuclear Generating Station, Unit No. 1), ALAB-327, 3 NRC 408 (1976); Houston Lighting and Power Co. (South Texas

Project, Units 1 and 2), ALAB-639, 13 NRC 469 (1981). But the question need not be definitively resolved in connection with the stay application at hand. As we see it, that application is unnecessary and does not require any action on our part.

As we read its September 30 order, the Licensing Board conditioned its imposition of sanctions against the staff upon the failure of the staff either to comply with its directives or to seek appellate review. In these circumstances, it appears that the Board was itself providing a stay of the order pending the completion of our consideration of a timely staff request for such review. The Licensing Board manifestly had the authority to grant a stay and we perceive no reason to exercise our authority in light of that Board action. Should our reading of the Licensing Board's order prove to be incorrect and the Board takes steps to impose sanctions against the staff, the staff may then immediately seek to reinstate its stay motion before us.

It is so ORDERED.

FOR THE APPEAL BOARD


C. Jean Shoemaker
Secretary to the
Appeal Board