

11/23/81

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 1) MOTION FOR RECONSIDERATION ON CONTENTION 5 AND 2) TRANSMITTAL OF ADDITIONAL INFORMATION

On November 7, 1981, CASE filed "CASE's 1) Motion for Reconsideration of Consolidation on Contention 5; and 2) Transmittal of Additional Information." (hereafter CASE's "Motion and Transmittal"). In its Motion, CASE requests that the Atomic Safety and Licensing Board (hereafter "the Licensing Board"):

- 1) grant CASE separate intervenor status to pursue Contention 5;
- 2) In the alternative, designate CASE as lead-party intervenor on Contention 5;
- 3) Instigate an investigation into the timing of the announcement of construction delays as discussed herein; and
- 4) Set a date for a prehearing conference as suggested by CASE in its 10/26/81 Motion for Postponement of Hearings, either at the time suggested by CASE of 12/1/81 and 12/2/81 or at a later time designated by the Board. (CASE's Motion and Transmittal, at 17.)

For the reasons set forth below, the Staff urges that the Licensing Board 1) deny CASE's Motion for Reconsideration of Consolidation on Contention 5 (although the Staff expresses no opinion on CASE's request

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that the Licensing Board, in the alternative, designate it rather than CFUR as lead intervenor on Contention 5)^{1/} and 2) deny CASE's requests that the Licensing Board a) initiate an investigation on the "timing of the announcement of construction delays" or b) consider the announcement of such delays at the prehearing conference,^{2/} except insofar as that matter may bear on the scheduling of future hearing sessions in this proceeding e.g., rescheduling the next evidentiary session to a later date.

DISCUSSION

A. The Licensing Board Should Not Grant CASE Separate Intervenor Status on Contention 5

The instant motion is the last in a series of motions and other filings by CASE seeking either "separate status" for CASE on Contention 5^{3/} or "clarification" of that contention.^{4/} The Licensing Board denied CASE's previous Motion for Separate Intervenor Status^{5/} and struck CASE's "Motion

^{1/} A former intervenor in this proceeding, ACORN, was originally designated by the Licensing Board as "lead" intervenor on Contention 5. See "Memorandum and Order (Rulings on Consolidation of Parties, Appointments of Lead Party-Intervenor, Miscellaneous Motions and other Matters)," December 31, 1980. However, when the Licensing Board granted ACORN's "Motion for Voluntary Dismissal," the Board designated CFUR as "lead" intervenor on Contention 5. See "Memorandum and Order," July 24, 1981 (at 19).

^{2/} The Staff's position is consistent with its previously stated position that the prehearing conference scheduled for December 1, 1981 should take place as planned. See "NRC Staff Answer to Applicants' and CASE's Motions To Postpone Hearing," November 2, 1981 (at 3-4, 6).

^{3/} See "Motion To Grant CASE Separate Intervenor Status," November 20, 1980.

^{4/} See "Motion for Board Clarification of Wording of Contention 5," July 28, 1981.

^{5/} See "Memorandum and Order," December 31, 1980.

for Clarification."^{6/} In striking CASE's Motion for Clarification, inter alia, the Licensing Board observed that:

"the blizzard of motions and other papers which we regard as excessive and unnecessary filings [which] constitutes an imposition on the Board." (Order at 1-2).

The Licensing Board also stated that:

"the remedy we promised for these unnecessary and excessive filings is contained in our Order entered July 30, 1981 wherein we... directed the parties to confer directly on their disputes. We now add CASE to that directive." Id. at 2.^{7/}

Notwithstanding the Licensing Board's previous directives that the parties (including CASE) confer directly on discovery disputes before resorting to motions involving the Licensing Board, CASE's latest motion presents directly to the Licensing Board yet another dispute relating to discovery, claiming that "because of a series of events including Board rulings and orders" (all of which are described at length by CASE at pp. 2-6):

"CASE has been effectively precluded from pursuing discovery regarding Contention 5 since 12/31/80, when consolidation was first ordered." (CASE's Motion, at 5).

In complete disregard of the specific directives of the Licensing Board, CASE did not confer with the Staff regarding its interest in

^{6/} See "Order," August 3, 1981.

^{7/} The Licensing Board's "Memorandum and Order," July 23, 1981, contained a "Discovery Directive to CFUR and other Parties" (at 7-11), wherein it specifically ordered that

"All parties are directed to confer directly with each other regarding alleged deficiencies in discovery before resorting to motions involving the Board." (Id., at 9).

In the Licensing Board's Order of August 3, 1981, the Board stated:

"We now add CASE to that directive ..." (Id., at 2).

pursuing discovery on Contention 5, nor has CASE, to the Staff's knowledge, consulted with the other parties regarding the status of discovery on Contention 5. The Staff agrees completely with the Licensing Board that the parties should confer directly on their disputes before seeking relief from the Licensing Board.

In addition, although CASE claims that "Board Rulings On Consolidation Have Led To Delay" [sic] (CASE's Motion, at 8) and states that "the benefits of consolidation have been nonexistent" (Id., at 10), the Staff continues to support the Licensing Board's position that:

"... a case of prejudice on account of consolidation has not been made and [that] consolidation is appropriate to the end of an orderly, fair and expeditious conduct of the hearing." ("Memorandum and Order," December 31, 1980, supra, at 10.)

With respect to CASE's request that the Licensing Board (in the alternative) designate CASE as "lead-party" intervenor on Contention 5 (instead of CFUR), the Staff, consistent with "NRC Staff Comments On Plans for Consolidation of Parties," November 30, 1980 (at 3), expresses no opinion as to which intervenor should be lead intervenor. As the Staff there noted:

"the Staff believes that the selection of the appropriate 'lead' intervenor is a matter best left to the agreement of the intervenors and the judgment of the Licensing Board." (Id.)

- B. The Licensing Board Should Deny CASE's Request That The Board Investigate "The Timing Of Announcement Of Construction Delays" And That "This Topic Be Included In The Prehearing Conference"

CASE's Motion also contains a "Transmittal of Additional Information" (at 12-17), in which CASE requests that the Licensing Board:

"instigate an investigation into this matter [the announcement of delays in completion of Comanche Peak construction] and that

this topic be included in the pre-hearing conference proposed by CASE." (CASE's Motion, at 16).

By requesting that the prehearing conference consider the "timing of the announcement of construction delays," and filing a second transmittal of additional information,^{8/} CASE is once again burdening the Licensing Board and parties with excessive and unnecessary filings.^{9/}

CASE also seeks to have sanctions imposed against the Applicants and/or Staff, stating that:

"Should investigation reveal and confirm that the Applicants and/or the NRC Staff have willfully and deliberately withheld this vital information from the Board and the parties in this proceeding, CASE plans to file a Motion for Sanctions against the offending party (or parties), including reimbursement for the extra time and expense of preparing and mailing by express mail the recent pleadings which have been necessitated because of such withholding of information." (CASE's Motion, at 16-17).

With respect to the expense of express mail, CASE has apparently misconstrued the Licensing Board's previous orders, since the Licensing Board has never required the parties to use express mail for serving all pleadings, motions or other filings, as CASE implies. In this regard,

^{8/} In CASE's previous "Transmittal of Additional Information," November 2, 1981, CASE, described, at great length (see attachments to that filing) alleged irregularities surrounding the announcement by Applicants of delays in completion of Comanche Peak construction.

^{9/} In CASE's "Motion For Postponement of Hearings," October 26, 1981, CASE requested that the Board schedule a prehearing conference to consider the delays in completion of Comanche Peak construction. Although the Licensing Board's "Order" of November 4, 1981, denying, inter alia, CASE's Motion did not specifically rule on CASE's request concerning a prehearing conference, by not specifically including CASE's request as a matter to be considered at the prehearing conference, the Licensing Board has, by implication, rejected CASE's request.

the Licensing Board, in its "Memorandum and Order" of July 23, 1981, merely stated that:

"All filings scheduled by the Board shall be physically lodged with the Board and parties on or before the due date, not merely mailed on that date. Expedited or following day delivery shall be employed when necessary." (Memorandum And Order, at 10).

CASE, by choosing to file its "blizzard of papers" by express mail, is to blame for the extra expenses which may result from its participation in this proceeding, and not the Licensing Board and the other parties.

CASE further claims that:

"... we had insufficient information to substantiate a different construction completion date from that given by the Applicants (12/81)." (Id., at 17).

However, almost a year ago, the NRC Staff supplied CASE with the very information it implies was "deliberately and wilfully" withheld by the Staff. As early as the last prehearing conference in this proceeding (April 30-May 1, 1980), Staff counsel indicated (Tr. 531-532) that an assessment of the progress of Comanche Peak construction would be made by the Staff's "Caseload Forecast Panel" in the fall of 1980. That assessment was made on October 21, 22 and 23, 1980 and the results were reported in a "Summary of Caseload Forecast Panel Meetings and Facility Tour at Comanche Peak," (hereafter "Summary") January 14, 1981. Copies of that summary were provided by the technical staff to all individuals on the technical staff's service list, including CASE's representative, Mrs. Ellis. In addition, copies were sent to the Local Public Document Room for Comanche Peak. The Staff stated in its Summary that "the applicant's target date for fuel loading at Unit 1 is December 1981," (Summary at 1) but that the Staff believed that date to be optimistic. (Id.) According to the Staff, "based on our meetings

and tour, we project the fuel loading date to be December 1982" (Id.), although the Staff stated that "the applicant expressed confidence that it will meet the December 1981 target date." (Id.) Contrary to the implication in Mrs. Ellis' "transmittal of additional information," the Staff has not made any secret of its previous assessments of Comanche Peak construction progress and even sent a summary of its latest assessment to Mrs. Ellis.

The Staff's assessment of Comanche Peak construction progress and Applicants' estimated construction completion dates apparently were not a source of great concern to Mrs. Ellis until just prior to the prehearing conference and hearing, when she now claims that the construction completion dates and schedules based thereon, have "compromised... CASE's rights in this proceeding." (CASE's Motion, at 15)

CASE seeks to have the Licensing Board and parties engage in what the Staff perceives to be a fruitless endeavor to determine what effect "correct information regarding completion dates might have had on the Board's [scheduling] rulings." (Id.) The Staff does not believe that valuable hearing time should be consumed considering past scheduling in this proceeding. However, the Staff would agree that Comanche Peak construction progress and completion dates may be legitimate matters to consider insofar as such matters may bear on future scheduling of the operating license hearings. Further, to the extent that construction progress and completion dates are relevant to admitted contentions, they may be raised in direct testimony or in cross-examination. However, other matters relating to construction completion, such as Applicants' request for amendment of their construction permits to extend the latest

dates for completion of construction, relate to the construction permit only and are outside the scope of this proceeding. To the extent that CASE would seek to have the operating licensing hearing (or prehearing conference) "ascertain the exact reasons for the projected two-year delay in the completion date "(CASE's Motion For Postponement of Hearings," supra, at 3), CASE's request must be denied as beyond the scope of this proceeding.

CONCLUSION

For the reasons set forth above, the Staff urges that the Licensing Board 1) deny CASE's Motion for Reconsideration of Consolidation on Contention 5 (although the Staff expresses no opinion on CASE's request that the Licensing Board, in the alternative, designate it rather than CFUR as lead intervenor on Contention 5) and 2) deny CASE's requests that the Licensing Board a) initiate an investigation on the "timing of the announcement of construction delays" or b) consider the announcement of such delays at the prehearing conference, except insofar as that matter may bear on the scheduling of future hearing sessions in this proceeding e.g., rescheduling the next evidentiary session to a later date.

Respectfully submitted,

Marjorie Ulman Rothschild

Marjorie Ulman Rothschild
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 23rd day of November, 1981

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF ANSWER TO CASE'S 1) MOTION FOR RECONSIDERATION ON CONTENTION 5 AND 2) TRANSMITTAL OF ADDITIONAL INFORMATION" 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 23rd day of November, 1981:

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