

CASE

(CITIZENS ASSN. FOR SOUND ENERGY)

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March 1, 1982

Marshall E. Miller, Esq., Chairman
Administrative Judge
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Dr. Richard Cole
Administrative Judge
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Dr. Kenneth A. McCollom
Administrative Judge
Dean, Division of Engineering,
Architecture and Technology
Oklahoma State University
Stillwater, Oklahoma 74074

In the Matter of
Texas Utilities Generating Company, et al.
(Comanche Peak Steam Electric Station, Units 1 and 2)
Docket Nos. 50-445 and 50-446

Dear Administrative Judges:

Pursuant to the Board Chairman's directive to put it in writing, this is to advise that the information contained in the February 19, 1982, letter to the writer from Marjorie Ulman Rothschild, Counsel for NRC Staff, contained an incorrect statement: "It is my understanding that you feel the Staff satisfactorily responded to those interrogatories during the conference call and on that basis, written answers will not be necessary."

During the February 18 conference call with Ms. Rothschild, Spottswood Burwell, and CPSES Resident Inspector Bob Taylor, I stated, in response to Ms. Rothschild's inquiry, that my thinking at that time was that written answers would not be necessary, but to let me think about it over the weekend and look things over and get back with her Monday, February 22; that if she didn't hear from me on Monday, she could assume that written answers would not be necessary. (Although I did not go into this at the time with Ms. Rothschild, CASE was still in the process of evaluating CFUR's withdrawal from the hearings and its effect on Contention 5 and possible hearing schedules, and whether or not CASE could continue in the hearings as the sole intervenor. We expected to make a firm decision in this regard over the weekend, and did so. I did not want to tell the Staff that written answers would be required until I was certain what CASE's decision would be in that regard.)

On Friday, February 19, 1982, we received a call from the NRC Staff to the effect that NRC Commissioner Thomas Roberts was going to make a tour of the Comanche Peak facility on Monday, February 22, and that I was invited to also take the tour. Over the weekend, we made the decision to remain in the hearings as the sole intervenor.

On Monday morning, February 22, I placed a call to the NRC office of Ms. Rothschild. She was not in, so I left word that I was going on the tour at Comanche Peak with Commissioner Roberts and would be unavailable for the rest of the day, and to advise Ms. Rothschild that we would need answers in writing and that I would call her the next day (Tuesday, February 23).

On Tuesday, February 23, I called Ms. Rothschild and advised that we would want the answers in writing, since we intended to use them in deposing or cross-examining NRC Staff witnesses in the hearings. It is our understanding that one of the primary purposes of discovery is to cut down on the actual time spent in the hearings themselves. Ms. Rothschild indicated, as she had emphatically several times before in telephone conversations, that the Staff didn't have to answer anything or supply any documents unless ordered to do so by the Board. She further stated that they would, however, be willing to consider supplying answers to some of the questions if we would drop the ones the Staff considered objectionable. In answer to my inquiry if she was saying that they would not answer any questions if we didn't drop the ones they considered objectionable, she replied that they might not. Since we had only asked questions to which we wanted answers and since we believed all our questions were necessary and proper, I advised Ms. Rothschild that we would prefer that the Staff go ahead and answer all the questions we had asked, in writing, objecting to those they felt were improper, and leave it to the Board to make that determination.

It was not until we received Ms. Rothschild's February 19 letter on February 25 that we realized that she had erroneously jumped the gun and (by copy of her letter) advised the Board that written answers would not be necessary.

In conclusion, we are formally requesting the Board to grant our request to direct the Staff to expeditiously answer our questions and provide the documents requested. Ms. Rothschild has already indicated that they will do this, and this letter is just to set the record straight.

There are also some matters on which we would appreciate the Board's help in the way of clarifying procedures for us.

1. There is some confusion in our minds as to what is considered to be part of the hearing process and what isn't. Some background information is necessary at this point. On October 21, 22, and 23, 1980, the NRC Caseload Forecast Panel visited CPSES

to determine (as I was told) how much work still remained to be done, so that they would know how to allocate the NRC's manpower. I was told by the NRC Staff about this trip, which was to include a tour of the plant on October 22. The NRC invited CASE to attend. In a similar manner to what happened regarding the recent plant tour by Commissioner Roberts, we were told by the utility that we could not go on the plant tour. To make a long story short, the October 21 and 23 meeting portion was open to the public, but CASE, as an Intervenor, was barred from going on the plant tour. Our inquiries to several people in the NRC were answered that the Caseload Forecast Panel's tour was not a part of the hearing process per se but rather a regular thing which the NRC had been doing prior to the hearings for the operating license being set up, that the utility had the right to bar Intervenor from taking the tour since it was on private property, but that the NRC's meeting would be open to the public.

It was at the October 23 meeting, after the NRC's tour of the plant on October 22, that the NRC Caseload Forecast Panel came up with their estimate that Unit 1 would be completed December 1982 instead of December 1981 as the utility was currently projecting.

On Friday, February 19, 1982, I received a telephone call from the NRC Staff telling me of the visit and tour of CPSES on Monday, February 22, by Commissioner Roberts and inviting me to go also. I was advised to contact the utility about what time to be there, whether or not my husband could accompany me (I knew he would want to accompany me on the 70 mile + trip, 140 miles + round-trip), and to make arrangements to get in the gate. I did so, and on Saturday morning, February 21, received another call from the utility stating that we could not go on the tour with the Commissioner. I attempted to contact someone with the NRC, and happened to catch one of Commissioner Roberts' assistants in his office on Saturday. I explained the situation to him, pointing out that we were an Intervenor in the CPSES proceedings and that we had a specific contention about the way the plant was being built and that we really wanted to go on the tour with the Commissioner. He said he would get back with me on it. About 5:00 P.M., I received a call from the utility company, inviting me to be their personal guest on the tour (but was advised my husband could not go).

Had I not been able fortuitously to contact Commissioner Roberts' assistant, we would have again been barred from going on the plant tour.

It is my understanding that the Intervenor in the South Texas Project hearings were told what time to be at the plant site to accompany Commissioner Roberts on the plant tour he took on Sunday, February 21, that they were there at that time, waited for an hour, then left a note; they did not get to accompany the Commissioner on the tour of STNP.

Our question in this regard is:

Are Caseload Forecast Panel plant tours part of the licensing process or not?

Are tours by the Commissioners part of the licensing process or not, when Intervenor have specific contentions about the way the plant's being built?

Would not the Commissioner's visit to STNP and to CPSES come under the rules regarding ex parte communications, since he would ultimately be one of the decision-makers regarding whether or not operating licenses are granted for the two plants?

2. A related area of confusion exists regarding Inspection and Enforcement (I&E) Reports. For some time, CASE and the other Intervenor have been receiving the I&E Reports (under an agreement with the NRC) from the Region IV office in Arlington when they are released to the public. However, we have never received the Applicants' answers to them, although those answers are being sent to the UTA library mini-public document room. (This has meant that the only way to get Applicants' answers has been for us to make the 30-mile round trip ever so often to see if perhaps some new answers have come in from the Applicants.) Because of this, we have never really thought of the I&E Reports as an actual part of the hearing process; this opinion was further enforced by what we were told by the NRC regarding the Caseload Forecast Panel, since the I&E Reports were being done prior to the hearings being set up (as were the Caseload Forecast Panel's tours).

Our question in this regard is:

Are I&E Reports part of the licensing process or not?

If they are, shouldn't all parties receive copies of them, as well as copies of the Applicants' answers?

3. Some questions have been raised in our minds regarding the February 19, 1982 (two-page) letter from Ms. Rothschild to me, which we received February 25. One is the statement that "...it is not appropriate for you to contact directly members of the NRC technical Staff, including inspectors or investigators in the Region IV office, for the purpose of requesting information or documents..." etc. Another is the statement "...it is not appropriate for you to request from the Staff, as part of discovery, a document which hasn't been issued yet, such as 'I&E Report 81-12.'"

Our question in regard to the first is:

Does this mean that the NRC's investigative branch cannot make confidential, independent investigations about CPSES without having to go through the NRC Staff counsel?

Regarding the second, CASE attempted to contact Chairman Miller on February 12, 1982, to clear up whether or not I&E Reports are part of the hearing process and whether or not it was necessary to ask for them in interrogatories to the NRC Staff. Mr. Miller was out and Dr. Cole returned the call (which we had left for Mr. Miller or Dr. Cole, which ever returned that day, which was a Friday). Dr. Cole advised us to put in writing any requests for any documents we wanted. (We apologize to Dr. Cole for any discomfort this may have caused him -- we certainly had no desire to put him in what could have even remotely been considered to be an ex parte situation.)

We did file interrogatories regarding I&E Report 81-12, to be sure it was in the record that we were attempting to obtain this document and had as yet been unable to do so because it was not yet available. We were especially interested in any possible tie-in with the ASME's allowing Brown and Root's certification and stamps to expire on January 8, 1982, and whether or not the NRC had found any problems similar to those outlined in ASME's letter in that regard. (See CASE's 1/4/82 Sixth Set of Interrogatories and Requests to Produce to Applicants, CASE's 2/10/82 Seventh Set of Interrogatories to Applicants and Requests to Produce, CASE's 2/10/82 First Set of Interrogatories to NRC Staff and Requests to Produce, and CASE's 2/13/82 Second Set of Interrogatories to NRC Staff and Requests to Produce.) We are also interested in the results of the investigation, whatever those results may be.

We are now frankly quite confused. We have been told by Dr. Cole to ask for any documents we want in interrogatories; we have been told by Ms. Rothschild that it was not appropriate for us to request from the Staff, as part of discovery, a document which hasn't been issued yet, such as "I&E Report 81-12."

We request clarification from the Board on this matter.

4. Much of the confusion which has resulted recently from some of the preceding could be alleviated, we believe, by a clarification by the Board of precisely what the Applicants and the NRC Staff are supposed to advise the Board of in these proceedings. CASE's understanding is apparently quite different from that of the Applicants and the Staff.

CASE was unaware of the ASME's allowing Brown and Root's certification and stamps to expire until we were sent a copy of the attached article from the FORT WORTH STAR-TELEGRAM dated December 24, 1981; it was some time later before we received it. We immediately began discovery regarding it. (See our 1/4/82 Sixth Set of Interrogatories to Applicants and Requests to Produce.) We have been diligently pursuing it ever since.

Had we been aware of this matter earlier (obviously the Applicants were aware of it prior to the December hearings, and according to our verbal communications, at least the CPSES NRC Resident Inspector and regional management were also aware of it), we would have been able to begin discovery much earlier on it and would not now be in the position of having to ask for an extension of time to pursue it further (see attached Motion for Extension of Time for Discovery on Contention 5).

In response to our question as to why they do not believe such certification problems (as the ASME's allowing Brown and Root's certification and stamps to expire) come within the Board's Order to Applicants to keep the Board advised of significant events in these proceedings¹, Applicants responded "Applicants are not required to notify the Board of such matters at this phase of the proceeding. Applicants are obliged to inform the Board of matters which may affect the Board's deliberation on issues which have been litigated, e.g., Contention 25. Contention 5, however, has not even been scheduled for a hearing. Further, Applicants are under an obligation to notify the Board of changes in the schedule for completion of Comanche Peak since such changes could affect the Board's schedule for the hearings on the remaining issues. Matters affecting scheduling are not involved in this case..."²

In verbal response to our question as to why the NRC Staff does not believe such certification problems (as the ASME's allowing Brown and Root's certification and stamps to expire) come within the Board's Order to the Staff to keep the Board advised of significant events in these proceedings³, the answer was that the NRC Staff doesn't have to account for why, but that

¹ CASE's 2/10/82 Seventh Set of Interrogatories to Applicants and Requests to Produce, page 3, Question 1(c).

² Applicants' 2/25/82 Answers to CASE's Seventh Set of Interrogatories, pages 1 and 2, Answer 1.c.

³ CASE's 2/10/82 First Set of Interrogatories and Requests to Produce to NRC Staff, page 3, Question 3.(d).

the Staff is supposed to advise the Board of anything that would affect scheduling which this clearly does not, that the Board notification program, through NRR, relates to significant new information, which the CPSES NRC Resident Inspector didn't consider this to be.

CASE considers this to be at least potentially significant new information (it was certainly new and significant to us), certainly worthy of exploring through discovery. Although this might not have an effect on the actual date set for litigating Contention 5, it has already had an effect on the cut-off date for discovery and is one of the reasons CASE has now found it necessary to request an extension of time for discovery on Contention 5 (see attached). The decision by the Applicants and the NRC Staff that this information does not come under the Board's directive to keep it informed of significant events in these proceedings has placed a hardship on this Intervenor, necessitated our asking for a delay, and (we believe) is not in keeping with the Board's intent in its directive.

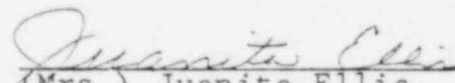
We request that the Board clarify its intent in its directive to the NRC Staff and the Applicants to keep it informed of significant events in these proceedings.

CASE has always expected to work within the rules of the NRC in these proceedings. However, we need to know clearly what the rules really are and what they mean.

We realize that the Board may not be the best source of this information, but we frankly don't know who else to turn to for this information. We ask that the Board please clarify these things for us or refer us to someone within the NRC who can do so.

Sincerely,

CASE (CITIZENS ASSOCIATION FOR
SOUND ENERGY)


(Mrs.) Juanita Ellis,
President

Brown & Root permit to expire at Comanche Peak N-plant site

By MICHELLE SCOTT
Star-Telegram Writer

The certification that allows Brown & Root to manufacture and install certain components at the Comanche Peak nuclear power plant will expire Jan. 8, about 10 days before a team of consultants is scheduled to resurvey procedures at the plant.

Texas Electric Service Co. spokesman George Hedrick said Wednesday, however, that expiration of the certification will not affect work at the plant construction site, nor will it affect the plant's construction schedule. TESCO is one of the utility companies that is scheduled to receive power from the Texas Utilities Co.-owned plant.

A team of American Society of Mechanical Engineers consultants decided against renewing the certification during a regular review of the plant conducted Oct. 12-14. Hedrick said the stamp was not renewed because of inconsistencies between the contractor's manual and actual

construction and record-keeping procedures. He said those inconsistencies are being corrected and will be inspected again by the ASME team on Jan. 18-22. The team will inform Texas Utilities of their decision on whether to issue a new stamp on Jan. 22, he said.

The certification stamp indicates compliance with ASME codes and is applied to certain critical systems and components at the plant, such as pressurized piping systems, once they are completed. Work in those areas may be continued despite the lack of certification. But they cannot be certified as safe until the stamp is reissued, Hedrick said.

The ASME team "will review material to make sure the company is complying with procedures described in the certification," Hedrick said. "Upon determining the procedures are being followed, they will renew ASME certification."

Employees of Brown & Root quality assurance have complained that inconsistencies in manuals they use for installa-

tion and manufacture of critical safety items covered by the certification might cause safety problems at the plant.

But an official with Texas Utilities Generating Co., a subsidiary of Texas Utilities in charge of construction at the plant, has said those inconsistencies would not cause safety problems.

Problems that kept the ASME team from issuing renewals included inconsistencies between the main manual and those manuals used by employees doing the actual work; inconsistencies in the way records were kept; and general inconsistency between the engineering society and the U.S. Nuclear Regulatory Commission.

The NRC has said Texas Utilities is responsible for overall quality of the plant. The society's code, however, requires that only the stamp owner (Brown & Root) makes decisions and issues directives to employees doing the work. That inconsistency is in negotiation.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

APPLICATION OF TEXAS UTILITIES
GENERATING COMPANY, ET AL. FOR AN
OPERATING LICENSE FOR COMANCHE
PEAK STEAM ELECTRIC STATION
UNITS #1 AND #2 (CPSES)

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emp
Docket Nos. 50-445
and 50-446

CERTIFICATE OF SERVICE

By my signature below, I hereby certify that true and correct copies
of CASE's 3/1/82 Letter to ASLB Members

have been sent to the names listed below this 1st day of March
1982, by: Express Mail where indicated by * and First Class Mail
Elsewhere

- | | |
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