

4/20/82

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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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)

Docket Nos. 50-445
50-446



CASE'S MOTION FOR ADDITIONAL TIME
FOR DISCOVERY ON CONTENTION 5

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CASE'S MOTION FOR ADDITIONAL TIME
FOR DISCOVERY ON CONTENTION 5

Pursuant to 10 CFR 2.730, CASE (Citizens Association for Sound Energy),
Intervenor herein, files this, its Motion for Additional Time for Discovery
on Contention 5.

SUPPLEMENTARY BACKGROUND INFORMATION

On April 2, 1982, the Board filed its Order (Following Conference Call)
in which it stated, in part:

"I&E Reports 81-12 and 81-20 are to be provided to CASE by the Staff
in their current state of preparation. If the Staff refuses to provide
this information, it shall provide a detailed written explanation of why
it feels this material need not be produced."

In the mail when the writer came home from work on Friday, 4/9/82 was
a Mailgram from the Board Chairman of 4/8/82 in response to Applicants' 4/1/82
Motion for Protective Order and CASE's 4/5/82 Answer to Applicants' Motion for Pro-
tective Order and Motion to Compel Discovery, which stated:

"Applicants April 1 Motion for Protective Order is denied. Parties are
directed to provide for inspection of original documents by CASE in most
expeditious manner."

CASE'S MOTION FOR ADDITIONAL TIME FOR DISCOVERY ON CONTENTION 5

CASE now finds it necessary to request additional time for discovery on Contention 5 because of the new and significant information and for the valid reasons set forth following:

1. The NRC Staff has just provided CASE with documents which they had previously stated, under oath, did not exist.

Question 1 of CASE's 2/10/82 First Set of Interrogatories and Requests to Produce to NRC Staff asked:

- "1. (a) Has the NRC conducted any audits to detect trends that may be detrimental to safe station operation at CPSES?
- (b) If the answer to (a) above is yes, supply for copying and inspection all such audits, or advise how CASE can obtain them through the Public Document Room. If the audits themselves are not provided, please provide a list of the specific documents so that we can obtain them from the PDR.
- (c) If the answer to (a) above is no, has the NRC conducted any unofficial audits (i.e., perhaps not actual audits but efforts to detect such trends) for this purpose?
- (d) If the answer to (c) above is yes, supply for copying and inspection all such documents, or advise how CASE can obtain them through the PDR. If the documents themselves are not provided, please provide a list of the specific documents so that we can obtain them from the PDR."

During the 2/18/82 conference call between CASE, Marjorie Rothschild (the NRC Staff counsel), Spottswood Burwell (the NRC Project Manager for CPSES), and Robert Taylor (the NRC Resident Inspector at CPSES), the writer specifically stated that perhaps our question hadn't been worded exactly right, but that what we were after was not just audits but any trending about construction at CPSES. We again emphasized this to Ms. Rothschild in our telephone conversation with her on 2/23/82, and pointed out that it was our understanding that such trending had been done.

The NRC Staff's 3/10/82 Answers to CASE's First and Second Sets of Interrogatories on Contention 5 and NRC Staff Motion for a Protective Order stated:

"1. Interrogatory 1

This interrogatory cites 10 CFR Part 50, Appendix B, Section XVII 'Audits' and requests the following:

1(a)

This interrogatory asks whether the NRC Staff conducted any 'audits' to detect trends that may be detrimental to safe station operation at CPSES (Comanche Peak Steam Electric Station, Units 1 and 2).

The provisions of 10 CFR Part 50, Appendix B, Section XVIII, apply to the Applicants' Quality Assurance/Quality Control program and do not impose any requirements on the NRC Staff. The Staff does carry out a comprehensive program of documented inspections at the site, through the Resident Inspector and the Region IV Staff. In addition, the Staff makes a 'Systematic Assessment of Licensee Performance' ('SAPL') which is also documented. The last documented 'SAPL' was conducted at Comanche Peak on October 30, 1980 and is documented in Report Nos. '50-445/Rpt. 80-25' and '50-446/Rpt. 80-25', November 12, 1980. The most recent 'SAPL' at Comanche Peak covers the period from mid-1980 to mid-1981 and will be documented in Report 81-20.

1(b)

This interrogatory requests that all 'audits' be provided for copying and that the Staff advise CASE how CASE may obtain such 'audits' from the Public Document Room (PDR).

NRC Staff inspections are documented in inspection reports which are issued by the Staff and made available to the public in the Commission's Public Document Room (PDR) and Local Public Document Room (LPDR). The 'SAPL' reports issued by the Staff are also made available in the PDR and LPDR. (Footnote 1: Staff counsel also understands that inspection reports are publicly available in the 'mini-LPDR' established by the Staff in this proceeding at the University of Texas at Arlington, Texas.) Thus, these documents are available to CASE, as well as the members of the public, at the PDR, LPDR and 'mini-LPDR.' In addition, CASE's representative (Mrs. Ellis) is also on (NRC) Region IV office's distribution list for inspection reports and any 'SAPL' reports and is personally sent copies of such reports by Region IV.

1(c)

This interrogatory inquires whether the NRC Staff has conducted any 'unofficial audits'. (i.e., perhaps not actual audits but efforts to detect such trends)...

The Staff has not conducted any 'unofficial audits' at Comanche Peak.

"1. Interrogatory 1 (continued):

1(d)

No answer to this interrogatory is necessary, since it applies only if the answer to (c) above is yes."

The Affidavit of Robert G. Taylor, the NRC Resident Inspector at CPSES, which was attached to Staff's 3/10/82 Answers, stated that he was responsible for providing information in the Staff's answers to CASE's First Set of Interrogatories (2/10/82) numbers 1(a), 1(c) and 1(d).

Following the NRC Caseload Forecast Panel meeting at the Region IV offices in Arlington, Texas, on 4/13/82, Ms. Rothschild (NRC Staff counsel) advised the writer that, although she had not been aware of them previously, apparently there had been some trending done at the Region IV offices and that she was supplying copies of them informally to CASE at that time. She then handed the writer the documents, copies of which are attached as CASE Attachment A hereto.

The title of the documents is "Trend Analysis;" they are trend analyses for the years 1976 (Attachment pages 1 through 6), 1977 (Attachment pages 7 through 11), 1978 (Attachment pages 13 through 17) and 1979 (Attachment pages 18 through 25). The documents indicate that, at a minimum, the following NRC people were aware of the fact that such trend analyses were being done: W. C. Seidle, Chief, Reactor Construction and Engineering Support Branch, NRC, Region IV; W. A. Crossman, Chief, Projects Section, NRC, Region IV; R. E. Hall; W. E. Vetter; W. G. Hubacek; R. C. Stewart; C. R. Oberg; K. V. Seyfrit, Director, NRC, Region IV (as of 10/6/78); H. S. Phillips; and R. G. Taylor. It appears that R. G. Taylor (the NRC Resident Inspector at CPSES) was aware of each of the trend analyses from 1976, 1977, & 1979, since a memorandum was specifically addressed to him from W. A. Crossman in each year (Attachment pages 2, 7, and 19). It is not clear to whom memoranda were sent in 1978; however, we

expect to clear this up when we obtain other documents which we are requesting from the NRC Staff.

CASE submits that, given the specific questions asked, and the writer's specific further explanation of what we had intended during the 2/18/82 conference call and the 2/23/82 telephone conversation with NRC Staff counsel, it is impossible to accept the premise that the Staff misunderstood what CASE was asking for and that the information supplied CASE on 4/13/82 was not supplied previously due to oversight, misunderstanding, or lack of knowledge of its existence. This leads CASE inescapably to the conclusion that this information was deliberately withheld by someone with the NRC Staff. We are not suggesting that we doubt Ms. Rothschild's statement that she had been unaware of its existence. However, the fact that it was not brought forward in a timely manner raises grave questions regarding what else may exist at the Region IV offices which the NRC Staff counsel is unaware of. As demonstrated in item 2 following, this is even more disturbing a question in light of other recent events at the Region IV offices.

The new documents we have recently received regarding these Trend Analyses have raised many questions, some of which we are pursuing in our Third Set of Interrogatories and Requests to Produce to NRC Staff which we are filing informally with the Staff today. We fully expect that other documents and answers will raise further questions and possibly further requests for documents, and we request that we be given adequate time to pursue them on discovery.

In addition, these new documents are vitally important to CASE's Contention 5, since some of the information contained therein is supportive of our Contention. We call the Board's attention specifically to Attachment page 5 (1976 Trend Analysis), which states in part:

"During the early part of 1976, it became apparent to the Principal Inspector that the effectiveness of the licensee's QA/QC Program was in a state of degradation as a result of a domineering and overpowering control by the contractor's site construction management.

"On June 11, 1976, at the request of the Region IV staff, the President of TUGCO/TUSI, two Senior Vice Presidents and the QA Manager met in conference at the NRC regional office in order to alert top management of the seriousness of the apparent breakdown in corporate management." (Emphases added.)

. . . and Attachment Page 22 (1979 Trend Analysis), which states in part:

"Effectiveness of QA/QC Program

"This item seems to need addressing in two parts to be effective:

"Part one is the overall theory of Quality Assurance as a management tool. In this area, I believe that the licensee has been led down a poor path by Brown & Root during past years. It appears to me that Brown & Root has, in many instances, provided construction procedures to fulfill Appendix B that provide a minimum amount of direction to the construction force and yet comply to the words, if not the spirit of Appendix B. This is not too bad if the construction force is really a competent group but leads to some pretty bad things if that is not the case. What I have begun to see, but have difficulty proving, is that the Brown & Root construction philosophy is to build something any way they want to and then put it up to the engineer to document and approve the as-built condition. If the engineer refuses, he is blamed for being to conservative and not responsive to the client's needs. Thus the driving force behind my request for a special engineering audit of site operations.

"The second part of the addressment is to that phase called QC. Only recently has there been a real effort on the part of the licensee itself, or on the part of Brown & Root, to write explicit instruction to the line inspectors on what they were to inspect. Previously, the procedures were frequently pretty general, again not too bad if the inspectors are knowledgeable in the subject being inspected but terrible if they are not. In a couple of cases, I have been able to show them that their people are essentially incompetent even though they had been through the site training and had been certified as competent. I see a desire on the part of the licensee to turn this situation around in the important areas of electrical and piping installation. However, the situation discussed above has a bearing since too often an installation clearly accomplished other than as originally designed and buildable has been approved by the licensee's on-site engineering arm as fulfilling requirements. In effect, the engineer has approved a nonconforming installation in advance of QC being called. QC is then signing for the as-built condition and the underlying problem is not addressed." (Emphases added.)

CASE finds little comfort in the next statement, on Attachment page 23:

"I'm not at all sure that what CPSES is doing in this area is very different than what other utilities and/or engineers have done on other projects but I don't like it. I believe that much the same thing went on in Bechtel at ANO-2, but it wasn't as obvious nor was I there as much."

. . . and continuing on Attachment Page 23:

"Any Other Trends Indicative of Poor Performance

"I don't see any other problem not discussed above except possibly a future development in the public relations arena. It seems likely to me that the licensee will use his full powers to be less open with us in the area of identified construction deficiencies than he has in the past. I think he will take maximum advantage of part 50.55(e) and the guidance to go through the necessary formalities but avoid, if at all possible, having to report to us. It is, of course, premature to really get into this arena until we prove a case." (Emphases added.)

It is obvious that the documents we have just received are vitally important to CASE's Contention 5 and to the development of a full and complete record in these proceedings. We request the necessary time to develop them.

2. NRC's Region IV office has conducted an investigation regarding some defective pumps. Some of the pumps manufactured by the company in question went to CPSES. The handling of the investigation by NRC's Region IV office has apparently led to a Congressional investigation.

CASE has recently learned that the NRC Region IV office conducted an investigation regarding some defective pumps manufactured by Hayward Tyler Pump Company of Burlington, Vermont. Information which we have received indicates that some of the pumps manufactured by this company were sent to Comanche Peak. It is our further understanding that the investigation by the Region IV office was terminated before the investigation was completed and that the NRC released the report in draft form to representatives of the pump manufacturer prior to its completion. Apparently there was an investigation of this matter by the Oversight and Investigations Sub-Committee of the Interior Committee of the U. S. House of Representatives.

The preceding is as much information as we have at the moment. However, this is obviously of interest to us and could have bearing on our Contention 5. We are presently attempting to obtain information from the Oversight and Investigations Sub-Committee, and need time to pursue this with the NRC Staff and the Applicants.

3. CASE has not yet received I&E Report 81-12, the investigation into allegations at CPSES.

NRC Staff Counsel Ms. Rothschild advised on 4/13/82 following the NRC Caseload Forecast Panel Meeting in Arlington, Texas, that I&E Report 81-12 was being completed and should be available right away, probably by Friday, 4/16/82, and that she would attempt to expedite our receiving it as much as possible. However, we have not as yet received it (as of this writing) and request additional time to pursue discovery regarding it.

4. We have not yet been able to inspect the original documents requested in our Eighth and Ninth Sets of Interrogatories to Applicants and Requests to Produce.

Applicants are interpreting the Board's 4/8/82 Mailgram Order to "provide for inspection of original documents by CASE in most expeditious manner" as applying only to our Eighth Set of Interrogatories and Requests to Produce, not to our Ninth Set or subsequent sets. They have also limited our site visits to inspect documents to three people, all of whom must be CASE members, and have refused to allow inspection of documents at the site on weekends (when we could get other CASE members who have to work to help with the inspection of documents).

This has made it much more difficult for us to work out a time for inspection of documents and means that it will take more visits, rather than our being able to make one or two weekend visits with several people.

We have now been able to make arrangements to inspect original documents on-site on Thursday, 4/22/82, and Friday, 4/23/82. Applicants will allow us to inspect the documents requested in our Eighth Set and whatever documents requested in our Ninth Set that they have "ready".

We have attempted to work this out with Applicants, according to the

Board's directives. However, one of the problems with negotiations is that they take time.

Since we were not aware of the Board's Mailgram Order until the writer came home from work 4/9/82 (Friday) about 6 P.M., the earliest we could contact Applicants was Monday morning, 4/12/82. We did this; Applicants were to check and advise us at the NRC Caseload Forecast Panel meeting at the Region IV office in Arlington, Texas, the next day, Tuesday 4/13/82. On Tuesday, the writer suggested Friday, 4/16/82 as a time for inspection on-site. We were told that this would be agreeable, but that we would only be allowed at that time to inspect the two sets of documents on the concrete problems referenced in our Eighth Set, Questions 14(c) and 15(b). We suggested that the site visit be combined on 4/16/82 with a promised tour of the plant for the writer and her husband; however, Applicants were unable to accommodate the plant tour on 4/16/82. This would have meant that we would have had to make the 150-mile round-trip to inspect only the two sets of documents on concrete problems referenced in our Eighth Set. We requested that Applicants arrange for us to inspect documents for both our Eighth Set and our Ninth Set at the same time. They were to get back to us on this.

On 4/15/82, Applicants' counsels called CASE to discuss possible narrowing of issues for the hearings. We discussed the fact that early inspection of the original documents requested would expedite such narrowing of issues, and were advised to continue talks with Applicants' Dallas representatives. On 4/16/82, the writer was ill all day with a very contagious virus which we've had before (with sore throat, runny nose, coughing, fever, etc.). The writer did call the Applicants, however, on 4/16/82 (Friday) to inquire about setting up the inspection of documents at the plant site. Although a time earlier in the week might have

then been possible for the Applicants, the writer felt that Thursday, 4/22/82 and Friday, 4/23/82 were the earliest combined days the writer and her husband (who is also one of the three CASE members able to take off during the week and inspect documents) would be able to go. (This may be further complicated by the fact that, if this particular virus takes the course it has in the past, my husband will probably take it about Monday, 4/19/82. Hopefully, he will be recuperated enough to make the trip by the 22nd.)

Thus, the trip to inspect documents onsite (of documents requested in our Eighth Set and whatever documents Applicants have "ready" in our Ninth Set) is now scheduled for Thursday, 4/22/82 and Friday, 4/23/82.

CASE has acted in good faith in this matter and complied fully with the Board's directives to try to work things out with Applicants before involving the Board. From the time we were aware of the Board's Mailgram Order, we were in touch with Applicants at the earliest possible time, on a continuing basis (on 4/12/82, 4/13/82, 4/15/82, and 4/16/82), to work out a time to inspect the documents on-site.

Since it will now be after the 4/22/82 deadline for filing discovery requests before we can inspect the original documents requested, we will need additional time for discovery to pursue questions which will undoubtedly be raised by the documents we inspect. Further, as stated in our Answer to Applicants' Motion for Protective Order filed 4/5/82, we are now in the position of having to inspect originals of NCR and other logs which we have already received copies of to ascertain what, if any, changes have been made from the originals as compared to the copies we have. This will increase the amount of time required to inspect original documents considerably over what we had originally anticipated.

We request the necessary time to do this.

5. The NRC Caseload Forecast Panel's estimate of the completion of construction at CPSES may change the scheduling of a decision on whether or not to grant an operating license for CPSES. We need time for discovery on this.

On 4/13/82, the NRC Caseload Forecast Panel met at the Region IV offices in Arlington, Texas, to assess the construction completion schedules for CPSES Units 1 and 2. The Panel was to tour the plant on 4/14/82 and 4/15/82. Although CASE requested that we be allowed to accompany them on this tour of the plant, Applicants barred us from accompanying the Panel. It is CASE's opinion that, since we have a contention which deals specifically with construction problems at the plant and since much of the Panel's decision must necessarily hinge on construction problems and how long it will take to complete them, we should have been allowed to accompany the Panel on the plant tour. However, the letter advising of the Panel's visit specifically stated:

"NOTE: The meeting on April 13, 1982 is open to interested members of the public to attend as observers pursuant to the NRC Policy Statement on open meetings. For the site visit on April 14 and 15, 1982, permission to enter the construction site must be obtained from the Texas Utilities Generating Company."

We fought this battle once, when the Panel last visited the plant site in October 1980, and lost. Thus, we are not actively pursuing it at this time; however, this is not to say that we will not pursue this matter further in the future.

Following the October 1980 meeting and site tour, the Panel held a meeting and announced their decision as to their projected completion dates as compared to Applicants'. The Panel estimated completion of Unit 1 as December 1982, whereas Applicants at that time were maintaining that construction would be completed by December 1981. The Panel stated at the beginning of the 4/13/82 meeting that they would not be making an announcement immediately following the plant tour as to their projected completion dates or fuel load dates as they had in October 1980.

They stated that NRC management wanted to participate in the decision regarding the estimated fuel load dates, and that Applicants would be advised at some later time (they were not sure just when) by letter or in another meeting of the Panel's decision.

It is obvious that the matters considered by the Panel in arriving at its decision would necessarily include construction problem areas at the plant. It is therefore relevant to CASE's Contention 5.

Since CASE was allowed to attend the 4/13/82 Caseload Forecast Panel meeting with Applicants only as an observer and not as a participant and since we were barred by Applicants from accompanying the Panel on the plant tour, we should certainly be allowed adequate time to conduct proper discovery regarding this matter, and we request time to do so.

We further request that the Board formally request an expedited decision by the Caseload Forecast Panel as to construction completion dates and fuel load dates for CPSES, since this could affect the scheduling of a decision on whether or not to grant an operating license for CPSES.

SUMMARY

As demonstrated in the preceding, CASE needs more time for discovery on the following matters:

1. Documents just provided CASE by the NRC Staff which the Staff had previously stated, under oath, did not exist. (Pages 2 through 7.)
2. The investigation by the NRC's Region IV office regarding some defective pumps. Some of the pumps manufactured by the company in question went to CPSES. (Page 7.)
3. The Congressional investigation into the handling of the investigation

- by the NRC's Region IV office regarding the defective pumps. (Page 7.)
4. Inspection and Enforcement Report (I&E Report) 81-12, the investigation into allegations at CPSES, which CASE has not yet received. In its 4/2/82 Order (Following Conference Call), the Board stated: "I&E Report 81-12 (is) to be provided to CASE by the Staff in (its) current state of preparation. If the Staff refuses to provide this information, it shall provide a detailed written explanation of why it feels this material need not be produced." NRC Staff Counsel has advised that this report should be available shortly. (Page 8.)
 5. Original documents requested in CASE's Eighth and Ninth Sets of Interrogatories to Applicants and Requests to Produce. The inspection of these original documents has not yet taken place, due to no fault of CASE's. (Pages 8 through 10.)
 6. Construction problems at CPSES which had a bearing on the NRC Caseload Forecast Panel's deliberations to assess the construction completion schedules for CPSES Units 1 and 2. The Panel met 4/13/82, then toured the plant 4/14/82 and 4/15/82. (Pages 11 and 12.)

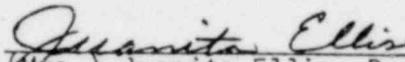
For the reasons set forth herein, CASE hereby moves that the Board:

1. Grant an extension of time of at least sixty (60) days for discovery on Contention 5. Given the number of items which need to be explored and the new information which has just become available, we do not believe that proper discovery can physically be accomplished in less than that amount of time; and
2. Formally request an expedited decision by the Caseload Forecast Panel as to construction completion dates and fuel load dates for CPSES,

since this could affect the scheduling of a decision on whether or not to grant an operating license for CPSES, and thus possibly affect the timing of discovery on CASE's Contentions 5 and 22 (see Pages 11 and 12).

CASE believes that this is absolutely essential in order to preserve the rights of all parties and to see that a full and complete record is developed and a proper decision rendered in these proceedings.

Respectfully submitted,



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