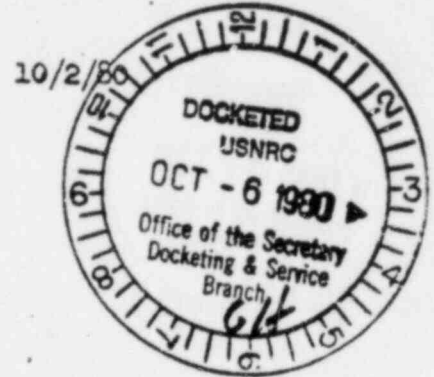


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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 (CPSSES)

Docket Nos. 50-445
and 50-446

CASE'S RESPONSE TO APPLICANTS' MOTION TO COMPEL
AND MOTION FOR PROTECTION

On August 1, 1980, Applicants filed their First Set of Interrogatories to CASE and Requests to Produce; CASE responded on September 3, 1980; Applicants filed their Motion to Compel and Answers to CASE's Request for Clarification of Certain Interrogatories and to CASE's Motion for An Extension of Time on September 18, 1980.

Pages 2 through 5 of Applicants' Motion to Compel (hereinafter referred to as "Applicants' Motion") deal with generalities and Applicants' interpretation of certain "important principles applicable to the discovery process which should serve as guidance to all parties in conducting discovery in this proceeding."

In section II, page 5, of Applicants' Motion, they state:

"CASE specifically objects to 49 of Applicants' interrogatories, dealing with three Contentions." (Emphasis added.)

The facts do not support Applicants' statement. In fact, CASE specifically objected to 19 out of 198 multi-part questions; we further objected to portions only of 14 other interrogatories and referred to other sections of

THIS DOCUMENT CONTAINS
POOR QUALITY PAGES

8010140015

G DSOB
S 0/1

our answers for the remainder of the multi-portioned interrogatories. CASE will not attempt to characterize Applicants' motives in making such unsubstantiated statements. However, the effect is clearly to prejudice the Board against CASE and to give the false impression that this Intervenor is being uncooperative and unresponsive. CASE is forced to respond and clarify such misstatements in addition to trying to respond to interrogatories.

Of the 19 interrogatories to which CASE specifically objected, one of these was because Applicants' question 23 did not make sense as written. On page 19 of Applicants' Motion, it is stated:

"CASE also sought clarification with respect to interrogatory 23. That interrogatory contained a typographical error. It should refer to interrogatory 22, rather than 82."

Even in such minor respects, Applicants have again misstated CASE's statements. What CASE actually said (page 19 of our 9/3/80 Answers to Applicants' First Set of Interrogatories, hereinafter referred to as "Answers") was:

"CASE objects to Question 23 as being vague and ambiguous."

However, CASE assumed that this was indeed a typographical error and went on to answer it, along with other similar questions, on page 22 of our Answers.

On p. 18 of Applicants' Motion, it is stated:

"Numerous other interrogatories and requests to produce remain unanswered. Applicants assume that CASE does not intend to respond to them."

Contrary to the above, CASE stated on page 41 of our Answers:

"At this time, CASE has not prepared or caused to be prepared any report, study, or analysis on which we intend to rely for its position regarding

contentions 5, 23, or 24. Our present plans are to file testimony, call witnesses, and cross-examine Applicants regarding each of these contentions, and to participate as fully as possible in the hearings. Who CASE's specific witnesses will be is unknown at this time. When and as such agreements and decisions are made, the Board and all parties will be kept informed in accordance with requirements of 10 CFR 2.740(e)." (Emphases added.)

And on page 6, CASE stated:

"At the present time, CASE is not certain which other materials" (in addition to those previously listed) "will be relied upon by CASE witnesses." (Emphasis added.)

Our response on page 41 was regarding the questions on pages 24 through 41 of our Answers. It is not CASE's intention not to respond to them, as assumed by Applicants, and our answer clearly indicates that this is not our intention. However, these questions are premature at this time. Applicants seek to force CASE to prepare detailed information which will later be duplicated and expanded upon by our witnesses.

With regard to Group "A" on page 6 of Applicants' Motion, CASE's objection on page 3 of our 9/3/80 Answers stands.

CASE, as a public interest organization with limited resources, is more concerned about addressing the substantive issues, which are many, rather than being forced to reiterate or restate in our own words the meaning of the contentions. Indeed, CASE believes that this may be a trick by Applicants to get CASE to restate the contentions in words that are not the best, hoping later to be able to bar CASE from pursuing certain areas of inquiry. The Board decided after much discussion and study on the wording of the contentions

as best expressing the intent of the Intervenors and representing the issues which they sought to litigate.

With regard to Group "B" on page 9 of Applicants' Motion, as stated on page 5 of CASE's 9/4/80 Answer, CASE objected only to "that portion of these questions which asks 'What is your basis for Contention____?'" Those questions are too general and vague to allow CASE to respond to the questions and call for a running narrative. CASE is still not sure, notwithstanding Applicants' comments on pages 9 and 10 of Applicants Motion, specifically what particular information Applicants seek. CASE would point out that although the points made in Applicants' Motion may for the most part be correct concerning the purpose and intent of discovery, CASE is not required to argue and present its entire case on the merits in a narrative form answer to a generally phrased interrogative.

With regard to Group "C" on page 11 of Applicants' Motion, the information sought by Applicants in these questions is obviously and patently an attempt to request information which is not only immaterial to development of a defense to intervenors' contentions but also seeks information that would be privileged if CASE had the resources to employ licensed attorneys. See further CASE comments on pages 9 and 12 of CASE's 9/3/80 Answer.

In Applicants' explanation on page 12 of their Motion, they state:

"Applicants ask only that CASE indicate whether such meetings have occurred with respect to a particular Contention and whether such meetings or contacts resulted in agreements or understandings that other parties or persons would aid CASE in preparing for the hearings, or provide information to CASE regarding the particular Contention, and if

so, the extent of such aid or the nature of such information. In other words, Applicants want to know if other parties or persons may play some role in the presentation or preparation of CASE's position on its Contentions so that Applicants can decide whether to pursue discovery against those persons or other parties." (Emphasis in the original.)

Perhaps this is what Applicants intended, but the facts show that this is not what Applicants in fact said. The questions as phrased go far beyond what is indicated in Applicants' explanation. CASE cannot answer the questions Applicants intended to ask; we can only respond to the questions which were asked.

With regard to Group "D" on page 13 of Applicants Motion, Applicants have again misinterpreted what CASE stated. On page 16 of CASE's 9/3/80 Answers, it is clearly stated that:

"CASE objects to those portions of the preceding questions which ask 'Have you read the construction permits for Comanche Peak, Units 1 and 2...reviewed 10 CFR Part 50, Appendix B...Final Safety Analysis Report (FSAR)...Environmental Report - Operating License Stage (ER-OL)? If not, why not? If so...'"

"With regard to the remaining portions of these questions, please refer to answers beginning on page 41."

It appears to CASE that questioning whether or not this Intervenor has read something or other is meant for harassment and insult and could not possibly aid the Applicants in preparing this case. CASE does not see any reason why Applicants should be allowed to require answers from CASE as to what it has or hasn't read concerning legal pleadings on file in this proceeding. This was the portion to which CASE objected.

The sub-parts of these questions were repeated in CASE's listing of questions

in our 9/3/80 Answer beginning on page 24, and the answer to those sub-parts is included in the Answer on page 41.

Regarding Group "E" on page 16 of Applicants Motion, Applicants have again misquoted CASE:

"Each of these Interrogatories to which CASE objects..." (Emphasis added.)

What CASE actually said, on page 22 of our 9/3/80 Answer, was:

"CASE would answer that the regulations and rules of the Nuclear Regulatory Commission and the statutes and laws enacted by the U. S. Congress tell the Applicant what it must do, not this humble Intervenor."

Nowhere in our answer did we say that we objected to the questions. CASE answered the questions as they were phrased by the Applicants. In Applicants Motion on page 16, they state in explanation "If CASE believes Applicants have not satisfied applicable licensing requirements, then CASE must indicate precisely in what respects Applicants fail to satisfy such requirements." However, that is not what Applicants asked CASE. The statement by the Applicants that "These interrogatories are designed to elicit identification of the deficiencies or defects which CASE claims exist in the application" is not supported by the facts; in actuality, such identification of deficiencies or defects is requested in questions 9a, 9b, 13a, 13b, 17, 18, 22, 27, 40a, 40b, 41a, 41b, 43, the first sentence of 44, 45, 47, 49, 82b, 108, 114b, 155b, 186b; these questions are included in CASE's 9/3/80 Answer on page 41. In Group "E", Applicants are not asking for identification of deficiencies but what they must do about them.

CASE wants to emphasize that it is not our intention to be uncooperative or to deny Applicants access to such information as may be necessary and discoverable under NRC regulations in these hearings. Indeed, CASE has tried diligently to comply with requests made by Applicants which have increased CASE's burden. (For example, we spent many hours in complying with Applicants' request in its First Set of Interrogatories that we recite the interrogatory or request preceeding each answer or response.) We have tried to answer the questions as best we can at this time. However, much of the information requested by Applicants is premature at this time.

As Applicants themselves have pointed out, they have filed voluminous materials in these hearings. Indeed, this is part of CASE's problem. We have reviewed portions of the FSAR, for example, but we only received the missing pages (a Stack about 4" thick) which were left out of the copies we were sent of Amendments 1 through 10 in August, and we received Amendment 11 (about 3" thick) in early September. We just received Amendment 1 to the Environmental Report - Operating License Stage - (about 1½" thick) yesterday afternoon (October 1). A quick scan of the revised Environmental Report (ER) pages indicates that there is information which pertains to many of CASE's contentions, including Contentions 23 and 24 and the cost/benefit analysis. We are trying to remove the old pages and incorporate the new pages into the FSAR and the ER, and to analyze the information contained therein. We are concerned that an incomplete answer on

some points may be used later by Applicants to object to inclusion of additional information.

There is also another problem with which we are trying to deal; although CASE has consistently received copies of the various questions asked of the Applicants by the NRC Staff, the Office of Nuclear Reactor Regulation, etc., we have never received copies of Applicants' responses to such questions. We are in the process of compiling an itemization of such items and plan to request them in future interrogatories; however, we assume that if we request these responses in our interrogatories, Applicants will provide them for copying rather than providing a copy of them, which will mean that we will be spending our resources with such time-consuming activities as making copies rather than in dealing with the substance of such response, which in turn will delay our being able to pursue information which may be contained in such responses. We are unsure of the best procedure to follow to obtain copies of these past responses by Applicants and to get on the regular mailing list to receive such future responses. Any assistance that the Board can give regarding the proper procedural channels to follow to accomplish this would be most appreciated.

Another problem area for CASE is that in regard to certain Contentions, including Nos. 5 and 23, there are still motions before the Board concerning the final wording of these Contentions. While we realize that we will have to provide additional information regarding these contentions, we are concerned

that responding more fully to interrogatories about these contentions at this time may prove to be unnecessary and time-consuming should the wording of the Contentions be revised in accordance with the motions before the Board. CASE is well aware of the problems of the Board, especially the new Chairman, in reviewing the voluminous amounts of information and motions from past filings and pre-hearing conferences and now before it, and we are not insensitive to those problems. However, in all fairness, we believe that the final ruling on the wording of these contentions should be made before we are required to answer further. There are also motions for reconsideration of certain other rejected contentions on which the Board has not yet ruled which CASE believes should be dealt with soon to afford adequate time for discovery on any which may be accepted by the Board. At the same time, we do not want to push the Board to make hasty decisions without having adequate time to thoroughly review and consider all the information at hand.

For the reasons set forth above, CASE moves for a protective order pursuant to 10 CFR 2.740(c) which orders that:

- (1) CASE be relieved of any responsibility to supplement its Answers to Applicants First Set of Interrogatories to CASE and Requests to Produce with regard to Contentions 5 and 23 until such time as the Board has ruled on the final wording of those contentions; and that CASE be given

adequate time following such ruling to prepare its answers to applicable interrogatories on those contentions.

- (2) CASE be relieved of any responsibility to supplement its Answers to Applicants First Set of Interrogatories to CASE and Requests to Produce with regard to all of CASE's Contentions which are affected by Amendment 1 to the ER (OLS) for a period of ninety (90) days in order to allow CASE adequate time to review Amendment 1 and to prepare its responses.
- (3) CASE be given a period of one hundred twenty (120) days in which to conduct discovery before being required to reply further to discovery from Applicants.
- (4) Any future written discovery requests to CASE from Applicants be limited to not more than thirty (30) Interrogatories and Requests to Produce, including subparts, for any forty-five (45) day period.
- (5) Applicants be enjoined from misquoting or misstating CASE's intent or statements, a practice which currently is placing an oppressive extra burden on CASE because we are forced to correct such misquotes and misstatements in addition to responding to interrogatories in order to avoid Applicants' prejudicing the Board and the record in these proceedings against CASE.

WHEREFORE, PREMISES CONSIDERED, CASE moves that this Board sustain CASE's objections as stated in its Answers to Applicants' First Set of Interrogatories, grant this motion for a protective order in its entirety, and that CASE be awarded such further relief as it may show itself to be entitled.

Respectfully submitted,

Juanita Ellis
(Mrs.) Juanita Ellis, President
CASE (CITIZENS ASSOCIATION FOR SOUND ENERGY)
1426 S. Polk
Dallas, TX 75224
214/946-9446

10/2/80

By my signature below, I certify that copies of this, "CASE'S RESPONSE TO APPLICANTS' MOTION TO COMPEL AND MOTION FOR PROTECTION," were mailed by First Class Mail to the attached Service List on this 2nd day of October, 1980.

Juanita Ellis
Juanita Ellis



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 (CPSSES)

Docket Nos. 50-445
and 50-446

CERTIFICATE OF SERVICE

Valentine B. Deale, Esq., Chairman
Atomic Safety and Licensing Board
1001 Connecticut Avenue, N. W.
Washington, D. C. 20036

Dr. Forrest J. Remick, Member
Atomic Safety and Licensing Board
305 E. Hamilton Avenue
State College, PA 16801

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

Nicholas S. Reynolds, Esq.
Debevoise & Liberman
1200 - 17th St., N. W.
Washington, D. C. 20036

Marjorie Rothschild
Counsel for NRC Staff
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Mr. Geoffrey M. Gay
West Texas Legal Services
100 Main Street (Lawyers Bldg.)
Fort Worth, TX 76102

Jeffery L. Hart, Esq.
4021 Prescott Avenue
Dallas, TX 75219

David J. Preister, Esq.
Assistant Attorney General
Environmental Protection Division
P. O. Box 12548, Capitol Station
Austin, Texas 78711


Mr. Richard Fouke
1668-B Carter Drive
Arlington, TX 76010

Atomic Safety and Licensing Board
Panel
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Atomic Safety and Licensing
Appeal Panel
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Docketing and Service Section
Office of the Secretary
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Arch C. McColl, III, Esq.
701 Commerce Street, Suite 302
Dallas, TX 75202


(Mrs.) Juanita Ellis, President
C. A. E. (CITIZENS ASSOCIATION FOR
SOUND ENERGY)