

August 13 1982
DOCKETED
USNRC

82 AUG 16 A9:41

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD
OFFICE OF SECRETARY
OPERATING & SERVICE
BRANCH

In the Matter of)	
)	
TEXAS UTILITIES GENERATING)	Docket Nos. 50-445 and
COMPANY, <u>et al.</u>)	50-446
)	
(Comanche Peak Steam Electric)	(Application for
Station, Units 1 and 2))	Operating Licenses)

APPLICANTS' ANSWER TO CASE'S
MOTION FOR SUBPOENA

Pursuant to 10 C.F.R. § 2.730(c), Texas Utilities
Generating Company, et al. ("Applicants") hereby serve their
answer to "CASE's Motion for Subpoena," filed August 10,
1982. For the reasons set forth below, Applicants urge the
Board to deny CASE's motion.

I. BACKGROUND

On July 29, 1982, during ongoing hearings in this
proceeding concerning Contention 5 (QA/QC), CASE presented
Mr. Mark A. Walsh as a witness and submitted written
testimony concerning allegations regarding consideration of
"thermal stresses" in certain pipe supports at Comanche

Peak.¹ The deadline for identification of witnesses and submittal of prefiled testimony had been June 23, and July 19, 1982, respectively. Mr. Walsh's testimony was admitted by the Board and he underwent cross-examination by Applicants (Tr. 3085-3172) and examination by the Board (Tr. 3176-3196). As Applicants indicated at the hearing (Tr. 3555), they intend to call rebuttal witnesses regarding Mr. Walsh's allegations who will be available for depositions. Applicants will transmit shortly a list of those potential witnesses.

CASE now seeks a subpoena to enable it to take the deposition of a Mr. Jack Doyle, who CASE states Mr. Walsh has "indicated...has specific information pertinent to these proceedings...." Applicants submit that CASE has failed to show good cause for the taking of Mr. Doyle's deposition and the issuance of the subpoena. Accordingly, Applicants urge the Board to deny CASE's motion.

¹ Mr. Walsh initially tendered a written limited appearance statement. CASE subsequently requested that Mr. Walsh be allowed to testify as a witness. Tr. 2719. The Board ruled that Mr. Walsh could so testify. Tr. 2740.

II. CASE HAS FAILED TO DEMONSTRATE
GOOD CAUSE FOR THE TAKING OF
THE DEPOSITION AND ISSUANCE
OF A SUBPOENA

A. The Motion is Untimely

CASE's motion evidences an attempt to expand its direct case on Contention 5. Specifically, CASE states that Mr. Doyle's "testimony...is...essential to a complete record." Motion at 2. However, all witnesses for the parties' direct cases on Contention 5 have been identified and their testimony prefiled, except for the testimony of Henry and Darlene Stiner. The Board has stated that "anything further in the way of testimony is going to have to be the result of a motion to the Board and a pretty strong showing of good cause." Tr. 3534. Applicants submit that CASE has made no showing of good cause.

CASE states that Mr. Doyle is known to Mr. Walsh. In fact, Mr. Doyle was identified in Mr. Walsh's Supplementary Testimony. Walsh Supplementary Testimony at p. 1 (CASE Exhibit 659H). Accordingly, CASE should have identified Mr. Doyle no later than the day Mr. Walsh was proffered as a witness, and sought a subpoena at that time as CASE did with respect to two other individuals. Tr. 2961-62. Further, CASE has failed to show that Mr. Doyle possesses any information which was not available to or presented by Mr. Walsh or which could not be obtained by deposition and upon

cross-examination of Applicants' rebuttal witnesses, see discussion at Section II.B., infra. Thus, good cause does not exist for permitting the taking of this deposition and issuance of a subpoena at this late date. Accordingly, the Board should deny the instant motion.

B. The Information Known to Mr. Doyle
Merely Duplicates Mr. Walsh's Testimony

As described by CASE, the information allegedly possessed by Mr. Doyle appears to duplicate the testimony proffered by Mr. Walsh. Specifically, Mr. Walsh testified as to the STRUDL computer calculations (Tr. 3100 et seq.), the alleged "failure" of supports as calculated by STRUDL (e.g., Tr. 3121-22, 3129-30, 3134-36 and 3196), Richmond Inserts (e.g., Tr. 3124-25, 3153-54 and 3196), pipe thermal growth (e.g., Walsh Supplementary Testimony at p. 3) and unstable supports (e.g., Tr. 3105-06, 3178, and 3194-95). CASE has made no demonstration that information Mr. Doyle possesses is different than what was presented by Mr. Walsh. In that CASE indicates it intends to utilize Mr. Doyle's deposition for adding to the record in the proceeding, such duplication would merely unnecessarily burden an already extensive record. Accordingly, the Board should deny CASE's motion.

C. Information May Be Obtained From Applicants' Witnesses

CASE has not demonstrated that it would be unable to obtain whatever information it believes Mr. Doyle possesses through the witnesses Applicants intend to call on rebuttal. CASE will have the opportunity to depose those individuals prior to the hearing and to conduct cross-examination at the hearing. Applicants' witnesses will be knowledgeable of matters raised by Mr. Walsh and, according to the description provided by CASE in its motion, the information of concern to Mr. Doyle. Thus, CASE would not be precluded from pursuing any relevant line of questioning on this matter. Again, Applicants urge the Board to deny CASE's motion.

D. CASE Has Not Sought Leave to Conduct Discovery on Contention 5

In its Scheduling Order dated August 6, 1982, the Board stated, as follows:

Discovery on Contention 5 is closed except for possible depositions of rebuttal witnesses. The opportunity remains for appropriate motions, pursuant to 10 C.F.R. § 2.740(b), concerning other discovery on Contention 5. [Order at 2.]

CASE has not filed an appropriate motion as directed by the Board for leave to conduct additional discovery on Contention 5. CASE merely assumes it is permitted to take Mr. Doyle's deposition and seeks a subpoena to compel his presence. CASE's motion for a subpoena to enable it to depose Mr. Doyle is thus in direct conflict with the Board's

Order. The motion is another in a long line of attempts by CASE to circumvent the directives of the Board and should not be countenanced. Accordingly, Applicants urge the Board to deny CASE's motion.


III. APPLICANTS WILL SUFFER UNDUE
PREJUDICE IF CASE'S MOTION IS
GRANTED

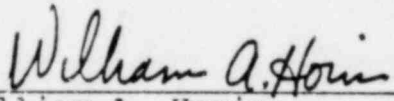
Although framed as a motion for subpoena to enable the taking of Mr. Doyle's deposition, CASE clearly intends either to produce Mr. Doyle as a witness or to seek to introduce his deposition into evidence. CASE states "Mr. Doyle's testimony is of the utmost importance to these proceedings and is absolutely essential to a complete record in this case." CASE Motion at 2 (emphasis added). Additional delay will necessarily result from either the calling of Mr. Doyle as a witness or an attempt to introduce his deposition into evidence. Such prejudice is not outweighed by the remote prospect that Mr. Doyle could contribute any information to the record not already presented or not obtainable from the depositions, testimony or cross-examination of Applicants' witnesses or already in evidence through the testimony of Mr. Walsh.

IV. CONCLUSION

For the foregoing reasons, Applicants believe that CASE has failed to demonstrate good cause for issuance of the subpoena. Accordingly, Applicants urge the Board to deny CASE's motion.

Respectfully submitted,


Nicholas S. Reynolds / WAH
Nicholas S. Reynolds


William A. Horin
William A. Horin

DEBEVOISE & LIBERMAN
1200 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 857-9817

Counsel for Applicants

August 13, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
) Docket Nos. 50-445
TEXAS UTILITIES GENERATING) 50-446
COMPANY, et al.)
) (Application for
(Comanche Peak Steam Electric) Operating Licenses)
Station, Units 1 and 2))

CERTIFICATE OF SERVICE

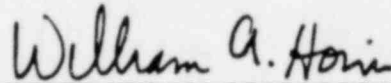
I hereby certify that copies of the foregoing "Applicants' Answer to CASE's Motion For Subpoena," in the above-captioned matter were served upon the following persons by express delivery (*) or by deposit in the United States mail, first class postage prepaid this 13th day of August, 1982:

- | | |
|--|---|
| * Marshall E. Miller, Esq.
Chairman, Atomic Safety and
Licensing Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555 | Chairman, Atomic Safety and
Licensing Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555 |
| * Dr. Kenneth A. McCollom
Dean, Division of Engineering
Architecture and Technology
Oklahoma State University
Stillwater, Oklahoma 74074 | * Lucinda Minton, Esq.
Atomic Safety & Licensing
Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555 |
| * Dr. Richard Cole, Member
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555 | * Marjorie Ulman Rothschild, Esq.
Office of the Executive
Legal Director
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555 |
| Chairman, Atomic Safety and
Licensing Appeal Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555 | |

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

Mr. Scott W. Stucky
Docketing & Service Branch
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

* Mrs. Juanita Ellis
President, CASE
1426 South Polk Street
Dallas, Texas 75224



William A. Horin

cc: Homer C. Schmidt
Spencer C. Relyea, Esq.