

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL 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'S EXCEPTIONS TO
THE ATOMIC SAFETY AND LICENSING BOARD'S
ORDER DENYING RECONSIDERATION OF SEPTEMBER 30, 1982

Sherwin E. Turk
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October 8, 1982

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INTRODUCTION

On August 4, 1982, the Atomic Safety and Licensing Board ("Licensing Board") issued an "Order to Show Cause" ("OSC") in which it directed the NRC ("Staff") to show cause "why sanctions should not be imposed for its refusal to obey the Board's Orders" at the hearing sessions held during the week of July 26-30, 1982, to identify by name ten (10) individuals who were designated by letter in NRC Inspection Report 82-10/82-05 (Staff Exhibit 199), and to produce unexpurgated signed witness statements taken by the Staff during that investigation (OSC, at 2 and 10).^{1/}

^{1/} The Staff had indicated on July 29, 1982, that it would appeal from the Licensing Board's oral rulings compelling disclosure (Tr. 3072-73, 3559). Six days later, before the Staff had an opportunity to file that appeal, the Licensing Board issued its Order to Show Cause.

The Staff filed its response to the Order to Show Cause on August 24, 1982, as directed by the Licensing Board,^{2/} and included therein a motion for reconsideration based, in part, upon significant new information which was gathered by the Staff after returning from the July hearing sessions.^{3/}

On September 30, 1982, the Licensing Board issued its "Order Denying Reconsideration" ("ODR") in which it ruled that "the Staff has not shown good cause and sanctions will be imposed unless the orders are obeyed forthwith." (ODR, at 2). The Licensing Board again directed the Staff to make the disclosures which the Licensing Board had previously ordered,^{4/} and indicated that "if the Staff fails either to obey this order promptly or to seek appellate review, the Licensing Board will use its authority pursuant to 10 C.F.R. § 2.713(c) to impose sanctions upon Staff counsel" (id., at 14; emphasis added).

^{2/} "NRC Staff's Response to Order to Show Cause and Motion for Reconsideration" ("Staff's Response"), filed August 24, 1982.

^{3/} Id., at 23-24. Attached to and incorporated by reference in the Staff's Response were the "Affidavit of John T. Collins," and the "Affidavit of Donald D. Driskill and Richard K. Herr," which set out the significant new information referred to in the Staff's Response.

^{4/} Exempted from the Licensing Board's order of September 30, 1982, were the identities of "two individuals who asked for confidentiality" (ODR, at 14). The Licensing Board's ruling in this regard was premised solely upon the new information set out in the Staff's Response, filed on August 24, 1982.

EXCEPTIONS

Pursuant to 10 C.F.R. § 2.762(a), the Staff hereby takes exception to the Licensing Board's Order Denying Reconsideration and its Order to Show Cause, in the following respects.

1. The Licensing Board erred in concluding that the Staff has not shown good cause for its refusal to disclose the identities of the 10 individuals designated by the letters B-K in Staff Exhibit 199 (ODR, at 2).

2. The Licensing Board erred in finding that the "informer's privilege" is available only with respect to those persons who have expressly requested or received pledges of confidentiality (See ODR, at 3; OSC, at 7-8).

3. The Licensing Board erred in finding that disclosure of the ten individuals' identities was necessary to a proper decision in this proceeding (ODR, at 5-7).

4. The Licensing Board erred in finding that disclosure of the ten individuals' identities would not result in harm to the Commission's ability to investigate future allegations of applicant and licensee misconduct, and in disregarding the Staff's views in this regard (See ODR, at 7).

5. The Licensing Board erred in failing properly to balance the purported benefits resulting from disclosure against the harm which could be caused thereby (ODR, at 7-8).

6. The Licensing Board erred in directing Staff witnesses and their counsel to disclose the identities of individuals B-K without

first (a) conducting an appropriate examination of the circumstances surrounding the Staff's communications with those persons, (b) properly determining the need for such disclosure, and (c) properly balancing the potential harm against the purported benefits which might result from such disclosure (ODR, at 5-8).

7. The Licensing Board erred in finding that the informer's privilege is unavailable to supervisory personnel employed by an applicant or its constructor (ODR, at 4).

8. The Licensing Board erred in finding that the informer's privilege is unavailable to persons contacted by the Staff in the course of its confidential investigation of allegations made by an informer (ODR, at 4).

9. The Licensing Board erred in finding that the informer's privilege was available only with respect to one individual (individual A), and that the Staff had waived the privilege as to that person (ODR, at 4).

10. The Licensing Board erred in finding that the informer's privilege was waived by virtue of the fact that a Department of Labor investigator was present during portions of the Staff's investigation and received copies of certain signed statements (ODR, at 4).

11. The Licensing Board erred in failing to refer its rulings to the Appeal Board prior to compelling disclosure (ODR, at 10).

12. The Licensing Board erred in finding that the disclosure of the identities of some individuals (who indicated they did not object to disclosure) would not compromise the identities of other individuals who had requested that their identities not be disclosed (ODR, at 5).

13. The Licensing Board erred in concluding that the legal doctrine which permits the withholding of certain information that tends to disclose confidential information is inapplicable in this proceeding (ODR, at 5).

14. The Licensing Board erred in concluding that sanctions against the Staff are appropriate (ODR, at 12).

15. The Licensing Board erred in concluding that sanctions against Staff counsel are appropriate (ODR, at 9-10, 12-14).

16. The Licensing Board erred in denying the Staff's motion for reconsideration (ODR, at 9).

17. The Licensing Board erred in denying the Staff's request for a stay of its orders compelling disclosure (Tr., at 3072-73).

18. The Licensing Board erred in concluding that the Staff was under an obligation to comply with the Licensing Board's orders to disclose confidential information, without first being able to seek an appeal from those orders on a timely basis (ODR, at 9-10; see OSC at 2).

CONCLUSION

In each of the respects set forth herein, the Staff takes exception to and appeals from the Licensing Board's Order Denying Reconsideration.

Respectfully submitted,

Sherwin E. Turk

Sherwin E. Turk
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 8th day of October, 1982

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S EXCEPTIONS TO THE ATOMIC SAFETY AND LICENSING BOARD'S ORDER DENYING RECONSIDERATION OF SEPTEMBER 30, 1982" 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, or, as indicated by double asterisk, hand delivery, this 8th day of October, 1982:

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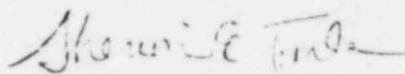
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