

September 7, 1982

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'82 SEP -8 10:19

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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)

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

APPLICANTS' ANSWER TO CASE'S
MOTION TO ADD NEW CONTENTION

Pursuant to 10 C.F.R. § 2.730(c), Texas Utilities Generating Co., et al. ("Applicants") hereby serve their answer to CASE's Motion to Add New Contention 26, dated August 26, 1982. For the reasons set forth below, Applicants urge the Board to deny CASE's motion.

I. BACKGROUND

A. Allegations of CASE Witness Mark Walsh

During the evidentiary hearings in this proceeding conducted July 26-30, 1982, CASE presented a new witness, Mr. Mark A. Walsh, who testified regarding consideration of certain thermal and seismic stresses in pipe supports at Comanche Peak. Mr. Walsh's testimony was received into evidence at Tr. 3198. Mr. Walsh explicitly raised the issue of the pipe support design criteria used at Comanche Peak, Supplemental Testimony at 2 (CASE Exhibit 659H) and was subjected to cross-examination on the issue.

DS03

B. Discovery on Contention 5

At the close of the hearings, the Board directed that discovery on Contention 5 was "closed, except for possible depositions of rebuttal witnesses." See Tr. 3560 and the Board's August 6, 1982 Scheduling Order, at 2. The Board stated that additional discovery on Contention 5 would require "appropriate motions, pursuant to 10 C.F.R. § 2.740(b)." Id. On August 9, 1982, CASE filed its Twelfth and Thirteenth Sets of Interrogatories, which concerned Contention 5, although no motion was made at the time to permit such additional discovery on Contention 5.

Applicants telephoned CASE on August 16, 1982 to respond to CASE's discovery requests. At that time Applicants provided the names of potential witnesses for Applicants' rebuttal case on Contention 5 and direct case on Contention 22. In addition, Applicants informed CASE that the documents requested in CASE's discovery requests which Applicants believed they may rely upon in their rebuttal case would be provided for inspection and copying. Applicants stated that they viewed the remainder of the discovery requests as being beyond the scope of discovery permitted by the Board. CASE then filed a motion to allow additional discovery on Contention 5, dated August 17, 1982.

On August 20, 1982, a conference call with the Board and parties was held. During that call Applicants noted the proprietary nature of documents belonging to ITT-Grinnel and

NPSI requested in questions 9, 10, 12, 16 and 17 of CASE's Twelfth Set of Interrogatories and, in addition, stated that Applicants did not possess the requested documents. The Board directed with respect to those documents which were proprietary and not in Applicants' possession that Applicants should so indicate in their responses to CASE's Interrogatories and identify the entity in whose possession those documents are kept. Applicants did so in their August 23, 1982 answers to CASE's interrogatories.

C. Proposed New Contention 26

CASE now moves the Board to admit a new contention which alleges Applicants do not comply with 10 C.F.R. Part 50, Appendices A and B because "Applicants do not possess copies of the design criteria for pipe support systems and components at CPSES." Applicants demonstrate below that CASE has not made an appropriate showing for admission of a new contention, and thus its motion should be denied. Further, in that the issue raised by CASE has already been the subject of CASE's direct testimony and will be addressed in Applicants' rebuttal case, there is no need to admit a separate contention on the question.

II. DISCUSSION

A. Standards for Admission of Late-Filed Contentions

Late-filed contentions are not to be admitted unless the proponent demonstrates that a balancing of the factors set forth in 10 C.F.R. § 2.714(a)(1)(i)-(v) weighs in favor of admitting the untimely contention.¹ In this instance, CASE has not even attempted to make such a showing, and in fact makes its motion under the general provision of 10 C.F.R. § 2.730. Applicants address each factor seriatim below, and demonstrate that CASE has not satisfied the requirements for admitting a new contention.

B. Application of Standards to Proposed Contention 26

1. Good cause for lateness

In the first instance, CASE has not addressed and thus has not demonstrated good cause for its untimely filing of this contention.² CASE only claims that it has recently become aware of the apparent circumstances which give rise to the specific issue raised in its contention without any

¹ The standards governing late intervention set forth in 10 C.F.R. §2.714(a)(1) also apply to late-filed contentions. See 43 Fed. Reg. 17799 (April 26, 1978).

² CASE relies heavily on the false factual premise that the subject criteria are not kept on site as support for admission of its contention. CASE Motion at 4-5. To the contrary, Applicants have never made such a statement. Applicants have only stated that those criteria are not within their possession and provided the identity of the owner of such information so that CASE could contact them directly. CASE apparently has not even attempted to make such contact.

demonstration that this is new information not previously ascertainable through discovery on Contention 5, which has been conducted for over two years. That CASE only recently became interested in the issue of pipe supports does not provide good cause for now filing a new contention, particularly where the issue is being fully addressed as within the scope of Contention 5.

2. Other means to protect
petitioner's interest

With respect to the availability of other means whereby CASE's interest will be protected, 10 C.F.R. § 2.714(a)(1)(ii), it is clear that the allegation raised in CASE's new contention has already been raised in this proceeding and will be further addressed at the upcoming hearings. The underlying issue of CASE's contention concerns the standards to which pipe supports are designed at Comanche Peak. Specifically, the means by which such standards are established for and implemented by the different entities designing pipe supports for Comanche Peak has already been addressed by CASE, Walsh Supplemental Testimony at 2 (CASE Exhibit 659H), and will be the subject of rebuttal testimony by Applicants, see Applicants' prefiled rebuttal testimony regarding Walsh allegations at 9. Accordingly, CASE's interest in pursuing this issue will be protected through the normal course of this proceeding without the admission of a new contention.

3. Ability to contribute to the record

With respect to the third factor, 10 C.F.R. § 2.714(a)(1)(iii), regarding the ability of the petitioner to contribute to the record, CASE has made no attempt to demonstrate that this factor weighs in its favor. Specifically, CASE has not shown that upon admission of the contention it will be able to provide any probative and material information that it has not already or will have the opportunity to present through litigation of Contention 5 in the form of its own direct testimony or upon cross-examination of Applicants' witnesses, particularly given CASE's false factual premise that the design criteria are not kept on site. Thus, there is no indication that CASE will contribute anything further to the record if a new contention is admitted.

4. Representation of interest
by existing parties

As to the fourth factor, i.e., the extent to which CASE's interest will be represented by existing parties, 10 C.F.R. §2.714(a)(1)(iv), CASE cannot claim its interest need be protected by existing parties since CASE is already a party to this proceeding and is pursuing this issue as part of its case on Contention 5. CASE will thus have a complete opportunity to represent its own interest on this issue.

5. Broadening of issues and delay

Finally, with respect to whether the petitioner's participation will broaden the issues or delay the proceeding, 10 C.F.R. § 2.714(a)(1)(v), although CASE claims that it will be prepared to proceed on this issue at the September 13 hearings, it also alleges that it will proceed with "additional motions" if it is not satisfied with the resolution of its allegation. CASE Motion at 8. CASE obviously intends to file additional motions and thus delay the proceeding if it is dissatisfied with answers to its questions. Accordingly, while this factor may at first glance seem to be neutral, it provides little support for CASE's position in view of CASE's stated intent to delay the proceeding with additional motions if it deems necessary.

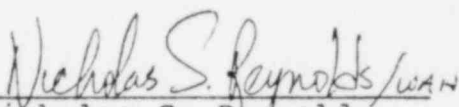
In sum, none of the factors set forth in 10 C.F.R. §2.714(a)(1) support the admission of a new contention at this late stage of the proceeding. In fact, the contention is based on a false factual premise which CASE asserts supports admission of the contention. In addition, the issue raised by CASE in its proposed new contention has already been the subject of testimony by CASE's witness and is addressed by Applicants in their rebuttal case. Thus, CASE will have the opportunity to conduct cross-examination of Applicants' witnesses on this issue. Further, the Board has indicated its intent to pursue the subject matter of pipe supports. Thus, the Board will certainly conduct its own

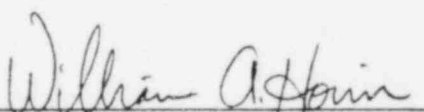
examination on the subject in the context of Contention 5 to assure a complete record. In sum, CASE has already been afforded the opportunity to pursue this issue thoroughly without admission of a wholly separate and new contention. Accordingly, the Board should deny CASE's motion to add the new contention.

III. CONCLUSION

For the foregoing reasons, Applicants urge the Board to deny CASE's motion to add a new contention.

Respectfully submitted,


Nicholas S. Reynolds


William A. Horih

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

Counsel for Applicants

September 7, 1982

UNITED STATES OF AMERICA
 NUCLEAR REGULATORY COMMISSION

DOCKETED
 USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

'82 SEP -8 A10:1

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)

OFFICE OF SECRETARY
 DOCKETING & SERVICE
 BRANCH

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Applicants' Answer To CASE's Motion To Add New Contention," in the above-captioned matter were served upon the following persons by deposit in the United States mail, first class postage prepaid this 7th day of September, 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

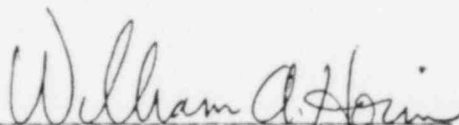
Marjorie Ulman Rothschild, Esq.
 Office of the Executive
 Legal Director
 U.S. Nuclear Regulatory
 Commission
 Washington, D.C. 20555

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.