

9/3/82

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD ~~82~~ SEP 10 P1:51

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)

OFFICE OF SECRETARY
DOCKETING & SERVICE
Docket Nos. BRANCH 45
and 50-446

CASE'S MOTION TO STRIKE
PREFILED TESTIMONY OF
KENNETH L. SCHEPPE

Pursuant to 2.730, CASE (Citizens Association for Sound Energy), Intervenor herein, hereby files this, its Motion to Strike Prefiled Testimony of Kenneth L. Schepple.

On Thursday, July 29, 1982, Mr. Kenneth L. Schepple cross-examined Mr. Mark Walsh, CASE's witness, regarding Mr. Walsh's testimony. On Friday, September 3, 1982, Applicants prefiled the testimony of their rebuttal panel to Mr. Walsh's testimony. Mr. Schepple was included as one of the rebuttal witnesses to Mr. Walsh's testimony.

CASE was aware that Applicants intended to include Mr. Schepple as a rebuttal witness and did, in fact, take the deposition of Mr. Schepple in preparation for the September hearings. However, it has just come to our attention that there is apparently a legal precedent regarding this type of testimony of which CASE was previously unaware. It is our understanding that in the recent (within the last few weeks) Clinch River Breeder Reactor hearings¹, the Natural Resources Defense Council (NRDC) was not allowed to have Mr. Thomas Cochran cross-examine

¹ CASE does not have the citation in this regard; however, it is our understanding that Board Chairman Miller was directly involved in these proceedings.

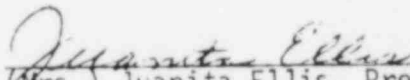
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on behalf of NRDC as an expert because he had previously testified regarding the same issues.

If our understanding of this ruling is correct (and we will rely on Judge Miller's judgement in this regard), we would assume that the reverse would also be true, and that an expert who has previously cross-examined in the hearings cannot testify as an expert on the same issues in rebuttal to the testimony of the individual whom he had previously cross-examined.

We therefore move that the prefiled testimony of Mr. Kenneth L. Schepple be stricken from the record and that Mr. Schepple be dismissed as a witness insofar as rebuttal of the testimony of Mark Walsh.

Respectfully submitted,



(Mrs.) Juanita Ellis, President
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NUCLEAR REGULATORY COMMISSION

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Docket Nos. 50-445
and 50-446

CERTIFICATE OF SERVICE

By my signature below, I hereby certify that true and correct copies of _____
CASE's Motion to Strike Prefiled Testimony of Kenneth L. Scheppele _____

have been sent to the names listed below this 8th day of September, 1982, by:
Express Mail where indicated by * and First Class Mail elsewhere.

* Administrative Judge Marshall E. Miller
U. S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
Washington, D. C. 20555

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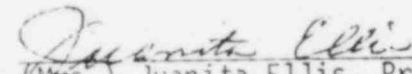
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