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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF PUBLIC
SERVICE
BRANCH

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

APPLICANTS' MOTION FOR SUMMARY DISPOSITION
OF INTERVENOR'S CONTENTION 22
REGARDING EMERGENCY PLANNING

Pursuant to 10 C.F.R. § 2.749, Texas Utilities Generating Company, et al. ("Applicants") hereby move the Atomic Safety and Licensing Board ("Board") for summary disposition in favor of the Applicants with regard to Intervenor CASE's Contention 22 regarding emergency planning, on the grounds that there is no genuine issue of material fact to be heard. Applicants urge the Board to so find, to conclude that Applicants are entitled to judgment as a matter of law, and to dismiss Contention 22 as an issue in this proceeding.

Annexed hereto is a concise statement of material facts as to which Applicants contend there is no genuine issue to be heard. Also annexed hereto in support of Applicants' motion are the affidavits of Richard A. Jones, Bobby T. Lancaster, and Roger E. Linnemann, M.D.

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I. BACKGROUND

On June 16, 1980, the Board issued its Order Subsequent to the Prehearing Conference of April 30, 1980 in which it admitted CASE's Contention 22 which reads as follows:

Contention 22. Applicants have failed to comply with 10 CFR Part 50, Appendix E, regarding emergency planning, for the following reasons:

- a. The FSAR does not identify state or regional authorities responsible for emergency planning or who have special qualifications for dealing with emergencies. (CASE 12(a))
- b. No agreements have been reached with local and state officials and agencies for the early warning and evacuation of the public, including the identification of the principal officials by titles and agencies. (CASE 12(b))
- c. There is no description of the arrangements for services of physicians and other medical personnel qualified to handle radiation emergencies and arrangements for the transportation of injured or contaminated individuals beyond the site boundary. (CASE 12(c))
- d. There are no adequate plans for testing by periodic drills of emergency plans and provisions for participation in the drills by persons whose assistance may be needed, other than employees of the Applicant. (CASE 12(d))
- e. There is no provision for medical facilities in the immediate vicinity of the site, which includes Glen Rose. (CASE 12(e))
- f. There is no provision for emergency planning for Glen Rose or the Dallas/Ft. Worth metroplex. (CASE 12(f) and ACORN 24)

Both the Applicants and the NRC Staff have commenced discovery against CASE with respect to Contention 22. Applicants provided CASE with a list of its potential witnesses on emergency planning by letter dated August 16, 1982. Discovery on Contention 22 is set to conclude on August 23.

By Order dated August 6, 1982, the Board established a prehearing schedule leading to further evidentiary hearings to commence September 13, at which time the issues raised in Contention 22 would be addressed. That schedule called for the parties to submit motions for summary disposition by August 23.

II. APPLICANTS MOTION FOR SUMMARY DISPOSITION OF CONTENTION 22

A. General

The Board in its Order (Granting Summary Disposition of Contentions 2 and 7), LBP-82-17, 15 NRC 593 (1982), recited the law and NRC policy relating to the use of summary disposition by NRC licensing boards. We perceive of no need to reiterate here the discussion in the Board's Order. Suffice it to say that 10 C.F.R. §2.749(d) compels the granting of summary disposition where it is shown "that there is no genuine issue as to any material fact and that the moving party is entitled to decision as a matter of law." Further, the Commission has urged its licensing boards to employ the procedural pools available, including summary disposition, to expedite the hearing process. Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452 (1981).

The Board should not permit the intervenor to go to trial on Contention 22 on the vague supposition that "something might turn up,"¹ or on the mere hope that on cross-examination the movant's evidence will somehow be discredited.² Finally, admission of a contention does not imply that it is meritorious. A hearing on each contention is not inevitable, but rather "depends upon the ability of the intervenors to demonstrate the existence of a genuine issue of material fact respecting any of the issues they previously raised."³

The intervenor must be required to oppose this motion and the supporting affidavits with demonstrations by affidavits of competent and qualified affiants that a genuine issue exists as to a material fact. Failing such demonstrations by the intervenor, the Board should "render the decision sought" 10 C.F.R. §2.749(d); Order (Granting Summary Disposition of Contentions 2 and 7), supra, 15 NRC at 595. Mere allegations or statements of concern by the intervenor's representative are insufficient to preclude summary disposition.

¹ 6 Moore's Federal Practice 56.15(4).

² Radio City Music Hall v. United States, 136 F.2d 715 (2d Cir. 1943); Orbis v. Brickman, 95 F. Supp. 605 (D.D.C. 1951).

³ Philadelphia Electric Co., et al. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-654, 14 NRC 632 (1981).

B. Contention 22

The intervenor contends that the Applicants have failed to comply with Appendix E to Part 50 in developing emergency response plans for Comanche Peak Steam Electric Station ("CPSES") in certain specific respects. The intervenor recites six alleged deficiencies in this respect. Applicants below address each of the six, and demonstrate that none raises a genuine issue of material fact.

1. Contention 22(a). The FSAR does not identify state or regional authorities responsible for emergency planning or who have special qualifications for dealing with emergencies.

In fact, Section 1.3 of the CPSES Emergency Plan, Revision 3, dated May 21, 1982, identifies each of the various state and local authorities responsible for emergency planning and describes the assistance expected from each. The principal local authorities charged with emergency operations and response are the County Judges of Hood and Somervell Counties, Hood County Sheriff's Department, Somervell County Sheriff's Department, Granbury Fire Department, Glen Rose-Somervell County Volunteer Fire Department, Hood General Hospital Ambulance Service, Glen Rose-Somervell County Volunteer Fire Department Ambulance Service, Hood General Hospital, and Marks English Hospital in Glen Rose. CPSES Emergency Plan § 1.3.1. See Affidavit of Richard A. Jones, at 2-3. The CPSES Emergency Plan is attached to Mr. Jones' Affidavit as Attachment A. Both Hood County and Somervell County have detailed emergency operations plans which include fixed nuclear

facility response plans and procedures for responding to incidents at CPSES. These plans are included with Mr. Jones Affidavit as Attachment B. Overall direction and control of state emergency activities is the responsibility of the Division of Emergency Management of the Texas Department of Public Safety. CPSES Emergency Plan § 1.3.2.2. See Jones Affidavit, at 3. The Bureau of Radiation Control of the Texas Department of Health is the agency responsible for handling radiological emergencies. CPSES Emergency Plan § 1.3.2.1. See Jones Affidavit, at 3. Like the county plans, the Texas Emergency Management Plan includes detailed procedures for responding to radiation accidents at fixed nuclear facilities. See Texas Emergency Management Plan, II.8.2; Annex L, Appendix 7 and Tab 1; and Annex R. A copy of the state plan is included with Mr. Jones' Affidavit as Attachment C.

Thus, the CPSES Emergency Plan adequately identifies the local and state emergency authorities in accordance with the requirements of Appendix E and describes the assistance expected from each. 10 C.F.R. Part 50, Appendix E, §IV.A.7; see NUREG-0654, Rev. 1, §II.A.1.a. Accordingly, no genuine issue of material fact exists as to Contention 22.a.

2. Contention 22(b). No agreements have been reached with local and state officials and agencies for the early warning and evacuation of the public, including the identification of the principal officials by titles and agencies.

In fact, TUGCO has obtained written agreements with the local and state authorities responsible for notification of the public and implementation of appropriate protective action, including

evacuation, in the event of an emergency at CPSES. CPSES Emergency Plan § 15.0, Appendix H (Letters of Agreement). See Jones Affidavit, at 7. See also CPSES Emergency Plan §§ 1.3, 3.0, 4.0, 8.0. The officials representing these authorities are identified by title and agency in the CPSES Emergency Plan. Id. §§ 1.3, 15.0 Appendix H.

At the local level, TUGCO has obtained agreements regarding notification and evacuation with the Sheriffs of Hood and Somervell Counties and the Chiefs of the Granbury⁴ and Glen Rose-Somervell County Fire Departments. CPSES Emergency Plan, § 15.0 Appendix H. At the state level, agreements have been reached with the Chief of the Bureau of Radiation Control of the Texas Department of Health and the Commander of Region VI of the Texas Department of Public Safety. Id. The agreements between TUGCO and State and local authorities are included in the CPSES Emergency Plan (Section 15, Appendix H) attached to the Jones Affidavit and are described in that Affidavit.

Section IV.A.8 of Appendix E requires an applicant's emergency plans to identify State and local officials responsible for planning, ordering, and controlling appropriate protective actions, including evacuation if necessary. See also NUREG-0654, Rev. 1, II.J. Section IV.D.1. of Appendix E requires agreements with local and State officials and agencies for prompt

⁴ This Letter of Agreement is being renegotiated and will be included in the CPSES Emergency Plan when available. See CPSES Emergency Plan § 15.0 Appendix H.

notification of the public and evacuation if necessary. The local and State officials must be described by title and agency in the applicant's plans. Appendix E, Section IV.D.1.

As demonstrated above and in the attached Affidavits, the CPSES Emergency Plan meets these requirements of Appendix E for identification of and agreements with local and State officials for notification of the public and protective action response. Accordingly, no genuine issue of material fact exists as to Contention 22.b.

3. Contention 22(c). There is no description of the arrangements for services of physicians and other medical personnel qualified to handle radiation emergencies and arrangements for the transportation of injured or contaminated individuals beyond the site boundary.

Contention 22(c) relates to two aspects of emergency planning, i.e., medical services for radiation emergencies and transportation of injured or contaminated individuals. Section IV.E.5. of Appendix E requires that arrangements be made for the services of physicians and other medical personnel qualified to handle radiation emergencies onsite. See 10 C.F.R. §50.47(b)(12).

In fact, Sections 1.3.1.4 and 10.1 of the CPSES Emergency Plan describe the medical support services available in the event of a radiation emergency at Comanche Peak. Hood General Hospital in Granbury, Texas, is the primary facility for decontamination and treatment of radiological injuries. CPSES Emergency Plan § 1.3.1.4, 10.1. See Affidavit of Roger E. Linnemann, M.D., at 2. TUGCO has obtained a Letter of Agreement from Hood General

Hospital to receive and treat injured CPSES personnel who are contaminated with radioactive material or who have an overexposure requiring medical evaluation. CPSES Emergency Plan, § 15.0 Appendix H. Back-up medical services, support, and definitive care will be provided by Radiation Management Corporation (RMC) and its affiliated medical center at Northwestern Memorial Hospital in Chicago in accordance with Letters of Agreement between TUGCO and RMC (CPSES Emergency Plan § 15.0 Appendix H) and between RMC and Northwestern (Linneman Affidavit, Attachment B). See CPSES Emergency Plan § 1.3.1.4, 10.1; Linnemann Affidavit, at 2. A description of medical services and capabilities at Hood General and Northwestern Memorial Hospital is contained in the Affidavit of Roger E. Linnemann, M.D. at 3-4.

Section IV.E.6 of Appendix E requires that arrangements be made for transportation of contaminated injured individuals from the site to specifically identified treatment facilities outside the site boundary.

TUGCO has obtained written agreements with the Glen-Rose Somervell County Volunteer Fire Department Ambulance and Rescue Service and the Hood General Hospital Ambulance Service to provide care in transporting injured and contaminated individuals for medical assistance. CPSES Emergency Plan 15.0 Appendix H; see id. §§ 1.3.1.3, 10.2. In addition to the local ambulance services, there is a TUGCO ambulance at the site. Id. § 1.3.1.3, 10.2.

RMC will train and exercise both CPSES and local ambulance

service personnel in transporting and handling radiologically injured patients. CPSES Emergency Plan, § 15.0 Appendix H; Linnenmann Affidavit, at 5.

The arrangements for medical services for radiological injuries and transportation of injured contaminated patients described in the CPSES Emergency Plan are adequate and satisfy the requirements of Appendix E. Accordingly, there is no genuine issue of fact with respect to Contention 22.c.

4. Contention 22(d). There are no adequate plans for testing by periodic drills of emergency plans and provisions for participation in the drills by persons whose assistance may be needed, other than employees of the Applicant.

Section 12.0 of the CPSES Emergency Plan provides for periodic drills and emergency exercises in which TUGCO, State, local and private personnel and resources will be mobilized to the extent necessary to verify the adequacy of the integrated emergency response capability. See Affidavit of Bobby T. Lancaster, at 2. Periodic drills will be conducted to test various aspects of the emergency response, including communications, fire drills, ambulance and medical support services, radiological monitoring, health physics, and repair and recovery operations. CPSES Emergency Plan § 12.2. A news media orientation will be provided in conjunction with the annual exercise to inform the media of the emergency preparedness program, the purpose of the exercise and to dispel rumors. Id. § 12.1. See Lancaster Affidavit, at 4.

The Sheriffs of Hood and Somervell Counties have agreed to participate in the annual exercise and drills as well as training sessions provided by TUGCO personnel. CPSES Emergency Plan § 15.0 Appendix H. See Lancaster Affidavit, at 3-4. Similar agreements have been reached with the local ambulance services, fire departments, and Hood General Hospital. CPSES Emergency Plan § 15.0 Appendix H. See Lancaster Affidavit, at 4. Both the Bureau of Radiation Control and the Department of Public Safety have agreed to participate in emergency planning exercises and drills involving CPSES. CPSES Emergency Plan § 15.0 Appendix H. Lancaster Affidavit, at 4-5. Finally, Squaw Creek Park, Inc., which operates the recreation area adjacent to Squaw Creek Reservoir has agreed to participate in exercises, drills and training sessions. Id.

Section IV.F.2. of Appendix E requires that persons whose assistance may be needed in the event of a radiation emergency participate in training sessions and emergency drills.

The CPSES Emergency Plan provides for participation of local, State, and private organizations in emergency preparedness exercises, drills, and training sessions. Each of the organizations responsible for implementing the emergency response have committed to participate by written agreement. The CPSES Plan describes the role of these organizations and complies with the requirements of Appendix E. Thus, there is no genuine issue of material fact regarding Contention 22.d.

5. Contention 22(e). There is no provision for medical facilities in the immediate vicinity of the site, which includes Glen Rose.

Contention 22(e) is related to subpart (c). As previously stated, arrangements have been made and agreements obtained from Hood General Hospital and Radiation Management Corporation to provide medical care for injured contaminated personnel. CPSES Emergency Plan § 1.3.1.4, 10.1, 15.0 Appendix H. See Linnemann Affidavit, at 6. Patients who are not radiologically injured or radiologically injured patients, once decontaminated, maybe treated at Marks English Hospital in Glen Rose. Linnemann Affidavit, at 6. Arrangements for provision of medical services in the vicinity of the site satisfy the requirements of Appendix E. There is no genuine issue of material fact as to Contention 22.e

6. Contention 22(f). There is no provision for emergency planning for Glen Rose or the Dallas/Ft. Worth metroplex.

Glen Rose lies within the ten-mile plume exposure pathway emergency planning zone (EPZ) and as such is included in the CPSES Emergency Plan for the ten-mile EPZ. The Somervell County-City of Glen Rose Emergency Operations Plan provides for local emergency response in Somervell County, the City of Glen Rose, and unincorporated towns within the county. Somervell County Plan §§ III, IV, VI, Annex F (attached to Jones Affidavit as Attachment B). The county plan assigns specific responsibilities and tasks

to members of the city government and city departments in parallel to their counterparts in the County. Id. § IV. This is described in the Affidavit of Richard A. Jones, at 8-9.

Much of Tarrant County and a small portion of Dallas County lie within the fifty-mile Ingestion Exposure Pathway EPZ. The State is responsible for emergency planning in the 50-mile EPZ. NUREG-0654, Rev. 1, II.J.11 provides that "[e]ach State shall specify the protective measures to be used for the ingestion pathway, including methods for protecting the public from consumption of contaminated foodstuffs" and establishes criteria to be followed by the State.

The Ingestion Exposure Pathway EPZ extends outward approximately fifty (50) miles in all directions from the plant site. Uptake of radioactive materials by plants or animals which constitute parts of the human food chain is the primary concern in the 50-mile EPZ. Milk and other animal by-products, and animals and plants intended for human consumption must either be protected from radiation contamination, or must be monitored to ensure that they do not contain radioactive contamination, or must be monitored to ensure that they do not contain radioactive materials in quantities which could pose a threat to the consumer. Texas Emergency Management Plan, Annex L, Appendix 7, Tab 1, II.A.5 (Attachment C to Jones' Affidavit).

Actions within the remainder of the concentric fifty (50) mile Ingestion Exposure Pathway EPZ, specifically products in the food chain, will primarily be conducted by the Bureau of Consumer

Health Protection and the Bureau of Veterinary Public Health of the Department of Health, and by the Texas Department of Agriculture. Bureau of Radiation Control activities in the 50 mile EPZ will include coordination of sample analysis, accident assessment, and recommendation of protective response. (Id. II.B.2).

The Food & Drugs Division of the Bureau of Consumer Health Protection will monitor and/or collect samples of foodstuffs within the Ingestion Exposure Pathway EPZ which are not adequately evaluated by other Department of Health Divisions or by the Texas Department of Agriculture. The Milk & Dairy Products Division will monitor and/or collect samples of dairy products, water for dairy animals, and vegetation samples from pastures grazed by dairy animals if those samples are not collected by the Texas Department of Agriculture during its sampling program in the Ingestion Exposure Pathway EPZ. (Id. II.D.1., 2.).

The Cooperative Meat Inspection Division of the Bureau of Veterinary Public Health will monitor and/or collect samples of unprocessed meat from animals which were inside the Ingestion Exposure Pathway EPZ when contamination was present. (Id. II.E.1.).

The Texas Department of Agriculture will develop and maintain land-use maps of the Ingestion Exposure Pathway EPZ showing food production areas and types of crop or food production activity; develop and maintain listings of County Agricultural Agents and points of contact for County Emergency Boards within the 50-mile

Ingestion Exposure Pathway EPZ; monitor and/or collect samples of foodstuffs and other agricultural products whose distribution to consumers must be regulated as a result of possible contamination following a fixed nuclear facility accident; identify food processors who normally receive livestock or produce from the affected portion of the Ingestion Exposure Pathway EPZ, and assist the Texas Department of Health in efforts to curtail distribution of contaminated products; and provide guidance to agricultural producers and processors concerning protective actions available. Typical actions could include sheltering and/or use of stored feed for livestock, delaying of marketing of live animals, diversion to nonhuman consumption or prolonged processing or storage of contaminated commodities, or destruction or disposal of foodstuffs which cannot otherwise be rendered harmless. (Id. II.G).

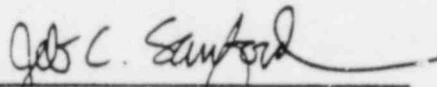
Emergency planning by the State for the 50-mile Ingestion Exposure Pathway EPZ meets the criteria of NUREG 0654, Rev. 1, II.J.11. Hence there is no genuine issue of material fact concerning Contention 22.f.

In view of the foregoing, Applicants submit there is no genuine issue of material fact to be heard regarding Contention 22. Accordingly, the Board should render judgment on Contention 22 in favor of the Applicants and dismiss Contention 22 in this proceeding.

III. CONCLUSION

For the reasons stated, Applicants request that the Board grant Applicants' Motion for Summary Disposition of Intervenor's Contention 22 Regarding Emergency Planning.

Respectfully submitted,



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