3/31/83

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'83 APR -4 A10:33

BEFORE THE COMMISSION

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)

Docket Nos. 50-445 and 50-446

CASE'S ANSWER IN OPPOSITION TO APPLICANTS' 3/31/83 MOTION FOR EXPEDITED RECONSIDERATION OF COMMISSION ORDER

On 3/31/83, at about 2:00 P.M., CASE was informed by the Applicants that they were filing a Motion for Expedited Reconsideration of Commission Order with the Commission, and Applicants' counsel read the Motion (as well as the Commission's 3/30/83 Order to us over the telephone, allowing us to tape them. Thus, although we still have copies of neither of these documents, we at least were able to listen to them and have general knowledge of their content. Since Applicants requested that the Commission rule on their motion today, they stated that they were telecopying or telephonically communicating their motion to the other parties so that "they each may know the subject of the motion and respond today either orally or in writing if it wishes." And, as noted by the Applicants themselves in their motion, "Obviously, the Commission must act today on this motion for reconsideration if the necessary logistics are to be attainable." (Emphasis added.)

CASE agrees that it would have been necessary for the Commission to have acted today if the necessary logistics were to be attainable. However, by the time CASE was informed of the Applicants' motion, it was already difficult if

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not impossible for CASE to handle the situation logistically. Some of our Board members who are assisting CASE's representative, Mrs. Ellis, in the preparation for the hearings and who will be assisting in the hearings themselves had already changed their plans for taking off next week and committed themselves to other projects on their jobs. Some people who will be helping with things such as bringing in food for CASE workers next week had already been contacted by phone with the change in plans. Mark Walsh, CASE's witness who will be cross-examining regarding the design problems with pipe supports, had made arrangements following the conference call with the Licensing Board on 3/28/83 to take off work without pay next week; following the telephone call this morning from the Licensing Board's law clerk, he advised his employer (where he has been working only since January) that he would not have to take off next week after all. To have attempted to again change plans at the time we received notification from the Applicants regarding their motion would have been very difficult. To attempt to do so tomorrow (should the Commission rule at that time) will be virtually impossible.

It should be noted that Applicants' Motion goes far beyond the Commission's 3/30/83 Order in its scope. It deals as well with matters which the Commission has not considered and has not stated that it wishes to consider in these proceedings. As Applicants correctly stated in their Motion, there are other issues scheduled for adjudication during those hearings (emergency planning, design of pipe supports and various matters raised in Board notifications).

However, what Applicants conveniently forgot to mention to the Commission is the fact that not only CASE, but the Attorney General of the State of Texas as well, have recently filed motions objecting to the unwarranted, unfair, and

extremely prejudicial rush to hearings on the issues to be litigated[1]. Of particular concern to CASE is the matter of what is commonly referred to as the Walsh/Doyle allegations (concerns about major design problems with pipe supports brought forward by CASE witnesses Mark Walsh and Jack Doyle, two former Comanche Peak engineers who quit because they were ordered to discontinue including loss-of-coolant accidents in their computer calculations regarding the pipe supports).

We will not restate what is contained in our 3/15/83 Motion for Reconsideration Regarding Hearings on Walsh/Doyle Allegations; we incorporate it herewith by reference and ask that the Commission consider it in its ruling. To briefly sum up the situation:

1. The NRC Staff, although it testified in the September 1982 hearings that everything was basically O.K. and by implication that the Board should go ahead and give Applicants their operating license, had not even completed analyzing the testimony (about 400 pages) of CASE witness Jack Doyle;
2. The Licensing Board basically told the Staff to go back to the drawing board and come back when they had some basis for their testimony and were really ready to testify;
3. The NRC Staff was given 5 months to prepare a 58-page single-spaced document in an attempt to refute the Walsh/Doyle allegations;
4. CASE and the State of Texas were given 3-1/2 weeks following CASE's (but not the State's) first notification that hearings were to reconvene the week of April 4-8[2] in which to obtain documents necessary

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[1] See CASE's 3/15/83 Motion for Reconsideration Regarding Hearings on Walsh/Doyle Allegations; and 3/25/83 Motion by the State of Texas for Stay of Evidentiary Hearing.

[2] It should be noted that, although the State of Texas is a party to these proceedings, it was not contacted and was not included in the 3/8/83 conference call as indicated in the Board's 3/9/83 Memorandum and Order (Memorializing Conference Call).

to conduct a meaningful cross-examination of the NRC Staff, to analyze the detailed and very complex documents associated with the Walsh/Doyle allegations and the Staff's investigation of them, and to prepare cross-examination questions and exhibits for such cross-examination;

5. CASE was barred by the Licensing Board from engaging in any kind of formal discovery (although CASE advised the Board that we had already prepared Admissions between the time we first received the Staff's investigation report on February 24 and the time of the conference call on March 8);
6. CASE was told that instead we must all engage in "informal discovery" (which has never worked in our proceedings) and that everyone was to cooperate in supplying documents;
7. CASE informed the Licensing Board during the 3/28/83 conference call that the informal discovery process simply was not working, and that at that time (one week before the hearings were to resume) we had received only 17 documents from Applicants and 4 from the NRC Staff, with many others still outstanding (from a list initially filed on 3/11/83 and pared down to well under half on 3/16/83);
8. The Applicants have again refused to provide CASE with the design criteria for two of the three major suppliers of pipe supports at Comanche Peak -- the two suppliers of most concern in the Walsh/Doyle allegations[3] -- as CASE advised the Board in the 3/28/83 conference

[3] See CASE's 3/23/83 Motion to Compel Applicants to Provide Design Criteria and Other Related Information on Pipe Supports.

call;

9. On 3/29/83, Applicants contacted CASE to advise that they had (in response to the Board's request that they try to work something out regarding the design criteria without necessitating hearings on whether or not the design criteria are proprietary) made arrangements with ITT Grinnel and NPSI for CASE to run down to the plant site (some 160 miles round-trip) the next day or the following day (3/30/83 or 3/31/83) with another person, review one set of the criteria at a time, take notes during our review, obtain approval from each company if we wished to have copies made of any portion of the documents (which would have involved contacting specific individuals who would then determine whether or not a protective agreement was necessary, etc.). This was set out in Applicants' 3/29/83 letter to CASE which we received yesterday, 3/30/83;

10. CASE was unable to make arrangements on the spur of the moment for Mr. Walsh (the only available engineer we have) to accompany Mrs. Ellis to the plant site to look at the documents on 3/30/83 or 3/31/83 since he had just made arrangements with his new employer (since January) to take off next week to cross-examine during the hearings. Applicants would not agree to make the design criteria available to us on Saturday or to our suggestion that Mr. Walsh look at the criteria at the plant site on Monday, 4/4/83, while hearings were going on regarding the Atchison matter. We were therefore unable to make arrangements to view the criteria even on the very limited conditions imposed by the Applicants;

11. The NRC Staff did not file its response to the Board's directive to supply the identities of proposed witnesses and statements summarizing their proposed testimony to the Board in a timely manner. The Board's 3/9/83 Memorandum and Order (Memoralizing Conference Call) stated that this information was to be in the hands of the Board (and all parties, according to previous Board directives) by 3/30/83. The Staff did not file their response as ordered by the Board and CASE did not receive its copy until today, 3/31/83 (which in effect cut our remaining time before hearings were to resume by 20%, thereby adding one more item to the list of inequities which we have encountered on a continuing basis in these proceedings);

12. CASE still has not received all of the documents requested on our severely cut-down list; there are still 38 items outstanding as of this writing (8:45 P.M., 3/31/83). Further, these 38 items include 8 items which we had expected would be furnished by the NRC Staff which the Staff has advised us (in their 3/30/83 letter which we received today) that we should now make arrangements to get from the Applicants.

As is obvious from the preceding, all is not well in the Comanche Peak proceedings. The Board's insistence on "informal discovery" in what is obviously an adversarial proceeding (although Applicants and NRC Staff have taken the same position) has not worked in the past and is not working now. The Licensing Board's recent rulings are setting in concrete the error of due process violations in these proceedings.

Indeed, had it not been for the developments of the past two days (the Commission's ruling followed by the Board's postponing of hearings), CASE would have been in touch with the Commission directly on an emergency relief basis

regarding these matters. Recent developments regarding our inability to obtain documents necessary to conduct meaningfull participation in these proceedings, especially in regard to the very complex and vitally important Walsh/Doyle allegations, have given added weight to our previous motions and made a postponement of the hearings scheduled for next week a necessity in order for the NRC to maintain any semblance of fairness and due process. Had a postponement not occurred one way or another, an appeal by CASE would have been inevitable.

Applicants would have the Commission believe that a delay in the hearings at this point would force a delay of fuel loading and be detrimental and prejudicial to the Applicants. This simply is not true. No one (including the Applicants) really believes that the Applicants will be ready to load fuel at the end of September (which is their present prediction). (See especially NRC Staff's 3/3/83 Response to Board Order Requesting Information, in particular Attachment 2 and Enclosure 2.) The NRC Staff's estimate of the end of December 1983 (Enclosure 2) is far more likely, but becoming more unlikely all the time as the NRC finally (after continual allegations of construction problems, etc.) is beginning to admit that there are really major problems at the plant. (See especially Board Notification 83-29A, under cover letter of March 30, 1983, which CASE received today, especially Enclosure 2/ and 3, which indicate that there has been an "erosion of confidence" on the part of the NRC Staff that Comanche Peak is a safe plant.)

Thus, a delay at this time of the hearings would not delay fuel load. To the contrary, it would help alleviate the need for an appeal by CASE which would certainly follow should the hearings go forward next week.

The suggestion in Applicants' motion that hearings be held in camera demonstrates their desperation at this point to get the hearings over and done with

before the NRC discovers too much and before CASE is able to adequately prepare cross-examination questions of the NRC Staff which will prove that not only the Applicants but the NRC Staff itself is violating the commitments of the Applicants in their FSAR and construction permits, applicable industry codes and standards, NRC regulations, and even fundamental engineering principles.

CASE is very much concerned about whistleblowers. The position of CASE has been set forth already in our pleadings in regard to the appeal regarding the Atchison matter and related subjects. (See especially CASE's 12/21/82 and 1/11/83 pleadings.) We believe that the Commission itself should look into the matter of whistleblowers -- but true whistleblowers, not middle and upper management people who had a duty to report construction problems to begin with and who, in some instances, were the individuals accused of wrongdoing. We are very much concerned that a decision in the Atchison matter not be used as a precedent which could lead to the identification of future true whistleblowers under other circumstances. However, we are also very much concerned about the unwillingness or inability of the NRC Region IV office to adequately investigate the allegations of whistleblowers and are firmly convinced that this should also be fully and thoroughly investigated. Our efforts to get other internal departments of the NRC to investigate the Region IV office and its handling of allegations of whistleblowers have proved fruitless. There must be some method set up to determine whether or not the NRC's present efforts in our hearings are directed not at protecting whistleblowers but rather at their desire to cover their own inadequacies. We are hopeful that the Commission can arrive at a solution to this thorny problem.

Finally, it should be noted that, although we do not have a written order from the Licensing Board at this time, we were told verbally when the law clerk called us this morning that the Board's decision was due to the Commission's ruling and the fact that the State of Texas and CASE had both been asking for additional time as discussed herein.

For the reasons set forth herein, CASE opposes the Applicants' Motion of today and urges that the Commission deny Applicants' Motion.

Respectfully submitted,

Juanita Ellis

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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CERTIFICATE OF SERVICE

By my signature below, I hereby certify that true and correct copies of

CASE'S ANSWER IN OPPOSITION TO APPLICANTS' 3/31/83 MOTION FOR EXPEDITED RECONSIDERATION OF COMMISSION ORDER

have been sent to the names listed below this 31st day of March, 1983, by: Express Mail where indicated by * and First Class Mail elsewhere.

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