

12/14/82

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

'82 DEC 17 AIO:36

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 & SERVICE
and 50-446 INCH

CASE'S MOTION FOR
RECONSIDERATION OF BOARD ORDER

CASE (Citizens Association for Sound Energy), Intervenor herein, hereby files this, its Motion for Reconsideration of Board Order (Proposed Findings of Fact) dated December 7, 1982. In that Order (page 4), the Board directed the parties to file simultaneously their proposed findings of fact based on the present record and stated the Board's belief that the evidence adduced to the present time constitutes the great bulk of the evidentiary record in this proceeding.

Although CASE can appreciate that it might be helpful to the Board to have findings of fact prior to the normal time table set forth in 10 CFR 2.754, the time allowed by the Board ("...in the hands of the Board by January 14, 1983") is simply not sufficient to the task and further, that such a time table presents insurmountable problems to this Intervenor which will result in prejudice to CASE which cannot be remedied in these proceedings.

As the Board is aware, CASE is usually (with the exception of the June hearings) an all-volunteer, non-paid organization which must depend upon the assistance of its members who normally work full time. The writer, as primary representative of CASE in these proceedings, resigned her job in May to devote full time to these proceedings, but lacking the magical abilities of Houdini, will simply physically be unable to comply with the Board's proposed deadline in this instance. The severe restrictions of such deadline are even more difficult given the fact that the Christmas holidays fall right in the middle of the time allowed for this

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mammoth task of reviewing, analyzing, and committing to paper a coherent document, based on thousands of pages of transcript and hundreds of documents, which will be truly helpful to the Board in making its decision.

Complying with this deadline will present a problem and place unfair pressures upon CASE unlike any like problem or pressures applied to the Applicants (who have available whatever legal staff, assistants, and funds are necessary to accomplish the feat) or to the NRC Staff (which also has available the manpower and funds to do the job), in that it will be very difficult to get volunteer helpers during this holiday season (which the writer, having already spent her summer "vacation" in the operating license hearings, obviously will not be privileged to enjoy).

All other considerations aside, the amount of time allowed would be totally insufficient, given the extensive record of these proceedings. However, there are also other considerations.

The record in these proceedings will be short-changed one way or another by the Board's deadline.

CASE is presently in the process of preparing an answer to the NRC Staff's 11/17/82 Brief in Support of Its Exceptions to the Atomic Safety and Licensing Board's Order Denying Reconsideration of September 30, 1982. We expect this answer to contain information which is very important to these proceedings which the Appeal Board and the Licensing Board should have prior to any decisions regarding the matters in controversy. CASE believes it is vital that we be allowed sufficient time to properly prepare our response to this Brief, since the matters involved can have wide-spread and lasting repercussions which transcend these immediate proceedings. Apparently the NRC Staff shares CASE's view of this issue's importance, since the NRC's Executive Legal Director himself has now personally taken a hand on behalf of the Staff's position.

Since CASE's response must be in the hands of the Appeal Board by December 22, 1982, and since we will need all the time available to adequately complete our

response, the Board's 12/7/82 Order places us in a very untenable position. We must either immediately begin preparation of our response to the Board's Order and forego filing our response to the Staff's 11/17/82 Brief; or we must complete our response to the Staff's 11/17/82 Brief and shorten even further the already-inadequate amount of time available to respond to the Board's 12/7/82 Order. Either alternative is unfair, ill-advised, and will deprive the record in these proceedings of vitally important information necessary to an informed, just decision regarding major issues, as well as result in irreparable harm and prejudice to this Intervenor.

CASE had no reason to expect such a Board Order.

There is nothing in the record of these proceedings, in NRC regulations, or (as near as we have been able to ascertain) in previous NRC proceedings to indicate that an Order such as this would be made. Neither was there any discussion with the parties prior to the Board's Order during which the parties could have alerted the Board to potential problems or conflicting pleadings (such as CASE's response to the Staff's 11/17/82 Brief) which might have persuaded the Board to adopt a different time schedule. Had there been such discussion, the time of the Board and all parties would have been saved in the long run.

CASE's compliance with the Board's Order will result in an unfair advantage to the NRC Staff and corresponding disadvantage to CASE.

As the Board noted in its 12/7/82 Order, the record in these proceedings is still not complete in regard to the Walsh/Doyle allegations (and other matters). Yet the Board has ordered CASE to provide proposed findings of fact regarding those allegations, without benefit of the Staff's testimony and other findings. CASE submits that this is patently unfair to this Intervenor and will offer an unfair advantage to the NRC Staff and place it in the position of being a "super-party." It will provide the Staff with the benefit of CASE's proposed

Findings of Fact regarding the Walsh/Doyle allegations and afford the Staff the opportunity to file rebuttal testimony and/or analyses which can take into account arguments and findings by CASE which might not otherwise be covered by the Staff in such rebuttal testimony or analyses. Although the usual regulations in 10 CFR 2.754 regarding Proposed Findings and Conclusions allow the Staff ten additional days after the Intervenor's filing of proposed findings and conclusions in which to file the Staff's proposed findings and conclusions, nowhere (as far as we have been able to ascertain) is there a precedent for allowing such "super-party" status to the Staff as would be afforded by the Board's Order.

Further, it is not conducive to a sound record to have the parties file proposed findings based on an incomplete record in this regard, since it is impossible to know at this time what effect, if any, the NRC Staff's rebuttal testimony and/or analyses will have on such findings. This could needlessly increase and clutter the already massive record with conclusions which might well be changed following rebuttal testimony by, and cross-examination of, NRC Staff witnesses and/or NRC Staff analyses of the Walsh/Doyle allegations. CASE submits that it would be far preferable to await any filing of proposed findings of fact regarding the Walsh/Doyle allegations until the record is complete in this regard.

There is no need to rush the proposed findings of fact.

As pointed out by the Board in its September 22, 1982, Memorandum and Order (page 2, footnote 2):

"The Staff uses the Applicants' projected fuel loading date for purposes of scheduling but believes that a December, 1983 fuel loading date is more realistic (Tr. 5426)."

It is CASE's belief that the NRC's investigation of the Walsh/Doyle allegations and other problem areas will ultimately uncover problems which will necessitate extensive re-evaluation and back-fitting by the Applicants which will further

delay Applicants' completion of construction of Comanche Peak. There are already indications that previously unrecognized and unidentified problems exist in regard to vendor welds, which CASE will be forwarding to the Board soon (hopefully at the same time we file this instant pleading), and we fully expect that other areas will similarly be identified in the near future one way or another.

In any event, there is no pressing need to prematurely proceed at an unseemly and counterproductive pace with proposed findings of fact under the severe time table set forth by the Board. To do so at this time, with new information continuing to come to light which may change those findings of fact, will act to the detriment of the record in these proceedings, unduly burden this Intervenor, and in many instances be less than helpful to the Board at this point in time.

Given the more realistic assessment of a December 1983 fuel loading date already expected by the NRC Staff (not to mention potential delays necessitated by other problems as they come to light), there is simply no good reason for the Board to require the parties to deviate from the usual procedure of filing proposed findings and conclusions after the record is closed.

The record will be better served by the Board's allowing more time for filing proposed findings.

In these proceedings, CASE has not always been noted for its brevity. One of the reasons for this is that many times we have had to operate under severely restrictive time deadlines which made it difficult to cover the subjects at hand with the precision we would have preferred. Under the Board's time table for proposed findings of fact, we again will find ourselves in the untenable position of simply not having enough time to really do the job the way it ought to be done.

This problem is further exacerbated by the fact that CASE, which is the only party presenting an adverse case and thus bearing an onerous responsibility and burden, has never filed proposed findings of fact and conclusions of law before. Therefore, in addition to the obvious burdens under a situation such as this,

we are faced with the problem of having to research how to prepare the proposed findings correctly and in a manner most coherent and helpful to the Board in reaching its conclusions and decision in this case. Since we had no idea or indication that we would have to tackle this task prior to the closing of the record, this has not yet been done. Therefore, if we are forced to comply with the Board's present deadline, we will be necessarily forced to present to the Board proposed findings which will represent less than our best efforts if we were afforded more time. We cannot believe that this is the Board's desire in such a vitally important matter.

The Board's granting of CASE's instant Motion will not result in prejudice to any of the parties.

As indicated by the Board in its 12/7/82 Order, the NRC Staff presently is quite busy with several unresolved issues and uncompleted analyses of which the Board is already aware. And, as discussed earlier in this pleading (bottom of page 4, continued on page 5), there are other unresolved and uncompleted analyses which the Staff is working on of which the Board may not yet be aware. It would thus appear to CASE that the Staff has its hands quite full at the moment and should not be burdened additionally at this time with the premature filing of proposed findings of fact. Indeed, it would appear to CASE that a conclusion to these proceedings could more readily be reached if the Staff were allowed to devote its time to these unresolved and uncomplete matters rather than tying up Staff time with the filing of proposed findings of fact at this time.

While working on this instant pleading, CASE has received Applicants' 12/10/82 Motion for Reconsideration of Board Order. We note that Applicants support the Board's Order but request that they be allowed to reply to proposed findings submitted by other parties. CASE would oppose this, since it would be unnecessary

because "such provisional findings may be supplemented or modified as a result of further information when the record is closed" (Board Order, page 4). Also, this would further unnecessarily burden the record, since Applicants will presumably still have the opportunity to reply to proposed findings submitted by other parties under 10 CFR 2.754(a)(3) after the record is closed. Whatever the Board may rule in this regard, there is nothing to indicate that Applicants would be prejudiced by the Board's allowing additional time for the filing of proposed findings of fact, and CASE submits that no prejudice would result.

MOTION FOR RECONSIDERATION

For the reasons previously stated herein, CASE moves that the Board reconsider its December 7, 1982, Order regarding Proposed Findings of Fact, and that the Board:

(1) Adhere to the usual schedule for Proposed Findings and Conclusions, after the close of the record, as set forth in 10 CFR 2.754.

If the Board is determined to require the parties to file proposed findings of fact based on the present record, we move that the Board:

(2) Exclude from its Order findings of fact regarding the Walsh/Doyle allegations until after the record is closed;

(3) Grant CASE (and the other parties) an additional 15 days to file proposed findings of fact on the present record excluding the Walsh/Doyle allegations (with proposed findings to be in the hands of the Board by January 31, 1983);

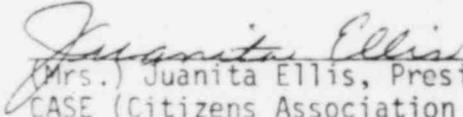
(4) Require simultaneous filings of proposed findings of fact by all parties without any party being afforded the opportunity at this time to respond to other parties' pleadings;

If the Board is determined to require the parties to file proposed findings of fact based on the present record including the Walsh/Doyle allegations, we move that the Board:

(5) Grant the parties an additional 30 days to file proposed findings regarding the Walsh/Doyle allegations beyond the time for filing proposed findings regarding other matters. This additional time is necessary due to the extensive record in this regard and the complexity of the matters involved.

Since the Applicants and the NRC Staff are taking the same basic position in favor of the Board's granting of an operating license for Comanche Peak, it is reasonable to assume that, given the funds and personnel available to both Applicants and Staff, their position on all matters will be well covered between them. This is not the case, however, with the adversarial position; CASE is the only party presenting an adverse case. We urge that the Board grant CASE's Motion (preferably item (1) preceding) so that the record will be complete and allow the Board to make a fair and reasonable decision based on a sound record.

Respectfully submitted,



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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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'82 DEC 17 A10:39

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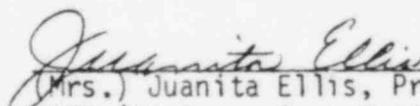
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Docket Nos. 50-445- SECRETARY
and 50-446- ENGINEERING & SERVICE
BRANCH

CERTIFICATE OF SERVICE

By my signature below, I hereby certify that true and correct copies of
CASE's 12/14/82 Motion for Reconsideration of Board Order (Proposed Findings of
Fact)
have been sent to the names listed below this 14th day of December, 1982, by:
Express Mail where indicated by * and First Class Mail elsewhere.

- | | |
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(Mrs.) Juanita Ellis, President
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