

2/3/83

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

SUPPLEMENT TO
CASE'S MOTION FOR
PROTECTIVE ORDERS FOR
ROY COMBS, LESTER SMITH, AND FREDDY RAY HARRELL

On 1/24/83, CASE (Citizens Association for Sound Energy), Intervenor herein, filed its Motion for Protective Orders for Roy Combs, Lester Smith, and Freddy Ray Harrell. We offer this instant pleading as supplementary information to that Motion.

Lester Smith's Interrogation by Applicants

In CASE's 1/24/83 Motion, we expressed our concern that "CASE is very much concerned that the same thing which happened to Mr. Combs may also happen to Messrs. Smith and Harrell and other future whistleblower/witnesses," and requested that "any future interrogation or discussion of these individuals' concerns with Applicants be done only under the provisions of discovery as set forth by the Board in these proceedings, and that any future interrogation or discussion of these individuals' concerns with the NRC Staff be done only with CASE present," among other things.¹

This is to advise that on 2/1/83, Mr. Smith was called into the office

¹ See CASE's 1/24/83 Motion, pages 3 and 4.

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of Applicants' Antonio Vega and interrogated regarding his affidavit. Mr. Vega taped and took notes of the conversation. As in the case of Mr. Combs, Mr. Smith's interrogation took place without either legal representation or representation by CASE. Mr. Smith had attempted to contact us Tuesday evening (2/1/83) but was unable to reach us by phone; he was able to reach us last night (2/2/83).

Mr. Smith stated that Mr. Vega questioned him about Mr. Smith's affidavit, which was attached to CASE's 1/24/83 Motion; that Mr. Smith felt that Mr. Vega was trying to trip him up on what he had stated in the affidavit; that Mr. Smith told him that he (Mr. Smith) had gone to his general foreman twice and told him about the welds, yet Mr. Vega turned around just a few minutes later and wanted to know why Mr. Smith hadn't gone to his supervisor, Mr. Smith told Mr. Vega that he had just got through telling him he went to him twice; Mr. Vega also asked who had been there when Mr. Smith made his affidavit (Mr. Smith stated he did not think that concerned Mr. Vega); Mr. Vega asked if Mr. Smith had been promised anything by CASE to make the affidavit; (Mr. Smith stated that some of the men at the plant have teasingly told him they are going to bring him a T-shirt that says "endangered species"); Mr. Vega said he wondered why the people didn't come to them and tell them, to which Mr. Smith replied that nobody had any confidence in them and that the people believed that if they did that they would lose their job (since the people have to go through their chain of command and it would probably never get to the higher-ups to start with); Mr. Vega wanted to know if any of the ex-workers at the plant had called Mr. Smith; there were two workers' names mentioned during their discussion who can verify about the welds being made (CASE now has these two names and will be monitoring to be sure there are no reprisals against

them, such as their being fired; Mr. Vega told Mr. Smith he would be looking into the matter of the welds); Mr. Vega told Mr. Smith to tell the hands to come to him (Mr. Vega) with their concerns; Mr. Vega asked Mr. Smith if he knew anything else, to which Mr. Smith replied that at that time he did not remember any; Mr. Vega stated that Mr. Smith was obligated or supposed to report anything he knew about (Mr. Smith repeated that he had reported it to his supervisor twice and it didn't do any good and that the supervisor told him to keep his mouth shut); Mr. Vega told Mr. Smith toward the end of the conversation that if he was harassed in any way over this to let him (Mr. Vega) know, that they would not tolerate that -- Mr. Smith told him that was fine, we'll wait and see how this turns out, and that he (Mr. Smith) was sure that if he (Mr. Vega) showed that they were going to do something instead of trying to cover it up, the hands might come to them, but that they weren't going to under the conditions they currently have.

Mr. Smith stated that the following day (2/2/83), they brought a memorandum around for the employees to sign (which Mr. Smith's foreman brought right to him and the other workers) which stated if anyone knew of anything down there at the plant that was wrong pertaining to the work that you were expected to report it to your supervisor; this was put out by the Project Manager, Doug Frankum. CASE believes that this is an effort to intimidate the workers and to dissuade them from contacting or talking with CASE or the NRC, since there has been no protection in the past for workers who (having contacted their immediate superiors and gone through the chain of command and received no satisfaction) went to the NRC or higher utility officials.

Mr. Vega also asked during the interrogation whether Mr. Smith had found any of the NRC Form 3 notices posted. Mr. Smith advised him that he had found

a copy on the time office bulletin board and that there was no way that anyone could see it when you go in and out of work unless you make a direct trip over to the bulletin board. Mr. Smith advises that the other workers believe he is going to get fired. CASE advised Mr. Smith that we would contact the Board today and let them know what is going on and request their assistance and that they expedite a ruling on CASE's 1/24/83 Motion so that Mr. Smith and other prospective whistleblower/witnesses will know where they stand and whether or not they will have any protection if they come forward.

We urge that the Licensing Board expedite their ruling as much as possible in this matter. Mr. Harrell has not yet been called in to be interrogated by the Applicants, but it is reasonable to assume that he will be in the very near future based on Applicants' past responses to CASE's pleadings attaching workers' affidavits.

Affidavit of Robert L. Messerly

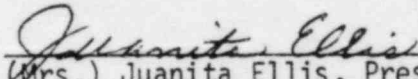
We are attaching an affidavit by Robert L. Messerly, a former Brown & Root foreman at Comanche Peak. Included in his affidavit is what we believe is significant new information about the polar crane's being used to force pipe, including 32" main steam line pipe, into position and about the use of "rebar eaters" to cut through concrete and rebar without proper approval or documentation. CASE will be requesting that Mr. Messerly be allowed to testify².

² As CASE requested in our 1/24/83 Motion, we move that the Board "Rule that no discovery be had by any party until at least after the filing of the preliminary Findings of Fact which must be in the hands of the Board by February 25, and until such time as the Board shall set forth." We are certainly not complaining about potential whistleblower/witnesses coming to us, but the fact is that we can only do so much in a given period of time. We have not yet had adequate time to thoroughly discuss the concerns of such individuals with them, and feel that it would be premature to try to present more than a brief summary/affidavit at this time.

For the reasons contained herein, CASE hereby requests that the Board consider this instant pleading in conjunction with our 1/24/83 Motion for Protective Orders for Roy Combs, Lester Smith, and Freddy Ray Harrell.

We further request that the Board expedite its ruling on our 1/24/83 Motion as much as possible.

Respectfully submitted,



(Mrs.) Juanita Ellis, President
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of

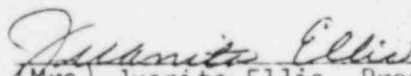
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CERTIFICATE OF SERVICE

By my signature below, I hereby certify that true and correct copies of
SUPPLEMENT TO CASE'S MOTION FOR PROTECTIVE ORDERS FOR ROY COMBS, LESTER SMITH,
AND FREDDY RAY HARRELL

have been sent to the names listed below this 3rd day of February, 1983
by: Express Mail where indicated by * and First Class Mail elsewhere.

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