UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before Administrative Judges:

Peter B. Bloch, Chairman
Dr. Kenneth A. McCollom
Dr. Walter H. Jordan

In the Matter of

Docket Nos. 50-445
50-446

TEXAS UTILITIES GENERATING COMPANY, et al.

(Application for Operating License)

(Comanche Peak Steam Electric Station, Units 1 and 2)

October 25, 1983

MEMORANDUM AND ORDER
(Reconsideration of Order of September 23, 1983)

[The parties are prohibited from informing anyone about the existence or content of this Memorandum and Order prior to 12 noon Eastern Daylight Savings Time, October 25.]

The Staff of the Nuclear Regulatory Commission (staff) and Texas Utilities Generating Company, et al. (applicant) have moved for reconsideration of our Order of September 23, 1983[1] on the ground that we have committed clear errors.[2]

Both staff and applicant request that we discontinue our informal pursuit of the Emergency Planning contention, arguing that we either

---

1 LBP-83-60, 17 NRC___(September 23, 1983) (challenged order).

2 Both motions were filed on October 6, 1983, pursuant to our Order authorizing such motions for "clear errors of fact or law."

D502

should declare a sua sponte issue or should abandon our interest. In this instance, we conclude that they are correct. Although Boards may, in our opinion, make inquiries designed to inform them whether or not to pursue sua sponte issues, this authority is of limited scope. When the Board's concern substantially burdens the parties, it must declare a sua sponte issue or abandon its concern.[3] Consequently, we requested limited oral argument from the parties to provide us with a basis for deciding whether or not to declare a sua sponte issue. Then, at the conclusion of oral argument, we determined that the review to be conducted by the Federal Emergency Management Agency is of sufficient scope so that we will not now declare emergency planning to be a sua sponte issue.[4]

With respect to other issues, only applicant objects. In each instance we have reviewed its objections. In some cases, we recognize that we have made an error in our analysis of the record.

I. Board Involvement in Defaulted Issues

We are not persuaded by applicant's arguments on this issue. Within the scope of an admitted contention, the Board is not just an

---

3 Texas Utilities Generating Company (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-81-36, 14 NRC 1111 (1981).

4 Tr. 8905-06, 8909. The Board is satisfied with FEMA's response, on Tr. 8909, concerning its review of the training of the county judge. Note that at Tr. 8905, line 7, the word "plant" should be changed to "Staff".

umpire calling balls and strikes. We must assure that relevant and material evidence bearing on the admitted contention is sufficiently well developed so that we can prepare a reasoned decision resolving the issues before us.[5] In this case, we have sworn testimony concerning an admitted contention about quality assurance deficiencies; the Board must be satisfied that the allegations in this testimony have been adequately answered. Furthermore, in light of our conclusion that we are properly concerned about the completeness of the record, there is no reason that we are required to bar intervenor from helping us to pursue our interest.[6]

II. Protective Coatings

In general, we do not find that applicant's arguments demonstrate clear error. Applicant merely has another view of the evidence. Our reasons for concern about the "nitpicking" meeting are expressed adequately in the challenged order.[7] We did, however, err in reaching a conclusion about the effect of the nitpicking meeting on the workers.

---

5 See Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 751-52; South Carolina Electric and Gas Company (Virgil C. Summer Nuclear Station, Unit 1), ALAB-663, 14 NRC 1140, 1163 (1981). We consider this such a basic principle governing our proceedings, that we did not think it necessary to provide these citations in our previous opinion.

6 Challenged Order, 17 NRC ____ at ____, slip op. at 10-11.

7 Id. at 13-15.

There is no evidence from which we can conclude that the nitpicking meeting adversely affected the performance of individual inspectors.

III. Harassment of Quality Assurance Inspectors

Applicant is correct in pointing out our clear error in including that "locking up" of inspectors among the list of "pranks". It is clear from the context of the remark that the allegation was limited to Mr. Hamilton's statement that whenever a quality assurance inspector found a deficiency, the craft person involved would request a second inspector. Thus, the inspector's time would be used inefficiently or, in the words of the witness, the inspector would be "locked up."[8] This was not a prank or harassment. However, this unrebutted evidence clarifies the relationship between the craft personnel and quality inspection personnel and helps to explain the context in which "pranks" should be interpreted.

Applicant also has persuaded us that there is ambiguity in NRC Exhibit 206 at VII-4 concerning the extent to which applicant's management (and the affiliated management of Brown & Root) has taken aggressive action to counteract inspector intimidation. Since this is the subject of an ongoing investigation, we rescind our previous finding and

---

8 CASE Exhibit 653 at 37-38.

will await further testimony if we should find it necessary to draw a conclusion on this matter.[9]

IV. Dismissal of Mr. Hamilton

Applicant's first major point, that the Board raised the question of the motivations for firing Mr. Hamilton by itself, is patently incorrect. Applicant tells us, without record citations, that the issues that were framed and litigated did not include this question. However, the testimony of Mr. Hamilton includes allegations that others were engaged in the same conduct and were not fired and that applicant's normal procedures for firing people were not followed.[10]

Applicant has, however, brought two factual issues more clearly into focus. Although it could have provided us with a full factual discussion in its Objections to our Proposed Decision, we believe that the importance of the matter requires us to extend applicant this additional chance to clarify our thinking.

Applicant argues that all the individuals who were dismissed for refusing to work in an allegedly unsafe area were aware that they would

---

9 In a Memorandum issued today, the Board has established a procedure to verify the adequacy of the construction of Comanche Peak apart from the adequacy of the quality assurance program. The Board may accept testimony on the current state of Comanche Peak in lieu of further evidence concerning quality assurance matters.

10 See Applicants' Motion for Reconsideration, October 6, 1983 at 22-31 for record citations in which these matters were discussed.

be subject to termination.[11] This is correct. It also argues that the evidence demonstrates that one of the individuals who did not "walk the rail" was never asked to do so.[12] This also is correct.

However, applicant incorrectly argues that the policy of firing people for refusing to do tasks was "consistently applied. The evidence shows that one person who was available to "walk the rail" was never asked to do so. There is no explanation in the record of why this should occur. There also is testimony that one of the individuals on the night shift refused to conduct an inspection and was not fired.[13] Although this is weak evidence, being hearsay, it is nevertheless evidence and it was within applicant's ability to come forward to rebut it or to provide reasons for being unable to obtain rebuttal testimony.

Applicant misapprehends our conclusions on safety. We do not find that Mr. Hamilton's safety fears were correct. The Occupational Health and Safety Administration (OSHA) found otherwise; and other of applicant's employees worked in the same area. However, applicant has not explained why it did not ask one of the day-shift workers to perform the work; nor has applicant explained why it did not fire one of the night-shift workers who did not perform the work. Furthermore, the

---

11 CASE Exhibit 653 at 8.

12 CASE Exhibit 653 at 10.

13 Applicant's Motion for Reconsideration at 23 does not dispute this state of the record.

description of the area makes it clear that Mr. Hamilton had real fears, whether or not an objective determination would find that the area was sufficiently safe.

We do not consider changes in personnel or the passage of time to be reasons to disregard Mr. Hamilton's previous employment history in reaching a conclusion about why he was fired. The "nit-picking" meeting, the removal of the authority to fire[14] and applicant's willingness to ignore complaints about "pranks" all are background relevant to Mr. Hamilton's dismissal. The fact that Mr. Hamilton had been assigned to a new supervisor just three days before his dismissal[15] also is relevant and unexplained, although we did not give this fact sufficient weight until we reviewed the record in response to the Motion for Reconsideration. Together, we consider that a preponderance of the evidence shows that Mr. Hamilton's aggressive concern for quality assurance was part of the reason he was discharged.[16]

---

14 We reject applicant's unproven suggestion that an applicant opposed to quality assurance necessarily would rejoice over the firing of quality assurance personnel. See Applicant's Motion for Reconsideration at 30. Reductions in force would not necessarily result from the firing of non-conscientious quality assurance people. Unless quality assurance work is completed, particularly for hold points, the pace of the craft's work may be slowed. Furthermore, the NRC staff is alert to appropriate staffing levels and reductions in force could invite unwanted regulatory attention.

15 CASE Exhibit 653 at 8.

16 That Mr. Hamilton was not instructed to fire people for identifying deficiencies (CASE Exhibit 653 at 46) does not persuade us that

(Footnote Continued)

V. Near White Blast

Applicant has found an error in the Board's findings on this point. The testimony was that Mr. Brandt, Mr. Foote and Mr. Cummings changed procedures for quality procedures in September or October of 1981.[17] Consequently the challenged order was incorrect in finding that the procedures were in effect during an "extended" period of time.

However, those procedures, which apparently were defective, were in effect for about three months during the period when Mr. Hamilton worked for applicant. Applicant's reliance on CCP-30, Revision 10, does not demonstrate otherwise.

We will subsequently consider whether applicant's follow-up inspection of protective coatings provides adequate assurance concerning the safety of coatings that were installed during the period of deficiency.

VI. Westinghouse Coatings

Testimony of a trained quality assurance inspector concerning the appearance of paint and its inability to pass an adhesion test, is

---

(Footnote Continued)
less direct means to the same end were not attempted. We note that Mr. Hamilton's allegations about Daniel Hash (Id. at 20) and about the careless attitude of Richard Dendy (Id. at 22-23) have never been answered.

17 CASE Exhibit 653 at 18.

adequate to raise a prima facie se. There needs to be some follow-up inspection to ascertain the truth and generality of this testimony. Mr. Hamilton's failure to write an NCR on this item is not dispositive since it apparently was not within the scope of Mr. Hamilton's responsibilities. Based on the Hamilton testimony and our findings about the Atchison firing, we conclude that Mr. Hamilton thought that such an NCR would not have been welcome.

VII. Demeaning of a Person's Character

Applicant has objected[18] to language in our opinion concerning its treatment of "vague" complaints and of complaints made by persons of questionable credibility.[19] However, applicant incorrectly interpreted these remarks to relate to Mr. Hamilton. They do not.

In the referenced section of our opinion, we were critical of applicant for its incomplete responses. We were critical of applicant because it did not respond adequately to what it described as the "vague" allegation of Mr. Hamilton. In addition, we noted that at times applicant has demeaned the character of a witness --here we refer primarily to Mr. Stiner-- and has refused to answer the allegation. This we consider incorrect.

We do not find any error in this passage of our opinion.

---

18 Footnote 21 to its motion.

19 Challenged Opinion at 23.

VIII. Plug Welds

Here applicant argues, without any record citation either in the motion for reconsideration or in the applicant's Objections, that the welds in question were cosmetic. This undocumented allegation is inconsistent with applicant's previous position that it inspected each of the plug welds after they were completed.[20] It is also inconsistent with Mrs. Stiner's testimony expressing concern that there was no hold point on plug welds.[21] Her testimony, as a qualified welder, indicates her belief that these welds were not merely cosmetic and that they required inspection prior to the completion of the welds.

If applicant can now demonstrate, on a weld-by-weld basis, that individual "plug" welds are cosmetic or that an engineering analysis demonstrates that affected pipe supports meet code standards regardless of the strength of the welds, it may submit evidence to that effect. Otherwise, applicant may propose appropriate remedial action.

IX. Downhill Welding

Applicant objects primarily on the ground that we did not give enough weight to Mr. Brandt's testimony. That is hardly clear error. However, we have read and considered applicant's arguments. We are not persuaded. We do not have sufficient evidence to conclude, by a

---

20 Applicant's Objections, August 27, 1983 at 47-48.

21 CASE Exhibit 667 at 30.

preponderance of the evidence, that there are no improper downhill welds at Comanche Peak.

Mr. Brandt's position as Non-ASME QA/QC Supervisor gives him the responsibility of knowing whether downhill welds have been made in violation of procedures. However, Mr. Brandt is just one person supervising many. We are not persuaded of the sufficiency of his testimony without knowing the extent of his personal observations and the nature of his attempts to ascertain the accuracy of the Stiner testimony. In this regard, we reiterate our concern that Mr. Brandt is an employee of the applicant and that we are properly applying established principles of evidence in noting that he has an interest that affects the credibility of his testimony.

X. Weld Rod Control and Unstated Management Directive

There is no clear error alleged with respect to our findings on weld rod control or on an unstated management directive. We consider applicant's comments to be in the nature of a differing view of the evidence.

XI. Material Misstatement

Applicant alleges that the Board made an error of fact or law concerning its findings that Applicant's FSAR contains a "material false

statement" about rock overbreak. Although our use of applicant's definition of misrepresentation[22] to analyze the cited FSAR section does not correct our initial impression about this issue, we are persuaded that the FSAR text and accompanying figures are sufficiently thorough that there is no ground for questioning applicant's "seriousness" in pursuing its application in a thorough and honest fashion. Hence, we consider any possible misrepresentation to be a technical matter that has no influence on the license application and is therefore beyond our jurisdiction.

XII. The "Feeling" at the Hearing

Applicant argues in one instance that there was a clear feeling at the Hearing that it had won on a particular point. It states that it was apparently deprived of this point because of the change in the Board.

We do not know how to evaluate this claim. Many a time in a hearing, a judge thinks he knows the way the evidence points. Then it comes time to deliberate upon the facts, considering the findings of the parties. At that time, previous bets are off.

Whatever may have been the feeling at the hearing, this Board has deliberated on the facts of record and has done its best to resolve the issues before it in a fair, objective manner. We do not consider it

---

22 Applicant's Motion for Reconsideration at 45.

relevant to speculate about whether the previous Board members would have agreed.

O R D E R

For all the foregoing reasons and based on consideration of the entire record in this matter, it is this 25th day of October 1983

ORDERED:

That Texas Utilities Generating Company, et al.'s Motion for Reconsideration is denied, except to the extent that it is granted within the text of the accompanying memorandum. In particular, the Board has determined that it will not pursue the emergency planning issue.

Applicant shall: (1) conduct an inspection of a sample of Westinghouse coatings and report the result of the inspection to the Board;(2) submit further evidence concerning plug welds or shall propose an appropriate response to the Board's concerns, and (3) submit further testimony or proposals in response to other adverse findings in our September 23, 1983 Memorandum and Order.

FOR THE
ATOMIC SAFETY AND LICENSING BOARD

Peter B. Bloch

Peter B. Bloch, Chairman
ADMINISTRATIVE JUDGE

Walter H. Jordan by PBB

Walter H. Jordan
ADMINISTRATIVE JUDGE

Kenneth A. McCollom by PBB

Kenneth A. McCollom
ADMINISTRATIVE JUDGE

Bethesda, Maryland