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July 18, 1984

Peter B. Bloch, Esq.
Chairman, Atomic Safety and
Licensing Appeal Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Re: Texas Utilities Electric Company, et al.
(Comanche Peak Steam Electric Station,
Units 1 and 2; Docket Nos. 50-445 and 50-446) OL

Dear Chairman Bloch:

In Mr. Roisman's July 7 letter to the Board, he makes a number of serious, albeit inaccurate, charges regarding the current status of requested discovery. We deal point-by-point with these unfounded charges below. More disturbing to us, however, are the circumstances surrounding that letter.

First, before writing the Board, Mr. Roisman never discussed with us the charges he now makes nor did he give us an opportunity to correct what may have been his misimpressions. Second, although we met daily with Mr. Roisman between the time he wrote the letter in question and our receipt of a copy of it a week later -- on July 14 -- Mr. Roisman made no mention of what he now seems to characterize as grave concerns. On the contrary, during the course of the taking of depositions between July 9 and July 13, Mr. Roisman twice indicated to Applicants' counsel that he felt that whatever discovery differences there were between us, they were of no great moment.

Item 1

A measure of the present charges is CASE's item 1 in which it is claimed that Intervenor has been severely disadvantaged by the July 6 delivery in Washington of an otherwise unidentified "2 inch stack" of material. What is overlooked is that the documents in question were previously reviewed by CASE representataives in Applicants' Dallas office. The asserted late delivery was merely the subsequent transmission of material designated by CASE for copying after review of Applicants' files.

Item 2

Equally without merit are the claims made in item 2 with respect to certain exit interviews. We wrote CASE's counsel, Mr. Roisman, as long ago as June 20, inviting him to review those documents at our offices (see copy attached). Some two days later, when CASE representatives were at our offices, Mr. Roisman was once again invited to review the exit interview files. Mr. Roisman expressed no interest at that time in doing so. But now, Intervenors claim extreme prejudice from the asserted untimely delivery of the exit iterviews.

Turning to the materials we provided to CASE in Glen Rose on July 6, those consisted of two items: An investigation into Darlene St' er's allegations of harassment and intimidation; and, a summary of hot line use and disposition. Intervenor makes no specific claim of any prejudice due to the time of production of either document. Moreover, those hot line summaries were in fact used by CASE in deposing Mr. Clements on July 10, 1984. CASE was likewise aware of the investigation into Mrs. Stiner's allegations well before her deposition was taken. In brief, it is not at all apparent to us how the timing of production of either document could have prejudiced intervenor in any manner.

Granted, Applicants have, during the course of preparing witnesses for depositions, discovered certain other documents which might arguably be responsive to CASE's data request. But, where this has occurred, we have provided copies to CASE in good faith, and have offered to recall witnesses to the extent CASE can show prejudice.

Further, in order to reassure ourselves that our initial document production was fully responsive, we are now conducting a review of our earlier document search. If significant new information is discovered, we of course will provide CASE the opportunity to recall witnesses. We apprised CASE in mid-week of all this, and Mr. Roisman did not advise us of his July 7 letter at that time.

Item 3

CASE's complaint in item 3 that some documents have had the names of individuals deleted is similarly without merit. Such deletion is precisely in accord with the procedures endorsed by the Board during the conference held with respect to confidentiality. We have fully complied with the Board's Order as is indicated in our report to the Board with respect to our efforts to persuade witnesses to waive confidentiality. Where CASE desired the names of those continuing to request confidentiality, we had understood that they would so advise us

and steps would be taken, such as a protective order, to accommodate the interests involved. CASE has taken no such action.

Item 4

With respect to item four, CASE's assertions that Applicants' search of the thousands of documents maintained by TUGCO and Brown & Root should also have included other contractors or subcontractors will not bear scrutiny. Contractor or subcontractor personnel (other than Brown & Root) performing QC functions at Comanche Peak over which Applicants have direct organizational authority, do so for the TUGCO site quality assurance organization and are integrated into that organization. Relevant information with respect to these personnel would be maintained within the TUGCO system, the files of which Applicants reviewed in response to CASE's request. Applicants produced such material irrespective of the company by which such persons were employed. To the extent that vendors, contractors and subcontractors perform quality-related work to be supplied to TUGCO, they perform the necessary construction, fabrication and quality assurance/quality control functions within the auspices of their respective organizations. Applicants have no direct organizational authority over these organizations. To fulfill their ultimate responsibility for the activities performed pursuant to the license, Applicants, however, do conduct audits of those organizations in accordance with the requirements of Appendix B. These audits have also been made available to CASE for examination throughout the proceeding. In short, Applicants' examination of materials for the instant document request was entirely reasonable and appropriate.

Item 5

The claims regarding the 1979 questionnaire forms that are the basis of CASE's item 5 are again charges that will not bear examination. These questionnaire forms were made available for CASE's review during the week of June 15, and CASE was advised of their existence prior to June 15. These documents were utilized by CASE during the depositions last week (see, for example, deposition of Mr. Chapman). The only objection made by counsel for CASE with respect to those documents was a claim of inability to cross-examine because he did not have the names associated with each individual interview. The names were not requested, however, until after the deposition began. Moreover, the transcript of Mr. Chapman's deposition makes clear that having the names of the persons who had been interviewed would not have assisted cross-examination. (See, e.g., Chapman dep., Tr. 35,723-30).

Item 6

Finally, as to the alleged restricted use of documents provided in the rate case documents which in item 6 CASE claims are pertinent to harassment and intimidation, Mrs. Ellis and Mr. Reynolds reached agreement that they could in fact be used during the depositions to the extent they were relevant and they were so utilized. For example, several of these documents were used in the cross-examination of Mr. Clements. Use of these documents, however, revealed, contrary to CASE's claim, that these documents do not bear at all on the intimidation issue. (See Clements dep. Tr. 40,161 et seq.).

* * * * *

In sum, CASE's July 7 charge of discovery misconduct appears wholly manufactured and designed to create a controversy where none need or should exist. As CASE indicates, both parties have encountered difficulties and have not met previously established schedules in all respects due to the extraordinary circumstances under which we are all operating. Considering that CASE's nominal discovery burdens do not bear comparison with Applicants' obligation to search through thousands of documents, CASE is hardly in a position to complain. The fact that CASE could not discharge even its minimal burden in a timely fashion ought to put its self-righteous and inaccurate claims in proper perspective. We are quite simply surprised and chagrined that we were allowed to operate throughout last week without knowledge of Mr. Roisman's letter and CASE's inaccurate charges.

In view of the foregoing, it is plain there is no basis for CASE's demand for a procedure to "compensate" for discovery iniquities. Moreover, what CASE proposes is not compensation, but an invitation to abandon all evidentiary safeguards and turn the hearing record into one founded on hearsay, rumor and innuendo.

This is not to say that CASE should be denied a fair opportunity to offer documents in evidence. But such an offer should be limited, as it is before other tribunals in other proceedings, solely for the purpose of showing that a statement or report has been made, not for the truth of the matter so recorded. If CASE wishes to prove that an event reported in a document did in fact occur, it should and must do so, as in other forums, through the presentation of competent witnesses and other recognized affirmative proofs.

We believe the facts revealed by this letter fully substantiate our view that no Board action is necessary regarding discovery. However, should the Board wish to inquire further into this matter, we would welcome an on-the-record conference call.

Very truly yours,

Bruce L. Downey

cc: Anthony Roisman (by hand delivery)
Service List

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BY MESSENGER

June 20, 1984

Anthony Z. Roisman, Esq.
Trial Lawyers for Public Justice
2000 P Street, N.W.
Suite 611
Washington, D.C. 20036

Re: Texas Utilities Generating Company;
NRC Docket Nos. 50-445-2 and 50-446-2

Dear Mr. Roisman:

In response to CASE's data requests relating to the issue of intimidation, I have caused a number of documents to be collected for your review at the Dallas office of TUGCO.

A number of documents have been previously provided to you. In addition, I have available in our offices here in Washington, a set of the exit interview files for your review. Since almost all of this file was maintained at the Comanche Peak site, it has been sent to our office.

I would estimate that the documents for your review measure approximately two feet in thickness. It is not clear that all of these documents, or even the greater part of them, are responsive to your request, but we have erred on the side of inclusion in order to avoid any dispute. Included are documents obtained from a review of Board of Director minutes, the Dallas QA office, corporate security office, the ombudsman and hotline files and various corporate executives, as well as the personnel files of those named in my letter of May 10, 1984, to Ms. Ellis and those named in Ms. Garde's letter of June 4. Absence of documents in any of these files does not mean that the subject was not discussed orally.

You may arrange to review the material by calling me or Ms. Susan Spencer at 214-979-8861. If you wish to copy any documents after your review, copies will be provided at the price consistently charged to CASE ($.15 per page).

With respect to documents provided in the course of the now-pending rate case proceeding, I have not attempted to review the massive material which has been provided in that case. It is, however, not my intention to prevent use in this proceeding of relevant documents provided in that rate case. I believe that your review of documents in response to this data request should eliminate this problem entirely. If it does not, please advise me as I am sure we can resolve the matter.

With respect to names of persons who have been promised confidentiality, we are well along in contacting them and I believe we have been fairly successful to date in persuading persons to allow their names to be used. I am aware of at least one instance, however, where it appears that the whereabouts of the person in question is unknown and we are writing to the last known address. I suspect that when you see the context of this person's statement, you will have no need to pursue the matter.

Am I to understand that Ms. Garde's letter of June 15 constitutes your response to our request for ". . . a summary of testimony that CASE intends to illicit from [each witness], including a list of facts that CASE intends to establish through the persons' testimony."? If so, the response is clearly inadequate. If you really believe, that the time for surprise is over, then you will provide us an adequate response immediately since our witnesses are to be deposed beginning July 2. I believe our on-the-record discussion at last week's prehearing conference makes clear that you are required to specify this information in advance with respect to each of your witnesses. It is not our obligation to ferret out such information from various sources and make inferences as to the facts that your witnesses will testify to. Previously supplied statements (for example, limited appearance statements) are not evidence in this case and hardly provide the type of detail necessary for our witnesses to adequately refresh their memories in advance of depositions.

A number of TU witnesses you indicate CASE wishes to depose may have planned vacations in early July. I will contact you shortly to propose a planned schedule for deposing these witnesses commencing on July 2.

Very truly yours,

Leonard W. Belter

Leonard W. Belter

LWB/jf

cc: Service list