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RELATED CORRESPONDENCE

C A S E

(CITIZENS ASSN. FOR SOUND ENERGY)

1426 S. Polk
Dallas, Texas 75224

214/946-9446

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USNRC

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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

June 7, 1984

Mr. Michael D. Spence
President
Texas Utilities Generating Company
Skyway Tower
400 North Olive Street, L.B. 81
Dallas, Texas 75201

Dear Mr. Spence:

Subject: In the Matter of
Texas Utilities Generating Company, et al
Comanche Peak Steam Electric Station,
Units 1 and 2
Docket Nos. 50-445 and 50-446 OL

Barriers to Settlement
On Design and Design QA Issues

There are some recent developments, precipitated by Applicants' actions, which are undermining my efforts at negotiating a settlement on the design and design QA issues. I cannot emphasize too much how important I believe your prompt and affirmative action on these matters is to any possible settlement. Otherwise, I am afraid that it may be impossible to arrive at any settlement with Applicants because CASE's people (including CASE Board members and Messrs. Walsh and Doyle as well) simply will feel that they are unable to trust Applicants under any conditions.

There are three primary areas with which we are concerned:

1. The threat by Applicants that CASE may be sued if we use any information from the TUEC rate hearings in any manner other than the rate hearings (including supplying information to the Nuclear Regulatory Commission Staff, investigators, inspectors, and the Atomic Safety and Licensing Board).

2. The rubber-stamped marking by Applicants of a non-proprietary document as being:

FOR LAWYER'S ATTENTION ONLY
NOT DISCOVERABLE

3. Applicants' lack of cooperation in providing full disclosure of documents on discovery regarding the intimidation issue in the licensing hearings for Comanche Peak before the Atomic Safety and Licensing Board of the U. S. Nuclear Regulatory Commission.

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There has been quite a bit of discussion regarding trust in connection with a settlement, and I think we are all agreed that a certain amount of trust is absolutely essential to any settlement. The preceding items have seriously undermined CASE's trust in the Applicants, as discussed below.

1. The threat by Applicants that CASE may be sued if we use any information from the TUEC rate hearings in any manner other than the rate hearings (including supplying information to the Nuclear Regulatory Commission Staff, investigators, and the Atomic Safety and Licensing Board)

Included in Applicants' 5/7/84 Response of Texas Utilities Electric Company to First Request for Information of Citizens Association for Sound Energy in the rate hearings (copy attached) and all subsequent responses by Applicants to CASE (and all other parties in the rate hearings) was the following paragraph:

"III.
"Use of Information

> "Neither the filing of the attached written responses nor the allowance of inspection shall constitute a general publication of the information provided. Such information shall, unless admitted into evidence, remain the exclusive property of Applicant and shall be used only in connection with this proceeding and future rate proceedings of Applicant before the Commission. Any other use of such information without the prior written consent of Applicant is prohibited."

It should be noted that Applicant in the rate hearings did not seek a protective order, which would have been the normal accepted practice if such protective order was desired and necessary. (See attached copies of pertinent CASE pleadings in the rate hearings.)

After unsuccessfully attempting in informal conversations with Applicant's attorney in the rate hearings to have the referenced paragraph deleted /1/, CASE's representatives in the rate hearings (Ms. Barbara Boltz and Dr. David Boltz) sought and were granted an opportunity for oral argument on the matter in Austin on Tuesday, May 29, 1984. Following oral arguments, the Hearings Examiners declined to rule on the matter, basically claiming lack of jurisdiction. CASE has filed an appeal to the Public Utility Commission (copy attached) and will be pursuing this matter further in those proceedings. Our concern in this letter, however, is primarily with the

/1/ It should be noted that the law firm handling the rate hearings for Applicants is Worsham, Forsythe, Sampels & Wooldridge, the same law firm in which Mr. Wooldridge is a partner. Since he is also now involved in the operating license hearings, it is obvious that he is or should be well aware of the position in which CASE has been placed and the implications and possible repercussions of Applicants' actions.

operating license hearings and CASE's (and Applicants') responsibilities in those proceedings /2/.

It was clear to everyone from the outset that the offensive paragraph was aimed at CASE, primarily in an effort to prevent CASE from using information obtained in the rate hearings in the operating license hearings. This was even acknowledged by one of the Hearings Examiners in the case (see attached 5/30/84 FORT WORTH STAR-TELEGRAM article):

> "One examiner, Administrative Law Judge Angela Demerle, said in an interview that the reason for the restriction is clear.
>
> "'They (the TUEC) don't want the material used in NRC (Nuclear Regulatory Commission) proceedings on Comanche Peak,' she said."

During the oral arguments on the "Use of Information" paragraph, Applicants' attorney in the rate hearings, Dan Bohannan, stated that Applicants wanted to use the paragraph in lieu of a protective order. He also stated that anyone who released information obtained during discovery in the rate hearings outside the rate hearings might be taken to court and sued by Applicants. Mr. Bohanan was quoted as stating (see attached 5/30/84 FWST article):

> "The TUEC's lawyer, Dan Bohannon, said the company is trying to preserve its right to sue to block the release of its information.
>
> "'We may or we may not do that (sue),' Bohannon said. 'The purpose of the clause is to tell you, 'Folks, this information was made available to you for use in the rate proceeding, and we don't intend for you to use it in other forums.'"

As Applicants are well aware, all parties in the operating license proceedings for Comanche Peak are under a continuing Board Order and have been for some time to inform the Atomic Safety and Licensing Board (ASLB) promptly of new facts or developments which are potentially significant. /3/. It should be noted that this applies to information which any of the parties considers to be even potentially significant; it is to be left to the Licensing Board to make the determination as to whether the information is in fact significant to the proceedings. It should also be noted that this applies not only to CASE, but to Applicants as well. Instead, Applicants are not only withholding from the ASLB information which CASE believes is

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/2/ It is also disturbing to CASE, however, that Applicants' "Use of Information" paragraph would also bar CASE and other parties from providing information and documents to the news media. As Applicants are well aware, CASE is committed to educating the public (including news media) and normally freely shares information on energy matters unless Applicants have properly sought and obtained a protective order for such information.

/3/ See, for example, Board Order dated October 20, 1981; Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 397, 406, fn. 26 (1976); and Board Order dated January 4, 1983.

significant -- Applicants are also attempting to prevent CASE from complying with a direct Board Order and from fulfilling its obligation to provide the U. S. Nuclear Regulatory Commission with information which is potentially important to the public health and safety. Such tactics are, in CASE's opinion, not only immoral, in bad faith, and counterproductive to any possible settlement, but are clearly contrary to NRC regulations and probably constitute obstruction of justice as well.

Another aspect of this which is very disturbing to me is that, after finding out the results (or lack thereof) of the oral arguments before the Public Utility Commission Hearing Examiners on Tuesday, May 29, I immediately attempted to contact Nick Reynolds, Applicants' lead attorney in the operating license hearings. However, when I telephoned the next day (May 30), Mr. Reynolds was out of town. I spoke with Bill Horin and explained in detail our concerns. Mr. Horin assured me that he would see that Mr. Reynolds received my message and request that he contact me; in subsequent conversations, Mr. Horin has assured me that Mr. Reynolds did receive my message. However, to date I have heard nothing from Mr. Reynolds regarding this matter.

When you telephoned me on Thursday, May 31, I expressed to you our deep concerns and desire to get this matter straightened out. However, there was no mention of this in your June 1 letter regarding the settlement, although I tried to make clear that we felt that this does impact on any possible settlement in that it indicates to CASE that the Applicants cannot be relied upon to do what they should do. Perhaps I did not make it clear enough at that time; if there was any doubt as to the importance CASE places on this matter, I hope that this letter will clear up that misconception.

CASE realizes that there are remedies open to CASE other than attempting to handle this matter in this manner to see that this matter is taken care of. Applicants have deliberately placed CASE in an untenable and impossible situation; we have no choice but to take whatever measures are necessary to remedy it and fully intend to do so. CASE's Board members and Messrs. Walsh and Doyle as well feel very strongly that **Applicants must immediately remove this threat of CASE's being sued by Applicants for reporting potentially signficant information to the Nuclear Regulatory Commission.** We must be free to report to the Nuclear Regulatory Commission any information which we believe is significant and which may affect the public health and safety -- from any source without fear of being sued by Applicants for doing so.

It is also important that this matter be taken care of immediately because some of the information CASE has obtained in the rate hearings has significance for the operating license hearings as well. This includes information which we believe should be provided to the Licensing Board regarding welding, intimidation, and CASE's answers to Applicants' recent Motions for Summary Disposition on design and design QA issues. If this matter is not resolved immediately, CASE will be forced to ask for additional time on the intimidation and Summary Disposition matters so that we can include this significant new information. It should be understood that any such delays will be directly attributable to Applicants -- not CASE.

Because of the lack of attention which Applicants have given to our strong concerns, it is now CASE's position that it is necessary for Applicants to resolve this matter to our satisfaction immediately, as a showing of good faith before any further negotiations can go forward regarding a possible settlement on design and design QA issues. Further, at this point in time, we consider that this must be handled in some manner which will provide CASE with adequate assurance (such as, perhaps, in the form of a sworn affidavit by the Chairman of the Board and Chief Executive Officer of Texas Utilities Electric Company). In any event, we will have to have an attorney review whatever assurance Applicants offer at this point in time to be certain that it is binding on Applicants.

2. The rubber-stamped marking by Applicants of a non-proprietary document as being:

FOR LAWYER'S ATTENTION ONLY
NOT DISCOVERABLE

This is another matter of concern to CASE. On June 2, 1984, CASE received a June 1, 1984, letter from Cygna Energy Services (the firm which is performing an Independent Assessment Program for the Comanche Peak nuclear plant) routinely supplying information regarding Phase 3 of the Program. This particular letter had attached copies of all pipe support and pipe stress responses received by Cygna to date from Texas Utilities and Gibbs & Hill (the Architect/Engineer for Comanche Peak). One such response was a May 2, 1984, letter to Cygna from L. M. Popplewell, Project Engineering Manager for Texas Utilities Generating Company (TUGCO). The first attachment to that letter was TUGCO's response to Cygna's 3/30/84 Telecon questions regarding allowables and safety factors for Richmond inserts. On this document was typed, and on some pages rubber-stamped the words (see attached copy):

FOR LAWYER'S ATTENTION ONLY
NOT DISCOVERABLE

Some of the calculations attached were also so stamped.

It does not appear to CASE that any of the information contained in this document is proprietary (and therefore properly the subject of a protective order). In any event, there is no provision of which we are aware in NRC regulations which classifies such information as "NOT DISCOVERABLE." The fact that this document was so marked is very disturbing to CASE, especially in light of the fact that the subject matter concerns an issue which has been a continuing known concern of CASE's in the operating license hearings /4/.

/4/ We have not as yet determined the significance of the technical information contained in this document. If appropriate, we will be pursuing this matter further in this regard as well.

The fact that a **rubber stamp** was used on some of the pages is also disturbing to CASE. The implications are clear -- one does not go to the expense and trouble of obtaining a rubber stamp for a one-time use of a phrase; therefore, it is reasonable to assume that there are other, probably many other, such documents in Applicants' possession. This inevitably leads CASE to wonder how many other such documents exist and whether or not information properly discoverable in the operating license proceedings has been withheld from CASE.

This matter has further eroded CASE's trust in Applicants. Although somewhat disturbing in and of itself, this takes on additional significance when combined with the other two items discussed herein. Under the circumstances, and as a necessary prerequisite for Applicants to help restore to CASE sufficient confidence in Applicants for meaningful efforts at settlement to continue, CASE believes that an explanation from Applicants is called for. Specifically, we believe the following questions should be answered:

1. What was the reason for this document's being marked

   FOR LAWYER'S ATTENTION ONLY
   NOT DISCOVERABLE

2. Where in NRC regulations is the justification for such information being "NOT DISCOVERABLE"?

3. Does the information contained in this document differ in any way from Applicants' previously stated positions in the operating license hearings?

4. If the answer to 3. preceding is yes, explain in detail such difference(s), the reasons for such differences, and why this was not called to the attention of the Licensing Board and parties in the operating license hearings.

5. Does the information contained in this document differ in any way from Applicants' statements or position as set forth in Applicants' 6/2/84 Motion for Summary Disposition Regarding Design of Richmond Inserts and Their Application to Support Design (received by CASE on 6/4/84)?

6. If the answer to 5. preceding is yes, explain in detail such difference(s), the reasons for such differences, and why this was not called to the attention of the Licensing Board and parties in the operating license hearings.

7. Are there any other documents which have been marked the same as, or similarly to:

   FOR LAWYER'S ATTENTION ONLY
   NOT DISCOVERABLE

8. If the answer to 7. preceding is yes, list all such documents.

9. If the answer to 7. preceding is yes, supply copies of all such documents.

10. For each document listed in response to 8. preceding, provide the following information:

    (a) Does the information contained in this document differ in any way from Applicants' previously stated positions in the operating license hearings?

    (b) If the answer to (a) preceding is yes, explain in detail such difference(s), the reasons for such differences, and why this was not called to the attention of the Licensing Board and parties in the operating license hearings.

    (c) Does the information contained in this document differ in any way from Applicants' statements or position as set forth in any of Applicants' Motions for Summary Disposition filed since the last operating license hearings, or from Applicants statements or position as set forth in Applicants' 4/11/84 Response to Partial Initial Decision Regarding A500 Steel?

    (d) If the answer to (c) preceding is yes, identify which Motion(s) or Response it differs from, and explain in detail such difference(s), the reasons for such differences, and why this was not called to the attention of the Licensing Board and parties in the operating license hearings.

CASE realizes that these questions are also properly the subject for discovery, and we are also filing such a discovery request. However, we urge that you take a hand personally in encouraging that these questions be answered immediately in order to help restore CASE's confidence so that we may proceed with settlement negotiations without being hampered by unanswered questions in this regard.

3. Applicants' lack of cooperation in providing full disclosure of documents on discovery regarding the intimidation issue in the licensing hearings for Comanche Peak before the Atomic Safety and Licensing Board of the U.S. Nuclear Regulatory Commission

The matter of Applicants' being uncooperative in providing full disclosure of documents on discovery regarding the intimidation issue in the operating license hearings was discussed briefly in CASE's 6/1/84 Proposed Schedule and Procedures for Resolution of Harassment and Intimidation Issues /5/, and will be discussed (if necessary) by CASE's attorney regarding Intimidation issues, Anthony Roisman, during the meeting with the Licensing Board,

/5/ See: page 4, footnote 5; and especially page 5, footnote 6.

Applicants, NRC Staff, and CASE on Intimidation issues scheduled for Thursday, June 14, 1984.

Although matters regarding the Intimidation issue in the licensing hearings are being handled by Mr. Roisman, it is also of concern to CASE **insofar as the trust in Applicants necessary for a settlement of the design and design QA issues** that Applicants have not been cooperative in providing full disclosure of documents on discovery regarding the intimidation issue. As with the matter of the rubber-stamped notation, this matter is disturbing in and of itself, but it takes on additional significance when combined with the other two matters discussed herein.

We urge that you personally take a hand and encourage the attorneys representing Applicants in the operating license hearings to assist in your efforts to help restore to CASE sufficient confidence in Applicants for meaningful efforts at settlement to continue.

In conclusion, I feel that both your efforts and my efforts at arriving at a settlement on the design and design QA issues are being seriously undermined by the matters discussed herein. (Indeed, the timing and seriousness of these matters is almost suggestive of an intentional undermining on the part of Applicants.) To coin an old and tired phrase, talk is cheap -- what is important now is that Applicants' actions are speaking loud and clear at the moment. I urge that you personally see to it that these matters are immediately and affirmatively resolved. Otherwise, I fear that it will be impossible for us to continue any sort of meaningful efforts at settlement -- the damage to CASE's trust in Applicants will be so great as to be irreparable.

We look forward to your early response.

Sincerely,

CITIZENS ASSOCIATION FOR SOUND ENERGY

Juanita Ellis

(Mrs.) Juanita Ellis
President

P. S. In the hope and expectation that you will give these matters your prompt attention and see that they are taken care of, I am also sending at the time of this mailing CASE's response to your June 1, 1984, letter on a potential settlement on the design and design QA issues.

cc: Service List in Dockets 50-445 and 50-446
(With attachments only to Board Members, parties, and Docketing and Service)

Activists protest utility's limit on use of information

By LEE JONES
Star-Telegram Austin Bureau

AUSTIN — An anti-nuclear group accused Texas Utilities Electric Co. of "harassment" Tuesday, but it couldn't persuade Public Utility Commission hearing examiners to stop it.

The examiners refused to strike a "use of information" restriction that the TUEC has attached to all documents turned over to groups fighting the company's request for a $304.5 million rate increase.

Citizens' Association for Sound Energy, the anti-nuclear organization, said the restriction carries with it the threat of a lawsuit that would deplete the group's treasury.

One examiner, Administrative Law Judge Angela Demerle, said in an interview that the reason for the restriction is clear.

"They (the TUEC) don't want the material used in NRC (Nuclear Regulatory Commission) proceedings on Comanche Peak," she said.

But Demerle and hearing examiner Mary Ross McDonald agreed that there was no legal ground to order TUEC to lift the restriction.

CASE, which is trying to block the start-up of TUEC's Comanche Peak nuclear power plant, claimed that the restriction keeps it from sharing information with newspapers and the U.S. Atomic Safety & Licensing Board.

As long as the restriction is there, so is the threat of a lawsuit if CASE divulges information received from Texas Utilities, said David Boltz of Dallas, a member of the organization's board.

"I'm surprised at the implied threat to sue a poor little public interest group," Boltz told the hearing examiners. "... I just can't believe this veiled threat to sue. That is clearly harassment."

Boltz's wife, Barbara, also a CASE board member, said the threat of a lawsuit is significant because the organization lacks the funds to pay lawyers.

The restriction says information provided by the TUEC remains the TUEC's property unless it is introduced into evidence. It also prohibits the use of the information anywhere but in the rate case.

CASE already has cited the restriction in turning down a request from the *Star-Telegram* for information obtained from the TUEC concerning Comanche Peak.

The TUEC's lawyer, Dan Bohannon, said the company is trying to preserve its right to sue to block the release of its information.

"We may or we may not do that (sue)," Bohannon said. "The purpose of the clause is to tell you, 'Folks, this information was made available to you for use in the rate proceeding, and we don't intend for you to use it in other forums.'"

He said there is a "developing body of law" that holds that corporations as well as people have certain privacy rights.

TUEC responses to requests for information are filed with the PUC which considers them available to the public under the Texas Open Records Act.

Geoffrey Gay of the state utility consumer counsel's legal staff said he is ignoring the TUEC restriction.

"My feeling is, I didn't agree to it and don't feel bound by it," he said. "... I don't think it is appropriate for the company to intimidate a party to this proceeding."

In another ruling dealing with access to data in rate cases, Demerle rejected the PUC staff's contention that it is immune to the requirement of responding to requests for information.

The TUEC had asked the staff to provide information from previous rate cases as well as details of staff objections to the TUEC rate request.

Demerle said the staff must provide information, except items she deems to be "burdensome" in terms of the staff's ability to collect them.

Eddie Pope of the PUC general counsel's office said the order will be appealed to the three-member commission.

NOTE FROM CASE: It should be noted that CASE does not consider itself to be either "anti-nuclear" or "activist" as the terms are commonly used.

DOCKET NO. 5640

RE: APPLICATION OF TEXAS UTILITIES ELECTRIC COMPANY FOR AUTHORITY TO CHANGE RATES	:	BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS

RESPONSE OF
TEXAS UTILITIES ELECTRIC COMPANY
TO
FIRST REQUEST FOR INFORMATION OF
CITIZENS ASSOCIATION FOR SOUND ENERGY

TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:

Texas Utilities Electric Company, Applicant, files this its Response to the aforementioned requests for information.

I.

Written Responses

Attached hereto and incorporated herein by reference are Applicant's written responses to the aforementioned requests for information. Each such response is set forth on or attached to a separate page upon which the request has been restated. Such responses are made in the spirit of cooperation without waiver of Applicant's right to contest the admissibility of any such matters upon hearing.

II.

Inspections

In those instances where materials are to be made available for inspection by request or in lieu of a written response, the

requesting party should contact Mr. Pitt Pittman at (214) 969-0568 to arrange an appropriate time for inspection. Inspections will be scheduled so as to accommodate all such requests with as little inconvenience to the requesting party and to company operations as possible. The requesting party should please be aware of the fact that many Company records such as books of original entry, maps, vouchers and matters of an historical nature are not maintained in one central location. In most, but not all, instances, Applicant will be able to accumulate the materials and have them available at one location if such materials are identified in advance. For example, ledgers that are used in each division's accounting areas daily cannot be removed, but specific entries can be copied and made available at another location upon request. Applicant will be as cooperative as possible in making the requesting party's time as productive as possible and appreciates the requesting party's understanding of the logistical problems faced by Applicant.

III.

Use of Information

Neither the filing of the attached written responses nor the allowance of inspection shall constitute a general publication of the information provided. Such information shall, unless

admitted into evidence, remain the exclusive property of Applicant and shall be used only in connection with this proceeding and future rate proceedings of Applicant before the Commission. Any other use of such information without the prior written consent of Applicant is prohibited.

Respectfully submitted,

WORSHAM, FORSYTHE, SAMPELS & WOOLDRIDGE
Robert A. Wooldridge
State Bar No. 21984000
J. Dan Bohannan
State Bar No. 02563000
2001 Bryan Tower, Suite 2500
Dallas, Texas 75201
Telephone: (214) 748-9365

By: _____

ATTORNEYS FOR APPLICANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing response to requests for information, with attachments, has been served upon each intervenor group by mail or by hand and that two copies have been hand delivered to the Office of General Counsel in addition to the filing of one copy with the Commission this the 7th day of May, 1984.

_____

DOCKET NO. 5640

APPLICATION OF TEXAS UTILITIES ELECTRIC COMPANY FOR A RATE INCREASE	)	BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS

CASE'S Fourth Motion:
Objections to Applicant's "Use of Information" Clause

NOW COMES CASE (Citizens' Association for Sound Energy) and files this, its Fourth Motion: Objections to Applicant's "Use of Information" Clause.

Objections

CASE strongly objects to Applicant's "Use of Information" clause contained in Section III of its filing entitled "Response of Texas Utilities Electric Company to CASE's First Request for Information." The offending clause is quoted below in its entirety:

"III.

Use of Information

"Neither the filing of the attached written responses nor the allowance of inspection shall constitute a general publication of the information provided. Such information shall, unless admitted into evidence, remain the exclusive property of Applicant and shall be used only in connection with this proceeding and future rate proceedings before the Commission. Any other use of such information without the prior written consent of Applicant is prohibited."

CASE not only objects to inclusion of this clause in the preface to TUEC's responses to CASE's RFI's; CASE also objects to Applicant's continual inclusion of this identical provision in the same section of its Responses to the RFI's of other intervenors in this proceeding.

First, CASE would point out that the Applicant does not have the right to arbitrarily prohibit or restrict the use of any material which supplies to any intervenor--including CASE--in this docket. The Applicant has not filed a

single written motion in this proceeding requesting that the Commission grant a protective order on any information requested in any RFI submitted by any intervenor--including CASE--to date. Absent any motions for protective orders by Applicant on any material requested in RFI's by any intervenor (much less on any material supplied to all parties by Applicant!)--including CASE--and absent any granting of any such motions by the Commission, this clause is disturbing to CASE. This clause appears to CASE to be a blatant attempt by Applicant to restrict or prohibit the use of information supplied in this case without Applicant going through the proper procedure of requesting a protective order on each and every item which it wishes to protect in writing from the Commission. The burden of proof is on Applicant to argue the need for any protective order on any information requested by any intervenor on RFI's. Applicant must not be allowed to sidestep their burden of proof by allowing them to include such a clause in their responses to intervenors' RFI's.

CASE would also note that Applicant's provision infringes on the Commission's proper enforcement of the provisions of the Open Records Act. Since all answers to RFI's which are supplied to intervenors by Applicant are also sent to the Commission where they are placed on file, they are therefore a part of the public record and cannot be subject to restrictions of use by Applicant or by a retroactive protective order. CASE wonders how Applicant could possibly argue logically that information which is a matter of public record is subject to Applicant's extraordinary claim that they can restrict or prohibit its use without their "prior written consent"!

As for information provided to a party for inspection and copying (in response to an RFI by themselves or an RFI from another intervenor), CASE would make several comments. First, this special dispensation of allowing the Company to make some documents available for inspection and copying was a concession on the part of the Hearings Examiner and the Administrative Law Judge to assist the Company in regard to documents

too voluminous to copy and mail copies to all parties, including the Commission. (See Examiners' Second Order, Section IV.6.) This order in no way implies that the Company was granted a defacto protective order on all information provided for inspection and copying. Again, if Applicant feels the need to protect any information which it wishes to make available for inspection to any intervenor--including CASE--in this proceeding, then its proper course of action is to file a written request for a protective order with the Commission immediately upon receipt of the RFI in question. Only if that motion is granted after argument by all parties before the Commission would such protection actually exist for any material made available for inspection and copying.

Next, CASE would note that the Company has no right to attempt to limit the use of any material to use during "this proceeding and future rate proceedings of Applicant before the Commission." At this time, CASE will simply refer the reader to CASE's Supplementary Motion to Compel Applicant to Provide Photocopies of Documents Being Made Available to CASE at CPSES in Response to CASE's RFI's Nos. 6-12 and 20 (dated 9/24/83) in Docket No. 5256. As outlined in that motion, CASE is (and has been, along with Applicant) under a continuing Board order (of the Atomic Safety and Licensing Board for Comanche Peak) to inform the ASLB Board immediately of anything which CASE believes may detrimentally affect the public health and safety relating to CPSES. This attempt by Applicant to restrict use of information obtained in this hearing to only this and future rate hearings (absent the granting of a protective order by this Commission) lacks any merit whatsoever, and should be dismissed. (CASE would also refer the reader to the Examiner's Order Ruling on DP&L's Objections to CASE's RFI's (dated 8/22/83) from Docket No. 5256, particularly the following citation:

> "Therefore, the examiner will presume outright that CASE is not merely gathering information at this Commssion for use at the NRC. Even if this were so, as long as the information is relevant here, CASE's use of it at the NRC, as long as the data is not subject to a protective order, would be of no concern to this Commission."

Finally, were this provision to be ruled to be binding, then Applicant would be in the astounding position of controlling the distribution of information without first having successfully argued for a protective order on it. In addition, Applicant would control information which is a matter of public record and, thus, beyond its control. CASE believes that the Commission will not agree to either result.

Motions

WHEREFORE, premises considered, CASE moves that the Examiners grant the following motions by CASE:

1. That Applicant's "Use of Information" clause appearing as Section III in every Response which it has filed (or will file) to each and every intervenor (including CASE)'s RFI's in this proceeding, be physically stricken from the record and be declared to be non-binding* in its entirety by the Examiners;
2. That Applicant be ordered to immediately file written motions for protective orders for each and every item of information in each and every RFI which it contends should be subject to protection. Each motion should include each and every reason and basis upon which the request is predicated.

*Or whatever legal term is proper in this context. Since Applicant never propounded Section III as a motion, it does not seem right to request that it be "denied"--but that is the gist of the request.

Respectfully submitted,

Barbara N. Boltz

(Ms.) Barbara N. Boltz, Boardmember
CASE (Citizens Association for Sound Energy)

(Dr.) David H. Boltz, Boardmember
CASE (Citizens Association for Sound Energy)
1426 S. Polk
Dallas, Texas 75224

(214) 339-4979

CERTIFICATE OF SERVICE

By my signature, I hereby certify that a true and correct copy of CASE's Fourth MOTION: Objections to Applicant's "Use of Information" Clause in Docket No. 5640 was mailed this 8th day of May, 1984 via First Class U.S. Mail (except for the name/s marked (*) which was/were mailed via Certified Mail, Return Receipt Requested) to:

*Mr. Robert A. Wooldridge
Attorney, TUEC
Worsham, Forsythe & Sampels
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Dallas, Texas 75201

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May 17, 1984

DOCKET NO. 5640

APPLICATION OF TEXAS UTILITIES ELECTRIC COMPANY FOR A RATE INCREASE	)	BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS

CASE's Sixth Motion:
Request for Prehearing Conference to
Resolve Disputed Clause in Applicant's Filing

NOW COMES CASE (Citizens Association for Sound Energy) and files this, its Sixth Motion: Request for Prehearing Conference to Resolve Disputed Clause in Applicant's Filing.

After having diligently and in good faith attempted to negotiate our objections to Applicant's "Use of Information" clause contained in Section III of its filing entitled "Response of Texas Utilities Electric Company to CASE's First Request for Information"[1] (See: CASE's Fourth Motion: Objections to Applicant's "Use of Information" Clause), and being unable by the time required for filing this request for prehearing conference to negotiate and resolve the disputes concerning said clause, CASE respectfully requests that a prehearing conference be scheduled to resolve the dispute, showing the grounds which are given in CASE's Fourth Motion.

In the event that the objections are resolved prior to the prehearing conference scheduled pursuant to this Request, CASE will immediately mail a notice to the Administrative Law Judge, the Examiner, and all parties, that the prehearing conference is unnecessary.

WHEREFORE PREMISES CONSIDERED, CASE respectfully requests that a prehearing conference be scheduled and, upon said prehearing, that CASE's objections listed

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[1]CASE's continuing objection also applies to the identical clause contained in TUEC's response to CASE's Second Request for Information--presumably will appear in its answer to CASE's Third Request for Information.

in its Fourth Motion be sustained. Futher, CASE requests such other and additional relief to which it is justly entitled.

Respectfully submitted,

Barbara N. Boltz

(Ms.) Barbara N. Boltz
Boardmember
CASE (Citizens Association for Sound Energy)

Dr. David H. Boltz
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1426 S. Polk
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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing Motion has been mailed to Applicant's attorney of record and to the Commission by Express Mail, and to all other parties of record by first-class U. S. mail on this 17th day of May, 1984.

Barbara N. Boltz

Barbara N. Boltz, Boardmember
CASE (Citizens Association for Sound Energy)

June 5, 1984

DOCKET NO. 5640

APPLICATION OF TEXAS UTILITIES ELECTRIC COMPANY FOR A RATE INCREASE	§	BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS

CITIZENS ASSOCIATION FOR SOUND ENERGY'S APPEAL
OF EXAMINERS' RULING REGARDING APPLICANT'S
"USE OF INFORMATION" CLAUSE

NOW COMES CASE (Citizens Association for Sound Energy) and files this its Appeal to the Commissioners of the Texas Public Utility Commission (PUC) of the Examiner's ruling[1] at the May 29, 1984 prehearing conference in the above referenced docket regarding Applicant's "use of information" clause contained in its Responses to requests for information.[2]

This appeal is filed pursuant to Section 21.106 of the PUC's Rules of Practice and Procedure.

CASE adopts and by reference incorporates its objections to the "use of information" clause which were filed in its Fourth Motion on May 8, 1984,[3] as well as its arguments made during oral argument before the Examiners at the May 29th prehearing conference.[4]

CASE asserts that the Examiners' ruling was in error. The Examiners stated that they could not rule on CASE's motion to strike the use of information clause from Applicant's responses to all parties' requests for information, since they ruled that such responses were not a part of the record (and,hence, not subject to being stricken).

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[1]As of this date (June 5, 1984) CASE has not yet received the Examiners' written ruling on this matter and is, therefore, basing its appeal on the Examiners' oral ruling of May 29th. CASE has filed this motion now, hoping that the Commission will consider it at its June 8th Final Orders Meeting.

[2]See Attachment 1. (Commission and Applicant only--all other parties see your files.

[3]See Attachment 2. (Commission and Applicant only--all other parties see your files.

[4]As CASE has not yet received a transcript of the prehearing conference, it is unable to cite page and lines numbers of the oral arguments on this matter.

First, CASE would note that the fact that Applicant's use of information clause did not appear in a motion, but as part of its official response to all parties requests for information as a fait accompli, does not mean that it should remain where Applicant's placed it, where it continues to threaten, harrass, and intimidate parties to this proceeding. The fact that the clause is embedded in Applicant's responses to RFI's makes it a part of the response. Sec. 21.81(a) of the PUC's Rules of Practice and Procedure states in part: "All requests for information of a party must be filed with the commission. . . Three copies of all answers to requests for information must be filed within 20 days from receipt of the request for information by the party. . . One copy shall be retained by the Hearings Division and two copies shall be delivered to the commission's general counsel." The certificate of service which is a part of Attachment 2 states that copies of the response (consisting not only of the individual answers, but also of the letter containing the use of information clause) were filed with the Commission.

CASE contends that information received as a result of discovery is not subject to such automatic restriction by Applicant. The restriction of discoverable material is under the Commission's jurisdiction, not Applicant's. By inserting this clause into its responses to RFI's, the Applicant has attempted to usurp the Commission's jurisdiction regarding the granting of protective orders. The rules do not give Applicant the option of claiming blanket protection for information in its possession, but they do give Applicant the opportunity to request that a protective order be granted for material which it claims to be privileged. But, as Applicant's attorney argued at the prehearing conference, Applicant's chose not to avail itself of the remedy of requesting protective orders on specific material, choosing instead to rely on the use of information clause to circument the need for arguing for such protective orders before the Commission.

The Examiners' correctly ruled that they do not view the clause as having the force of a protective order, but the fact that the clause remains in place as part of Applicant's response to RFI's allows Applicant to continue to threaten intervenors in this proceeding with lawsuits[5] should they reveal information which is not under protective order to the public, the press, or anyone else.

To CASE, such a standoff is intolerable. Either something is protected information or it is not. The Examiners' attempt to sidestep the issue does not change the fact that the Commission must act on this assertion by Applicant of a quasi-protective order (of whatever quality) ipse dicto. CASE would request the Commission to rule that the information obtained on discovery by all parties in this proceeding (whether that material was provided to all parties or whether it was placed on an inspection and copying basis), since it was not under a protective order at the time of its release, is a matter of public record. As Art. II, Sec. 13 of the PURA states in part: "All files pertaining to matters which were at any time pending before the Commission and to records, reports, and inspections required by Article V hereof shall be public records, subject to the terms of the Texas Open Records Act . . . . " The material has been filed with the Commission and released to the parties in this case; it is therefore a matter of public record, and is not subject to regaining any proprietary virginity it may once have had, since it has changed character upon its release.

CASE continues to pursue this issue with the Commissioners because CASE feels threatened, harrassed, and intimidated by the continued existence of the use of information clause. Although the Examiners stated that they would not sanction any attempt by Applicant to intimidate or harass any party to this proceeding, that is

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[5]See the transcript of the prehearing conference, where Applicant's attorney threatened intervenor groups with possible lawsuits should they release information outside of the rate hearing.

exactly what their ruling has allowed Applicant to do.

To threaten an all-volunteer citizens' group participating as a party to these proceedings without benefit of other than occasional legal counsel with lawsuits if it reveals information obtained through discovery to the press or to the public is intolerable. CASE, as a citizens' group, has always been very concerned with the public's right to know. In fact, during the last DP&L rate hearing (Docket No. 5256), CASE specifically avoided the restrictions associated with protective orders in order to be able to provide information freely to the public and the press. CASE finds it intolerable to be threatened with lawsuits for revealing information not under a protective order. And for a group that is funded by donations that threat is very real.

CASE further contends that Applicant designed and included this clause into its responses to RFI's with CASE, in particular, in mind, for only CASE is also an intervenor in the NRC operating licensing hearings for Comanche Peak before the Atomic Safety and Licensing Board (ASLB)--a fact of which Applicant is all too well aware. Applicant is also aware that CASE (as well as Applicant) have been under a continuing Board order for over two years to immediately inform the ASLB of anything which we believe may adversely affect the public health and safety in regard to CPSES. Threats to sue CASE should CASE reveal information to the Board puts CASE is an untenable (and possibly illegal) double-bind. The Examiners' ruling has placed the risk of obeying the ASLB's order squarely on CASE's shoulders--of revealing information to the ASLB and then sitting back and waiting to see what happens. Thus, by default, the Examiners have allowed the intimidation of a party to this proceeding to continue,[6] allowing Applicant to assert its territorial claims unchallenged.

6In the same breath, the Examiners stated that to the extent that any information might be used in another forum (e.g., NRC operating licensing hearings) that TUEC could assert its rights in that forum.

The Commission cannot tolerate such a challenge to its jurisdiction by a regulated utility[7], nor can it condone (even by default) the harrassment and intimidation of a party to this proceeding. The use of information clause must be clearly ruled upon in order to uphold that the information in question is part of the public record, and that it is not subject to protection, and hence, parties are free to show it to the press, the public, or other official boards or bodies where it may be relevant. In addition, it should be stricken to prevent the continuing intimidation and harrassment of parties to this proceeding--not merely ignored as a stillborn motion.

WHEREFORE, PREMISES CONSIDERED, CASE requests that the Commission hear this matter[8], and that your hearing and consideration grant this appeal and dissolve and strike the "use of information" clause appearing in Applicant's responses to RFI's in this case, and that the Examiners' ruling on this clause be dissolved (or whatever the proper legal opposite of "upheld" is).

Respectfully submitted,

Barbara N. Boltz

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[7]The Company is not a private corporation; it is a regulated monopoly. (PURA, Art. I, Sec. 2.)

[8]If granted a hearing on this matter on June 8, CASE will attempt to send a representative to argue before the Commission. But if funds and work schedules do not permit this, CASE would ask that this written motion be ruled on in lieu of oral argument by CASE.

CERTIFICATE OF SERVICE

This to certify that a true and correct copy of the above and foregoing Appeal has been mailed to Applicant's attorney of record and to the Commission by Express Mail, and to all other parties of record by first-class U.S. mail on this 6th day of June, 1984.

Barbara N. Boltz

Barbara N. Boltz, Boardmember
CASE (Citizens Association for Sound Energy)