

605

DOCKET
UNITED STATES

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION '84 JUN 12 P12:01

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

BRANCH

In the Matter of

TEXAS UTILITIES ELECTRIC
COMPANY, et al.

DOCKET NOS. 50-445-2
50-446-2

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

(Application for
Operating License)

STATE OF TEXAS' MEMORANDUM ON
PROPOSED STANDARD FOR LITIGATING
ALLEGATIONS OF INTIMIDATION

In determining what standard is to be applied in adjudicating what has come to be termed the intimidation issues in this proceeding, the Board must keep one central legal point firmly in mind: the Applicant bears the burden of persuasion "of proving compliance with all applicable Commission regulations. . ."
Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-283, 6 AEC 331, 345 (1973) (emphasis added). It necessarily follows that the Applicant bears the burden of persuading the Board that it has complied with the criteria set forth in 10 C.F.R. Part 50, Appendix B.

In order to press the matter, however, the Intervenor must produce evidence which would make a prima facie case favorable to its position on the intimidation issue. See Midland Plant, id.

B406130220 B40611
PDR ADOCK 05000445
PDR

DSJ

The current concern of the Board about adjudicatory standards apparently derives from some uncertainty over what a prima facie case is.

Given the purpose of Appendix B to have quality assurance programs operating which provide reasonable assurance that, as built, a nuclear facility will be operated without endangering the public health or safety, it seems that the Intervenor's prima facie case need consist of the introduction of evidence which, if ultimately persuasive,¹ would establish that: (1) some QC inspectors (or those other employees whose actions have implications for quality) were made aware of statements, incidents, or acts carried out by management or those acting in its stead which a reasonable person could interpret as discouraging the full performance of a QC inspector's duties; and (2) the duties of those QC inspectors, in terms of assuring the ultimate safety of the plant, were significant.

If the Intervenor produces evidence on each of these elements, then the burden of persuasion ought to rest with the Applicant to demonstrate that: (1) the incidents or acts did not occur; or (2) even if the incidents or acts did occur, the QA/QC program overall still was conducted in such a way that there is "reasonable assurance" that the Comanche Peak plant can and will be operated safely.

¹ At the prima facie stage, the question of whether introduced evidence is persuasive should not be addressed by the Board.

In using the foregoing standard, the Board should reject the Applicant's proposal that the intent of the alleged intimidator to intimidate is a necessary precondition to establishing that an incident of intimidation has occurred. It is true that the actor's intent in such a situation is a meaningful fact for the Board's consideration, but it is meaningful for an issue at least partially separate from the quality assurance one.² Focusing on the actor's intent would distract the Board from the essential quality assurance question and misdirect its attention to internal motivations and away from external actions. Furthermore, such a focus on the actor would tend to ignore the all important perceptions of those QC inspectors who directly or indirectly were made aware of what the actor did or said. The mosaic of the effect of those actions or statements, not the intent of any individual actor, is the crucial aspect of the intimidation issue.

In connection with how the Board should evaluate the question of whether, once the burden of persuasion has shifted to it, the Applicant has shown that the proven incidents of intimidation do not undermine its whole quality assurance program to such a degree that there is insufficient assurance that the public health and safety will be protected, the Board should recall one of its

2) It is meaningful in the Board's consideration of the issue of the Applicant's "character," which is one of the "fundamental requirements" for the Applicant to establish. Houston Lighting & Power Co. (South Texas Project, Units 1 and 2), Partial Initial Decision, at 8 (March 14, 1984).

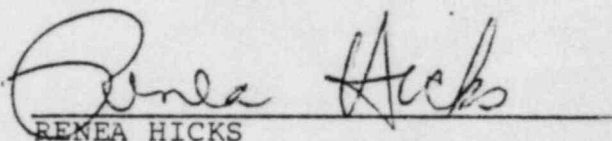
earlier approaches in these proceedings. In its Memorandum and Order on Quality Assurance for Design, dated December 28, 1983, the Board pointed out at page 70 that unexplained problems that are in themselves relatively isolated raise "serious questions" about the entire plant

Respectfully submitted,

JIM MATTOX
Attorney General of the
State of Texas

DAVID R. RICHARDS
Executive Assistant Attorney
General

JIM MATHEWS
Assistant Attorney General
Chief, Environmental Protection
Division



RENEA HICKS
Assistant Attorney General
Environmental Protection Division
P. O. Box 12548
Austin, Texas 78711-2548
512/475-1101
ATTORNEYS FOR THE STATE OF TEXAS

June 11, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED

'84 JUN 12 P12:01

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

DOCKET & SER.
BRANCH

In the Matter of

TEXAS UTILITIES ELECTRIC
COMPANY, et al.

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

§
§
§
§
§
§
§
§
§
§

DOCKET NOS. 50-445-2
50-446-2

(Application for
Operating License)

STATE OF TEXAS' MEMORANDUM ON
PROPOSED STANDARD FOR LITIGATING
ALLEGATIONS OF INTIMIDATION

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "State of Texas' Memorandum on Proposed Standard for Litigating Allegations of Intimidation" in the above-captioned matter were served this 11th day of June, 1984, upon the following persons by deposit in the United States mail, first class, postage prepaid, unless marked by * in which case service was by Express Mail, overnight delivery:

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

Dr. Walter H. Jordan
881 West Outer Drive
Oak Ridge, Tennessee 37830

Herbert Grossman, Esq.
U. S. Nuclear Regulatory
Commission
Washington, D. C. 20555

Nicholas S. Reynolds, Esq.
Bishop, Liberman, Cook,
Purcell & Reynolds
1200 17th St., N.W.
Washington, D. C. 20036

Juanita Ellis
President, CASE
1426 South Polk Street
Dallas, Texas 75224

Lanny A. Sinkin
114 W. 7th St.
Suite 220
Austin, Texas 78701

William L. Clements*
Docketing & Services Branch
U. S. Nuclear Regulatory
Commission
Washington, D. C. 20555

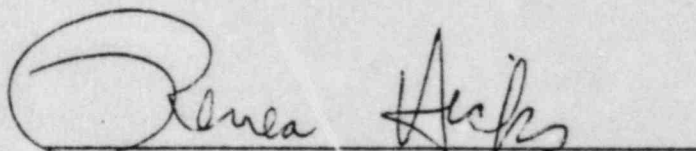
John Collins
Regional Administrator, Reg. IV
U. S. Nuclear Regulatory
Commission
611 Ryan Plaza Drive, Suite 1000
Arlington, Texas 76011

Chairman, Atomic Safety and
Licensing Appeal Panel
U. S. Nuclear Regulatory
Commission
Washington, D. C. 20555

Stuart A. Treby, Esq.
Office of the Executive
Legal Director
U. S. Nuclear Regulatory
Commission
Washington, D. C. 20555

Ellen Ginsberg, Esq.
Atomic Safety and Licensing
Board Panel
U. S. Nuclear Regulatory
Commission
Washington, D. C. 20555

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


RENEA HICKS

RH1/1