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docketed July 10, 1984

July 7, 1984

Peter Bloch, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
4350 East-West Highway
4th Floor
Bethesda, Maryland 20814

DOCKET NUMBER
PROD. & UTIL. FAC. 50-445
50-446

Re: Comanche Peak

Dear Chairman Bloch:

The purpose of this letter is to formally object to the Applicant's failure to fully and timely respond to longstanding discovery requests of CASE and to define what we perceive to be the unavoidable consequences of this failure.

TUGCO has not provided us with the documentation we requested in a timely manner, nor are the materials filed complete. All discovery was to have been completed by June 15. The parties all missed this deadline to some extent and this was discussed during the conference call on July 2nd. On that date, CASE voluntarily opened its witness files to TUGCO and the Staff which essentially gave them the benefit of our organization of materials already in the record and known to all parties.

This extraordinary disclosure, not in any way reciprocated by Staff or Applicant, must be contrasted with Applicant's conduct:

1. As late as July 6 Applicant was delivering to CASE documents sought in discovery (a two inch stack was received on that day in our Washington office). Applicant also produced another stack of documents (approximately one inch thick), which were picked up by a CASE witness from Applicant's counsel in Glen Rose at 2:00 p.m. on July 6. This latter information included such obviously relevant documents as an Investigation into Darlene Stiner allegations of harassment and intimidation.

2. The much discussed and oft promised exit interviews were not received by CASE until 7:00 p.m. on July 5.

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3. A substantial number of documents received by CASE have the names of the persons making the statement or mentioned in the statement deleted. Contrary to assurances from Applicant made to the Board and contrary to their letter of June 15, none of those blanks have been filled in and CASE remains in the dark regarding these names.

4. Applicant's counsel now inform us that response to our discovery requests has been limited to documents which entered the TUGCO/Brown & Root system. Thus all documents in the possession of other contractors and subcontractors have been excluded. This is directly contrary to the discovery request filed over three months ago. We have reason to believe that there may be significant relevant material.

5. Several cartons of documents, containing, inter alia, questionnaires filled out by all of the QC inspectors in 1979 (from which all names are deleted) relating to harassment and intimidation and investigations by TUGCO of specific allegations of harassment and intimidation were not made available to CASE until after June 15. This enormous volume of new materials has been dribbling in every few days and, as noted earlier, the latest -- not necessarily the last -- was received yesterday afternoon.

6. Some of the documents relevant to the harassment and intimidation issue available from the rate proceeding have not yet been cleared by Applicants' counsel and thus are still unavailable for use by CASE.

The consequence of this misconduct by Applicant is that instead of CASE having in place on June 15 all of the materials needed to prepare for evidentiary depositions we did not receive the bulk of the materials until after that date and probably do not have the bulk of it yet. In addition much of what we have is unusable for deposition because we do not know who wrote the document or about whom the document was written.

To compensate for these failures by Applicant and the prejudice suffered by CASE as a result of the failures it is necessary for CASE to take two steps:

1. We expect to use extensively the Board "surprise" exception for purposes of hearing. Information received by us subsequent to June 15 may constitute such surprise since we have been unable to prepare for

digest the newly acquired material. To the extent we have actually assimilated the data we will, of course, not claim surprise.

2. To alleviate the impact on the hearings CASE will use the documents received as evidence without the need for further evidentiary presentations. For example, if an exit interview statement prepared for an employee clearly disclosed that the employee claims to have been harassed or intimidated, it would be offered to prove that fact without the need to call the employee or the exit interviewer. This process should substantially reduce the need to use hearing time.

CASE believes the steps described above represent no more than its legal rights. They are set forth here in order to clearly state our intentions. As we made clear in our filing of June 1, the failure of Applicant to adhere to the schedule for discovery would inevitably impact on the ability of the deposition process to commence as planned.1/ CASE's Proposed Schedule And Procedures For Resolution Of Harassment And Intimidation Issues (June 1, 1984), pp. 3, 4-5. Now that the process has commenced the only remedy is to compensate for the prejudice after the conclusion of depositions.

We are extremely disappointed that Applicant with all its resources has failed to fulfill its minimal obligations to answer appropriate discovery requests filed by CASE. The consequence of such inaction must not be allowed to fall on CASE both because it is violative of due process and because CASE, unlike the Applicant, seeks the resolution of the harassment and intimidation issue on the basis of a full and complete record which is a prerequisite to this Board reaching a decision on the issue.

Sincerely,

Anthony Z. Roisman
Executive Director

cc: Service List

1/ As originally proposed depositions would start eleven days after the end of discovery and depositions would be done one at a time. The compressed schedule now being used and the need to prepare more lawyers for depositions to be taken in less time resulted in postponement of the starting date for two weeks. The delay in timely and complete discovery responses from Applicant impacts even more severely on the compressed time schedule now being used since all data must first be processed through a lead attorney before it can be distributed to the team attorneys.