

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

OFFICE OF INSPECTION AND ENFORCEMENT  
Richard C. DeYoung, Director

In the Matter of )

TEXAS UTILITIES GENERATING CO., )  
et al. )

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

Docket Nos. 50-445  
50-446

(10 CFR 2.206)

DIRECTOR'S DECISION UNDER 10 CFR 2.206

On January 28, 1983 Mrs. Juanita Ellis, president of the Citizens Association for Sound Energy (CASE), Dallas, Texas, submitted a petition under 10 CFR 2.206 requesting that the Director of the Office of Inspection and Enforcement issue an order to show cause why the licensees, Texas Utilities Generating Co., et al.,<sup>1/</sup> should not have to provide certain design information or, in the alternative, if the documents containing this information are not in the possession of the licensees, why their failure to possess these documents is not a violation of NRC regulations.

There is currently pending a proceeding before an Atomic Safety and Licensing Board for the purpose of determining whether operating licenses should be granted for the Comanche Peak facility. CASE has intervened in that proceeding, and CASE is challenging the adequacy of the design of pipe

<sup>1/</sup> In addition to the Texas Utilities Generating Co., the other co-licensees of the Comanche Peak facility are the Dallas Power & Light Co., the Texas Power & Light Co., the Texas Municipal Power Agency, the Brazos Electric Power Cooperative, Inc., and the Tex-La Electric Cooperative of Texas, Inc. The co-licensees hold the construction permits for the Comanche Peak Steam Electric Station and are applicants for operating licenses for the facility.

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supports being used at Comanche Peak. As part of its "Twelfth Set of Interrogatories to Applicants and Requests to Produce" (Aug. 9, 1982), CASE requested the licensees to supply certain documents containing information about design of the pipe supports. The licensees replied to the interrogatories by stating that, with the exception of certain pertinent information contained in the PSE Design Manual, the licensees did not possess the requested documents.<sup>2/</sup> Several months later, CASE filed its petition asking the NRC to require the licensees to make these documents available to it or, in the alternative, to find that the licensees are in violation

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<sup>2/</sup> See "Applicants' Responses to CASE's Twelfth and Thirteenth Sets of Interrogatories and Requests to Produce" (Aug. 23, 1982). Specifically, CASE requested the following documents pertaining to the design by ITT Grinnell and NPS Industries, Inc. (NPSI) of pipe supports (the numbers correspond to the requests in CASE's Twelfth Set of Interrogatories):

9. "NPSI Design Criteria for pipe supports (the official one issued in May, 1981)."
10. "[A]ll documents...which were used to define the method used to determine the tensile force in the Richmond Inserts."
12. "[T]he current Grinnell Design Criteria for pipe supports at CPSES [Comanche Peak Steam Electric Station]."
16. "[A] copy of the Hilti allowables and the procedures for the analysis."
17. "[A] copy of FUB II and the instructions of how to use the FUB II information...to determine the capacity of the Hilti bolt."

In answer to questions 9, 12, and 17 the licensees referred CASE directly to their contractors, ITT Grinnell and NPSI, saying that the licensees did not possess the cited documents. For questions 10 and 16, the licensees responded that, to the extent they had any of the information requested, it was contained in the PSE Design Manual, which was already available to CASE. Further information, they stated, would have to be obtained directly from NPSI or ITT Grinnell.

of NRC regulations for not having the documents in their possession.<sup>3/</sup> CASE's request that it be provided the NPSI and ITT Grinnell design documents is now apparently moot, as CASE has been provided an opportunity to inspect and copy relevant portions of these and other documents which CASE has sought as a result of further negotiations over discovery matters with the licensees.<sup>4/</sup> However, in all events, CASE's request that the Director initiate a show-cause proceeding pursuant to 10 CFR 2.202 for the production of documents to CASE is not properly brought under 10 CFR 2.206.<sup>5/</sup> CASE's request for production is essentially a motion to compel discovery of relevant documents to a party to an NRC adjudication. Such motions lie properly before the presiding officer or Board having jurisdiction over the proceeding. See 10 CFR 2.740(f). The NRC's adjudicatory boards are charged with regulating prehearing

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3/ CASE makes note of the fact that it is challenging the adequacy of the pipe supports, but that CASE is not attempting to use its § 2.206 petition to pursue matters properly before the Licensing Board. Since the pipe supports issue is before the Licensing Board, it shall not be addressed in this decision. 10 CFR 2.206 is not a mechanism for sidestepping the jurisdiction of the Licensing Board or the Atomic Safety and Licensing Appeal Board. See Pacific Gas & Electric Co., CLI-81-6, 13 NRC 443 (1981).

4/ See Letters to Juanita Ellis from Nicholas S. Reynolds, Counsel for Applicants (March 29, 1983), from William A. Horin, Counsel for Applicants (April 27, 1983), from Herman W. D'Errico, Project Manager, NPS Industries, Inc. (May 4, 1983), from David D. McKenney, Vice President and General Counsel, ITT Grinnell Corp. (May 9, 1983); Letters to William A. Horin from Juanita Ellis (May 4 and June 8, 1983).

5/ The Director informed Mrs. Ellis of this view in a letter dated March 31, 1983, which was sent in response to her letter dated March 11, 1983. CASE filed a motion to compel discovery with the Licensing Board on March 23rd, and since that time CASE and the licensees have negotiated arrangements whereby CASE has been allowed access to the documents. See supra note 2.

discovery and ensuring the parties' access to documents relevant to the issues set for hearing. In an analogous context, the Commission has cautioned that 10 CFR 2.206 should not be used as a means of circumventing a licensing board with jurisdiction to grant relief on a certain issue. See Pacific Gas & Electric Co., CLI-81-6, 13 NRC 443 (1981).

The question remains whether the licensees have violated NRC requirements by not having the identified documents within their possession. To put CASE's petition in context, it should be noted that information concerning the design of a nuclear facility can generally be divided into three categories. The first is that of design criteria or design allowables. This information defines minimum characteristics which gross elements of a power plant are to have. For example, a rod protruding from a wall may be required to carry a load of some specific amount. The load for this rod would be a design allowable, and part of the design criteria. The second category is the actual design of the facility. Again using the rod analogy, a complete design would specify not only the type of rod to be used, in terms of length, width, material and shape, but also how that rod would be attached to the wall, e.g., how many bolts would be used, of what material these bolts would be, and in what configuration they would be. The third category of information includes the design procedures or other information concerning the manner in which the design is to be developed or implemented. This third category would include, for example, tables and charts specifying properties of various materials, and computer programs incorporating algorithms which are used to calculate the final design. The information which CASE seeks in its petition, and which the licensees stated they did not possess,

falls generally into this third category.<sup>6/</sup> The licensees referred CASE to ITT Grinnell and NPSI, the contractors which designed the pipe supports.

CASE believes that the licensees are required to maintain the documents in their possession at the Comanche Peak site. See Petition at 1. It should be noted that the documents have been at the site in the possession of the pipe support contractors at times in connection with the contractors' performance of their assigned design and construction activities. Because the documents are maintained under the control of the contractors, the licensees have indicated that they do not have them within their immediate possession.

CASE contends that the licensees have violated various provisions of 10 CFR Part 50, Appendices A and B, if the ITT Grinnell and NPSI documents are not within the licensees' possession. These regulations require the establishment and implementation of a quality assurance program, including the creation and maintenance of appropriate documentation,<sup>7/</sup> applicable to the design, construction, and operation of structures, systems and components important to safety. The licensee may delegate the work of establishing and executing the quality assurance program to contractors, consultants, or other agents, but the licensee retains responsibility for the

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<sup>6/</sup> The information sought in interrogatories 9, 10, 12, 16, and 17 by CASE in its Twelfth Set of Interrogatories appears to have been primarily directed towards design procedures despite references made to design criteria. The design criteria referenced in these interrogatories were already available to CASE. See supra note 2.

<sup>7/</sup> See 10 CFR Part 50, Appendix A, Criterion I, and Appendix B, Criteria V, VI, & XVII.

establishment and execution of the quality assurance program. 10 CFR Part 50, Appendix B, Criterion I. The regulations require licensees to be responsible for the records, to have access to them and to establish requirements for record retention, but the regulations do not require licensees to maintain within their immediate possession all documentation bearing on the design of safety-related features of a nuclear power plant. See 10 CFR Part 50, Appendix B, Criterion XVII. The Commission's regulations contemplate that some records may not be at the site where the facility is being constructed or operated. Criterion VI of Appendix B provides that:

Measures shall be established to control the issuance of documents...which prescribe all activities affecting quality. These measures shall assure that documents... are distributed to and used at the location where the prescribed activity is performed.

The development of a design and the implementation of design procedures to create the design of safety-related equipment is often performed by contractors for persons who are licensed to construct a facility. The contractor may perform some of its functions at its own facilities as well as at the site of the nuclear project. Documentation related to the development of the design must be controlled and maintained by the contractor in accordance with the contractor's quality assurance program implemented to satisfy the licensee's obligations under 10 CFR Part 50, Appendix B. The licensee's Preliminary Safety Analysis Report (PSAR) and Final Safety Analysis Report (FSAR) state that, under the quality assurance program for Comanche Peak, contractors and vendors are required to have quality assurance programs which meet Part 50. See, e.g., PSAR §§ 17.0, 17.1.2.4; FSAR §§ 17.0, 17.1.1.5.

Quality assurance requirements concerning design implementation documentation for the pipe hangers and supports were set forth in Project Specification 2323-MS-46A, which was part of the contracts between the

licensees and their contractors ITT Grinnell and NPSI. The project specification, incorporates the American National Standards Institute (ANSI) Standard N45.2.9, "Requirements for Collection, Storage, and Maintenance of Quality Assurance Records for Nuclear Power Plants." The ANSI standard provides that the implementation of the standard's requirements may be delegated to the organizations performing the work covered by these standards. The standard provides general requirements and guidelines for record retention. See ANSI Standard N45.2.9-1974, at 1. The staff has adopted the recommendations of the ANSI standard as a generally acceptable means of meeting the requirements for maintaining quality assurance documentation. See Regulatory Guide 1.88, "Collection, Storage, and Maintenance of Nuclear Power Plant Quality Assurance Records" (Rev. 2, Oct. 1976). Consequently, the licensees are not required to themselves possess the NPSI and ITT Grinnell documents, although they retain the responsibility for ensuring that pertinent quality assurance documents related to the pipe supports are maintained.

The documents are available to the licensees and to the NRC for its inspection <sup>8/</sup> in the offices of ITT Grinnell and NPSI. The documents have

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<sup>8/</sup> Although they may not possess certain of the ITT Grinnell and NPSI documents, the licensees aver that the documents are indeed available to them. See Letter to Stephen G. Burns, Office of the Executive Legal Director, NRC, from William A. Horin, Counsel for Licensees (June 28, 1983). The PSAR and FSAR state that the quality assurance program includes audits of vendors' and contractors' activities to ensure conformance to quality assurance requirements. See generally PSAR §§ 17.1.2, 17.1.2.4; FSAR §§ 17.1.1.5, 17.1.17, 17.1.18. NRC representatives have reviewed the contractors' documents as part of its inspection efforts. See, e.g., NRC Region IV Inspection Report Nos. 50-445/82-26, 50-446/82-14 (Feb. 15, 1983).

also been used and kept by ITT Grinnell and NPSI at the Comanche Peak site and at such times have been available to the licensees and the NRC.

In conclusion, the licensees have not violated the Commission's regulations although they do not themselves possess the ITT Grinnell and NPSI documents at issue. Accordingly, the petitioner's request for initiation of show cause proceedings is denied.

A copy of this decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c).

FOR THE NUCLEAR REGULATORY COMMISSION

  
Richard C. DeYoung, Director  
Office of Inspection and Enforcement

Dated at Bethesda, Maryland  
this 19th day of August 1983