

The Board should summarily dismiss
Applicants' Motion for Summary Disposition

CASE submits that the issues discussed in Applicants' Motion for Summary Disposition should be addressed along with other related Protective Coatings issues /2/. In fact, Applicants themselves admit (Motion for Summary Disposition, page 2, footnote 1):

"Applicants have indicated to the Board that this issue could be addressed in the context of Applicants' coatings reinspection program."

Applicants further state:

"On review, however, Applicants conclude that the issue may be resolved on the independent basis presented in this motion."

However, they offer no reasons for their conclusions or for taking this particular issue out of the context of their coatings reinspection program. CASE expects to pursue the issue of maximum roughness surface preparation not only with respect to the time frame when CASE witness Robert Hamilton (who initially raised the issue in his testimony) was employed at Comanche Peak, but also with respect to the time frame when CASE witness William Dunham was employed at the plant.

The parties are currently engaged in the taking of evidentiary depositions on the issue of intimidation, harassment, threatening, firing, etc., of Quality Control Inspectors. CASE's primary representative has in effect already been barred from full and active participation in those proceedings due to the staggering work load of assisting in answering about 15 (we've temporarily lost count) of Applicants' Motions for Summary

/2/ See 3/15/84 Board Memorandum (Clarification of Open Issues), pages 7 and 8.

Disposition on design issues /3/ and working on proposed findings on welding issues, as well as keeping up with discovery requests, responding to interrogatories, and other necessary matters. Having to respond to Applicants' Motion for Summary Disposition of Maximum Roughness Surface Preparation Issue at this time would place an unequitable and totally unnecessary additional burden on this Intervenor. Also, it would require CASE to divert substantial resources from what little time CASE's primary representative is able to assist with the ongoing evidentiary Intimidation depositions in order to respond adequately to the motion.

Further, attempting to separate this issue from the other Protective Coatings issues will make it more difficult for the Board to understand the relationship between the two time frames when Messrs. Hamilton and Dunham were employed at Comanche Peak, create an artificial and unrealistic separation of Applicants' clear patterns regarding Protective Coatings, and create an unnecessary and undesirable division of the record on Protective Coatings thereby making it more difficult for the parties and the Board to prepare Findings of Fact.

For the reasons stated in the preceding, CASE urges that the Board summarily dismiss (under the Board's clear authority under 1. FR 2.749(a)) Applicants' Motion for Summary Disposition of Maximum Roughness Surface Preparation Issue and order them instead to include this issue in the context of Applicants' coatings reinspection program.

/3/ CASE will be responding to Applicants' 7/15/84 letter to CASE regarding their Motions for Summary Disposition on design issues shortly; our response will require some research. In the meantime, if such assurance is necessary, we assure the Board that (contrary to Applicants' assertions) CASE has never and will never knowingly misled the Board, in this or any other instance.

In the alternative and in addition, CASE moves for discovery
regarding Applicants' Motion for Summary Disposition
of Maximum Roughness Surface Preparation Issue

Should the Board decide that Applicants' Motion for Summary Disposition is the proper method for deciding the issue of maximum roughness surface preparation, CASE moves for discovery on this issue /4/. As can be seen from a review of the attached interrogatories and requests for documents, such discovery is necessary for CASE to be able to adequately answer Applicants' Motion. And, as the Board reiterated in its 1/3/84 Memorandum and Order (Additional Scheduling Order), page 2:

". . . it is appropriate to answer a motion for summary disposition by indicating why discovery should be allowed prior to acting on the motion. See Memorandum and Order (Scheduling Matters), December 28, 1983 at 7."

In conclusion

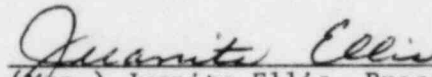
For the reasons stated herein, CASE moves that the Board:

- (1) Grant CASE the three-day extension requested in which to file this response;
- (2) Summarily dismiss Applicants' Motion for Summary Disposition of Maximum Roughness Surface Preparation Issue; and

/4/ In fact, whether or not the Board decides in favor of allowing Applicants' Motion, CASE requests discovery regarding these matters (since they will presumably be included in the context of Applicants' coatings reinspection program).

(3) Grant CASE discovery regarding Applicants' Motion and related issues (whether or not the Board summarily dismisses Applicants' Motion).

Respectfully submitted,



(Mrs.) Juanita Ellis, President
CASE (Citizens Association for Sound
Energy)

1426 S. Polk
Dallas, Texas 75224
214/946-9446