

10/15/84

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of

TEXAS UTILITIES GENERATING  
COMPANY, et al.

Docket Nos. 50-445-1  
and 50-446-1

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

CONFIDENTIAL

CASE'S MOTIONS

AND ANSWER TO APPLICANTS' MOTION FOR SUMMARY DISPOSITION  
REGARDING STABILITY OF PIPE SUPPORTS

CASE (Citizens Association for Sound Energy), Intervenor herein, hereby files this, CASE's Motions and Answer to Applicants' Motion for Summary Disposition Regarding Stability of Pipe Supports.

It should be noted, first of all, that instability of supports was discussed extensively in CASE's 8/22/83 Proposed Findings of Fact and Conclusions of Law (Walsh/Doyle Allegations), Section III (see also Section IV on cinched-up U-bolts). As CASE Witnesses Mark Walsh and Jack Doyle stated, they did not repeat everything which was stated therein, but they (and CASE) urge that the Board review those Sections prior to reading this pleading. (See attached Walsh/Doyle Affidavit at page 1.)

As has happened before with Applicants' Motions for Summary Disposition, the statements in Applicants' Statements of Material Facts do not always correspond to the statements in the back-up Affidavit. This is true in instances throughout the Motion under discussion, but Mr. Walsh did not address each and every one of them. He instead stated that he believes that we must treat the Statement of Material Facts as the Applicants'

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position; i.e., that there is little or no significance to instability of a single pipe support, and he has addressed Applicants' Motion accordingly. (Affidavit at page 2.)

CASE will not repeat here (with few exceptions) what Messrs. Walsh and Doyle have covered in their Affidavit, which ably represents CASE's position. However, there are a few matters which must be addressed here (regarding some legal arguments, for example), or to which we specifically want to call the Board's attention.

In their third Statement of Material Facts (see page 8 of this pleading), Applicants state:

"The support designer is responsible for assuring the stability of each pipe support as part of the piping and support system, and may rely on the presence of the pipe to (sic) a stabilizing effect. This responsibility is delineated in ASME Code Section NF, Appendix XVII, Section XVII-2221(a), to which all support design organizations are committed. (Finneran Affidavit at 8.)"

And in their Statement 14 (see page 56 of this pleading) Applicants state:

"Gibbs & Hill was provided as-built drawings of each pipe support along with as-built survey information that was marked on the drawings. It was not Gibbs & Hill's responsibility, as piping analyst, to review these supports for stability. (Finneran Affidavit at 25.)"

Applicants' statements are true only to a limited extent. From a legal standpoint, it is clear under NRC regulations, specifically 10 CFR Part 50, Appendix B, Criterion I, that:

"The applicant may delegate to others, such as contractors, agents, or consultants, the work of establishing and executing the quality assurance program, or any part thereof, but shall retain the responsibility therefor. . .

"These activities include both the performing functions of attaining quality objectives and the quality assurance functions."  
(Emphases added.)

In addition, Applicants must comply with 10 CFR Part 50, Appendix B, Criterion II, states, in part:

"Activities affecting quality shall be accomplished under suitably controlled conditions. Controlled conditions include . . . assurance that all prerequisites for the given activity have been satisfied. The program shall take into account the need for special controls . . . and skills to attain the required quality, and the need for verification of quality by inspection and test. The program shall provide for indoctrination and training of personnel performing activities affecting quality as necessary to assure that suitable proficiency is achieved and maintained. The applicant shall regularly review the status and adequacy of the quality assurance program. Management of other organizations participating in the quality assurance program shall regularly review the status and adequacy of that part of the quality assurance program which they are executing." (Emphases added.)

See also 10 CFR Part 50, Appendix A, Criteria 1, 2, and 4, and Appendix B, Criteria III, V, VI, X, XV, XVI, XVII, and XVIII, among others. In addition, Applicants are in violation of ASME Section XVII, Section XVII-2221(a), which requires that each support be stable (as does AISC in Section 1.8.1), and which is even quoted, and promptly misinterpreted, on page 2 of the Affidavit of Applicants' Mr. Finneran.

As pointed out by Mr. Walsh, regardless of who is responsible, the important point here is that there were unstable supports constructed which were in violation of the ASME Code to which Applicants are committed. And the Applicants did not discourage field engineers from continuing to create these unstable supports or ITT Grinnell from doing so. (Affidavit at page 8.) It is reasonable to assume that the problems of instability would be of concern to the Architect/Engineer (Gibbs & Hill) and that they would have some adequate procedural mechanism for the prompt identification and prompt correction of such problems. In any event, the ultimate responsibility lies with the Applicants, who are seeking an operating license for this nuclear plant.

CASE must again point out additional problems discovered regarding the credibility (and/or competence) of witnesses in these proceedings. As the Board and parties are well aware, CASE believes that this is a vitally important and legitimate issue in these proceedings, and at some point the Licensing Board must make the determination as to each witness's credibility. This is not pleasant for CASE, but we are, after all, involved in hearings about whether or not to grant an operating license for a nuclear power plant. We believe that we are under an obligation, therefore, to call to the Board's attention inconsistencies or statements which make it appear that witnesses are being less than candid with the Licensing Board, or that they have made statements which raise doubts about their competence or make them appear only "somewhat knowledgeable."

In most instances (unless it is especially blatant and obviously deliberate), we do not believe that it is necessary for the Board even to determine whether or not misstatements are deliberate, since the Board cannot grant an operating license to an applicant which is incompetent any more than they could to one who makes material false statements. The most important thing is for the Board to be certain that it arrives at the truth regarding the important issues in the case.

One such instance, which CASE believes requires disciplinary action by the Board (which we will be discussing in a later pleading) is the misrepresentation by Applicants' counsel to the Licensing Board that the documents and information which would come out of the 8/23/84 onsite meeting between Applicants and NRC Staff would not be significant. The Board will



recall that CASE's primary representative specifically called the Board's attention to this matter just before the last round of intimidation hearings in Fort Worth.

As had been our understanding from the notes and discussions of Dr. and Mrs. Boltz, who attended the 8/23/84 meeting for CASE, the information and documents generated from that meeting were indeed significant. CASE will be informing the Board further regarding other issues, but we call the Board's attention now to just the information regarding stability. As discussed by Mr. Walsh (page 42 of the attached Walsh/Doyle Affidavit):

"This 'insignificant' change amounts to 40% of the supports under discussion being improperly fixed." (Emphasis in the original.)

(See also discussion at page 43 of Walsh/Doyle Affidavit.)

We also call the Board's attention to a fact of which they are already aware -- that it is always CASE and its witnesses, rather than Applicants or the NRC Staff, which provides the Board with documentation so that the Board will have the facts it needs on which to base its decision. (See discussion in Walsh/Doyle Affidavit at pages 19 and 20.) This fact must also be considered by the Licensing Board when judging the credibility of Applicants, NRC Staff, and CASE and their respective witnesses.

As pointed out by Mr. Walsh, the burden of proof should be on the Applicants -- not CASE or its witnesses. This failure of Applicants to provide sufficient proof of their case is the reason CASE and Messrs. Walsh and Doyle are having to go through this relitigation (without Applicants having made a showing of good cause) of the design and design QA/QC issues. If documentation does exist for their statements and positions, the Applicants should have provided it with their Motions for Summary

Disposition, and should not be allowed to skirt this responsibility because CASE or its witnesses did not have adequate time to review Applicants' Motions before having to ask for documents on discovery, or did not have information which was provided later which indicated additional documents were needed.

CASE wants to call the Board's attention to another development revealed in the transcript of the 8/23/84 onsite meeting between the NRC Staff and the Applicants (Tr. pages 7-14). It appears that the Applicants and the Staff are attempting to redefine stability. However, it is clear that Applicants are committed to assuring that each and every unstable support is made stable. (See discussion at pages 33-34 of attached Walsh/Doyle Affidavit.)

CASE is concerned about this for several reasons. First of all, it appears that Applicants and NRC Staff are reverting to previous practices (as discussed on pages XXVII - 35 through -39 of CASE's Proposed Findings of Fact and Conclusions of Law (Walsh/Doyle Allegations)), and in this instance, they are attempting to define a problem which was brought up by Messrs. Walsh and Doyle -- but without ever once having consulted with Messrs. Walsh or Doyle about how they might define stability. To CASE, this causes our previous concerns about bias on the part of the NRC Staff to return, and casts doubt on the credibility of the NRC Staff and its review of this and other problems.

In addition, as can be noted by reviewing the 8/23/84 transcript, there is a continual pushing by Applicants to narrow the issues, and CASE is concerned that the NRC Staff will assist the Applicants in completely narrowing away consideration of some types of stability.

Another instance regarding credibility concerns the statements by NRC Staff Witness Dr. Chen regarding the number of unstable supports in a row which he saw (see pages 4 and 5 of attached Walsh/Doyle Affidavit; see also discussion in Affidavit of CASE Witness Jack Doyle, attached to CASE's 10/6/84 First Motion for Summary Disposition Regarding Certain Aspects of the Implementation of Applicants' Design and QA/QC for Design, at page 7, line 10, through page 15, line 23; page 51, line 25, through page 52, line 9).

Another instance to which we call the Board's attention is noted in Mr. Walsh's attached Affidavit (page 26), where he refers the Board to the discussion at page III - 4 of CASE's 8/22/83 Proposed Findings. The referenced portion concerns testimony by Applicants' witnesses regarding who or what organization is responsible for detecting unstable pipe supports. and states:

"It should be noted that Mr. Finneran's testimony in this area was shifting, to say the least (see Tr. 4953-4985). Compare especially Tr. 4959/6-7, 4962/24-4963/16, 4968/21-24, 4975/20-4976/12; also, 4960/17-20, 4963/13-18, 4978/10-12; and 4961/14-21, 4965/15-4966/9)." (Emphasis in the original.)

We ask that the Board review the referenced testimony and include consideration of it in the Board's deliberations, not only regarding the issue of instability, but of the credibility of Applicants' witness as well.

Yet another instance is regarding Applicants' Witness Mr. Finneran's deliberately taking statements made by CASE Witness Jack Doyle out of context and misrepresenting their meaning to the Licensing Board. In this particular instance, it is obvious that Mr. Finneran had to have known that the statement was taken out of context, since he refers to CASE's Proposed

Findings at III-9; and on page III-9 of our Proposed Findings, it states specifically that the statement was taken out of context, along with additional details. But Mr. Finneran did not include that statement from CASE's Proposed Findings in his Affidavit or acknowledge it in any way. (It should be noted that Mr. Doyle's statement was originally quoted out of context by the NRC SIT Team.) In case there is still doubt as to his position, Mr. Doyle has gone into detail regarding his position in this regard (pages 5 and 6 of attached Walsh/Doyle Affidavit), and hopefully this will clear up this particular point once and for all. CASE submits that, for Applicants' Witness to have taken Mr. Doyle's statements out of context -- after having been put on notice in CASE's Proposed Findings that the SIT had taken it out of context -- constitutes deliberate misrepresentation to the Board and at least borders on a material false statement, and we ask that the Board make a determination regarding this.

The credibility of Applicants' Witness Mr. Finneran is further called into question due to the following (although in this instance, it is not apparent that Mr. Finneran knew that he was making a misstatement). It should be noted that CASE Witness Mark Walsh, for the first time, discusses Mr. Doyle's and Applicants' statements regarding Terry Kerlin (Affidavit at pages 16-17). The reason for this is that, as pointed out by the Licensing Board in its 2/8/84 MEMORANDUM AND ORDER (Reconsideration Concerning Quality Assurance for Design), at page 15, item 2, all of Applicants' comments regarding this matter have been extra-record, rather than evidence either in the form of sworn testimony or documentation. Applicants' witnesses never testified about this in the hearings, and Mr. Doyle's testimony in the record was in fact unrefuted prior to the 6/17/84 Affidavit of



Applicants' Witness Finneran; and it should be noted that, as pointed out by Mr. Walsh in his attached Affidavit (see discussion at pages 15-18), Applicants have still failed to provide evidence to rebut the Board's original finding. The only "evidence" which Applicants have provided is Mr. Finneran's statement in his Affidavit (at page 11):

"However, as Applicants indicated in their Motion for Reconsideration of the Board's Memorandum and Order (at 20-21), Mr. Kerlin was a co-worker of Mr. Doyle's and had no supervisory responsibilities." (Emphasis in the original.)

There is no indication that Mr. Finneran did any independent research regarding this matter or that he is relying on anything other than the extra-record and unsupported statements in Applicants' Motion for Reconsideration. And there is no documentation to support any of Applicants' statements in this regard; this includes the CMC which Mr. Finneran stated had been written in March 1981 to improve stability (Tr. 4893/12-4895/3).

Similarly, Mr. Walsh has found it necessary to testify regarding a statement in Mr. Finneran's Affidavit which is, CASE believes, very significant. Mr. Finneran stated (Affidavit at page 11):

"Mr. Walsh has not alleged that he spoke to anyone, let alone a supervisor, regarding instability."

But, as stated by Mr. Walsh (page 18 of Walsh/Doyle Affidavit):

"As I stated during my unrefuted cross-examination testimony in July of 1982, I stated (Tr. 3107/19-22):

"'What happened was the engineer from Grinnell, I went over and informed him that it was unstable, and he told me that it was his responsibility.' (Emphases added.)

"'Consequently, we sent it back that way.'"

CASE submits that Messrs. Walsh and Doyle did attempt to tell individuals in positions of authority about the problems with instability while they were employed at Comanche Peak. Further, Mr. Walsh, in unrefuted testimony in these very proceedings in July 1982 stated that he did tell someone in authority at Comanche Peak about the problem of instability while he was employed there.

In light of this, Mr. Finneran's unequivocal statement (page 11 of Affidavit) that "Mr. Walsh has not alleged that he spoke to anyone, let alone a supervisor, regarding instability," is surprising, to say the least. Equally surprising is the fact that apparently no one of Applicants' representatives who one would assume reviewed Mr. Finneran's Affidavit was aware of Mr. Walsh's testimony in this regard. CASE does not have sufficient information to assume that this misstatement by Mr. Finneran was intentional. However, CASE submits that the alternative is equally as damaging to Applicants' case. If the misstatement was not intentional, the clear implication is that Applicants did not listen when Messrs. Walsh and Doyle attempted to bring this problem to their attention while employed at Comanche Peak, and they did not listen when Mr. Walsh brought it to the attention of not one supervisor, but many of Applicants' representatives in positions of authority who were present at the July 1982 hearings or who read the transcript of those proceedings.

As pointed out by Mr. Walsh, the Applicants' present attitude toward these unstable supports (missing supports) is that they don't care. This attitude calls into question the true extent of their concern about all the other problems discussed in CASE's other Answers to Motions for Summary

Disposition, as well as other problems which may not have been identified by CASE but which may exist in other areas throughout the plant. (Walsh Affidavit at page 3.)

There are many serious problems documented in regard to the problem of instability at Comanche Peak: serious problems with testing and testing procedures have been pointed out by Mr. Doyle; there is an obvious, serious, and documented breakdown in documentation and records retrievability; and there have been documented multiple breakdowns in design and design QA/QC.

CASE further submits that, based on the record in these proceedings (including the Motions for Summary Disposition and answers), the problem of instability at Comanche Peak is one which Applicants have been slow to recognize and which they have, in fact, fought hard against being forced to recognize and deal with, that they are even now finally taking steps to deal with some aspects of the problem only because of these proceedings, and that the preponderance of evidence clearly shows that Applicants would not have corrected these problems of instability had it not been for the oversight of the Licensing Board and the persistence of Messrs. Walsh and Doyle and CASE in these proceedings, and that, even now, Applicants are attempting to avoid dealing with some types of instability.

The Board discussed the problem of instability at some length in its 12/28/83 Memorandum and Order (Quality Assurance for Design). The Board gave Applicants another opportunity to allow them to salvage their multibillion dollar investment. This (and other Motions for Summary Disposition) was that chance. But what has been, and is being, revealed is that the Board's original concerns were not quite accurate -- because the

problems with stability (and others) are far more severe and widespread than the Board (and even CASE) had first imagined.

Applicants' testimony and actions demonstrate serious and alarming deficiencies -- not just in design and design QA/QC, and in documentation and retrievability, and in testing and testing procedures -- but also deficiencies in the willingness of upper management and supervisory personnel to admit mistakes, to bite the bullet and admit:

"Yes, we made some errors here, but we have replaced or retrained the 'somewhat knowledgeable' individuals who made those errors, we are taking immediate action to correct the deficiencies which have been identified, we are reviewing not just the particular supports which have been identified by Messrs. Walsh and Doyle but also have extended our review not only to all other pipe supports which might possibly also have similar deficiencies, but to other components (such as cable tray supports) as well."

Had Applicants shown such a willingness to promptly identify and correct deficiencies, had they encouraged rather than discouraged their employees to bring problems to their attention, had they taken steps to adequately deal with those problems once they had been called to their attention, had their attitude been different over the past many years during the design and construction of Comanche Peak, Messrs. Walsh and Doyle (and many other good employees) might well still be employed at Comanche Peak, and these proceedings would never have been necessary in the first place.

This, unfortunately, does not reflect the facts as indicated by the record before this Licensing Board, and even were Applicants to attempt to adopt this improved attitude and take such steps, CASE submits that it is too late. Too many problems have gone unidentified and uncorrected over a period of too many years for anyone to ever identify all of them, much less correct them at this late date. Applicants are in serious violation of NRC



regulations (as discussed at length in CASE's 8/22/83 Proposed Findings of Fact and Conclusions of Law (Walsh/Doyle Allegations), especially Section III, and in CASE's Answers to Applicants' many Motions for Summary Disposition). The Board should so find.

CASE'S MOTIONS

In addition to the preceding, CASE also makes the following two motions:

First, it should be noted that the Applicants agreed to provide CASE with a requested list of unstable supports on the main steam line; and on October 4, 1984, in response to a request by CASE President Juanita Ellis, Applicants' counsel William Horin provided to her by telephone the following list of 13 unstable supports on the main steam line:

MS-1-001-003-S72R  
MS-1-001-004-S72R  
MS-1-001-005-S72R

MS-1-002-003-S72R  
MS-1-002-005-S72R  
MS-1-002-006-S72R

MS-1-003-003-S72R  
MS-1-003-004-S72R  
MS-1-003-005-S72R  
MS-1-003-006-S72R

MS-1-004-003-S72R  
MS-1-004-005-S72R  
MS-1-004-006-S72R

Since the representation by Applicants' counsel is not evidentiary, by separate letter attached to this pleading, CASE is requesting Applicants to confirm this by Affidavit. If Applicants do not agree to voluntarily provide such Affidavit, CASE moves that the Board order them to do so, so that the evidentiary record will be complete.

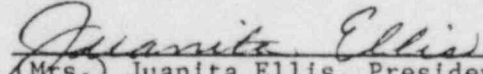
Second, beginning on page 9 of the Walsh/Doyle Affidavit, Mr. Walsh discusses inter-office correspondence by ITT Grinnell (Attachments A-1, A-2 and A-3 to Applicants' Affidavit). (This was also discussed by CASE Witness Jack Doyle in his Affidavit attached to CASE's First Motion for Summary Disposition Regarding Certain Aspects of the Implementation of Applicants' Design and QA/QC for Design.) The Board will recall that during an 8/22/84 conference call (off-the-record, I believe), the Board ordered Applicants to provide CASE with the information which we had requested during the 8/6/84 Applicants/ Staff/CASE conference call regarding discovery matters on the Motions for Summary Disposition:

" . . . any answer that was made, any back-up notes, any notes, anything to do with this particular matter in answer to Attachment A-3, and any subsequent information that went back and forth regarding this matter."

Applicants' counsel has now stated to Mrs. Ellis by telephone that there is no additional documentation in response to this request.

Since the representation by Applicants' counsel is not evidentiary, by separate letter attached to this pleading, CASE is requesting Applicants to confirm this by Affidavit. If Applicants do not agree to voluntarily provide such Affidavit, CASE moves that the Board order them to do so, so that the evidentiary record will be complete.

Respectfully submitted,

  
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(Mrs.) Juanita Ellis, President  
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