

November 1, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
TEXAS UTILITIES ELECTRIC)	Docket Nos. 50-445
COMPANY, <u>et al.</u>)	50-446
)	
(Comanche Peak Steam Electric)	
Station, Units 1 and 2))	

NRC STAFF RESPONSE TO APPLICANTS' MOTION FOR RECONSIDERATION
OF BOARD ORDER GRANTING DISCOVERY ON CROSSOVER LEG RESTRAINTS

I. INTRODUCTION

Applicants have filed a "Motion for Reconsideration of Board Order Granting Discovery on Crossover Leg Restraints" (October 19, 1984) ("Applicants' Motion"). Applicants' Motion requests the Board to reconsider its October 5, 1984 "Memorandum and Order (Discovery on Cross-Over Leg Restraints" ("Discovery Order") permitting Intervenor CASE to conduct discovery on "the adequacy of documentation and testing of the cross-over leg restraints." Discovery Order, p.2. The NRC Staff ("Staff") hereby responds to the Applicants' Motion.

II. BACKGROUND

The issue of the cross-over leg restraints was prompted by "Applicants' Motion for Authorization to Issue a License to Load Fuel and Conduct Certain Precritical Testing" (August 7, 1984) ("Applicants' 10 C.F.R. § 50.57(c) Motion"). In response to Applicants' 10 C.F.R. § 50.57(c) Motion, CASE filed its "Partial Answer In Opposition to Applicants' Motion for Authorization to Issue a License to Load Fuel and

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Conduct Certain Precritical Testing and Motion for Additional Time to Respond" (August 18, 1984) ("CASE's Partial Answer"). In its Partial Answer, CASE attached NRC Inspection Report 84-08/84-04 (July 26, 1984), which reported a Notice of Violation ^{1/} ("NOV") relating to QC inspections of the CPSES Unit 1 crossover leg restraints. On the basis of this Inspection Report, CASE requested an opportunity to take discovery against Applicants on the crossover leg restraints. CASE's Partial Answer, p.2.

CASE's discovery motion was discussed by the Board and the parties in a telephone conference call on August 22, 1984. The Board determined that the NOV was irrelevant to Applicants' 10 C.F.R. § 50.57(c) Motion. Tr. 14,005-006. Nonetheless, the Board indicated that there may be some nexus between the NOV and the underlying programmatic QA issue which is the subject of Contention 5. Accordingly, the Board requested a response from Applicants on whether discovery within the limits of Contention 5 should be permitted on the NOV. Tr. 14,007.

Applicants submitted their "Response to CASE Motion for Discovery Regarding Inspections of Main Coolant System Cross Leg Restraints" (September 14, 1984) ("Applicants' Response") to address the Board's question. On October 5, 1984, the Board issued its Discovery Order, which stated that "there is sufficient importance to the allegation in the [NOV] for us to permit discovery." Discovery Order, p.1. The Board listed several issues which it believes were raised by the Applicants' Response of September 14, 1984. Discovery Order, p.2.

^{1/} Notice of Violation 50-445/84-08-02.

Applicants then filed their Motion for Reconsideration, which addresses the issues identified by the Board in its Discovery Order.

III. DISCUSSION

Applicants' primary argument is that this NOV represents a single, isolated deficiency without any "programmatic significance."

Applicants' Motion, pp. 2, 4 (citing Pacific Gas and Electric Co.

(Diablo Canyon Nuclear Power Station, Units 1 & 2), ALAB-756, 18 NRC 1340, 1345 (1983)). Applicants indicate that:

deficiencies are not unusual and are independently irrelevant to the ultimate question of whether the plant has been constructed properly. Litigation of every reported or alleged deficiency would be immensely time-consuming, extremely expensive, and inconsistent with an Applicants' right to an expeditious hearing and a timely licensing decision. See Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 452-53 (1981).

Applicants' Motion, pp. 2-3. Applicants also argue that CASE has made no showing of the programmatic significance of the NOV, that the Board has also not made any such finding, and that in fact the Board acknowledged (see Discovery Order, p.2) that discovery would be permitted to "assist the Board in assessing its significance." Applicants' Motion, pp. 3-4, 8.

The Staff shares the Applicants' concern that the Board has permitted discovery without a clear statement by CASE regarding the "programmatic

significance" of this NOV in the context of Contention 5. ^{2/} The Board has already identified a large number of issues which need to be resolved in order assess the adequacy of Applicants' QA/QC program. See Memorandum (Board Questions on Computerization of Non-Conformances) (September 20, 1983); Memorandum and Order (Quality Assurance for Design) (December 28, 1964); Memorandum (Adequacy of Record: Delaval Diesel Generators) (January 31, 1984); Memorandum (Clarification of Open Issues) (March 15, 1984); Memorandum (Request for Evidence Relevant to Fuel Loading) (August 24, 1984). The issues which the Board has identified as requiring resolution span a full range of concerns, including construction adequacy, adequacy of construction and QA/QC procedures, issues regarding intimidation of QA/QC personnel, document control, and the commitment of Applicants' management to an effective QA/QC program. In these circumstances, the Staff submits that new issues should not be added unless CASE shows that the proposed new issue: (1) is itself of "programmatic significance," or (2) has an important connection to other already-admitted issues tending

^{2/} The Staff points out that the existence of programmatic significance of this NOV, or any other alleged deficiency, is keyed to the fundamental issue which underlie all contentions questioning the effectiveness of applicants' QA program, namely, whether the allegations asserted show a breakdown in the QA program "of sufficient dimensions to raise legitimate doubt as to the overall integrity of the facility and its safety-related structures and components." Union Electric Co. (Callaway Plant Unit 1), ALAB-740, 18 NRC 343, 346 (1983). As the Atomic Safety and Licensing Board in another proceeding said, the construction of a nuclear power plant is a "massive task," and there should be no surprise that an applicants' QA program has detected "thousands of non-conformances that have arisen during construction." Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-83-77, 18 NRC 1365, 1367 (1983). The Licensing Board embraced the position that proper functioning of the QA program in identifying and promptly correcting deficiencies is the crucial question to be answered. Id., pp. 1367-69.


to show a programmatic QA deficiency. Matters which would be only cumulative should not be admitted at this stage of the proceeding.

To date, CASE has not made any showing regarding the significance and relationship of the NOV to the already-multitudinous issues which CASE has already identified. Nor has CASE made any showing why the evidence on the NOV will be helpful to the Board in evaluating the adequacy of Applicants QA/QC program, which is the fundamental issue in this proceeding. The Staff draws the Board's attention to the Board's previous direction to CASE urging "increased paring of arguments so that its efforts will be focused on matters it considers truly important." Memorandum (Clarification of Open Issues) (March 15, 1984), p.3. As the Board there recognized, there are many important issues, and if CASE "directs this Board's attention to less important issues, it will squander its own resources and distract the Board from the important safety issues with which CASE is most concerned." Id.

IV. CONCLUSION

The Board should not permit CASE to conduct discovery on the NOV, since CASE has not made a showing that evidence on the NOV will contribute in a significant way to the record on Contention 5.

Respectfully submitted,


Geary S. Mizuno
Counsel for NRC Staff

Dated in Bethesda, Maryland
this 1st day of November, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

DOCKETED
USNRC

'84 NOV-5 P3:12

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TEXAS UTILITIES ELECTRIC COMPANY,)
 et al.)
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(Comanche Peak Steam Electric)
 Station, Units 1 and 2))

Docket Nos. 50-445
50-446

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO APPLICANTS' MOTION TO STRIKE CASE'S ANSWER TO APPLICANT'S REPLY TO CASE'S ANSWER ON CONSIDERATION OF FRICTION FORCES" and "NRC STAFF RESPONSE TO APPLICANTS' MOTION FOR RECONSIDERATION OF BOARD ORDER GRANTING DISCOVERY ON CROSSOVER LEG RESTRAINTS" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 1st day of November, 1984:

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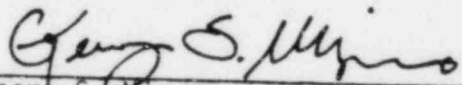
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