

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF MOTION TO STRIKE TESTIMONY  
OF DOYLE HUNNICUTT AND JAMES E. CUMMINS

I. Introduction

The NRC Staff hereby moves the Atomic Safety and Licensing Board to strike the testimony of Staff witnesses Doyle Hunnicutt<sup>1/</sup> and James E. Cummins<sup>2/</sup> as being beyond the scope of the harassment and intimidation issue and therefore not relevant to this proceeding.

II. Discussion

On June 14, 1984, a prehearing conference was held among the Board and parties to determine the scope of the harassment and intimidation issue. Tr. 13,868-14,050. Presentations and argument were made by Applicants, Intervenor CASE and the Staff regarding the scope of this issue.

1/ The "Testimony of Doyle Hunnicutt Regarding the T-Shirt Incident" was submitted by letter dated August 20, 1984.

2/ The Deposition of James E. Cummins was taken in Glen Rose, Texas on July 17, 1984.

During that prehearing conference, counsel for CASE asserted that the response of the NRC Staff to alleged incidents of intimidation was relevant to the issue. Tr. 13,885-887. Counsel for CASE also asserted that he could demonstrate that the NRC was part of a "pattern of intimidation" at Comanche Peak. Tr. 13,888. Subsequently, the Board Chairman stated during the June 28, 1984 telephone conference, in answer to the Staff's contra argument, that the Board would rule on the relevancy of the Staff's responses after CASE had an opportunity to produced evidence of a "pattern of intimidation" which resulted both from the actions of the Applicants and the Staff. Tr. 13,619(B)-622(B).

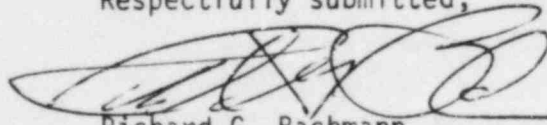
The testimony which the Staff has moved to be stricken concerns the so-called "T-Shirt incident." During the course of the evidentiary depositions taken in Glen Rose, Texas from July 9 through August 3, 1984, CASE elicited no testimony whatsoever which demonstrates that the NRC Staff was part of a "pattern of intimidation" regarding the T-Shirt incident. On the contrary, in an attempt to make a connection with the Staff, CASE introduced documents during the deposition of James F. Cummins (marked for identification as Intervenors' Exhibit Nos. 1 through 4; Tr. 54,045) which consist of questions and answers from Staff interviews of three of the T-Shirt personnel. It is clear from their answers that the T-Shirt wearers did not even expect any action from the NRC. In addition, there was no testimony elicited during the depositions of Kenneth Wayne Whitehead (Tr. 55,000-164) or Jack Pitts (Tr. 73,500-553), the only T-Shirt wearers deposed, concerning their expectations as to NRC involvement or lack thereof in the "T-Shirt incident." In short, CASE has provided no demonstration of the Staff's involvement in a "pattern of intimidation" which the Board indicated was a prerequisite for a finding of relevancy.

The Board stated during the June 28, 1984 telephone conference that it would defer ruling on the relevancy of the Staff's responses until the evidence was in. Tr. 13,622(B). The material is now before the Board. As discussed above, CASE has made no demonstration of the Staff's involvement in a "pattern of intimidation" for the Board to make a finding of relevancy and the Board should rule that the subject of the Staff's response to the T-Shirt incident is not relevant to the issue of intimidation currently before the Board.

III. Conclusion

For the reasons discussed above, the Board should strike the testimony of Staff witnesses Doyle Hunnicutt and James E. Cummins.

Respectfully submitted,



Richard G. Bachmann  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 20th day of August, 1984

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COLLECTED  
USNRC

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CERTIFICATE OF SERVICE

I hereby certify that copies of "TESTIMONY OF DOYLE HUNNICUTT REGARDING THE T-SHIRT INCIDENT" and "NRC STAFF MOTION TO STRIKE TESTIMONY OF DOYLE HUNNICUTT AND JAMES E. CUMMINS" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or deposit in the Nuclear Regulatory Commission's internal mail system (\*), or by express mail or overnight delivery (\*\*), or by hand delivery (\*\*\*), this 20th day of August, 1984:

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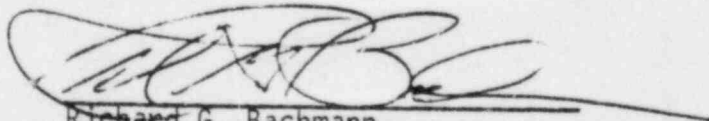
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