

8/27/84

RELATED CORRESPONDENCE

DOCKET NUMBER
PROD. & UTIL. REG. 50-445-01-2

DOCKETED
USNRC 50-446-01-2

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD ^{84 AUG 27 10:12}

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| In the Matter of |) | OFFICE OF SECRETARY |
| |) | DOCKETING & SERVICE |
| TEXAS UTILITIES ELECTRIC |) | Docket Nos. 50-445-2 and |
| COMPANY, <u>et al.</u> |) | 50-446-2 |
| |) | (Application for |
| (Comanche Peak Steam Electric |) | Operating Licenses) |
| Station, Units 1 and 2) |) | |

APPLICANTS' RESPONSE TO STAFF
MOTION TO STRIKE TESTIMONY OF
DOYLE HUNNICUTT AND JAMES E. CUMMINS

I. Introduction

On August 20, the Staff filed a motion to strike the testimony of Doyle Hunnicutt and James E. Cummins, two NRC employees who were called as witnesses by the Intervenor. The Staff advances two points in support of its motion. First, the Staff asserts that the challenged testimony is being offered to support Intervenor's contention that the NRC did not respond properly to allegations of harassment and intimidation at Comanche Peak. And, second, the Staff argues that the challenged testimony is irrelevant because that contention is not properly within the scope of the issues being litigated in this proceeding. Applicants support the Staff's motion to the extent that the challenged testimony is being offered to prove NRC misconduct.

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II. Argument

A. Intervenor's Contentions Concerning
Misconduct by the NRC is Ripe for
Summary Disposition

During the prehearing conferences on June 14 and June 28, 1984, Intervenor asserted that the response of the NRC Staff to alleged incidents of intimidation was relevant to the question of whether Applicants had intimidated QC inspectors at Comanche Peak (Tr. 3,885-87; 13618B-22-8). Indeed, counsel for Intervenor promised to prove that the NRC was part of a "pattern of intimidation" at the site (Tr. 13,888) and that the actions of the NRC Staff "enhanced the impact of the activities that Applicants engaged in which these people viewed as being either harassment or intimidation" (Tr. 13,622B). The Staff and Applicants objected to including the issue of NRC misconduct within the scope of this proceeding, but the Board declined to rule on the objections until it examined the evidence that Intervenor could muster on the point (Tr. 13,622B). Intervenor, however, failed to adduce any creditable evidence in support of its claim, and the Board should now rule that Intervenor's claims of NRC misconduct are not relevant to the admitted contention.

Intervenor promised to produce at least 14 witnesses who would implicate the NRC in alleged harassment and intimidation at Comanche Peak, but 13 of those "witnesses" either did not testify

at all or did not testify about this issue.¹ The Intervenor's fourteenth witness, Dennis Culton, did testify that "the NRC interview and inspection/investigation process was so hostile and intimidating that he wants nothing further to do with the NRC" Intervenor's witness list, p. 30. Nevertheless, the Board reviewed a tape recording of the meeting during which the alleged intimidation occurred, and found that during this meeting the NRC investigators acted properly in all respects. Thereafter, the Board struck Mr. Culton's testimony based on this finding and Mr. Culton's wooden refusal to be cross-examined by the Applicants and Staff. Thus, Intervenor failed to adduce any proof of NRC misconduct from any of its fourteen designated witnesses on the point.

¹ Intervenor's final witness list dated June 27 promised that "Witness A," Eddie Snyder, Jack Pitts, D.T. Oliver, A. Ambrose, M. Barfield, Lan Davis, Bruce Hearn, Ron Jones, Gerald Prior and Jerry Stephens would testify that efforts to secure NRC intervention in the T-Shirt incident failed and "that the lack of response by the NRC was nonfeasance." Only one of these witnesses, Jack Pitts, testified at all, and he was called as a witness by the Applicants. More significantly, Intervenor failed to ask Mr. Pitts a single question about requests for NRC assistance. Intervenor's final witness list also promised that Betty Brink would testify that the NRC improperly released the names of persons that she provided to the NRC in confidence; nevertheless, the Intervenor failed to call Ms. Brink as a witness. Finally, Intervenor's final witness list promised that Sue Ann Neumeyer would testify from "personal knowledge that the NRC is not interested in examples of evidence of harassment, intimidation, [or] pressure." Ms. Neumeyer's deposition transcript spans over 300 pages, but she made no mention of the NRC's indifference to such complaints.

Henry Stiner was the only other witness to testify that he was dissatisfied with the way in which the NRC addressed his complaints.² But, Mr. Stiner's testimony, like Mr. Culton's does not support Intervenor's contention. The crux of Stiner's beef with the NRC is that the NRC reacted too slowly to his complaint (Tr. 51,712-20) and that the NRC investigators "took such a pessimistic outlook on every allegation we [Henry and Darlene Stiner] told them about."³ As to the NRC's reaction time, Stiner's testimony reveals that he called the NRC in Washington two or three days after he was terminated; he was told that someone would call him back on the matter; and Mr. Driskill, an official with the Office of Investigation, returned Stiner's call "that night or the very next day" (Tr. 51,717-720). According to Stiner, Driskill told him he was going to be tied up for a week or so, and predictably Driskill called Stiner back a week later and arranged to meet with Mr. Stiner. At Stiner's request, this meeting was held at the offices of Roger Gilmore, a local attorney (Tr. 51,705; 51,710). Nothing in Mr. Stiner's story reflects that the NRC failed to respond promptly to his call; to the contrary, it is clear that the NRC's response was timely under any standard except Mr. Stiner's.

² Intervenor's witness list did not identify Mr. Stiner as a witness on this issue.

³ Significantly, Darlene Stiner did not include any allegations of NRC misconduct in her laundry list of complaints.

As to the NRC's pessimism, Stiner testified:

[A]bout the gouge mark in the pipe, they said that unless I had proof it wouldn't do them any good to investigate it. They said that if we didn't have hanger numbers, and time, and dates, and names, that just the fact that I could tell them where it was at wasn't good enough, that they'd have to have all the information before they could do any investigation on it. They let me know right there that I was barking up the wrong tree.⁴

Clearly, Stiner's testimony on the point reveals nothing more than an attempt by the NRC to get the facts necessary to investigate Stiner's complaint.⁵

Intervenor sought to prove that the NRC was implicated in the alleged harassment and intimidation of QC inspectors at Comanche Peak and failed to respond to worker concerns. The Board, in the interest of developing a full record, provided Intervenor opportunity to present its evidence on these issues. With only Henry Stiner's testimony to show for Intervenor's effort, the time has come to grant summary disposition in the issue.

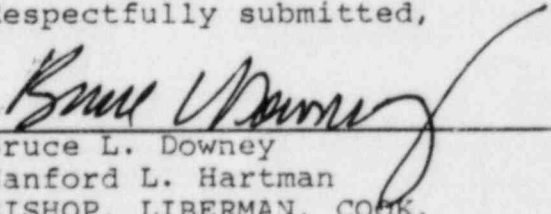
⁴ Stiner Tr. at 4,249.

⁵ Stiner's contention regarding NRC misconduct at this meeting is further undercut by the fact that there were several witnesses, including counsel for Intervenor CEFUR, present at the meeting.

B. The Testimony of Messrs. Hunnicutt and Cummins Relevant to Intervenor's Contentions Concerning the Applicants' Conduct During the T-Shirt Incident

Portions of the testimony of Messrs. Hunnicutt and Cummins describe points that are relevant to questions of what happened during the T-shirt incident. Mr. Hunnicutt, for example, testified that he interviewed several QC inspectors immediately following the incident, and during these interviews, he asked them whether personal property was removed by management from their work areas. Their responses to his questions are clearly relevant to Intervenor's contentions regarding the incident.⁶ In addition, the NRC took custody of the site documentation removed from the inspector's work areas and completed a physical inventory of that documentation.⁷ The events surrounding this aspect of the T-shirt incident may also be relevant to Intervenor's contentions concerning the incident. Given the relevancy of their testimony to Intervenor's contentions regarding the Applicants, the testimony of Messrs. Hunnicutt and Cummins, should be received in evidence.

Respectfully submitted,



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⁶ See Hunnicutt testimony at 7-8; Cummins Tr. at 54,045.

⁷ See Hunnicutt testimony at 5-6; Cummins Tr. at 54,028-37.

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COMPANY, et al.) 50-446-2
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(Comanche Peak Steam Electric) (Application for
Station, Units 1 and 2)) Operating Licenses)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Applicants' Response to Staff Motion to Strike Testimony of Doyle Hunnicutt and James E. Cummins" in the above-captioned matter were served upon the following persons by hand-delivery,* overnight delivery,** or by deposit in the United States mail***, first class, postage prepaid, this 27th day of August, 1984:

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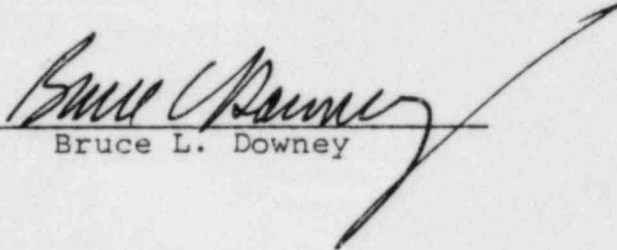
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