

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

11/20/84

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

TEXAS UTILITIES ELECTRIC
COMPANY, et al.

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

Docket Nos. ~~84-50-26~~ ⁸⁴⁻⁵⁰⁻²⁶ A10:15
and 50-446

OFFICE OF SECRETARY
DOCKETING & SERVICE
(Application for an
Operating License)

FOURTH ROUND RESPONSE

CASE'S ANSWER TO APPLICANTS' REPLY TO CASE'S ANSWER TO
APPLICANTS' MOTION FOR SUMMARY DISPOSITION
REGARDING THE UPPER LATERAL RESTRAINT BEAM

CASE finds it necessary to file this Fourth Round Response, CASE's Answer to Applicants' Reply to CASE's Answer to Applicants' Motion for Summary Disposition Regarding the Upper Lateral Restraint Beam. Our response for the most part is contained in the attached Affidavit of CASE Witness Jack Doyle, with the following additional comments.

The Board, in its 10/31/84 Memorandum (Multiple Filings) imposed certain restrictions upon CASE's ability to respond to Applicants' replies to CASE's Answer to Applicants' Motions for Summary Disposition; the Board stated (pages 1 and 2):

" . . . any such responses must clearly demonstrate, for each subject matter discussed: (1) relevance, (2) what new material in the last round filing is being responded to, (3) why the party was unable to anticipate this material in its last filing, and (4) the safety significance of the point that is being made. We will strike any filings that do not comply with this directive."

CASE filed its Motion for Reconsideration of Board's 10/31/84 Memorandum (Multiple Filings) on 11/15/84. We will not repeat that pleading here, but incorporate it herein by reference. Mr. Doyle's attached

Affidavit was signed and notarized on 11/5/84, which was the same day on which CASE received the Board's 10/31/84 Memorandum (Multiple Filings); therefore, Mr. Doyle did not have the benefit of the Board's Memorandum at the time he was working on his Affidavit. Since the Board has not yet ruled on CASE's 11/15/84 Motion for Reconsideration of Board's 10/31/84 Memorandum (Multiple Filings), we address herewith each of the four criteria for fourth round responses which the Board set forth in that Memorandum.

It must be remembered that the purpose of Applicants' Motions for Summary Disposition and responses thereto was to provide Applicants with an opportunity to correct a deficiency of proof on the part of Applicants /1/. It was Applicants who chose the specific items which they would address in their Motions for Summary Disposition, as well as the specific items addressed in their Statements of Material Facts and the back-up Affidavits for those Material Facts. These specific items chosen by the Applicants were to have been Applicants' opportunity to correct their deficiency of proof and should have been comprehensive enough to thoroughly address the issues. These specific items -- chosen by the Applicants -- also limited the responses which CASE could make to Applicants' Motions for Summary Disposition (see 7/26/84 conference call at Tr. 13931/13 et seq.).

Applicants' Motions should have been (and were represented to be) complete enough for the Board to have made a decision based on those pleadings -- the burden of proof was on Applicants to remedy their

/1/ See Board's 2/8/84 Memorandum and Order (Reconsideration Concerning Quality Assurance for Design), pages 34 through 36; see also CASE's 11/15/84 Motion for Reconsideration of Board's 10/31/84 Memorandum (Multiple Filings).

deficiency of proof. However, CASE's Answers to Applicants' Motions for Summary Disposition have attempted (within the time frame under which we were working) to address and respond to Applicants' Motions. CASE and its two engineering witnesses had not anticipated that Applicants would be given yet another bite at the apple in the form of third-round replies to CASE's Answers to Applicants' Motions for Summary Disposition. We had anticipated that there might be some requests by the Board for additional information similar to the Board's specific requests as contained in its 10/18/84 Memorandum and Order (Information Concerning Torques in U-Bolts) and its 10/18/84 Memorandum and Order (More Detail on Individual Pipe Supports). However, once the Board allowed unrestricted third-round replies by Applicants (yet another bite at the apple), it was necessary in the interest of fairness and a complete record for the Board to allow CASE to file fourth-round replies by CASE to respond to Applicants' third-round replies. (We will not belabor the point here, but refer the Board to our 11/15/84 Motion for Reconsideration of Board's 10/31/84 Memorandum (Multiple Filings) for our position regarding this and what CASE considers to be the unfair position of the Board in that Memorandum which restricts CASE's fourth-round answers to Applicants' unrestricted third-round replies.)

We believe that the first two criteria in the Board's 10/31/84 Memorandum (Multiple Filings) (i.e., relevance and what new material in the last round filing is being responded to) is adequately covered in Mr. Doyle's attached Affidavit /2/.

/2/ CASE believes that we understand what the Board requires. However, since we are not attorneys, if this belief is incorrect, we ask that the Board advise what additional information it requires in this regard and allow CASE the opportunity to provide such additional information.

The third criteria (why the party was unable to anticipate this material in its last filing) we believe is obvious: There was no way CASE or its witnesses could have anticipated that Applicants would deliberately misrepresent statements made by CASE and its witnesses, much less what such misrepresentations would consist of. Similarly, there was no way CASE or its witnesses could have anticipated that Applicants would make additional misleading statements, much less what such statements would consist of.

CASE Witness Jack Doyle has addressed, in part, the fourth criteria of the Board's 10/31/84 Memorandum (Multiple Filings) (i.e., the safety significance of the point that is being made); he states (attached Affidavit at pages 1 and 2):

"The counsel for Applicants keeps stating that CASE fails to demonstrate that our answers constitute important issues that affect the public safety. I don't know what Applicants' attorney means by this statement. The mere fact that Applicants must justify a particular support, etc., indicates on face value that the adequacy of that item is critical to the health and safety of the public, or the Licensing Board would not entertain litigation of the subject.

"Perhaps counsel for Applicants intends that each answer to Applicants' Motions be developed through fault-tree procedures to postulate the end result of each failure to comply with engineering principles.

"My answers are all based on the requirements of the codes (for example, ANSI N45.2.11) and the law (10 CFR Part 50, Appendix B, Criterion III, for example) which require accuracy (including calculations and assumptions). Any failure in this area is in violation of the law and therefore a de facto detriment to the health and safety of the public. It is beyond the scope of CASE's burden to show why accuracy is required by law for each item in a calculation."

As the Board is aware, CASE's witnesses have dropped some items of concern which the Board did not feel were significant safety issues, even though our witnesses are not convinced that such items could not cause problems similar to those which caused the accident at Three Mile Island or

which occurred at Browns Ferry, for example. It is CASE's understanding that Applicants' Motions for Summary Disposition deal only with significant safety issues or they would not be in litigation.

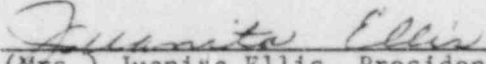
In addition, it should be remembered that the issues under discussion in Applicants' Motions for Summary Disposition and the responses thereto have increased importance because they will be used by the Licensing Board not just to determine the adequacy of the pipe supports, but the adequacy of design of the entire plant. Under such circumstances, CASE is not willing (within the time restraints under which we have had to work) to allow Applicants to make any misleading statements or rely upon any irrelevant or misleading documents without calling it to the Board's attention and challenging it. For instance, as discussed on page 12, first paragraph, of CASE's 11/15/84 Motion for Reconsideration of Board's 10/31/84 Memorandum (Multiple Filings):

. . . in their reply regarding gaps . . . Applicants have introduced information which is irrelevant in an effort to sway the Board to their views. Applicants have not made any showing that this information is relevant, but since they are attempting to use it to support their position and to sway the Board, CASE must address it or risk the Board's being misled by it -- thus placing CASE in the untenable position of having to argue not that something is relevant, but that the information contained in Applicants pleading is irrelevant. This burden should not be on CASE -- the burden should be on Applicants to 'clearly demonstrate' the relevance of the material in question. Yet, under the Board's 10/31/84 MEMORANDUM (Multiple Filings), Applicants are not being required to show relevance or to meet any of the four criteria stated by the Board." (Emphases in the original.)

Further, CASE submits that there is great safety significance in the fact that Applicants are making misleading statements to the Board, because it means that the Board cannot rely upon Applicants' representations or statements absent clear documentation to support those representations or statements -- documentation which Applicants have in many cases not

provided, and in some cases have fought hard against having to provide, even when the Board has expressly requested it /3/. This means that the adequacy of design of the entire plant, as well as the adequacy of Applicants' QA/QC program for design, is still unproven and that Applicants have again -- by their own choice -- failed to remedy their deficiency of proof.

Respectfully submitted,



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/3/ See Applicants' 11/5/84 Motion for Reconsideration of Memorandum and Order (More Detail on Individual Pipe Supports); see also Board's 11/6/84 Memorandum (Applicants' Motion for Reconsideration About Pipe Support Information).