

10/22/84

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

TEXAS UTILITIES GENERATING  
COMPANY, et al.

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

DO NOT WRITE IN THESE SPACES

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

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CASE'S SECOND MOTION FOR SUMMARY DISPOSITION,  
REGARDING APPLICANTS' PLAN AND SUPPLEMENT TO APPLICANTS' PLAN  
TO RESPOND TO MEMORANDUM AND ORDER (QUALITY ASSURANCE FOR DESIGN)

Pursuant to 10 CFR 2.749(a), CASE (Citizens Association for Sound Energy), Intervenor herein, hereby files this, its Second Motion for Summary Disposition, Regarding Applicants' Plan and Supplement to Applicants' Plan to Respond to Memorandum and Order (Quality Assurance for Design).

CASE's Second Motion concerns a commitment which Applicants chose to make as part of their "get well plan," but which they have failed to include in their Motions for Summary Disposition. Since the parties (including Applicants) have agreed to handle the design/design QA issues by mail in the form of Motions for Summary Disposition and responses, and since it has been represented by Applicants to the Board and parties that they have filed all of their Motions for Summary Disposition on the design/design QA issues, this Motion is necessary in order to complete the record. (See discussion at pages 1, 7, and 8 of CASE's 10/6/84 Motion and Offer of Proof Regarding CASE's First Motion for Summary Disposition Regarding Certain Aspects of the Implementation of Applicants' Design and QA/QC for Design, which we incorporate herein by reference.)

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In their 2/3/84 Plan to Respond to Memorandum and Order (Quality Assurance for Design), Applicants stated (page 4):

"In order to provide additional independence, Applicants intend to retain the services of an expert from the academic community who will be asked to review the basic engineering principles to be addressed in the Plan and to provide testimony to the Board. Applicants are in the process of selecting an individual with the necessary academic and professional background that will qualify the person as an indisputable expert. We will provide the Board with the name and qualifications when the person is selected."

And in their 3/13/84 Supplement to Applicants' Plan to Respond to Memorandum and Order (Quality Assurance for Design), Applicants' stated (page 1):

"Applicants also committed to retain the services of an independent expert to review the basic engineering principles being addressed in the Plan."

Applicants should have included Affidavits with their Motions for Summary Disposition regarding the various issues raised. However, Applicants have failed to include this independent, indisputable expert from the academic community as a participant in any of their various Motions for Summary Disposition, and there has been no mention of such expert in any of their recent discussions regarding their Plan or Supplement.

Applicants' Plan and its Supplement were to have been Applicants' last chance to satisfy the Board's concerns regarding design/design QA issues /1/. They had every opportunity to have included affidavits from this indisputable, independent expert from the academic community when they filed their various Motions for Summary Disposition; they did not /2/. Further,

/1/ Tr. 10,337-10,339.

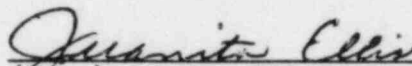
/2/ It should be noted that this is not the first time Applicants have attempted to rely on phantom experts to sway the Board. See Board's 2/8/84 Memorandum and Order (Reconsideration Concerning Quality Assurance for Design), page 32, item 11. and Footnote 60.

to allow Applicants to introduce such testimony now, outside of the agreed-upon procedures, would unduly delay the proceedings and severely prejudice the rights of this Intervenor. Although CASE believed the Board's decision to allow Applicants to relitigate the design/design QA issues, without a showing of good cause, to be unfair and prejudicial, we have borne this extraordinary burden. The Board has given Applicants more than ample opportunity to prove their case.

Since Applicants have failed to fulfill this portion of their own Plan, CASE submits that Applicants have now forfeited their opportunity to provide the Board with this added independence and added assurance, and that the Board must rule without giving Applicants yet another bite at the apple /3/.

The Board should so find.

Respectfully submitted,



(Mrs.) Juanita Ellis, President  
CASE (Citizens Association for Sound  
Energy)

1426 S. Folk  
Dallas, Texas 75224  
214/946-9446

/3/ CASE will not repeat here the arguments which we have already presented as to the severe additional and unfair burden which has been imposed on this Intervenor and its witnesses by the Board's allowing Applicants to relitigate the design/design QA issues without having made a showing of good cause. The Board is well aware of them, and we trust it will not subject CASE to unfair additional relitigation. See Board's 2/8/84 Memorandum and Order (Reconsideration Concerning Quality Assurance for Design), at pages 34-36, item IV.