

'84 NOV -1 P4:23

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

APPLICANTS' OPPOSITION TO
CASE'S MOTION FOR SANCTIONS

By its motion filed October 13, CASE seeks a variety of sanctions against Applicants for what CASE terms "repeated untimely filings by Applicant[s]." In support of its motion, CASE alleges that Applicants failed to meet deadlines for filing: (1) Applicants' original prefiled testimony; (2) proposed findings of fact; (3) a brief on the issue of the attorney work product privilege with respect to O.B. Cannon documents; and (4) prefiled testimony concerning the liner plate issues. The facts, however, do not support CASE's contentions.

1. Original prefiled testimony.

CASE's contention that Applicants' original prefiled testimony was untimely filed is groundless. By Board Order, prefiled testimony was due August 20, 1984. On August 19, Applicants completed over 1,000 pages of prefiled testimony (which was accompanied by several thousand pages of exhibits). On the morning of August 20, this testimony was sent via two different messengers to

the Dallas-Ft. Worth Airport for transmission to Washington and filing with the Board. One messenger, however, missed his flight, which was the last flight that would have arrived in Washington in time for filing with the Board. When counsel learned that the messenger had missed his plane, counsel phoned the Board Chairman from Glen Rose, Texas, explained what had happened, and sought a one-day extension for filing the prefiled testimony being transmitted by the messenger who missed the flight. The Chairman granted the extension and the remainder of Applicants' testimony was filed on August 21. Counsel's telephone charges for August, a copy of which is attached to this memorandum, indicate that the call was placed at 2:13 p.m. on August 20.

2. Proposed Findings of Fact.

CASE's contention that Applicants' proposed findings of fact were filed out of time is also groundless. Indeed, in light of the facts, it is nothing short of remarkable. The original deadline for filing proposed findings was August 31. During the week of August 27, counsel for Applicants had several conversations with counsel for the NRC and counsel for CASE about extending the filing deadline for all parties until September 4. Counsel for the NRC did not object to such an extension, but initially counsel for CASE did. After several discussions, however, counsel for CASE agreed to the extension, provided that Applicant undertake to copy the Dunham record for filing with the Board. Applicants agreed to this condition (which the Applicants fulfilled) and counsel for Applicants and CASE then telephoned the Board Chair-

man, who granted the extension. (As an incentive for the parties to file as soon as possible, the Chairman indicated that (1) no party would be required to serve their findings on another until the receiving party was prepared to make service on the serving party, and (2) the Board Chairman would review the parties' proposed findings in the order in which they were received.) Applicants then timely filed their proposed findings on Tuesday, September 4.

3. Brief on Privilege

CASE's contention concerning the brief on privilege is also groundless. During the hearing of October 11, the Board directed Applicants to file a brief concerning any claim of privilege for O.B. Cannon documents that were prepared prior to the time Applicants began working on the testimony of J.J. Lipinsky (which was ultimately filed as an affidavit) in support of Applicants' motion for summary disposition. The deadline for filing the memorandum was set for October 18. On the due date, Applicants informed the Board and the parties that it was not claiming privilege with respect to any such documents, and, thus, the issue on which the brief was to be filed was moot.

4. Prefiled Testimony on the Liner Plate Issues.

At the hearing on September 18, the Board permitted CASE to recite for the record a number of allegations concerning the liner plate travelers. None of these allegations related to the claims of intimidation pending before the Board and Applicants objected to the new "filed" contentions being raised and objected further

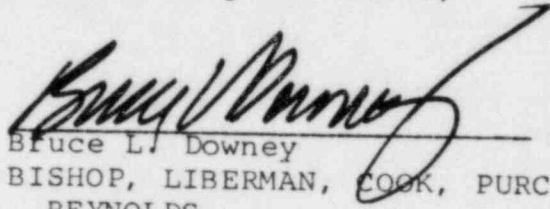
to CASE's reciting allegations without any testimony to substantiate them. Both objections were overruled. The Board then permitted CASE to file a memorandum memorializing its contentions by September 27, seven working days (nine calendar days) later. The Board also directed Applicants to file prefiled testimony on Monday morning, October 1, one working day (3 calendar days) after Applicants were to receive CASE's filing. CASE failed to meet its filing deadline, but Applicant was able to obtain a copy of CASE's filing on the twenty-ninth after normal business hours by sending a messenger to the offices of CASE's counsel. Over the weekend of September 29 and 30, it became apparent that Applicants could not complete its prefiled testimony, and Applicant informed the Board and the parties of its inability to do so at the beginning of the hearing on October 1. The Board then directed Applicants to continue preparing the prefiled testimony.

As directed, Applicants began preparing prefiled testimony on October 1. During the initial session it became apparent that, if Applicant addressed each traveler individually, rather than the generic issues, the prefiled testimony could span several hundred pages. Applicants' counsel then informed the Board of this fact and that counsel were looking at ways to present the testimony in a more succinct manner. Counsel then spent several hours on October 2 and 3 preparing a matrix that matched traveler numbers with CASE's allegations, and dictated draft testimony to a court reporter on October 3. The draft transcript was reviewed, corrected, and supplemented as necessary over October 4 and 5.

Counsel then returned to Washington. During the conference call of October 11, counsel informed the Board that it anticipated filing the corrected draft (which still lacked some dates) by Friday, October 12, or Monday, October 15. The corrected transcript was received in Washington on October 16 and was filed on that date. While the transcript was filed one day after Applicants thought it would be completed, so was CASE's memorandum. Moreover, all substantive work on the prefiled testimony was completed on October 5, six working days after Applicants received CASE's filing.

In light of these circumstances, the sanctions sought by CASE are not warranted, and the motion should be denied.

Respectfully submitted,


Bruce L. Downey
BISHOP, LIBERMAN, COOK, PURCELL &
REYNOLDS
1200 Seventeenth Street, N.W.
Washington, D.C. 20036
(202)857-9800

November 1, 1984



C&P Telephone

ACCOUNT NUMBER - 202 857 9800 547

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- DETAIL OF ITEMIZED CALLS -

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DATE	TIME	CALLED-PLACE	AREA-NUMBER	RATE	MIN
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-----AT&T COMMUNICATIONS (CONT.)-----

8 20	1221PM	WASHINGTON DC	202 857 9800		
		FR GLN RS TX	817 897 2941	CDT4/CP	92
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8 20	330PM	GLEN ROSE TX	817 897 2941		
		FR PROVIDENCE RI	401 831 0159	CD BWD	33
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8 20	329PM	GLEN ROSE TX	817 897 2941		
		FR PROVIDENCE RI	401 831 0159	CD BWD	1
					1.65
8 20	213PM	BETHESDA MD	301 492 7479		
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8 20	434PM	PROVIDENCE RI	401 831 0159		
		FR GLN RS TX	817 897 2941	CD BWD	5
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8 20	1130PM	ARLINGTON VA	703 527 5016		
		FR GLN RS TX	817 897 2941	CN BWD	21
					5.07
8 20	643PM	ARLINGTON VA	703 527 5016		
		FR GLN RS TX	817 897 2941	CE (34)	5
					2.39

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NUCLEAR REGULATORY COMMISSION

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In the Matter of)
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TEXAS UTILITIES ELECTRIC) Docket Nos. 50-445-2 and
COMPANY, et al.) 50-446-2
)
(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' Opposition to CASE's Motion for Sanctions" in the above-captioned matter were served upon the following persons by hand-delivery on October 31, 1984, or by overnight delivery,* or deposit in the United States mail,** first class, postage prepaid, this 1st day of November, 1984:

Peter B. Bloch, Esq.
Chairman, Atomic Safety and
Licensing Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

*Dr. Walter H. Jordan
881 West Outer Drive
Oak Ridge, Tennessee 37830

Herbert Grossman, Esq.
U. S. Nuclear Regulatory
Commission
Washington, D.C. 20555

**Mr. Robert D. Martin
Regional Administrator
Region IV
U.S. Nuclear Regulatory
Commission
611 Ryan Plaza Drive
Suite 1000
Arlington, Texas 76011

**Chairman, Atomic Safety and
Licensing Appeal Panel
U. S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Mr. William L. Clements
Docketing & Services Branch
U. S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Stuart A. Treby, Esq.
Office of the Executive
Legal Director
U. S. Nuclear Regulatory
Commission
Washington, D. C. 20555

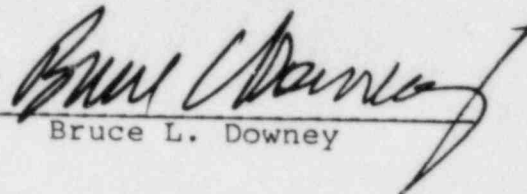
**Chairman, Atomic Safety and
Licensing Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

**Renea Hicks, Esq.
Assistant Attorney General
Environmental Protection
Division
P.O. Box 12548
Capitol Station
Austin, Texas 78711

**Mrs. Juanita Ellis
President, CASE
1426 South Polk Street
Dallas, Texas 75224

Anthony Z. Roisman, Esq.
Executive Director
Trial Lawyers for Public Justice
2000 P. Street, N.W.
Suite 600
Washington, D. C. 20036

Ellen Ginsberg, Esq.
Atomic Safety and Licensing
Board Panel
U. S. Nuclear Regulatory
Commission
Washington, D. C. 20555


Bruce L. Downey

cc: Homer C. Schmidt
John W. Beck
Robert Wooldridge, Esq.