

582

December 12 1984
DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'84 DEC 12 A11:12

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)
TEXAS UTILITIES ELECTRIC)
COMPANY, et al.)
(Comanche Peak Steam Electric)
Station, Units 1 and 2)

Docket Nos. 50-445 02
50-446 02

NRC STAFF RESPONSE TO CASE'S MOTIONS AND CASE'S ANSWER TO APPLICANTS' RESPONSE TO BOARD REQUEST FOR INFORMATION REGARDING CINCHED-DOWN U-BOLTS

I. INTRODUCTION

On November 5, 1984 CASE filed "CASE's Motions and CASE's Answer to Applicants' Response to Board Request for Information Regarding Cinched Down U-Bolts" ("CASE's Motion"), together with "CASE's Answer to Applicants' Response to Board Request for Information Regarding Cinching Down U-Bolts in the form of Affidavit of Jack Doyle" ("Mr. Doyle's Affidavit"). In these documents CASE contends, based upon the "Applicants Response to Board Request for Information Regarding Cinching Down U-Bolts (October 23, 1984) ("Applicants' U-Bolt Response"), that Applicants made materially false and misleading statements regarding the representative nature of a sample of pipe supports which were tested for U-bolt torquing. CASE's Motion, pp. 6-7. CASE requests the Board to: (1) grant discovery regarding "the information requested by CASE during the August 6, 1984 telephone conference call and all other information relevant to this matter, as well as...possibly unstable supports in Unit 2", (2) order Applicants to provide the discovery material to the

8412130055 841207
PDR ADOCK 05000445
G PDR

D 507

Board and parties, (3) find that Applicants have made material false statements to the Board, (4) order Applicants to provide an "explanation of their material false statement," and (5) order Applicants to state whether Applicants "have utilized other random representative samples from Unit 2 rather than Unit 1" in motions for summary disposition and in responses to the Staff's Technical Review Team. ^{1/} CASE's Motion, pp. 9-10. The Staff hereby responds to CASE's Motion.

II. BACKGROUND

As part of their Plan for addressing the Board's concerns regarding pipe support design and design QA, ^{2/} on June 29, 1984 Applicants submitted "Applicants' Motion for Summary Disposition of CASE's Allegations Regarding Cinching Down of U-Bolts" ("U-Bolt Summary Disposition Motion"), together with the attached "Affidavit of Robert C. Iotti and John C. Finneran, Jr. Regarding Cinching Down of U-Bolts" ("Applicants' U-Bolt Affidavit"). As part of Applicants' argument that U-bolts at CPSES were acceptable and did not impose unacceptable stresses on the supported piping, Applicants'

^{1/} CASE also requests that the Board order the Applicants to provide the "raw data" requested in the Board's "Memorandum and Order (Information concerning Torques in U-Bolts)" (October 18, 1984). This request has been rendered moot, since the Board has clarified and reiterated its earlier request for the raw data in its "Memorandum (Raw Data on U-Bolts)" (October 24, 1984), and because the Applicants have complied with the Board's request. See Applicants' Response to Board Request for Raw Data Regarding Cinching Down U-Bolts (November 9, 1984), together with attached Affidavit of John C. Finneran Jr. Regarding Information Related to Cinching Down of U-Bolts.

^{2/} Applicants' Plan to Respond to Memorandum and Order (Quality Assurance for Design) (February 3, 1984).

stated that "[t]o determine the range of torques which exist in the field, applicant inspected the torque of a randomly selected representative sample of cinched down U-bolt supports..." Applicants' U-bolt Affidavit, p. 10.

On August 6, 1984, the parties held an informal telephone conference call to afford CASE the opportunity to ask the Applicants questions regarding the various summary disposition motions filed by the Applicants, including their U-Bolt Summary Disposition Motion.^{3/} During this conversation Applicants' representatives were asked about the representativeness of the U-bolt sample.

Subsequently, on October 16, 1984, the Board requested that the Applicants provide it with the "raw data underlying Table 2..." of Applicants' Affidavit. Memorandum and Order (Information Concerning Torques in U-Bolts). On October 23, 1984, Applicants submitted their U-Bolt Response, which included a 9 page table listing the pipe supports which were selected for testing, their location, pipe size, and the average torque of the U-bolts on the supports.

Following the filing of Applicants' U-Bolt Response, the Board issued a second order on the subject, stating that the Board desired the "raw data", since the data supplied did not permit the Board to "observe the variance of readings on individual bolts." Memorandum (Raw Data on U-Bolts) (October 24, 1984) ("Second U-Bolt Order"), p. 1. The Board also indicated that it wished to know what procedure was used to measure

^{3/} A transcript of this telephone conference call was made by the Staff.

torque, and the criteria for selecting the sample of pipe supports that were tested. Id., p. 1. Applicants subsequently filed their "Response to Board Request for Raw Data Regarding Cinching Down U-Bolts" (November 9, 1984) ("Second U-Bolt Response"). Meanwhile, CASE submitted its Motion together with Mr. Doyle's Affidavit.

In particular, CASE argues that statements made by Applicants in the "Affidavit of Robert C. Iotti and John C. Finneran, Jr. Regarding Cinching Down of U-Bolts" (attached to "Applicants' Motion for Summary Disposition of CASE's Allegations Regarding Cinching Down of U-Bolts" (June 29, 1984) ("U-Bolt Summary Disposition Motion")), and during an August 6, 1984 meeting between the parties, were intentionally misleading or false regarding the representative nature of the pipe support sample. CASE's Motion, pp. 2-7. According to CASE, the data supplied by Applicants to the Board in their U-Bolt Response show that the pipe support sample was not truly representative, since the pipe supports were selected only from Unit 2, rather than Unit 1 and common areas. This was not a representative sample, in CASE's view, since "it is likely" ^{4/} that a procedure for U-bolt torquing which was adopted in late 1982 was not used on most of Unit 1 pipe supports, but was utilized on Unit 2 supports. CASE's Motion, p. 6. CASE also contends that the sample is not representative since the sample included Class 4, 5 and 6 supports, as well as small bore piping supports. CASE's Motion, p. 6.

^{4/} CASE believes that discovery will result in information tending to corroborate CASE's contention in this regard. CASE's Motion, p. 6.

On November 19, 1984, Applicants filed "Applicants' Reply to CASE's Motion Concerning Information Regarding Cinching Down U-Bolts"

(Applicants 11/19/84 Reply) along with another affidavit by Mr. Finneran (Finneran 11/19/84 Affidavit). In their Reply, Applicants assert:

1. that U-bolt torques for Unit 2 are representative of torques in Unit 1 and because U-bolts in Unit 1 had been painted torque values measured on such U-bolts would have been suspect; (11/19/84 Reply, pp. 3-4)
2. that Applicants were not trying to hide the fact that the sample was taken from Unit 2 U-bolts, since they expressly called out this information in their October 29, 1984 Response; (11/19/84 Reply, p. 4)
3. that Applicants have not made a material false statement, noting that "CASE again has not and cannot point to any statement of Applicants which is false..." (11/19/84 Reply, p. 5)
4. that there is no support for the position that Applicants either deliberately attempted to deceive the Board or made a material false statement; (11/19/84 Reply, p. 6)
5. that the torques of non-safety related U-bolts used in the sample were representative of the torques on safety related U-bolts; (11/19/84 Reply, p. 6)
6. that construction practice for torquing Unit 1 and Unit 2 U-bolts was the same; (11/19/84 Reply, p. 7)

Applicants urge denial of CASE's Motion.

III. DISCUSSION

Applicants' U-Bolt Summary Disposition Motion and the attached U-Bolt Affidavit failed to disclose that the sample of randomly selected U-bolts was limited only to Unit 2 U-bolts. Subsequently, in the informal discovery conducted by telephone conference call on August 6, 1984, when asked about the representative nature of the sample, Applicants' representatives again omitted to disclose the fact that the sample was limited to Unit 2.

Applicants now assert that these statements were not false because the U-bolts in Unit 2 are:

similar in make, manufacture and sizes to, and were torqued using the same construction practices as the Unit 1 and common U-bolts. In short, the torques recorded in the Unit 2 U-bolts were representative of the torques in Unit 1 and common U-bolts.

Finneran 11/19/84 Affidavit, pp. 1-2; Applicants 11/19/84 Reply, p. 4.

Applicants go on to explain that in fact the Unit 2 U-bolts were the only representative population of U-bolts available for testing. Finneran 11/19/84 Affidavit, p. 2; Applicants 11/19/84 Reply, p. 4. Applicants' assertion in the 11/19/84 Reply may indeed prove to be correct -- that torquing techniques on Unit 2 are adequately representative of torquing on Unit 1, and that the torque results for Unit 2 U-bolts may be reasonably extrapolated to torque values for U-bolts in Unit 1. Nonetheless, in their U-Bolt Summary Disposition Motion and in the telephone conference call, Applicants omitted to disclose a relevant item of information, that the "random study" was limited to U-bolts in Unit 2.

The Comanche Peak Task Force staff has requested the advice of the Office of Inspection and Enforcement to determine whether this omission amounts to "a material false statement". Since this entails familiarizing other Staff members with the background of issues on Comanche Peak, the Staff's review has not yet been completed. The Staff will inform the Board of its conclusion upon completion of its review.

In any event, whether or not such omission constitutes a "material false statement", it has a bearing on issues in litigation before the Board. The omission bears upon the credibility of Applicants' witnesses who have submitted affidavits on this and other summary disposition motions; it

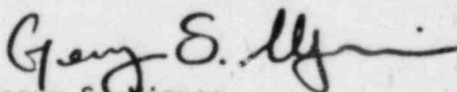
also raises an issue of potentially important misunderstandings with respect to the evidence submitted in connection with other motions in which "representative samples" or "random samples" are cited without details concerning the method of sample selection. Consequently, the Staff believes that this newly-uncovered information warrants the grant of CASE's request to undertake discovery on the nature of random or representative samples relied upon by Applicants to support Applicants' summary disposition motions or responses to Staff questions. The Staff also requests leave to undertake discovery on this matter.

Moreover, since Applicants' 11/19/84 Reply raises a new element necessary to support its U-Bolt Summary Disposition Motion - that is, the assertion that the torques on Unit 2 U-bolts are "representative" of the torques on Unit 1 U-bolts because the "same construction practices" were used in both units - discovery with respect to this new assertion should be available to the Staff and CASE.

IV. CONCLUSION

The Board should grant the discovery requested in CASE's Motion in accordance with the Staff's position set forth above.

Respectfully submitted,



Geary S. Mizuno
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 7th day of December, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO CASE'S MOTIONS AND CASE'S ANSWER TO APPLICANTS' RESPONSE TO BOARD REQUEST FOR INFORMATION REGARDING CINCHED-DOWN U-BOLTS" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 7th day of December, 1984:

Peter B. Bloch, Esq., Chairman*
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. Kenneth A. McCollom
Administrative Judge
Dean, Division of Engineering,
Architecture and Technology
Oklahoma State University
Stillwater, OK 74078

Elizabeth B. Johnson
Administrative Judge
Oak Ridge National Laboratory
P.O. Box X, Building 3500
Oak Ridge, TN 37830

Dr. Walter H. Jordan
Administrative Judge
881 W. Outer Drive
Oak Ridge, TN 37830

Herbert Grossman, Alternate Chairman*
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

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

Renea Hicks, Esq.
Assistant Attorney General
Environmental Protection Division
P.O. Box 12548, Capital Station
Austin, TX 78711

Nicholas S. Reynolds, Esq.
William A. Horin, Esq.
Bishop, Liberman, Cook,
Purcell & Reynolds
1200 17th Street, N.W.
Washington, DC 20036

Billie Pirner Garde
Citizens Clinic Director
Government Accountability Project
1901 Que Street, N.W.
Washington, DC 20009

Mr. Michael D. Spence, President
Texas Utilities Generating Company
Skyway Tower
400 North Olive Street, L.B. 81
Dallas, TX 75201

Robert A. Wooldridge
Worsham, Forsythe, Sampels & Wooldridge
2001 Bryan Tower, Suite 2500
Dallas, TX 75201

Mr. James E. Cummins
Resident Inspector/Comanche Peak
Steam Electric Station
c/o U.S. Nuclear Regulatory Commission
P.O. Box 38
Glen Rose, TX 76043

Robert D. Martin
William L. Brown
U.S. Nuclear Regulatory Commission
611 Ryan Plaza Drive, Suite 1000
Arlington, TX 76011

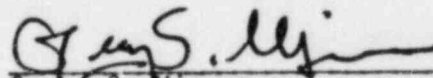
Lanny Alan Sirkin
114 W. 7th, Suite 220
Austin, TX 78701

Ellen Ginsberg, Esq.*
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission

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

Atomic Safety and Licensing Appeal
Board Panel*
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Docketing and Service Section*
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555



Gary S. Mizuno
Counsel for NRC Staff