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3/7/85

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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)

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Docket Nos. 50-445
and 50-446

(Application for an
Operating License)

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CASE'S MOTION TO STAY RULING

REGARDING

CASE'S 1/7/85 MOTION FOR RECONSIDERATION OF BOARD'S
12/18/84 MEMORANDUM (CONCERNING WELDING ISSUES) (LBP-84-54)

On Monday, 3/4/85, Judge Bloch advised CASE in a telephone call that he had telephoned Applicants' counsel, Mr. Wooldridge, requesting Mr. Wooldridge's assessment as to which, if any, pending matters might be ripe for ruling by the Board /1/; that one of the two suggestions by Mr.

/1/ Scheduling has itself now become an issue in the proceedings. For this reason, CASE respectfully suggests that in the future the Board should include discussions regarding suggestions for ruling on open motions or issues as one of the items which should be discussed only in writing or with at least two (and, in the case of scheduling, preferably all) of the parties on the line and adequate time to prepare arguments. (We are not proposing that short extensions of time on which the parties can reach agreement, or other non-substantive or procedural matters, be included in this.) The Board has followed this practice in the past regarding substantive matters. CASE believes that at this point in the proceedings, it would be appropriate to include scheduling in the category of a substantive matter and require written filings (or at a minimum, the participation of all parties during telephone discussions) for such discussions, with adequate time to prepare arguments.

(Having said all this, we must in all fairness add that we realize that Mr. Wooldridge is relatively new to these operating license proceedings, and further, that he was only responding to the Board's request for assistance in attempting to identify matters which might be ripe for decision. It is also understandable that the Board does not want to unnecessarily postpone dealing with issues which can and should be dealt with now. We are not being critical either of the Board or Mr. Wooldridge in this instance; however, we do believe the time has come to elevate scheduling in importance insofar as ex parte discussion.)

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Wooldridge was that the Board might want to go ahead and rule on CASE'S 1/7/85 Motion for Reconsideration of Board's 12/18/84 Memorandum (Concerning Welding Issues) (LBP-84-54); and that the Board was considering going ahead and ruling on portions of that Motion.

This all came up on Monday (3/4/85) while CASE was completing and preparing for mailing its Fifth (and final) discovery requests to Applicants under the Board's 12/18/84 Memorandum (Reopening Discovery; Misleading Statement) and the Board's 2/15/85 Memorandum (Motion for Protective Order), which was due to be placed into the mail that day. We were also making preparations to go to Glen Rose that afternoon for meetings beginning the following day (Tuesday, 3/5/85) and continuing on Wednesday and Thursday (3/6/85 and 3/7/85), between the NRC's Technical Review Team (TRT) and Applicants to discuss Applicants' proposed responses to the TRT's findings. The Board and parties will recall that Mrs. Ellis had previously requested that a telephone conference call on scheduling (which was later postponed indefinitely) be rescheduled from Tuesday, 3/5/85, to Monday, 3/4/85, to allow Mrs. Ellis both to participate in the conference call and also attend the meeting on Tuesday; Mrs. Ellis had indicated that she was especially interested in attending the meeting on Tuesday, since it involved Applicants' proposed response to QA/QC problems which had been identified by the TRT.

This placed CASE in the awkward and (we believe) unfair position of having to respond on short notice to what, in effect, was an ex parte oral motion by Applicants' counsel for reconsideration of the Board's ruling (at least implied) during the 2/5/85 telephone conference call. Since Judge Bloch could not assure CASE's Mrs. Ellis that he would not rule regarding

this matter during the time Mrs. Ellis would be in Glen Rose, and since it was obvious that CASE could not very well argue the merits in an ex parte telephone call with Judge Bloch, Mrs. Ellis, in order to file this pleading, had to cancel her planned attendance at the TRT/Applicants meetings.

It appears to CASE that clearly the position of the Board during the 2/5/85 on-the-record conference call was that the Board would not rule on anything that is pending, even the couple of matters in which all of the filings have been made. During that conference call, regarding scheduling, the Board made what must be considered to be at least an implied Board Order, to the effect that it was not going to rule on anything at this point in the proceedings. It should be noted that welding issues specifically were included in the discussion. As stated in that conference call /2/:

"MRS. ELLIS: . . . CASE expects to file shortly some new and significant information on the welding issues and we ask the Board to hold the record open on that, as we have in our Motion for Reconsideration. . .

"JUDGE BLOCH: . . . my inclination is not to rule on anything that's pending, even the couple of matters in which all of the filings have been made. . . .

"MR. TREBY: . . . I would like to make one comment on something the Board said with regard to ruling on any pending matters. I would like to support the view that the Board not rule on any matters that may be pending before it now, such as things like welding or such, until the Staff has issued its documents. My understanding is that one of the things that the TRT looked at was some welding matters, and I -- my understanding is that there may be some information with regard to that that will come out in the SER that they're planning to publish in the Mechanical and Piping area. And it seems to me that we ought to get all of this information out before the Board and the parties before we have any more rulings.

. . .

/2/ CASE has not yet made the half-day's round trip to the mini-public document room in Arlington to make a copy of the 2/5/85 conference call transcript; the following quotes are from a tape recording of the call.

"JUDGE BLOCH: . . . In the opinion of the Board, this is not a time to rush forward. We understand why Mr. Roisman would seek to do that [regarding answers to CASE's motion regarding 100% reinspection of construction/hardware]. If Mr. Roisman is correct on the need for an independent construction review, it seems to me that the Board will be better prepared to know that after the Staff has had an opportunity to consider it, and the Applicants have had a chance to respond. For all we know at this time, the Staff or the Applicants may voluntarily adopt something that is quite as acceptable as Mr. Roisman's plan or might be identical to Mr. Roisman's plan. But whatever the ultimate outcome from the standpoint of the Staff and the Applicants, it seems to me that the case is at such a pass that rushing is not productive. As a result of that, we would grant, without further argument by CASE, the Staff's request for an extension of time to respond [to CASE's motion for 100% reinspection of construction/hardware] . . . Applicants have not requested an extension and will not be granted it at this time, although we understand that after they review the filing they may request a similar extension. . . We would of course clarify that the February 26 Staff response date is subject to further motion for extension of time if the Staff finds it needs it. . . "

(Emphases added.)

No one /3/ disagreed with the Board's stated inclination not to rule on anything at this stage of the proceedings -- including Applicants.

Nothing as far as CASE is aware has changed insofar as what has been filed with the Board or what is in the record to change the Board's thinking and position regarding this /4/. None of the parties has initiated an official motion for the Board to reconsider its position. As the Board itself has noted, "the case is at such a pass that rushing is not productive." There is no reason for the Board to now change its position and rush regarding this particular CASE Motion.

/3/ With the limited exception of Mr. Roisman's request that the Staff should file a written motion for additional time to respond to CASE's Motion which Mr. Roisman had filed requesting a 100% reinspection of construction/hardware, and that the usual filing requirements be followed for responses to that CASE Motion.

/4/ It should be noted that attending the meetings in Glen Rose would have helped Mrs. Ellis better evaluate the plan which Applicants are proposing to respond to the TRT's findings.

CASE filed its Motion for Reconsideration of Board's 12/18/84 Memorandum (Concerning Welding Issues) (LBP-84-54) on 1/7/85. We call the Board's attention specifically to the discussion on pages 1 through 5 of that pleading, and incorporate them herein by reference. Included in that Motion were the following motions (page 64):

"CASE's review and analysis of the Board's 12/18/84 Memorandum is not yet complete, and the items included in this pleading are only a few of those which appeared to be inaccurate or misleading, based only upon CASE's recollection. This is an unusually long and detailed Memorandum; it would take considerable time to go back in the record and review each transcript citation (which is now necessary in order to determine which of Applicants' representations are accurate and can be relied upon).

"Because of the unusual circumstances (detailed in this pleading) regarding the Board's 12/18/84 Memorandum (Concerning Welding Issues), including the fact that Applicants have deliberately and willfully disobeyed the Board's specific orders, and that Applicants' Proposed Findings of Fact in the Form of a Proposed Initial Decision (upon which the Board relied as the framework for its 12/18/84 Memorandum) contain erroneous statements and misrepresent the record in the proceedings, CASE moves:

"(1) That the Board allow CASE to supplement this pleading at the time we provide the Board with summary information of our findings following discovery regarding the credibility of Applicants' testimony and representations in these proceedings (as authorized by the Board in its 12/18/84 Memorandum (Reopening Discovery; Misleading Statement); see discussion at pages 62 and 63 preceding);

"(2) That, in the meantime, the Board postpone making final its 12/18/84 Memorandum (Concerning Welding Issues) . . . "

There is still further additional information which CASE is preparing which it is necessary for the Board to consider in order to have an accurate record and so that the Board's 12/18/84 Memorandum (Concerning Welding Issues) will agree with the record in these proceedings. This is an excruciatingly difficult job, since it involves a careful review of the entire record on welding issues while at the same time coordinating the information in the record with the specific portions of the Board's Memorandum to which it applies.

As the Board and parties are well aware, Mrs. Ellis suffered for the past three months with back problems, which severely limited her being able to type and made it difficult to sleep. (As must be obvious by CASE's recent pleadings, this has improved greatly recently, since she purchased a backless chair which relieves the pressure on her back while typing.) In addition, she was sick with a virus (or something) February 9 through 15. Despite this, CASE (with the exception of just a few days' extensions) has met its deadlines and Mr. Roisman has even been accused of rushing.

We mention this only to make the point that CASE has been diligent and has done nothing to be penalized for. Applicants have made errors (in judgement, in testimony, and in attitude) -- yet the Board has allowed the Applicants additional time to respond to CASE's discovery requests regarding credibility matters, to respond to CASE's answers to Applicants' Motions for Summary Disposition, to respond to CASE's Motions for Summary Disposition, apparently intends to allow them to change their affidavits/testimony on the Walsh/Doyle issues, has invited Applicants to review their own testimony and to disclose all their errors in the course of these proceedings /5/, allowed Applicants additional time to reorganize their legal staff (without the other parties having had the opportunity to receive and answer any written motion), and also apparently plans to let Applicants now decide whether or not Applicants want to stick to the agreed-upon Plan put forward by Applicants themselves regarding the design/design QA issues. (This will be discussed in more detail in the pleading which CASE is preparing regarding the Cygna Reports and design/design QA issues.) The Board has given Applicants numerous bites at several apples. The Staff has missed numerous projected completion dates, yet the Board is allowing the Staff the time

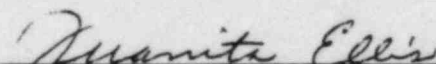
/5/ Board's 12/18/84 Memorandum (Reopening Discovery; Misleading Statement), at page 9.

necessary to do what it feels it needs to do.

The point we want to make is that we are not asking for special treatment -- only some of the same opportunities which the Board is allowing Applicants and/or Staff. We don't want to be precluded from getting information to the Board regarding welding issues which we believe is necessary for an accurate and complete record, and we want the opportunity and sufficient time to do a thorough job (just as the Board is affording Applicants) and the opportunity (just as the Board is affording Applicants) to rehabilitate our welding witnesses. We believe this can be done through what's already in the record, information which we have asked for on discovery regarding credibility /6/, and the new and significant information which we mentioned in the 2/5/85 conference call /7/.

IN CONCLUSION, for the reasons discussed herein, CASE moves that the Board abide by the statements made by the Board during the 2/5/85 telephone conference call, and that the Board stay any ruling on CASE's 1/7/85 Motion for Reconsideration.

Respectfully submitted,



(Mrs.) Juanita Ellis, President
CASE (Citizens Association for Sound
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/6/ Credibility is the key consideration in the Board's 12/18/84 Memorandum (Concerning Welding Issues), and CASE should have the opportunity to pursue and benefit from discovery which has been duly authorized by the Board.

/7/ The information we were expecting is taking longer to obtain than we had anticipated; it will be sent to the Board as soon as possible. We hope to have additional information in the hands of the Board by Tuesday, 3/12/85.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

By my signature below, I hereby certify that true and correct copies of
CASE's Motion to Stay Ruling Regarding CASE's 1/7/85 Motion for Reconsideration
of Board's 12/18/84 Memorandum (Concerning Welding Issues) (LBP-84-54)

have been sent to the names listed below this 7th day of March, 1985,
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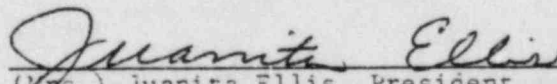
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