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6/10/85

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

Docket Nos. 50-445
and 50-446

TEXAS UTILITIES ELECTRIC
COMPANY, et al.

DOCKETED
USNRC

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

(Application for an
Operating License)

'85 JUN 13 P12:07

CASE'S ANSWER IN OPPOSITION TO
APPLICANTS' 6/10/85 MOTION TO EXTEND TIME

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

On June 10, 1985, Applicants' counsel Mr. Wooldridge read over the telephone to CASE's primary representative Mrs. Ellis a pleading being filed by Applicants, Applicants' Motion to Extend Time.

For the reasons discussed herein, CASE opposes Applicants' Motion.

Background

On 4/26/85, Applicants' filed their Proposed Case Management Plan, for both dockets of these proceedings. On 5/13/85, CASE filed its Answer to Applicants' 4/26/85 Proposed Case Management Plan (in Main Docket, 50-445 and 50-446). (CASE's response in Docket 2 was filed on 5/9/85.) On 5/24/85, after reviewing Applicants' Proposed Case Management Plan and the responsive filings, the Board filed its 5/24/85 Memorandum and Order (Case Management Plan).

As discussed herein, Applicants have failed totally to show good cause for the delay which they now seek (until 6/28/85) in which to respond to the Board's Order to "file by June 15, 1985, a statement of Current Management Views" that complies with the discussion in the Board's memorandum.

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Further (and perhaps even more importantly in the context of this case), Applicants' pleading is filled with inaccuracies and misleading statements.

CASE first became aware of Applicants' desire to obtain an extension of time in which to respond to the Board's Order when Applicants' counsel Mr. Wooldridge telephoned CASE's Mrs. Ellis on Friday afternoon, 6/7/85, at about 2:00 P.M. Dallas time (3:00 P.M. Eastern). He stated that Applicants would like an extension of time until 6/28/85 to respond to CPRT matters and to answer the Board's Order (due on 6/15/85). Mrs. Ellis was unable to reach either Mr. Roisman or Ms. Garde by telephone to discuss it with them, but eventually did speak to another attorney with Mr. Roisman's firm who stated that Mr. Roisman had discussed it with him and left word that if Applicants asked for an extension of time, CASE (in Docket 2) was totally opposed.

Mrs. Ellis advised Mr. Wooldridge by telephone that CASE in both sides of the hearing were opposed to Applicants' request, and suggested that she would be willing to participate in a telephone call with Judge Bloch at that time should Mr. Wooldridge so desire. He indicated that Applicants would file their Motion in writing.

Later that evening (at about 5:20 P.M. Dallas time), Applicants' counsel Mr. Horin telephoned Mrs. Ellis, requesting that CASE reconsider its position. There was a brief discussion of Applicants' and CASE's reasoning regarding the matter, with the same end result: that Applicants' would file their Motion in writing.

On Monday, 6/10/85 (at around 2:30 or 3:00 P.M. Dallas time), Ms. Garde and Mrs. Ellis telephoned Mr. Wooldridge to inquire if it was still Applicants' intention to file a motion for an extension of time. He responded that it should be completed sometime in the afternoon and that he would see that a copy was hand-delivered to Ms. Garde and he would telephone Mrs. Ellis and read it to her. At about 3:45 P.M., Mrs. Ellis again telephoned Mr. Wooldridge to inquire if Applicants' pleading was ready; he replied that he had not yet received it and would check into it. At 5:00 P.M. Dallas time, Mr. Wooldridge telephoned Mrs. Ellis and read Applicants' pleading to her over the telephone.

Mrs. Ellis telephoned Judge Bloch at home and requested that the Board not rule on Applicants' pleading prior to receipt of an answer from CASE in the main docket.

CASE has discussed this in some detail to give the Board an idea of the hectic and hasty manner in which this was handled; we believe that this is pertinent because of the information which follows.

Applicants state that since the time of the Board's memorandum (5/24/85), a two-day meeting has been scheduled by the NRC Staff. However, to CASE's knowledge, this is inaccurate to the point of amounting to a misrepresentation. CASE's Mrs. Ellis personally attended a plant tour of the Comanche Peak plant with the NRC Staff's Harold Denton on 5/23/85. During the lunch break on that date (the day before the Board's Memorandum and Order was issued), Applicants' John Beck told Mr. Denton that the NRC Staff/Applicants meeting where Applicants would present their response

program had been tentatively scheduled for June 12 and 13. Further, in response to an inquiry from Mr. Denton, Mr. Beck stated that Applicants would not be supplying their final written response at the meeting, but would instead make a verbal presentation with slide hand-outs and make their presentation to the NRC Staff in a week. (It is also noteworthy that the meeting had been originally scheduled for May 8, but was postponed.)

Thus, Applicants' stated reason that the meeting had been scheduled by the NRC Staff since the Board's Memorandum and Order was issued is inaccurate at best, and does not present a valid reason for the postponement.

Applicants also state that, since the receipt of the Board's 5/24/85 Memorandum and Order, they have received SSER 11 and extensive documents dealing with QA/QC issues and concerns raised by the NRC's Technical Review Team. CASE (in the main docket) did not receive its copy of SSER 11 until 6/6/85, and it is our understanding that Applicants' counsel Mr. Horin did not receive a copy until 6/7/85. Further, it should be noted that the SSER on Cygna and design/design QA matters is not yet even completed. Thus, Applicants' pleading in this regard should not be construed by the Board as meaning that Applicants either can or will present their final and total response at the June 13 and 14 meeting.

It appears that Applicants' recent receipt of the NRC documents might well be reason for Applicants' to request the NRC Staff to postpone the meeting, but is not reason for management not to meet the Board's 6/15/85 deadline on Applicants' statement of Current Management Views. This again speaks to CASE's view as expressed in our 5/13/85 Answer to Applicants'

Proposed Case Management Plan that Applicants are attempting to have the NRC Staff join them in circumventing the hearings process and the Licensing Board. Applicants' current pleading is yet another example of this tactic.

What Applicants should have done if they needed more time -- as soon as they received the Board's 5/24/85 Memorandum and Order -- was to have told the NRC Staff's Mr. Noonan that they needed some additional time before the meeting in which to answer the Board's Order. Or, at a minimum, they should have telephoned the Board Chairman and advised him of the upcoming meeting which had already been tentatively scheduled for June 12-13 and requested additional time. Instead, Applicants are now misrepresenting the time frame during which the meeting was scheduled and the scope of the meeting in an effort to support their unsupportable Motion.

Applicants do not want to have to make a statement now or take a position now about their management. They want to have another opportunity to try to influence the NRC Staff and get the Staff on Applicants' side before they have to make any commitments to the Board.

Applicants' gratuitous statement that the upcoming NRC Staff/Applicants meeting will include a number of NRC staff management is irrelevant. Further, several NRC Staff management have recently been on plant tours at Comanche Peak (Mr. Denton on 5/23/85, and Messrs. Dircks and Stello on 5/20/85), as well as having attended the Atomic Industrial Forum meeting in Dallas the week of 5/20/85 which many of Applicants' personnel also attended. If Applicants' reason for this statement was to somehow give the upcoming meeting more importance, the Board should accept this for what it is -- another red herring to try to support Applicants' unsupportable Motion.

Another especially important point needs to be made at this time. Applicants have hired new consultants and new employees. However, they have still failed to read and comprehend what is contained in SSER 11, which they just received: that Applicants' management has not taken control and become involved in Applicants' QA/QC program. Applicants' current pleading is proof that Applicants' management still does not have the necessary commitment to quality.

Applicants' state that the request for current management views was initiated by the Board itself and not by CASE. However, Applicants fail to realize that the Board's Memorandum and Order was issued after a review of the responses from CASE, which includes our strong concerns and questions about Applicants' changes in management, as well as other concerns.

Applicants fail to realize that the Board is actually being generous by affording Applicants with yet another opportunity to dig themselves out of the hole they've dug for themselves. Applicants, instead of seizing gratefully on that opportunity, have again relegated the Licensing Board to the back seat and put the Board's concerns on the back burner while working on other matters for which they do not have deadlines.

In conclusion, and for the reasons stated herein, CASE urges that the Board deny Applicants' request for an extension of time to respond to the Board's Order that Applicants shall file by June 15, 1985, a statement of Current Management Views.

Respectfully submitted,

Juanita Ellis
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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, et al. } and 50-446-1
(Comanche Peak Steam Electric }
 Station, Units 1 and 2) }

DOCKETED
USNRC

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CERTIFICATE OF SERVICE

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By my signature below, I hereby certify that true and correct copies of
CASE's Answer in Opposition to Applicants' Motion to Extend Time

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