

June 11, 1985
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USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION '85 JUN 13 A11:28

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING SERVICE
BRANCH 1

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

CASE'S OPPOSITION TO APPLICANTS' MOTION TO EXTEND
TIME TO FILE THEIR "CURRENT MANAGEMENT VIEWS" BRIEF

CASE opposes Applicants' request for an extension of time to file their "Current Management Views" brief; and requests that the Board consider the circumstances outlined below in its consideration of Applicants' June 10, 1985 request.

Should the Board grant Applicants' request, CASE seeks a clarification from the Board of the elements it considers in evaluating this and similar requests for extension of time in future filings by any party.

BACKGROUND

Applicants seek, through a June 10, 1985 request, a two-week delay in the filing of a Board-requested document (described in a May 24, 1985 Memorandum and Order). The circumstances allegedly giving rise to this request are asserted as:

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1. The Applicants have received SSER #11 and
2. The NRC Staff has scheduled a two day meeting with the Applicants for June 13 and 14 (re: program plan, design adequacy, QA/QC).

Applicants argue that the above-listed developments "require a substantial effort" on the part of Applicants and their counsel such that "time does not permit a proper and full response to [the] Board's request for Current Management Views." (Applicants' Motion at 2) They conclude, without argument, that no party will be prejudiced nor will the Board's judicial managerial responsibilities be impinged.

CASE disagrees on both points. However, because the Board must assess for itself whether the delay impacts the efficient conduct of their hearings CASE will address only prejudice to itself on the following points:

1. The request for extension is itself procedurally defective, and the very act of CASE having to "drop everything" to respond to this late-filed request for time extension prejudices CASE.
2. Applicants' delay in filing prevents CASE from integrating the analyses of Current Management Views and the proposed program plan in a single assessment before both the Staff and the Board in a timely manner.

ARGUMENT

Arguably, the first harm has already occurred. The appropriate remedy of seeking and receiving more time to respond is pragmatically impossible since Applicants would then achieve a de facto extension anyway and accomplish by default that which they could not get legitimately through a timely request.

More importantly CASE will be denied the knowledge that is to be contained in Applicants' filing and prejudiced in our ability to evaluate the adequacy of the proposed program plan and management changes.

The Applicants correctly point out that the "Current Management View" filing is to respond to a Board request. Nonetheless, the disclosures in the filing will have a powerful, if not dispositive, impact on the future of this proceeding. Further, Applicants' filing will enable CASE to evaluate the record and their proposed program plan in the light of Applicants' current assessment of the same, and file appropriate motions and responses.

If the delay was purely administrative and without strategic benefit to Applicants perhaps our objection would be pro forma. However, CASE believes that the reasons cited by Applicants for their last minute delay are disingenuous^{1/} and that the real motivation for the request is strategic advantage which works to CASE's detriment.

To illustrate, Applicants have consistently maintained in public meetings and dialogue that their "program plan" for all matters including QA/QC issues would be disclosed after receipt of the QA/QC SSER. Theoretically, until the program plan for reinspection or corrective action is approved by the Staff the Applicants proceed with construction or reinspection at their

^{1/} See brief on same issue filed today by Mrs. Ellis for a summary of the facts which support Intervenor's belief that the basis for the delay request is insincere.

own risk. Their program plan does not consider the current management views of the plant, nor the evaluation of the cause of the problems, nor does the Staff ask Applicants to do so. Instead the entire program plan is premised on the theory that the plant is salvagable. If the proposed program plan and management changes are approved by the Staff, the Applicant stands in a much stronger position of seeking Board endorsement for its reform plan and its new management team without having to incorporate the consequences of any acknowledgements of what went wrong.

In reality the Applicant is presenting to the Staff much of the same plan on June 13 and 14 it claims it does not have time to give to the Board by June 15, but without any historical analysis as to root cause or pervasiveness. If the Staff finds the approach substantially acceptable without consideration of its current management views, then the history of non-compliance becomes irrelevant.

A perfect example of this approach is evident in Applicants' recent filing which addresses open discovery issues. (See Applicants' Report Regarding Status of Replies to CASE Interrogatories, pp. 3-5).

CASE requested, in its First Set of Interrogatories Re: Credibility, all liner plate documentation for Units 1 and 2. Applicants' response first mischaracterizes Ms. Neumeyer's testimony and ignores CASE's continuous position that Ms. Neumeyer's liner plate experience was a window into the entire fabrication, installation, documentation, and quality verification history at Comanche Peak.

More ominously Applicants take the position that because of the future "fix", to be proposed in its program plan, the liner plate issues are now moot. Therefore no further discovery is deemed necessary.

Significantly Applicants' position is that their explanation on mootness will be explained in their forthcoming plan. That plan is to be presented first to the Staff, not the Board, and presumably seeks to gain the reasonable assurance of the Staff for future work without ever addressing in any forum the depth, breadth and extent of the Quality Assurance breakdown that fostered the liner plate incident in the first place. A similar example is evident in the response to discovery requests on paint coatings. (See pp. 4-5)

CASE's resources continue to be stretched beyond their limits to accommodate Applicants' failures of proof and unredeemed promises of reform.

CONCLUSION

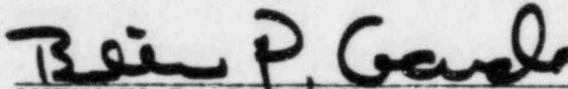
We believe the proper action for Applicants to take is to delay the meeting if that is necessary. CASE believes that the Staff, which has twice delayed this meeting at the request of the Applicant, would do so again to accommodate Applicants' need to respond to the Board.

Unless the Board can assure CASE that no prejudice will result from the two-week delay -- that is that the Staff must wait for the Current Management View filing and CASE's integrated response to the Program Plan and the Current Management Views --

we request that the delay be denied and Applicants be required to file by the end of the business day Monday, June 17, 1985.^{2/}

Should Applicants' request be granted, CASE respectfully seeks a written order from the Board clarifying those elements considered in granting the delay.

Respectfully submitted,



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^{2/} Since the initial filing date was listed as a Saturday the parties would likely not have received it before Monday anyway.

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