July 29, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

MOTION TO COMPEL RESPONSES TO INTERROGATORIES
FILED JULY 3, 1985

By letter dated July 3, 1985, CASE advised Applicants that a previous informal discovery request (letter from A. Roisman to R. Wooldridge (May 28, 1985) should now be considered formal. [1] By letter dated July 22, 1985, Applicants filed a letter which is apparently intended to be a formal objection to responding to the discovery request. Although in the future we will take the position that if Applicants intend to file legal papers they should obey the Rules of Practice, inasmuch as they are

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1. The use of this informal discovery was at the express invitation of the Licensing Board. Applicants never responded to the request, formally or informally.

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represented by counsel, we will on this occasion treat the letter as their full response to the discovery request in the nature of a blanket objection.

The essence of the Applicants' position if that because they have argued that Docket 2 is moot, all parties and the Board must act on the assumption that Docket 2 is moot until the Board rules to the contrary. This novel legal theory has no support. Unless and until this Board rules that Docket 2 is moot, it is not moot and all parties must operate on that assumption. This Board implicitly followed that principle when on July 22 it issued an Order in both Docket 1 and Docket 2 requiring Applicants to respond to discovery related to the MAC Report.

Another line of flawed reasoning advanced by Applicants is that this Board has given them unfettered discretion to decide whether to answer a discovery request based upon Applicants' balancing of the risks and benefits. That, of course, is not what the Board ruled. This Board imposed on Applicants a duty to "respond to discovery requests that are likely to survive regardless of what the Staff does." It did not state, or even imply, that Applicants were free to make this decision on their own although this Board may have hoped that Applicants' application of the standard and request for relief from discovery would reflect a more forthcoming attitude. Thus it is the duty of Applicants to seek leave from this Board to avoid responding

to discovery. Unless and until that request is accepted, the duty to respond pursuant to the Rules of Practice remains.

There is a second reason why Applicants' attempt to avoid responding to the July 3 discovery under the aegis of the May 30th Order must fail. That Order addresses only Docket 1 discovery. The February 15 protective order addresses only Docket 1. There is no such restriction on Docket 2. In addition, by its terms, the February 15 Protective Order expires "[o]ne month after the last Staff filing" which was SSER 11, filed sometime before June 6, 1985 (the date of the Board Notification). Thus there is now no Protective Order and the provisions of the May 30th Order interpreting that Protective Order are -- dare we say -- moot.

There are serious equitable considerations which strongly favor requiring Applicants to respond to discovery now. On January 16 of this year Applicants, by ex parte communication with the Board Chairman from Mr. Wooldridge, sought and obtained a temporary cessation of the hearings in Docket 2 until the first of March. The alleged purpose of that request was to allow Applicants to digest and prepare to respond the TRT findings. There was no indication that the purpose of the temporary halt was to permanently end Docket 2 and we are confident that if this hidden agenda had been revealed at that time, the requested halt would not have been granted. Throughout the hearings, as

evidence developed the Board, either sua sponte or at the request of CASE, allowed discovery, particularly document production. Applicants' ploy was to stop this damage to Applicants' process (e.g. the fallout from discovery of the liner plate travellers), and then try to halt Docket 2 in its entirety.

At a minimum Applicants hoped to obtain control of Docket 2 by halting the flow of damaging information to CASE. Now we see the intended fruits of their labor. The mootness allegation, filed after a several month discovery black-out in Docket 2, is itself used as a basis for preventing discovery to which CASE had, as of January 16, and still has, a right.

However, Applicants went further in their deception. They sought further time extensions and hearing postponements based upon the purported need for their new counsel, Ropes & Gray, to become familiar with the case. But where is Ropes & Gray? Except for responding to CASE's Motion for Establishment of an Evidentiary Standard and having their name appear, without signature, on some but not all filings, Ropes & Gray is gone, their apparent usefulness as a justification for delay now over. Or did Applicants discover that they had another O.B. Cannon? Regardless, the Ropes & Gray gambit was more misrepresented justification for more postponement of hearings and discovery.

It would be unconscionable for this Board to now reward the shenanigans of Applicants by allowing them to obtain a stay of discovery in Docket 2 until resolution of the mootness issue. In fact, the discovery sought relates to evidence that bears directly on the issue of mootness. If the existence of the CPRT arguably moots Docket 2, CASE is surely entitled to know fully what the CPRT is, who is running it and their character and competence. It is surely not possible that just any CPRT would moot Docket 2 or that any mea culpa would be sufficient. CASE is entitled to discovery to test that question even if we accept the Applicants' premise (which we do not) that Docket 2 could be moot solely on the basis of a CPRT and a mea culpa. As this Board ruled in its May 24th Order, the character and competence of the current management could be "powerfully influence[d]" by their "understanding of the plant condition and of prior management actions." Order, Slip Op. 4. There are many of the old management in the current management, including most of the highest corporate executives. What role did these people play in advising various private and governmental bodies about the status of the plant that was inconsistent with the reality and/or with representation made to this Board and the Staff? [2] Answers to

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2. Our concern that someone employed by Applicants has misrepresented reality to other govenmental bodies is not idle speculation. See the two attached documents prepared by DOE representatives which reflect 1) the concensus among observers at the hearings (on November 19-21) is that Docket 2 would be completed in a week in favor of Applicants (obviously no CASE observers were questioned) and 2) a January 28, 1985 DOE report

these questions will help to measure whether the CPRT is merely old wine in new botttles or, as Applicants would have us believe, a new vintage. Surely CASE is entitled to know the answers to the pending discovery to help make its arguments on this point.

Finally, we want to stress that the frequently used argument that delaying discovery will not prejudice CASE because the Board will not allow the Applicants to use later time pressures to shorten CASE's time is not, if it ever was, valid. As we have seen, the six month delay in Docket 2 has allowed Applicants to seek to claim that a live docket is moot and to seek to foreclose discovery that would have been legitimate (even by Applicants' theory) before the CPRT was filed. That is, if Applicants succeed here, an irreversible injury. Moreover, as Applicants' Case Management Plan reflects, Applicants are still setting schedules for CASE based on the unrealistic asumption that CASE can match Applicants in numbers of lawyers. Since Applicants act as though they can still lay down 30-day response schedules after taking six months to prepare their filing, this Board should stop accepting the fiction that CASE is not being prejudiced by postponement of what it seeks. Just responding to Applicants'

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that reflects a number of inaccuracies communicated by Applicants regarding Applicants' expected resolution of TRT issues and its fuel loading schedule (see letter from R. Wooldridge to P. Block dated January 30, 1985 noting indefinite postponement of the fuel load application). Apparently Applicants are not the only ones reporting false hopes to DOE as the final paragraph of the January 28 DOE memo reflects.

endless parade of unrealistic deadlines is prejudice enough.

For all these reasons we urge the Board to direct Applicants to respond to the July 3 CASE discovery in Docket 2 by August 2, the required due date. This will enable CASE to factor in some of the data in its response to the Staff filing of August 2.

Repectfully submitted,

Anthony Z. Roisman/mlk

Anthony Z. Roisman
Billie Pirner Garde
Trial Lawyers for Public Justice
2000 P Street, N.W.
Suite 611
Washington, D.C. 20036
202 463-8600

Counsel for CASE

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Report of Atomic Safety and Licensing Board Hearing
on the Comanche Peak reactor

Two days of, at times, excrutiatingly detailed hearings before the NRC's Atomic Safety and Licensing Board (ASLB) have certainly produced the legal equivalent of sound and fury. What is uncertain at this stage of the proceedings is whether this sound and fury signifies nothing.

At issue is whether a quality control inspector hired by Texas Utilities Company (TUCO) had been harrased and intimidated into changing a highly critical inspection report he made of paint coating procedures at TUCO's Comanche Peak nuclear reactor under construction near Dallas.

The focal point of this proceeding is a trip report written by Joseph Lipinsky, a senior quality control expert of Oliver B. Cannon and Sons. The Cannon firm had been retained by TUCO to look into paint coating problems at the Comanche Peak construction site. Lipinsky visited the site for three days and was highly critical of the paint coating and quality control documentation procedures of TUCO's construction contractors. At one point in his report, which was intended for internal use only but was subsequently leaked by unknown parties, Lipinsky likened the quality control problems at Comanche Peak to those at the now abandoned Zimmer plant in Ohio.

The specter of a multibillion dollar abandonment at Comanche Peak, as was the case at Zimmer, caused no small degree of consternation among TUCO officials. Exchanges between TUCO and O. B. Cannon senior officials developed into a series of meetings, some involving Lipinsky, in which the implications of the report were discussed. A four-month impasse transpired during which Lipinsky refused to sign affadivits characterizing his quality control assertions in a light more favorable to the utility. Ultimately, Lipinsky signed an affadavit stating he was satisfied with the quality control procedures. That affadavit is the focus of today's hearing. In it, Lipinsky, in a carefully worded statement, stated his opinion was based on unoorroborated assurances by TUCO officials that the procedures were in fact followed.

O. B. Cannon head Robert B. Roth stated this afternoon that he had held extensive discussions of the Lipinsky report with the author and with TUCO officials. Roth characterized Lipinsky as an honest man but stated that Lipinsky's assertions that paint quality standards could never be achieved without a complete rework were inaccurate based on Roth's 20 years of experience in the field. Roth noted that Lipinsky subsequently accepted TUCO representations that appropriate standards were met. Cannon officials viewed it outside the scope of their contract with TUCO to verify that procedures were in fact followed. Roth noted that numerous other audits of paint quality had been carried out at TUCO's request and that O. B. Cannon's position was that if TUCO is satisfied, Cannon is satisfied.

The consensus among the observers at the hearing is that the intimidation and harrassment phase of the proceedings will be settled in TUCO's favor next week.

The paint coatings issue is significant because widespread paint flaking during a reactor emergency could conceivably clog vital cooling ducts. Independent investigations by NRC staff and others have shown that 40% of the paint samples listed failed appropriate tests. The agency's final report on this matter is due later this week.

Left to be resolved are such intriguing questions as how could the utility design the walls of the controlroom to withstand predicted earthquakes and fail to note the possibility that parts of the ceiling could break loose and endanger the reactor operators who would have to man the controls during a seismic event.

NRC staff and interested parties feel hearings to determine if Comanche Peak is suitable for licensing will run into the summer of 1985. Observers estimate that Comanche Peak will incur $750,000 in interest expense for each day its startup is delayed once construction is complete.

Action officer: Fred Tathwell
252-2764

Department of Energy
Washington, D.C. 20585

January 28, 1985

NOTE TO: The Secretary
Deputy Secretary

Subject: Status of Comanche Peak Licensing

- The Comanche Peak 1 nuclear power plant, owned by Texas Utilities (TU), has been under intense scrutiny by the NRC for the past six months. In order to respond to approximately 700 safety allegations, the NRC formed a Technical Review Team (TRT) to conduct an on-site investigation. The inspection began in July 1984 and the results of the inspection were released to the utility on January 17, 1985. This was the most detailed and comprehensive inspection by the NRC to date in response to allegations.

- Comanche Peak has received considerable negative news coverage as a result of the allegations and NRC inspection.

- The Government Accountability Project (GAP) has been very active in the licensing proceedings. Tony Roisman of GAP represents the local intervenors, Citizens Association for Sound Energy.

- The NRC met with TU on January 17 to discuss the results of the TRT report. TU will respond to the report with a program to resolve the deficiencies identified. TU's plan is expected to be finalized in March or early April with the resolution of issues to be concluded in, approximately, June.

- TU has retained new council to represent them in the hearings on QA contentions which have been ongoing for over three years. TU has stated that they would like continuation of these hearings to be delayed until March. These hearings are expected to last until September 1985. At such time, the utility may receive a fuel-loading license. Full-power operation of the unit is not expected before early 1986, about six months later than the last projection.

o Although Comanche Peak has been receiving much adverse publicity, informal communication with involved NRC staff leaves the strong impression that there are no technical or quality assurance difficulties with the plant that cannot be resolved and that there is no reason to expect that the plant will not be licensed.

Gordon L. Chipman, Jr.
Director, Task Force on Nuclear
Power Plant Construction

cc: E. DeRocco
E. Gjelde
J. Vaughan
T. Garrish
R. Odle
J. McAvoy
S. Britt
S. Herod
T. Werner

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CERTIFICATE OF SERVICE

By my signature below, I hereby certify that true and correct copies of CASE's Motion To Compel Responses To Interrogatories Filed July 3, 1985 have been sent to the names listed below this 29th day of July, 1985, by: Express mail where indicated by *; Hand-delivery where indicated by **; and First Class Mail unless otherwise indicated.

Administrative Judge Peter B. Bloch
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Herbert Grossman
Alternate Chairman
ASLB Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Kenneth A. McCollom, Dean
Division of Engineering, Architecture
and Technology
Oklahoma State University
Stillwater, Oklahoma 74074

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

Ms. Ellen Ginsberg, Law Clerk
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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

Nicholas Reynolds, Esquire
Bishop, Liberman, Cook,
Purcell & Reynolds
1200 17th Street, N.W.
Washington, D.C. 20036

Stuart Treby, Esquire
Geary S. Mizuno, Esquire
Office of Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Docketing & Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Renea Hicks, Esquire
Assistant Attorney General
Environmental Protection Division
Supreme Court Building
Austin, Texas 78711

Mrs. Juanita Ellis
President, CASE
1426 S. Polk
Dallas, Texas 75224

Anthony Z. Roisman
ANTHONY Z. ROISMAN sls