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August 13, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the matter of	)	Docket Nos. 50-445-1
	)	50-446-1,
TEXAS UTILITIES ELECTRIC	)	50-445-2 and
COMPANY, ET AL.	)	50-446-2
	)	
(Comanche Peak Steam Electric	)	(Application for Operating
Station, Units 1 and 2)	)	Licenses)

APPLICANTS' RESPONSE TO CASE'S
MOTION TO COMPEL JULY 3, 1985 DISCOVERY

I. INTRODUCTION

On July 29, 1985, CASE filed in Docket 2 a "Motion to Compel Responses to Interrogatories Filed July 3, 1985" ("Motion to Compel"). The "interrogatories" CASE seeks to compel responses to were informal requests submitted on May 28, 1985, apparently converted by CASE into formal requests by letter dated July 3. By letter dated July 6, 1985, CASE had also informed Applicants that the discovery requests applied to Docket 1. Applicants herein respond to the Motion to Compel.

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II. DISCUSSION

CASE's May 28th "informal" (but now deemed formal by CASE) discovery requests consist of six pages of detailed interrogatories and documents, loosely related to Applicants' management changes, the CPRT, Applicants' internal assessments of plant and licensing status, the SAFETEAM, communications between Applicants and the Department of Energy and other government offices and officials, CYGNA Phase IV, corrective action implementation subcontractors, and Applicants' scheduling forecasts for the CPRT. Many of these wide-ranging requests have little, if anything, to do with either specified issues currently in controversy in this proceeding or the issue of mootness of pending Docket 1 or Docket 2 issues.

Applicants initially responded to the interrogatories on an informal basis by letter dated July 22, 1985. Applicants generally objected to the timing of the discovery requests (informal or otherwise) for the following reasons:

- It would be unfair and unduly burdensome for Applicants to respond to such a wide variety of discovery requests in advance of this Board's decision on refocusing of the proceeding in light of the TRT/CPRT developments.

- In any event, Applicants have already provided CASE with substantial information related to the CPRT and Applicants' management

changes in its filings in this proceeding and in response to ripe Docket 1 discovery requests.

CASE's Motion to Compel fails to squarely address or undermine either of these basic facts. The Board has recognized in its May 24, 1985 Memorandum (Case Management Plan), at 2-3, that mootness of pending issues is a question that now must be addressed in this proceeding. However, many of CASE's discovery requests are focused on neither current issues in either Docket 1 or Docket 2, nor on recent developments pertinent to the mootness question. Further, Applicants have already provided CASE with much information on the recent developments at Comanche Peak, and will continue to provide CASE with relevant CPRT information as it develops, consistent with the discussion in the recently filed Management Plan.[1] There can be little doubt that CASE already has sufficient information to respond to Applicants' Management Plan.[2]

1/ See "Applicants' Current Management Views and Management Plan for Resolution of All Issues" (June 28, 1985), at 70-73.

2/ In fact, an often heard complaint from CASE of late has been that it has too much information on the CPRT to digest, and therefore cannot yet substantively address either that program or Applicants' proposed Management Plan for this proceeding. See, e.g., Motion to Compel, at 6-7; "CASE's Initial Response to Applicant's 6/18/85 Current Management views and Plan for Resolution of All Issues" (July 29, 1985), at 19.

A response to several specific points raised in the Motion to Compel is in order. First, CASE argues that discovery should proceed on the assumption that Docket 2 is not moot. Motion at 2. However, CASE does not identify any of its May 28th discovery requests which are relevant to existing Docket 1 or Docket 2 issues. CASE's argument that Applicants have somehow foisted their mootness argument onto the Intervenor and the Licensing Board simply misses the mark. It is CASE itself which appears to be moving on, hoping to harvest a new crop of issues from Applicants' labors in responding to unnecessary discovery. Applicants believe these requests are irrelevant to issues before the Board, and in any event premature. The time to assess whether further discovery of the type included in CASE's interrogatories is necessary, is after the Board decides the issue of mootness and the status of these proceedings.

Further, contrary to CASE's arguments, CASE already has substantial information on changes in personnel at Comanche Peak and the CPRT effort. Compare Motion to Compel at 5. As is specifically addressed below, Applicants have provided a vast quantity of information on these subjects in the Management Plan, Amendment 55 to the FSAR, the CPRT Program Plan, the CPRT issue-specific action plans, and in "Applicants' Second Partial Response to Ripe Discovery Requests," filed July 3, 1985. CASE's argument that it has

no available information with which to respond to the Management Plan, or to frame new issues or refocus old issues for this proceeding is without merit. It is also disingenuous for CASE to argue as if its May 28th discovery requests are focused only upon management character and competence, and scope of CPRT issues. To the contrary, those discovery requests are directed at many other matters of no relevance to either past or potential issues. See, e.g., Interrogatories 3, 5-11, 14-16.

Second, there must be a balance between the burdens of responding to interrogatories of tenuous potential relevance and the potential delay that would result if discovery not responded to must later be pursued. Contrary to CASE's arguments, the Board itself has recognized the practicality and logic of a balanced approach to discovery during this phase of the proceeding. This recognition is reflected in the Board's May 30, 1985 Memorandum (Clarification of LBP-85-16). To argue, as CASE does (Motion to Compel at 3), the issue of whether the May 30th Memorandum was directed specifically at the instant discovery request is to miss the point. The principle relied upon by the Board does apply to this situation.[3] It is Applicants that would bear the

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3/ In any event, the May 30th Memorandum explicitly applied to both Dockets 1 and 2, irrespective of whether the initial discovery protective order applied to both dockets. The May 30th Memorandum superseded the

(Footnote 3 Continued on Next Page

burden of responding to unfocused, irrelevant, or premature discovery, and it is Applicants who would bear the burden of later litigation delay if it improperly fails to respond.[4] Applicants should not be required to expend resources prematurely on discovery.

Moreover, the Commission itself has recognized that any possible benefits of far-reaching, unfocused interrogatories is clearly outweighed by the burdens of responding to such requests. In the Commission's "Statement of Policy on Conduct of Licensing Proceedings," CLI-81-8, 13 NRC 452, 453 (1981), the Commission suggested that "the benefits now obtained by use of interrogatories could generally be obtained by using a smaller number of better focused interrogatories."

(Footnote 3 Continued from Previous Page)
protective order in Docket 1, and applies to Docket 2 irrespective of the effect of the protective order in Docket 1.

4/ CASE makes some rather vague arguments asserting that CASE will somehow be burdened by delays in discovery if discovery is refused now. Motion at 6. However, it is not at all clear to Applicants what possible burdens are being placed on CASE. The urgency in CASE's pleading is unfounded. There is a basic issue to be decided in this proceeding, as recognized in the Board's May 24, 1985 Memorandum (Case Management Plan), at 2-3, i.e. mootness of old issues and the status of the proceeding. CASE has been and is being provided substantial information relevant to that issue. CASE cannot reasonably argue that it lacks the information necessary to respond substantively to Applicants' proposed Management Plan.

Third, CASE presents a somewhat conspiratorial theory as to the current delay in the proceeding, and uses this theory in support of an "equitable" argument for immediate discovery. Motion to Compel at 3-6. Applicants need not address the various suppositions inherent in CASE's argument.[5] Suffice it to say, Applicants reiterate the position presented in the Management Plan (at 27-69) -- this proceeding should move forward along with events which have occurred over the last twelve months. Applicants are implementing a comprehensive remedial verification and corrective action plan to address, inter alia, CASE's assertions. Applicants have invited the Intervenor to assert specifically how its remedial program does not address the outstanding issues in this proceeding. See Management Plan at 43-45. Applicants have provided thick stacks of documents describing that program. Applicants do not understand how such an effort and plan for further hearings can be construed as "shenanigans" equitably supporting a discovery fishing expedition. Logic, practicality, and fundamental principles of NRC case law dictate the approach being suggested in the Management Plan and in Applicants' approach to the Intervenor's discovery requests. CASE's claims of equity are without merit.

* * *

5/ See 10 C.F.R. §2.713(a).

The following are specific objections and comments on each of CASE's May 28, 1985 discovery requests.

1. This interrogatory requests information related to Applicants' management changes. Applicants have provided detailed information on this subject in FSAR Amendment 55 and in response to Question 36 from CASE's Fourth Set of Interrogatories (See "Applicants' Second Partial Response to Ripe Discovery Requests" (July 3, 1985), at 15-19). These documents adequately describe the management organization as it currently exists, and the qualifications of the various individuals involved. This information is the focus of the mootness question.

   Applicants' object to discovery requests on this subject which go beyond information reasonably necessary to address the issue of appropriateness of the Management Plan. For example, Applicants object to discovery which is irrelevant to the issue of competence and character of the current organization. It is pointless for this proceeding to become bogged down in matters such as suggested by requests 1.a and 1.b related to various past events and the minute details of the events leading up to changes in management. Applicants also object to discovery of any internal personnel assessments, evaluations and performance ratings (Request 1.e). As stated in "Applicants' Second Partial Response to Ripe Discovery Requests," at 18, such information is confidential and irrelevant to the issues of this proceeding. CASE has shown no compelling need for the information which would outweigh employees' privacy interests.

Finally, Applicants object to open-ended, unfocused discovery requests, such as 1.h. Such requests are overly burdensome.

With respect to the organization, personnel and contracts related to the CPRT program (Requests 1.c. and 1.d.), CASE has been provided with such information either in the Program Plan itself or in accordance with Applicants' commitment in their second partial response to ripe requests (at 23). Other requests for information regarding personnel changes are irrelevant (Requests 1.f. and 1.g.).

2. This request seeks information regarding speeches given by TUGCO or Brown & Root management to the Comanche Peak work force regarding organizational or management changes at Comanche Peak and "problems [at] and status of the plant." Applicants object to this request as either seeking irrelevant information or information otherwise already provided.

In the first instance, such communications are themselves not in controversy. Further, as discussed in the response to Request 1, supra, Applicants previously provided substantial information on this topic to CASE. That information is more than sufficient to address any question related to the overall adequacy of Applicants' Management Plan. Thus, to the extent the instant request seeks such information, it has already been produced. Similarly, with regard to speeches concerning "problems [at] and status of the plant," CASE has recieved voluminous materials relating to such matters, e.g., SSER's 7-11, CPRT Program Plan and issue-specific action plans. That

material fully documents NRC findings and Applicants' response thereto regarding "problems" at and "status" of Comanche Peak. The information sought in the instant request would at most be duplicative of such material.

3. This interrogatory requests documents on the status of licensing provided by Applicants to owners, stockholders, investors, financial institutions, etc. Applicants object to this request as irrelevant. Applicants financial arrangements, and assessments of licensing status for financial purposes, simply have nothing to do with this proceeding.

4. This interrogatory seeks, in part, information concerning the discontinuation of the ombudsman position and the formation and structure of the SAFETEAM (Requests 4.a. - 4.c.). The transition from the ombudsman to the SAFETEAM program is not at issue in this proceeding. Nor is the SAFETEAM program itself at issue. Applicants recognize that the ombudsman program was a subject of litigation in Docket-2. If Applicants' Management Plan is adopted, however, Docket-2 would be moot and further litigation of such programs would be unnecessary. If that Plan is not adopted, this subject may be open for further litigation if properly raised.

Applicants recognize that request d. concerns allegations of harrassment and intimidation of QC inspectors prior to June 30, 1984, which is coincident with the cut-off date established in Docket-2 for allegations subject to litigation (including discovery). Mindful of our obligation to supplement

discovery requests pursuant to 10 CFR §2.740(e), Applicants review allegations received by the SAFETEAM to ascertain whether information received by SAFETEAM may create an obligation to supplement previous responses.

5-11. These requests relate to various hypothetical communications regarding the status of Comanche Peak between Applicants and various governmental officials. Applicants object to these requests as irrelevant. Communications (if any) between Applicants and "governmental officials" regarding the status of the plant are irrelevant to this proceeding.

12. Applicants have provided CASE, on an ongoing basis, with CPRT documentation. CASE has been provided with the Program Plan and issue-specific action plans. CASE has been present at transcribed meetings between the Applicants and the NRC regarding the TRT/CPRT. CASE will continue to be provided with relevant documentation as it is developed, consistent with Applicants' Management Plan. There can be little doubt that CASE already has sufficient CPRT information with which to participate in this proceeding by addressing the Management Plan. In any event, information beyond that already provided is not complete or otherwise produceable in a meaningful form at this time (see "Applicants' Answer to CASE's Interrogatories Regarding Premature Implementation of CPRT," Questions 2-6, filed this date). Accordingly, Applicants consider the material already provided to be responsive to this request.

13. This interrogatory seeks documents which assess CYGNA's Phase IV findings. Applicants object to this request as premature. CYGNA has not issued its Phase IV Report. CYGNA has compiled and transmitted to all parties a list of topics as to which it requested further technical information from Applicants. However, CYGNA has not issued any conclusions regarding QA/QC issues. The matter CASE refers to in the interrogatory was a comment by Ms. Williams during a meeting with the NRC Staff. It was not a "finding" by CYGNA, nor has it become (to Applicants' knowledge) a finding by CYGNA. Applicants note tht CYGNA's technical concerns are being addressed by the CPRT in the Design Adequacy Program. Consistent with Applicants' Management Plan, CASE will be provided information related to that program as it is becomes available.

14-15. These two discovery requests seek information related to various subcontractors' involvement in "resolving QA/AC or hardware concerns identified by the NRC." Applicants previously agreed to produce the contracts of organizations performing services for the CPRT (see "Applicants' Second Partial Response to Ripe Discovery Requests" (July 3, 1985), at 23). Applicants recently transmitted most of those contracts, and will forward the remaining contracts shortly. The relationship between these organizations, and with Texas Utilities, is set forth in those contracts.

16. This interrogatory requests any scheduling forecasts submitted by Applicants to outside consultants, governmental agencies, investors, the Board of Directors, and other

government officials. Applicants object to this request as irrelevant to this proceeding. Any scheduling forecasts by Applicants for planning purposes have no bearing on any issue before the Licensing Board.

III. CONCLUSION

For the reasons stated above, CASE's Motion to Compel should be denied.

Respectfully submitted,

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(Comanche Peak Steam Electric	)	(Application for
Station, Units 1 and 2)	)	Operating Licenses)

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Response to CASE's Motion to Compel July 3, 1985 Discovery" in the above-captioned matter were served upon the following persons by express mail (*) or deposit in the United States mail, first class, postage prepaid on the 13th day of August, 1985, or by hand delivery (**) on the 14th day of August, 1985.

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