901

RELATED CORRESPONDENCE

Filed: January 27, 1986.

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

before the

ATOMIC SAFETY AND LICENSING BOARD

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

APPLICANTS' OPPOSITION TO
"MOTION TO COMPEL RESPONSES TO
CASE's NOVEMBER 15, 1985, INTERROGATORIES"

Introduction

CASE begins its speaking motion to compel by setting forth a recitation of events prior to the promulgation of the three interrogatories that are the subject of the present motion.[1] The recitation is not

[1]CASE seeks relief upon by this motion only with respect to Interrogatories Nos. 12, 13 and 14 of the set propounded by it on November 15, 1985. See "Motion to Compel Responses to CASE's November 15, 1985, Interrogatories" ("Motion") at 1, 3 & n.2.

DS03

entirely accurate, and the Applicants therefore believe it useful to set the matter more accurately in context.

In a prior set of interrogatories,[2] CASE called for a number of documents and responses regarding the then and now in-process Comanche Peak Response Team ("CPRT") efforts. The Applicants filed responses objecting to all of these insofar as they called for in-process discovery of the CPRT activities.[3]

At the November 12, 1985, pre-hearing conference, the Applicants offered two arguments to the Board. First, assuming the question were entirely a matter of first impression and Board discretion, the Applicants argued that in-process discovery of the work of people who are performing expert analyses in anticipation of pending litigation should be denied, in part because of the inevitable interference with the doing of the work

---

[2]"CASE's 8/27/85 Interrogatories to Applicants and Request to Produce."

[3]"Applicants' Responses to 'CASE's 8/27/85 Interrogatories to Applicants and Request to Produce'and Request for Protective Order" (10/22/85).

(and the Applicants' ability to prepare their case) that would result; in part because the notion of discovery of the opinions of experts before the experts have completed the formulation of their opinions is a concept foreign to litigation -- either in the NRC or in the federal courts, on which the NRC Rules of Practice are based; and in part on the ground that, since all of the CPRT files would someday be available for inspection, the in-process discovery was hopelessly premature.[4] Since CASE would have -- after the CPRT

---

[4]CASE appears to approach an argument (it is not clear whether the argument is actually advanced) to the effect that, since the Applicants have stated a present intention to waive at some future time any objections to producing the entire CPRT working files, there has been effected a present waiver of the protection of the rules on discovery of experts. If that argument is made, there is a simple cure: the Applicants will modify their present intention to make a future waiver. Regardless, the point remains that CASE has not even attempted (much less succeeded) in making any case for why it needs discovery now. The fact of the matter is that, at the proper time, CASE will have all of the discovery it is entitled to (perhaps more). Given CASE's not unsurprising inability to demonstrate any need for extraordinary in-process discovery, any case for urging this Board to create new rules and depart from established authority stands naked and fatally weak.

CASE does not urge (and could not urge) the argument that, in the absence of in-process discovery,

efforts have been completed (and, therefore, are immune from any interference) -- all the discovery that might be had, this Board should not, we argued, condone such pointless interference.

Second, the Applicants advanced a legal argument to the effect that, given that the CPRT personnel are all experts retained in anticipation of litigation, and given that the recent NRC decisions are unanimous in importing the federal rules on discovery of experts into NRC practice, all discovery of CPRT is barred until the Applicants had made a determination as to who its witnesses are going to be (and then discovery is only proper with respect to the "testifying experts"

---

its ability to conduct in-process audits of the work of the CPRT is impaired. As an intervenor in an NRC licensing proceeding, it is not CASE's function to audit either the Applicant or the Staff. It is CASE's function to propound specific contentions on which it wishes to advance already established positions. Any assertion that CASE should have discovery so that it can determine what its contentions should be is contrary to law. E.g., Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188, reconsideration denied, ALAB-110, 6 AEC 247, aff'd CLI-73-12, 6 AEC 241 (1973).

and only in accordance with the precepts of Fed. R. Civ. P. 26(b)(4)).

At the pre-hearing conference, the issue having been squarely joined on several of the interrogatories and document requests then pending before this Board, CASE argued (by its representatives in both of the then pending dockets) in opposition. The Board granted none of CASE's requests for in-process CPRT discovery during the pre-hearing conference, and it granted none in its subsequent order of December 23, 1985, disposing of those issues that remained open at the close of the pre-hearing conference.

CASE now argues that in connection with one of those prior interrogatories "[the] Board did not accept . . . the Applicants' position . . . . The deficiency paper[5] information was specifically

---

[5] In the terminology employed by the CPRT, a "deficiency" is a design or construction deviation that has been determined to be "safety significant" (employing a definition of "safety significant" that is substantially more rigorous than that employed by the

permitted by this Board." Motion at 2. Putting aside that it is not clear what CASE is trying to prove by this line of argument, CASE has misstated the facts. What happened is that the Applicants objected to having to search for and produce, in-process, any CPRT files that might contain "deviation paper," but noted that a partial answer to the request would include the non-CPRT NCR process (since the Applicants' procedures require that an NCR be written for the deviations identified by CPRT).[6] The Applicants made no objection to producing the NCRs; no objection was overruled and no argument was rejected. Tr. 24,257.

Following the prehearing conference, CASE filed additional interrogatories, including the three at

---

NRC Regulations for regulatory purposes). We don't know whether CASE's use of the term "deficiency paper" is intended to limit the scope of what it is seeking to only the documents concerning deficiencies, or whether CASE is intending to refer to "deviation paper" despite misuse of the terms. We assume the latter.

[6]"Applicants' Responses to 'CASE's 8/27/85 Interrogatories to Applicants and Request to Produce'and Request for Protective Order" (10/22/85) at 19-20; Tr. 24,249-50 (11/12/85).

issue here. Each seeks information regarding the number, identity and activities of experts retained by the Applicants. In addition to the erroneous argument that the Board has "already ruled that the Applicants are not entitled to delay in [the] production of deficiency paper" (Motion at 5), CASE argues (1) that notwithstanding the unanimity of the recent NRC cases on the point, Fed. R. Civ. P. 26(b)(4) has no application in NRC litigation and should be ignored by this Board, and (2) that, even assuming applicability of the federal rules, the CPRT personnel are outside of the protection of those rules because the CPRT personnel are performing some "dual function" that renders them totally outside of the scope of the protections of the rules on discovery of experts. CASE is equally in error on both arguments.[7]

---

[7]It is noteworthy that CASE makes no response to the first line of argument offered during the pre-hearing conference, namely that wholly apart from rules prohibitions, in-process CPRT discovery would not be a wise exercise of this Board's discretion.

I. THE FEDERAL RULES OF CIVIL PROCEDURE GOVERNING DISCOVERY OF EXPERTS APPLY IN THIS PROCEEDING

CASE premises its major argument on the proposition that the provisions of Fed. R. Civ. P. 26(b)(4) have no application in NRC litigations. "In short, the provisions of Rule 26(b)(4) were deliberately not included by the Commission in its Rules of Practice and . . . use [of those provisions] in this proceeding to avoid relevant discovery is improper." Motion at 7.[8] In support of this

---

[8]Though CASE nowhere so acknowledges, this very "deliberately not included" argument has been rejected in the precise context now at issue:

> "To begin with, the application of a federal rule of civil procedure in a licensing proceeding is not precluded by the mere absence of an analogous NRC rule of practice. To the contrary, the Appeal Board has followed federal rules and practices where no analogous NRC rules exists. . . . In considering whether to follow the federal guidance, a Board should determine whether the situation before it is analogous to the situation the federal rule governs and whether the policy rationale underlying the federal rule is persuasive. . . . Applicants' assertion that Rule 26(b)(4)(B) has been 'expressly excluded from the Commission's discovery scheme' is unsupported. (Emphasis

proposition, CASE offers one licensing board decision (General Electric Co. (Vallecitos Nuclear Center, General Electric Test Reactor), LBP-78-33, 8 NRC 461 (1978)), together with the argument that, since the provisions of the federal rules were in existence when the Rules of Practice were promulgated by the Commission, the absence of a cognate provision in the Rules of Practice signals conclusively the Commission's rejection of those provisions as properly applied in NRC litigation. In point of fact, however, the latter argument is simply a repetition of the Vallecitos ratio decidendi that has been considered and rejected by three decisions subsequent to Vallecitos, and CASE is therefore relegated to the single argument that a prior

---

> added.) . . . We have no evidence that the Commission deliberately chose to exclude the principle of Rule 26(b)(4)(B) from its Rules of Practice."

Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1 and 2), LBP-83-27A, 17 NRC 971, 978 (1983).

Board rejected application of Fed. R. Civ. P. 26(b)(4) and therefore this Board should, too.[9]

Countervailing, we submit, are the following points: First, the Vallecitos decision's authoritative value is significantly undermined by the fact, as CASE acknowledges, that all of the decisions subsequently rendered on the point have rejected the Vallecitos conclusion. Vallecitos is therefore badly outnumbered. Second, the Commission has allowed the post-Vallecitos unanimity to stand unmodified, either by adjudicatory review or amendment to the regulations. We submit that, were the Commission of the view that the licensing boards were routinely and unanimously ignoring its "deliberately not includ[ing]" Fed. R. Civ. P. 26(b)(4) in the Rules of Practice, the Commission would have amended the Rules. The

---

[9]CASE omits to note, though the point is made in some of the decisions its cites, that the Appeal Board has regularly followed federal rules and practices where an analogous NRC rule did not exist, and, indeed, the Appeal Board has fashioned a test for such situations that CASE does not address. See infra at note 11.

Commission has not done so, and application of the conventional precepts of statutory construction leads to the conclusion that the subsequent licensing boards' decisions accurately reflect the Commission's preference.[10] Finally, consideration of the policies behind the Federal Rules reveals, as the subsequent decisions have concluded, that those policies are equally applicable in NRC litigation, as three different licensing boards have recently held.[11]

---

[10]The Commission, of course, exercises legislative (i.e., rulemaking) as well as adjudicatory functions vis-a-vis the Rules of Practice. The analogous principle of statutory construction is that when the legislature has allowed consistent interpretations of a statute to remain unaltered by legislative correction, the interpretations acquire a legislative imprimatur. E.g., Illinois Brick Co. v. Illinois, 431 U.S. 720, 736 (1977): "[W]e must bear in mind that considerations of stare decisis weigh heavily in the area of statutory construction, where Congress is free to change this Court's interpretation of its legislation." See also General Dynamics Corp. v. Benefits Review Board, 565 F.2d 208, 212 (2d Cir. 1977); Levine v. Commissioner, 526 F.2d 717, 722 (2d Cir. 1975); Sutherland Statutory Construction § 40.05 (1984 Rev. at p. 362).

[11]Vallecitos contains no assessment of the policies underlying Fed. R. Civ. P. 26(b)(4), which

The bottom line, therefore, is that each argument that CASE now advances has been explicitly rejected by at least one licensing board, that the applicability of Fed. R. Civ. P. 26(b)(4) in NRC proceedings is now well established, and that, wholly apart from prior

---

omission appears itself to be inconsistent with the obligation, when considering such a question, to make "inquiry into whether the situations [i.e., federal court litigation and NRC litigation] are truly similar." Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-379, 5 NRC 565, 588 n.13 (1977). The Seabrook, Shearon Harris and Kerr-McGee decisions, on the other hand, each consider whether the substance of the federal policy is applicable to NRC licensing before concluding that the rule should be imported:

> "We have examined the history of Rule 26(b)(4) and find that the situation it seeks to protect is analogous to this situation. Rule 26(b)(4) differentiates between experts whom the party expects to call as witnesses and those who have been retained or specially employed by the party in preparation for trial. The Notes of the Advisory Committee on Rules explain that discovery of expert witnesses is necessary, particularly in a complex case, to narrow the issues and eliminate surprise, but this purpose is not furthered by discovery of non-witness experts.
>
> "We find in this case the same concerns that Rule 26(b)(4) was intended to address. Discovery of NECNP's non-witness experts will not narrow the issues nor eliminate surprise at

decisions, CASE has offered no compelling argument (indeed, it offers no argument whatsoever) why the salutory precepts of the federal rule are any less applicable in NRC licensing than in the regular litigation fora. There has been offered, in short, no reason whatsoever why this Board should take up CASE's invitation that it depart from the unanimous post-Vallecitos view of the licensing boards that have considered this issue.

> trial. Therefore, discovery of the content of the advice of NECNP's non-witness experts is denied.
>
> "NECNP also cites federal decisions in support of its position that the identity of its non-witness experts is also protected by Rule 26(b)(4) and the the policy concerns which prompted these decisions are applicable to this NRC licensing proceeding. . . . The Board agrees with that analysis. Therefore, discovery of the identity of NECNP's non-witness experts is also denied."

Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), LBP-83-17, 17 NRC 490, 497 (1983). Reaching the same conclusion on similar analyses are Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1 and 2), LBP-83-27A, 17 NRC 971, 978 (1983), and Kerr-McGee Chemical Corp. (West Chicago Rare Earths Facility), LBP-85-38, 22 NRC 604, 609-10 (1985).

II. THE RESPONSE TO EACH OF THE INTERROGATORIES WAS CONSISTENT WITH THE RULES

CASE makes no separate argument for each of the three interrogatories that are the subject of this motion. Rather, it treats the three interrogatories as a single group and it confines its argument on the propriety of the interrogatories, assuming the federal rules on discovery of experts do apply, to a generalized assertion that the CPRT personnel[12] are "dual function" persons and therefore not subject to the protections of the rules. Motion at 9-15. CASE's arguments break down into two assertions: (1) that the CPRT experts, because they have been charged with other duties, are entitled to no protection under the rules whatsoever, and (2) that even if the CPRT experts are entitled to protection as experts, their observations made during the course of the examinations

---

[12]While the interrogatories were not limited to CPRT personnel in the scope of the information called for, CASE's arguments in support of the motion to compel are so limited. We therefore assume that, insofar as the interrogatories extended beyond CPRT, they are not pressed.

undertaken in order to formulate their opinions are matters of discoverable "primary fact." Neither of the arguments holds water as applied to this situation.

A. CASE has Identified No Collateral CPRT Function, And, if it Had, Discovery Would be Permitted Only as to the Collateral Function (If Relevant and Not Otherwise Privileged)

CASE's dual function argument is based on the discussion in Kerr-McGee Chemical Corp. (West Chicago Rare Earths Facility), LBP-85-38, 22 NRC 604 (1985), to the effect that:

> "We recognize that an expert may 'wear two hats,' that of an actor at first, and then of a litigation consultant. . . . 'The test to be applied is whether, in light of the nature of the documents and factual situation in a particular case, the experts and their information can fairly be said to have been obtained or acquired because of the prospect of litigation.'"

22 NRC at 611-15. Yet the discussion and resolution of the matter in Kerr-McGee makes it plain that nothing said by the Kerr-McGee board would have been considered by the Board to exclude the CPRT personnel from the protection of the Rule.

As applied, the two determinants of whether an expert's activities fall outside of the protection of the rules are scope and timing. As to scope, the

material that is discoverable must be distinct from the subject matter of what the expert is doing vis-a-vis the litigation. As to timing, work that is simultaneously serving two functions, one of which is litigation related, is (to the extent performed after the witness was engaged for the litigation) entirely non-discoverable. This is clearly illustrated by the very authority CASE cites: in the only one of the several situations presented to it in which the Kerr-McGee board found the rules' protection not available, it was because the expert had been hired before the litigation was commenced in order to meet a regulatory requirement that existed outside of the litigation. 22 NRC at 615. Even then, only the pre-litigation work was discoverable; all work that was done by the same person, with respect to the same subjects, was subject to the protections of the rule after the litigation was commenced:

> "Work done by Stearns Catalytic on these matters falls in the category of that required in the normal course of Kerr-McGee's relationship with the NRC and should not be shielded from discovery. However, other work performed after the notice of opportunity for hearing, directed toward this litigation, should be shielded."

Id.

CASE strives to fit into this situation by contending that all of the present work of the CPRT is work that the Applicants would have done anyway, to meet a regular non-litigation requirement, even if this litigation had never commenced. But the assertion is plainly erroneous on its face, and the materials quoted by CASE to support the notion do not do so. The CPRT was commissioned after the litigation commenced, and it was commissioned to deal with issues raised during the litigation, including the Staff's inquiry into matters raised during the litigation. The issue being considered by the CPRT, moreover, is a matter that is within the exclusive province of this Board to decide (namely, whether there is reasonable assurance that no undetected and uncorrected safety-significant construction, design or testing deficiencies exist in the facility, which is simply the licensing standard that this Board will apply in reaching a decision on Contention 5). In Kerr-McGee, the expert was originally retained to deal with a matter within the purview of the regulatory staff (and which to a certain extent remained with the regulatory staff wholly apart

from the convocation of the licensing board). Per contra in this case, and without intending to denigrate the importance of the Staff judgments on the adequacy of the CPRT effort and the quality of CPSES construction, design and testing, as a legal matter the role of the Staff with respect to Contention 5 is that of a party, not a tribunal. Indeed, even if one viewed Staff concurrence on any new or revised designs, analyses or inspections of record to be a "collateral" matter foreign to the litigation (a proposition we submit is dubious on its face), the fact of the matter is that the CPRT is performing no designs, analyses or inspections of record. CPRT is, to state the matter again, the means by which the Applicants intend to present their case on the issues now before this Board. The argument that CPRT is addressing itself to relevant non-litigation matters cannot be sustained.[13]

---

[13] In fact, the argument that because CPRT may be addressing itself to non-litigation as well as

Nor do the statements of Mr. Spence or SSER 11 suggest anything to the contrary. The former presents the candid and quite appropriate view of the chief executive officer of the lead applicant that the issues raised by this litigation are of concern and that ultimately he, as well as the Board, must be convinced that the "capable of being operated safely" standard has in fact been met. This is, we assume, always true of responsible nuclear management. Likewise, the statements contained in SSER 11 are the Staff's request for Applicants' response to certain issues so that that

---

litigation matters does nothing to undercut the shield upon discovery of materials prepared for litigation. Nor does it (or could it) create additional discovery rights for CASE because, to the extent that CPRT might be performing tasks related to matters outside the scope of Contention 5, by definition such matters are outside the scope of discovery permitted under the Rules of Practice in the first place. CASE's arguments in this regard are self-defeated first by CASE's failure to identify the specific areas that it contends are both matters of CPRT endeavor and outside the scope of the matters for litigation, and then by its failure to explain how any such matters are nevertheless relevant for discovery in the same litigation. The Kerr-McGee situation, where the expert was retained, and began work, prior to the commencement of litigation, does not aid CASE here.

Staff may formulate the position it proposes to take in the litigation. At most, these statements reflect additional reasons why CPRT should be afforded the ability to execute without pointless interference and delay the scope of work with which it is charged in connection with the pending litigation. By no stretch of even a fertile imagination do these statements demonstrate a scope function of CPRT wholly collateral to the issues raised by Contention 5.

The bottom line of the CPRT is that the experts comprising that effort were retained as a direct result of the course of this litigation. It may be true that convincing this Board that Contention 5 should be rejected may also involve, as a practical matter, convincing the Staff of the same thing, and it may be true that TUGCO management intends to review CPRT conclusions and render its own judgment, but neither of these propositions undercuts one whit the protection to which the CPRT personnel are entitled from discovery under the federal rules as experts retained in anticipation of litigation.

B. The CPRT is Not Engaged in Witnessing Primary Facts, as the Concept is Relevant to Fed. R. Civ. P. 26(b)(4)

CASE's "primary facts" argument is, in context, nothing but an attempt at bootstrapping. It is true that a witness to a car crash is not immunized from discovery as to what he saw at the time of the crash just because he happens to be an accident reconstruction expert and is later retained in connection with litigation over the crash. This does not translate into a precept that an expert, hired to formulate an opinion about matters involved in a litigation and who goes into the field to perform experiments, take measurements, or otherwise obtain data needed in order to formulate the opinion, is -- with respect to the data gathering function -- beyond the pale of the federal rules on discovery of experts. Indeed, CASE's assertion proves too much: were it true that all data-gathering by experts is freely discoverable, the language in the same federal rules governing and regulating the discovery as to facts known to testifying experts would be wholly nugatory

and there would never be any protection for non-testifying experts as to matters of fact.[14]

A rule of court should not be interpreted in a fashion that would render some of its language nugatory, and we know that under the federal rules, discovery as to a non-testifying expert -- including as to his data-gathering -- is generally barred altogether.

C. The Responses to Interrogatories Nos. 12, 13 and 14 were Proper and Unobjectionable.

Since CASE premises its arguments entirely on the theories of "dual purpose" and "primary facts," neither of which aids its cause, there is no need to dwell upon the specifics of the three interrogatories in question.

---

[14]CASE's reference to the Lipinsky situation, rather than aiding its arguments, only serves to underline the distinction between the proper application of the "primary facts" notion and the prohibited discovery of data-gathering by an expert retained in connection with litigation. One need go no further than the language quoted by CASE at Motion 13-14 n.10 to determine that the basis for the Board's ruling in that situation was its determination that the memorandum in question came before Mr. Lipinsky was retained as an expert in connection with litigation.

With respect to Interrogatory No. 12, the Applicants have yet made no judgment as to which experts will be employed as witnesses, and therefore no discovery regarding experts is proper, including identity, existence or number, until such a determination has been made. (Kerr-McGee, supra, 22 NRC at 616.) Given that even identity or existence cannot be discovered, it is plainly impermissible to inquire of non-testifying experts whether they are "persons working for consultants, contractors and subcontractors" as does Interrogatory No. 13. Id. With respect to Interrogatory No. 14, since the terms of the interrogatory called for information only with respect to persons "identified in the answer to Question 12 and 13," no answer is required if no persons are required to be identified by Interrogatories Nos. 12 and 13. Beyond that, Interrogatory No. 14 calls for an impossible speculation. It also misses the mark of the legitimate inquiry that might be made of any retained expert: "Was the expert retained in anticipation of litigation?" (Kerr-McGee, supra, 22 NRC at 614-15.) If he was, the answer to a speculative inquiry about what might have been done under a set of facts that did

not occur (and, frankly, at this point in time is difficult to imagine) is irrelevant.

Conclusion

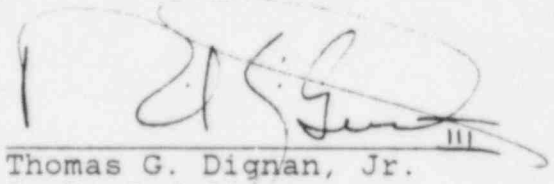
For the foregoing reasons, CASE's motion to compel should be denied.

Robert A. Wooldridge
Worsham, Forsythe, Sampels & Wooldridge
2001 Bryan Tower - Suite 3200
Dallas, Texas 75201
Telephone: (214) 979-3000

Nicholas S. Reynolds
William A. Horin
Bishop, Liberman, Cook, Purcell & Reynolds
1200 Seventeenth Street, N.W.
Suite 700
Washington, D.C. 20036
Telephone: (202) 857-9800

Roy P. Lessy, Jr.
Morgan, Lewis & Bockius
1800 M Street, N.W.
Washington, D.C. 20036
Telephone: (202)872-5000

Thomas G. Dignan, Jr.
R. K. Gad III
Ropes & Gray
225 Franklin Street
Boston, Massachusetts 02110
Telephone: (617) 423-6100

By 
Thomas G. Dignan, Jr.
R. K. Gad III

Dated: January 27, 1986

CERTIFICATE OF SERVICE

I, Robert K. Gad III, one of the attorneys for the Applicants herein, hereby certify that on January 27, 1986, I made service of the within "Applicants' Opposition to 'Motion to Compel Responses to CASE's November 15, 1985, Interrogatories'," by mailing copies thereof, postage prepaid, to:

* Peter B. Bloch, Esquire
Chairman
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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

Chairman
Atomic Safety and Licensing Appeal Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Stuart A. Treby, Esquire
Office of the Executive Legal Director
U.S. Nuclear Regulatory Commission
7735 Old Georgetown Road
Room 10117
Bethesda, Maryland 20814

Mr. James E. Cummins
Resident Inspector
Comanche Peak S.E.S.
c/o U.S. Nuclear Regulatory Commission
P.O. Box 38
Glen Rose, Texas 76043

Mr. William L. Clements
Docketing & Services Branch
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Chairman
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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

Renea Hicks, Esquire
Assistant Attorney General
Environmental Protection Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711

Ellen Ginsberg, Esquire
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

* Anthony Roisman, Esquire
Executive Director
Trial Lawyers for Public Justice
2000 P Street, N.W., Suite 611
Washington, D.C. 20036

Joseph Gallo, Esquire
Isham, Lincoln & Beale
1120 Connecticut Avenue, N.W.
Suite 840
Washington, D.C. 20036

* Dr. Kenneth A. McCollom
Administrative Judge
Dean, Division of Engineering,
Architecture and Technology
Oklahoma State University
Stillwater, Oklahoma 74078

Mr. Lanny A. Sinkin
Christic Institute
1324 North Capitol Street
Washington, D.C. 20002

Ms. Billie Pirner Garde
Citizens Clinic Director
Government Accountability Project
1901 Que Street, N.W.
Washington, D.C. 20009

Mr. Robert D. Martin
Regional Administrator,
Region IV
U.S. Nuclear Regulatory Commission
Suite 1000
611 Ryan Plaza Drive
Arlington, Texas 76011

* Elizabeth B. Johnson
Administrative Judge
Oak Ridge National Laboratory
P.O. Box X, Building 3500
Oak Ridge, Tennessee 37830

Geary S. Mizuno, Esquire
Office of the Executive
Legal Director
U.S. Nuclear Regulatory Commission
Maryland National Bank Bldg.
Room 10105
7735 Old Georgetown Road
Bethesda, Maryland 20814

Nancy Williams
Cygna Energy Services, Inc.
101 California Street
Suite 1000
San Francisco, California 94111

Robert K. Gad III

* = Federal Express