

6365

DOCKETED
USNRC

May 17, 1988
'88 MAY 18 P 5:03

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE

In the Matter of
TEXAS UTILITIES ELECTRIC
COMPANY, ET AL.
(Comanche Peak Steam Electric
Station, Units 1 and 2)

Docket Nos. 50-445-OL
50-446-OL

NRC STAFF MOTION FOR CLARIFICATION OF STATUS OF
PIPING TECHNICAL ISSUES AND FOR POSTPONEMENT OF
CONSIDERATION OF CASE'S OTHER IDENTIFIED ISSUES

I. INTRODUCTION

Pursuant to the Licensing Board's Order of November 18, 1987, the Staff hereby moves the Licensing Board for an order clarifying the status of the technical issues concerning large and small bore piping and pipe supports. The Staff also moves the Licensing Board for an order postponing consideration of Intervenor Citizens Association for Sound Energy's other identified issues. The Staff is aware that the Licensing Board's Order stated that after Intervenor's specification of issues, other parties could file motions to strike or motions for summary disposition of the identified issues. Memorandum and Order (Litigation Schedule) at 5 (November 18, 1987) [hereinafter Scheduling Order]. However, due to the nature of CASE's filing, the Staff believes the instant motion more accurately deals with the situation presented by that filing. Therefore, the Staff requests the Licensing Board to consider this motion in lieu of those motions listed in its scheduling order.

8805260163 880517
PDR ADOCK 05000445
G PDR

45.7

II. BACKGROUND

On November 18, 1987, the Licensing Board issued its order setting forth the litigation schedule for this Operating License proceeding. Phase I of the Licensing Board's schedule was based on reports issued by Applicants known as Project Status Reports (PSRs). The first two PSRs issued by Applicants concerned large and small bore piping and pipe supports. These PSRs were transmitted to the Board and parties by letters from Applicants' counsel dated November 2, 1987. At that time discovery commenced against the Applicants with respect to the contents of the large and small bore piping PSRs.

Phase II of the Licensing Board's schedule commenced with the issuance of the Staff's Supplemental Safety Evaluation Report (SSER) concerning large and small bore piping and pipe supports. Safety Evaluation Report Related to the Operation of Comanche Peak Steam Electric Station, Units 1 and 2, NUREG-0797, Supplement No. 14 (SSER 14). ^{1/} SSER 14 was issued by the Staff on March 9, 1988.

The next step in the Licensing Board's schedule is the beginning of discovery against the Staff. Scheduling Order at 5. Intervenor did not conduct discovery against the Staff regarding SSER 14. At the end of discovery the schedule requires Intervenor to specify the issues (in this

^{1/} The SSER was transmitted to the Board and Parties by letter from Staff Counsel dated March 10, 1988.

instance relating to SSER 14) in which it is interested and the basis for that interest. ^{2/}

On April 28, 1988, Intervenor made the required filing. "CASE's Identification of Piping/Pipe Support Issues" (April 28, 1988) [hereinafter Piping Issues]. In its filing Intervenor asserts that CASE is favorably impressed with Applicants' commitments regarding resolution of the Walsh/Doyle issues. Piping Issues at 3. Intervenor then raises several potentially litigable issues, though the Staff contends that some of the issues lack the necessary clarity to decide exactly what is to be litigated. The first issue discussed by CASE pertains to CASE's concern with the implementation of Applicants' corrective action program. ^{3/} Id. at 4-7. Intervenor's next issue pertains to whether CYGNA was pressured during the performance of its activities by Applicants. Id. at 6-7. Finally, Intervenor raises a concern as to the adequacy of Applicants' root cause and generic implications analysis as transmitted by the Applicants to the Board by letters dated March 29, 1988 and April 21, 1988. The Staff's motion relates to each of the points raised in Intervenor's filings as discussed below.

^{2/} At the prehearing conference held on November 2-3, 1987, the Licensing Board explained that such issues were to be set forth with enough clarity so that the parties knew what was to be litigated, along with a statement of the reasons for litigating the issue and the bases for those reasons. Tr. 25143-25144.

^{3/} It is this issue that the Staff contends needs further clarification before its litigation.

III. DISCUSSION

A. Technical Issues

Intervenor does not raise concerns about the way in which the technical issues concerning piping and pipe supports have been resolved. Piping Issues at 3-4. Rather, Intervenor suggests that CASE is satisfied with the Applicants' resolution of the Walsh/Doyle issues. CASE sets forth the possibility that if Intervenor is satisfied with the documents Applicants intend to enter into evidence, a stipulation could be reached which would eliminate the necessity to litigate these issues. ^{4/} Id. at 4. It is the Staff's understanding from this filing that Intervenor has proposed no litigable contention concerning the Walsh/Doyle technical issues and other external source issues resolved in Appendix A to the Applicants' PSRs on large and small bore piping. ^{5/} Intervenor does not challenge the review of the technical issues contained in Appendices A and F of SSER 14. ^{6/} In light of this situation, the technical issues regarding piping and pipe supports should no longer be considered as matters in controversy in this proceeding. Therefore, the Staff requests that the Licensing Board issue an order to the effect that the issues contained in Appendices A and B of Applicants' large and small bore piping PSRs and in Appendices A, B, C and

^{4/} It should be noted that, regardless of which specific documents Applicants intend to offer into evidence, if CASE had a problem with any of the available piping documents, the concern should have been raised at this time.

^{5/} In addition, Intervenor does not challenge the issues discussed in Appendix B of Applicants' PSRs.

^{6/} In addition, Intervenor does not challenge the resolution of open items in Appendices B and C of SSER 14.

F of the Staff's SSER 14, are not matters in controversy in this proceeding.

B. Implementation

Intervenor raises several points about implementation. First, CASE argues that although Intervenor wishes to litigate implementation issues, CASE cannot state on what document it intends to rely. Intervenor asserts that it does not know whether and in what form Applicants will address implementation. Piping Issues at 4. Intervenor also asserts that it is unclear at the moment in what form the Staff will address implementation. Id. Next, Intervenor argues that piping issues will not be ripe for litigation until implementation is complete. Finally, Intervenor raises a concern about the adequacy of implementation due to the alleged continued existence of a climate of intimidation and harassment. Id. at 7.

The Staff has some difficulty interpreting exactly what Intervenor means by "implementation." As CASE points out, the Staff has addressed implementation of Applicants' "plan" in SSER 14. Piping Issues at 5. CASE believes, however, that it has only been addressed to a limited extent. The Staff has addressed implementation of portions of the Corrective Action Program in Section 4 and Appendix A of SSER 14. As part of the Corrective Action Program, design criteria were developed to resolve generic technical issues, which include those issues identified by CASE, concerning piping and pipe supports. These criteria were then used in the piping and pipe support design validation analyses. SSER 14, Section 4.1.2.3. The Staff reviewed the methodology for the development of these criteria and evaluated the adequacy of the criteria. SSER 14, Section

4.1.2.2 and Appendix A. Next, the Staff reviewed the use of the design criteria in the design validation of piping and pipe supports. Id., at Section 4.1.2.3 and Appendix A. The Staff considers these activities to be implementation of Applicants' Corrective Action Program. Other portions of the Corrective Action Program are geared to determining whether modifications resulting from the design validation of piping and pipe supports have been correctly executed, and whether design documents and the piping systems' as-built condition have been properly reconciled. With respect to the Post Construction Hardware Validation Program (PCHVP), the procedures to be used for hardware validation were discussed in Section 5.1.3 of Applicants' PSRs. The Staff reviewed this section of the PSRs and concluded that the procedures for piping and pipe supports ensure that construction deviations, system design changes, and hardware modifications will be adequately evaluated to determine whether they should be reinspected. SSER 14, Section 4.1.3. The adequacy of the PCHVP reinspections is monitored as part of the Staff's ongoing inspection activities. The Staff also intends to monitor the design reconciliation process.

The Staff anticipates the inclusion of similar discussions of implementation to that contained in SSER 14 in the Staff's evaluations with respect to the other design disciplines. The Staff also anticipates providing some discussion of implementation in its evaluation of the CPRT activities. To the extent that CASE is concerned with the development of design criteria, the use of design criteria in the piping analyses and pipe support calculations, or the procedures to be used in the PCHVP, there is sufficient information available for CASE to specify the issues in which it is interested and the basis for that interest. With respect

to the other aspects of implementation, the Staff's findings on the adequacy of the implementation of the PCHVP and the design-reconciliation procedures will be found in the Staff's inspection reports. ^{7/} In light of the several facets of implementation discussed above, the Staff requests the Licensing Board to issue an order requiring CASE, in identifying its issues, to clarify what is meant by "implementation" and what aspects of implementation it intends to pursue.

CASE's next concern regarding implementation challenges the adequacy of implementation of Applicants' corrective action programs due to harassment and intimidation of employees working in those programs. The basis for this concern is the existence of several incidents of alleged harassment and intimidation by former contractor employees. CASE alleges the continued existence of a climate of harassment and intimidation. Piping Issues at 7. The two Department of Labor complaints cited by CASE as part of the basis for its issue do not concern people involved in implementation of the Corrective Action Program for piping and pipe supports. Therefore, the Staff believes that the question of harassment and intimidation, if it should be litigated at all, should be litigated with respect to Applicants' entire program rather than for each discipline. In addition, the Staff believes that this issue should be limited to the incidents of harassment and intimidation cited by Intervenor. Thus, the Staff

^{7/} In its filing Intervenor mentions that some of the Staff's inspection reports have raised questions about Applicants' plan and its implementation. Piping Issues at 5, n.2. However, Intervenor does not identify these inspection reports, and does not identify which problems are of interest to it. Therefore, Intervenor has not identified any piping issues from these reports which could be litigated at a hearing.

suggests that if this issue is to be litigated at all, it should be some time in the future, such as during the hearing concerning the Collective Significance and Collective Evaluation Reports. If, prior to that time, Intervenor becomes aware of other incidents of harassment and intimidation which it believes provide additional bases for its interest in this issue, CASE should be required to notify the Board and parties of such examples as additional bases for harassment and intimidation issues.

The Staff disagrees with CASE's point that any piping issues should await complete implementation of Applicants' corrective action program before being litigated. See, Piping Issues at 5. Commission practice does not require that the parties await completion of all activities associated with a particular issue in the licensing of a plant before litigation of the issues begins. See, e.g., Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-57, 18 NRC 495, 519 (1983). Rather, what is required is enough information to be available in connection with a particular issue for the Licensing Board to make its reasonable assurance finding. Id. The Staff believes that litigation may proceed with respect to piping issues before the design reconciliation phase of the design validation program is complete. If issues arise after the record on these issues is closed, Intervenor would have an opportunity to attempt to reopen the record for further litigation.

C. Litigation of CYGNA issues

Intervenor next expresses interest in the CYGNA final report and states that CASE might wish to litigate certain issues with respect to that report. Piping Issues at 6-7. The Staff notes that with respect to

piping, CYGNA has informed the parties of the closure of its concerns in the piping area. See, SSER 14 at Sections 4.2.3 and 7 (References 22 and 23). Since this information is available, any issue that CASE wishes to litigate in connection with CYGNA piping issues should have been filed in its pleading. Since no such issues were specified, the Staff assumes that the issues are closed and would no longer be matters in controversy. If the CYGNA report changes those conclusions, CASE would have an opportunity to raise those issues after the report is issued.

CASE also expresses interest in the question of whether CYGNA was pressured in the course of its activities by Applicants. This issue is applicable to CYGNA's activities as a whole, not just to piping and pipe supports. Therefore, the Staff suggests that this issue be combined with any other issues CASE wishes to raise concerning CYGNA's activities, and that the issues, if they are to be litigated at all, should be litigated at a single hearing session.

D. Adequacy of the Root Cause and Generic Implications Analysis

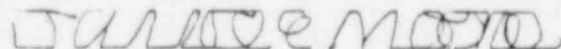
Finally, CASE has expressed an interest in the litigation of the adequacy of the root cause and generic implications analysis submitted by Applicants. Piping Issues at 8-10. This analysis pertains to design deficiencies which are not related solely to piping and pipe supports. Intervenor's concerns do not seem to be focused on the piping area in particular, but rather on the analysis as a whole. Therefore, the Staff suggests that this issue be litigated as a multi-disciplinary issue during the hearing on the Collective Significance Report.

In summary, while Intervenor has not raised any specific issues concerning piping and pipe supports, Intervenor has raised certain issues which may be appropriate for litigation. The Staff suggests that these issues be treated as multi-disciplinary issues and, with appropriate specificity, should be litigated at the hearing on the Collective Significance Report. It is the Staff's understanding of CASE's filing that there are no issues to be litigated in a hearing specifically related to large and small bore piping and pipe supports.

IV. CONCLUSION

For the reasons set forth above, the Staff moves the Licensing Board for an order which 1) rules that there are no piping and pipe support issues which are matters in controversy in this proceeding and 2) postpones consideration of CASE's other identified issues until hearings are held with respect to issues concerning Applicants' general corrective action program, that is, until hearings are held with respect to the Collective Evaluation and Collective Significance Reports.

Respectfully submitted,



Janice E. Moore
Counsel for NRC Staff

Dated at Rockville, Maryland
this 17th day of May, 1988

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION '88 MAY 18 P5:03

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD
SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)

TEXAS UTILITIES ELECTRIC)
COMPANY, ET AL.)

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

Docket Nos. 50-445-OL
50-446-OL

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF MOTION FOR CLARIFICATION OF STATUS OF PIPING TECHNICAL ISSUES AND FOR POSTPONEMENT OF CONSIDERATION OF CASE'S OTHER IDENTIFIED ISSUES" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 17th day of May, 1988:

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

Dr. Kenneth A. McCollom
Administrative Judge
1107 West Knapp
Stillwater, OK 74075

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

Dr. Walter H. Jordan
Administrative Judge
881 West Outer Drive
Oak Ridge, TN 37830

Mrs. Juanita Ellis
President, CASE
1426 South Polk Street
Dallas, TX 75224

Susan M. Theisen, Esq.
Assistant Attorney General
Environmental Protection Division
P.O. Box 12548, Capital Station
Austin, TX 78711-1548

Robert A. Wooldridge, Esq.
Worsham, Forsythe, Samples
& Wooldridge
2001 Bryan Tower, Suite 3200
Dallas, TX 75201

Joseph Gallo, Esq.
Hopkins & Sutter
Suite 1250
1050 Connecticut Avenue, N.W.
Washington, DC 20036

Billie Pirner Garde
GAP - Midwest Office
104 E. Wisconsin Avenue - B
Appleton, WI 54911-4897

William L. Brown, Esq.*
U.S. Nuclear Regulatory Commission
611 Ryan Plaza Drive, Suite 1000
Arlington, TX 76011

Asst. Director for Inspec. Programs
Comanche Peak Project Division
U.S. Nuclear Regulatory Commission
P. O. Box 1029
Granbury, TX 76048

Lanny Alan Sinkin
Christic Institute
1324 North Capitol Street
Washington, DC 20002

Robert D. Martin*
U.S. Nuclear Regulatory Commission
611 Ryan Plaza Drive, Suite 1000
Arlington, TX 76011

Robert A. Jablon, Esq.
Spiegel & McDiarmid
1350 New York Avenue, N.W.
Washington, DC 20005-4798

Jack R. Newman, Esq.
Newman & Holtzinger, P.C.
Suite 1000
1615 L Street, N.W.
Washington, D.C. 20036

Docketing and Service Section*
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Mr. W. G. Council
Executive Vice President
Texas Utilities Generating Company
400 North Olive Street, L.B. 81
Dallas, TX 75201

Anthony Z. Roisman, Esq.
Suite 600
1401 New York Avenue, NW
Washington, DC 20005

William H. Burchette, Esq.
Mark D. Nozette, Esq.
Heron, Burchette, Ruckert
& Rothwell, Suite 700
1025 Thomas Jefferson Street, N.W.
Washington, DC 20007

James M. McGaughy
GDS Assoc. Inc.
1850 Parkway Pl., Suite 720
Marietta, GA 30067

Atomic Safety and Licensing Board
Board Panel*
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Atomic Safety and Licensing Appeal
Board Panel*
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Robert M. Fillmore
Worsham, Forsythe, Samples
& Wooldridge
2001 Bryan Tower, Suite 3200
Dallas, Texas 75201

Adjudicatory File*
Atomic Safety and Licensing Board
Panel Docket
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Janice E. Moore
Janice E. Moore
Counsel for NRC Staff