

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

Before Administrative Judges:

'87 MAR 31 P1:54

Peter B. Bloch, Chairman
Dr. Kenneth A. McCollom
Dr. Walter H. Jordan

OFFICE OF SECRETARY
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SERVED MAR 31 1987

In the Matter of

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

TEXAS UTILITIES ELECTRIC COMPANY, et al.

ASLBP No. 79-430-06 OL

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

March 30, 1987

MEMORANDUM AND ORDER

MEMORANDUM

(Applicants' Motion to Compel)

The filings on the current motion have achieved a new level of entertainment and literary style and deserve commendation on that account. Texas Utilities Electric Company, et al. (Applicants) note that

CASE [Citizen's Association for Sound Energy] apparently would have discovery be a one-way street; litigation on the merits an ever-receding horizon. The Motion for Protective Order is compatible not with the Rules of Practice but with a theory of litigation by attrition; wear down Applicants, divert the Applicants' resources and avoid a head-on battle on the merits at all costs. . . . For this reason, answers to Sets 1-3 must be compelled and, where CASE has not yet formulated its position on the matters at issue, a reasonable deadline must be set for CASE to do so.

¹ Applicants' Memorandum in Opposition to CASE's Motion for Protective Order and in Support of Motion to Compel Answers
(Footnote Continued)

For its part, CASE notes that

Applicants join issue with CASE's objections principally on whether postponing answering the legitimate questions is unjustified delay. . . . Frankly we are a little puzzled by Applicants' motion. It appears to be little more than intervenor-bashing, using the tired cliché of delay. Applicants surely know that CASE will tell them what it finds objectionable about Comanche Peak and why. All this paper [just] to ask CASE the questions and seek to compel answers is "full of sound and fury signifying nothing."²

I. Background

The parties have remarkably dissimilar views of the current stage of our proceedings. CASE's view emphasizes that Applicants have been consuming enormous amounts of time to respond to charges brought forth by CASE and the Staff in this litigation; and CASE stresses that Applicants have been repeatedly missing their own deadlines for completing work, thereby causing further delay.³ Applicants focus their attention at the present moment of time, explaining the reasons why it is important for them to obtain the information they request and how granting their request would narrow issues for trial and serve the cause of expedition.⁴

(Footnote Continued)

(Applicants' Interrogatories, Sets 1987-1,2,3), March 2, 1987 (Applicants' Memorandum), at 2.

² CASE Opposition to Applicants' Motion to Compel, March 17, 1987 (CASE Opposition), at 8-9, quoting Shakespeare, MacBeth, Act V, Scene 5, Line 19.

³ CASE Opposition at 2-4.

⁴ Applicants' Memorandum at 4-5.

In viewing this discovery controversy, and without prejudice with respect to findings of fact we may subsequently be called on to make, we note that Applicants' CPRT program is an enormous effort to compensate for past weaknesses in design and construction QA/QC. What we have seen encourages us to believe that serious efforts are being made to identify individual problems, to learn about the root cause of those problems and to correct those problems. In the course of this work, Applicants have been willing to forego deadlines that they have set for themselves. The failure to meet those deadlines appears to be a mark of the seriousness of Applicants in correcting deficiencies.

At the same time, CASE has been given the enormous task of familiarizing itself with the outlines of a research effort whose cost is hundreds of millions of dollars. CASE asked that it be permitted to begin that task by examining the overall effectiveness of the design of the CPRT program. It stated that it did not believe that it had the resources to contest effectively all the technical details involved in this massive effort. It won from this Board a decision that the first stage of CASE's approach would be discovery concerning the adequacy of the CPRT program and the filing of a summary disposition motion concerning that program. We agreed with CASE that it could defer taking a position on individual results reports until after it had filed its motion for summary disposition.

Simultaneously, Applicants sought and obtained from this Board a ruling that it need not respond to questions about Results Reports until it had completed work on each of the reports. Although there is a

formal rationale that has been asserted by Applicants for this result, the practical result of this ruling is that Applicants are not bothered by discovery on individual results reports until they have concluded their work on each report. This prevents an unnecessary discovery burden in the course of completing reports.

II. Ruling

We agree with CASE that it need not respond to Applicants interrogatories concerning its litigation position at this time. It is entitled to the mirror image of the protection afforded to Applicants, for the purpose of serving the twin goals of enhancing the quality of the ultimate analysis and bringing this case to trial more quickly.⁵

We anticipate that CASE will file its motion for summary disposition in May, subject to delays that may be approved by this Board for cause.⁶ Subsequently, we anticipate adopting a fair schedule that will not prejudice CASE nor cause undue delay. The schedule would require CASE to disclose its position on completed CPRT or design review

⁵ Applicants' Memorandum at 16, citing Chemical Manufacturers Ass'n v. Consumer Products Safety Commission, 600 F. Supp. 114, 117-18 (D.D.C. 1984); In re LTV Securities Litigation, 89 F.R.D. 595, 618-19 (N.D. Tex. 1981).

⁶ Our ruling is without prejudice to the right of Applicants to refile Sets 1 and 2 if they consider it appropriate in light of the motion for summary disposition that is expected to be filed.

work and would require Applicants to disclose their position concerning the scope of the breakdown in QA/QC for design and construction. One possible vehicle for that procedure would be to require the parties to file contentions, with bases, concerning their position on the remaining issues. Another vehicle would be the kind of discovery exemplified by Applicants' Set 3.

It is our understanding that Applicants are about to file a memorandum concerning scheduling. When they do so, the stage will be set for the Board to adopt a management plan that will meet the legitimate needs of all parties."

Applicants Motion to Compel Answers to Applicants' Interrogatories, Sets 1987-1,2,3 shall be denied.

O R D E R

For all the foregoing reasons and based on consideration of the entire record in this matter, it is this 30th day of March 1987

ORDERED:

That Applicants March 2, 1987 Memorandum in Opposition to CASE's Motion for Protective Order and In Support of Motion to Compel Answers

Timing of Discovery: 6

(Applicants' Interrogatories, Sets 1987-1,2,3) is denied.

FOR THE
ATOMIC SAFETY AND LICENSING BOARD

A handwritten signature in dark ink, appearing to read "Peter B. Bloch", is written over a horizontal line.

Peter B. Bloch, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland

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