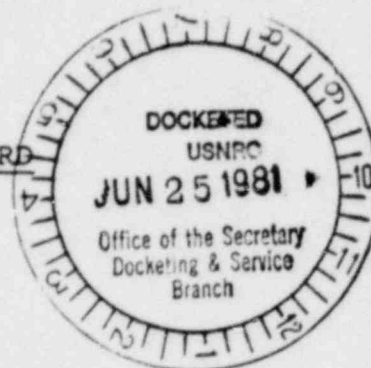




June 24, 1981

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of

TEXAS UTILITIES GENERATING
COMPANY, et al.

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

Docket Nos. 50-445
50-446

(Application for
Operating Licenses)

APPLICANTS' (1) ANSWER TO ACORN'S
MOTION FOR VOLUNTARY DISMISSAL, AND
(2) MOTION TO CANCEL PREHEARING CONFERENCE

I. Answer to ACORN's Motion
for Voluntary Dismissal

Pursuant to 10 C.F.R. §2.730(c), Texas Utilities
Generating Co., et al. ("Applicants"), hereby support the
Motion for Voluntary Dismissal filed by Texas Association of
Community Organizations for Reform Now ("ACORN") on June 16,
1981. Applicants urge the Atomic Safety and Licensing Board
("Board") to grant ACORN's motion, dismiss ACORN as a party-
intervenor, and dismiss ACORN's contentions.

On June 16, 1980, the Board issued its Order Sub-
sequent to the Prehearing Conference of April 30, 1980, in
which twenty-five contentions were admitted to this proceed-
ing. Of those twenty-five contentions, ACORN was the sole

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sponsor of Contentions 10 through 21 (12 contentions) and a joint sponsor of Contentions 4, 5, 22(f), 23 and 24(a) (3 contentions and portions of 2 other contentions). By its Rulings on Objections, dated October 31, 1980, the Board dismissed Contention 11 from the proceeding.

Thereafter, on December 31, 1980, the Board issued its Memorandum and Order regarding consolidation of the Intervenor. In that Order the Board designated ACORN lead party-intervenor for the eleven contentions (10 and 12 through 21), for which it was the sole sponsor, and for two of the contentions (5 and 23) for which it had been joint sponsor.^{1/} Accordingly, since ACORN has been the sole intervenor to press Contentions 10, 12 through 21, and 23 (see note 1, below), the Board should dismiss those contentions. The Board also should dismiss Contention 5 unless some other intervenor seeks to be substituted as lead party-intervenor.

Upon the Board's granting of ACORN's motion, Intervenor CASE and CFUR would thereafter be lead party-intervenor for the following contentions:

CASE	Contentions 22, 24 and 25.
CFUR	Contentions 1, 2, 3, 4, 6, 7 and 9. ^{2/}

^{1/} The other joint sponsor of Contention 23 was intervenor CASE, which withdrew its interest in Contention 23 in December, 1980. See Supplement to CASE's Answers to Applicants' First Set of Interrogatories and Requests to Produce, December 1, 1980, at p. 13.

^{2/} In its June 10, 1981 Response to Applicants' Motion to Strike, CFUR noted its intent to "defer to the efforts of the Staff on

II. Motion to Cancel Prehearing Conference

By Notice and Order served on June 11, 1981, the Board scheduled sua sponte a prehearing conference for July 8 and 9, 1981, in Fort Worth, Texas. The conference is to "deal principally with matters of discovery and scheduling as outlined in the Board Memorandum to the parties on June 8, 1981."

Applicants hereby move that this prehearing conference be cancelled as unnecessary in view of events since issuance of the Board's June 11 Notice and Order. The principal development is the withdrawal from this proceeding of intervenor ACORN. That withdrawal should result in the dismissal of ACORN's contentions (see Part I, supra) and the mootness of the pending motions of the NRC Staff and of Applicants to compel ACORN to comply with discovery requests and of Applicants to strike certain contentions of ACORN. Accordingly, a substantial portion of the matters that were to be dealt with at the prehearing conference can be disposed of by a Board order granting ACORN's motion to withdraw, dismissing ACORN's contentions, and denying as moot the pending motions against ACORN.

(footnote continued from p. 2)

the issue of drawdown due to use of groundwater" at Comanche Peak, which is the subject of Contention 8. Response at p. 5. CFUR stated that "it appears that the Staff is adequately examining the problems with which CFUR is concerned in this area." These statements indicate an intent by CFUR to withdraw Contention 8 from the proceeding, and the Board should dismiss Contention 8 in its order ruling on ACORN's motion for voluntary dismissal.

The remaining motions now pending in the main relate to a fundamental disagreement between Applicants and intervenor CFUR as to the proper scope of discovery in NRC proceedings. At bottom, the dispute between CFUR and Applicants seems to involve the interpretation of the clauses "the subject matter involved in the proceeding" and "those matters in controversy" contained in 10 C.F.R. §2.740(b)(1).^{3/} CFUR maintains generally that it may discover any information which relates to the application for operating licenses. For example, with regard to Contention 7 (rock "overbreak" and fissure repair), CFUR argues that its discovery inquires "about matters which relate to the construction of the CPSES structures and consequently are highly relevant to the ultimate issue in this proceeding of whether the Applicants should be issued an operating license." CFUR's Motion to Compel (May 12, 1981) at p. 2.

Applicants maintain generally that parties seeking discovery must identify the contention to which the discovery relates, and then may obtain discovery regarding matters relevant to that contention. For example, in response to CFUR's discovery requests regarding Contention 7, Applicants provided

^{3/} 10 C.F.R. §2.740(b)(1) provides, in pertinent part, as follows:

"(1) In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding In a proceeding on an application for a construction permit or an operating license

responses to inquiries involving rock "overbreak" and fissure repair, but declined to respond to inquiries involving the separate and unrelated activity of pouring concrete for the foundation of CPSES Units 1 and 2. Applicants' Answer to CFUR's Motion to Compel (May 27, 1981), at pp. 2-3.

In any event, these matters raise basic legal questions which the Board certainly can dispose of based upon the pleadings. The time and resources of the parties and this Board would be more efficiently expended if the Board cancelled the prehearing conference scheduled for July 8 and 9 and disposed of the pending motions^{4/} on the basis of the written pleadings. The matters of schedule listed in the Board's

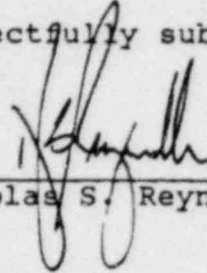
(footnote continued from p. 4)

for a production or utilization facility, discovery shall . . . relate only to those matters in controversy which have been identified by the Commission or the presiding officer in the prehearing order"

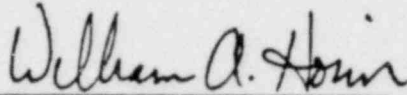
^{4/} Applicants have compiled a list of the pending motions and responses thereto which we believe is complete (assuming that ACORN's motion to withdraw is granted). The list is attached for the convenience of the Board.

Pre-Hearing Conference Agenda dated June 8, 1981 (items V through IX) could be handled through written submissions of the parties (and perhaps telephone conference calls).

Respectfully submitted,



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June 24, 1981

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

(Application for
Operating Licenses)

Applicants' Response-
5/13/81
Applicants' Response-
5/18/81;
Staff Response-5/21/81
Applicants' Response-
5/27/81
Applicants' Response-
6/3/81
Applicants' Response
due 6/25/81

6. To Compel Applicants to Respond
to Fourth Set (with Motion to
Find Applicants in Default)
6/18/81

Applicants' Response
due 7/6/81

CASE Motion:

1. To Compel Applicants to Respond
to Fourth Set 3/17/81

Response:

Applicants' Response-
4/1/81

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Applicants' (1) Answer To ACORN's Motion For Voluntary Dismissal, and (2) Motion to Cancel Prehearing Conference," in the above-captioned matter were served upon the following persons by deposit in the United States mail, first class postage prepaid this 24th day of June, 1981:

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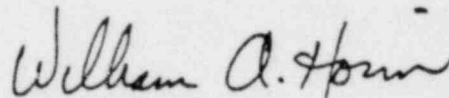
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