

June 18, 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

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

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Docket Nos. 50-445
50-446

(Application for
Operating license)



CFUR'S MOTION TO COMPEL RESPONSIVE
ANSWERS TO ITS FOURTH SET OF INTERROGATORIES
TO APPLICANT AND REQUESTS TO PRODUCE, MOTION TO
FIND APPLICANTS IN DEFAULT AND REQUEST FOR ORAL ARGUMENT

COMES NOW CFUR, one of the Intervenor in this proceeding and files this MOTION TO COMPEL RESPONSIVE ANSWERS TO ITS FOURTH SET OF INTERROGATORIES TO APPLICANT AND REQUESTS TO PRODUCE, MOTION TO FIND APPLICANTS IN DEFAULT AND REQUEST FOR ORAL ARGUMENT pursuant to 10 CFR §§2.707, 2.740(f) and 2.755.

I.

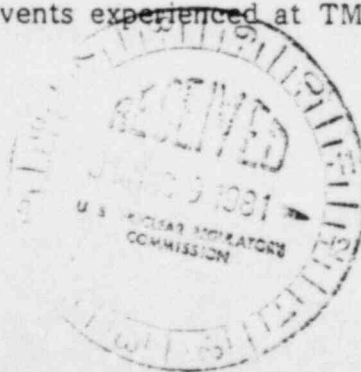
The Applicants seek to severely limit the scope of CFUR's Fourth Set of Interrogatories through their unilateral determination of the scope of CFUR's Contention 3. With this limitation on Contention 3, the Applicants have answered only 3 of CFUR's 48 Interrogatories without a relevancy objection or qualification.

The Applicants' effort to limit Contention 3 not only emasculate that admitted Contention, but serves to make a mockery of the discovery process. The Board should disallow and impose sanctions for these efforts by the Applicants.

As stated in response to Interrogatory 1, the Applicants' argument is that only the specific sequence of events experienced at TMI are relevant to Contention 3.

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Essentially the same justification is set forth by the Applicants for their failure to answer almost all of CFUR's Interrogatories as enumerated below.

The Applicants' position is patently erroneous in light of the clear wording of the Contention. It does not state that the computer codes should be tested and modified for the sequence events at TMI. Instead, Contention 3 unequivocally state that the codes must be tested and modified "to accept the parameters reflecting the sequence of events at TMI." The only fair reading is that the Contention is addressed to the types of events that occurred at TMI. It is unreasonable to conclude it addresses only the specific series of events that occurred at TMI.

The Applicants are well aware of the true scope of Contention 3. CFUR has consistently made clear that Contention 3 encompasses the types of failure and errors experienced at TMI and not the specific sequence of failure and errors themselves. Supplement to Petition for Leave to Intervene by Citizens for Fair Utility Regulation (CFUR) filed May 7, 1979, p. 3; Report of CFUR's Position on Contention filed April 10, 1980, Enclosure 1, pp. 9-12; Proceedings of April 30, 1980 Prehearing Conference, pp. 176-179; CFUR's Response to NRC Staff's Second Set of Interrogatories to and Request for the Production of Documents from Intervenor CFUR and Supplement to Answers to NRC Staff's First Set of Interrogatories to and Request to Produce from CFUR files May 22, 1981, Answer C3-2; CFUR's Response to Applicants' Third Set of Interrogatories to CFUR and Request to Produce filed June 2, 1981, Answers 1-3 through 44-3.

The Staff has understood the true scope of Contention 3. In the NRC Staff's Answers to Applicants' Statement of Objections to Prehearing Conference Order and Motion for Modification, p. 4, the Staff stated, "The Contention [3] raises the issue of whether computer codes used in the design of CPSES properly take account of the conditions experienced at TMI-2."

Indeed, the Applicants, themselves, understand the true scope of Contention 3. The detail of their Third Set of Interrogatories to CFUR filed April 23, 1981, shows they are aware of and have sought discovery from CFUR based on the full scope of Contention 3. Moreover, the Applicants' actual understanding of the true scope of Contention 3 is conclusively established by their own arguments in the Applicants' Motions (1) to Compel Responses, and (2) Require Supplementation of Responses to Interrogatories in Applicants' Third Set of Interrogatories to CFUR filed June 12, 1981. As stated on Page 3, the Applicants clearly understand the types of parameters encompassed by Contention 3 to include "operator error, maintenance error, hydrogen formation, single failure criterion interpretation, PORV problems and misleading indications." It is simply not believable that the Applicants can now state in good faith that Contention 3 is concerned only with the specific sequence of events which occurred at TMI.

The Applicants misunderstand the discovery process in this proceeding. By their actions, they adopt the view that discovery is a one-way street over which they can seek and receive extensive and broad ranging discovery from CFUR. In return, however, they refuse to provide similar discovery in response to CFUR's requests. Instead, the Applicants obstruct CFUR's requested discovery to the utmost. In the interest of fairness, and to insure proper compliance with discovery rules and regulations, the Board must intervene and actively insure that the Applicants provide the legitimate discovery requested of them. CFUR is clearly entitled to discovery on its accepted contentions.

The purposes of the Applicants' limitation on Contention 3 are to avoid and evade their discovery obligations in this proceeding and to cause unnecessary burdens on CFUR in obtaining discovery. Such conduct cannot be condoned and should be harshly sanctioned by the Board.

Due to their intentionally erroneous limitation on Contention 3, the Applicants have failed to answer all or most of Interrogatories 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 46. The Board should overrule all of the Applicants' objections to these Interrogatories and order the Applicants to provide full, complete and truthful answers to each listed Interrogatory.

II.

The Applicants also object to Interrogatory 21 on the ground that it is not sufficiently specific in that it "does not identify the accident sequences with which it is concerned." CFUR is interested in accident sequence analyses other than design basis accidents. The Applicants should be compelled to answer Interrogatory 21 for all accident sequence analyses other than the design basis accident sequence analyses listed in Exhibit A to CFUR's Fourth Set of Interrogatories.

III.

The Applicants have failed without objection, to answer Interrogatory 20. The Applicants reference their response to Interrogatory 3. However, that response does not set out how human error is taken into account, if it in fact is, in analyzing small break accidents.

Interrogatory 20 also inquires about following erroneous procedures. Applicants make no attempt to answer that inquiry. The Board should order the Applicants to answer fully all portions of Interrogatory 20 and require the Applicants to set out how human error is taken into account, if it is.

IV.

On the whole, the Applicants' Answers to CFUR's Fourth Set of Interrogatories are so evasive and incomplete that they should be treated as a failure to answer or respond. 10 CFR §2.740(f). Such failure to answer or respond places the

Applicants in default under 10 CFR §2.707. As a result of this default and as a sanction for the Applicants' efforts to thwart CFUR's legitimate discovery requests, CFUR prays that the Board enter findings of fact pursuant to 10 CFR §2.707(a) that the Applicants are not qualified to operate CPSES unless and until, and as a condition of the issuance of an operating license, the Applicants model the types of parameters experienced at TMI for each of the design basis accident sequences considered for CPSES, and prove that the accident sequences considered will not progress into a more serious accident.

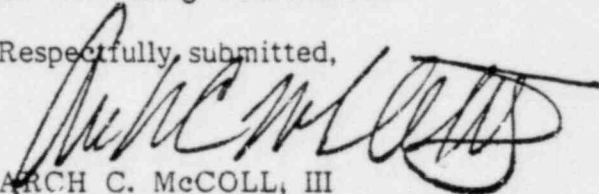
V.

CFUR objects to the form of the oath taken by Mr. Homer C. Schmidt and moves the Board to order the Applicants to swear to all Interrogatory answers based on personal knowledge. CFUR adopts the arguments contained in Part IX of its Motion to Compel Responsive Answers to CFUR Interrogatories to Applicant of February 26, 1981.

VI.

CFUR requests oral argument on this Motion to Compel and Motion to Find Applicants in Default at the July 8, 1981 Prehearing Conference.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "CFUR'S MOTION TO COMPEL RESPONSIVE ANSWERS TO ITS FOURTH SET OF INTERROGATORIES TO APPLICANT AND REQUESTS TO PRODUCE, MOTION TO FIND APPLICANTS IN DEFAULT AND REQUEST FOR ORAL ARGUMENT" were served upon the following persons by deposit in the United States mail, first class postage prepaid this 18th day of June, 1981:

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A handwritten signature in dark ink, appearing to read 'Arch C. McColl, III', written over a horizontal line.

ARCH C. McCOLL, III