



7/28/81

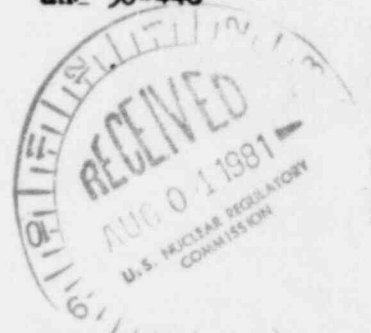
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

APPLICATION OF TEXAS UTILITIES
GENERATING COMPANY, ET AL. FOR AN
OPERATING LICENSE FOR COMANCHE
PEAK STEAM ELECTRIC STATION
UNITS #1 AND #2 (CPSES)

Docket Nos. 50-445
and 50-446



CASE'S MOTION FOR RECONSIDERATION
REGARDING PREHEARING CONFERENCE

COMES NOW CASE (Citizens Association for Sound Energy), hereinafter referred to as CASE, Intervenor herein, and files this, its Motion for Reconsideration Regarding Prehearing Conference.

On June 2, 1981, the Board initiated a conference call among all parties to discuss a prehearing conference. It was decided that such prehearing conference would be held July 8 and 9, 1981, and on 6/11/81, CASE received a copy of the Prehearing Conference Agenda in which the topics to be discussed were outlined. On June 16, 1981, West Texas Legal Services (allegedly on behalf of its client, ACORN) filed its Motion for Voluntary Dismissal of ACORN. On June 24, 1981, Applicants' filed their (1) Answer to ACORN's Motion for Voluntary Dismissal, and (2) Motion to Cancel Prehearing Conference; this pleading was received by CASE on 6/29/81.

CASE had no opportunity to respond to Applicants' 6/24/81 Motion to Cancel Prehearing Conference, because on 6/26/81 CASE received the Board Chairman's telegram cancelling the prehearing conference and stating:

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"...ORDER CONCERNING ALL PENDING MOTIONS WILL BE ISSUED SHORTLY/EXPEDITED SCHEDULE FOR TERMINATION OF DISCOVERY AND EARLY COMMENCEMENT OF EVIDENTIARY HEARING ON NEPA AND SELECTED ISSUES WILL BE INCLUDED/

MARSHALL E. MILLER, CHAIRMAN
USNRC"

Subsequent information which has recently come to CASE's attention, coupled with recent pleadings and orders in these proceedings, has convinced CASE that there is an urgent need to have a prehearing conference in order to assure that these hearings proceed in an orderly and expeditious, but fair, manner.

CASE applauds that portion of the Board's July 20, 1981 Memorandum and Order regarding Applicants' Second Set of Interrogatories to CFUR and related pleadings, in which the Board ruled:

"Pursuant to the provisions of 10 CFR 2.740(e)(3), all interrogatories filed by any party to this proceeding, past or future, shall be deemed to be continuing in nature, and the party to whom they are addressed shall be under a continuing duty to supplement the responses as necessary to keep them currently accurate."

We ask that one subject to be discussed at the proposed prehearing conference be a date certain by which Applicants must supplement their past answers. This is urgently needed in order for CASE to determine how to proceed regarding future pleadings in these proceedings. Applicants have indicated in the past that they only intend to supplement their responses to CASE's interrogatories as required by 10 C.F.R. 2.740(e). (See Applicants' 4/1/81 Answer to CASE's Motion to Compel and to Require Supplementation with Respect to CASE's Fourth Set of Interrogatories to Applicants, page 9.) It is not clear under 10 CFR 2.740(e) as to the definition of "seasonably." Further, Applicants should be advised specifically regarding supplementation of answers to CASE's interrogatories regarding Contention 5

when the Board has clarified its wording of the contention and when the status of Contention 5 is determined.

In the Board's July 22, 1981. Order regarding CFUR's Motion to Clarify Contention 3, the Board stated:

"This proceeding is already suffering from a flood of motions, answers, objections to interrogatories and the like which constitute an imposition upon the Board. The subject of excessive and unnecessary filings with the Board and proposed remedies therefor will be discussed in another Order to be released shortly."

CASE certainly does not consider any of its motions to be frivolous or unnecessary, and we request a clarification by the Board of precisely what is meant by "excessive and unnecessary filings" as well as specifically which "motions, answers, objections to interrogatories and the like which constitute an imposition upon the Board." CASE would further point out that many of the motions, answers, and objections to interrogatories stem directly from the failure of the Board in these proceedings to comply with the provision of the May 20, 1981, NRC Statement of Policy on Conduct of Licensing Proceedings (CLI-81-8) which states on page 7, Section F:

"The licensing boards should issue timely rulings on all matters."

CASE, for example, is still awaiting complete answers from the Applicants in response to CASE's 2/17/81 Fourth Set of Interrogatories to Applicants and Requests to Produce; this is not the fault of CASE, but rather because the Board has failed to issue a timely ruling on our 3/17/81 Motion to Compel and to Require Supplementation of Responses to CASE's Fourth Set of Interrogatories to Applicants. The list of Pending Motions attached to Applicants' 6/24/81

(1) Answer to ACORN's Motion for Voluntary Dismissal, and (2) Motion to Cancel Prehearing Conference indicates that other parties are experiencing similar problems regarding timely rulings by the Board on their motions.

CASE mentions this in the most respectful way, and we fully realize that there may have been good and valid reasons for the Board's inaction regarding timely rulings. However, we believe in all fairness it should be pointed out that, if indeed there has been "an imposition upon the Board," it is not only the Board which has been imposed upon, and the present Board cannot ignore previous Board inaction which may have exacerbated the problem.

We further note the apparent intention of the Board as currently constituted to issue timely rulings on outstanding motions, and we heartily concur with the Board's intention. However, we are very much concerned that adequate opportunity be given to all parties to openly and thoroughly discuss problem areas so that fairness and due process can be maintained and a full and accurate record achieved in these proceedings; we urge that these goals not be sacrificed in the rush to expedite the hearing process.

The Board Chairman's 6/26/81 telegram cancelling the pre-hearing conference also stated: "EXPEDITED SCHEDULE FOR TERMINATION OF DISCOVERY AND EARLY COMMENCEMENT OF EVIDENTIARY HEARING ON NEPA AND SELECTED ISSUES WILL BE INCLUDED."

CASE requests that the Board clarify whether or not "TERMINATION OF DISCOVERY" referred to all contentions or if that term was intended to be part of the balance of the sentence which referred to commencement of evidentiary hearing on NEPA and selected issues.

We further request that the Board clarify exactly what contentions and/or portions of contentions will be affected by the evidentiary hearing on NEPA and selected issues referred to in the Board's telegram, as well as specifying what is meant by "selected issues."

CASE believes that the subjects discussed herein could most easily be considered at a prehearing conference, in which there could be an adequate dialogue to enable a thorough analysis and resolution of these problem areas.

WHEREFORE, PREMISES CONSIDERED, CASE hereby moves that the Board:

- (1) Convene a prehearing conference, the date to be arrived at by mutual agreement among all parties;
- (2) Hold such prehearing conference in Dallas or Arlington, rather than in Fort Worth or Glen Rose, where previous prehearing conferences have been held (since Texas Utilities' offices and CASE's headquarters are located in Dallas, and CFUR's headquarters and the NRC Regional offices are located in Arlington and DFW Airport is located nearer Arlington than either Dallas or Fort Worth);
- (3) Hold such prehearing conference in a building where the proceedings are open to all the public, including television news media, rather than at a location such as the Federal Building in Fort Worth where television cameras are not allowed;
- (4) Include in the agenda for such prehearing conference discussion by parties and timely rulings by the Board regarding the following subjects:

- (a) Whether or not West Texas Legal Services was authorized by ACORN to withdraw from the hearings on behalf of ACORN, and the status of ACORN in these proceedings;
- (b) The status of Contention 5, including designation of lead party-intervenor if proper, status of pursuit of CASE's Second Set of Interrogatories and Requests to Produce, clarification of wording of Contention 5, and any other applicable issues regarding Contention 5;
- (c) Date certain by which Applicants must supplement their past answers;
- (d) Clarification by the Board of precisely what is meant by "excessive and unnecessary filings" as well as specifically which "motions, answers, objections to interrogatories and the like...constitute an imposition upon the Board;"
- (e) Clarification by the Board of which contentions will be affected by "termination of discovery" as mentioned in the Board's 6/26/81 telegram;
- (f) Clarification by the Board of what contentions and/or portions of contentions will be affected by the evidentiary hearing on NEPA and selected issues referred to in the Board's telegram of 6/26/81, as well as specifying what is meant by "selected issues."

- (g) Oral argument on discovery motions which remain undecided at conference time;
- (h) Discussion, including NRC Staff's forecast, of Staff's Final Environmental Report;
- (i) Discussion, including NRC Staff's forecast, of Staff's Supplemental Safety Evaluation Report;
- (j) Discussion regarding cut-off of discovery;
- (k) Status of contentions and timing of motions for summary disposition;
- (l) Discussion on anticipated schedule of hearings; and
- (m) Any other additional considerations for the Board's attention which may arise between now and the conference time.

CASE does not seek to delay Board action until the time of such prehearing conference on much of the preceding. However, there are certain items listed which we believe can be handled more expeditiously, fairer, and with less confusion, motions and answers to motions at a prehearing conference than with a ruling by the Board without the parties having the prior right to comment or with the parties having the prior right to comment by mail. We therefore further move that the Board delay action until the prehearing conference on the following prior-listed items: (4)(b), (4)(e), (4)(f), (4)(j), (4)(k), and (4)(l).

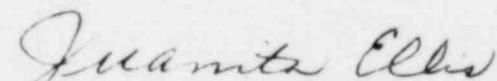
Should the Board decide not to hold the requested prehearing conference,

CASE moves in the alternative that the Board allow the parties the right to comment prior to the Board's ruling on the following prior-listed items: (4)(b), (4)(e), (4)(f), (4)(j), (4)(k), and (4)(l), preferably after the Board has ruled on (4)(a), (4)(c), (4)(d), (4)(h), (4)(i), and information has been received by all parties from the NRC Staff regarding (4)(h) and (4)(i).

There have been several occurrences in these proceedings which, through no fault of CASE's, have damaged our rights or made it extremely difficult to properly pursue and prepare our contentions for litigation: the failure of Applicants to file full and complete responses to CASE's interrogatories and requests to produce; the consolidation of CASE with other inter :nors over our strong objections; the precipitous filing by West Texas Legal Services of its Motion for Voluntary Dismissal of ACORN without prior discussion with CASE; and the failure of the Board to issue timely ruling on CASE's motion.

A decision by the Board to deny this instant motion by CASE would serve to further damage our rights in these proceedings, perhaps irreparably.

Respectfully submitted,



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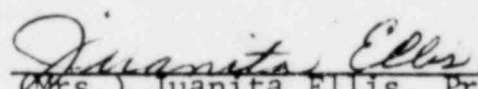
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CERTIFICATE OF SERVICE

By my signature below, I hereby certify that true and correct copies of
CASE'S MOTION FOR RECONSIDERATION REGARDING PREHEARING CONFERENCE

have been sent to the names listed below by First Class Mail this 28th
day of July, 1981 * = with Certificate of Mailing receipt

- | | |
|--|--|
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