

8/10/81

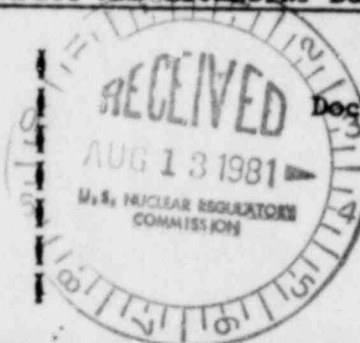


UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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

REQUEST FOR CLARIFICATION REGARDING 10 CFR 2.730(c)

Pursuant to the Board Chairman's recent directive to put in writing CASE's request for clarification regarding procedural matters in response to CASE's telephone call, CASE (Citizens Association for Sound Energy), Intervenor herein, hereby files this, its Request for Clarification Regarding 10 CFR 2.730(c).

On June 24, 1981, unknown to this Intervenor, Applicants' filed their (1) Answer to ACORN's Motion for Voluntary Dismissal, and (2) Motion to Cancel Pre-Hearing Conference. On June 26, 1981, CASE received the Board Chairman's telegram cancelling the prehearing conference which had been scheduled for July 8-9, 1981. It was not clear from the wording of the telegram whether or not the telegram was in response to the Applicants' Motion. On 6/29/81, CASE received Applicants' 6/24/81 motion to cancel the prehearing conference. Since the Board Chairman had already cancelled the prehearing conference by the time we received Applicants' motion, we were unable to answer such motion pursuant to 10 CFR 2.730(c) prior to the cancellation of the prehearing conference by the Board. (CASE's later Motion for Reconsideration Regarding Prehearing Conference, filed the morning of 7/28/81, was stricken by the Board's 8/3/81 Order.)

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On 7/13/81, the NRC Staff filed its Motion to Modify Its March 4, 1981 Motion to Compel Against CASE, which CASE received 7/16/81. While preparing our response, CASE was concerned there might be some delay due to a possible postal strike which was being discussed at that time, and we telephoned the Board Chairman's office and advised his secretary that we did intend to file an answer to the Staff's Motion, in case there was such delay. CASE was not advised that such an answer would not be allowed.

On 7/28/81, pursuant to 10 CFR 2.730(c) and 2.710, CASE filed its Answer To, and Motion Regarding, NRC Staff's Motion to Modify Its March 4, 1981 Motion to Compel Against CASE. Under 10 CFR 2.730(c) and 2.710, CASE would have had fifteen days (10 days plus 5 days for mail) from the date Staff filed its motion in which to file an answer to such motion. Thus, under these NRC regulations, CASE had to file its answer to Staff's motion not later than 7/28/81, the actual date on which such answer was filed, absent specific instructions from the Board that such answer would not be allowed or extending the time period for such answer.

Since CASE's representative had to work 7/28/81, we filed our 7/28/81 answer that morning before work (along with two other motions). In the 7/28/81 afternoon mail, we received the Board's Orders of 7/23/81 regarding Striking CFUR Contentions and discovery directives to parties, 7/23/81 Scheduling Order, and 7/24/81 granting ACORN's Motion to Voluntary Dismissal and designation of lead parties. We note that under Discovery Directives to CFUR and Other Parties, item 8, page 11, it is stated:

"A party who files a motion shall not have a right to reply to an answer in opposition thereto, unless prior leave is obtained from the presiding officer..."

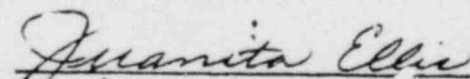
However, this does not appear to deal with answers to motions, and we do not find any Board rulings in the several orders we have received which state that a party shall not have a right to reply to a motion pursuant to 10 CFR 2.730(c) and 2.710.

On 8/3/81, CASE received the Board's 7/29/81 Order granting the Staff's 7/13/81 Motion to Modify Its March 4, 1981 Motion to Compel Against CASE. On 8/6/81, CASE received the Board's Order striking CASE's 7/28/81 Answer To, and Motion Regarding, NRC Staff's Motion to Modify Its March 4, 1981 Motion to Compel Against CASE (and striking CASE's other two 7/28/81 motions).

CASE has tried very hard to obey the NRC regulations in these proceedings and had hoped to have the Board give consideration to our pleadings before ruling on the various points raised in our motions. At the time we filed our 7/28/81 motions, we had had no prior indication that answers to motions would not be allowed and in fact to date have no such ruling from the Board in any of the orders we have received.

We therefore request that the Board clarify whether or not answers to motions will be allowed in the future pursuant to 10 CFR 2.730(c) and 2.710.

Respectfully submitted,



(Mrs.) Juanita Ellis, President  
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X  
Y  
Y  
Y  
Y  
Y

Docket Nos. 50-445  
and 50-446

CERTIFICATE OF SERVICE

By my signature below, I hereby certify that true and correct copies of  
REQUEST FOR CLARIFICATION REGARDING 10 CFR 2.730(c)

have been sent to the names listed below by First Class Mail this 10th  
day of August, 1981. \* = with Certificate of Mailing receipt

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