4/26/82

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

'82 APR 29 P1:26

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In the Matter of	)(	
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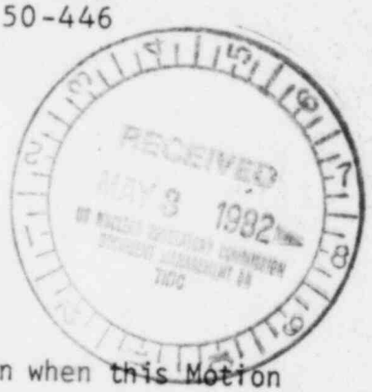
APPLICATION OF TEXAS UTILITIES GENERATING COMPANY, ET AL. FOR AN OPERATING LICENSE FOR COMANCHE PEAK STEAM ELECTRIC STATION UNITS #1 AND #2 (CPSES)	)(	Docket Nos. 50-445 and 50-446



CASE'S MOTION FOR RECONSIDERATION OF
BOARD'S ORDER DURING CONFERENCE CALL OF 4/22/82

We realize that the Board will possibly not be in town when this Motion is filed, as indicated during the 4/22/82 conference call. However, we have no choice if we are to protect our rights in these proceedings but to file this motion, pursuant to 10 CFR 2.730, due to the new and unforeseen circumstances which have now developed.

We should point out, first of all, that the Board's conference call of 4/22/82 was totally unexpected by CASE; we had no idea the Board would have a conference call while we were at the plant site to inspect original documents. We had none of the NRC regulations with us; we had little time to switch our thoughts from inspecting documents to the matters at hand in the conference call; the writer was still taking medication following her bout with a virus[1] and was not thinking as clearly as she might otherwise have been. And at the time we were totally unaware of Applicants' latest abuse of the discovery process. Thus we were not aware at that time of the full impact of the Board's statement

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[1] See CASE's 4/20/82 Motion for Additional Time for Discovery on Contention 5, last paragraph of page 9, continued on page 10.

that it would be gone for some time until right before the hearing date of June 7 and its directive, in effect, to speak now or forever hold our peace.

Applicants are deliberately obstructing discovery in an attempt to exploit the Board's dedication to holding a hearing on June 7, 1982. They have deliberately and consistently ignored the Board's direct orders by withholding important documents from CASE, forcing CASE to turn to the Board to obtain discovery on original documents, severely and unnecessarily limiting CASE's discovery of original documents (to only three people at a time, all of whom must be CASE members), severely and unnecessarily limiting CASE's discovery of original documents by not allowing discovery on weekends when other CASE members could help and requiring that discovery only be had during Applicants' regular working hours Monday through Friday, and forcing CASE to spend valuable and limited time in filing pleadings with the Board.

CASE's attempt to conduct discovery is being thwarted by the interaction between the Board's dedication to speedy hearings and Applicants' deliberate refusal to provide complete and responsive answers to discovery requests. This is again exemplified by the fact that CASE has again been forced to spend time conferring with Applicants, pursuant to the Board's orders to go to the telephone first and then to the typewriter, prior to filing a Motion to Compel. See CASE's April 26, 1982 letter to Applicants requesting complete answers to our 4/5/82 Ninth Set of Interrogatories to Applicants and Requests to Produce, being filed at the same time of this instant pleading. Applicants will probably now answer our questions, since their purpose has already been served by the fact that CASE has had to take time again from pursuing discovery to deal with Applicants' incomplete and unresponsive answers.

Further, flying in the face of the Board's explicit directives, they have come up with yet another important document, in response to CASE's First Set of Interrogatories and Requests to Produce of July 7, 1980. It is obvious that this document is pertinent and one which comes under CASE's requests; it is:

> "Report of Independent Review and Analysis of QA Records Management Systems for Texas Utilities Services, Inc.," prepared by Ebasco Services Incorporated (June 16, 1981).

It is also obvious that this document should have been provided long ago. CASE submits that there is absolutely no rational excuse or explanation for the fact that Applicants had not previously advised CASE of its existence. To add insult to injury, Applicants deliberately withheld this document from CASE until the eve of what Applicants thought would be the last day for filing interrogatories and requests to produce, which (had they been successful) would have prevented CASE from reviewing this document and asking interrogatories about it. Indeed, if the Board denies this instant motion, Applicants may still accomplish this purpose because we may not be able to adequately deal with the volume of documents we already have and plan to get and adequately pursue discovery on this most recent document too.

CASE was first informed of the existence of this document in Applicants' April 19, 1982 letter (sent First Class), which CASE received on April 23, 1982, one day after what Applicants thought at the time they mailed it was to have been the last day for filing interrogatories and requests to produce. (It was also mentioned in Applicants' 4/20/82 Answers to CASE's Ninth Set of Interrogatories, which was waiting for the writer when she came home from work Wednesday, 4/21/82. We did not have time to review Applicants' 4/20/82 Answers at that time, because

we left right after work for Glen Rose where we were to inspect original documents at the plant site 4/22/82 and 4/23/82. We turned our full attention to deciding upon which specific documents we needed to inspect and to making up a list of those documents for use the next day. The only answers in Applicants' 4/20/82 Answers which we looked at were the several which had to do with what certain terms meant on the logs of the documents we were about to inspect. We had not read the rest of Applicants' 4/20/82 Answers at the time of the unexpected conference call set up by the Board the next day, 4/22/82. So at the time of the conference call, we had no idea that Applicants had again supplied incomplete and unresponsive answers or that they had again sprung a new and important document on us.)

CASE submits that this latest flagrant abuse by Applicants of the discovery process can be directly attributed to the fact that the Board, by refusing to recognize the fact that Applicants have deliberately been obstructionist in their actions regarding discovery[2], have in effect encouraged Applicants to continue this type of behavior and have rewarded Applicants for their abuse of the discovery process while at the same time penalizing CASE by denying our motion for sufficient time to make up for Applicants' obstructionist tactics.

The Board's actions have produced a similar result regarding the withholding by the NRC Staff of important documents which support CASE's position on Contention 5[3]. In the 4/22/82 conference call, the Staff argued against any

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[2] In the Board's 4/2/82 Order (Following Conference Call), the Board stated: "There has not been any wiilfull withholding of information by the Applicants, or the Staff, and CASE's motion to impose sanctions is denied."

[3] See CASE's 4/20/82 Motion for Additional Time for Discovery on Contention 5.

extension of time for discovery on Contention 5, then when they lost that argument, asked to benefit from such extension by requesting more time for their answer to CASE's Third Set of Interrogatories and Requests to Produce (even though our Third Set had been filed informally by CASE on 4/20/82, which was timely even under the old cut-off date of 4/22/82 for filing interrogatories). The Board totally ignored the fact that the Staff's withholding of these documents was one of the primary reasons CASE was forced to request more time in the first place, and granted Staff additional time to respond to CASE's 4/20/82 Interrogatories and Requests to Produce. This will place yet another last-minute burden on CASE and possibly preclude our being able to ask follow-up questions on Staff's answers before the cut-off of discovery requests. The Board thus in effect has rewarded the Staff for their abuse of the discovery process while at the same time penalizing CASE.

CASE has been penalized in other ways by the actions of the NRC Staff, the Applicants, and the Board. The Board has not yet acknowledged the fact that the four months or so since CASE was granted separate status to pursue discovery on Contention 5 was hardly sufficient time to make up for the lost eleven months during which CASE was in effect barred from discovery on Contention 5[4] -- especially considering the new and significant information withheld by Staff and Applicants which CASE has had to ferret out for ourselves since that time.

Another way in which CASE has been penalized is by having to spend numerous hours in filing motions and answers to motions with the Board in order to preserve

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[4] See CASE's 11/7/81 Motion for Reconsideration of Consolidation on Contention 5, and CASE's 3/22/82 Motion for Reconsideration of Extension of Time for Discovery on Contention 5.

our rights in these proceedings -- time which we should have been able to use on discovery. See expecially the following recent pleadings:

CASE's 3/1/82 Motion for Extension of Time for Discovery on Contention 5 (regarding ASME's allowing Brown and Root's certificate and stamps to expire at CPSES 1/8/82);
CASE's 3/1/82 Letter to ASLB Members (correcting NRC Staff's erroneous statement to Board that written answers to CASE's First and Second Sets to Staff would not be necessary, and requesting answers to certain questions which the Board apparently has decided not to answer);
CASE's 3/22/82 Motion to Compel NRC Staff to Provide Complete Answers to CASE's First and Second Sets of Interrogatories and Requests to Produce, and Answer to NRC Staff's Motion for a Protective Order;
CASE's 4/5/82 Answer to Applicants' Motion for Protective Order, and CASE's Motion to Compel Discovery (triggered by Applicant's Motion to keep CASE from inspecting and copying original documents);
CASE's 4/20/82 Motion for Additional Time for Discovery on Contention 5 (Triggered by: NRC Staff's providing us with documents which they had previously stated did not exist; NRC's Region IV office's investigation regarding some defective pumps and the congressional investigation regarding Region IV's handling of the investigation; the fact that CASE had not at that time received I&E Report 81-12, the investigation into allegations at CPSES - we have now received this report and will be filing interrogatories about it shortly; the fact that at that time we had not yet been able to inspect original documents at the plant site or file interrogatories regarding those documents; and the need to pursue discovery regarding the problems in construction considered by the NRC Caseload Forecast Panel 4/13/82, 4/14/82, and 4/15/82); and
CASE's 4/26/82 Letter to Applicants (requesting complete answers to our 4/5/82 Ninth Set to Applicants), being filed at the same time of this instant motion.

Another, more subtle, way in which CASE has been penalized is that, by our having to continually file pleadings with the Board, we have been put in the untenable position of having to risk antagonizing the Board in order to preserve our rights in these proceedings. This present pleading is perhaps the most striking example of this. This could have the effect, by the time we come to hearing, of turning the Board (perhaps subconsciously) against CASE and putting it in no mood in the hearings to hear CASE's legitimate case in the hearings -- rather than the Board's antagonism being directed at the parties which have necessitated CASE's pleadings -- the Applicants and the NRC Staff.

CASE's request in our 4/20/82 Motion for Additional Time for Discovery on Contention 5 for an additional sixty days for discovery was not unreasonable, given the particular circumstances of these proceedings. It was not a padded estimate, but was rather a realistic assessment of the time necessary (due to the actions of Applicants and NRC Staff and previous Board rulings) for CASE to be able to adequately prepare its case, participate fully as an Intervenor, and protect its rights in these proceedings. The writer is not an attorney, but it appears to us that the directives of the NRC are very explicit, as set forth in the U. S. Nuclear Regulatory Commission Policy and Planning Guidance 1982, NUREG-0885, Issue 1, pages 4 and 11 (emphases added)[5]:

> "...pressure to issue new licenses will not be allowed to compromise safety."
>
> "Licensing boards should adhere rigorously to established schedules in order to reach timely decisions, while preserving individual rights of the public to pursue valid safety issues."
>
> "The NRC and the industry must strengthen their Quality Assurance programs with specific attention to their implementation. The NRC must encourage the industry to be more aggressive in assuring the adequacy of design, construction, and operation. Quality Assurance programs for plants under construction and awaiting licensing review must receive priority attention to ensure that the plants can be operated with minimum risk to the public health and safety and that costly licensing delays are avoided."

The particular issues to be litigated in Contention 5 are far too important for the Board to pursue a premature hearing on it. CASE submits that the Board must grant its request for substantive additional time for discovery on Contention 5 in order to comply with the explicit directives of the NRC. Clearly the two weeks' extension granted by the Board in its 4/22/82 conference call is insufficient and does not comply with those directives. It is not CASE, but the actions of the Applicants and the NRC Staff which has caused this situation.

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[5] See also CASE's 3/22/82 Motion for Reconsideration of Extension of Time for Discovery on Contention 5, pages 17 through 21.

They should not be allowed to use the Board's desire for a speedy hearing to subvert the discovery process and to reap rewards for their abuse of the system, thereby severely damaging CASE's rights in these proceedings and unfairly penalizing CASE. If the actions of Applicants and NRC Staff necessitate the postponement of the hearings, it will be by their own actions, not those of CASE. Arriving at the truth and seeing that a full and complete record is developed in these proceedings must not be sacrificed to a too-rigid, unreasonably restrictive time table for discovery.

The only two other Intervenors in these proceedings have already been forced to withdraw, leaving CASE as the sole remaining Intervenor. We have no intention of withdrawing. However, neither do we have any intention of having our rights trampled on by Applicants, the NRC Staff, or the Board.

For the reasons set forth herein, CASE hereby moves that the Board:

(1) Reconsider its 4/22/82 telephone conference Order granting only two additional weeks for discovery on Contention 5 while maintaining the June 7, 1982 hearing date, and grant CASE's 4/20/82 Motion for sixty days for Additional Time for Discovery on Contention 5;

(2) Recognize the fact that Applicants and NRC Staff have deliberately withheld documents from CASE in these proceedings; and

(3) Take immediate steps to see that such abuses of the discovery process by Applicants and NRC Staff cease, including the promise of strong sanctions for all future violations.

Respectfully submitted,

Juanita Ellis

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NUCLEAR REGULATORY COMMISSION

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GENERATING COMPANY, ET AL. FOR AN	I	and 50-446
OPERATING LICENSE FOR COMANCHE	I	
PEAK STEAM ELECTRIC STATION	I	
UNITS #1 AND #2 (CPSES)	I	

CERTIFICATE OF SERVICE

By my signature below, I hereby certify that true and correct copies of CASE's Motion for Reconsideration of Board's Order During Conference Call of 4/22/82

have been sent to the names listed below this 26th day of April 1982, by: Express Mail where indicated by * and by First Class mail elsewhere.

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