

June 6, 1982

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

APPLICANTS' BRIEF REGARDING  
SCOPE OF HEARING ON CONTENTION 5

Texas Utilities Generating Co., et al. ("Applicants") hereby submit their brief regarding the scope of the hearing on Contention 5. Applicants urge the Board, prior to the taking of evidence on Contention 5, to establish the proper scope of that Contention for purposes of the hearing. The question to be decided is whether Contention 5 encompasses the technical adequacy of engineering and construction for the broad range of construction matters sought to be raised by CASE, or whether Contention 5 concerns the adequacy of the Applicants' Quality Assurance/Quality Control ("QA/QC") program to identify deficiencies and verify that resolution in accordance with approved corrective measures has occurred.

I. SUMMARY OF POSITIONS

Applicants believe that the record in this proceeding demonstrates that Contention 5, as admitted by the Board, raises the issues of the adequacy of Applicants' QA/QC program established pursuant to 10 C.F.R. Part 50, Appendix B.

Specifically, the record shows that the "construction practices" identified in Contention 5 may be examined at the evidentiary hearing solely for the purpose of determining whether Applicants' QA/QC program properly identified and verified appropriate corrective measures for those deficiencies in accordance with the requirements of 10 C.F.R. Part 50, Appendix B. The adequacy of the technical and engineering resolution of those matters are, however, beyond the scope of the Contention as admitted by the Board.

In contrast, CASE sets forth in its response to Applicants' motion for summary disposition the position that it is entitled "to explore" matters "wherever violations of [10 C.F.R. Part 50, Appendix B] have occurred or wherever construction failures demonstrate an inadequate QA/QC program." CASE Response at 2. CASE also apparently seeks to litigate the technical and engineering aspects of construction practices. CASE claims that it should be permitted "to examine the acceptability of staff resolutions or Applicant resolutions."<sup>1</sup> Applicants

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<sup>1</sup> In support of this proposition CASE cites a portion of the dissenting opinion of Judge Kohl in Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), ALAB-639, 13 NRC 469, 481-82 (1981), where the Intervenor's own pleading was being quoted for the purpose of demonstrating a general proposition concerning disclosure of informants' identities. Applicants will not belabor this misleading reference or the tenuous connection between the proposition made by CASE and the legal authority cited in support thereof. The issue here is not whether CASE could have raised such matters, but whether the Board intended such matters be included in Contention 5 when it was admitted.

submit that as admitted by the Board, Contention 5 does not encompass such inquiries into technical and engineering aspects.

## II. BACKGROUND

### A. Petitions to Intervene and First Prehearing Conference

On May 22, 1979, the Board convened a prehearing conference to consider petitions to intervene received from petitioners CASE, CFUR and ACORN. Order, April 9, 1979. Pursuant to 10 C.F.R. § 2.714, the petitioners had each filed on May 7, 1979, supplements to their petitions to intervene. Therein, the petitioners provided descriptions of their proposed contentions. In response to these petitions, the NRC Staff submitted on May 17, 1979 a Memorandum Regarding Contentions in which it noted that "a common issue which each petitioner seeks to raise [is] quality assurance/quality control." Memorandum at 3. Consequently, the Staff rewrote "the several contentions of the petitioners on quality assurance/quality control" to provide language for a joint contention which encompassed the concerns expressed by petitioners. That proposed language is virtually identical to the present language of Contention 5 except that additional "construction practices" are included in the present wording.

At the May 22, 1979, prehearing conference, the Applicants, the NRC Staff and petitioners each presented their positions on the admissibility of proposed contentions. At issue was, inter alia, whether the NRC Staff's proposed

language accurately reflected the concerns of the petitioners. See Tr. at 77-88. While CASE would have accepted that language, Tr. at 40, ACORN and CFUR rejected that language, Tr. at 78, 110, as not encompassing all their concerns.

On June 16, 1979, the Board issued its Order Relative to Standing of Petitioners to Intervene, wherein it admitted a contention pursuant to 10 C.F.R. § 2.714(b) which was determined to encompass all "the various quality assurance/quality control contentions" of the petitioners CASE, CFUR and ACORN. The contention as admitted by the Board provided, as follows:

The Applicants have failed to establish and execute a quality assurance/quality control program which adheres to the criteria in 10 C.F.R. 50, Appendix B.  
[Order at 11.]

Examination of the record illustrates that the Board intended this Contention to encompass Quality Assurance/Quality Control issues, and not matters concerning the technical adequacy of engineering and construction.

B. Negotiations and Second Prehearing Conference

Following the Board's June 16, 1979 Order, the parties entered into negotiations in an attempt to reach a stipulation as to, inter alia, the language of the admitted QA/QC contention. During these negotiations the primary focus with respect to the QA/QC contention was whether the wording should identify particular areas of construction or whether the language should remain broadly worded as originally admitted by

the Board. Applicants and the NRC Staff sought to include specific construction practices in the contention itself so as to narrow the QA issues for litigation. Intervenor sought to retain the broad language. However, no agreement was reached between all the parties.

At the prehearing conference of April 30, 1980, the parties presented their positions on the wording of the QA/QC contention. The Intervenor sought to maintain the wording of the contention in a broad manner in order to permit examination of "the overall QA/QC program of the Applicants." (ACORN, Tr. at 233). The Intervenor (including CASE) sought, therefore, to retain the wording of the contention as originally stated by the Board, viz., as a general QA contention. (CFUR, Tr. at 205, 207; CASE, Tr. at 522). The position of the Applicants and the NRC Staff was that, as worded by the Board, the contention was too broad, and that further specification was needed to establish the bounds of the issues to be litigated. (Applicants, Tr. at 205-206, 236; Staff, Tr. at 206-207). In addition, at least one member of the Board also believed that "further specification of [the] specific charges in the QA/QC area" would need be made to "result in a much more specific contention." Tr. at 209. In view of the divergent positions of the parties on this matter, the Board afforded the parties an opportunity following the prehearing conference to file memoranda setting forth their positions.

C. Statements of Position and  
Rewording of the Contention

1. Statements of position

On May 12, 1980, the parties filed their pleadings on the wording of the Quality Assurance/Quality Control contention. In CASE's "Motion In Support of Retaining Present Wording of Quality Assurance/Quality Control Contention," it stated that it believed that the

wording of the contention regarding the quality assurance/quality control at CPSES must be broad enough to encompass the concerns of CASE which include not just the nuts and bolts type of problem, but the design, testing, managerial and administrative controls to be used to assure safe operation, and others -- in short, all aspects of the quality assurance/quality control of the plant as set forth in 10 C.F.R. 50, Appendix B.  
[CASE Motion at 2 (emphasis added).]

CASE's position was that 10 C.F.R. Part 50, Appendix B addressed other matters besides construction practices and it believed that the contention should be broadly worded to include such matters. CASE Motion at 5-6. CASE proposed language for the contention which was similar to the broad language originally adopted by the board. CASE Motion at 9.

ACORN took a position similar to that taken by CASE in stating that the specific items which the Applicants and Staff wished to include in the text of the Contention "are merely symptoms of the overall failure of the QA/QC program."



ACORN's, May 12, 1980, Statement of Position With Regard to Wording of QA/QC Contention, at 2. ACORN also proposed general language for the Contention. ACORN Statement at 1.

In its Statement of Position on the Contention, CFUR propounded that Applicants' proposed wording would limit the Contention to particular areas of QA/QC. CFUR urged retention of the Board's wording of the Contention. CFUR Position at 1. In support of its position, CFUR cited the criteria listed in 10 C.F.R. Part 50, Appendix B as being areas which must be included within the scope of the Contention. CFUR Position at 2-3.

In sum, the Intervenor's concerns focused on assuring an opportunity to examine all aspects of the Applicants' QA/QC program, not merely those evidenced in the particular areas cited in the proposed language of the Applicants and the NRC Staff.

## 2. Board Order rewording contention

Upon evaluation of the arguments presented at the Prehearing Conference and the pleadings of the parties setting forth their positions on the wording of the QA/QC contention, the Board adopted in its June 16, 1980, Order Subsequent to the Prehearing Conference of April 30, 1980, language proposed by the NRC Staff and noted its belief that such language is "sufficiently broad to encompass the subject matter of each Intervenor's QA/QC contention." Order at 4. The wording adopted by the Board specifies particular areas in which instances of alleged failures in the Applicants' QA/QC program

have occurred. In adopting that language, the Board has specified a Quality Assurance/Quality Control contention in which particular areas of construction might be examined to determine whether Applicants' QA/QC program functioned properly so as to assure that appropriate procedures in those areas were followed, deviations were identified and approved corrective action implemented and verified by the QA/QC program.

### 3. Motions for reconsideration

Additional indication of the Board's intended scope of Contention 5 came following issuance of its June 16, 1980 Order, when the parties submitted pleadings seeking reconsideration of that Order. In those pleadings, the Intervenor repeated their concerns regarding the wording of the QA/QC contention. CASE again sought rewording of the Contention to include only a statement as to the Applicants' compliance with 10 C.F.R. Part 50, Appendix B. CASE's July 14, 1980, Motion, at 13. ACORN sought similar relief on the grounds that the construction practices cited in the Contention were merely "evidence of overall failure" of the Applicants' QA/QC program. ACORN July 1, 1980, Motion at 6.

In ruling on the various motions for reconsideration, the Board declined to revise the wording of Contention 5. Specifically, the Board stated that "the specific subjects which CASE raised relating to the QA/QC contention are covered in Contention 5; other possible subjects not specifically identified by CASE or others are omitted." Rulings on Objections to Board's Order of June 16, 1980 and on



Miscellaneous Motions, October 31, 1980, at 8.

In sum, the Board has carefully delineated the matters which may be litigated in Contention 5. The Board has identified areas as to which Applicants' quality assurance/quality control program may be examined. The Board has at no time indicated that Contention 5 includes as a subject matter for litigation the technical adequacy of engineering and construction for Comanche Peak.

III. THE SCOPE OF CONTENTION 5 FOR  
DISCOVERY IS NOT COEXTENSIVE  
WITH THE SCOPE OF THE CONTENTION  
FOR LITIGATION

CASE has pursued discovery on Contention 5 on virtually all aspects of construction at Comanche Peak. CASE has requested, and Applicants have produced, documentation regarding the quality aspects as well as the engineering aspects of construction at Comanche Peak. This discovery process has led to the production of over 20,000 pages of documents to CASE. In addition, CASE's access through discovery has not been limited to the areas of construction practices listed in Contention 5. This approach to discovery has assured that CASE has had the opportunity to examine whatever documents might lead to the discovery of relevant information on Contention 5. However, it is now essential that the particular issues raised in Contention 5 that are to be litigated at the hearings be identified.

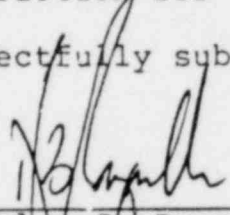
Obviously CASE intends to attempt to raise several matters relating to the technical adequacy of engineering and

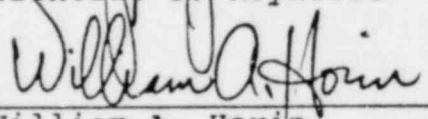
construction for Comanche Peak. For example, rock overbreak appears to be a subject that CASE seeks to litigate, even though it was already summarily disposed of by the Board. Order (Granting Summary Disposition of Contentions 2 and 7), March 5, 1982. Applicants submit that only those matters envisioned by the Board in establishing the scope of the Contention in its June 16, 1980 Order, as described above, are properly subjects for litigation.

V. CONCLUSION

If summary disposition is not granted, Applicants urge the Board to determine, prior to the taking of evidence on Contention 5, that the Contention concerns the adequacy of Applicants' QA/QC program to identify construction deficiencies, to assure that appropriate procedures are followed, deviations identified, evaluations performed and corrective action implemented. The Applicants urge the Board to find that the Contention does not raise as issues the technical adequacy of engineering and construction for Comanche Peak.

Respectfully submitted,

  
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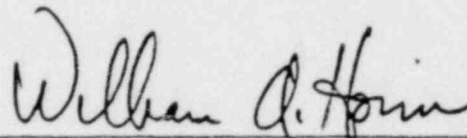
CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Applicants' Brief Regarding Scope of Hearing on Contention 5," in the above-captioned matter were served upon the following persons by hand delivery (\*), overnight delivery (\*\*) or by deposit in the United States mail, first class postage prepaid this 6th day of June, 1982:

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|--|---|
| * Marshall E. Miller, Esq.<br>Chairman, Atomic Safety and<br>Licensing Board<br>U.S. Nuclear Regulatory<br>Commission<br>Washington, D.C. 20555  | Chairman, Atomic Safety and<br>Licensing Appeal Panel<br>U.S. Nuclear Regulatory<br>Commission<br>Washington, D.C. 20555                                  |
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