

2/24/83

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD '83 FEB 23 P2:12

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 LEAVE TO
FILE ADDITIONAL PROVISIONAL
PROPOSED FINDINGS OF FACT

Pursuant to 10 CFR 2.730, CASE (Citizens Association for Sound Energy), Intervenor herein, hereby files this, its Motion for Leave to File Additional Provisional Proposed Findings of Fact, to supplement its Provisional Proposed Findings of Fact being filed today.

CASE has tried very hard to comply with the Board's deadline of having Provisional Proposed Findings of Fact in the hands of the Board by 2/25/83 (Board's Reconsideration of December 7, 1982 Order, filed December 21, 1982). We were aware that there were certain responsibilities which we would have to accept as an Intervenor when we decided to participate in these proceedings; and we were willing and able to fulfill those responsibilities.

However, we have found ourselves in the very difficult position of having to shoulder as well many additional responsibilities for which we were not prepared. For instance:

(1) CASE has been the only party taking an adversarial position regarding the Appeal Board's consideration of the Atomic Safety and Licensing Board's Order Denying Reconsideration of September 30, 1982. As such, we have filed several pleadings with the Appeal Board which have taken valuable time from

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the amount of time available to work on the Provisional Proposed Findings of Fact. (See CASE's 12/21/82 Brief in Opposition to the NRC Staff's Exceptions to the Atomic Safety and Licensing Board's Order Denying Reconsideration of September 30, 1982; CASE's 1/11/83 Motion for Leave to File Response; CASE's 1/11/83 Written Argument on Issues; CASE's 1/18/83 letter to Appeal Board under Subject of Affidavit of Jack Doyle; CASE's 1/24/83 letter to Appeal Board under Subject of Affidavit of Roy Keith Combs - Revisions, Attachments 5 and 6 to CASE's 1/11/83 Written Arguments on Issues; CASE's 1/26/83 Response to Appeals Board Question Directed to NRC Staff on January 19, 1983; and CASE's 2/7/83 letter to Appeal Board under Subject of February 1, 1983 Letter to Appeal Board From Government Accountability Project (GAP).)

This is a very important issue, which was triggered by the NRC investigation into the allegation of CASE witness Charles A. Atchison that he was wrongfully fired for reporting nonconformances at Comanche Peak. CASE considers the Appeal Board's consideration of this issue to be an integral and important part of these proceedings. The Licensing Board obviously considers it a very important issue as well. Further, because of some of the information contained in CASE's pleadings to the Appeal Board, the Licensing Board has stated that: "The Intervenor has challenged the NRC Staff's competence in handling and investigating QC allegations by 'whistle-blowers,' and has questioned the Staff's alleged bias in favor of the Applicants. Clearly further evidence on these issues will be required when the evidentiary hearing resumes./9/ Footnote /9/ Tr. 2669-70."

(2) CASE has had to assume the responsibility of attempting to keep the Board advised of new facts or potentially significant matters pertinent to these proceedings, since neither Applicants nor the NRC Staff has fulfilled

its obligations as directed by the Board in this regard. (See Licensing Board's 1/4/83 Memorandum and Order, at 5 and 6.) See CASE's 12/14/82 Motion to Supplement CASE's Exhibits, which led to the Board's ordering that "Prior to that hearing, the parties shall complete discovery and file prefiled direct testimony on all remaining issues, including the underlying facts and evidence regarding the Atchison matter contained in CASE Exhibit 738..." (emphasis added). (See Licensing Board's 1/4/83 Memorandum and Order at 7.) See also CASE's 1/18/83 Motion for Board Order for NRC Staff and Applicants to Provide Documents and CASE's 1/28/83 letter to Licensing Board under Subject of CASE's 1/18/83 Motion for Board Order for NRC Staff and Applicants to Provide Documents -- Supplemental Information; these pleadings obviously were the reason that the Licensing Board finally received notification of this major problem with the Steam Generators at Comanche Peak -- information which should have been sent to this Board months before it was (see 2/3/83 Board Notification - Preheater Type Steam Generators at Comanche Peak Steam Electric Station, Units 1 and 2 (BN 83-11), and NRC Staff's 2/4/83 Response to CASE's Motion for Board Order, at 8).

CASE's efforts in this regard have led to the Board's learning of significant information relevant to these proceedings.¹

(3) CASE has had to deal with whistleblowers who are coming to CASE because they have lost faith in the Region IV NRC office's ability and/or willingness to adequately investigate allegations of whistleblowers, thereby in effect having to do not only CASE's work but some of the NRC's work as well. (See CASE's 12/21/82 Brief in Opposition to the NRC Staff's Exceptions to the Atomic Safety and Licensing Board's Order Denying Reconsideration of September 30, 1982; CASE's 1/11/83 Written Argument on Issues; CASE's 1/18/83

¹ Very probably including the just-received 2/15/83 notification regarding the Hayward-Tyler Pump matter (see NRC Staff's 2/15/83 letter to Licensing Board).

letter to Appeal Board under Subject of Affidavit of Jack Doyle; etc. And see especially CASE's 1/24/83 Motion for Protective Orders for Roy Combs, Lester Smith, and Freddy Ray Harrell; and CASE's 2/3/83 Supplement to that motion; and CASE's 2/21/83 Motions to (1) Respond to Applicants' Charges of Misconduct by CASE; (2) Strike Applicants' February 8, 1983 Answer to CASE Motion (and Supplement) for Protective Orders; and (3) Impose Sanctions Against Applicants.)

(4) Most recently, CASE has had to deal with Applicants' very serious charges of misconduct and perhaps criminal activity on the part of CASE, Mrs. Juanita Ellis personally, Government Accountability Project (GAP), and Ms. Billie Garde (GAP's representative). (See CASE's 2/21/83 Motions to (1) Respond to Applicants' Charges of Misconduct by CASE; (2) Strike Applicants' February 8, 1983 Answer to CASE Motion (and Supplement) for Protective Orders; and (3) Impose Sanctions Against Applicants.) As we discussed in our 2/21/83 Motions, at 40 and 41:

"CASE suggests that there may be still another reason Applicants made the outrageous and untrue charges against CASE. Applicants' 2/8/83 Answer to CASE Motion (and Supplement) for Protective Orders was deliberately phrased in such a way that CASE would have only two options: (1) to answer it (thereby robbing CASE of valuable and needed time to work on the provisional proposed findings of fact); or (2) to continue to work on the provisional proposed findings of fact and risk being discredited in the eyes of the Board and all who received a copy of Applicants' Answer. Either option would be unacceptable to CASE, and either option chosen by CASE would work to Applicants' benefit...

"CASE urges that the Board not allow Applicants to benefit at CASE's expense by their attempts to either discredit CASE or to rob CASE of valuable and necessary time for preparing its provisional proposed findings of fact."

CASE then asked that the Board grant its Motions, including:

"Grant CASE an additional eight working days (to replace the eight days which CASE's instant pleading has taken to respond to Applicants' untrue charges) for CASE to complete preparation of its provisional proposed findings of fact (with the understanding that CASE will still file with the Board by February 25 those sections of its findings which have been completed by that time)." (CASE's 2/21/83 Motions, at 42.)

CASE has made every effort in these proceedings to meet its obligations as an Intervenor, while at the same time attempting to deal with the additional burdens described in the preceding. At times we have hung on by our fingernails, but we have persevered. CASE does not have the financial resources to hire additional personnel to assist with our efforts, or to hire a Washington law firm to handle our case. (Indeed, we have not had time to even get out and raise money necessary to continue the intervention -- an activity necessary since we do not have funds available from ratepayers or taxpayers, as do the Applicants and NRC Staff.) We do not have a full-time, paid staff as do the Applicants and the NRC Staff.

In fact, at the present time, CASE has only one full-time, volunteer, worker available to work not only on the provisional proposed findings of fact but to deal with the previously described additional burdens which we have had to shoulder. Other CASE volunteers assist when and as they can on week-ends and occasionally in the evenings, but they must work at regular jobs during the week. This places the vast majority of the burdens of CASE's present intervention on one person, and that person is presently on the verge of physical and mental exhaustion from working almost around-the-clock seven days a week for the past five months, under extreme pressure. Absent substantial relief from the Licensing Board, it is unclear at this time how much longer CASE will be able to continue its intervention.

Since CASE has had to spend its valuable and limited time on the extra burdens discussed in the preceding, it now appears that we will be entering a period where, in effect if not intention, Applicant will be rewarded for its irresponsible charges against CASE and Mrs. Ellis personally and for its flouting the Board's orders, to keep it informed of new facts or potentially

significant matters, and the NRC Staff will be rewarded for refusing to comply with the Board's Orders to supply names and unexpurgated copies of back-up notes, for being unprepared to testify in the September hearings, and for flouting the Board's orders to keep it informed of new facts or potentially significant matters². At the same time, CASE will be severely and unfairly penalized for doing its utmost to fulfill not only the duties and responsibilities of an Intervenor, but the additional unusual and difficult burdens discussed herein.

The NRC Staff has already been allowed six months since the taking of Jack Doyle's deposition to analyze and prepare their report on the Walsh/Doyle allegations and to prepare their case for trial; the Staff has been allowed to go back to the drawing board and come back later with testimony of its witnesses, on its own timetable based on the completion of its review of the Walsh/Doyle allegations.

CASE has proved its good faith in these proceedings. We believe the Board knows that we have not attempted to merely delay the proceedings. (Indeed, Mrs. Ellis, as CASE's primary representative, had not expected that the proceedings would take this long, and has not worked since May 1982 at a regular job, devoting her full time instead to this intervention.) Any extensions of time for which we have asked have been for good cause and often because of events over which CASE has little or no control, and because the issues with which we are dealing in these proceedings are very difficult and complex. Further, we have several thousand pages of transcript as well as almost a thousand documents in the record to sort through, analyze, and discuss in

² See also CASE's 2/21/83 Motions to (1) Respond to Applicants' Charges of Misconduct by CASE; (2) Strike Applicants' February 8, 1983 Answer to CASE Motion (and Supplement) for Protective Orders; and (3) Impose Sanctions Against Applicants, at 38 through 41.

our provisional proposed findings of fact. We have done our best under what has now proven to be an impossible work load. And we must now, reluctantly, ask for additional time to complete the provisional proposed findings of fact.

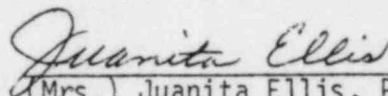
MOTION

For the reasons set forth herein, CASE hereby moves that the Licensing Board grant CASE an additional twenty-one working days to supplement its Provisional Proposed Findings of Fact, with such supplementary findings to be in the hands of the Board by Tuesday, March 29, 1983.

We further move that the Board suspend discovery on the issues to be litigated at the next hearing until after March 29, 1983.

This would avoid unfairly penalizing CASE and rewarding Applicants and NRC Staff for their failure to fulfill their responsibilities as parties in this proceeding. Further, it would not delay the loading of fuel (should Applicants receive an operating license) as Applicants would have the Board believe, because Applicants' projected fuel load date is totally unrealistic to begin with, as admitted by the NRC Staff³.

Respectfully submitted,



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³ See Tr. 5426; and discussion at page 39 of CASE's 2/21/83 Motions to (1) Respond to Applicants' Charges of Misconduct by CASE; (2) Strike Applicants' February 8, 1983 Answer to CASE Motion (and Supplement) for Protective Orders; and (3) Impose Sanctions Against Applicants. The Board has taken note of the discrepancy between the fuel load dates projected by Applicants and the NRC Staff and asked for information in this regard in its February 17, 1983 Order Requesting Information. (We also note, however, receipt of a February 14, 1983 letter to Applicants from the NRC attaching what appears to be a license to bring nuclear fuel on site.)

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SERVICE
BRANCH

CERTIFICATE OF SERVICE

By my signature below, I hereby certify that true and correct copies of
CASE's Motion for Leave to File Additional Provisional Proposed Findings of Fact

have been sent to the names listed below this 24th day of February, 1983
by: ~~Express Mail~~ where indicated by * and First Class Mail elsewhere.
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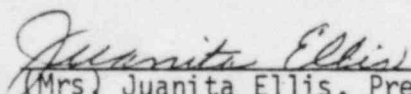
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