

8/25/83

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

*83 SEP 12 P1:25

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 ANSWER TO
APPLICANTS' MOTION TO STRIKE
INTERVENOR'S EXTRA-RECORD SUBMITTALS

Pursuant to 10 CFR 2.730, CASE (Citizens Association for Sound Energy) hereby files this, its Answer to Applicants' Motion to Strike Intervenor's Extra-Record Submittals. This motion was filed by Applicants on 8/12/83 and received by CASE on 8/15/83.

CASE has acted in good faith always in these proceedings and attempted to follow the Board's directions. However, there is now and always has been a difference of opinion as to what CASE believes is significant and what Applicants and the NRC Staff believe is significant.

Applicants' motion is, as usual skewed, misleading, and deliberately designed to influence the Board adversely against this Intervenor. As has been pointed out before, this is standard operating procedure for the Applicants in these proceedings -- when backed into a corner, without sufficient evidence to support their claims, they resort to attacking CASE's witnesses and CASE and its representatives personally.

Applicants cited a March 1, 1983, Board Memorandum and Order, which we will discuss later in this pleading. However, they conveniently forgot to

mention another Board Order, that of January 4, 1983. That Order dealt with certain documents which CASE moved be accepted into the record.

Regarding four of the five documents submitted, the Board stated that "Rulings on the admissibility of the remaining exhibits will be deferred until the evidentiary hearing is resumed." (Footnote omitted.) It should be noted that at that time, future hearings were anticipated regarding matters raised by events and by CASE: "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." (Footnote omitted.) Order at pages 4 and 5.

In regards to the other document submitted, the Board accepted it into the record and made the following comments:

"Exhibit 738 is a detailed, closely reasoned opinion and proposed order (by a Department of Labor Administrative Law Judge), finding that Mr. Atchison's wrongful discharge as a quality control (QC) inspector by Brown and Root resulted from his complaints about and reporting of construction defects and quality control deficiencies. . . ."

"The Recommended Decision results from an appeal of that determination, and is based upon a full evidentiary hearing before an Administrative Law Judge. Such decision contains important additional evidence directly connected with testimony already in our record. In fact, we are surprised that only the Intervenor called this matter to the Board's attention on December 14, 1982 and filed a copy on that date. We have previously admonished both the Applicants and the Staff that they have an affirmative duty to inform the Board promptly of new facts or developments. /12/ (Footnote /12/ Order dated October 20, 1981.) This Recommended Decision is a potentially significant matter which Applicants and Staff should have immediately forwarded to this Board. /13/ (Footnote /13/ Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 397, 406, fn. 26 (1976).)

"The Staff has an additional reason to break its silence in this matter . . ."
(Emphases added.)

Applicants also forgot to mention a few important aspects of the very Board Order which they cite (March 1, 1983). One of the most significant omissions is the fact that the Board's admonishment was not directed solely at CASE, as Applicants would have the Board believe, but at all parties, Applicants and Staff included. Further, in that Order, the Board struck not only CASE pleadings, but pleadings by both Applicants and NRC Staff as well. In its comment that "The Board is concerned that the parties are having difficulty meeting deadlines important to the schedule . . ." the Board might well have been referring to the fact that Applicants had just missed the deadline for filing their Provisional Proposed Findings of Fact. (CASE and the Staff, in accordance with the Board's directive, had filed on February 24; Applicants did not file until February 25, giving them the benefit of an extra day and allowing them to receive the pleadings of the Staff and CASE prior to filing, in addition to their usual edge of being in the same city and being able to run over and hand-deliver a copy to the Board, whereas CASE has to send things a day in advance at great added expense and effort).

Applicants also conveniently forgot to mention that CASE paid dearly for its taking the time to answer one of Applicants pleadings (which was stricken by the Board in its 3/1/83 Order) -- Applicants' 2/8/83 Answer to CASE Motion (and Supplement) for Protective Orders. This pleading by Applicants was so detrimental to CASE, CASE's representative Mrs. Ellis personally, and Ms. Billie Garde (with GAP) personally, that CASE was in fear of being kicked out of the hearings if we allowed Applicants scurrilous, untrue pleading to remain in the record unopposed (as it surely would have absent an answer from CASE).

In our 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, CASE urged that the Licensing Board not allow Applicants' false and malicious accusations (and CASE's mandatory reply) to rob CASE of valuable time needed to complete our Findings. Our plea fell on deaf ears. Instead, then-Board Chairman Miller struck both Applicants' 2/8/83 Answer and CASE's 2/21/83 Motions¹ and all pleadings leading up to it by CASE, Applicants' and NRC Staff.

It was Applicants 2/8/83 Answer which led directly to CASE's not being able to complete its Provisional Proposed Findings of Fact. The Licensing Board severely penalized CASE for our not having completed those Findings. In its July 29, 1983, Proposed Initial Decision (Concerning aspects of construction quality control, emergency planning and Board questions), the Board stated:

"... CASE did not include these matters in its proposed findings even though the proposed findings were mandatory. . . . Because this Board is consequently left to speculate about what CASE currently contends about these issues, its failure to file proposed findings constitutes abandonment of this portion of its case. . . .

"We therefore find that CASE has abandoned the allegations on which it has not filed findings. . ." (Emphases added.)

This was a severe blow to CASE. Since its inception in 1974, we have intervened in all Dallas Power & Light rate hearings and are the only remaining Intervenor in these operating license hearings for Comanche Peak. Through the

¹ Erroneously cited in the Board Order as 2/2/83.

years, we have worked diligently, continuously, digging out facts, under extreme handicaps of lack of funds, all-volunteer workers (most of whom work full-time at other paid jobs), under constant pressure of deadlines. But CASE has always fulfilled our obligations and been very careful to maintain our credibility and integrity. The Board's recent Order was the first time that CASE has ever been found in default in meeting its obligations. Frankly, it hurts. It hurts primarily because we feel very strongly that we have been treated very unfairly in this matter by the Licensing Board. The Board's action hardly constitutes "continuing to coddle the Intervenor at the expense of the Applicants," as suggested in Applicants' 8/12/83 Motion to Strike.

It is not just CASE which has been hurt by the Board's decision in this regard. The Board has also been hurt, as has the entire hearings process -- because Applicants have succeeded in using the Licensing Board to achieve their aim of diverting CASE from its Findings.

Apparently, judging from Applicants' very cursory treatment of its Findings on the Walsh/Doyle allegations (contrary to the Board's directives that the parties include reasoned arguments on the issues which set forth the positions of the other parties and stated why the arguments of the other parties did not stand up), Applicants believed that CASE would be unable to file its Proposed Findings on the Walsh/Doyle allegations and find time to respond to Applicants' several recent pleadings simultaneously. We assume that Applicants will, upon receipt of CASE's Proposed Findings on the Walsh/Doyle allegations, be crying to the Board for more time to respond (since they did not file adequate Findings to begin with).

It should also be noted that many of the pleadings stricken by the Board's 3/1/83 Order were pleadings wherein CASE was seeking -- no, begging -- for help from the then-constituted Licensing Board in dealing with the fact that CASE was being contacted by potential witnesses because they had no confidence in the NRC Region IV office's ability and/or willingness to adequately investigate concerns of workers and/or whistleblowers. CASE simply did not know where to turn. And the Licensing Board Chairman at that time, Mr. Miller, would not discuss even the most trivial procedural-type questions with this Intervenor. CASE presently feels a return of its lack of confidence in the established system, because of the fact that the three individuals for whom we sought protective orders from the Board are no longer employed at Comanche Peak -- two were in a layoff shortly after the Board's ruling striking CASE's pleadings, and one quit shortly before that layoff (convinced that he too would be included in the layoff). They, and CASE, firmly believe that this was in direct retaliation for their stated willingness and desire to testify in these proceedings.

As indicated earlier in this pleading, it may well be that the significance of some of CASE's pleadings has not been clear. We believe that it is significant that the Chairman of the Board and Chief Executive Officer of Texas Utilities Company has now become the Chief Executive Officer of Brown & Root, the contractor for Comanche Peak. We believe it is significant because it supports the Board's decision on collateral estoppel in the Atchison case, and might well be used as supportive information should Applicants later seek to appeal the Board's decision in this regard.

We believe it is significant that not just CASE, but Congressional subcommittees and even the Licensing Board in the South Texas hearings, are aware

that the investigation in the past by NRC Region IV have been inadequate (to be kind). We think it is significant that the NRC Senior Resident Inspector - Construction at Comanche Peak, and the whole NRC Region IV office apparently, could not find Larry Witt, when anybody with a Glen Rose phone book could have found him, when the County Judge, the Sheriff, officials with Brown & Root, etc., etc., could have told the NRC where to find him. We think it is significant that three people that CASE knows of (and that now the NRC investigators, NRC Region IV, and anybody else who has access to NRC documents knows of) have concerns about the illegal use of rebar eaters at Comanche Peak. It should also be noted that, as explained to the Board Chairman when CASE advised that we would be sending our 8/3/83 letter regarding discouragement from reporting nonconforming conditions, what we filed was the same information we turned over to NRC investigators as part of what CASE believes they should look at in their ongoing investigation, with a few additions. One of our purposes for doing this was to deliver this information to the investigators in writing, so that there could be no misunderstanding later about what had been said or about whether or not the individuals named by CASE in that letter wanted to remain confidential. We did not want the NRC investigation (at least insofar as CASE's witnesses or potential witnesses is concerned) to be shrouded in the cloak of "confidentiality," as happened with the investigation into the allegations of Henry and Darlene Stiner.

CASE submits that the Licensing Board is well able to decide for itself what is significant and what is not, without a pre-determination being made for it by either the Applicants or the NRC Staff. If it believes that what CASE is submitting is not significant, it has only to say so. In fact, it

recently availed itself of its authority to do so, when it denied CASE's 8/3/83 pleading due to lack of ripeness. Further, it is CASE's intention to advise the Board Chairman of any future pleadings we plan to file prior to filing them. If he does not feel that they are significant we will not do so.

It is obvious, from the record in these proceedings, that neither Applicants nor the NRC Staff have any intention of complying with the Board's directive to inform the Board promptly of new facts or developments. CASE has attempted to fulfill its duty in this regard. Our efforts have at all times been in good faith. We have done the best we can considering the circumstances under which we must operate, which includes the fact that we are without legal representation (as the Board is well aware, but which should be stated here for the record) and the fact that we do not have paid consultants as the Applicants and NRC Staff do, but must work (often by long-distance telephone and with daily Federal Express pick-ups five days a week, as when preparing our Proposed Findings on Walsh/Doyle) with individuals whose only payment is that they can sleep nights knowing that they have done their best to make Comanche Peak a safer plant.

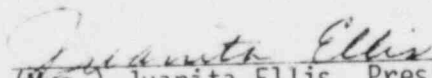
With regard to the materials and information which CASE has referenced in pleadings recently which has been previously stricken, CASE did so only to avoid burdening the record unnecessarily by repeating what has previously been said. However, Applicants ignore the fact that the framework within which this information has recently been submitted is far different from its original submission and its original ripeness, if you will. Further,

as pointed out herein, the specific pleadings which the Board struck regarding Messrs. Combs, Smith, and Harrell, are now directly relevant (as are the submissions regarding Messrs. Dillingham and Messerly) to an ongoing NRC investigation. (Speaking of which, CASE is unable to discuss these matters further at this time, since we have been asked to meet with some of our potential witnesses -- one in two hours, 80 miles away, from the time we are typing this pleading) when they talk with NRC investigators.

CASE believes that it is important that the Board be aware of what is going on in the real world -- not just the phony, make-believe world which Applicants and the NRC Staff would have the Board believe really exists -- a world in which Applicants and NRC Staff seek to pressure the Board with inaccurate, deliberately optimistic construction completion dates into making a hasty decision, without all the facts, to grant Applicants an operating license for Comanche Peak. And CASE believes that the Board is well able, as stated previously, to determine for itself what is significant without predeterminations by the Applicants and/or the NRC Staff.

For the reasons set forth herein, CASE moves that the Board deny Applicants' 8/12/83 Motion to Strike Intervenor's Extra-Record Submittals in its entirety. We further move that the Board order Applicants to cease and desist from its unfounded, untrue, and unwarranted attacks on CASE and its representatives.

Respectfully submitted,


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By my signature below, I hereby certify that true and correct copies of
CASE'S ANSWER TO APPLICANTS' MOTION TO STRIKE INTERVENOR'S EXTRA-RECORD


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