

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

1/13/84

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USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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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 RECONSIDERATION
OF SCHEDULING ORDERS

Pursuant to the Board's directives, CASE (Citizens Association for Sound Energy), Intervenor herein, hereby files this, its Motion for Reconsideration of Scheduling Orders¹.

Board's 12/28/83 Memorandum and Order (Scheduling Matters):

DISCOVERY REOPENED; item 8. CASE moves that the Board reconsider this portion of its Order as follows. This portion of the Board's Order deals with procedures for the "show-and-tell" site visit by CASE's witnesses to identify specific deficiencies. (See 10/21/83 Telephone Conference, Tr. 9099/2-9100/10, 9124/19-9129/8; Board's 10/25/83 Memorandum (Procedure Concerning Quality Assurance), page 3; CASE's 11/9/83 (1) Partial Answer to Board's 10/25/83 Memorandum (Procedure Concerning Quality Assurance); (2) Motion for Additional Hearings; and (3) Motion for Protective Orders, pages 18-23; CASE's 11/28/83 Answer to Board's 10/25/83 Memorandum (Procedure Concerning Quality Assurance), and attached affidavits; CASE's 12/5/83 Response to Board's Request for Chart of "Show-and-Tell" Trip to Comanche Peak and RESTRICTED USE Attachment; CASE's 12/23/83 Response to Applicants' Identification of Issues and Proposal to Establish

¹ See CASE's summary letter of 1/3/83 to Licensing Board under subject of: Extension of Time for Responding to Board's 12/28/83 Memorandum and Order (Scheduling Matters).

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Hearing Schedule, page 32, top of page; Board's 12/28/83 Memorandum and Order (Scheduling Matters), pages 3 and 4, item 8; Board's 1/3/84 (Docketed 1/4/84) Memorandum and Order (Additional Scheduling Order), pages 5 and 6, item VI; CASE's 1/9/83 Proposed Schedule for Hearings, pages 7 and 8.)

It may well be that several of CASE's concerns in this regard can be handled simply by clarification from the Board. One of our primary concerns is the matter of cost. It had been our understanding prior to the Board's 12/28/83 Order that the Board would be going to the plant and that CASE's witnesses would be showing deficiencies to the Board. The change by the Board from this being a site visit by the Board to a matter for discovery raises some troubling questions regarding costs: (1) The Board has indicated that it desires CASE's in situ observations to be fully recorded, "including the use of photographs, a transcript . . ." etc. As a matter of discovery, it is CASE's understanding that normally these costs would be born by the party requesting discovery, in this instance CASE. CASE has no funds available (and does not anticipate having any funds available) for this purpose. (2) It is anticipated that some of CASE's in situ observations would necessitate some destructive examination or at least the taking down of some items, such as pipe supports. Under discovery (rather than a Board site visit) might the Applicants hold CASE responsible for the costs involved for such destructive examination or taking down of items (and/or the replacement of such items)? Might CASE be held responsible for the costs associated with having trained people available to use the instruments necessary for testing, or for the costs associated with the use of the instruments themselves?

Since CASE is not represented by counsel in these proceedings, potential problems such as these are of great concern to us. We do not want to be placed in the untenable position of possibly being held liable for costs such as these, and we state for the record at this time that neither CASE, its representatives, nor its witnesses will be responsible for any costs associated with this site visit other than the necessary costs associated with having our witnesses present and for costs of copies of documents related to deficiencies identified. Further, in order to proceed with such a site visit, CASE would require an agreement between CASE, Applicants and NRC Staff prior to such visit to that effect.

A review of the record regarding this matter reveals that prior to the Board's 12/28/83 Order, there had been no indication that this would not be a site visit by the Board or that CASE might have to bear such costs or liability. It should be noted, however, that CASE does not believe the Board intentionally placed CASE in such an untenable position, but rather that the Board is merely attempting to find a logical manner in which to resolve its concerns about the quality of construction at Comanche Peak. However, this does not alleviate CASE's concerns in this regard.

Another concern is that the Board would not be in attendance under the Board's present Order. CASE has previously indicated many of the difficulties with the procedures outlined by the Board². However, some of CASE's witnesses were willing, even under those conditions, to attempt to show the Board specific deficiencies -- because it was their (and CASE's) understanding that they

² See especially CASE's 11/9/83 Partial Answer to Board's 10/25/83 Memorandum, etc., pages 18-23.

would be able to show the Board specific deficiencies and if the Board had questions, our witnesses could show the Board the problems and explain them on the spot, on the record. Almost without exception, CASE's witnesses have indicated that they have no desire to participate in this "show-and-tell" site tour if the Board is not going to be present as they had anticipated.³

A further concern is that it is not clear from the Board's Order whether or not CASE would be allowed to follow up each finding of a deficiency by going directly to the paperwork and making certain whether or not Applicants had already identified such deficiency. As CASE has previously indicated, we consider this an integral and necessary part of the identification of deficiencies; it was anticipated that when a deficiency or problem is found, the paperwork will then be tracked immediately to assure that it is not enhanced or changed between the time the deficiency is discovered and the time the Board sees the paperwork, including procedures, etc. The time estimated by CASE included allowance for this to be done.⁴ Certainly the amount of time allowed by the Board in its Order does not include sufficient time for this vitally important step in the identification of deficiencies by CASE's witnesses. (See discussion following.) Without this checking of records and procedures in conjunction with the finding of deficiencies, Applicants could possibly claim later that they had already identified the deficiency and were taking care of it; this would be totally unacceptable to CASE and its witnesses.

It should be noted that, had deficiencies been identified in a timely manner, the paperwork would have still been available in close proximity

³ CASE has been unable to contact all of our witnesses regarding this. Mr. Messerly has indicated that he might still be willing to participate but at this time he is simply trying to get his life back together and trying to get his house rebuilt following the fire; he was unable, the last time CASE talked with him, to give any estimate as to when he would be available for such a site visit.

⁴ CASE's 12/5/83 Response to Board's Request for Chart of "Show-and-Tell" Trip.

to the actual work. It will be necessary to go elsewhere to find the paperwork now only because so much time has elapsed that the paperwork has been moved (presumably to the record vault).

Additionally, sufficient time has not been allowed by the Board's Order to allow all of CASE's witnesses to show the Board the specific deficiencies with which they are concerned. After discussing the amount of time necessary with each witness to cover his/her concerns, CASE came up with a total of approximately 21 days (allowing what we considered a realistic amount of time to find and check out the deficiencies, obtain and check the paperwork, etc.). Knowing that there was no way the Board could even consider taking three weeks for such a site visit, we arbitrarily cut the amount of time requested back to approximately 13 days. As discussed previously⁵, CASE realizes that the amount of time anticipated is probably more than the Board has anticipated. However, as pointed out by our witnesses, it cannot be expected that CASE's witnesses can point the Board to deficiencies in a plant which has been under construction for nine years in a few hours. They must be given sufficient time to make the trip worthwhile. Obviously, the twenty-four hours allowed by the Board (which would actually amount to somewhat more than that on a comparative basis, since CASE's proposal included actual anticipated time, including anticipated delays) is not sufficient.

Is additional detail required (in addition to the affidavits already filed by CASE⁶)? The Board stated in its 12/28/83 Order "These allegations

⁵ CASE's 12/5/83 Response to Board's Request for Chart of "Show-and-Tell" Trip.

⁶ CASE's 11/28/83 Answer to Board's 10/25/83 Memorandum (Procedure Concerning Quality Assurance), and attached affidavits.

must be contained in testimony, affidavits or staff documents filed in this case prior to the date of the inspection." Does the Board require additional detail in this regard?⁷ (It should be noted that CASE, in its 12/5/83 Response, attempted to comply with the Board's desire for a one-page chart.) If the Board requires additional detail, we will again discuss this with our witnesses and attempt to comply.

The Board's directive on page 4 of its 12/28/83 Order that the 'parties attempt to agree about methods of fully recording CASE's in situ observations . . ." was certainly never contemplated by CASE and frankly, had we known that this would be necessary, we probably would never have made our offer regarding the "show-and-tell" site visit to begin with. Efforts in this regard in the past regarding "informal discovery," etc., have generally been very difficult and time-consuming for CASE and have, too often we believe, robbed CASE of valuable and necessary time required for other important matters such as working on findings of fact, etc. This is, after all, an adversarial proceeding. CASE's rights have already been prejudiced by such procedures in the past. Applicants are well aware of the fact that one hour robbed by such procedures from CASE are the equivalent of perhaps hundreds of hours from Applicants. For example, it was very obvious that Applicants were deliberately stalling during the last site visits on discovery which CASE made; the amount of time taken by Applicants to bring documents requested by CASE to review was far in excess of what should have been required and resulted in CASE's representatives spending much of our time waiting for

⁷ It should be noted that, although Mr. Dunham has indicated to CASE that he wishes to show the Board deficiencies in protective coatings, on advice of his attorney in the Department of Labor hearings, Mr. Dunham will not supply CASE with an affidavit regarding this or any other matters prior to his Department of Labor hearings which are presently scheduled for the week of February 13 in Fort Worth.

documents to be brought. We are not anxious to have a repeat performance of this and believe that it would be desirable and expeditious for the Board to supervise such efforts from the beginning, either personally or through its representative. Given the time schedules which have now been set by the Board, CASE does not have the luxury of attempting to cooperate, then having such efforts undermined by deliberate actions by Applicants. Certainly we do not want to have our witnesses' and NRC Staff time wasted in this manner.

Because of the preceding problems, CASE proposes an alternative method which we believe will better serve the Board's purposes. In its 12/28/83 Memorandum and Order (Quality Assurance for Design), the Board stated "we urge consideration by applicant of an independent design review . . ." Included in the characteristics set forth by the Board for such review was that "the independent reviewers should respond, in detail, to each allegation of CASE concerning hardware design problems . . ." (page 74, Scope).

CASE proposes that, should such an independent design review take place, CASE's witnesses be allowed time during such review to go with the independent reviewers, point out specific potential deficiencies, have the reviewers check out such deficiencies (with monitoring by CASE of such review of deficiencies and paperwork), and have the reviewers assess any impact of such deficiencies insofar as design is concerned at the same time. It appears to CASE that this would alleviate most, if not all, of CASE's concerns expressed herein, while at the same time accomplishing the Board's purposes in a logical, cost-effective, and expeditious manner. Should the Board consider that this might be a possibility, CASE would like the opportunity to further refine our proposal.

Board's 1/3/84 (Docketed 1/4/84) Memorandum and Order (Additional Scheduling Order):

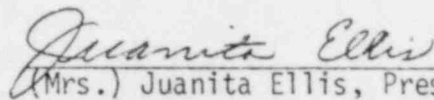
Reason for firing Robert Hamilton (pages 1 and 2). In CASE's 12/23/83 Response to Applicants' Identification of Issues and Proposal to Establish Hearing Schedule (page 11), CASE objected to any redundant testimony and urged that the Board allow only pertinent and material testimony which is not already in the record in this regard. The Board, in its 1/3/84 Order, ruled that "Issues that have already been decided, such as the reason for firing Mr. Robert Hamilton . . . are not subject to relitigation, either by Applicants or by CASE without a prior decision of this Board."

It may well be that only clarification is needed from the Board regarding this matter. However, it is not clear to CASE from the Board's previous Orders as to the reason for firing Robert Hamilton, only that the Board has ruled that he was fired for "pretextual reasons," and "that a preponderance of the evidence shows that Mr. Hamilton's aggressive concern for quality assurance was part of the reason he was discharged."⁸ CASE believes that Mr. Hamilton was fired solely because of his aggressive concern about quality assurance and that the reasons given by Applicants were entirely pretextual and only an excuse for getting rid of a tough QC inspector; we believe that there is sufficient information in the record already to support such a finding. However, if there is doubt in the Board's mind, we urge that additional testimony be allowed in this regard; (see CASE's 11/9/83 Partial Answer to Board's 10/25/83 Memorandum, etc., affidavit of William A. Dunham, at

⁸ See Board's 7/29/83 Proposed Initial Decision (Concerning aspects of construction quality control, emergency planning and Board questions), page 22; Board's 9/23/83 Memorandum and Order (Emergency Planning, Specific Quality Assurance Issues and Board Issues), pages 17-20

page 6, line 21, through page 7, line 7; see CASE's 11/28/83 Answer to Board's 10/25/83 Memorandum, etc.: Affidavit of Joseph Krolak, pages 2 and 3; Affidavit of Robert Hamilton, page 9).

Respectfully submitted,



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CERTIFICATE OF SERVICE

By my signature below, I hereby certify that true and correct copies of
CASE's 1/13/84 Motion for Reconsideration of Scheduling Orders

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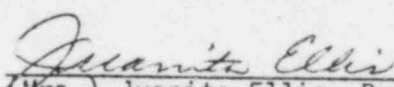
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