

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

1/16/84

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

DOCKETED
USNRC

In the Matter of

'84 JAN 18 A11:11

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 CLARIFICATION OF
ISSUES IN 12/23/83 PLEADING

During the 1/12/84 telephone conference call with the Board and parties, Applicants requested assistance from the Board in framing the issues left to be addressed in this case so that there is no mistake made by anyone as to what issues need to be addressed from an evidentiary standpoint and also from a pleading standpoint following hearings.

Judge Bloch indicated that the Board has addressed this to some extent by requiring prefiled findings for each phase of the upcoming hearings. He stated that he was reluctant to go through the Board's own decisions which have been published and try to make a comprehensive list of issues there. But he also indicated that if the parties resolved CASE's 12/23/83 pleading¹, the Board could make a determination of what the parties now have in contest and provide the parties with the common issues remaining.

CASE indicated that its 12/23/83 pleading sets forth basically what CASE believes to be the remaining issues. However, in reviewing our 12/23/83 pleading following the conference call, CASE believes that there are some issues which are referred to in a general way in that pleading which should be clarified further to be sure that the parties and the Board understand

¹ CASE's 12/23/83 Response to Applicants' Identification of Issues and Proposal to Establish Hearing Schedule.

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the extent of those issues, and we so advised Judge Bloch and counsel for Applicants and NRC Staff following the conference call. It should be remembered that CASE's 12/23/83 pleading was not intended to be a summation of CASE's entire case, but only a short response to a pleading which was initiated by Applicants, on their own volition. We believe that further clarification is essential in some regards in light of the use to which the Board now proposes to put CASE's pleading. Our instant pleading, similarly, is not intended to be a summation of our entire case; we will be going into more detail when we file Expected Findings of Fact for the upcoming series of hearings and when we file our proposed findings and final arguments. We are attempting herein to clarify certain matters of which we believe the Board and parties should be aware. We do not, by this or our 12/23/83 pleading, imply that we will not take further action where appropriate (such as based on new and significant information, etc.).

Obviously, CASE will be attempting to prove that our Contention 5 is valid. CASE does not believe that Applicants understand the basic fundamentals of a QA/QC program, or the basic reasons for having such a program, or that they even recognize the need to have an adequate QA/QC program. We believe that intimidation, harassment, and threatening of QC inspectors, craftspeople, and other employees, as well as discouragement from doing the job right to begin with, is so pervasive and so thoroughly engrained at Comanche Peak that numerous, major problems with design and construction have been built into the plant, making the quality of work at the plant indeterminate -- and indeterminable -- at best and deficient at worst.

Further, we believe that it is important to identify and deal with the reasons for the failure of Applicants' QA/QC program. Initially, CASE had believed that most of the problem was attributable to the primary contractor,

Brown & Root -- and we still believe this is a large part of the problem. But as we have obtained further documents, as other witnesses have come forward, as we have talked to others who have worked or still work at Comanche Peak (who will not come forward because they are convinced that they will lose their jobs or be blackballed forever in the lucrative nuclear industry), as we have heard the testimony of Applicants' own witnesses, we have become convinced that the problems at Comanche Peak are directly attributable to Company management -- a management which never admits mistakes, which has a narrow and grudging conception of its public responsibilities, which seeks to get by with the bare minimum (whether it be in terms of materials used at the plant, or of staff discipline and training, or of engineering analyses, or of forthrightness with public authorities). It is CASE's impression that even these licensing proceedings are considered by Applicants merely as something which must be endured in order to get an operating license for Comanche Peak.

To CASE, one of the most striking and telling examples of management's inability and/or unwillingness to establish and maintain an adequate QA/QC program is to be found in management's attitude regarding, and response to, the intimidation, harassment, and threatening of QC inspectors and other employees at Comanche Peak. (See discussion on page 4 of CASE's 12/23/83 pleading.) Applicants' reluctance to find fault in the ranks of high-level QA/QC management when confronted with this matter, and its leniency with (and even encouragement of) those involved, betrays an attitude which is inconsistent with the discipline and seriousness needed to operate a nuclear power plant.

The role of the NRC Staff in these proceedings cannot be ignored. Throughout these proceedings, the NRC Staff has been inordinately lenient with Applicants. The Staff has shown a seemingly limitless capacity to accept Applicants' word for things without requiring documentation or analyses. It has been slow to issue notices of violation which indicate the severity of the violation². Although it issued a notice of violation and proposed a \$40,000 fine in the Atchison case, it has since decided to hold the fine in abeyance pending the outcome of the U. S. 5th Circuit Court of Appeals decision. CASE views the recent decision by Region IV to issue a notice of violation and proposed \$40,000 fine for intimidation of QC inspectors with cautious optimism as a step in the right direction toward putting Applicants on notice that the NRC will not tolerate these actions on the part of an applicant for an operating license for a nuclear power plant. (However, it remains to be seen whether or not the Applicants will, in fact, ever have to pay the fines.)

On balance at this time, the NRC Staff's habitual alignment with Applicants in these proceedings has served to seriously undermine the public's confidence in the Nuclear Regulatory Commission itself. It also undermines the credibility and/or competence of the NRC Staff's witnesses in these proceedings and diminishes the usefulness to the Board of the Staff's participation in the proceedings. CASE is hopeful that the Staff's future testimony and actions will help to identify the problems at Comanche Peak and see that they are adequately dealt with, thereby helping to restore

² A striking example of this is Inspection Report 50-445/82-25, 50-446/82-13 (CASE Exhibit 849), which the Board accepted into the record in its 1/3/84 Memorandum and Order (Additional Scheduling Order), page 7, item VIII.

the public's confidence in this vitally important federal agency.

CASE offers the preceding general comments, not by way of argument, but so that Applicants and NRC Staff will be aware of where CASE is headed in these proceedings and not be taken by surprise when CASE addresses these matters in hearings, in proposed findings, or in final arguments.

We also offer the following more specific comments regarding our 12/23/83 pleading.

Firing of Robert Hamilton -- see CASE's 1/13/84 Motion for Reconsideration of Scheduling Orders, pages 8 and 9.

Items Closed by Affidavit -- Throughout our 12/23/83 pleading, CASE identified items which were originally left open by the Board, then closed by affidavit of Applicants' witnesses. At some point in the future, when appropriate, CASE expects to move that the Board reopen these items. The basis for such motion will be that Applicants' witnesses who filed those affidavits have made material false statements, lack commitment to an adequate QA/QC program, and their testimony cannot be relied upon by the Board as the basis for closing out these items.

Site tour to identify specific problems -- see CASE's 1/13/84 Motion for Reconsideration of Scheduling Orders, pages 1 through 7.

Credibility and/or competence of Applicants' and/or NRC Staff witnesses --

In addition to CASE's previous comments regarding this, included in this category are material false statements which CASE believes have been made and on which we will be asking the Board to rule. For example, on page 12 of CASE's 12/23/83 pleading, we alluded to what we believe to be a material false statement which was the basis for Applicants' proposed findings in this regard. It is expected that future hearings on protective coatings and intimidation will confirm CASE's understanding of this matter.

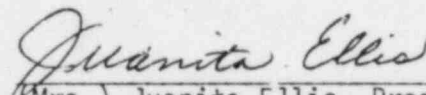
Trending -- In our 12/23/83 pleading, page 33, CASE alluded to something with which we have been concerned throughout these proceedings -- demonstrated trends or patterns of nonconforming conditions, of dealing with nonconforming conditions, etc., which have recurred (and in many cases, continue to recur) throughout the construction and design of Comanche Peak. Although the subject itself will probably not need to be covered in hearings, CASE considers it an important part of the total picture of Applicants' QA/QC program and the Board and parties should be aware that we plan to address it in hearings (where appropriate), in our proposed findings, and in our final arguments.

Overall QA/QC Program -- On pages 8 and 9 of our 12/23/83 pleading, CASE discussed some of the specific matters which the Board has not yet included in its Board Orders (whether or not substantial numbers of deficiencies have been overlooked, the overall efficacy of the quality assurance program, whether or not allegations represent a pattern related to the adequacy of

the quality assurance program, possible implications of management's failure to implement quality assurance procedures, the extent of management's commitment to quality control, etc.). In its 12/28/83 Memorandum and Order (Quality Assurance for Design), which was issued after CASE's 12/23/83 pleading, the Board indicated that it had not covered all the Walsh/Doyle allegations in that Order.

CASE urges that the Board make clear in its ruling regarding CASE's 12/23/83 pleading and answers to it by Applicants and Staff that the Board is reserving unto itself possible future rulings regarding these overall types of matters. We believe this is necessary to avoid attempts by Applicants to limit the Board in this regard in the future.

Respectfully submitted,



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CERTIFICATE OF SERVICE

By my signature below, I hereby certify that true and correct copies of
CASE's 1/16/84 CLARIFICATION OF ISSUES IN 12/23/83 PLEADING

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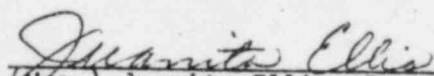
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