

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

9/29/83  
DOCKETED  
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

83 OCT -3 P12:26

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)

OFFICE OF SECRETARY  
DOCKETED  
Docket Nos. 50-445  
and 50-446

CASE'S ANSWER TO APPLICANTS' 9/22/83  
MOTIONS (1) TO CANCEL EVIDENTIARY  
HEARINGS AND (2) FOR EXPEDITED CONSIDERATION

Pursuant to the Board's verbal directive allowing answers to subject motions by Applicants to be filed by expedited mail to be received by the Board on 9/30/83, CASE hereby files this, its Answer to Applicants' 9/22/83 Motions (1) to Cancel Evidentiary Hearings and (2) for Expedited Consideration. (The Board's directive in effect has already granted the second part of Applicants' pleading, since CASE did not receive Applicants' pleading until 9/23/83; thus, Applicants' recommendation "that answers be received by the Board no later than . . . (one week following receipt of this motion)" has been adopted by the Board. We will therefore address the first portion of Applicants' pleading in our instant pleading.)

CASE'S ANSWER TO APPLICANTS' MOTION TO CANCEL EVIDENTIARY HEARINGS

Applicants would have the Board believe that the NRC's recent inspection of the Fuel Building found nothing of significance with which the Board should concern itself and argue that a reading of the report and Applicants' affidavits in answer to it prove Applicants' premise.

However, a brief review of the inspection report (83-23) reveals the following:

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From Appendix A, Notice of Violation:

Violation of 10 CFR 50, Appendix B, Criterion X, and FSAR Section 17.1.10:

- "a. Cable Tray Supports . . . material for Cable Tray Hangers 1848 and 1979 deviated from final design documents.
- "b. Conduit Hilti Bolts . . . spacing of one bolt . . . deviated from minimum spacing allowed to adjacent abandoned hilti bolt.
- "c. Large Bore ASME Pipe Supports . . . Five pipe supports deviated from final design documents as follows: one weld . . . was undersized; dimensions for (2 supports) deviate from vendor certified drawings; and materials for (2 supports) . deviate from vendor certified drawing.  
"A broken cotter pin was found on (one support) which had been inspected . . . for integrity.
- "d. Small Bore ASME Pipe Supports . . . Three pipe supports deviated from final design documents as follows: dimension for (one support) deviated from final review drawing; shims (sic) for (one support) were misoriented during the documentation of as built conditions; and the material in (one support) deviates from the final view drawing.

"This is a Severity Level IV Violation. . ." (Emphases added.)

Violation of 10 CFR 50, Appendix B, Criterion V, and FSAR Section 17.1.5:

" . . . procedures for the installation and inspection of the 'NPSI' seismic sway strut jam nuts do not appear adequate to insure snugness as required . . . and as evidenced by the finding of five loose jam nuts on (5) large bore ASME pipe supports . . .

"This is a Severity Level IV Violation . . ." (Emphases added.)

The section on "Details" in the I&E Report gives further insight into the extent and type of problems encountered. From pages 5-7 of the Report, "Details":

"By direct observation, the NRC inspector visually inspected completed work to determine whether activities relative to large bore, small bore, and Class V pipe supports systems are being accomplished in accordance with NRC requirements, SAR commitments, and licensee procedures. The NRC inspector examined the support for general configuration, weld appearance and size, hardware, dimensional check, clearances, tolerances, and support spacing between small bore.

"(1) Large Bore ASME Pipe Supports

"The NRC inspector visually inspected 50 large bore pipe supports in accordance with the completed as-built vendor certified drawing (VCD) and current CMC's. Six supports out of 50 contained discrepancies; which are considered to relate to adequate QC inspection. Five supports were identified to have loose jam nuts on the seismic sway struts. These discrepancies are considered to be generic in nature and relate to NPSI supports utilizing single jam nuts. Supports that contained discrepancies are noted below . . .

"The above discrepancies are considered to be in violation of 10 CFR 50, Appendix B, Criterion A, and the FSAR, Section 17.1.10.

"Loose Jam Nuts

"Procedure . . . requires that nuts be snug tight. Loose jame (sic) nuts were found on the following (5 supports) . . .

"This discrepancy is considered to be in violation of 10 CFR 50, Appendix B, Criterion V and the FSAR, Section 17.1.5.

"(2) Small Bore ASME Pipe Supports

"The NRC inspector visually inspected 35 small bore pipe supports in accordance to current as-built VCD's and CMC's. Three supports were observed to have discrepancies. . .

"The above discrepancies are considered to be in violation of 10 CFR 50, Appendix B, Criterion X and the FSAR, Section 17.1.10.

"(3) Class V Pipe Supports

"The NRC inspector also inspected eight Class V supports. Traveller packages did not contain all current drawings, inspection reports, and CMC's. The licensee informed the NRC inspector that not all final documents have been combined by document control. This is an open item. . .

"(4) Pipe Support Stability

"NRC Region IV staff reviewed the pipe supports in paragraphs 2.C(1), (2), and (3) for stability. No cases of instability were identified. . .

". . . The discrepancies noted by the NRC inspector mostly consisted of dimensional tolerances, loose jam nuts, material not specified by the bill of materials, and one undersized weld. The discrepancies noted are of no major safety significance but do reflect on QA/QC effectiveness. Procedures used by QC require inspection of items above." (Emphases added.)

As can be readily seen from the preceding, 12% of the large bore pipe supports visually inspected contained discrepancies, and 10% were identified as having loose jam nuts on the seismic sway struts. Further, these discrepancies were considered by the NRC inspector to be generic in nature and relate to NPSI supports (which are of special interest in these proceedings) utilizing single jam nuts. Over 8-1/2% of the small bore pipe supports which were inspected had discrepancies. Problems with traveller packages left the inspection of Class V pipe supports as an open item.

(It should be noted that the wording of the report changed with regard to pipe support stability, an issue raised in the Walsh/Doyle allegations. It is stated throughout the report that "the NRC inspector" did the inspections; but the statement regarding pipe support stability indicates that "NRC Region IV staff" did the reviewing in this regard.)

As stated by the inspector, although the discrepancies noted are of no major safety significance in and of themselves, they do reflect on QA/QC effectiveness.

Applicants argue (page 6) that the Board should go away and let the NRC Staff take care of everything. However, the credibility and/or competence of the NRC Region IV personnel who have testified in these proceedings is strongly questioned by CASE (see especially pages XXVII - 30 through XXVII - 51 and documents incorporated by reference on page XXVII - 30 of CASE's 8/22/83 Proposed Findings of Fact and Conclusions of Law (Walsh/Doyle Allegations)). (And it is of further concern that the Senior Resident Inspector - Construction at Comanche Peak, Robert G. Taylor, was employed by Gibbs & Hill, Inc., the Architect/Engineer at Comanche Peak, from 1968-1974; see Professional Qualifications of Robert G. Taylor, attached to NRC Staff Exhibit 13, Testimony of

William A. Crossman, Robert C. Stewart and Robert G. Taylor Concerning Construction of the Comanche Peak Steam Electric Station, Units 1 and 2, filed 5/24/82. Had the testimony of Mr. Taylor not included such statements as ". . . our program in particular is completely non-statistically based. It's almost what I like to call intuitively based. It inspects enough to provide enough information to the inspectors to arrive at what amounts to a subjective judgment." and "I would be very comfortable building a house on top of that plant (Comanche Peak) and living in it for the entire future of my life and not be concerned whatever with my safety or my family's safety."<sup>1</sup> . . . his past employment might not in and of itself have been a concern. However, coupled with his testimony in these proceedings, we believe it must be included in any assessment the Board might make regarding the credibility and/or competence of Mr. Taylor and the NRC Region IV personnel who have testified in these hearings.)

For the reasons cited in the preceding, CASE believes that it is absolutely imperative that the Licensing Board in these proceedings not abandon its right and duty to assure itself that Comanche Peak has been built in such a manner that it can operate without endangering the health and safety of the public.

Applicants have stated that "The record on Contention 5 (QA/QC) must be considered closed with the exception of a few outstanding matters awaiting completion of certain NRC investigations and open items from two previous inspections. Indeed, the Board is about to issue its Final Decision on the

<sup>1</sup> Tr. 1715/21-24 and 1735/16-19, respectively. See also discussion on pages 27-36 of 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.



remainder of the issues considered under Contention 5, an indication of a more complete (and final) posture of the record than the record on pipe support design allegations, as to which the Board has considered the record to be closed. . ."

However, the Board's 9/23/83 Memorandum and Order (Emergency Planning, Specific Quality Assurance Issues and Board Issues) was in some ways not to the Applicants' liking and does not support Applicants' presumptive statements. The Board stated (pages 1 through 3):

"This decision is called a 'Memorandum and Order' because its effect is to affirm the declaration of a default on some issues and to make interim factual findings that do not dispose of any contentions. Hence, this is an interlocutory order that does not conclude the evidentiary record on any contention. /2/

"Staff persuaded us that CASE's failure to file findings on certain quality assurance issues should not preclude the Board from satisfying ourselves that our record is reasonably complete. To this extent, we no longer consider that our remaining questions on these quality assurance issues are in the nature of preliminary inquiries concerning potential sua sponte issues. Since the quality assurance contention still is pending, we need not decide whether our questions are 'important' safety issues--as used in the sua sponte section of the procedural rules--but only whether we require answers in order to have a satisfactory understanding of the quality assurance contention. /3/

"Applicant's objections have, in some instances, led us to narrow the scope of our continuing concern. In other instances, applicant's objections have been incomplete and our review of the record in light of those objections has caused us to make new, more detailed findings.

"The objections of the parties also have permitted us to clarify the nature of our concern and the relationship between some of the 'open items' and the Board's overall responsibility to assess the adequacy of applicant's quality assurance program.

"Although the issuance of proposed decisions is not expressly provided for in the rules, and should be used sparingly, in this particular instance we believe the procedure has been useful."

"/2/ Facts found in this decision will be relied on in our initial decision in this case. To this extent, the memorandum and order makes final rulings, but we do not believe it need be issued as an initial decision under 10 CFR 2.760.

"/3/ Because of this change in the Board's analysis, statements in our proposed decision about whether or not we will declare a 'sua sponte' issue should be interpreted as statements about whether or not we require a more complete record."

Clearly, the Board has made its decisions based on a thorough review of the record and the pleadings of all parties; equally clearly, the Board's decisions as stated in its 9/23/83 Memorandum and Order are well within NRC regulations and the Board's responsibilities and authority in these proceedings. The issuance of its 9/23/83 Memorandum and Order have already answered Applicants' 9/22/83 Motion. CASE believes that the Board has acted correctly in this matter.

The inspection report contains details of other inspection areas, some of which the Board has also recently indicated a specific interest in (the punchlist). On pages 17-18, it states:

"13. Punchlist

"The NRC inspector reviewed the licensee's program for punchlisting incomplete items. The NRC inspector reviewed the following three punchlists: the construction punchlist, the completions punchlist, and the master punchlist.

"The construction punchlist consists of outstanding construction items normally generated on a room or outside area basis. Work in these areas is performed in accordance with normal construction procedures with QA/QC coverage as required (sic) for safety-related work by the QA/QC program.

"... Based on the inspector's review of the punchlist system, the NRC inspector found that basic controls do exist; however, there are problem areas identified for which further actions appear necessary as follows:

- "- There is no procedural control of the construction punchlist.
- "- There is no procedural control for punchlist input.
- "- There is no procedural control for removal of punchlist items.
- "- There is no historical record of items on the punchlist.
- "- It is not clear when the construction punchlist and master system punchlist is to be combined.

- "- There is no QA/QC review of the punchlist from the standpoint of the need for corrective action.
- "- SAP-18 is incumbent on the startup and operations organizations, but not the construction organization.
- "- QI-QP-15.2-1, Revision 4, has been outdated with regard to record verification as record deficiencies are now input to the construction punchlist vice to the completion punchlist.

"Pending followup on the above items, this matter is considered unresolved . . ."  
(Emphases added.)

On page 18, another unresolved item (which is not included in the list of unresolved items listed on page 19 of the I&E Report) was identified:

"14. QA Audits

"The NRC inspector found that a general inspection by audit personnel had occurred in the Fuel Building, but it was not documented as a formal audit. The NRC inspector indicated that the subject of audit of the room/area turnover process was considered as an unresolved item pending subsequent planned inspections of the room/turnover process by NRC Region IV. The licensee has indicated that planned audits will be conducted in the future. . . ." (Emphasis added.)

It should be pointed out that Applicants themselves made the Fuel Building a big issue. Throughout these hearings, they've said in effect that it's not fair to say that a pipe support was unstable, for example, because it was still going through an iterative process and wasn't really, really completed and signed off yet. But the Fuel Building was to have been the first building completed and signed off on -- the first one that was really, really finally through.

Obviously, the NRC's report of its inspection of the Fuel Building does not support Applicants' previous rosy predictions that it would prove that everything was fine at Comanche Peak. To the contrary, the NRC inspection revealed that there are a number of problems, some of which are generic in nature dealing with NPSI supports. And contrary to what Applicants had stated,



the inspection by the NRC proved that there were many items which Applicants' QA/QC program did not catch -- items which should have been caught by QC but were not.

Further, there is at least one individual at the NRC Region IV office who has publicly expressed his concern and stated that (contrary to Applicants' public statements and their statement on page 15 of their pleading) "'I would not characterize it as being a good effort on their part. We were dissatisfied with the fact that there were a number of items that we found that they did not identify in their effort.'" (See Attachment A and pages 3 through 6 of CASE's 9/3/83 Motion Regarding 9/7/83 Conference Call.) James Gagliardo has publicly expressed his views on more than one occasion regarding this matter; he was also a part of the 3-man NRC Caseload Forecast Panel which met in Arlington, Texas, on this past Tuesday, September 27, 1983. During that public meeting, he asked the Applicants' representatives specifically if they had taken care of the problems with their punchlist. (Applicants' response was unintelligible to Mrs. Ellis, CASE's representative who attended the meeting but was some distance away from most of the participants.)

As discussed in our 9/3/83 Motion Regarding 9/7/83 Conference Call, it appears to CASE that Mr. Gagliardo has direct personal knowledge of material facts either not known to or not discussed by other NRC Staff witnesses in these proceedings. CASE moves that the Board use its authority under 10 CFR 2.718 and 2.720(h)(2)(i) to require his testimony at the upcoming hearings should the Staff decide not to call him as a witness (which we assume they will not do).

Thus, the importance of the Fuel Building inspection is great, since (as stated by the NRC in its 7/27/83 cover letter):

"... this represents the first inspection of the turnover/access control process. . . it presents the first time that areas or rooms are essentially complete with exception of the preidentified incomplete items. We consider this inspection to be our initial effort with regard to construction completion and that the results of this inspection should provide you with insight into areas where actions appear necessary to improve the turnover/access control process. We have drawn no final conclusions from this inspection. It is the plans (sic) of this office to conduct future inspections of selected completed areas or rooms."

Mr. Gagliardo has been quoted as saying that fines or enforcement actions could be imposed if the Applicants do not improve their final quality control inspection on completed facilities. (See Attachment A to CASE's 9/3/83 Motion Regarding 9/7/83 Conference Call.)

CASE will not discuss in any detail Applicants' self-serving comments regarding the lack of positive information on Comanche Peak being disseminated (bottom of page 6), except to mention that Applicants put out a weekly news release to the media in this area espousing their views. Nor will we address fully their efforts to distort the public interest and public confidence issue; obviously, the best way for them to have gained public confidence and to serve the public interest would have been for them to have decided early on that they would build a safe nuclear power plant, and build it right the first time.

CASE strongly objects to Applicants' suggestion that issues be litigated by affidavit rather than through the established process, wherein Intervenor are given the right to cross-examine on issues which have been raised which are pertinent to open contentions (such as Contention 5). The Board's responsibility is to see that a full and true disclosure of the facts is made (as set forth in 10 CFR 2.743(a)). CASE has been working on a motion for discovery

regarding certain new and significant matters, including the inspection of the Fuel Building by the NRC, which would in all likelihood have led to hearings at some point in time. One of our problems in developing our motion has been that most of the questions are really cross-examination questions rather than questions for discovery. Thus, Applicants' latest attempt to read CASE's mind has, as in all cases in the past, failed.

Applicants appear to be making a veiled hint that there is somehow something improper in the Board's desire to obtain sufficient information to complete the record in these proceedings and to inquire further into matters in which it has already indicated a strong interest, such as the computerized punch list and its use at Comanche Peak. Obviously, Applicants arguments in this regard are merely self-serving and an attempt to hide the facts from this Board.

In regard to the affidavits attached to Applicants' motion, it is obvious that Applicants still miss one of the primary reasons for the NRC's and CASE's concerns -- that Applicants' QA/QC program did not catch many things during their final, absolutely complete inspection of the Fuel Building which should have been caught. The issues in controversy here need to be litigated in a hearing, and CASE supports the Board's proposed hearing on these and other matters.

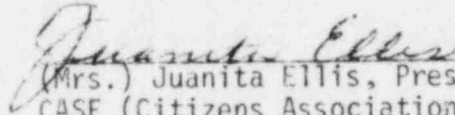
IN CONCLUSION, CASE opposes Applicants' motion and moves that the Board:

(1) Go forward with the hearings as set for the week of October 17, 1983, on the NRC's inspection of the Fuel Building; and

(2) Require the presence and testimony of James Gagliardo of the NRC

Region IV office at those hearings.

Respectfully submitted,

  
\_\_\_\_\_  
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CERTIFICATE OF SERVICE

By my signature below, I hereby certify that true and correct copies of  
CASE's Answer to Applicants' 9/22/83 Motions (1) to Cancel Evidentiary Hearings  
and (2) for Expedited Consideration

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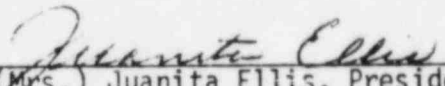
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