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USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION '83 DEC -9 A9:31

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	Docket Nos. 50-445 and
TEXAS UTILITIES GENERATING)	50-446
COMPANY, <u>et al.</u>)	
)	(Application for
(Comanche Peak Steam Electric)	Operating Licenses)
Station, Units 1 and 2))	

APPLICANTS' ANSWER TO CASE'S
MOTION FOR RECONSIDERATION

Pursuant to 10 C.F.R. §2.730(c), Texas Utilities Generating Co., et al. ("Applicants") hereby submit their answer to "CASE's Motion for Reconsideration (Affidavits on Open Items Relating to Walsh/Doyle Allegations)". For the reasons set forth below, Applicants oppose CASE's Motion and urge the Board to deny the motion in its entirety.

I. BACKGROUND

Allegations regarding Applicants' pipe support design program have been the subject of litigation in this proceeding since July, 1982. During the ensuing 18 months the intervenor has sponsored nine separate pieces of testimony, presented over 150 exhibits and submitted over 400 pages of proposed findings on this one topic alone. Applicants and the NRC Staff have responded to the material produced by the intervenor and, in

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turn, the intervenor has been given a full opportunity to present its case and rebut Applicants' and Staff's positions. At issue here is whether the intervenor's latest submissions should be given evidentiary status.

The instant dispute centers around two affidavits presented by the intervenor in response to affidavits of the NRC Staff closing out their consideration of a few discrete questions left open at the conclusion of the last round of hearings on these matters. Although indicating its general support of the approach taken by Applicants on these matters at the hearings, the Staff was either unable to confirm the validity of Applicants' response or indicated it wished to examine certain questions in more detail before reaching a final conclusion. The intervenor was given a full opportunity to explain its position in detail and to question Applicants' and the Staff's witnesses on these matters.

On October 14, 1983, the Staff submitted the affidavits of Dr. W. Paul Chen and Mr. Joseph I. Tapia to respond to the questions left open at the May, 1983 hearing session. With these affidavits the Staff completed its review of the questions, confirming the validity of Applicants' pipe support design methods on these matters. The intervenor now seeks to introduce into evidence two affidavits of its own which it contends respond to new information presented in the affidavits of Dr. Chen and Mr. Tapia. The evidentiary status of these affidavits was addressed by each of the parties during the November 16, 1983 telephone conference. At that time, and upon consideration of

the parties' arguments, the Board admitted the Staff's affidavits into evidence. The Board declined, however, to admit the intervenor's affidavits formally into the record because they contained no new information but rather were a restatement of arguments previously made on the record. The Board indicated, however, that if the intervenor demonstrated there was new evidence in its affidavits that need be considered, rather than simply new arguments based on already admitted evidence, it would reconsider its decision. (Tr. 9194-96.) The intervenor now seeks to make such a demonstration.

As shown below, none of the information presented in the intervenor's affidavits presents new evidence that warrants their admission. Accordingly, the Board should deny CASE's motion and affirm its previous ruling.

II. APPLICANTS' ANSWER TO CASE'S MOTION

A. CASE Has Had An Opportunity To Pursue Fully All Aspects Of Applicants' Pipe Support Design Program

Contrary to CASE's arguments, it has had a full opportunity to pursue its claims regarding Applicants' pipe support design program. As already noted, CASE has presented numerous pieces of testimony and hundreds of exhibits, as well as hundreds of pages of proposed findings in connection with its pipe support design allegations. As will be shown below, CASE presents no new factual evidence in its affidavits beyond that already in the

record. Rather, it simply restates or reframes arguments it has made previously. The Board has already correctly ruled that there is no need to admit such material into the record.

CASE contends that NRC regulations mandate that it be given an opportunity to cross-examine the Staff regarding its affidavits or at least to have its affidavits formally admitted into the record (Motion at 4-6). It relies on 10 C.F.R. §2.743(a) in this regard, which provides, as follows:

Every party to a proceeding shall have the right to present such oral or documentary evidence and rebuttal evidence and conduct such cross-examination as may be required for full and true disclosure of the facts. (Emphasis added.)

Contrary to CASE's assertions, that provision does not convey an absolute right to present evidence or conduct cross-examination. Rather, the Board is vested with the discretion to rule on the admission of evidence and regulate the conduct of the proceeding.¹ The Board's discretion includes the initial determination of whether the development of further evidence on a matter is required for full and true disclosure of the facts, recognizing that no party has an unfettered right to do so.²

In this instance, the Board has correctly determined that admission of the CASE affidavits is not required for full and true disclosure of the facts. CASE had a full opportunity not

¹ 10 C.F.R. §2.718; See e.g. Public Service Company of Indiana, 1 Marble Hill Nuclear Generating Station, Units 1 and 2, ALAB-461, 7 NRC 313, 316 (1978).

² See Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-244, 8 AEC 857, 869 n. 16 (1974) (Discretion to limit cross-examination).

only to develop its position on pipe support design questions but to conduct cross-examination of both Applicants' and the NRC Staff's witnesses. The Staff's affidavits are simply confirming the validity of discrete aspects of Applicants' pipe support design process (and in most instances the Staff's initial conclusions regarding that process) and CASE is seeking to present anew the arguments it has already made on these questions. The full and true disclosure of the facts does not require rehashing of those arguments on the record.

Further, the Board should not lose sight of the fact that the issue here concerns the adequacy of Applicants' pipe support design program. Thus, to assure the full and true disclosure of the facts it is most important that pursuit of such facts be conducted in conjunction with Applicants' witnesses and Applicants' evidence. Indeed, if an intervenor has a valid concern regarding an applicant's practices, it should be able to build its case through and in connection with the applicant's presentation of evidence. There is no dispute that CASE had every opportunity to examine Applicants' witnesses and their positions on CASE's allegations. In particular, there can be no dispute that CASE had a full opportunity to conduct examination of Applicants' evidence concerning the few discrete issues the Staff left for subsequent confirmation. Thus, affording yet another opportunity to challenge the validity of Applicants' program by responding to the NRC Staff's conclusions on those

discrete issues is certainly not essential to the full and true disclosure of the facts. Accordingly, there is no need for the Board to admit the intervenor's affidavits into the record.

B. CASE Presents No New Information In Its Affidavits That Warrants Their Admission

The Board has already correctly determined that, at a minimum, admission of CASE's affidavits is unnecessary if they present no new factual information, and instead simply present new arguments premised on evidence already in the record (Tr. 9194-95). As we demonstrate below, CASE presents no new facts in its affidavits that could justify admission of that material into the record.

Before proceeding to discuss the content of CASE's affidavits, we note that CASE limits the arguments in its motion for reconsideration to portions of the Doyle affidavit. With respect to the Walsh affidavit, CASE specifically states that the information in that affidavit "has, we believe, already been covered adequately by CASE's Proposed Findings" (Motion at 3). With respect to the Doyle affidavit, CASE states that it is limiting its arguments to "the specific items of concern to us at this point in time." (Motion at 9.) CASE presents arguments, therefore, only with respect to its request that the Board reconsider its decision regarding certain portions of the Doyle affidavit.³ Accordingly, Applicants limit their response to

³ Although some of the alternatives for relief which CASE proposes involve admission of both the Doyle and Walsh affidavits (Motion at 12-13), CASE discusses only portions of the Doyle affidavit in the body of its pleading. Thus, at a
(footnote continued)

those aspects of the Doyle affidavit discussed in CASE's motion. The Board should summarily deny CASE's motion to the extent it concerns the Walsh affidavit and the portions of the Doyle affidavit not addressed in the motion.

1. Richmond insert torsional coupling

The first item that CASE contends constitutes new material⁴ which warrants admission of its affidavit concerns the method used to model Richmond insert torsional coupling (Motion at 9). This topic was fully addressed at the hearing and, in fact, was left open only to allow the Staff to confirm its conclusions regarding the validity of Applicants' model (Tr. 6931), which the Staff has now done with Dr. Chen's affidavit. The Doyle affidavit simply rehashes previously proffered arguments (compare Doyle affidavit at 5-8 with Applicants' Proposed Findings of Fact (August 5, 1983) at 37-38.) Significantly, CASE acknowledges that the dispute concerns Applicants' methodology, which was approved by the NRC (Motion at 9). CASE had a full opportunity to challenge this methodology at the hearings (by examination of Applicants' witnesses) and develop its own

(footnote continued from previous page)

minimum, the Board should summarily deny those alternatives. (See discussion infra at Section II.C.)

4 CASE does not attempt in its pleading to distinguish, as the Board has requested, between new facts (that may warrant admission) and new arguments based on facts or principles already in the record (which do not warrant admission). In that CASE acknowledges that the Board established such criteria for the admission of its affidavits, we can only speculate that by failing to draw the distinction the Board has drawn (Tr. 9195), CASE recognizes that it cannot satisfy the test the Board has established.

position at that time. Yet, CASE now asks for yet another opportunity to expound on its theories. In sum, CASE wholly fails to satisfy the standard the Board established for admission of its affidavits. Thus, the Board should deny CASE's motion with respect to this topic and affirm its prior decision.⁵

2. Spring constant for upper lateral restraint

CASE contends that the portion of the Doyle affidavit which addresses the upper lateral steam generator restraint presents "new material and arguments" (Motion at 9). That material and those arguments are, however, simply a rehash of previous arguments made by CASE. In particular, the question of the wall configurations, the use of bounding assumptions, the appropriateness of loading combinations and their effect on allowable stresses have all been addressed previously by CASE. (Compare, e.g., Applicants' Proposed Findings at 76-80, Tr. 6831-34, with Doyle affidavit at 9-12.) CASE is simply using

⁵ Although we presume the Board is already aware of the decision, we note that following the submission of proposed findings on the pipe support allegations, the Appeal Board addressed in another proceeding a question which was raised at that time, viz., the propriety of utilizing new material, albeit subject to official notice, for the first time in proposed findings. The Appeal Board determined that there is an obligation to raise such material in a timely manner, i.e., before the filing of proposed findings, so as to afford an opportunity for the challenged witness to present any analytical disagreement with that material, particularly where the question is the reliability of a technique employed by an expert witness. Union Electric Company (Callaway Plant, Unit 1), ALAB-740, 18 NRC ____ (September 14, 1983), slip op. at 10-11. Thus, CASE's reference to yet another textbook at this late date (Doyle affidavit at 7) is inappropriate.

this opportunity to restate its previous arguments.⁶ Accordingly, the Board should deny CASE's motion for reconsideration on this matter.

3. Flexibility of Richmond Bolts

The intervenor claims that the Doyle affidavit contains "much new analysis, argument and supporting documentation" to address the question of the effect of A307 bolt assembly flexibility on seismic analyses (Motion at 10). Again, however, the intervenor makes no attempt to distinguish between new factual information and new argument based on principles and theories already placed in the record. Fortunately, even a brief review of the affidavit demonstrates that it simply rehashes arguments previously made on this matter.⁷ Indeed, the affidavit is replete with citations to CASE's Proposed Findings of Fact, Doyle direct and surrebuttal testimony, CASE Exhibits and the hearing transcript, as providing further discussion of the

⁶ We note that the only material or arguments that could be considered as new information are the drawings intended to represent the steam generator compartment walls. These drawings were prepared by Mr. Doyle and, thus, no foundation has been established to assure they are true and correct representation of the wall configurations. Thus, even though this "material" is new, the Board should deny its admission.

⁷ We note that although Board Notification 82-105A (Doyle affidavit at 18) was not previously used to support the intervenor's position on this matter, and thus could be considered "new," that document concerns pipe/pipe clamp interaction and thus is simply irrelevant to support/wall anchorage system interactions at issue here. Further, the general arguments regarding generic stiffnesses are based on material already in the record and concern the general concept of the use of generic stiffnesses (Doyle affidavit at 19-20). Thus, these arguments are not proper for admission at this time (Tr. 9194), and, in any event, should have been made previously.

arguments presented in the affidavit (see Doyle affidavit at 12-21). Thus, on its face, the affidavit simply recapitulates material already in the record, which as the Board has already determined does not warrant admission. Further, CASE acknowledges that the issue here involves an approach used by Applicants and concurred in by the NRC Special Inspection Team ("SIT") (Doyle affidavit at 12). Accordingly, CASE has already been given a full opportunity to pursue this question (with Applicants' witnesses) in the hearings and to develop its own position at that time. The affidavit here is simply an opportunistic attempt to bolster its previous arguments. Accordingly, the Board should deny the motion for reconsideration with regard to this topic.

4. Generic stiffness calculations

CASE contends that its affidavit also presents "new arguments and evidence" on this topic (Motion at 11). However, the arguments presented in the Doyle affidavit are simply challenges to Applicants' "approach" of using generic stiffness values (Doyle affidavit at 22) and thus either were raised before or should have been raised before. For the most part those arguments merely restate positions previously raised (compare Applicants' Proposed Findings at 57-60 and Doyle affidavit at 21-26) and thus should not be admitted. One potentially new matter concerns a pipe support generic stiffness study prepared by Applicants at the request of the NRC in connection with the SIT close-out of open items. CASE contends that it should be

given the opportunity (by admission of the affidavit) to address this generic stiffness study (Motion at 10-11).⁸ The only concern raised by CASE in that affidavit, however, is that Applicants' study showed that certain loads increased. CASE does not even contend such changes were significant or would have some adverse consequence (Doyle affidavit at 24). Its argument, therefore, raises no safety concern regarding Applicants' generic stiffness studies. Thus, it presents no information that warrants admission of the affidavit. Accordingly, the Board should deny the motion for reconsideration with respect to this topic.

5. Bending of A307 bolt material

CASE presents no arguments in support of its motion with respect to this matter (Motion at 11). In fact, it acknowledges in the affidavit that this topic was extensively addressed in CASE's proposed findings and declines to discuss the matter further (Doyle affidavit at 26). Accordingly, the Board should summarily deny this portion of CASE's motion.

⁸ Dr. Chen's affidavit addresses primarily Applicants' initial generic stiffness study which was provided to CASE prior to the May 1983 hearing (CASE Exhibit 823) (see Chen affidavit at 21-23). The later study discussed in the Chen affidavit was prepared at the request of the Staff to confirm the validity of particular aspects of the initial study (Chen Affidavit at 23). Applicants submit that such confirmation is properly left to Applicants and the Staff for resolution. See Applicants' Proposed Findings at 57, n. 14.

6. Staff calculation concerning support

CASE contends that the Doyle affidavit contains "new materials" in response to calculations by Dr. Rajan regarding a particular support. CASE contends it was unable to pursue this matter at the May 1983 hearings because it did not have Dr. Rajan's calculations at that time. (Motion at 11-12.) CASE does not acknowledge, however, that the point now in dispute (the distribution of loads on a particular support member) was identified by Dr. Rajan at those hearings (see Doyle affidavit at 27, lines 21-25; quoting Tr. 6652-53). CASE did not follow up on this matter at all during the hearings, preferring instead to await receipt of Dr. Rajan's calculations even though a drawing of the support (at least as it existed in January, 1981⁹) was already in the record as CASE Exhibit 669B, 4G-4H10, and could have been discussed at that time. Thus, CASE's pursuit of the matter now is untimely. Accordingly, the Board should also deny this aspect of CASE's motion.

In sum, all of the arguments CASE makes for reconsideration are without merit. Accordingly, the Board should deny the motion in its entirety.

⁹ The Board should note that Dr. Rajan examined this support at least 18 months after the drawing submitted by CASE was last revised. Thus, there is no evidence that the configuration of the support remained the same over that period of time. In fact, this support design has been revised, a possibility which Dr. Rajan indicated at the May, 1983, hearing session existed (Tr. 6653), to stiffen the particular support member at issue here. See discussion at n. 11, infra.

¹⁰ The incorrect reference to drawings 4F and 4G on Figure 4 of the Doyle affidavit appears to be a drafting error.

C. None of the Alternatives for Relief
Proposed by CASE Should be Granted

The NRC Rules of Practice provide that the grounds for the relief sought in a motion must be presented "with particularity." 10 C.F.R. §2.730(b). In this instance CASE proposes several alternative forms of relief (Motion at 12-13), although in the motion itself it presents only specific arguments for admission of portions of the Doyle affidavit. Accordingly, the Board should summarily deny all requests for relief which are not supported by particular arguments in the motion itself, viz., items (1), (2), (4) and (5) of CASE's motion (Motion at 12-13).

In particular, we note that CASE's request for further hearings on this matter is unfounded. Hearings on these issues have been extensive, and all parties have been given a full opportunity to present their positions. The matters involved here concern a few questions already addressed by Applicants and the intervenors at the hearing. In fact, the Staff also addressed these questions at the hearing, leaving open for subsequent confirmation only discrete aspects of the Staff's position on Applicants' pipe support design program. Such matters are wholly appropriate for supplementation of the record by Staff affidavit.

Finally, we request that if the Board admits into the record any portion of CASE's affidavits, that Applicants be given an opportunity to file responsive affidavits. Contrary to CASE's assertion (Motion at 6), it is important that Applicants be given such an opportunity in order to address assertions by the

intervenor that, although not providing reliable evidence of new facts (and thus should not be given any weight by the Board), create misimpressions which should not remain unrefuted in the record.¹¹ As the bearers of the ultimate burden of proof (see 10 C.F.R. §2.732), fairness demands that Applicants be given the opportunity to rebut such evidence.

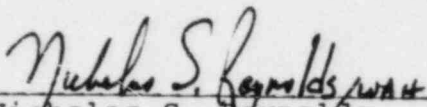
III. CONCLUSION

For the foregoing reasons, the Board should deny CASE's motion for reconsideration in its entirety and reaffirm its prior ruling. However, if the Board grants that motion by admitting

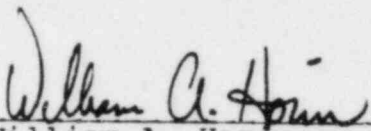
¹¹ For example, CASE asserts that "authorities" warn against use of A307 bolts under any circumstances and, thus, it should be determined why Applicants used such bolts "to begin with" (Doyle affidavit at 26). If this portion of the affidavit is admitted, Applicants should be given the opportunity to place in the record the facts that (1) concern over the use of A307 bolts is limited to their application as friction connections, and (2) Applicants have never used A307 bolts in friction connections. Also, Applicants would place into the record evidence showing that the support which was the subject of calculations by Dr. Rajan which are now challenged by CASE (Doyle affidavit at 26-29) has been modified in the course of the normal design review process to stiffen the support member of concern (See note 9, supra).

any portion of the intervenor's affidavits into the record, then the Board should also afford Applicants the opportunity to respond by affidavit to these assertions.

Respectfully submitted,



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December 8, 1983

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NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Applicants' Answer to CASE's Motion for Reconsideration" in the above-captioned matter were served upon the following persons by deposit in the United States mail, first class, postage prepaid, this 8th day of December, 1983.

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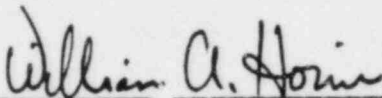
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