

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
4/16/84
USNR

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of

TEXAS UTILITIES GENERATING
COMPANY, et al.

(Comanche Peak Steam Electric Station
Station, Units 1 and 2)

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Docket Nos. 50-445 and
50-446

CASE'S MOTION TO COMPEL APPLICANTS
TO PROVIDE COMPLETE ANSWERS TO
CASE'S SEVENTEENTH, EIGHTEENTH, NINETEENTH,
AND TWENTIETH SETS OF INTERROGATORIES
AND REQUESTS TO PRODUCE TO APPLICANTS

On 3/12/84, CASE filed its Seventeenth Set of Interrogatories and Requests to Produce to Applicants; on 3/14/84, we filed our Eighteenth and Nineteenth Sets; and on 3/15/84, we filed our Twentieth Set. By mutual agreement, Applicants responded to all four Sets on April 5, 1984 (received by CASE on 4/6/84). At Applicants' request on 4/5/84 (the day before Applicants were to respond), on 4/6/84 we clarified our Question 3 of our Eighteenth Set by phone and confirmed it in writing with our 4/7/84 letter. Documents requested were first made available to CASE on Friday, 4/13/84, at the Dallas offices of Applicants. We plan to continue reviewing documents today, then will probably have to postpone further review until after the hearings beginning April 24.

Pursuant to 10 CFR 2.740(e)(3) and 2.740(f), CASE finds it necessary to file this Motion to Compel. In addition to the specific items set forth here, CASE will continue to attempt to work informally with Applicants (as the Board has requested we do) to resolve several other problems with Applicants' responses.

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Should additional Motion(s) to Compel be necessary, we will pursue them at the proper time. (We mention this at this time only to assure that we will not be precluded from doing so due to late filing.)

There are many important principles applicable to the discovery process which are well established in NRC proceedings. Applicants are well aware of these principles, as demonstrated by the following which was taken primarily from Applicants' own Motions to Compel CASE (before we really understood what the regulations were) dated September 18, 1980, and February 23, 1981. Applicants have been an excellent teacher in this regard.

However, it should be pointed out that the very fact that Applicants are so well acquainted with NRC requirements in these matters clearly indicates that they are being deliberately evasive and uncooperative regarding the following specific items. This is precisely the sort of nonresponsiveness CASE feared when we wrote our 3/15/84 letter to the Board (Supplementation of Interrogatories and Requests to Produce to Applicants from CASE), to which Applicants' counsel strenuously objected.

Discovery in litigation before the courts, as well as in NRC licensing proceedings, is intended to insure that "the parties have access to all relevant, unprivileged information prior to the hearing." (Boston Edison Company (Pilgrim Nuclear Generating Station, Unit 2), LBP-75-30, 1 NRC 579, 582 (1975). Indeed, discovery in modern administrative practice is to be liberally granted "to enable the parties to ascertain the facts in complex litigation, refine the issues, and prepare adequately" for the hearing. Pacific Gas and Electric Company (Stanislaus Nuclear Project, Unit 1), LBP-78-20, 7 NRC 1038, 1040 (1978).

As to the scope of permissible discovery, it is well-settled that a party has the right to find out what the other parties know with respect to a particular contention, viz., the positions of adversary parties and the information available to those parties to support their position. Pennsylvania Power & Light Company, et al. (Susquehanna Steam Electric Station, Units 1 and 2), ASLB Memoranda and Orders, January 4, 1980, slip op. at p. 6 and August 27, 1979, slip op. at pp. 5-6. Discovery inquiries are limited only by the requirements that they be reasonably relevant to a sensible investigation, Pilgrim, LBP-75-30, supra at 582, and the information sought is reasonably calculated to lead to the discovery of admissible evidence, 10 CFR 2.740(b)(1).

The Appeal Board in Pennsylvania Power and Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), 12 NRC 317 (1980) discussed the conduct of discovery in NRC proceedings. That decision reinforces the preceding.

A party to an NRC licensing proceeding is not excused from making timely responses to discovery requests because of a lack of complete knowledge or because the party has only partial knowledge of the answer. See Boston Edison Co. (Pilgrim Nuclear Generating Station, Unit 2), LBP-75-30, 1 NRC 579, 583 n. 10 (1975). That party must answer discovery requests to the best of its ability, and if the party claims a lack of sufficient information to provide any response at the time answers are due, the party should answer by providing the information when available. Id. Answers must be responsive and complete to the extent information is now available. See Pilgrim, supra 1 NRC at 583 n. 10, 586; see also 10 CFR 2.740(f).

With respect to objections to discovery requests, the burden of persuasion is on the objecting party to show that the interrogatory should not be answered. Pilgrim, LBP-75-30, supra at 583. General objections are not sufficient. Id. Indeed, answers to discovery requests are important to a party's ability to prepare its case for trial. Claims that responses would be unduly burdensome, time-consuming and expensive are merely general, unsupported assertions, and thus are insufficient to sustain the burden of persuasion. Pilgrim, supra, 1 NRC at 583.

See also NRC Rules of Practice, 10 CFR 2.740b(b) and 2.741(d). These regulations require that a party must timely respond or state its objections with respect to each interrogatory or request to produce.

CASE's Motion is necessary for efficiency of operation in the discovery procedure and to allow CASE to properly prepare for hearings.

CASE'S SEVENTEENTH SET

As stated by CASE on page 2 of its 3/12/84 Seventeenth Set, all of the interrogatories in this pleading pertain to the "T-Shirt" Incident (see articles attached to CASE's 3/12/84 Motion for Discovery Regarding "T-Shirt" Incident, to which our 3/12/84 Seventeenth Set was attached).

22. If the answer to 21. is yes, provide the names and addresses of such inspectors.
(21. Have any of the QC inspectors involved (who wore the T-shirts or who are in the group with them) quit?)

Applicants answered Question 21, "yes." They answered 22:

"Mr. Snyder resigned and Mr. Pitts has transferred to another facility. Applicants do not know the present address of either individual."

Applicants may not know the present address of the two individuals; however, they obviously must have the last known address while they were working at Comanche Peak. Applicants must answer to the best of their ability; they are not excused from responding because of a lack of complete knowledge or because they have only partial knowledge of the answer.

CASE moves that the Board order Applicants to provide the last known address of the two individuals.

31. If the answer to 29. is yes, supply the name(s) and addresses of such QC inspectors.

(29. During any of the interviews, discussions, etc., following the wearing of the T-shirts, did any of the QC inspectors express concern in any manner regarding changing of quality control procedures?)

Applicants answered Question 29, "yes." Applicants object to specifying the identities of the inspectors making particular allegations (requested in Question 31) and state "Mr. Grier's report was prepared at the request of Mr. Tolson in a manner which would prevent disclosure of those identities to supervisory personnel. Disclosure of those identities here would defeat that purpose." (Emphasis added.) Applicants do not state that they do not know the names; they state that Mr. Grier's report was prepared in a manner which would prevent disclosure of those identities to supervisory personnel. Applicants do not state that no one associated with Applicants other than Mr. Grier knows the identities of the individuals. (For example, it is not clear to CASE from Applicants' answer whether or not Mr. Tolson knows the identities of the individuals.)

At a minimum, the Board should order Applicants to supply CASE with the names if anyone other than perhaps Mr. Grier knows them. If there is a need for a protective order, Applicants can then argue that. However, Applicants' answer as stated is insufficient.

32. If the answer to 29. is yes, supply for inspection and copying all such procedures, including the original and all revisions.

(29. During any of the interviews, discussions, etc., following the wearing of the T-shirts, did any of the QC inspectors express concern in any manner regarding changing of quality control procedures?)

Applicants answered Question 29, "yes." Applicants answered 32: Applicants will provide a copy of the specific procedure identified by the inspectors and the particular revision as to which they expressed a concern." This is not responsive to CASE's request; we asked for all such procedures, including the original and all revisions.

Documents received by CASE on discovery on 4/13/84 that "Three-fourths of the inspectors interviewed (by Boyce Grier) have concerns with respect to inspection procedures. They believe that procedures have been changed too frequently and that changes have been in the direction of relaxing requirements. It is their perception that requirements are being relaxed because inspectors have found too many problems that impact on schedule. They believe this is the reason that post construction inspections are being held up while the procedure is being revised. One inspector felt that inspectors should have more input into procedure changes and opportunity to comment on new procedures and proposed changes." Thus, it is obvious that the concerns expressed went beyond the only two procedures provided to CASE: QI-QP-11.3-40, Revision 15,

dated Feb. 13, 1984, and Revision 16, dated Mar. 12, 1984. In addition, the following is contained in the back-up notes by Mr. Grier of his interviews of various individuals, which appear to refer to specific procedures:

Inspector M: Conduit -

11.3-23 changed twice in last week

-40

-24

-26

Inspector K: No procedure in areas of inspection - lighting procedure

Inspector L: Problems in lighting - inspections being limited

Reactor bldg. -- not Q

Safeguards -- lighting is Q

Understands procedures being changed

Inspector E: 11.3-25

CASE moves that the Board order Applicants to supply to CASE copies of all of the preceding procedures, including the original and all revisions (including, if they are not among the specific procedures referred to by number in the preceding, all lighting procedures for the reactor building and the safeguards buildings).

36. Provide a summary of any and all telephone calls between the QC inspectors who wore the T-shirts (and the QC inspectors who were in the same group with them), and any of Applicants' employees (as defined under item 2 on page 1). Give full and specific details (such as who, what, when, where, etc.).

Applicants answered this question: "Applicants object to this request. The request is overly broad and would be unduly burdensome to provide a response. Further, the request is not limited to matters which are relevant to any outstanding issue in the proceeding."

Applicants' arguments are totally without merit. At the beginning of our specific interrogatories and requests to produce, at the bottom of page 2 of our Seventeenth Set, CASE stated that all of the interrogatories in this pleading pertain to the "T-Shirt" Incident, which is obviously relevant to these proceedings. Further, CASE does not understand (and Applicants have not met their burden of proof regarding) how the request is overly broad or would be unduly burdensome to provide a response to; we assume that there were not that many telephone calls between the QC inspectors and Applicants' employees of which Applicants have knowledge regarding the T-shirt incident.

CASE moves that the Board order Applicants to supply a complete answer to this request.

39. Have any of the QC inspectors who wore the T-shirts or the other QC inspectors who were in the same group with them been reassigned, or have their duties been changed in any way since the T-shirt incident on Thursday, 3/8/84?
40. If the answer to 39. is yes, supply complete details, including names, etc.
- (37. Have the QC inspectors who wore the T-shirts and the other QC inspectors who were in the same group with them been split up in any way?)
- (38. If the answer to 37. is yes, provide specific details, including names, etc.)

Applicants answered Questions 39-40: "See response to questions 37 and 38." They answered 37, "yes." They answered 38.: "Of the inspectors listed in questions 11 and 12, six have been reassigned to Unit 2 as a result

of shifts in manpower requirements" and they give the individuals' names.

Applicants ignored completely that portion of CASE's question which asked "have their duties been changed in any way since the T-shirt incident?"

CASE moves that the Board order Applicants to supply a complete answer to all of CASE's questions 39 and 40.

CASE'S EIGHTEENTH SET

3. Supply for inspection and copying all documents (as defined in item 8 on page 2 of our pleading) of all management/employee disputes, complaints, or discussions regarding work of QC inspectors or workers, including letters of resignation by employees, letters to supervisors or management by employees, complaints, to management or supervisors, etc.

On April 5 (the day Applicants were to have mailed their answer to our 3/14/84 Eighteenth Set), Applicants asked for clarification of this question. CASE responded by phone on 4/6/84 with confirmation in writing on 4/7/84 (see CASE's 4/7/84 letter to Applicants). CASE has been advised by telephone that Applicants are treating Question 3, as clarified by CASE, as a new request.

To begin with, had Applicants required clarification, there was ample opportunity between 3/14/84 and 4/5/84 for them to have sought such clarification. Further, once such clarification was provided, there is no justification for Applicants treating this as a new request rather than as a clarification to be answered at once. In fact, in Applicants' 4/5/84 Response (top of page 13), they state: "Applicants will respond to this request upon receipt of this clarification."

Applicants had indicated when they requested clarification that they

considered the request as worded to be overly broad and that it sought information not relevant to the issues of intimidation and harassment, to which the request was directed. (See page 12 of Applicants' 4/5/84 Response.) CASE therefore tried to be very specific when we clarified our question on 4/7/84:

The wording of Question 3 is clarified as follows:

3. Supply for inspection and copying any and all documents between management (including supervisors, foremen, middle management, upper management, etc.) and employees regarding the following:
 - (a) Any and all management/employee disputes, complaints, differences, and/or discussions pertaining to:
 - (1) policy disputes, complaints, differences, and/or problems regarding enforcement, application, or interpretation of procedures, instructions, or regulations relating to the job or work of the employee or of employees under his/her supervision (including, but not limited to, overinspecting, "knitpicking," etc.);
 - (2) intimidation, harassment, threats, pressure to meet production, or other kinds of pressure;
 - (3) management directives (written or verbal) regarding the reporting of nonconforming conditions;
 - (4) and the like.
 - (b) Any and all letters of resignation by employees and responses by management in which such employees indicate concern or dissatisfaction with:
 - (1) the enforcement, application, or interpretation of procedures, instructions, or regulations relating to the job or work of the employee or of employees under his/her supervision (including, but not limited to, overinspecting, "knitpicking," etc.);
 - (2) intimidation, harassment, threats, pressure to meet production, or other kinds of pressure;
 - (3) management directives (written or verbal) regarding the reporting of nonconforming conditions;
 - (4) and the like.

- (c) Counseling reports, termination reports, and exit interviews regarding (a) and (b) preceding.
- (d) Any and all procedures, instructions, regulations, and/or management directives (including those supplied by employees) involved in (a)(1), (a)(3), (b)(1), and (b)(3) preceding.
- (e) Internal investigations conducted by management into such disputes, complaints, differences, problems, discussions, concerns or dissatisfaction, including those by the "ombudsman."
- (f) Any and all internal files Applicants or their employees have on employees contacted by the NRC.

For purposes of your answer, the following definitions shall apply:

The term "documents" shall be construed in the broad sense of the word and shall include any writings, drawings, graphs, charts, photographs, reports, studies, slides, internal memoranda, handwritten notes, tape recordings, calculations, and any other data compilations from which information can be obtained. (See item 8, page 2, of CASE's 3/14/84 Eighteenth Set.)

The term "employees" shall be construed in the broad sense of the word and shall include Quality Control Inspectors, craftspeople, engineers, and any other employees employed by Brown and Root, Gibbs & Hill, Ebasco, any consultants, sub-contractors, and anyone else performing work or services on behalf of the Applicants or their agents or sub-contractors. (See item 2, page 1, of CASE's 3/14/84 Eighteenth Set.)

The terms "procedures" and "instructions" shall be construed to include, but not be limited to: the written or verbal procedures or instructions under which the employees work; the written or verbal methods of reporting of nonconforming conditions by means of nonconformance reports (NCR's), inspection reports (IR's), component modification cards (CMC's), design change authorizations (DCA's), nondestructive examination reports (NDER's), field deficiency reports (FDR's), and/or any other method used for reporting nonconforming conditions.

The term "regulations" shall be construed to include, but not be limited to: the Code of Federal Regulations (CFR), especially 10 CFR; Applicants' Final Safety Analysis Report (FSAR); industry codes and practices; industry standards; etc.

CASE moves that the Board order Applicants to respond to our clarified Question 3 in a timely fashion, rather than treating it as a new request. We ask that the Board specifically order Applicants to have the requested documents ready for CASE's inspection on Monday, May 7, 1984, immediately following the April 24-May 3 hearings. This will give Applicants ample time to assemble the information and have it available for CASE to inspect. If Applicants have any objections to CASE's question, as clarified (rather than simply supplying the information requested), CASE moves that the Board order Applicants to immediately so notify CASE and the Board so that we can promptly respond, should the Board require additional response.

CASE'S NINETEENTH SET

CASE's 3/14/84 Nineteenth Set dealt exclusively with requests to update previous interrogatories.

CASE's Second Set (12/1/80):

7. Is it correct that the only audits which have been performed by insurers (industrial risk, builder's risk, etc.) on work done at the Comanche Peak plant are as follows; and are the referenced items all the items regarding such audits?

6-pages, 5/25/79, Brown & Root to National Board of Boiler & Pressure Vessel Inspectors

1-page, 6/25/79, Brown & Root to National Board of Boiler & Pressure Vessel Inspectors

6-pages, 6/8/79, from National Board of Boiler and Pressure Vessel Inspectors

8-pages, 4/17/79, from National Board of Boiler & Pressure Vessel Inspectors

8. If the answer to Question 7 is no, list the other audits which have been

done (we are not asking for copies to be provided for inspection and copying in this question; we want to know which other audits have been performed).

9. If the answer to Question 7 is no, provide for inspection and copying all other such audits.

Applicants objected to these requests on the grounds that they "believe that insurer's audits are irrelevant to the unresolved issues remaining in the proceeding." However, they fail to state what the contents of the audits are or why they believe they are irrelevant to open issues. CASE believes they may well be relevant to issues in these proceedings, perhaps Walsh/Doyle, protective coatings, or overall conclusions about the safety of the physical plant. CASE's request must only be reasonably relevant to a sensible investigation and reasonably calculated to lead to the discovery of admissible evidence. If our review of the documents reveals that they are not relevant to any open issues, CASE would not be interested in them either. However, we cannot know that until we have reviewed them. (We also note that, based on past experience with Applicants, we must assume that when they don't want to provide us with documents, this usually means that there is something in the documents we will be interested in.)

CASE moves that the Board order Applicants to supply complete responses to these questions.

11. Is it correct that the only outside or sub-contractor evaluations, studies or audits which have been conducted at CPSES (by sub-contractors or agents of sub-contractors or by consulting firms or others, etc.)

was the Muenow Report regarding problems with the concrete "honeycombing" (approximately 200 pages or so) under a cover letter dated 5/5/80?

12. If the answer to Question 11 is no, list the other evaluations, studies or audits which have been done (we are not asking for copies to be provided for inspection and copying in this question; we want to know which other audits have been performed).
13. If the answer to Question 11 is no, provide for inspection and copying all other such audits.

In their 4/5/84 response, Applicants correctly point out that "Applicants previously supplemented their original response to include another report prepared by Muenow and Associates and the Lobbin Report.

They further state that "The only report which were prepared subsequent to those reports are ones of which CASE is already aware, viz., INPO and Cygna." However, it is CASE's understanding that there was an evaluation, study or audit conducted at CPSES by Stone and Webster, which Applicants have not mentioned or provided to CASE. Further, it is our understanding that Applicants were treating the Lipinsky memorandum (supplied to the Board by CASE with our 11/9/83 (1) Partial Answer to Board's 10/25/83 Memorandum, etc.) as a partial report on protective coatings; we should be supplied with any related or additional evaluations, studies or audits regarding protective coatings.

CASE moves that the Board order Applicants to provide complete responses to these questions.

CASE'S TWENTIETH SET

CASE's Twentieth Set was a continuation of our requests to update previous requests.

3/1/82 Eighth Set:

11. How many audits have been performed by Hartford Steam Boiler regarding Comanche Peak?
12. Please provide for inspection and copying all audits referenced in 11 above.

Applicants answered these: "Applicants object to the production of audits performed by Hartford Steam Boiler regarding Comanche Peak. Applicants believe these requests are irrelevant of the outstanding issues in this proceeding." As in the CASE of items requested in our Nineteenth Set (see pages 12 and 13 of this pleading), Applicants fail to state what the contents of the audits are or why they believe they are irrelevant to open issues. ASE believes they may well be relevant to issues in these proceedings, perhaps Walsh/Doyle, protective coatings, or overall conclusions about the safety of the physical plant. CASE's request must only be reasonably relevant to a sensible investigation and reasonably calculated to lead to the discovery of admissible evidence. If our review of the documents reveals that they are not relevant to any open issues, CASE would not be interested in them either. However, we cannot know that until we have reviewed them. As stated in 10 CFR 2.740(b)(1):

"It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."

CASE moves that the Board order Applicants to supply complete responses to these questions.

16. Please supplement your answers to the following questions, originally asked in CASE's 12/1/80 Second Set of Interrogatories to Applicants and Requests to Produce:

(Regarding any witnesses to be called in upcoming hearings with regard to Contention 5):

22. If the answer to Question 21 above is yes, supply the following information regarding each such witness:

- f. List or identify any and all documents which that witness intends to rely on in giving their testimony.
- g. State whether or not such witness has conducted any research or made any studies on which such witness will rely.
- h. If the answer to g. above is yes, state briefly the scope and nature of such research or study.
- j. Provide for inspection and copying any documents on which the witness relied in such testimony.

Applicants responded to these requests: "Applicants have not yet identified their witnesses regarding the issues remaining for litigation. Applicants will do so when they have identified those witnesses. Applicants will provide for inspection and copying the requested documents (which have not previously been provided) when their witnesses are identified."

However, the Board will recall that CASE specifically requested during the March hearings all documents (many of which were specified in the transcript) on which Applicants' welding witnesses relied in preparing their testimony. It was CASE's understanding that we would be provided copies of these documents

by Friday, April 6; however, we have not yet received them. And, from Applicants' answer, it does not appear that they intend to provide them.

We also would like to call the Board's attention to CASE's 3/15/84 letter to Applicants wherein we specifically pointed out that "we have not been provided with documents on which the witnesses relied in their testimony, as requested in this item. Specifically, we would like to have such documents in regards to the testimony of your witnesses on welding . . ."

CASE moves that the Board order Applicants to immediately supply CASE with the requested documents.

CASE'S MOTIONS:

For the reasons set forth herein, CASE hereby moves that the Board order Applicants to immediately provide complete responses to the following interrogatories and requests to produce:

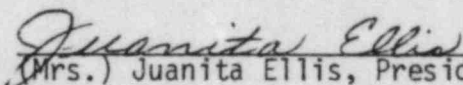
CASE's Seventeenth Set: 22, 31, 32, 36, 39, 40.

CASE's Eighteenth Set: 3, as clarified.

CASE's Nineteenth Set: Referring to CASE's Second Set, 7, 8, 9, 11, 12, 13.

CASE's Twentieth Set: Referring to CASE's Eighth Set, 11, 12.
16, Referring to CASE's Second Set, 22f, g, h, j.

Respectfully submitted,


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DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

By my signature below, I hereby certify that true and correct copies of
CASE's Motion to Compel Applicants to Provide Complete Answers to CASE's Seven-
teenth, Eighteenth, Nineteenth, and Twentieth Sets of Interrogatories and
Requests to Produce to Applicants

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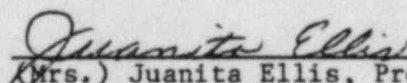
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