

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

4/16/84

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

APR 18 10:16

In the Matter of

TEXAS UTILITIES GENERATING
COMPANY, et al.

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

OFFICE OF SECRETARY
OF ENERGY

Docket Nos. 50-445-2
and 50-446-2

CASE'S ANSWER TO APPLICANTS' MOTION
TO ESTABLISH A CUT-OFF DATE WITH RESPECT
TO ALLEGATIONS OF INTIMIDATION EFFECTS

Pursuant to 10 CFR 2.730(c), CASE (Citizens Association for Sound Energy), Intervenor herein, hereby files this, its Answer to Applicants' Motion to Establish a Cut-Off Date with Respect to Allegations of Intimidation Effects.

On 4/5/84, Applicants filed their Motion to Establish a Cut-Off Date with Respect to Allegations of Intimidation Effects; this motion was received by CASE on 4/6/84.

In their Motion, Applicants refer to the Board's 3/15/84 Memorandum (Clarification of Open Issues), specifically pages 13 and 14, wherein the Board stated that the issue of intimidation relates to the question "whether there has been a practice of discouraging the report of nonconforming conditions," and that this issue is not confined to specific previously known subissues. Applicants claim that: "In view of the potential ongoing nature of the issue, a cut-off date is necessary in order to avoid, as the Board noted, the substantial penalty of unduly prejudicing the plant's start-up date. It is also necessary in order to assure orderly

litigation of this issue." Applicants argue that such a cut-off date is necessary "so that all parties may know, during the hearing preparation stage, the specific incidents to be presented at hearing. Hence an effective cut-off date must exist at the time intense preparation for hearing begins."

Applicants then request that a cut-off date of March 31, 1984, be established and "that no evidence of specific allegations of intimidation or discouragement or alleged effects thereof, occurring after that date be admitted at the hearing."

As shall be demonstrated herein, Applicants' motion and arguments are not valid and are in fact designed to prevent CASE from providing the Licensing Board with sufficient information, documentation, and witnesses to illustrate the true extent of the intimidation, harassment, and threatening of Quality Control Inspectors, craftspeople, documentation specialists, engineers, and others at Comanche Peak.

Applicants Motion Is Premature

The Board and all parties are in agreement already that hearings on the issue of intimidation cannot be held prior to the July hearings, and even that date is not certain at this time. Thus, absent any other considerations, Applicants' proposed cut-off date of approximately three-and-a-half months prior to the first possible hearing date is unreasonable, unnecessary, and premature.

However, there are other considerations which should be taken into account by the Board. Applicants' motion is predicated upon oft-repeated and by this time tiresome phony fuel load dates which they historically (and at times hysterically) persist in using in attempts to blackmail the

Board into taking premature actions in these proceedings and to avoid Applicants' having to deal with important issues. This has been a long-established pattern by Applicants in these proceedings, and CASE urges that the Board order a halt to such frivolous and unsubstantiated alleged fuel load dates.

Although Applicants still are stating publicly that they continue to cling to the unattainable goal of loading fuel for Unit 1 between July and September, the NRC Caseload Forecast Panel recently came to a different conclusion. Although there has been no official report by the Caseload Forecast Panel regarding its March 20-22 Comanche Peak review (at least CASE has received none), public statements indicate that the Panel believes that fuel loading will not begin before April 1985 (see attached 3/22/84 FORT WORTH STAR-TELEGRAM article).

Throughout these proceedings, the Board and parties have been subjected to a continual barrage of pleadings (written and verbal) by Applicants' counsel urging that the Board hurry things up so as not to delay Applicants' fuel load. It should be pointed out that Applicants' counsel are not under oath when they make these statements, and it is safe to assume that Applicants' employees who give this information to their attorneys are also not under oath. Because of the preceding, CASE moves that the Board order the Chairman of the Board and Chief Executive Officer of Texas Utilities Company, Perry G. Brittain, and Michael D. Spence, President, Texas Utilities Generating Company, to immediately file sworn affidavits with the Licensing Board setting forth what each believes the fuel load dates for Units 1 and 2 will actually be, and the basis for such belief. We further move that the Board include in its Order that,

should either Mr. Brittain or Mr. Spence at any time receive information which indicates that such fuel load dates might be changed, each is to immediately file a sworn affidavit with the Board to that effect. CASE believes that this procedure is necessary to discourage and hopefully help control Applicants' future attempts to coerce and intimidate the Board by means of this particular ploy.

Further, Applicants' proposed cut-off date would preclude CASE from pursuing information which is just now being provided to CASE on discovery regarding the T-Shirt Incident (see CASE's 3/12/84 Seventeenth Set of Interrogatories and Requests to Produce to Applicants). Applicants did not answer CASE's 3/12/84 Seventeenth Set until April 5, 1984 (received by CASE on 4/6/84) -- after Applicants' proposed cut-off date.

In addition, Applicants' proposed cut-off date would preclude CASE from pursuing information which is yet to be supplied in answer to CASE's 3/14/84 Eighteenth Set of Interrogatories and Requests to Produce to Applicants. On April 5 (the day Applicants were to have mailed their answer) Applicants asked for clarification of CASE's Question 3 of our Eighteenth Set. CASE responded by phone on 4/6/84 with confirmation in writing on 4/7/84 (see CASE's letter to Applicants of 4/7/84). CASE has been advised that Applicants are treating Question 3 of our Eighteenth Set as a new request (which obviously will further delay receipt of the documents requested). See CASE's Motion to Compel, which is being sent in this same mailing.

Also, Applicants' proposed cut-off date would preclude CASE from the potential of having new witnesses contact CASE as a result of the recent surprise visit by the NRC Task Force under the direct supervision of

Darrell Eisenhut, NRC Director of Licensing, which arrived at the Comanche Peak site on April 3. It appears that numerous current and former workers are coming forward with allegations because of this new federal investigation. (See attached 4/10/84 DALLAS TIMES HERALD article.)¹

It is little wonder that Applicants do not want CASE to be able to pursue this additional information, which is certain to add substantially to the proof of our case that intimidation, harassment, and threatening of QC inspectors and others at Comanche Peak is rampant, widespread, and thoroughly ingrained into the thinking and actions of many of Applicants' management personnel, including upper management. CASE urges that the Board not allow Applicants to sidestep CASE's further development of this vitually important issue.

CASE also urges that, should the Board decide that a cut-off date is in order, it tie such date to the actual anticipated time of the hearings (such as a certain number of days prior to the hearings), subject to extension for good cause. In addition, CASE urges that the Board bar Applicants from filing additional motions for a cut-off date prior to a set

¹ As discussed in this newspaper article, documentation specialist Dobie Hatley has received notification by the Department of Labor that DOL's initial investigation is complete and has found that Ms. Hatley was illegally fired and that "Pressure was brought to bear on Mrs. Hatley by craft employees and by her supervisors to circumvent established document control procedures. The fact that she resisted this pressure and complained of document control deficiencies contributed to her termination." CASE has requested Ms. Hatley to supply us with a copy of the DOL letter and we will be forwarding it to the Board as soon as we receive it. We note that, to our knowledge, Applicants did not advise the Board of the DOL ruling as they did in the case of William Dunham, which CASE believes is in violation of the Board's continuing order for all parties to keep it informed of significant or potentially significant matters relevant to these proceedings. Please consider this pleading as CASE's notification to the Board of what we consider to be a significant matter.

date certain by the Board, again keyed to a certain number of days prior to the actual anticipated hearing date. Otherwise, CASE anticipates that Applicants will be continually updating their motion, necessitating responses from CASE, consideration by the Board, et cetera, ad infinitum.

Granting of Applicants' Motion would be detrimental to an orderly litigation of the Intimidation Issue

Applicants argue that granting of their motion is necessary "in order to assure orderly litigation of this issue." However, since there are undoubtedly additional witnesses whom CASE will be calling on Intimidation issues following ongoing discovery and perhaps the coming forward of new witnesses, the granting of Applicants' Motion at this time would be disruptive of the process envisioned in the Board's 3/15/84 Memorandum since it would necessitate CASE's filing additional motions later to call each new matter and/or witness to the Board's attention. This will not only rob CASE of already in-short-supply time but would unnecessarily burden an already large record and needlessly take up additional Board time.

Applicants' Motion Goes Beyond the Board's Suggestion

Applicants argue "that no evidence of specific allegations of intimidation or discouragement or alleged effects thereof, occurring after that date be admitted at the hearing" (emphasis added). This is obviously not what the Board intended in its 3/15/84 Memorandum, and on pages 4 and 5, the Board specifically states:

"Let us also caution the parties that should important new safety concerns of allegations, relevant to this contention (Contention 5), come to light, they will be admitted for consideration by this Board.

Furthermore, the trial of some issues may reveal interrelationships among issues or may give rise to new issues, and those implications may require exploration."

The Board should recognize Applicants' ploy of sneakily pulling into its Motion the means for assuring that Applicants would not have to deal with any important new safety concerns or allegations which new CASE witnesses bring to light. We urge that the Board reject Applicants' ploy outright.

CASE's Answer and Motions

For the reasons set forth herein, CASE urges that the Board deny Applicants' Motion in its entirety. Further, CASE moves that:

1. The Board order the Chairman of the Board and Chief Executive Officer of Texas Utilities Company, Perry G. Brittain, and Michael D. Spence, President, Texas Utilities Generating Company, to immediately file sworn affidavits with the Licensing Board setting forth what each believes the fuel load dates for Units 1 and 2 will actually be, and the basis for such belief.

The Board further order that, should either Mr. Brittain or Mr. Spence at any time receive information which indicates that such fuel load dates might be changed, each is to immediately file a sworn affidavit with the Board to that effect.

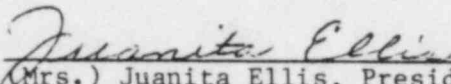
2. Should the Board decide that a cut-off date is in order, it tie such date to the actual anticipated time of the hearings (such as a certain number of days prior to the hearings), subject to extension for good cause.

The Board bar Applicants from filing additional motions for

a cut-off date prior to a set date certain by the Board, again keyed to a certain number of days prior to the actual anticipated hearing date.

3. The Board reject outright Applicants' ploy of including in their Motion that the "alleged effects" of specific allegations or intimidation or discouragement occurring after March 31 be excluded from future hearings.
4. As stated above, the Board deny Applicants' Motion in its entirety.

Respectfully submitted,



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Fort Worth Star-Telegram

Thursday, March 22, 1984 ***

THURSDAY MORNING, MARCH 22, 1984

1984 FORT WORTH STAR-TELEGRAM

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Reactor setbacks predicted

By BRUCE MILLAR
Star-Telegram Writer

Commercial operation of the Comanche Peak nuclear power plant won't begin before October 1985, almost a year behind plant owners' current schedule, a federal panel predicted Wednesday.

The preliminary estimate by the U.S. Nuclear Regulatory Commission's caseload forecast panel has stirred concerns that further delay would mean increased plant costs and higher electric bills.

Officials of Texas Utilities Electric Co., the holding company for utilities that own the plant, said they were surprised by the panel's findings but maintained they could meet current goals of loading fuel into the nuclear reactor between July and September. They disagreed with the NRC's estimate that fuel loading won't begin before

Please see NRC on Page 9

NRC task force predicts Comanche Peak delays

Continued from Page 1

April 1985. They said the NRC's projection would be altered after further discussions with utility officials.

"We're going to give them more data," said Louis Fikar, executive vice president of Texas Utilities Generating Co.

"It's just a matter of different experiences and different viewpoints," said Homer Schmidt, TUGCO manager of nuclear services.

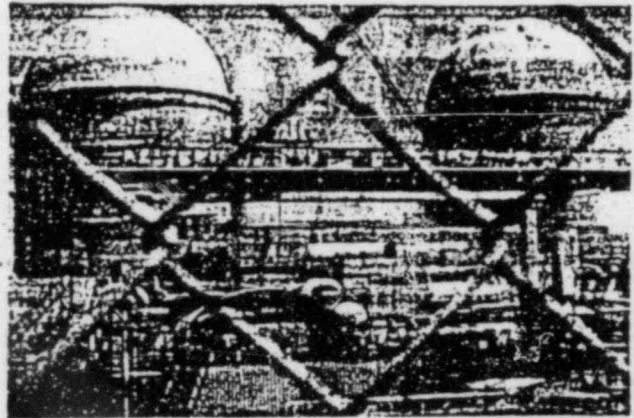
He said construction is six to eight weeks behind schedule, meaning fuel loading could begin in August or September.

It would be "premature" to expect that the revised completion forecast would result in higher costs for the plant, Schmidt said.

Utility officials have estimated that a delay in commercial operation beyond 1984 would jack up the cost by \$1 million a day in interest and replacement fuel expenses. Construction delays in 1983 boosted the plant's estimated cost by \$450 million.

The plant is four years behind schedule. Utility officials estimate that it will begin commercial operations in early 1985. They have predicted the final completion cost will be \$3.89 billion, five times higher than the original estimate. The plant is near Glen Rose, about 45 miles southwest of Fort Worth.

The NRC panel revised its estimate because members believe that plant owners were being too optimistic, said Thomas A. Ippolito, senior



COMANCHE PEAK ... startup may be delayed.

ior manager of the newly formed Comanche Peak task force.

Top NRC officials in Washington formed the group last week to consolidate all investigations into the safety of Comanche Peak.

Ippolito said the NRC group was concerned about progress in four areas: painting, preoperational testing, thermal insulation and a list of 9,000 unfinished items. Some of those items are minor.

The NRC's preliminary projection of fuel loading between April and June 1985 will be reviewed after plant owners submit additional material. A final prediction will be made within a month, Ippolito said.

A Dallas-based group opposing li-

censing of the plant said the new NRC estimate signals the beginning of a new cycle of higher plant completion costs, efforts to raise electricity rates and denials by utility officials.

"I think they will claim that they will have to go for another rate hike or add to one they have already filed," said Barbara Boltz of Citizens Association for Sound Energy.

Last month, Texas Utilities Electric Co. proposed a \$304.2 million rate increase. The increase would boost customers' bills an average of 8 percent. The company includes Texas Electric Service Co., Texas Power & Light Co. and Dallas Power & Light Co.

Comanche Peak firing of worker ruled illegal

DALLAS TIMES HERALD Tues. 4/10/84 B-1

By JACK BOOTH

Staff Writer

The U.S. Department of Labor has ruled that a documents supervisor was illegally fired from the Comanche Peak nuclear plant because she complained about pressures to circumvent document procedures.

The ruling in favor of former supervisor Dobie Hatley marks the third time in a year that the department has found that a Comanche Peak supervisor or inspector was illegally fired.

Mrs. Hatley's firing on Feb. 7 prompted the Government Accountability Project, a Washington, D.C.-based citizens group, to ask the U.S. Nuclear Regulatory

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Commission to launch an investigation into allegations of construction flaws at the plant and to halt work until plant documents could be safeguarded.

Prompted by the group's March 19 request, the NRC staff launched a major, surprise investigation at the plant a week ago that is still in progress. After arriving at the plant, NRC investigators went straight to the document room to begin interviewing workers about the charges by Mrs. Dobie and other employees.

In the latest Labor Department ruling, Curtis Poer, the Dallas-area director, wrote in an April 6 letter that investigators concluded Mrs. Hatley had been fired in vio-

See COMANCHE on Page 2

Fired Comanche Peak supervisor wins ruling

COMANCHE — From Page One

lation of a federal law set up to protect workers who report construction problems at nuclear plants.

"Pressure was brought to bear on Mrs. Hatley by craft employees and by her supervisors to circumvent established document control procedures," Poer wrote. "The fact that she resisted this pressure and complained of document control deficiencies contributed to her termination."

The letter directed Brown & Root Inc., the main contractor at the plant, to rehire Mrs. Hatley and pay her back wages. The order can be appealed, however. The company has appealed three previous department rulings dealing with Brown & Root employees.

In an affidavit made public on Feb. 10, Mrs. Hatley, a five-year employee,

charged that plant officials began violating document procedures in a wholesale fashion recently after initially observing a new system that had been set up to correct problems identified by the NRC. Mrs. Hatley, who was in charge of the new system, said she was fired for complaining that superintendents "were constantly asking that we break procedure."

In an interview Monday, Mrs. Hatley, a Glen Rose resident, said procedures were violated because it was too difficult and time consuming for workers to keep track of from 200 to 300 design changes that have been made on many of the engineering drawings at the plant.

As a result, she charged, workers have been given incomplete design packages that lack the latest changes,

and work has been performed according to outdated drawings. In other cases, she said, records of the work that was done were later lost.

"The real heart of it is that in the event of an accident once the plant was in operation, it would be the same thing if you had an accident in your plumbing and you didn't know where to cut off the water," she said. "If the document is not correct, then precious time would be lost while you tried to figure out what was wrong."

Mrs. Hatley said the new federal investigation, headed by Washington NRC officials, has prompted a stream of current and former workers to come forward with allegations. Those workers were unwilling to do so in the past because they believed that the NRC's Region IV office, located in Arlington, was

hostile to whistle-blowers and intent on covering up problems, she said.

A plant spokesman could not be reached for comment on the Labor Department's ruling on Mrs. Hatley's firing.

Last June, U.S. Labor Secretary Raymond Donovan ruled that Charles A. Atchison was illegally fired from his job as a quality-control inspector at Comanche Peak by Brown & Root for reporting welding defects.

Last October, the Labor Department ruled that an inspector supervisor, William A. Dunham, was illegally fired by Brown & Root for strongly opposing harassment of inspectors by management. Similar charges of harassment have dominated the licensing hearings that are being conducted by the U.S. Atomic Safety and Licensing Board.

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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH
Docket Nos. 50-445-2
and 50-446-2

CERTIFICATE OF SERVICE

By my signature below, I hereby certify that true and correct copies of
CASE's 4/16/84 Answer to Applicants' Motion to Establish a Cut-Off Date

With Respect to Allegations of Intimidation Effects

have been sent to the names listed below this 16th day of April, 1984,
by: Express Mail where indicated by * and First Class Mail elsewhere.

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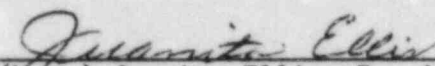
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