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193

C A S E

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May 11, 1984

EXPRESS MAIL

Nicholas S. Reynolds, Esq.
Bishop, Liberman, Cook, Purcell & Reynolds
1200 - 17th St., N. W.
Washington, D. C. 20036

Dear Nick:

Subject: In the Matter of
TEXAS UTILITIES GENERATING COMPANY,
et al
(Comanche Peak Steam Electric Station,
Units 1 and 2)
Docket Nos. 50-445-1 and 50-446-1

Possible Settlement Regarding Certain
Design and Design QA Aspects of
CASE's Contention 5

As discussed yesterday with the NRC Staff counsel and Bill Horin (and with you through Bill), we thought it advisable for CASE to move to the top of our list of things to do our counterproposal regarding a possible settlement of certain design and design QA aspects of CASE's Contention 5. Applicants and Staff concurred that this should be our top priority at this time, and we have accordingly put aside other work for which we have deadlines (by mutual agreement) in order to prepare this counterproposal and to allow us to engage this afternoon at 1:00 P.M. (our time) in a telephone conference with Applicants (and the NRC Staff if they so desire) in this regard. (It should be noted that the Licensing Board Chairman was not available to participate in our discussions today due to a back problem. However, I think I can speak for all parties when I say that we believe he would have been in complete accord with our mutual efforts in this regard.)

First, we will address briefly some of the points in your May 1, 1984, initial proposal. We will try to be as candid as possible and hope that our comments will be considered in that context. It should be pointed out that the initial reaction of CASE Witness Jack Doyle and me as CASE's primary representative in these proceedings was based upon several then-perceived assumptions. First of all, we were at that time encouraged by what appeared to be Cygna's changed attitude to a more independent and less adversarial one. Mr. Doyle was particularly impressed by the candor of Cygna's witness Dr. Gordon Bjorkman and he specifically stated that Dr. Bjorkman should be part of any team with which we were working under any settlement. (We must point out that one of our problems in the past with Applicants' witnesses has been that, in our opinion, they are too inclined to dance around the question without answering it -- Dr. Bjorkman was actually giving us candid answers to our questions, which is what we have always wanted. We mention

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this here not to provoke an argument with Applicants about what their witnesses have and have not done, but merely to offer additional perspective regarding our initial reactions to a possible settlement of some of the design and design QA aspects of our Contention.) It should also be noted that we were somewhat less satisfied with the candor of Dr. Bjorkman's later answers.

Another factor to be considered was the fact that (as I expressed to you, Nick), based on our past dealings with the Applicants, CASE simply does not trust the Applicants to do the right thing; we were therefore not prepared to proceed based only on the Applicants' word without additional safeguards to protect CASE's rights in this matter.

Therefore, another essential ingredient for a possible settlement was what appeared to CASE to be more alertness, concern, and responsiveness of the NRC Staff. We had been heartened by the unannounced site inspection by the new task force under the direction of Messrs. Darrell Eisenhut and Thomas Ippolito. It appeared that the NRC Staff was fully prepared to aggressively investigate and resolve, without the involvement of NRC Region IV (in which CASE and our witnesses have completely lost confidence), the many allegations brought forward by the Government Accountability Project (GAP) and whistleblowers. This perceived new stance by the NRC Staff was of vital importance to CASE in deciding whether or not to seriously consider a settlement on design issues. This is true because it is our understanding that it was the Applicants' intention that, once a settlement was arrived at, the Atomic Safety and Licensing Board would no longer be involved in any way and that the new NRC task force headed by Mr. Ippolito would then be CASE's court of last resort, if you will. This would mean that, should CASE's concerns developed during the conduct of Phases 3 and 4 not be addressed adequately in CASE's opinion, we would have no recourse other than to go to Mr. Ippolito. It is obvious, therefore, that CASE of necessity must have complete confidence in Mr. Ippolito -- not only regarding his desire but also his ability and authority to rectify and deal with CASE's concerns.

We note also that the Applicants' proposed scope of the settlement is much broader than CASE had anticipated or is prepared to agree to. For instance, we do not agree that the following should be included: the use of A500 tube steel; or the forthcoming NRC Staff walkdowns (especially since such walkdowns could identify not only design but construction problems as well which might come under other aspects of CASE's Contention 5).

We do agree with the Applicants that it is difficult to address such highly technical and detailed issues as the design and design QA aspects of our Contention in the context of the operating license hearings. And we must admit that the idea of having discussions between engineers rather than adjudicatory hearings is an appealing and logical one. However, it must be pointed out that to a great extent this was what was proposed and attempted between Cygna and CASE in preparation for the recent hearings, without any great success. At this point in time, CASE sees little reason to believe that such attempts in a context outside the hearing process would be more fruitful and satisfactory. In fact, absent the Licensing Board's oversight

and control, CASE doubts that our interaction with Applicants, Cygna, and NRC Staff would be as fruitful and satisfactory as it was in the context of the hearings process, since there would be little or no incentive for Applicants, Cygna, or NRC Staff to be cooperative with CASE -- and little, if anything, CASE could do about it other than complain to the NRC Staff. Should the NRC Staff prove unreceptive to CASE's concerns, it appears to us that we would simply be up the proverbial creek with no means of propulsion.

One of CASE's primary concerns has been and is still what, if anything, will be done regarding the specific problems brought out by Messrs. Walsh and Doyle during the recent hearings. Cygna intends to treat the concerns raised by Messrs. Walsh and Doyle in the hearings merely as comments on the Cygna Report and does not intend to change their conclusions regarding anything in the Report -- even though Cygna witnesses admitted under cross-examination that in some cases the specific items they looked at were not representative of the rest of the plant. Since neither Applicants nor Cygna (nor, for that matter, the NRC Staff to date) has admitted that any problems exist which must be rectified, what will happen regarding the issues already discussed in hearings? We assume from Applicants' May 1 letter that the answer is "Nothing," that the settlement proposed by Applicants is intended to cover only future items, not items already discussed in the hearings, and that items already discussed and identified in the hearings will simply be dropped and never addressed. One of the non-negotiable items which CASE believes must be included in any settlement would be that Applicants and Cygna first must admit that there are problems, what the problems are, and what Applicants propose to do about them, when they propose to do it, etc. In other words, as a prerequisite for the settlement, what are Applicants prepared to admit needs to be reanalyzed, redesigned, etc., what are they going to do about it, when are they going to do it, etc.?

A related concern is that, if Applicants and Cygna do not plan to do anything about the specific concerns already brought out in hearings, there is obviously no reason to assume that they would adequately address and resolve additional concerns brought out by Messrs. Walsh and Doyle under conditions of settlement.

Regarding the specifics of Applicants' proposal, there are several aspects which need to be addressed. First of all, since (as Applicants are well aware) Messrs. Walsh and Doyle must work at their regular jobs during normal weekdays, Applicants' proposals in A., B., and C. on page 2 for Messrs. Walsh and Doyle to "be on site at Comanche Peak for any period during which Cygna is on site conducting its IDVP efforts," participate in "bi-weekly scheduled meetings between Cygna and the parties (i.e., CASE, Applicants and NRC Staff)," and for "all exchanges of technical information between Applicants and Cygna (to) be open to attendance by CASE and Messrs. Doyle and/or Walsh" are virtually meaningless unless specific arrangements were included to accommodate Messrs. Walsh and Doyle's need to attend to such matters outside normal business hours or on week-ends. Further, there is no mention of payment of expenses for Messrs. Walsh and Doyle (such as plane fare for Mr. Doyle to fly to DFW, then drive to Comanche Peak, for example); this would have to be borne by Applicants.

Another concern is that there is no protocol discussed in Applicants' proposal for contacts between Applicants and Cygna (or between Cygna and anybody else, for that matter) should CASE and/or the NRC Staff not be on the scene. Further, there are no provisions for CASE to respond to the bi-weekly scheduled meetings (item B.) or the exchanges of technical information (item C.) should CASE not be in attendance (for instance, should CASE believe that a meeting regarding an exchange of information which had occurred between Applicants and Cygna was in order). Items D. and E. state that all written questions from Cygna and all written answers by the Applicants will be provided promptly to CASE and the Staff; no provision is made for verbal questions and answers. Item G. states that Cygna will issue its report, including any observations and findings, to all parties simultaneously; however, CASE believes that a far preferable procedure would be that discrete portions be provided to the parties as soon as they are available, for comment, and that provisions be made for Cygna to respond to such comments (in other words, something more like the proposals contained in the Licensing Board's 12/28/83 Memorandum and Order (Quality Assurance for Design). As it is set forth, there is no assurance whatsoever that CASE's comments will be considered in any way.

There are no provisions whereby CASE can request and obtain additional documents under Applicants' proposal. (You will remember, Nick, you specifically promised me all the documents I wanted! . . . and that we wouldn't even have to pay for them!)

After much reflection and discussion among ourselves and with Messrs. Walsh and Doyle, CASE is of the opinion that we do not believe that Cygna is the best choice for resolving the design and design QA aspects of Contention 5. Our overall dealings with Cygna have not been particularly encouraging. We believe that, at a minimum, there is a need for a review of the Cygna process by an outside consultant. Further, we believe that the selection of the component cooling water system is not an adequate choice and that another system or systems would be better. However, in the real world, we realize that Applicants already have a large commitment, both financially and otherwise, to using Cygna for the continuing design verification efforts. We therefore suggest that:

(1) Cygna continue with Phases 3 and 4 (with additional people involved as discussed herein;

(2) There be a review by an outside consultant (which CASE would have input regarding) of the Cygna process;

(3) Procedures for start-up testing be reviewed;

(4) The high pressure injection system, all safety-related parts of the HVAC system, and safety-related electrical system be reviewed in depth, both regarding paperwork and during a complete walkdown; and

(5) The additional reviewed in items (3) and (4) be done by someone other than Cygna.

Another prerequisite for settlement would be that CASE be allowed to choose some additional individuals, perhaps from other consulting firms, for Applicants to bring in to work in conjunction with Cygna. (One such organization which has been mentioned is MHB Technical Associates; however, are not prepared to make this as a firm recommendation at this time.)

There are other specifics which would need to be addressed should a settlement be possible, such as the specific organization or individuals who would be involved. If CASE agreed to Cygna as the primary choice (along with additional personnel suggested by CASE), we would still want to be certain that Dr. Bjorkman would be actively involved and would want to be certain precisely what his responsibilities and authority would be. In addition, as has been mentioned previously, we would want to have Isa Yin and Ron Gardner of NRC Region III (and perhaps other NRC personnel) actively involved. We expect to be discussing this further with the NRC Staff, and hope to meet (for the first time) the head of the new Comanche Peak Task Force, Mr. Ippolito, sometime next week.

This brings us again to the all-important question: Can CASE trust the NRC Staff? As discussed above, there were some promising elements which led us to hope that we might; however, there had also been some troubling ones. A few examples out of many:

(1) Although the Atomic Safety and Licensing Board, in its 12/28/83 Memorandum and Order (Quality Assurance for Design), found that the Applicants were in serious violation of NRC regulations in that they did not have a program for promptly identifying and correcting design deficiencies, the NRC Staff to this day has made no move to fine or even reprimand the Applicants for this.

(2) CASE and its witnesses and potential witnesses were not at all satisfied with the report by the NRC's Office of Investigations into intimidation, harassment, and threats reported to the NRC by those individuals; it appeared that OI had merely stated what the individuals told the NRC investigators (and that not always completely accurately) without making any attempt to investigate further, that they had completely ignored confidentiality when it had been expressly asked by a few individuals, etc.

(3) The Applicants still have never had to pay any fine regarding the firing of Charles Atchison, although an Administrative Law Judge, Secretary of Labor Donovan, and the Atomic Safety and Licensing Board found that he had been wrongfully terminated and the NRC issued a proposed notice of violation (which is still being held in abeyance pending a ruling by the 5th Circuit Court of Appeals).

Even with such concerns, we were still almost ready to believe that the new NRC Task Force for Comanche Peak was really ready, willing, and able to do a thorough job and fully address the numerous allegations forwarded to it by GAP from whistleblowers. We were also heartened by what we believe to be a more realistic assessment by the NRC Caseload Forecast Panel of Comanche Peak's fuel load date. However, two recent events have forced us to reconsider our position in this regard:

(1) What we (and GAP) believe amounts to prenotification of the Applicants by the NRC regarding the allegations forwarded to the NRC by GAP. We believe this is a very serious matter -- one which certainly causes us to have second thoughts about trusting the NRC.

(2) The recent change of the Caseload Forecast Panel's estimate of fuel load from what it was considered to be just a month and a half ago. To CASE and our witnesses and potential witnesses, this is a cop-out by the NRC which is shocking. It frankly appears to CASE to be a caving in by the NRC Staff to pressure exerted by Applicants at high levels on down.

The repercussions from the Forecast Panel's latest estimate have already begun in the form of increased pressure on the Licensing Board to rush the hearings to completion (and upon CASE to comply with unrealistic and unnecessary deadlines which Applicants seek to impose). CASE considers this to be a tactic on the part of Applicants designed to increase the pressure on the Licensing Board and CASE. Such tactics are counter-productive and are not conducive to good-faith negotiations towards arriving at a settlement. They merely serve to reinforce our belief that we cannot trust the Applicants absent some additional outside assurance or rely on the Applicants to voluntarily adequately address and resolve any concerns which CASE might have should we agree to a settlement.

At this point in time, CASE frankly does not know whether or not we can trust the new NRC Task Force or Mr. Ippolito. We have never met Mr. Ippolito, although we hope to be able to meet with him sometime next week. The signals coming from the NRC at the national level are not clear and often appear to be contradictory. Were we to have to make a decision at this moment, we would have to state that we are not presently convinced that we can rely upon the NRC Task Force or Mr. Ippolito to see that CASE's rights are protected in a settlement situation or that we can safely assume that concerns which might result from CASE's participation in such a settlement will be adequately addressed and resolved.

Therefore, at this point in time, one of the non-negotiable prerequisites for a settlement regarding some of the design and design QA aspects of CASE's Contention 5 would have to be that the Atomic Safety and Licensing Board would be our court of last resort should we simply not be able to assure that our concerns would be adequately addressed and resolved in any other way. It should be noted that we mean the current ASLB when we say this, since it would be totally impossible, unrealistic, and result in too much delay to have a new Board come in and try to review and evaluate the extensive record (plus whatever additional information might be forthcoming as a result of activities under the settlement). We realize that Applicants have already stated that they would not be agreeable to any settlement which included this as a prerequisite. We urge that Applicants reconsider their hard-line position on this and attempt to arrive at a mutually acceptable method whereby this could be done. However, at the present time CASE (including Messrs. Walsh and Doyle) cannot see our way clear to proceed with a settlement otherwise. If some method could be

worked out to provide for this, we might yet be able to work out a settlement. However, until and unless we become convinced that we can in fact rely upon the NRC's new Comanche Peak Task Force (of which we are not at all convinced at this time), this is our position.

We are hopeful that the information contained herein will afford us a better basis for proceeding.

Sincerely,

CASE (Citizens Association for Sound Energy)

Juanita Ellis

(Mrs.) Juanita Ellis
President

cc: Service List: Express Mail to Board and Parties mailed 5/11/84; Balance to be mailed to rest of service list on 5/14/84 with other items.