

CASE

(CITIZENS ASSN. FOR SOUND ENERGY)

March 15, 1984

RELATED CORRESPONDENCE

1426 S. Polk
Dallas, Texas 75224

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USNRC
214/946-9446

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Administrative Judge Peter B. Bloch
U. S. Nuclear Regulatory Commission
4350 East/West Highway, 4th Floor
Bethesda, Maryland 20014

Dr. Walter H. Jordan
1 W. Outer Drive
Oak Ridge, Tennessee 37830

Dr. Kenneth A. McCollom, Dean
Division of Engineering, Architecture
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Oklahoma State University
Stillwater, Oklahoma 74074

Gentlemen:

SUBJECT: In the Matter of
Application of Texas Utilities
Generating Company, et al. for
An Operating License for
Comanche Peak Steam Electric Station
Units #1 and #2 (CPSES)
Docket Nos. 50-445 and 50-446

Supplementation of Interrogatories
and Requests to Produce to Applicants
from CASE

In light of the discussion yesterday regarding the supplementation of answers to interrogatories and requests to produce, CASE filed yesterday our Nineteenth Set of Interrogatories and Requests to Produce to Applicants and are sending our Twentieth Set (which is a continuation of our requests to supplement to Applicants) in the same package as this letter today.

CASE would like to call the Board's attention to a matter of which the current Board Chairman may not be aware, since it occurred before he joined the Board. In the 3/12/84 informal off-the-record conference call between parties and the Board Chairman regarding the preservation of documents confiscated and tape recordings made in connection with the "T-Shirt" Incident (see CASE's 3/12/84 pleading), Judge Bloch at one point indicated to Applicants that the appearance was that Applicants did not want to give out relevant information on an ongoing basis, and that the Board did not understand this and was concerned about it.

In this regard, the Board should be aware that Applicants have a history of being uncooperative regarding discovery matters. There are many instances of this, but we call the Board's attention particularly to a discussion in this regard in CASE's 3/22/82 Motion for Reconsideration of Extension of Time for Discovery on Contention 5. In this instance, CASE believes, Applicants deliberately withheld a document (the Lobbin Report) until such time

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as they had prepared an answer to it, then provided both the report and Applicants' answer. Because of the tight schedule under which we were operating at that time, this necessitated our having to file a motion for an extension of the time allowed for discovery at that time. Further, Applicants did not supply audits which were made by TUGCO QA on Gibbs & Hill (which CASE only found out about when reading the Lobbin Report) -- even though CASE had specifically asked for all such audits and stated:

"The topics of the evaluations, studies or audits with which CASE is concerned are any and all of them which might have a bearing on Contention #5."

(See CASE's 3/22/82 Motion for Reconsideration of Extension of Time for Discovery on Contention 5, pages 6-10; we are attaching those portions of CASE's Motion with applicable portions marked for the Board's convenience.)

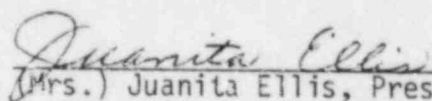
As discussed in CASE's 3/22/82 Motion (page 7), there is a previous Board Order to which we call the Board's attention. It is contained in the Board's Order Subsequent to Prehearing Conference of December 1, 1981, filed December 18, 1981, and states, in part:

"The Board also directs the parties to provide each other with basic information to aid in discovery (Tr. 259). This includes such information as identification of significant documents in their possession and of knowledgeable witnesses."

We call these matters to the Board's attention at this time because we fully expect, based on previous experience with Applicants, that Applicants will fight CASE's being supplied with requested answers to interrogatories and requests for documents and that there will be a lot of time and effort expended on the part of CASE and the Board in discussions with Applicants, etc., in this regard. We are concerned that, with the extensive number of hearings anticipated by the Board and the time constraints under which we will be working, we will simply not have sufficient time to engage in meaningful discovery if we have to fight every step of the way to get the answers and documents we need. We anticipate that we will need the Board's assistance in this regard and wanted to alert you in advance.

Respectfully submitted,

CASE (Citizens Association for Sound
Energy)


(Mrs.) Juanita Ellis, President

cc: Service List

3/22/82

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of) (
) (
APPLICATION OF TEXAS UTILITIES) (Docket Nos. 50-445
GENERATING COMPANY, ET AL. FOR) (and 50-446
AN OPERATING LICENSE FOR) (
COMANCHE PEAK STEAM ELECTRIC) (
STATION UNITS #1 AND #2) (
(CPSES)) (

CASE'S MOTION FOR RECONSIDERATION
OF EXTENSION OF TIME FOR
DISCOVERY ON CONTENTION 5

Pursuant to 10 CFR 2.730, CASE (Citizens Association for Sound Energy), Intervenor herein, hereby files this, its Motion for Reconsideration of Extension of Time for Discovery on Contention 5.

BACKGROUND

On 6/16/80, following extensive written discussion by the parties regarding the wording of Contention 5, the Atomic Safety and Licensing Board in these proceedings changed the wording as accepted by the Board in its 6/27/79 Order Relative to Standing of Petitioners to Intervene:

"The Applicants have failed to establish and execute a quality assurance/quality control program which adheres to the criteria in 10 CFR 50, Appendix B."

The wording of the contention, which the Board stated in its 6/27/79 Order "encompasses all those contentions" (of CASE, CFUR, and ACORN concerning the various quality assurance/quality control contentions), was changed on 6/16/80 to:

Contention 5. On March 8, 1982, the Board filed its Order denying CASE's Motion for extension of time.

CASE'S MOTION FOR RECONSIDERATION OF EXTENSION OF TIME FOR DISCOVERY
ON CONTENTION 5

Since the Board's March 8, 1982, ruling, significant new information has come to light which necessitates CASE's again asking for an extension of time for discovery on Contention 5. It is because of this and the other reasons set forth herein that CASE now files this Motion for Reconsideration.

1. Applicants have withheld vital information bearing directly on CASE's Contention 5, in violation of NRC regulations and the clear orders of the Board.

On March 5, 1982, Applicants notified CASE by letter (with copy to the Service List) of the availability of the document listed below. (CASE received the letter in the afternoon mail on March 9, 1982, when the writer came home from work.) The letter stated:

"This is to notify you that Applicants hereby supplement their response to CASE's first set of interrogatories and requests to produce. As a result of Applicants' continued search for documents within the scope of your discovery requests, Applicants have identified the document listed below as coming within the scope of Item 10 of your July 7, 1980 interrogatories and requests to produce, as clarified on August 4, 1980. Applicants submitted their response to Item 10 on September 8, 1980 and supplemented the response by letter dated December 22, 1980.

"In the interest of expediting discovery on Contention 5 in accordance with the Board's directive, the following document has been placed in the Dallas offices of Texas Utilities Generating Company for your inspection and copying:

'Review of the Quality Assurance Program for the Design and Construction of the Comanche Peak Steam Electric Station.' Prepared by F. B. Lobbin. (February 4, 1982)"

Since it was too late when we received the letter on March 9 to contact the utility, we called the next morning (Wednesday, March 10) and asked that Applicants go ahead and make a copy of the report, since it was obvious that we would want a copy. Arrangements were made for C&E to pick up a copy on Monday, March 15, which we did.

When we picked up the report on 3/15/82, we found that Applicants had not only provided a copy of the report itself, but also Applicants' February 23, 1982 Response to F. B. Lobbin Report R-82-01. It was therefore obvious that the report had been in the possession of the Applicants for some time (certainly long enough for them to prepare their 2/23/82 Response). It is equally obvious that this document is very significant and pertinent to CASE's Contention 5.

Applicants' actions are clearly in flagrant disregard for the Board's specific instructions as set forth in the Board's Order Subsequent to Prehearing Conference of December 1, 1981, filed December 18, 1981:

"The Board also directs the parties to provide each other with basic information to aid in discovery (Tr. 259). This includes such information as identification of significant documents in their possession and of knowledgeable witnesses." (Emphasis added.)

Applicants have also failed to voluntarily supplement their answers to CASE's previous interrogatories on Contention 5. The duty to supplement answers is set forth very clearly in NRC regulations. As clarified by Applicants themselves in their 10/3/80 Answer to CFUR's Motion for Protection, page 3:

"...parties to NRC licensing proceedings are under a continuing duty to supplement their responses to discovery requests. This duty applies, inter alia, to information as to the identify of persons having knowledge of discoverable matters, the identify of witnesses and the substance of their testimony, and responses which were true when made but are found to be incorrect (where the failure to amend the response would constitute knowing concealment)."
(Emphasis added.)

Under the circumstances, CASE can only conclude that Applicants deliberately withheld the February 4, 1982 Review of the Quality Assurance Program for the Design and Construction of the Comanche Peak Steam Electric Station, by F. B. Lobbin, Consulting Engineer, until they had prepared their answer to it and until CASE could not pursue it on discovery, due to the Board's provision that parties were "to initiate their discovery requests with sufficient lead time for responses within the time provided in the Commission regulations." Had CASE been apprised by Applicants of the existence of the 2/4/82 Review shortly after the date of the report or even when Applicants' response was completed 2/23/82, we would have been able to pursue it on discovery. As it was, because of CASE's work load in responding to the NRC Staff's Fourth Set to CASE on 3/15/82 and to Applicants' Third Set to CASE on 3/16/82, we were unable to even file interrogatories within the time frame under which we were

forced to work.

This means that CASE is now in the untenable position of being barred by the Board's order from pursuing discovery on information contained in this significant report -- because of Applicants' illegal untimely notice of its existence.

CASE is still in the process of analyzing the contents of the February 4, 1982 Review. However, in addition to the report itself, there is another very significant item mentioned in the report. On page 10, it is stated:

"The number and scope of design and construction audits conducted by TUGCO QA to date has been limited. The evidence for this conclusion is illustrated in Figures 2 and 3. Figure 2 illustrates the number and scope of audits conducted over the years of Gibbs & Hill." (Emphasis in the original.)

Figure 2 is a Summary of Gibbs & Hill Audits by TUGCO QA.

It lists as the Primary Focus/Subject of Audits:

- QA Program - General
- Dallas Office
- Design/Design Change Control
- Followup on Prior Audits
- IEEE Qualification
- Damage Study
- QA Organization
- IE Bulletins
- Drawing Control

And it lists seventeen (17) different audits in the TGH series as having been done by TUCCO from 1974 through 1981.

This is especially significant because Applicants recently supplied CASE with copies of audits in response to our requests for documents. The audits were in the following series: TCP;

TMP; TGF; and TBS. CASE has asked some follow-up questions regarding these audits (see CASE's 3/1/82 Eighth Set of Interrogatories and Requests to Produce to Applicants, Questions 4 through 10). We were not supplied with or apprised of the existence of any audits in the TGH (Gibbs & Hill) series, although it is obvious from the information contained in Figure 2 of the 2/4/82 Review that these audits are very pertinent to CASE's Contention 5 and that they clearly come under CASE's previous interrogatories and requests to produce.

For the preceding reasons, we move that the Board order Applicants to immediately provide CASE with all audits in the TGH (Gibbs & Hill) series, as well as all other audits which come within CASE's First Set of Interrogatories to Applicant, filed 7/7/80, and as clarified in our 8/4/80 Response to and Motion Regarding Applicants' Answers to CASE's First Set of Interrogatories and Requests for Clarification, Questions 9 and 10:

"The topics of the evaluations, studies or audits with which CASE is concerned are any and all of them which might have a bearing on Contention #5."

It should be pointed out at this time that, even if the Board so orders, there is no guarantee that CASE will receive all the documents we've asked for and are entitled to, if the Board allows Applicants to interpret Contention 5 as they desire. The reasons for this were set forth very specifically in CASE's 7/28/81 Motion for Board Clarification of Wording of Contention 5; the Board struck this motion on 8/3/81. Without going into detail again