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6/22/84

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CASE'S ANSWER TO APPLICANTS' MOTION TO COMPEL
ANSWERS TO APPLICANTS' NINTH SET OF INTERROGATORIES
TO CASE AND REQUEST TO PRODUCE

AND

REQUEST FOR ORAL ARGUMENT

Pursuant to 10 CFR 2.730(c) and (d), CASE (Citizens Association for Sound Energy), Intervenor herein, hereby files this, its Answer to Applicants' Motion to Compel Answers to Applicants' Ninth Set of Interrogatories to CASE and Request to Produce and Request for Oral Argument. (Applicants' Motion to Compel was filed 6/11/84 and received by CASE on 6/12/84.)

To begin with, Applicants did not make any attempt to discuss these matters with CASE prior to filing their Motion to Compel, contrary to the Board's orders. Had they taken the time to do so, much time could have been saved which will now unnecessarily have to be taken up by the Licensing Board, Applicants, NRC Staff, and CASE.

CASE objects in particular to Applicants' mischaracterization of CASE's responses to Applicants' Ninth Set. On pages 2, 3, and 4, Applicants refer the Board to Boston Edison Co. (Pilgrim Nuclear Generating Station, Unit 2),

* As the Board and parties are aware, the Intimidation portion of CASE's contention are being handled by Mr. Roisman, with Ms. Garde's assistance. Our discussion in this pleading is in regard to one limited matter wherein we identify some specific documents which we have not previously identified even to them due to the threat of lawsuit which we believe existed; see page 9 of this pleading.

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LBP-75-30, 1 NRC (1975). However, Applicants ignore that portion of the Pilgrim decision which states that: 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; and that a 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; and that answers must be responsive and complete to the extent information is now available. See Pilgrim, supra 1 NRC at 579, 583 n. 10, and 586. See also 10 CFR 2.740(f).

CASE has attempted to answer the interrogatories and requests for documents from Applicants to the best of our ability at the time we responded, with the confirmed stated intent of providing the information when available. CASE submits that Applicants, in most cases cited, simply do not like our answers. However, if we don't know, we don't know, and we have so indicated. We will supplement our responses as soon as we do know, and are in fact doing so in some instances with this pleading (for example, we now feel that statements by Mr. Spence and Mr. Reynolds on the record now allow CASE to provide information in the operating license hearings which was obtained from the rate hearings -- or at least to successfully countersue should Applicants pursue this further; we also believe that any such suit by Applicants would constitute obstruction of justice).

As discussed herein, the Board should deny Applicants' Motion in its entirety; or, in the alternative, grant CASE's request for oral argument in a telephone conference call with the Board and parties on the record.

CASE'S RESPONSE TO SPECIFIC ALLEGED "DISCOVERY REQUESTS AS TO WHICH REPLIES ARE INADEQUATE":

13-9 (see page 5 of Applicants' Motion):

Applicants' First Set, Item 2 (and Item 6):

CASE, and Mrs. Ellis in particular, were amazed and shocked at Applicants' comments regarding the log books maintained by Darlene Stiner and relied upon by her in the February and March hearings. We apologize in advance to the Board for the amount of detail necessary regarding this item; however, Applicants' failure to discuss this with CASE prior to filing its written motion necessitates it. Applicants' statement that we had originally agreed to provide for inspection and copying the original of Mrs. Stiner's log book is correct, as far as it goes; however, there the similarity between Applicants' statements and the truth ends. When Mrs. Ellis expressed to Mr. Reynolds her uncertainty as to when Mr. or Mrs. Stiner would be in the Dallas/Fort Worth area (since we did not anticipate their participating in the April hearings because Mr. Stiner had a new job), Mr. Reynolds specifically stated to Mrs. Ellis something to the effect of: "Why don't you just go ahead and make a copy of it for us." And later, when we were preparing to respond to Applicants' Ninth Set, Mrs. Ellis asked Mr. Horin to check with Mr. Reynolds just to be sure that a copy was still acceptable and to get back with her; Mr. Horin never responded further, and Mrs. Ellis assumed that a copy would be acceptable, and responded accordingly (pages 2 and 3 of CASE's 5/30/84 Partial Answer to Applicants' Ninth Set of Interrogatories to CASE and Requests to Produce).

As indicated in our 5/30/84 Partial Answer (page 3), Mrs. Stiner had placed copies of the books in the mail to CASE (as it happened, Mrs. Stiner had understood that only the pertinent portions would be required, so she had not made

complete copies); however, the Post Office promptly lost the envelope she sent and has as yet been unable to locate it. In the meantime, Mrs. Ellis has located a complete copy which she had made of the larger of the two little books; however, she only made a copy of the one pertinent page from the other little book and does not have anything further on it.

In discussions with Mr. and Mrs. Stiner on the evening of June 21, an additional complication has arisen. Mr. and Mrs. Stiner's understanding had been that only the pertinent portions relied upon in Mrs. Stiner's testimony were required. Although Mrs. Ellis attempted to explain NRC regulations in this regard, they both expressed concern and questioned how Mrs. Stiner could be forced to provide information which they believe Applicants will use to cover up, rather than correct, problems which may still exist at the plant. In this regard, they specifically were concerned with information in the book relating to Mrs. Stiner's inspections of the diesel generators. They also stated that they could not understand why Mrs. Stiner should have to provide documents when the Applicants have not yet fully responded to CASE's earlier requests to Applicants for documents (specifically the personnel records) on which Applicants' witnesses relied in previous hearings; Mr. and Mrs. Stiner are researching this further and CASE will provide Applicants with specific details in this regard as soon as possible.

An additional complication is that Mr. and Mrs. Stiner live in Arkansas; since the books are in their possession (and they do not intend to let them be out of their possession at any time), any inspection would have to be at the home of Mr. and Mrs. Stiner in Arkansas. Further, copying facilities are not readily available. In addition, should Applicants insist upon viewing and copying the little books at the Stiners' home, Mrs. Ellis would have to

insist on being present (at Applicants' expense) (if she had time to go, which she doesn't). This is necessary because of Mr. Reynolds' expressed concerns regarding personal safety (mistaken concerns, we believe, but apparently real to him). It should also be noted that Mrs. Ellis has not yet even broached the subject to Mr. Stiner of Applicants' coming to his home to view the books; it is unknown what his reaction would be, but if he agreed, he would certainly want to be there. This would necessitate viewing during the normal hours when he would be home, which would be late in the evening or on Sunday, since he is having to work about 10 hours a day.

One further complication has resulted from Applicants' refusal to accept a copy of Mrs. Stiner's book. Following the Board's clarification earlier this week of its concerns regarding the diesel generators and Applicants' oversight of the vendor, CASE has again reviewed the copy of the book which we have. We now believe that that portion of the book dealing with Mrs. Stiner's inspections of the diesel generators should be turned over to the NRC for investigation prior to releasing it to Applicants. (CASE has believed for some time that it is this portion of the book in which Applicants are primarily interested.) This is our intent absent a Board Order to the contrary.

So at the present time, CASE's position is that we have a complete copy of the larger of the two books, and a copy of the applicable page on which Mrs. Stiner relied in her testimony of the smaller of the two books. We are willing to provide Applicants with copies of both copies, with the exception of those portions of the larger of the two books which deal with Mrs. Stiner's inspections of the diesel generators, which we will expurgate prior to providing Applicants with copies. After the NRC has had the opportunity to investigate regarding the diesel generators, we will supply Applicants with unexpurgated

copies of those portions as well.

Should Applicants insist on anything further, CASE requests oral argument in an on-the-record conference call with the Board and parties. We are not prepared to offer anything further in this regard absent a Board Order.

13-9 (see page 5 of Applicants' Motion); (continued):

Applicants' First Set, Item 13(b) and (c):

CASE does not consider that our previous answer was deficient; however, we can now further clarify and supplement our response as follows:

Further details regarding the general comments contained in CASE's 5/30/84 Partial Answer insofar as CASE's belief that Applicants have failed to satisfy virtually all of the provisions of Appendix B are contained in CASE's 6/12/84 Proposed Standard for Litigating Allegations of Intimidation, C. Harassment And Intimidation: What CASE Will Prove, pages 8-10.

Also, additional information which we probably should have mentioned before (but were thinking might possibly be a matter of settlement) is contained in CASE's 8/22/83 Proposed Findings of Fact and Conclusions of Law (Walsh/Doyle Allegations); these are summarized in Section XXX, SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS, and detailed in the referenced portions of that pleading. As discussed therein, these specifically reference Appendix B and more specifically Criteria III, XV, XVI, and XVII.

(See also CASE's 2/16/84 Expected Findings of Fact for February 20-24, 1984 hearings.)

CASE is presently reviewing information received recently on discovery, and will supplement our response when we have additional answers.

In regard to CASE's discussion on pages 4-5 of our 5/30/84 Partial Answer regarding the implied lawsuit against CASE by Applicants should we use documents from the rate hearings in the licensing hearings, see comments on page 2 and footnote * on page 1. We now believe that we may use some or all of the following documents obtained in the rate hearings (but which CASE believes should have already been provided by Applicants to CASE, as discussed with Susan Spencer and Applicants' attorney regarding intimidation today, under CASE's question 11, 12/1/80 CASE's Second Set, requested to be updated by CASE's 3/14/84 Nineteenth Set -- see CASE's 4/16/84 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, pages 13 and 14):

939 SIS Record for Monitoring QA/QC Programs, by Authorized Nuclear Inspectors (ANI's) (Hartford Steam Boiler):

314, 10/14/82

322, 11/11/82

327, 11/18/82

334, 1/13/83

339, 3/1/83

341, 3/8/83

346, 4/21/83

347, 4/21/83

353, 6/2/83

355, 6/7/83

356, 7/1/83

357, 7/2/83

362, 8/3/83

361, 8/11/83

939 SIS Record (continued):

363, 8/18/83

364, 8/23/83

365, 10/7/83

366, 10/21/83

369, 11/9/83

367, 11/18/83

371, 2/6/84

932 SIS Report, by Authorized Nuclear Inspectors (ANI's) (Hartford Steam Boiler):

11-006, 10/14/82

10-016, 12/20/82

18-005, 1/10/83

9-002, 4/21/83

G-044, 5/26/83

4-003-2, 6/22/83

G-051, 6/29/83

10-022, 6/30/83

16-009, 9/27/83

10-024, 10/5/83

10-030, 1/5/84

10-031, 1/24/84

5-002, 2/10/84

10-032, 2/17/84

10-033, 4/13/84

10-034, 4/18/84

As stated, we may use some or all of the preceding documents from the rate hearings; we are not yet certain, and have not yet thoroughly analyzed them. We will supplement our response as soon as we know the answer ourselves. If Applicants have any objections to CASE's supplying any of the preceding information to the Licensing Board, please advise us in writing immediately. If we have not heard from you to the contrary by 7/9/84, we shall assume that you have no objections and will proceed accordingly. If you do have any objections, please let us know immediately so that we can request that this be included in our request to the Board for oral argument in an on-the-record conference call.

It should be noted that we believe 939 367 and 932 G-051 indicate that there has been intimidation of ANI's. See footnote * on page 1. In our discussions today with Susan Spencer and Applicants' attorney on intimidation matters, we indicated that we want to see the rest of the ANI Reports and ANI SIS Records under Applicants' response to CASE's 18th Set, Question 3, on intimidation.

We will be supplementing our responses as soon as we have additional answers.

Applicants' Third Set of Interrogatories:

Item 4. (See Applicants' page 7):

CASE is not certain we understand Applicants' comments in this regard. If there is a difference between Applicants' Question 4 of their Third Set and their Question 13 of their First Set, we ask that they explain the difference. If it is the same, we ask that one of them be stricken as being cumulative,

unnecessary, and burdensome.

Item 11. (See Applicants' page 7):

Other than what we have already stated, we don't know. We will supplement when we do know the answer ourselves.

Applicants' Fifth Set of Interrogatories:

2-5 and 3-5 (see Applicants' page 8):

Applicants have misstated CASE's response, which refers back to our answer to Applicants' Third Set, question 11; Applicants have not stated that CASE is incorrect in our assumption. Our answer to their Third Set, question 11, is discussed above. Obviously, we cannot supply the answer to 2-5 (supplemented) until we know the answer to Item 11 (supplemented). It should also be noted that CASE answered this question extensively when we answered Applicants' Motion for Summary Disposition of CASE's Contention 5 (see CASE's 6/2/82 Response to Applicants' Motion for Summary Disposition of CASE's Contention 5); see especially CASE Exhibit 2 (a 184-page document) attached thereto, which specifically identified which Criteria of 10 CFR Part 50, Appendix B was violated. We have not made an analysis of those I&E Reports since that time (i.e., not for rest of 1982, 1983, and 1984). (See also discussion of I&E Reports contained at pages 7 through 22 of CASE's 10/18/82 Response to Board's Directive Regarding CASE Exhibits; although this does not answer the specific question, Applicants may find it helpful to avoid surprise.) It should also be noted that each NRC I&E Report which contains a violation states in the report which particular Appendix B criteria has been violated. CASE does not believe it should be required to perform the detailed analysis which Applicants seek.

With regard to Applicants' other comments regarding what amounts to CASE's having to file Findings of Fact on everything Applicants want to know about prior to the time such Findings are required and in some instances prior to hearings on the issues or even the completion of discovery on issues, we note that CASE has already filed a response to the Board's 3/15/84 Memorandum, and we refer the Board to our comments therein (see CASE's 4/2/84 Motions Regarding Board's 3/15/84 Memorandum (Clarification of Open Issues)). Further, Applicants' proposal goes far beyond the Board's referenced Orders and would require CASE to prepare its Findings far in advance of what is necessary, fair, or equitable, and impose a standard on this Intervenor (with already stretched reserves far smaller than those of Applicants or NRC Staff) which is not imposed on the other parties in these proceedings. We also note that, in several instances, what CASE relies upon regarding certain aspects of our Contention 5 are dependent upon reports which are anticipated from Applicants or NRC Staff.

5-5c. (Applicants' page 10):

As indicated in our previous answers to 5-5c, 22-5, 23-5, and 24-5, we have not completed the detailed analysis for which Applicants call, and we do not believe that we should be required to perform one at this time.

Applicants' Sixth Set of Interrogatories

1.6.d and 1-6.e (Applicants' pages 10 and 11):

As stated in our previous replies, CASE has not made the detailed analysis which would be required to answer Applicants questions, and we do not believe that we should be required to perform such analysis at this time.

6-6 through 11-6 (Applicants' page 11):

Applicants have again misstated CASE's responses (page 6 and 7 of CASE's 5/30/84 Partial Answer). Part of our answers is that we don't know at this time. In addition, some of Applicants' questions would require CASE to perform detailed analyses in order to respond to Applicants' questions; we object to having to perform such analyses at this time. We will supplement our answers as soon as we have the answers ourselves.

30-6 and 31-6 (Applicants' pages 11 and 12):

CASE does not know exactly what portions of the NRC Staff's trend analyses we will rely on; we have already answered the questions to the best of our ability. To answer more accurately would require detailed analyses to be performed in order to answer Applicants' questions; we object to having to perform such analyses at this time. We will supplement our answers as soon as we have the answers ourselves.

In responding to all of these interrogatories, CASE has answered to the best of our ability based on the information we now have. We have recently received numerous documents on discovery which may well change our original general concepts of what documents we will rely on. We do not believe that we should be required to perform detailed analyses which would be required in order to answer Applicants' interrogatories at this time.

For the reasons stated herein, CASE urges that the Board deny Applicants' Motion in its entirety; in the alternative, CASE requests that the Board grant CASE oral argument in an on-the-record conference call with the Board and parties.

Respectfully submitted,

Juanita Ellis

(Mrs.) Juanita Ellis, President
CASE (Citizens Association for Sound Energy)

see Service List attached

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

By my signature below, I hereby certify that true and correct copies of CASE's Answer to Applicants' Motion to Compel Answers to Applicants' Ninth Set of Interrogatories to CASE and Requests to Produce and Request for Oral Argument have been sent to the names listed below this ~~22nd~~ 23rd day of June, 1984, by: Express Mail where indicated by * and First Class Mail elsewhere.

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