

RELATED CORRESPONDENCE

October 29, 1984

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONBEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CASE OPPOSITION TO MOTION TO STRIKE OF O.B. CANNON

The Motion to Strike is founded on several faulty assumptions:

1) It incorrectly assumes that confusion about the sequence of events or a clear memory of them (a point acknowledged by the Board and easily correctable by the upcoming testimony) taints the entire testimony including points on which Mr. Norris was quite clear -- e.g. his opinion of Lipinsky and his opinion of the problems or lack of problems at CPSES.

2) It incorrectly assumes that Rule 403 of the Federal Rules of Evidence, which is on its face written to protect juries from prejudicial testimony, applies to strike testimony before an administrative three person hearing board consisting of two lawyers and a scientist.

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3) It incorrectly assumes that if the testimony casts a shadow on Mr. Norris' veracity the shadow will be lifted by striking the testimony and thus essentially eliminating any opportunity for the witness to clarify the record.

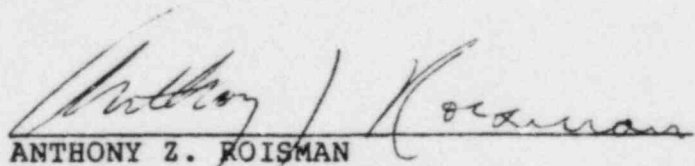
4) It incorrectly assumes that the Board acted in an improper manner by not stopping the testimony on the first day when Mr. Norris' confusion was apparent and neglects the fact that (a) it was Mr. Norris who failed to fully respond to the subpoena and failed to produce all relevant documents in O.B. Cannon's files thus creating much of the confusion, (b) it was Mr. Norris who spent considerable time with counsel for TUGCO going over the scope of the testimony expected and chose to come to testify without better preparation, (c) it was not until the second day when Mr. Norris' memory improved that the Board raised a question about his candor and shortly thereafter based on Mr. Norris' concerns the examination was halted.1/

1/ Cannon alleges a "basic lack of procedural fairness" occurred. We take strong exception to this unsupported and insupportable assertion. Mr. Norris had been subpoenaed some time before the hearing. He had access to counsel for CPSES who could have advised him of the Board's probing examinations and his need for counsel. He knew what documents the Board wanted and did not produce them. He could have brought counsel and did not. It is Mr. Norris who created his own problem and not any procedural unfairness and to allege to the contrary is an unwarranted attack on the hearing process.

Viewed in light of these erroneous assumptions it is clear the Motion to Strike should be denied. Of great importance is that on many points Mr. Norris gave very clear testimony which should not now be removed merely because at other places he was less clear. The Board has already determined that it does not deem the confusing or poorly remembered portions of prior testimony to be necessarily damaging in and of themselves to Mr. Norris provided his subsequent testimony is candid and complete. (Memorandum; Testimony of O.B. Cannon, October 4, 1984) But to the extent Mr. Norris was previously unclear by design -- i.e. to thwart the inquiry in an effort to protect CPSES, then the prior testimony is not only pertinent but crucial.

We are confident the Board will have no difficulty distinguishing between honest confusion and any other motivation and believe that in order to have a full record before it the Board should deny the Motion to Strike.

Respectfully submitted,



ANTHONY Z. ROISMAN
Trial Lawyers for Public Justice, PC
2000 P Street, N.W., Suite 611
Washington, D.C. 20036
(202) 463-8600

Counsel for CASE

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CERTIFICATE OF SERVICE

By my signature below, I hereby certify that true and correct copies of CASE's Opposition to Motion to Strike of O.B. Cannon have been sent to the names listed below this 29th day of October, 1984, by: Express mail where indicated by *; Hand-delivery where indicated by **; and First Class Mail unless otherwise indicated.

Administrative Judge Peter B. Bloch
U.S. Nuclear Regulatory Commission
4350 East-West Highway, 4th Floor
Bethesda, Maryland 20814

Herbert Grossman
Alternate Chairman
ASLB Panel
U.S. Nuclear Regulatory Commission
4350 East-West Highway, 4th Floor
Bethesda, Maryland 20814

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

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

Ms. Ellen Ginsberg, Law Clerk
U.S. Nuclear Regulatory Commission
4350 East/West Highway, 4th Floor
Bethesda, Maryland 20814

Nicholas S. Reynolds, Esquire
Bishop, Liberman, Cook,
Purcell & Reynolds
1200 17th Street, N.W.
Washington, D.C. 20036

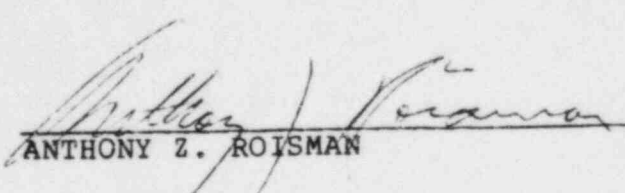
Stuart Treby, Esquire
Geary S. Mizuno, Esquire
Office of Executive Legal Director
U.S. Nuclear Regulatory Commission
7735 Old Georgetown Rd., 10th Floor
Bethesda, Maryland 20814

Docketing & Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Renea Hicks, Esquire
Assistant Attorney General
Environmental Protection Division
Supreme Court Building
Austin, Texas 78711

Mrs. Juanita Ellis
President, CASE
1426 S. Polk
Dallas, Texas 75224

Joseph Gallo, Esquire
Isham, Lincoln & Beale
1120 Connecticut Avenue, N.W.
Suite 840
Washington, D.C. 20036


ANTHONY Z. ROISMAN