

8/13/84

RELATED CORRESPONDENCE

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 50-446-1

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USNRC

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CASE'S MOTION FOR ADDITIONAL TIME IN WHICH TO RESPOND
TO APPLICANTS' MOTIONS FOR SUMMARY DISPOSITION ON DESIGN/DESIGN QA ISSUES

Pursuant to 10 CFR 2.730, CASE (Citizens Association for Sound Energy), Intervenor herein, files this, its Motion for Additional Time in Which to Respond to Applicants' Motions for Summary Disposition on Design/Design QA Issues. Attached to this Motion is the Affidavit of CASE Witness Mark Walsh, which was prepared at the request of CASE President Mrs. Juanita Ellis to explain to the Licensing Board the need for additional time to respond to the many Motions for Summary Disposition which the Applicants have filed.

Initially, Mr. Walsh had anticipated that he would have more time available to devote to answering the Motions. However, for the past couple of months or so, he has had to work overtime at his full-time job. As explained by Mr. Walsh, he receives no compensation from CASE for the work he does for CASE, and he must rely on his other job for a living. He had thought that the overtime would be completed some time ago; however, it has in fact increased, to the point where he is now working six days a week and sometimes even on Sundays, as much as 14 hours a day. (Walsh Affidavit at page 1.)

As stated by Mr. Walsh, Jack Doyle has also been working a lot of overtime for the past several months as well, and Mr. Walsh states that he knows from his own personal experience how difficult it is to work 15 to 20 hours a week overtime at a regular job, then try to work on Motions for Summary Disposition in the evenings and on Sundays -- especially on detailed and complicated engineering/design matters. As Mr. Walsh states, it must be even more difficult for Mr. Doyle, and he has not been able to assist as much as Mr. Walsh (and CASE) had anticipated. (Walsh Affidavit at page 1.)

As discussed by Mr. Walsh, it is obvious that it took the Applicants, with virtually unlimited staffs, contractors, and consultants, months to prepare the Motions. It should also be noted that the NRC Staff, along with its consultants, have not yet been able to answer a single Motion for Summary Disposition (at least which was originally filed as a Motion for Summary Disposition, excluding the A500 Steel response by Applicants) either, for the same reason. Mr. Walsh read that portion of the transcript of the 7/26/84 telephone conference call where the NRC Staff's attorney, Mr. Mizuno, discussed the difficulty the Staff was having with answering the Motions. (Tr. 13,838.) As Mr. Mizuno discussed regarding the Staff, CASE should not be given any less opportunity to review the Motions in depth than the Applicants had to prepare them. (Walsh Affidavit at pages 1 and 2.)

Mr. Walsh explains that another problem for him is that it is very difficult for him to put his thoughts down on paper about these technical issues, and that since this is being done under oath, and because he wants the Board to have the complete picture of the problems, this has led to a lot of rewriting and editing. He explains that handling the design issues

in writing, although it will probably be easier for the Board, is more difficult for him (although he states that realistically, it would probably have been impossible for him to take additional time off from work for a hearing as he has in the past to attend hearings). (Walsh Affidavit at page 2.)

As discussed by Mr. Walsh, the procedure set forth by the Board in the 7/26/84 telephone conference call, whereby we have to beat the Staff in filing our answers, is going to be very difficult, and probably impossible to accomplish. In addition to obtaining from Applicants new documents and information, in order to properly and adequately respond to the Applicants' many Motions, he must do a tremendous amount of researching of thousands of pages of transcript, thousands of documents (already in the record, received on discovery, telecons received from Cygna, etc.) and (if we had time, which we don't) the recently received Phase 3 Cygna Report, which is a burden which is not shared by either the Staff or the Applicants. (Walsh Affidavit at page 2.)

However, as stated by Mr. Walsh, the information derived from such research is absolutely essential for the Board to make an informed decision regarding these important issues and for the record to be complete. It must be remembered that he and CASE would not be having to answer these Motions now at all had the Board not allowed Applicants to relitigate the design issues. The Applicants failed their chance where the parties had over six months to do findings, and now the Applicants want CASE and Messrs. Walsh and Doyle to respond to documents just as important as findings but in only

a few months' time. It is just as important that CASE be allowed now to complete the record. (Walsh Affidavit at page 3.)

As discussed by Mr. Walsh, one of the problems we have encountered is that CASE has not received some of the documents which the Applicants had promised us on discovery. (See letter to William Horin, Counsel for Applicants, being sent at the same time as this Motion, containing a summary of the open discovery items.) This has made it difficult to plan which Motions we can answer first, and we had to finally file some answers last week without having received all of the information requested. Not receiving the information requested is not CASE's fault -- it is the Applicants' fault, but it appears that CASE is to be penalized for it. (Walsh Affidavit at page 3.)

Mr. Walsh further states that he needs time to review the Phase 3 Cygna Report (which we have not had time to do yet -- the additional copy for Jack Doyle was just received 8/1/84, and he just got it last week-end). As the Board will notice in the Answers we've filed so far, we've referenced a few items from it, but Mr. Walsh really has not had time to do more than just quickly scan a few pages of it. Mr. Walsh states that he is convinced that the Phase 3 Cygna Report contains information important for the resolution of these Motions for Summary Disposition, and that the record will suffer without such information being included in our Answers at this time. But without additional time to review the Report, we will not be able to include it. (Walsh Affidavit at pages 3 and 4.)

As indicated by Mr. Walsh, in conclusion, we can only say that we will

do the best we can to comply with the Board's directives. He states that he will be more than overjoyed when these Answers are completed, so that he will not need to do all this additional and unnecessary work because the Applicants screwed up the first time. (Walsh Affidavit at page 4.)

We have been told by the Staff that they plan to file Answers to the following eight Motions sometime during the week of 8/13/84, probably around the 15th; they have not indicated which they will be filing first:

AWS/ASME (design) -- Answered by CASE

Richmonds -- Not answered yet by CASE; will take considerable time;

Applicants have agreed (in the 8/6/84 CASE/Applicants/Staff telephone conference call) to provide documents. These documents are essential for CASE's position. (The Staff was to have had meetings with the Applicants in Bethesda on August 8 and 9 to discuss Motions for Summary Disposition. As Mr. Walsh states, we don't know whether or not Richmonds were discussed, but the transcripts from such meetings have been very helpful in the past, and it may well be that there will be helpful information in these as well. CASE hasn't received transcripts of the August 6, 8, or 9 transcripts yet.)

OBE/SSE Damping Values -- Answered by CASE

U-Bolts as 2-way restraints -- Not answered yet by CASE

Safety Factors -- Not answered yet by CASE

Friction -- Answered by CASE

Section Properties -- Being sent at same time as this Motion by CASE

Gaps -- Being sent at same time as this Motion by CASE

The Staff has also indicated that they are working on:

Generic stiffnesses -- Not answered yet by CASE

Mr. Walsh states that there is absolutely no way we can possibly answer all of the Motions the Staff has indicated they plan to file Answers to this coming week, but that we plan to answer them in the following order, as quickly as we can:

U-Bolts acting as 2-way restraints -- we have been working on this some already and should be able to get it out next week-end

Safety Factors -- we have been working on this some already and should be able to get it out next week-end

Richmonds

Mr. Walsh states that he is especially concerned about the Richmond inserts, which is one of the most important items with which he is concerned, and is one which will take a tremendous amount of time to complete. (Walsh Affidavit at pages 4 and 5.)

CASE can add little to the comments contained in Mr. Walsh's affidavit. We regret that we do not have attorneys to assist in the preparation of our Answers, as Applicants and Staff do. We are, of course, trying to be as much help as possible, but the amount of assistance which CASE's few volunteers can be is very limited on these highly technical and complicated issues.

We ask the Board's assistance regarding the matter of discovery. (See discussion in CASE's 8/13/84 letter to William Horin, which is being sent at the same time as this pleading.) CASE has spent a lot of time (not to mention money for telephone calls) attempting to obtain the documents which we have requested on discovery. We now regretfully believe that Applicants

are deliberately dragging their feet in an effort to hamstring CASE's efforts to adequately respond to Applicants Motions. As indicated in the attached letter, Applicants have not followed through in supplying several documents which have been promised for some time. We have already had to file answers without having needed documents (in some instances receiving such documents right after we had already filed our answers). This is not only unfair to CASE, but it means that the record will suffer and be incomplete. We ask that the Board establish some clear guidelines to put Applicants on notice that any delay on their part in getting promised documents into our hands will automatically mean at least an equal amount of delay in CASE's being able to answer. "Informal discovery" with the Applicants has never been very satisfactory for CASE. It takes a large bite out of our already severely limited time to follow up on open items. And recently (see Transcript of 7/26/84 on-the-record telephone conference call), we were penalized for not being diligent enough in pursuing these open items. Because of the other matters necessary for CASE to address (in addition to these Motions for Summary Disposition), we ask the Board's assistance in relieving this additional and (we believe) unnecessary burden on CASE.

In regard to documents necessary for CASE's Answers, and in regard to CASE's need for additional time to answer, recent decisions such as in the Byron case, we believe, send a clear message that the Licensing Board must have a complete record on which to base its decisions. This is also mandated in NRC regulations (see, for example, 10 CFR Part 2, Appendix A, V.(g)(1)) in order for the Board to make a reasoned and informed decision under 10 CFR 50.57.

There is also a matter of fairness to be considered. CASE's position in this regard was discussed in the Board's 2/8/84 Memorandum and Order (Reconsideration Concerning Quality Assurance for Design) at pages 34-36, and we will not belabor those points here. In that Order the Board stated (page 35):

"We are permitting Applicant to reopen the record without a showing of good cause because it does not seem to us logical or proper to close down a multi-billion dollar nuclear plant because of a deficiency of proof. While there would be some 'justice' to such a proposition, there would be no sense to it." (Emphasis added.)

Surely it would not be logical, proper, or make sense to now deny CASE the additional time necessary to adequately answer Applicants' numerous and extremely burdensome Motions for Summary Disposition -- especially after Applicants have already been given an additional eight months in which to prove their case, without their ever having been required to show good cause for such an extension to begin with. (It should also be noted that in Applicants' most recent filing on their projected fuel load date, they admit that they are now (apparently irrevocably) three weeks behind their overly optimistic schedule to fuel load.)

Contrary to what was required of Applicants, CASE submits that we have already shown good cause, in the form of the Answers to Motions for Summary Disposition which we have already filed. They are not frivolous or simple. To the contrary, they contain information which the Licensing Board needs in order to make a reasoned decision, and which it would not have received in any other way but through CASE and Messrs. Walsh and Doyle. (See, for instance, CASE's Answer to Applicants' Motion for Summary Disposition on gaps, being filed at the same time as this pleading; this took a tremendous amount of time to research and prepare.)

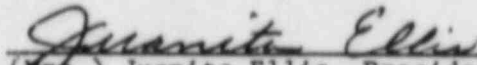
CASE wishes that it were possible to state with absolute precision when we will be able to reply on each specific Motion for Summary Disposition. This instant pleading is being typed at 1:30 A.M. on Monday morning, following several excruciatingly difficult sessions in order to complete the two Answers we are able to put into the mail 8/13/84. Between assisting in answering these Motions for Summary Disposition and the other many matters requiring attention, Mrs. Ellis is (and has been for some time) working 12 to 16 hours a day, seven days a week. There is only so much which it is humanly possible for our two engineers and our small volunteer organization to do in a limited period of time. We will do the best we can -- we can do no more than that.

For the reasons discussed herein, CASE moves that the Board:

- (1) Order Applicants to immediately supply the documents which CASE requested in regard to A500 Steel and documents requested in the 6/6/84 and 6/11/84 Applicants/Staff/CASE telephone conference calls (see discussion in CASE's 8/13/84 letter to William Horin under subject of Open Discovery Items for Motions for Summary Disposition);
- (2) Establish some clear guidelines to put Applicants on notice that any delay on their part in getting promised documents into our hands will automatically mean at least an equal amount of delay in CASE's being able to answer (without the additional burden on CASE of having to continue to follow-up with Applicants);
- (3) Reconsider its order in the 7/26/84 telephone conference call that we must file our answers before the NRC Staff files its answers;

- (4) Grant CASE additional time (with the understanding that we will make a sincere, good faith effort to respond as quickly as possible and attempt to answer before the Staff on each item) in which to answer Applicants' Motions for Summary Disposition; and
- (5) Provide an expedited response to CASE's instant Motion.

Respectfully submitted,


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

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