

May 9, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

DOCKETED
USNRC

In the Matter of)
)
TEXAS UTILITIES GENERATING)
COMPANY, et al.)
)
(Comanche Peak Steam Electric)
Station, Units 1 and 2))

'85 MAY 10 10:25
Docket Nos. 50-445-2
and 50-446-2
OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

CASE MEMORANDUM IN SUPPORT OF ITS CASE
MANAGEMENT PLAN AND IN OPPOSITION TO
APPLICANT'S CASE MANAGEMENT PLAN (DOCKET 2)

Applicant has submitted a plan for the procedure to be followed for the remainder of the operating license for the Comanche Peak nuclear power plant. (See Applicant's Proposed Case Management Plan, submitted April 26, 1985). CASE opposes the adoption of this plan for the reasons set forth below:

Essentially Applicant has not offered any "management". As can be seen by comparing the two Plans, Applicant seeks to establish a date to file some unidentified document which will argue that some (probably all) issues in Docket 2 are moot, and proposes a time schedule for responses by the Staff and CASE. However, whether any issues in Docket 2 are moot is only one of many preliminary matters to be resolved in Docket 2. CASE has listed other items merely as examples of other matters which surely should, in the interest of organization and expediency, be decided as soon as possible. Presumably all parties agree that

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the issues identified in CASE's March 15, 1985 and April 18, 1985 letters are relevant. No party in their response to CASE's letter argued otherwise, or asserted that their resolution is not essential to advance the case.

In addition Applicant's Plan assumes that the parties can address a critical issue (i.e. whether a substantive issue is moot or not) without the benefit of any discovery with respect to that issue. This assumption is as erroneous as it is self-serving.

For instance, Ms. Barnes testified that the use of mismatched valve discs created a serious material traceability problem and that when she raised this issue with her supervisors she was pressured to drop the matter. Recent TRT findings confirm that there is a problem of material traceability with the valve discs due to random interchanging of parts. Applicant has now agreed to develop a plan to replace validated deficiencies, including the valve discs or otherwise correct the material traceability problem related to those discs. (See the Comanche Peak Response Team (CPRT) Program Plan (Draft) and Issue Specific Action Plan, issued April 23, 1985.) However, the agreement only goes to those disc problems confirmed by the TRT. Applicant apparently asserts that the Linda Barnes issue is therefore moot.

CASE asserts that the Board cannot rule on that claim until the parties know:

- 1) How broadly did the TRT investigate the problem and what was the basis for the boundary of their investigation -- e.g. did they check all valves, all safety components with interchangeable parts, or all

equipment whose safety inspection was under the jurisdiction of the person who so casually dismissed Ms. Barnes problem?

- 2) What was the root cause of the deficiency -- e.g. why did the discs get interchanged when it was an unacceptable procedure, who authorized that activity, and why didn't it get identified as improper earlier?
- 3) What is the precise Applicant proposal for solving the problem, including the underlying justification and basis for believing the program is acceptable? A mere affidavit, asserting conclusions without underlying documentation can certainly no longer be acceptable to this Board.
- 4) And, finally, what about the pressure which was placed on Ms. Barnes to violate or ignore procedural requirements? The implications of such pressure surely have not been mooted by the simple eleventh hour acknowledgement of Applicant that Ms. Barnes identified a real problem. The issue of character and competence of the Applicant, and the failure of the QA/QC program to identify deficiencies, remain unaddressed by Applicant's program.

In essence the Applicant's Plan proposes to file several summary disposition motions. These motions would require CASE to respond without the ability to develop sufficient data, through discovery or the normal hearing process, to respond to the summary disposition motion. The incredibly short time period

suggested for responses further reveals the Applicant's ulterior motive of closing out Docket 2 without resolution of the issues raised by CASE.

On numerous occasions Applicant has sought to postpone addressing any substantive matter until its CPRT report is issued. We believe that as soon as the report is issued Applicant intends to use it to in effect seek summary disposition on Docket 2 issues. But CASE has had no opportunity to participate in the development of the CPRT report, nor any ability to probe the TRT or CPRT methodology or conclusions, CASE cannot be expected to fully address the impact of the CPRT report on the issues in the hearing until it has had full discovery on that report, the bases for it, how it was developed and what are the implications of it for a remedial program.

By contrast the case management plan proposed by CASE does not seek to resolve substantive issues prematurely, but to decide only on procedures for resolving those substantive issues, to define categories of substantive issues which are in the Docket 2 hearing and identify those categories which are excluded. That this is the only logical procedure to follow is evident from the course of events to date. For example, originally Applicant had the burden to prove it was entitled to an operating license. It presented an affirmative case in support of that license in the form of the license application and the FSAR. CASE then identified issues, had discovery and went to hearings. In both dockets CASE has had substantial success. In our view Applicant's affirmative case is insufficient to justify issuance of a license. The Staff has agreed, in principal if not in fact,

and is issuing SSERs requiring substantial corrective action. The Board agreed, at least on design issues, and issued its December 5, 1983 Partial Initial Decision giving Applicant advance notice of its failure to demonstrate acceptable evidence to support design adequacy. CYGNA agrees and has filed one hundred pages of RILs, many of which remain unresolved, all of which have yet to have articulated "root causes" and generic implications reviewed. Even Applicant agrees -- it has withdrawn motions for summary disposition, dismissed and/or transferred former key employees, reshaped its legal team and issued an initial CPRT program plan designed to correct the TRT identified and verified deficiencies.

In other words we are back at square one. Applicant's CPRT report will be, in effect, an amended FSAR without the usual supporting documentation or scrutiny by the Staff. Upon issuance CASE will study it, identify categories of issues raised by the CPRT proposal, obtain discovery and prepare to resume hearings on contested issues. Resolving issues of alleged mootness at the time the CPRT report is issued would be grossly inappropriate. The CPRT will itself provide the basis for articulation of categories of issues. An example of the inappropriateness of Applicant's plan would be if the tables were turned and the license was denied on the basis of the TRT findings alone, without allowing Applicant months with free access to the Staff to develop a CPRT report to respond to the deficiencies. Applicant's well known objection to the former must apply with equal force to the latter.

Applicant's recently released program plan (not served on the parties by Applicant but merely placed in the PDR by the NRC) is itself revealing evidence of the grand gulf between Applicant's "case management plan" and a realistic hearing procedure. Even a cursory review reveals that Applicant has devised a system to avoid the most crucial issues in Docket 2 -- the root causes and generic implications of a major QA/QC breakdown. In the proposed plan Applicant only looks for root causes of problems that it finds have safety significance. (CPRT Program Plan, Rev. 2, p. 7, Root Cause Determination") Thus, for instance under Applicant's proposed plan the multi-level failures of linerplate inspections and paint coatings will never be investigated or trended. As we already know Applicant has dismissed their safety significance by narrowing the safety importance of linerplates to water-tightness and putting all paint coatings on the exempt list. Yet the root cause of both of those failures, which occurred when Applicant believed the systems had full quality significance, are crucial in understanding how pervasive the safety failures caused by the "wide-spread" breakdown of the QA/QC program are. The proposed program plan is essentially an elaborate repair and damage mitigation program for identified problems only. This is precisely why the harassment and intimidation docket is critical to resolution of the question of the status of the plant. The identifiable problems are almost exclusively from the small number, comparatively, of individuals who risked coming forward to tell their tales. Yet everyone knows that these known

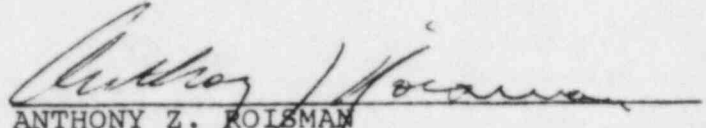
allegers and allegations are only a small part of the whole of deficient conditions. The proposed program does not attempt to find out why the system failed, how broad are the implications of the failure, what to do about the failures. Even the new "SAFETEAM" program to identify known deficiencies today is premised on a dependence that individuals will identify "problems", when clearly the bulk of the workforce never even recognized the deficient conditions to begin with. Obviously Applicant knows its proposed program will not withstand the scrutiny of discovery and hearings and has proposed a plan to prevent either.

The proposed program plan demonstrates that it is irresponsibly premature to file motions for summary disposition. At best the parties are ready to begin to define the scope of this newly commenced licensing hearing. The Board must reject this attempt by Applicant to eliminate the giving of any answers to the questions raised by CASE and the worker witnesses.

The CASE case management plan attempts to short-cut months of useless wrangling. The Board and the parties need the information sought in order to properly define the categories of issues and intelligently develop a schedule for the hearing. The full explication of categories of issues and the development of positions on undeniably relevant procedural and process issues is essential for the Board to make informed, reasoned decisions.

We urge the Board to reject Applicant's proposed case management plan for Docket 2 and to adopt the CASE proposal.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Anthony Z. Roisman", written over a horizontal line.

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CERTIFICATE OF SERVICE

By my signature below, I hereby certify that true and correct copies of CASE's Proposed Case Management Plan (Docket 2) and Memorandum in Support of its Case Management Plan and Opposition to Applicant's Case Management Plan (Docket 2) have been sent to the names listed below this 9th day of May, 1985, by: Express mail where indicated by *; Hand-delivery where indicated by **; and First Class Mail unless otherwise indicated.

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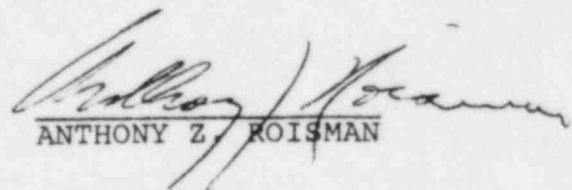
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