

June 7, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

DOCKETED
USNRC

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In the Matter of)
TEXAS UTILITIES ELECTRIC) Docket Nos. 50-445 and
COMPANY, ET AL.) 50-446 OL
(Comanche Peak Steam Electric) (Application for
Station, Units 1 and 2)) Operating Licenses)

OFFICE OF SECRETARY
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APPLICANTS' REPORT REGARDING STATUS
OF REPLIES TO CASE INTERROGATORIES

Pursuant to agreement between the parties (see Applicants' May 30, 1985 letter to Intervenor), Applicants provide this report regarding responses to pending interrogatories. In light of the Board Chairman's clarification¹ of the May 24, 1985, Memorandum and Order (Case Management Plan), this report lists which outstanding discovery requests are ripe for response (that is, will be responded to or objected to by Applicants). Applicants have attempted to state such objections in this report to the extent possible at this time.

The Board has indicated that Applicants should respond if the request is "likely to survive regardless of what the Staff does" (see Memorandum (Clarification of LBP 85-16)). Applicants believe the test under the Board's standard is whether actions by

1/ See Memorandum (Clarification of LBP 85-16), May 30, 1985.

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the NRC Staff, or Applicants in response to NRC findings, will supersede the issues to which the interrogatories are directed, and thereby render answers to those interrogatories unnecessary. Applicants will submit a statement identifying the issues which they believe will remain for litigation, in accordance with the Board's May 24, 1985, Memorandum and Order. The responses below reflect Applicants' preliminary position regarding the ripeness of issues. A detailed explanation of that position will be set forth in the above-described plan.²

^{2/} Applicants acknowledge that future Board decisions regarding the issues to be litigated may alter the obligation to respond to particular requests. The risk of delay associated with the possibility of such changes is, of course, borne by Applicants. We note, however, that the Board has acknowledged that it will afford Applicants an opportunity to respond to the Staff's findings before reaching decisions on the current state of the record (see Memorandum (CASE Motion for Evidentiary Standard), March 12, 1985 at 2). Thus, responding now to interrogatories that Applicants do not believe will remain for litigation would be premature and a waste of the Board's and parties' resources.

APPLICANTS' REPORT REGARDING
PENDING CASE INTERROGATORIES³

The pending interrogatories were filed pursuant to the Board's order reopening discovery in its December 18, 1984, Memorandum (Reopening Discovery; Misleading Statement), LBP-84-56, 20 NRC 1696, 1702. Applicants filed a motion for reconsideration of that Memorandum on January 7, 1985, wherein Applicants agreed to additional discovery relating to the tests and samples in Applicants' motions for summary disposition regarding pipe support design. Applicants objected to reopening discovery with respect to any other matters. The Board Chairman suspended action on that motion pending receipt of additional information.⁴

On February 15, 1985, the Board granted a motion for protective order deferring CASE's discovery requests not related to tests and samples (see Memorandum (Motion for Protective Order)). CASE was to "reactivate" its other requests within one month after the last Staff filing "providing that it considers the underlying information still necessary." The recent clarification supersedes the protective order in that it requires

3/ The "informal discovery" sought in Mr. Roisman's letter of May 28, 1984, is not within the scope of this report or of the agreement between the parties memorialized in the letter of Applicants' counsel dated May 30, 1985. However, Applicants are in the process of reviewing this informal discovery request, with the view toward responding to those requests that bear on issues that are ripe.

4/ Statement By Chairman Peter Bloch, Atomic Safety and Licensing Board (January 9, 1985).

Applicants to respond now to requests that "are likely to survive regardless of what the Staff does," whether or not the requests relate to tests and samples. We view the Board's action as authorizing discovery with respect to matters which are likely to remain the focus of litigation even after the Staff and Applicants complete their plans to address open issues. The obligation to respond to other requests may yet be eliminated by the Board in acting on Applicants' motion. Any other interpretation would need to assume a de facto denial of Applicants' motion for reconsideration, on which Applicants intend to seek final Board action.

A. CASE'S First Set Of Interrogatories Re: Credibility

Interrogatory

Response

1. Intervenor requests all liner plate documentation for Units 1 and 2. We note that witness Neumeyer's testimony related to liner plate travelers for the Unit 2 refueling cavity and transfer canal. The interrogatory goes far beyond those areas. The Board's Memorandum reopens discovery respecting matters already at issue; it does not authorize wholesale discovery as to matters not at issue.

More importantly, in Supplements No. 10 and No. 11 to the Comanche Peak SER, respectively, the TRT reports the conclusions of its review and analysis of technical and QA/QC issues regarding liner plate fabrication and installation. Applicants are preparing an action plan to respond to these issues. For reasons that we will fully explain in our forthcoming plan, Applicants believe that liner plate issues currently before the Board are moot. Further discovery regarding those issues is therefore inappropriate.

2. Intervenor requests numerous documents regarding the protective coatings program. In Supplement No. 9 to the Comanche Peak SER, the TRT concluded that

"a total failure of protective coatings inside containment would not adversely affect the performance of post-accident fluid systems" (p. 1-1). Accordingly, the TRT found that technical problems with coatings lack safety significance. Coatings technical issues are moot in light of the SSER, and this interrogatory is not ripe for response.

B. CASE's Second Set of Interrogatories Re: Credibility

These interrogatories relate primarily to pipe support design issues and the Cygna review. To the extent these matters will remain for resolution in the proceeding and will not be affected by Applicants' program to address outstanding issues, they are ripe for response.

Interrogatory

Response

- | | |
|----|---|
| 1. | This interrogatory is ripe for response. |
| 2. | This interrogatory is ripe for response. |
| 3. | This interrogatory is ripe for response. |
| 4. | This interrogatory is ripe for response. |
| 5. | Applicants will object to this interrogatory as not being relevant to an issue in the proceeding. |

C. CASE's Third Set of Interrogatories Re: Credibility

These interrogatories relate generally to three topics: (1) the document control program at Comanche Peak, (2) the termination of various document control personnel, including Dobie Hatley, and related allegations and (3) Cygna's prenotification regarding documents to be reviewed in a

follow-up audit of the document control system in October, 1983.

Only the first topic, the document control program, relates to a live issue in this proceeding, while the second and third topics do not. With respect to the second matter, the Board excluded those allegations from the proceeding when CASE withdrew Dobie Hatley's testimony (see February 15 and July 26, 1984, Telephone Conferences, at 9331 and 13,825-26, respectively). To the extent the requests concern the termination of other personnel, CASE has never raised the topic as an issue in the proceeding. Finally, the implications of the prenotification matter for Cygna's independence, the issue as to which it was raised by CASE, has already been ruled upon by the Board (Tr. 13115-17, 13471). Applicants set forth below the specific categories into which each request falls, as well as our position with respect to those requests which do not fall within those categories.

1,2,27,28,43-49,
51,53

These requests fall within the scope of the first topic. Questions relating to this topic are not, however, ripe for response in that documentation and document control matters have been examined by the Staff and will be addressed by Applicants in their program to respond to questions relating to this topic.

3-14,17,19,22,
23,24,26,29-37,
38,50,54,57,58.

These requests all fall within the scope of topic 2, above. Thus, they are not relevant to issues in this proceeding.

40-42,50,

These requests all fall within the scope

- 52,55,56 of topic 3, above. Thus, they are not relevant to an open issue in the proceeding.
- 15,16,18,20, These interrogatories are not relevant to
21,25 issues in this proceeding.
39. This interrogatory is objectionable on grounds other than those specified above.

D. CASE's Fourth Set of Interrogatories Re:Credibility

These interrogatories primarily concern design issues relating to pipe and cable tray support design. Applicants previously responded to the portions of the requests which concerned the tests and samples performed in connection with Applicants' motions for summary disposition regarding pipe support design issues (see Applicants' response, dated March 13, 1985). Applicants are preparing a program to address outstanding design issues in an integrated fashion. Accordingly, to the extent this program will envelope subjects addressed in the interrogatories and thereby render unnecessary further consideration of those issues, as heretofore presented in the proceeding, Applicants identify the interrogatories as not ripe for response.

1. This interrogatory is not ripe for response. Some of the requests (portions of items 1.(f)) concern Cygna's review and conclusions regarding unstable supports. These requests seek information as to which Applicants do not have personal knowledge. Accordingly, if CASE intends to pursue those requests further, it should do so with Cygna.

2. The portions of this interrogatory as which Applicants have not previously responded are ripe for response.
3. This interrogatory is not ripe for response.
4. This interrogatory is not ripe for response.
5. This interrogatory is ripe for response.
6. This interrogatory is not ripe for response.
7. This interrogatory is not ripe for response.
8. This interrogatory is ripe for response.
9. This interrogatory is not ripe for response.
- 10-11. These interrogatories concern Applicants' witnesses in the portion of this proceeding addressing welding allegations, which the Board addressed in its Memorandum (Concerning Welding Issues) dated December 18, 1984. Applicants will object to each of these requests as concerning matters which are no longer at issue. Applicants will also object to portions of these requests on other grounds.
12. Applicants will object to this interrogatory.
- 13-16. These interrogatories relate to witnesses or persons involved in the welding allegations. Accordingly, Applicants object to these requests as not being relevant to an issue which remains in the proceeding.
- 17-22. These requests as not relevant to an issue in the proceeding.
23. This interrogatory is not ripe for response.

24. This interrogatory is not ripe for response and is, in part, otherwise objectionable.
25. This interrogatory is not ripe for response.
- 26-31. These interrogatories are not relevant to issues in the proceeding.
32. This interrogatory is not ripe for response.
- 33,34. These interrogatories are ripe for response.
35. This interrogatory is ripe for response, but may be objectionable in part.
36. This interrogatory is ripe for response. Aspects of the interrogatory are, however, objectionable.
37. The instant request is beyond the scope of authorized discovery. Applicants note, however, that Applicants supplement responses to discovery requests as appropriate in accordance with 10 C.F.R. § 2.740(e).
38. See discussion, supra, regarding Applicants' motion for reconsideration.
39. This interrogatory is not ripe for response.
40. This request is not ripe for response, and also is objectionable on other grounds.
41. This request for inspection is beyond the scope of authorized discovery. To the extent CASE intends to inspect documentation, the request is not ripe for response.
42. This interrogatory is irrelevant to issues which remain in the proceeding.

E. CASE's Fifth Set of Interrogatories "Re: Credibility"

These interrogatories primarily concern Applicants' motions for summary disposition regarding pipe support design. Applicants provided a partial response to these requests on April 25, 1985. In that response Applicants identified those requests which did not concern the adequacy of tests or samples in Applicants' motions for summary disposition, which was the scope of discovery authorized by the Board (see Memorandum (Motion for Protective Order), February 15, 1985).

In view of the Board's clarification as to the status of discovery, Applicants have reexamined these requests to ascertain whether requests not concerning tests and samples are otherwise ripe for response. Applicants intend to continue to provide responses relating to the tests and samples regardless of whether they concern issues which are likely to be otherwise disposed of and, thus, would not be ripe for response. Accordingly, we set forth below our position regarding the ripeness of the remaining requests.⁵ Interrogatories not addressed below have been or are already in the process of being responded to. As discussed previously, Applicants consider requests which concern topics to be addressed by Applicants' program not to be ripe for response.

^{5/} Applicants retain their previously stated objections to the interrogatories already responded to where those (Footnote 5 continued on next page)

<u>Interrogatory</u>	<u>Response</u>
4-7.	These interrogatories are not ripe for response.
8.a.,c.	These interrogatories are ripe for response.
9-14.	These interrogatories are not ripe for response.
15-24.	These interrogatories will, in part, be ripe for response. Specific portions of the interrogatories may be objectionable.
25.	This interrogatory is ripe for response.
27.	The subparts of this interrogatory not previously answered are ripe for response. Portions of the interrogatory may be otherwise objectionable.
29-31.	These interrogatories are, in part, ripe for response.
33.	The portion of this interrogatory which concerns the nature of "analytical...or other tests" is ripe for response with respect to certain motions for summary disposition.

(Footnote 5 continued from previous page)
objections were other than that the interrogatory did not concern tests and samples.

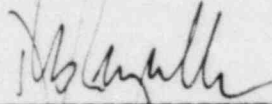
35(first), 36,
38,39

These interrogatories is ripe for
response.

35(second)

This interrogatory is ripe for response.

Respectfully submitted,



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June 7, 1985

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Report Regarding Status of Replies to Case Interrogatories", in the above-captioned matter was served upon the following persons by express mail (*) or deposit in the United States mail, first class, postage prepaid, this 7th day of June, or by hand delivery (**) on the 10th day of June, 1985.

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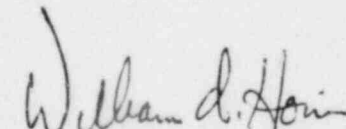
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