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USNRCUNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION JUL 18 AIO:19OFFICE OF SECRETARY
DOCKETING & SERVICEBEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CASE'S RESPONSE TO THE ALLEGED MOOTNESS OF DOCKET 2
ISSUES AND PROPOSED SCHEDULE FOR DOCKET 2I. Introduction

Soon after the Applicants requested a three month suspension of the hearings in Docket Two it became apparent to CASE that there was a radical difference in the parties perception of the issues in Docket 2. On a number of occasions since the hearings were suspended CASE has attempted to bring our concerns about the growing divergence of views to the Board for resolution. In declining to resolve the questions of changing scope and evidentiary standards the Board has continually instructed Applicant that the delays would not prejudice CASE. Applicants now argue that due to the passage of time Docket 2 has become moot.

Contrary to the unexplored assumptions of Applicants' filing, (Current Management Views and Management Plan for

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that the existence of a QA/QC plan and its purported implementation are insufficient to provide reasonable assurance that the plant was constructed and can operate without endangering the public health and safety. ²

The answer to that question is, as Applicants themselves begrudgingly admit, that the plant's QA/QC program flopped. To put it another way, a snapshot taken today of the known information about Comanche Peak, reveals a picture of a plant that fails to meet the requirements necessary for receipt of an operating licence.

Faced with that reality the Applicants have only two options:

- Option 1:** Stand on the record as is and accept the denial of their operating license request, (i.e., deny that any failures exist and refuse to reinspect the plant); or
- Option 2:** Accept the fact that the QA/QC program has failed and that an alternative mechanism for reinspection of the plant must be adopted or relied upon to establish that the plant was constructed in accordance with regulatory requirements.

The eventual outcome of this second option will depend upon resolution of:

- a. The adequacy of the proposed reinspection plan to substitute for a failed QA/QC program (i.e., to

2. See, generally, CASE's Request for an Evidentiary Standard, February 4, 1985 pp.2 to 7 for a discussion on this matter.

find all deficiencies, defects, deviations).

b. The adequacy of the implementation of the reinspection (i.e., was the reinspection implemented according to its plan such that all construction defects were identified).

c. The adequacy of the proposed solutions to correct the identified construction defects (i.e., will the SRT properly determine which defects require repairs and properly determine what repairs are required).

d. The adequacy and implementation of the corrective action program (i.e., were all safety-related deficiencies, etc. repaired in a manner which provides reasonable assurance that the plant, as reworked, has been constructed properly).

Applicants have rejected option 1, for the present time, but they have not embraced option 2. Instead they have used a variety of euphemisms to avoid the issue. For instance, instead of a concession that there was a pervasive failure of the QA/QC program Applicants only concede that:

In sum, Applicants recognize that plant design and construction have not been error free. Preliminary indications from the comprehensive Comanche Peak Response Team effort to this point, however, reflect few safety-significant deficiencies. Applicants fully expect that other deficiencies will be identified, given the scope and depth of Applicants' reinspection and corrective action program. These will also be analyzed and corrected. Current Management Views, p.7

Instead of a concession that the QA/QC program can not be relied upon as a basis for establishing that the plant was properly constructed Applicants only concede that:

TUGCO management is not satisfied with the status of the plant and would not proceed to operate it, even if authority were to be granted, until all of the outstanding concerns have been addressed, their safety

significance determined, generic implications and collective significance considered, and necessary corrective actions have been completed. Current Management Views, p.7

What is significantly missing is Applicants' acceptance of the breadth and depth of the QA/QC breakdown. However, it is the breadth and depth of of the QA/QC breakdown that has been the issue in Docket 2 and it is that breadth and depth that defines the scope of the reinspection effort.

Applicants state that they are initiating a "sample reinspection of essentially the entirety of the safety significant hardware in the plant." Current Management Views, p.23. A sample reinspection is totally inadequate if the QA/QC program is already determined to be unreliable. In that event a full reinspection would be required because there would be no basis to assume (much less accept) that any part of the plant has been properly built. Further indication that Applicants do not accept the need for a full reinspection is their unqualified rejection of the possibility that harrassment, intimidation, threats and general discouragement was a possible root cause of the fact that a significant number of allegations from former Comanche Peak employees were ignored by management but found valid by the NRC. See Current Mangement Views, pp.12-13. Yet, such a finding would infect every part of the plant and would dictate not a "random" sample of the plant but a full reinspection of the entire plant.

the only possible explanation was that QA/QC had failed completely. ⁴ CASE could prevail on the ultimate issue in Docket 2 if it prevailed on any of the theories. Arguably, on the presently available record, it has prevailed on all three theories.

In as much as Applicants have not conceded that there has been a wide-spread break-down of QA/QC and have not agreed to do a complete reinspection of the plant the issues in Docket 2 are not moot. Further proceedings in Docket 2 are necessary to enable CASE to further establish through discovery and evidence introduced in the hearing that:

1. The management attitude that pervaded the plant during construction was to build the plant quickly and to the extent proper inspection or construction might interfere with that goal to discourage it and, if necessary, fire, constructively discharge or ignore the persons who insisted on either questioning the improper activities and/or

4. The failure of the QA/QC program to detect and correct a significant number of construction defects and the implication of that failure are part of the staff conclusions in SSER 11, (App P, p.35)

The pattern of failures by QA and QC personnel to detect and document deficiencies suggest an ineffective B&R and TUGCO inspection system. This pattern, coupled with (a) the past problems in the document control system, (b) deficiencies in the QC qualification program, (c) ineffectiveness of the quality audit and surveillance systems, (d) a rudimentary and ineffective trending and corrective action system, (e) QC problems as shown in QA/QC Category 8, QA-50; and (f) instances of improper workmanship of hardware as found by all of the TRT groups, challenges the adequacy of the QC inspection program at CPSES on a system-wide basis.

refused to engage in the improper activities. 5

2. Determine the root cause and full extent of construction defects not detected by QA/QC. 6

5. Among the facts relevant to this issue are 1) the false statements by witnesses during this hearing (including Messrs. Tolson, Brandt and Purdy), upon whom Applicants have principally relied, 2) the real reasons for the sudden departure of every QA/QC manager at CPSES, 3) the whole story behind the MAC report, 4) the involvement or lack of involvement of corporate directors and Messrs. Spence, Brittain, Merrit, and George in the policies being carried out by the now departed QA/QC managers as reflected in the corporate process used to decide who should leave, and 5) the continued viability of testimony in support of Applicants affirmative case where authors are no longer working at CPSES.

6. Merely because Applicants assert they will seek root causes of construction defects does not mean that CASE will be bound by their conclusions. While the CPRT seeks to determine what it defines as root causes, CASE will conduct discovery to build its own evidentiary record. Moreover the CPRT is principally a response to the findings of the TRT which was limited to investigation of allegations received as of a certain date. The essentially favorable and supportive findings of the TRT and the TRT process as it operated beginning last fall has encouraged many others to come forward with their concerns. Hundreds of as yet uninvestigated and unresolved allegations of problems at CPSES are still pending with the TRT.

These allegations will be handled using a late filed allegation procedure to which CASE strongly objects. That is, these allegation will not even be investigated unless the result of such an investigation could alter the TRT's findings. In addition Applicants' own SAFETEAM reports at least 600 allegations received by it, (See transcript of June 7 and 8, 1985 meeting, statement by William Counsel), which have still not been addressed in a manner, such as litigation, which will fully expose the extent of the deficiencies.

The purpose of this hearing is to determine whether CPSES is a safe plant not whether the CPRT can properly respond to the TRT. In our view the CASE examination of the liner plate travellers is but the first of many CASE efforts to expose shoddy QA/QC, construction and documentation at CPSES. Heat number traceability, component traceability, electrical wiring, insufficient redundancy in safety systems to name only a few, are also areas of severe defects which will be explored in the continued Docket 2 proceedings.

3. Establish that the construction defects at the plant are so widespread that the QA/QC must have failed.

The need for development of this additional evidence by CASE is apparent when the OL hearing is viewed in its entirety. At this point Applicants have not waived the right to claim that there was only a minor QA/QC breakdown and that even the CPRT effort was an unnecessary precaution. Thus should this Board ultimately find that the CPRT effort was insufficient and were to deny the OL, Applicants could argue on appeal both that there was no pervasive QA/QC breakdown in the first place, and thus no reinspection effort was mandated and that the CPRT was sufficient if a reinspection had been required. Obviously, faced with this possibility, CASE desires to build its strongest record in Docket 2 to establish the failure of the QA/QC program to be able to counter Applicants' potential alternative arguments.

As we believe is amply demonstrated by the above discussion, the issues in Docket 2 are not moot. Even if as to some of the

7. The CPRT is premised on the principle that the identification of a construction defect is sufficient to require a reinspection effort which will identify root cause and generic or programmatic implications for each defect. CASE accepts Applicants' principle, but is unwilling to accept their implementation of it.

CASE will continue to establish that previously undetected construction defects still exist and that the volume of those defects, regardless of their root causes, is sufficiently high to support the contention that the QA/QC program failed, and a truly comprehensive reinspection is necessary.

sub-issues this Board were to conclude that the CPRT plan to address these sub-issues was adequate ⁸ the CPRT implementation of the reinspection related to the specific sub-issue, the Senior Review Team's determination of the corrective action required and Applicants' corrective action or reanalysis are all matters for potential controversy once the reinspection is completed. All of these factors are related to the sub-issue and must be resolved. ⁹ Thus while Board hearings on a particular sub-issue may be postponed, the sub-issue has not dissappeared.

III. How Docket 2 Issues Could Be Moot

As we noted in Section II the Applicants could establish that the issues in Docket 2 are moot. To do this Applicants must choose one of two courses of action:

1. Applicants could agree that there has been a sufficient failure of the QA/QC program that it cannot be relied upon at all to prove that CPSES was built in conformance with its construction permit; or
2. Without agreeing that the QA/QC program failed Applicants could agree to a complete reinspection as proposed by CASE

8. CASE's response to the CPRT plan and its adequacy will be filed at a later date and as Applicants agree ultimately this Board will have to resolve any conflicts.

9. Applicants' ridiculous position that CASE now bears the burden of identifying new contentions, with detailed bases to justify the contentions if an issue is not the subject of a CPRT effort, will be addressed only if Applicants assert this argument as a defense to discovery requests.

and agree that any future determination of the adequacy of construction of CPSES would have to depend upon the implementation of the reinspection effort and the reconstruction required by that effort.

If applicant chose the first option we would still have a hearing on the issue of the implication of such a finding for the reinspection effort. Certainly, the present CPRT is a far cry from an adequate full reinspection program. However, CASE would be willing to rely upon the finding, without further discovery or hearings at this time, to argue what should be the scope and depth of the reinspection effort. As discussed earlier in Section II (p.3) potential additional evidentiary hearings would still remain related to implementation of the reinspection program, design and scope of the reconstruction efforts and implementation of the reconstruction effort.

If Applicants chose the second option there would be no further discovery or hearings or need for findings on the extent of the QA/QC breakdown and the reinspection program would be submitted to the Board for approval as a stipulation (assuming the Staff agreed). Future hearings on implementation of the reinspection, design and scope of reconstruction and implementation of reconstruction would remain.

Our inclusion of these two options as ways to make the existing Docket 2 issue moot is not with the expectation that Applicants will accept the offer - surely its Current Management Views and response to CASE discovery request on the MAC report

indicate that little, if anything has changed at CPSES - but to make clear how mootness in the context of the Docket 2 proceeding would be achieved.

IV. Scheduling

Unlike Applicants we will not attempt to set forth a schedule for the remainder of Docket 2 which presupposes the Board will accept our arguments. We propose the following:

1. Within ten days ¹⁰ of this filing the Board have oral argument in Washington on the issue of mootness in Docket

2. (If staff intends to brief the issue it should file within five days of the receipt of this filing.)

Applicants' position on mootness was presumably reached after, a minimum of seven weeks, and more realistically, after six months of preparing a new approach to licensing. It should not be allowed to file a response brief.

2. If the Board does not find Docket 2 issues moot, then within 15 days of the Board's ruling on mootness CASE will file its initial request for documents and other discovery to Applicant and staff.

10. Prior commitments of CASE's counsel make the following dates (inclusive) unavailable for hearings or conference calls: July 27-August 2; August 9; August 16.

- 3.. Within 20 days of receipt of all information requested by CASE in its initial discovery request (including all previously filed and unanswered discovery) CASE will file its final request for discovery.
4. Within 30 days of receipt of all information requested by CASE in its final discovery request CASE will identify issues for hearing related to the Docket 2 issues of the breadth and depth of the QA/QC breakdown at CPSES.
5. Briefing argument and decision on motions for summary dispositions, establishing an evidentiary standard, etc.
6. Following Board rulings on the breadth and depth of the QA/QC breakdown, including findings on the root causes of the failures, CASE will be prepared to propose a schedule for discovery and hearings on the adequacy of the CPRT. ¹¹

11. CASE does intend to share with the Applicants, Staff and Board our initial views on the CPRT but cannot be expected to fully anticipate our concerns with the proposed program until we have had the benefit of discovery regarding, inter alia, the process used and real intentions behind the CPRT, clarification of the many ambiguities in the CPRT, a fuller understanding of the qualifications of the CPRT members, and a better understanding of the real role of the CPRT in relation to the SRT and CPSES management (of which CPRT head Mr. Beck is a member).

Unlike Diablo Canyon and Zimmer, Applicants here are involved in an ongoing licensing proceeding where no initial decision favorable to it has been issued and where admitted contentions of the Intervenor have been found to be valid. In such a setting, Applicants are not entitled to any presumption of correctness for their proposed actions and intervenors cannot be compelled to once again identify issues and bases as a pre-requisite to discovery on what are really ongoing proffers of evidence by the Applicant.

(footnote continued)

7. If the Board does find Docket 2 issues moot in Docket 2, CASE would file within 30 days in Docket 1 a further articulation of the issues in that proceeding and its proposed schedule for resolution of those further articulated issues.

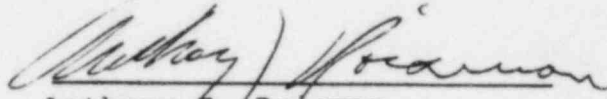
V. Conclusion

Applicants rightly perceive that from their perspective the continuation of Docket 2 is a nightmare. They desperately seek to wake up and end that nightmare. Unfortunately, the nightmare continues and while Applicants attempt to sleep walk their way to a new day they are unable to avoid the lingering reality of Docket 2. If they will not accept CASE's position on the real

If a basis were needed for questioning the sufficiency of the CPRT it is already evident. The same key persons who brought us a failed CPSES construction program (Brittain, Spence, George and Merrit) are still in charge and the new CPRT (with its allegedly independent staff and dependent director) is directly under their control. It has been and is CASE's contention that the failure of the QA/QC program had its roots in the pressure from construction and higher management to meet scheduling deadlines. Throwing out the QA/QC managers who followed these orders and leaving the real culprits in charge is reason enough to doubt that the CPRT is well planned or likely to be well executed. The Current Management Views state that today's management (old and new faces) can find nothing wrong in the conduct of any of the now deposed QA/QC managers. If they don't see it now, they never will. The CPRT they designed is essentially blind to any root cause which would require plant-wide reinspection and/or plant-wide reconstruction. Its "business as usual" in Glen Rose.

issue in Docket 2 or the real remedy which Docket 2 seeks, Docket 2 issues have not been superseded by the CRPT promises of reform. The CPRT represents, at best, a new affirmative case by Applicant on the Docket 2 issues. As such it is subject to all the normal rules of discovery and hearings. CASE intends to pursue these issues to their inevitable conclusion. If Applicants continue to insist on avoiding the inevitable the only issue that is moot is the issue of mootness.

Respectfully Submitted,


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July 16, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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TEXAS UTILITIES GENERATING)	
COMPANY, et al.)	Docket Nos. 50-445-2
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Station, Units 1 and 2))	

CERTIFICATE OF SERVICE

By my signature below, I hereby certify that true and correct copies of CASE's Response To The Alleged Mootness of Docket 2 Issues And Proposed Schedule For Docket 2 have been sent to the names listed below this 16th day of July, 1985, by: Express mail where indicated by *; Hand-delivery where indicated by **; and First Class Mail unless otherwise indicated.

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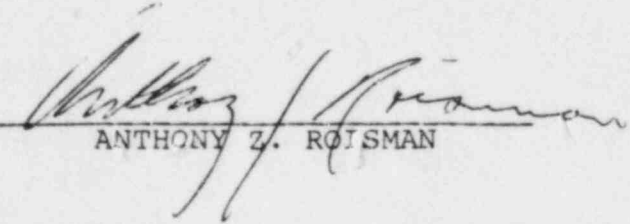
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