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8/5/85

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

TEXAS UTILITIES ELECTRIC  
COMPANY, et al.

(Comanche Peak Steam Electric  
Station, Units 1 and 2)

Docket Nos. 50-445 <sup>OL</sup> and 50-446 DOCKETED  
USNRC

(Application for <sup>85</sup> AUG -8 P3:43  
Operating License)

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CASE'S MOTION FOR RECONSIDERATION OF  
BOARD'S 7/22/85 MEMORANDUM AND ORDER  
(MOTIONS RELATED TO THE MAC REPORT)

On July 22, 1985 /1/, the Board ruled on CASE's Motions related to the MAC Report /2/. On July 22, 1985, CASE (unaware that the Board had already ruled on CASE's Motions) filed its Motion to Compel Answers to CASE's 6/24/85 Interrogatories to Applicants and Requests to Produce (in the main docket) /3/. Thus, the Board ruled prior to receipt of CASE's 7/22/85 Motion to Compel.

/1/ Docketed as being served July 23, 1985, and received by CASE on July 25, 1985.

/2/ See: CASE's 6/24/85 Board Notification and CASE's Motions: for Discovery Regarding the MAC Report and Issues Raised by the MAC Report and/or for Hearings and/or Evidentiary Depositions; and CASE's Interrogatories to Applicants and Requests to Produce re: the MAC Report and Issues Raised by the MAC Report.

/3/ CASE in docket -2 had filed a Motion to Compel Response to Interrogatories and Document Production Request Related to MAC Report on July 18, 1985.

Applicants indicated in their 8/1/85 letter to the Licensing Board that they did not intend to respond to CASE's Motions to Compel in either docket, and that they will respond to CASE's discovery requests consistent with the Board's Memorandum and Order.

There are portions of the Board's 7/22/85 Memorandum and Order which CASE hereby moves that the Board reconsider /4/. Those portions have to do

/4/ We also call the Board's attention to the fact that their admonition to CASE on page 2 that CASE's discovery should not "be a fishing expedition for material relevant only to CASE's simultaneous appearance before the public utility commission" is unnecessary. Further, the Board's admonition is based on erroneous assumptions fostered by Applicants for Applicants' own devious motives which include an attempt to divert the Board's attention from the real issues in these proceedings and to attempt to avoid answering CASE's discovery requests which are entirely legitimate and proper in these proceedings.

First, Applicants stated only that the MAC Report was discovered while "gathering data for a prudence audit being performed for TUEC" and "in connection with a pending prudence audit being performed for TUEC" (see Applicants' 5/29/85 and 6/12/85 letters to the Board). They did not indicate (and CASE did not know) that the prudence audit in question was one being performed for the Public Utility Commission (PUC) until they filed their 7/8/85 Response in Opposition to CASE's Motion for Immediate Hearings, Evidentiary Depositions, and/or Discovery Regarding the MAC Report. CASE was generally aware that there was some sort of prudence audit in the works for the Public Utility Commission (PUC); however, we have neither the time or inclination to use our already severely limited resources to attempt to gather information in the operating license hearings solely for use in the rate hearings.

To the contrary, our interrogatories sought -- legitimately -- to ascertain which particular prudence audit was involved, since there was nothing in the filings received from Applicants at the time we filed our interrogatories to indicate that it was indeed a prudence audit for the PUC. (Such a prudence audit might even have been one Applicants should have been preparing for use in these proceedings.) It should be noted that such a prudence audit may well have implications for the operating license hearings (as well as for possible future rate hearings); this would appear to be supported by the fact that, by Applicants' own admission, the MAC Report was rediscovered while gathering data for that particular prudence audit. Therefore, that prudence audit clearly comes under the category of legitimate discovery in these proceedings under 10 CFR 2.740(b)(1).

Further, the Board's reference to "CASE's simultaneous appearance before the public utility commission" is a misconception, since there was no TUEC rate case pending before the PUC at the time CASE filed its discovery requests, nor is there a rate case currently pending. Nor have Applicants yet indicated how that prudence audit is to be used. This is obviously another red herring by Applicants.

Thus, CASE accepts the Board's admonition in the spirit in which it was set forth; however, we want to correct the erroneous impression which led to the Board's concerns initially and to assure the Board that its concerns are unfounded and based on erroneous assumptions fostered by the Applicants for their own purposes.

with the Board's decision to disallow discovery regarding the following paragraphs on page 7 of CASE's 6/24/85 Interrogatories to Applicants and Requests to Produce re: the MAC Report and Issues Raised by the MAC Report: "Engineering personnel" (paragraph 1); "Anyone else interviewed by Mr. Wooldridge" (paragraph 2) to the extent that this would have included Billy R. Clements; and "Cygna" (paragraph 7).

Some of this was discussed briefly in CASE's 7/22/85 Motion to Compel (bottom part of page 6, continued on page 7). We incorporate that discussion into our comments herein.

Particularly amazing is the following portion from Applicants' response to CASE's Motions /5/ which Applicants quoted from the South Texas operating license proceeding (South Texas, Memorandum and Order (unpublished), at 6 (July 10, 1984) (emphasis added by Applicants):

"Moreover, as our PID pointed out, many of the personnel who were involved in the oversight of B&R's design activities no longer serve in that capacity."

Although CASE is still reviewing and preparing our response regarding the CPRT, one aspect of it immediately struck CASE: the same individuals who were previously involved in the design issues (and even in testifying in Applicants' Motions for Summary Disposition, which Applicants now want to withdraw) are still participating, and/or advising the CPRT, regarding design issues. Thus, Applicants' quotation regarding the design activities at South Texas, rather than supporting Applicants' position, argues in favor of CASE's position -- since many of the same personnel who were involved in the oversight of design activities are still so involved, one way or

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/5/ Applicants' 7/8/85 Response in Opposition to CASE's Motion for Immediate Hearings, Evidentiary Depositions, and/or Discovery Regarding the MAC Report.

another, in the design activities at Comanche Peak. Although Applicants have made changes in the QA/QC organization, they have not made correspondingly similar changes regarding design activities.

The MAC Report has some very important statements and implications regarding design and design QA, as demonstrated from the following sample of portions of the MAC Report (attached to the 5/17/78 MAC letter to TUGCO, forwarded to the Board and parties attached to Applicants' 5/29/85 letter to the Board):

"The audit also disclosed that present practices in the control of design changes and of certain nonconformances do not provide the requisite level of review by the original designer. In other instances it was evident that design changes were being used in lieu of nonconformance reports."

-- from Appendix A, page 3, Summary, emphases added

"... the Quality Assurance Plan and Procedures are not consistent with current and planned revisions in authority delegations to the Architect/Engineer and the Constructor, and is not complete in addressing all eighteen criteria of 10CFR50 Appendix B."

-- from Appendix A, page 3, Finding 1, emphases added

"The current site DC DDA system of after the fact coordination of design changes with the original designer provides a significant risk of design error and does not meet the requirements of 10 CFR Appendix B, nor of ANSI N45.2.11, 'Quality Assurance Requirements for the Design of Nuclear Power Plants'."

-- from Appendix A, pages 3 and 4, Finding 2, emphases added

"Disposition of nonconforming items does not always achieve the requisite review by appropriately qualified design personnel. . . In other instances, the DC DDA program has been used to bypass the nonconformance reporting system."

-- from Appendix A, page 5, Finding 7, emphases added

"Too much responsibility is placed on the inspectors with respect to preparation of inspection planning, resolution of site problems and determination of the design configuration base for performance of inspections."

-- from Appendix B, page 3, item I.D.3., emphasis added

Thus, the MAC Report constituted an early warning to Applicants not only of design QA problems, but also alerted them that there also was a significant risk of design error. Had Applicants heeded this early warning (rather than responding as they did and refusing to face the problems and potential problems), it might well be that they would not currently be experiencing many of the severe problems with design/design QA of pipe supports, cable tray supports, conduit supports, and perhaps other as-yet-unidentified design/design QA problems.

The implications of this are numerous and applicable not just to what has transpired in the past, but (since many of the same engineering personnel are now involved with Applicants' new CPRT Plan as were originally involved with design/design QA) to what is going on right now and will be going on in the near future. If it should be ascertained that Applicants' engineering personnel knew about the MAC Report, and the Board determines that such personnel should have mentioned it during testimony given in these proceedings, it could also taint Applicants' current and future CPRT efforts -- even should the Board ultimately determine that the CPRT Plan is otherwise adequate.

If Cygna was aware of the MAC Report, there is also the question of whether or not they should have so stated during their testimony in these proceedings. If Applicants did not tell Cygna about the MAC Report, this fact needs to be known, since such withholding would have deprived Cygna of relevant and material information necessary to thoroughly assess design/design QA issues. Further, such withholding would also go to

Applicants' credibility, and the attitude and commitment of Applicants' management -- including their topmost upper management -- toward quality.

Regarding paragraph 2 on page 7 of CASE's Interrogatories ("Anyone else interviewed by Mr. Wooldridge"), it is obvious that Billy R. Clements would have been included in this category because of the discussion on page 2 of Applicants' 6/12/85 letter to the Board. Applicants indicated that Mr. Clements had knowledge of the MAC Report but did not revisit Mr. Fikar's decision not to produce the report. There also appears to be a good possibility that Mr. Clements was disciplined for this ("reassigned to a position with a non-nuclear operating division of TUEC effective June 11, 1985"). Thus, CASE should be allowed to pursue discovery insofar as it relates to Mr. Clements.

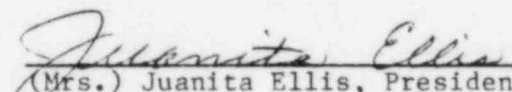
Because of these circumstances, CASE's discovery requests are essential in order to properly prepare our case for trial and to assure full and true disclosure of pertinent and material facts. CASE needs to know, and is entitled to explore through discovery, relevant and material information concerning Applicants' engineers (and engineering consultants), as well as Mr. Clements, in regard to the various aspects of the MAC Report (i.e., the circumstances leading to the discovery of the MAC Report, the extent to which Applicants' employees knew about that report, when Applicants' employees first became aware of the MAC Report, whether or not Applicants' employees (if they knew about the MAC Report) should have included reference to the MAC Report in their testimony in these proceedings, and whether or



not (if they knew about the Report) their failure to have included such reference constitutes a material false statement to the Licensing Board and/or even obstruction of justice, etc.).

For the reasons discussed herein, CASE moves that the Board reconsider that portion of its 7/22/85 Memorandum and Order wherein it struck the following paragraphs on page 7 of CASE's 6/24/85 Interrogatories to Applicants and Requests to Produce re: the MAC Report and Issues Raised by the MAC Report: "Engineering personnel" (paragraph 1); "Anyone else interviewed by Mr. Wooldridge" (paragraph 2) regarding Billy R. Clements; and "Cygna" (paragraph 7); and that the Board allow full discovery rights regarding Engineering personnel, Cygna, and Billy R. Clements.

Respectfully submitted,

  
(Mrs.) Juanita Ellis, President  
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UNITED STATES OF AMERICA  
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Docket Nos. 50-445-1  
and 50-446-1

'85 AUG -8 P3:43

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CERTIFICATE OF SERVICE

By my signature below, I hereby certify that true and correct copies of  
CASE's Motions for Reconsideration of Board's 7/22/85 Memorandum and Order  
(Motions Related to the MAC Report)

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