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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

8/15/85

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. 50-445CL
and 50-446

(Application for an
Operating License) OFFICE OF SECRETARY
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CASE'S 8/15/85 SUPPLEMENT TO CASE'S 1/7/85 MOTION FOR RECONSIDERATION
OF BOARD'S 12/18/84 MEMORANDUM (CONCERNING WELDING ISSUES) (LBP-84-54)

In CASE's 3/19/85 Supplement to CASE's 1/7/85 Motion for
Reconsideration of Board's 12/18/84 Memorandum (Concerning Welding Issues)
(LBP-84-54), we stated that we would be filing additional information (some
of which we believed would be new and significant). There is still
additional information which we expect to file following further contact
with the NRC Technical Review Team (TRT) to clarify a few matters, but there
are two specific matters which we believe are especially important to get
into the hands of the Board right away.

Board's Order at Page 10, last sentence of second paragraph; and page 59 and
first full paragraph of page 60; re: Welding of Misdrilled Holes:

In CASE's 1/7/85 Motion for Reconsideration /1/ (pages 31-39) and
briefly in our 3/16/85 Supplement /2/ (bottom of page 32 and page 33),
CASE discussed statements of the Board regarding its strong doubts both of
the credibility of CASE Witness Henry Stiner and of his testimony.

/1/ CASE's 1/7/85 Motion for Reconsideration of Board's 12/18/84 Memorandum
(Concerning Welding Issues) (LBP-84-54)

/2/ CASE's 3/16/85 Supplement to CASE's 1/7/85 Motion for Reconsideration
of Board's 12/18/84 Memorandum (Concerning Welding Issues) (LBP-84-54)

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The Board stated, on page 10, last sentence of second paragraph:

"Mr. Stiner subsequently testified that he had performed 20 or 30 plug welds in a single day (Tr. 10699-70)."

The Board stated, on pages 59 and 60:

"The one overriding factor regarding the Board's decision involves Mr. Stiner's incredible statement that a 1 1/4 inch hole in two inch thick material (on which he allegedly welded many times (Tr. 10683-84)) could be easily welded in about two minutes (excluding the blending of the weld with surface material (Tr. 10698-9)), and it would only require two weld rods to complete (Tr. 11158)." (First emphasis added; second emphasis in the original.)

"Mr. Stiner's sworn testimony on this point is not accurate and reliable. The board believes that any welder who had ever weld-repaired a misdrilled hole of this large size or smaller would have been able to at least provide a response that was in the ballpark. In that Mr. Stiner was not able to do so, the Board questions whether Mr. Stiner has ever performed a weld repair on a misdrilled hole. . ." (Emphasis added.)

In CASE's 1/7/85 Motion for Reconsideration, CASE explained (pages 31 through 39) the correct interpretation of Mr. Stiner's testimony as CASE understood it and as it was explained by Mr. Stiner. As discussed therein, it appears to CASE that the Board has misinterpreted the testimony in the record regarding this matter.

However, CASE can understand that the Board might be reluctant to accept some counsel's representations of the correct interpretation /3/. Fortunately, it is not necessary for the Board to do so, because there is now new and significant information which fully supports and corroborates CASE's interpretation of the record, and which vindicates Henry Stiner's testimony and credibility.

/3/ The Board has good cause to doubt representations made by Applicants' attorneys, as discussed later in this pleading; however, CASE does not believe that it has given the Board reason to doubt its representations.

It is important to remember the time frame during which the various events discussed herein occurred. CASE filed its Proposed Findings of Fact on Welding Issues on 9/9/84. The Board's Memorandum (Concerning Welding Issues) was issued December 18, 1984.

CASE now calls the Board's attention to SSER No. 10 /4/, page N-57, regarding the TRT's investigation of "plug welding," as alleged by Henry Stiner. In the next-to-last paragraph, last three sentences, it is stated:

"In a telephone interview with the alleged on September 10, 1984, the alleged clarified this allegation. The alleged stated that the number of electrodes used was only an estimate, and that such holes were 'capped' with a weld on either face and had slag and an air pocket in the middle. A 'plug weld' made in this manner would obviously require fewer electrodes."

Thus, on September 10, 1984 (the day after CASE filed its Proposed Findings), months before the Board's 12/18/84 Memorandum was issued and before Henry Stiner or CASE realized that the Board had misinterpreted the testimony in the record regarding this matter, Mr. Stiner explained to the TRT his method of "plug welding." His explanation at that time was consistent with the interpretation given by CASE in our 1/7/85 Motion for Reconsideration. The TRT's SSER No. 10 came out in April 1985.

CASE has not completed reviewing the several SSER's issued by the TRT in recent months; in addition, we have been involved with various other pleadings and matters relating to these proceedings. It was not until Mr. Stiner recently called the statements by the TRT to CASE's attention that we realized their full significance.

/4/ NUREG-0797, Supplement No. 10, Safety Evaluation Report related to the operation of Comanche Peak Steam Electric Station, Units 1 and 2, Docket Nos. 50-445 and 50-446, April 1985

CASE submits that this new and significant information, especially when combined with the information contained in our 1/7/85 Motion for Reconsideration and its 3/16/85 and 3/19/85 Supplements, fully vindicates and supports Mr. Stiner and his testimony in this regard.

Further, since the "one overriding factor regarding the Board's decision involves Mr. Stiner's incredible statement" regarding the manner in which, and the time in which, he completed a "plug weld" (Board Memorandum at page 59, second paragraph), this clarification and substantiation of Mr. Stiner's testimony should add credibility to any other testimony of his which the Board questioned and go far towards establishing his overall credibility -- and correspondingly call into question the testimony of Applicants' witnesses.

However, CASE does not ask that the Board close the record and rule based on what is currently before it regarding the welding issues. There is much additional information already in the TRT's SSER's and expected to be in future SSER supplements which the Board should consider prior to closing the record on welding. We therefore again ask that the Board continue to hold the record open awaiting receipt of this additional information (although we must admit that we, and undoubtedly Mr. Stiner, would not be adverse to a ruling by the Board at this point reversing its previous ruling on this particular point).

Representations by Applicants' Counsel

In our 1/7/85 Motion for Reconsideration (pages 7 through 19), CASE submitted information regarding what we consider to be deliberate violations by Applicants' counsel of the Board's specific orders.

In reviewing some of the welding information in our files, additional support of CASE's position regarding the willful and deliberate misrepresentations by Applicants' counsel was found.

We call the Board's attention to the Board's Order at page 1 (which CASE asked the Board to reconsider in our 1/7/85 Motion for Reconsideration at pages 20 and 21). The Board stated:

" . . . we find that Henry Stiner had a long-standing absentee problem at work and that he was discharged from the plant because of his absenteeism, not because he gave information to a QC inspector about a gouge in a pipe preceding the three day absence that precipitated his termination. . . "

And in Applicants' 1/22/85 Reply to CASE's Motion for Reconsideration of Licensing Board's Memorandum (Concerning Welding Issues), Applicants counsel argued against CASE's Motion, stating:

"CASE alleges that the Licensing Board erred in finding that Mr. Stiner was discharged because of a longstanding absentee problem and not because he gave information to a QC inspector regarding a gouge in a pipe. Accordingly, CASE moves that this finding be stricken and the Board exclude its findings regarding Mr. Stiner's credibility from consideration concerning the issue of his termination. CASE's Motion at 20-21.

"Applicants maintain that the unrefuted evidence currently in the record and briefed by Applicants and CASE provides substantial evidence to support the Licensing Board's finding regarding Mr. Stiner's termination. See, e.g., Applicants' Proposed Findings at 3 and CASE's Proposed Findings on Welding Issues at 6-7 (September 9, 1984). For this reason the motion for reconsideration should be denied."
(Emphases added.)

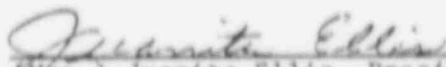
CASE calls the Board's attention to Applicants' 8/30/82 Answer to CASE's Motion for Protective Order at page 5, second paragraph (copy of applicable portions are attached for the Board's convenience), where Applicants' counsel made the representation to the Board:

"His [Mr. Stiner's] efforts to obtain his personnel records pre-date these hearings and therefore have no rational connection to them. Further, as a former Brown & Root employee who was fired for unsatisfactory job performance (and not matters related to these hearings), Mr. Stiner's election to testify in these hearings does not bring him within the scope of Section 210 of the Energy Reorganization Act." (First emphasis in the original; second emphases added.)

CASE does not accept the representations by either Applicants' witnesses or of Applicants' counsel regarding the reasons alleged by Applicants for Mr. Stiner's firing. Whether or not the Board ultimately accepts Applicants' reasons, however, the above representation by Applicants' counsel is inconsistent with the later sworn testimony of Applicants' own witnesses. It is a gross misrepresentation to the Licensing Board, and the Board should so rule.

CASE asks that the Board consider this in connection with CASE's 1/7/85 Motion for Reconsideration. Further, we ask that the Board take this and other misrepresentations of Applicants' counsel into consideration in the overall context of these proceedings and in any future Board decisions as to whether or not to accept representations of Applicants' counsel.

Respectfully submitted,


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

1426 S. Polk
Dallas, Texas 75224
214/946-9446

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NUCLEAR REGULATORY COMMISSION

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In the Matter of

TEXAS UTILITIES ELECTRIC
COMPANY, et al.
(Comanche Peak Steam Electric
Station, Units 1 and 2)

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Docket Nos. 50-445-1
and 50-446-1

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

CERTIFICATE OF SERVICE

By my signature below, I hereby certify that true and correct copies of
CASE's 8/15/85 Supplement to CASE's 1/7/85 Motion for Reconsideration of Board's
12/18/84 Memorandum (Concerning Welding Issues) (LBP-84-54)

have been sent to the names listed below this 15th day of August, 1985,
by: ~~XXXXXXXXXXXX~~ where indicated by * and First Class Mail elsewhere.
Federal Express

* Administrative Judge Peter E. Bloch
U. S. Nuclear Regulatory Commission
4350 East/West Highway, 4th Floor
Bethesda, Maryland 20814

* Judge Elizabeth E. Johnson
Oak Ridge National Laboratory
P. O. Box X, Building 3500
Oak Ridge, Tennessee 37830

* Dr. Kenneth A. McCollom
c/o Neal McCollom
4851 Winesanker Way
Fort Worth, Texas 76133

* Dr. Walter H. Jordan
881 W. Outer Drive
Oak Ridge, Tennessee 37830

* Administrative Judge Herbert Grossman
U. S. Nuclear Regulatory Commission
4350 East/West Highway, 4th Floor
Bethesda, Maryland 20814

* Nicholas S. Reynolds, Esq.
Bishop, Liberman, Cook, Purcell
& Reynolds
1200 - 17th St., N. W.
Washington, D.C. 20036

* Geary S. Mizuno, Esq.
Office of Executive Legal
Director
U. S. Nuclear Regulatory
Commission
Maryland National Bank Bldg.
- Room 10105
7735 Old Georgetown Road
Bethesda, Maryland 20814

Chairman, Atomic Safety and Licensing
Board Panel
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Chairman
Atomic Safety and Licensing Appeal
Board Panel
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Mr. Robert Martin
Regional Administrator, Region IV
U. S. Nuclear Regulatory Commission
611 Ryan Plaza Dr., Suite 1000
Arlington, Texas 76011

Lanny A. Sinkin
3022 Porter St., N. W., #304
Washington, D. C. 20008

Dr. David H. Boltz
2012 S. Polk
Dallas, Texas 75224

William Council, Vice President
Texas Utilities Generating Company
Skyway Tower
400 North Olive St., L.B. 81
Dallas, Texas 75201

Docketing and Service Section
(3 copies)
Office of the Secretary
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Ms. Billie P. Garde
Government Accountability Project
1901 Que Street, N. W.
Washington, D. C. 20009

Renea Hicks, Esq.
Assistant Attorney General
Environmental Protection Division
Supreme Court Building
Austin, Texas 78711

* Anthony Z. Roisman, Esq.
Trial Lawyers for Public Justice
2000 P Street, N. W., Suite 611
Washington, D. C. 20036

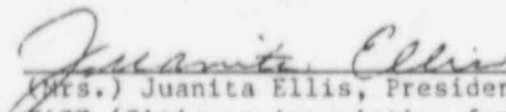
Mr. Owen S. Merrill
Staff Engineer
Advisory Committee for Reactor
Safeguards (MS H-1016)
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Robert A. Wooldridge, Esq.
Worsham, Forsythe, Sampels
& Wooldridge
2001 Bryan Tower, Suite 2500
Dallas, Texas 75201

Thomas G. Dignan, Jr., Esq.
Ropes & Gray
225 Franklin Street
Boston, Massachusetts 02110

Ms. Nancy H. Williams
Project Manager
Cygnus Energy Services
101 California Street, Suite 1000
San Francisco, California
94111-5894

Mark D. Nozette, Counselor at Law
Heron, Burchette, Ruckert & Rothwell
1025 Thomas Jefferson Street, N. W.,
Suite 700
Washington, D. C. 20007


(Mrs.) Juanita Ellis, President
CASE (Citizens Association for Sound Energy)
1426 S. Polk
Dallas, Texas 75224
214/946-9446

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
TEXAS UTILITIES GENERATING)	Docket Nos. 50-445 and
COMPANY, <u>et al.</u>)	50-446
)	
(Comanche Peak Steam Electric)	(Application for
Station, Units 1 and 2))	Operating Licenses)

APPLICANTS' ANSWER TO CASE'S
MOTION FOR PROTECTIVE ORDER

Pursuant to 10 C.F.R. §2.730(c), Texas Utilities Generating Company, et al. ("Applicants"), hereby submit their answer to CASE's Motion for Protective Order, served August 12, 1982, as supplemented by letter from CASE dated August 19, 1982. For the reasons set forth below, Applicants urge the Atomic Safety and Licensing Board ("Board") to deny CASE's motion as beyond the jurisdiction of the Board or, in the alternative, as being without merit or substance.

I. BACKGROUND

During the evidentiary hearings conducted July 26-30, 1982, CASE identified and sought a subpoena for the attendance of Mrs. Darlene Stiner, a QC inspector at the Comanche Peak site. CASE stated that Mrs. Stiner possesses information relevant to matters at issue in Contention 5. The board granted the requested subpoena, Tr. 2964. Mrs. Stiner is scheduled to testify upon the resumption of the evidentiary hearings on September 13, 1982.

On August 11, 1982, Applicants' Counsel became aware that Mrs. Stiner had been engaged in efforts during working hours to

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Clearly, an employee's remedy for alleged discriminatory practices by an NRC licensee lies with the Department of Labor, pursuant to 42 U.S.C. §5851, and not with the NRC. This Board, being vested with only such authority as the Commission may delegate, accordingly, is not empowered to provide CASE with the relief it seeks. Thus, the Board should deny CASE's motion as being not within the Board's authority.

B. In Any Event, The Motion Is Without Merit

Assuming arguendo that the Board had jurisdiction over a claim under Section 210 of the Energy Reorganization Act, 42 U.S.C. §5851, nevertheless the Board should deny CASE's motion as being without merit or substance. As to Mr. Stiner, even CASE concedes that Mr. Stiner's efforts to reverse his terminations in 1980 and 1981 started "long before CASE had any idea Mr. and Mrs. Stiner would be testifying in these proceedings" (CASE Motion, at 1). Mr. Stiner's situation is purely a personnel matter between him and Brown & Root. His efforts to obtain his personnel records pre-date these hearings and therefore have no rational connection to them. Further, as a former Brown & Root employee who was fired for unsatisfactory job performance (and not matters related to these hearings), Mr. Stiner's election to testify in these hearings does not bring him within the scope of Section 210 of the Energy Reorganization Act.

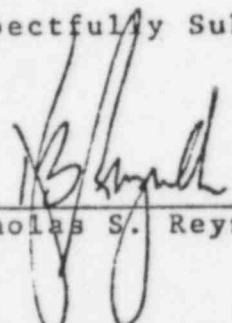
As to Mrs. Stiner, the allegations raised by CASE are false. Applicants have taken no action "in retaliation for her testifying in the operating license hearings for Comanche Peak"

of Mrs. Stiner. Accordingly, CASE's motion should be denied.

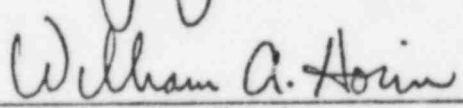
III. CONCLUSION

For the foregoing reasons, Applicants urge the Board to deny CASE's motion for lack of jurisdiction over the subject matter or, in the alternative, for lack of merit.

Respectfully Submitted,



Nicholas S. Reynolds



William A. Horin

Debevoise & Liberman
1200 17th Street, N. W.
Washington, D. C. 20036
(202) 857-9817

Counsel for Applicants

August 30, 1982