

August 28, 1985 ^{DOCKETED} _{USNRC}

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

CASE'S MOTION TO COMPEL RESPONSE TO
INTERROGATORIES (Re: READINESS REVIEW)

On July 29, 1985 CASE filed interrogatories, in the form of a three question request, about Applicant's communication with Georgia Power Company regarding the development of the CPRT.

On August 19, 1985 Applicant responded by denying any communication with Georgia Power Company. Specifically, Applicant's counsel represented that, "based on interviews with members of the SRT and CPRT, to the Review Team Leader level, and CPSES project personnel ... there have been no communications with, site visits by or documentation received from Georgia Power Company concerning the development of the CPRT or CPRT Program Plan." (Applicants Response To The CASE Interrogatories Regarding the CPRT, p.2) This was confirmed for the CPRT by Mr. Terry Tyler in an accompanying affidavit.

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an affidavit detailing the depth and breadth of their search for the original answers. If CASE must rely on the representations of Applicant's counsel we must be able to discover where misrepresentations originate.

There is an underlying problem illustrated by this current controversy that we also believe the Board should address. It is not normally proper for counsel to respond to discovery request for their client. If they do, they run the risk of becoming witnesses and thus being disqualified as counsel. (DR-102, Code of Professional Responsibility) In addition it appears that Applicant has many layers of knowledge which it uses to mask the whole truth -- e.g. the explanation for the MAC Report non-disclosure was that it was not prepared for regulatory purposes.^{1/} To help assure that the full and truthful answer is given it is essential that responses to discovery come from persons with direct personal knowledge and who fully disclose how they went about assembling the information to answer the questions. It is true that Texas Utilities and its contractors and sub-contractors are a large organization, but that does not excuse incomplete answers, particularly by outside lawyers. Rather it requires an even more careful search to assure the whole truth is revealed. We request that the Board indicate in its order on this motion that Applicant must: 1) answer discovery with non-lawyer employees with personal knowledge of the

^{1/} CASE has never limited its discovery to only documents prepared for regulatory purposes and thus is an artificially created distinction which makes no difference. It is merely another device to justify the failure to be truthful.

matters; 2) disclose how, in detail, the data was gathered for the answer; and 3) assure that data is gathered directly from all knowledgeable people with all contractors, sub-contractors, consultants and others working on CPSES.

Applicants response, or lack of it, also states that CASE's requests are irrelevant, because such information would be irrelevant to the issues in the proceeding. Although we are unclear which issues Applicant is referring to, we assume that the Applicant has not withdrawn their request to have the Board hold a hearing and rule on the adequacy of the CPRT. If the acceptability of the CPRT is before the Board, than it is clearly discoverable if Applicant has reviewed and considered the elements of the Readiness Review program in its quest for a path to an operating license.

Additionally, CASE is alarmed that Applicant may be operating on less than good faith in its reply to interrogatories. Our concern, as we have stated, is that Applicants may be continuing to reply to CASE with only such information as they intend to rely upon for regulatory compliance. This attitude, articulated by several top management officials in their affidavits regarding the nondisclosure of the MAC report, raises the question that there is an entire layer of audits, reviews, and consultant reports which have not been identified or produced in response to discovery.

Further, Applicant has insisted on an interative approach to the CPRT (modifying as they go along), and because this Board has now directed Applicant to produce responses to discovery during

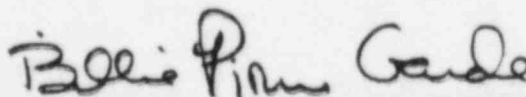
the development of the CPRT (Board Order, August 16, 1985), it is appropriate for CASE to be told about efforts being made by Applicant to identify and possibly use short-cuts for attempting to meet regulatory requirements. The readiness review is such a short-cut and if Applicant is considering its use that is extremely relevant to this proceeding.

CASE believes that no such short-cut can substitute for the requirements of 10 C.F.R. Part 50 Appendix B but needs to know as early as possible what, if any, consideration Applicant is giving to its use in order to properly prepare for future hearings. This is particularly important in light of Applicant's habit of changing its approach to licensing when it gets close to receiving a negative response from the NRC and then pressing for a prompt response to that new approach from CASE without the benefit of any discovery.

CONCLUSION

For all these reasons we request that the Motion to Compel be granted.

Respectfully submitted,



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ORIGINAL

Attachment 1

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of:

COMMISSION MEETING

Briefing on Operational Readiness
Review Pilot Program Georgia Power (Vogtle)

(Public Meeting)

Docket No.

Location: Washington, D. C.
Date: Friday, July 26, 1985

Pages: 1 - 80

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1 CHAIRMAN PALLADINO: More, Jim?

2 COMMISSIONER ASSELSTINE: No.

3 CHAIRMAN PALLADINO: Fred?

4 COMMISSIONER BERNTHAL: I would just second what Jim
5 said. There's an old sign that IBM made famous many years ago
6 that appeared on a lot of desks that said, "Think." And it's
7 clear that you've given a good deal of thought to this idea,
8 and your presentation reflects that, and you're thinking about
9 what you're doing, and that's the way you find your pathway
10 through the licensing maze, one hopes relatively unscathed.

11 I have a couple of questions on whether there are
12 early results that have come out of this that might be of
13 general interest. Have you compared notes much with other
14 utilities?

15 I'm sure you've talked to the INPO people a good
16 deal, but are there things that have come out of this already
17 that other utilities have found particularly interesting or
18 that are different?

19 MR. RICE: I can address that question. We are
20 sharing all of the things in the process, procedures, and
21 results with any other utilities.

22 [Commissioner Roberts leaves the Commission
23 meeting.]

24 MR. RICE: We've had two utilities -- WNP-3, which
25 was mentioned awhile ago, and one other utility, TVA -- well,

1 there's really three then -- there's TVA, and also Comanche
2 Peak has visited us, looked at the process, and carried away
3 both our procedures, and at least in my exiting with those
4 folks, some idea of some things they may want to apply from
5 this. They're in a different condition than we are, but we
6 are sharing all of the lessons learned and the process in a
7 very open manner with them.

8 COMMISSIONER BERNTHAL: What's the general
9 attitude? I'm not sure how candid you care to be. Did they
10 consider it overkill? Do they consider it overwhelming to
11 even think about initiating such a project, or are a lot of
12 them nodding their heads saying, "Sounds like it's a great
13 idea, which we have done or we intend to do?"

14 MR. MILLER: I don't think I've had any
15 broadly-based feedback, enough to really give you a feel for
16 that. I may get some at my NUMARC meeting in late August.

17 The only people I have talked to have been
18 supportive, but I haven't really spoken to very many of them.
19 I really can't tell you what the thrust of the industry might
20 be.

21 COMMISSIONER BERNTHAL: Has this made visible
22 differences in construction itself, so if I were to go down
23 there tomorrow, I would be able to tell somehow that you are
24 doing things differently in the plant than other utilities
25 might be? Or is it mostly behind the scenes?