

December 23, 1985

BEFORE THE
UNITED STATES
NUCLEAR REGULATORY COMMISSION '85 DEC 24 A11:25

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of

TEXAS UTILITIES GENERATING COMPANY,
et al.

(Comanche Peak Steam Electric
Station, Units 1 and 2

)
)
) Dkt. Nos. 50-445-1&2
) 50-446-1&2
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)
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06506-2

CASE MOTION TO REALIGN THE DOCKETS
OR, IN THE ALTERNATIVE,
TO CONSOLIDATE THE DOCKETS¹

Introduction

In numerous filings by Applicants and Staff in recent months, they have complained about special procedural problems which they believe exist solely because this case is divided into two dockets. In addition, Applicants and Staff have argued that the scope of the issues as CASE perceives them in Docket 2 is far broader than they believe is appropriate for Docket 2, although not broader than the proper scope of issues in this entire

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In their Memorandum (Possible Docket Unification) of 12/12/85, these Boards indicated that this is an issue they would address sua sponte but for its pendency before the Appeal Board.

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proceeding. For instance, in its Answer to Applicants' Directed Certification Petition of the October 31, 1985, Board Order (12/2/85), the Staff states (pp. 27-8):

Nor is the Staff here complaining about the particular scope of issues in the overall proceeding.

The presence of two dockets has led to endless wrangling over the proper docket for discovery, the availability of evidence between dockets, the process for cross-referencing data from each docket, and the like. CASE has long been on record on these issues and has continually argued that these are artificially created problems which are no different than the problems that would arise in a complex, multi-issue, single-docket case. Nonetheless, Applicants and Staff have persisted in their complaints. As a result of these complaints and of the Board's recent Memorandum (Possible Docket Unification) (12/12/85), we have also reexamined the issue. It is our view that the root of the problem is not the existence of two dockets but rather the magnitude of the changes which have occurred since the two dockets were created that makes the division of issues between the dockets substantially less meaningful.

There are two possible solutions to this dilemma: either realign the issues or consolidate the dockets. Since the creation of two dockets appears to have been motivated in part by the need to accommodate one Board Member of the original docket, CASE does not feel that it has the information necessary to argue that the only solution is that the dockets be consolidated, although it favors that remedy because it will be less complicated and will avoid future complaints. CASE believes that

either realignment of issues or consolidation would accomplish
the same basic purpose.²

Facts

Before there were two dockets, the legitimate issues in this
proceeding included³ the following:

1. Did the QA/QC program fail to detect a significant number of construction defects?
2. What was the extent of that failure?
3. What was the cause of that failure?
4. What are the implications of the answers to these three questions for the future of Comanche Peak? For instance:
 - a. Is an operating license denial required?
 - b. If a reinspection effort is required to avoid a license denial, what should be the scope and requirements for the reinspection?
 - c. Was the reinspection properly implemented?
 - d. What is the type (both procedural and substantive)

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The process for either realignment of issues between the dockets or consolidation can be carried out in the same fashion as the creation of Docket 2. The Commission has delegated to the Chairman of the Atomic Safety and Licensing Board Panel authority to establish licensing boards (significantly this authority is not delegated to the Appeal Board) and, by inference, to define the scope of the issues for those hearing boards. 10 CFR §§2.721(a) and 2.718(e).

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Among the items not listed are plant design questions, QA/QC failures unrelated to construction, document control problems, specific hardware problems unrelated to QA/QC failures, management character and competence to operate the plant, and any new contentions which may be warranted by ongoing revelations about Comanche Peak.

of rework program required by the results of the reinspection?

e. Was the rework program (both design and construction) properly implemented?

f. Does the reworked plant meet the requirements for issuance of an operating license?

No one knew with confidence how these questions would arise, if at all, or which ones would dominate future licensing consideration. But in the latter part of 1983 it became apparent that one sub-issue -- the possible existence of "incidents or actions" of which "management was aware" that "might have been interpreted by workers as a discouragement to the proper reporting of deficiencies in the QC program" (Judge Block, Prehearing Conference Transcript, June 14, 1984, p. 13939) -- could be isolated and heard separately. This sub-issue was given the "shorthand" title "intimidation and harassment" (Mr. Treby, id., p. 13928) and resulted in creation of a separate docket. Although all parties recognized that no one could say in advance precisely what the hearings would produce or what standard should be used for defining harassment and intimidation (Judge Grossman, id., p. 13910; Mr. Belter, id., p. 13916; Judge Block and all parties, id., pp. 13939-40), it is even more significant that there was no discussion of what would happen if, in the middle of the harassment and intimidation hearings, it became apparent that there had been a substantial failure of the implementation of the QA/QC program to detect construction defects.

Now that the failure of the QA/QC program has been confirmed

in a manner which has altered the Applicants' licensing plan, the focus of concern in this proceeding has shifted significantly from seeking to establish only one generic root cause of the QA/QC failure that could be shown to be sufficiently pervasive to require a major reinspection, to the reality that there has been a plantwide failure of QA/QC which has resulted in a major (not necessarily adequate) reinspection from which Applicants will eventually produce a root cause analysis. This analysis may include a determination of the extent to which the root cause was, among others things, "harassment and intimidation." Thus the issue on which the parties' and the Board's attention is now focussed is the scope of the failure rather than the root cause. Root cause will be addressed later. These changed circumstances do warrant changes in the hearing structure.

Argument

The reason for establishment of Docket 2 was that (letter to Anthony Z. Roisman from B. Paul Cotter, Jr., 12/11/85):

Judge McCollom, a member of the first board and a part-time Panel member, was then experiencing workload conflicts because of his duties as Dean of the College of Engineering, Architecture, and Technology at Oklahoma State University. In addition, it appeared that the harassment and intimidation issues were discrete and could be handled by a second board, thus improving efficiency in resolving the issues in the case. These considerations justified the establishment of a second board, particularly in light of the Commission's policy statement of May 20, 1981, 13 NRC 452, concerning the conduct of licensing hearings.

We have no information regarding Dr. McCollom's availability at this time and do not address it. However, it does now appear

that the issue of harassment and intimidation is not such a discrete issue that its resolution can be concluded separately and apart from other issues in this case. In addition, it is now significantly less relevant to isolate harassment and intimidation from either other generic root causes of the failure of QA/QC or from other issues in the case. In fact, considering the Staff argument (Answer to Applicants' Directed Certification Petition (12/2/85)), it may be impossible and is certainly difficult to isolate harassment and intimidation as a separate
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Docket 2 issue.

The key to the present confusion about Docket 2, as the Staff claims, stems from the different perceptions of the scope of Docket 2. Staff and Applicants would limit proof of the existence of harassment and intimidation to individual incidents. CASE believes that in addition to individual incidents offered as examples or evidence of a pervasive climate of harassment and intimidation, and certainly in the context of proving pervasiveness, it can and must also be able to present evidence

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CASE has argued before that efforts by Staff to isolate issues between Dockets 1 and 2 is foolish and unnecessary. Evidence, discovery, and implications based upon them can and should freely move between the dockets with appropriate fair warnings. Staff and Applicants insist on a rigid separation of issues and argue that without it there would be confusion and inefficiency. In this motion we accept their argument, although not fully agreeing with it, because, as we have also argued, there is no inherent practical difference between one docket and two if the same issues are to be ultimately resolved. What is at the heart of the potential problems perceived by Staff and Applicants is the artificiality created by attempting to confine Docket 2 to individual incidents of harassment and intimidation without regard to other evidence from which pervasive harassment and intimidation can be implied, and to confine Docket 2 to what is only a portion of the root cause issue. Thus the cure, proposed here, is to realign the issues or to consolidate the docket.

regarding the scope of the breakdown of QA/QC. If there is evidence of harassment and intimidation and some construction or procedural defects are traceable to that harassment and intimidation, and if there are also a large number of additional previously undetected defects, then CASE can argue that, absent persuasive contrary proof, the root cause of the additional defects was harassment and intimidation of some workers, which then created the inhibiting atmosphere for all workers. In order to make that argument, CASE in Docket 2 is entitled to explore fully the scope of the QA/QC breakdown, including all of the TRT and CPRT findings and the adequacy and reliability of those programs for finding defects. In Docket 1 CASE also has an interest in construction defects because in that Docket it will focus, inter alia,⁵ on the plant hardware. Thus the safety significance today of the previously undetected construction defects and the adequacy of the repair work program and its implementation are Docket 1 issues.

In their CPRT, Applicants do not look for root causes or conduct follow-up inspections on construction defects which they now claim are not safety related even though at the time of the original construction work it was treated as safety related and a properly functioning QA/QC program should have detected it.

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The failure of QA/QC to detect a construction defect which at the time of construction was safety significant but on later review is determined not to be safety significant is just as persuasive evidence of the QA/QC breakdown as the finding of a defect which was and still is safety significant. The important difference created by a valid determination that there is no current safety significance is that the repair work required will be different.

E.g., liner plates and paint coatings. By taking this position Applicants make the current safety significance of identified construction defects a Docket 2 issue by forcing CASE in Docket 2 to argue that defects are safety related today in order to be able to force a review of the root cause of that defect.

What follows from all this is that the existence and scope of the failure of QA/QC to find construction defects and the safety significance today of those defects has emerged as central issues in this proceeding. CASE is willing to litigate that issue in Docket 2 where its implication for the argument that harassment and intimidation is the root cause of the failures is extremely important. However, since the resolution⁶ of this issue is also relevant to Docket 1, and since the issue is becoming so dominant, it does make practical sense to combine the dockets, assuming Dr. McCollom's schedule does not create a problem. An advantage of combining the dockets is that it is not necessary to go through the unproductive process of deciding which parts of which issues belong in which dockets or any of the procedural problems that Applicants and Staff claim are inherent in two dockets.

There are several additional factors which should be considered at this point which also bear on the instant motion.

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Under the realignment of dockets proposed, it would not be necessary, at least based on what is currently known about the issues and facts in this proceeding, to cross-reference evidence between dockets. Rather it will be sufficient to use findings made in one docket to support arguments and findings in the other docket. To avoid the possible Catch-22 problems, the cross-referencing would be to proposed findings in the docket which is not completed.

First, contrary to the views of the Staff and Applicants, even if the two dockets were to remain separate and even if their view of the scope of Docket 2 were to prevail, the hearings in Docket 2 could not conclude until Applicants had completed implementation of the CPRT and identification of their view of the root causes of the failures. Just as completion of the TRT was a prerequisite to completion of Docket 2, so too is the completion of the CPRT. Second, the affirmative case by CASE in Docket 2 is not limited to the facts known as of the summer of 1984.

Subsequent disclosures, at least of events which occurred prior to June 14, 1984, whether they come from the TRT, CPRT, or other sources, are legitimate evidence for Docket 2, regardless of its scope, and at an appropriate time will be offered. Three, regardless of how the Dockets are structured and what issues are assigned to the Dockets, CASE has the same prerogative as other parties to assign its representatives to work on particular issues regardless of where they arise. (For this reason, CASE is filing with this pleading Notice of Appearance forms for Mr. Roisman and Ms. Garde in Docket 1 on discrete issues and a Notice of Appearance form in Docket 2 for Mrs. Ellis on discrete issues.)⁷ Finally, as the evidence unfolds, many possible causes, or a combination of causes, may emerge as the reason for the failure of QA/QC. To the extent these are generic causes it

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The multi-representative party is now the rule rather than the exception in this proceeding. CASE's representatives in Docket 1 and 2 have previously committed to eliminate duplicative efforts and redundancy in filings, discovery, etc. Under a unified docket or realigned dockets, that commitment would, of course, continue.

will not really matter to what extent harassment and intimidation is the principal cause. Any generic cause of the failure of QA/QC to detect construction defects will require the kind of reinspection effort CASE is seeking. Using the narrow view of Docket 2 urged by Applicants and Staff would result in one hearing on one possible generic cause of the QA/QC failures and another hearing in another docket on all the other possible generic causes.

Relief Sought

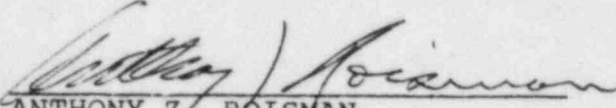
In light of the above discussion, CASE proposes that either the two dockets be consolidated (assuming Dr. McCollom is agreeable) or that the scope of Docket 2 be expanded to include not only the extent of the breakdown of QA/QC for construction, whether harassment and intimidation was the cause of that breakdown and the implications of these findings (whether to deny the operating license and the extent of reinspection which could prevent that denial, if any) -- all of which are already in the Docket 2 -- but also the safety significance of the construction defects not found by QA/QC and all of the root causes of the failure of QA/QC. This would leave Docket 1 with at least the following issues: all the design issues, pre-existing hardware problems, document control problems, implementation of the reinspection effort, design and implementation of the rework program (including both design and construction), management character and competence to operate the plant, and ultimate licensability of the plant. This is a division which reflects a

logical dividing point among the issues at this time.

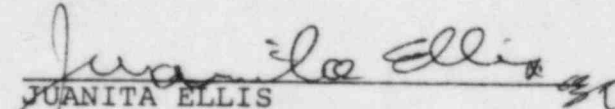
Conclusion

The time is appropriate to restructure this proceeding to reflect the reality of what is happening. CASE offers one of two courses of action to accomplish the restructuring. Our preference is toward consolidation because it will reduce much of the squabbling and complaining from Applicants and the Staff but we will accept either course as a substantial improvement over the status quo.

Respectfully submitted,


ANTHONY Z. ROISMAN
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Counsel and Representative of
CASE in Dockets 1 and 2

BEFORE THE
UNITED STATES
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

'85 DEC 24 A11:25

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of

TEXAS UTILITIES GENERATING COMPANY,
et al.

(Comanche Peak Steam Electric
Station, Units 1 and 2

)
)
) Dkt. Nos. 50-445-1
) 50-446-1
)
)

NOTICE OF APPEARANCE OF ANTHONY Z. ROISMAN

Notice is hereby given that the undersigned will appear in this docket on the matters of the extent of the past breakdown of QA/QC, the cause of the past breakdown of QA/QC, the safety significance of the construction defects not previously detected by QA/QC, and the implications of the resolution of these matters for issuance of an operating license and/or the scope of any reinspection required to permit issuance of an operating license, on behalf of the Citizens' Association for Sound Energy (CASE):

NAME: Anthony Z. Roisman

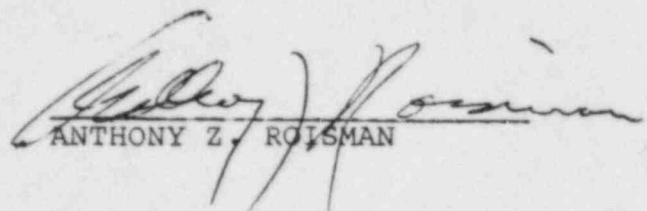
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ADMISSIONS: New York State (1965)
District of Columbia (1967)

PARTY: Citizens' Association for Sound Energy (CASE)

December 23, 1985


ANTHONY Z. ROISMAN

BEFORE THE
UNITED STATES
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

'85 DEC 24 A11:25

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)

TEXAS UTILITIES GENERATING COMPANY,
et al.)

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

Dkt. Nos. 50-445-1
50-446-1

NOTICE OF APPEARANCE OF BILLIE P. GARDE

Notice is hereby given that the undersigned will appear in this docket on the matters of the extent of the past breakdown of QA/QC, the cause of the past breakdown of QA/QC, the safety significance of the construction defects not previously detected by QA/QC, and the implications of the resolution of these matters for issuance of an operating license and/or the scope of any reinspection required to permit issuance of an operating license, on behalf of the Citizens' Association for Sound Energy (CASE):

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TELEPHONE: (202)463-8600

PARTY: Citizens' Association for Sound Energy (CASE)


BILLIE P. GARDE

December 23, 1985

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. 50-445-2
and 50-446-2

(Application for an
Operating License)

NOTICE OF APPEARANCE
OF JUANITA ELLIS
FOR CASE IN DOCKET 2

Pursuant to 10 CFR Section 2.713(b) the undersigned representative of the Intervenor, CASE (Citizens Association for Sound Energy), enters her appearance in the above-captioned matter and in connection therewith provides the following information:

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

Address: 1426 S. Polk
Dallas, Texas 75224

Telephone No.: 214/946-9446

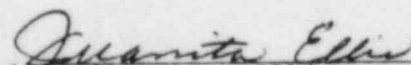
Name and Address of Party: CASE (Citizens Association for Sound Energy)
1426 S. Polk
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Admissions: Docket 1 (Main Docket) of
Comanche Peak Operating Licensing Proceedings
Docket Nos. 50-445 and 50-446

This notice of appearance applies with respect to the following issues only:

- (1) The safety-significance of construction defects not properly identified by QA/QC;
- (2) The adequacy of the implementation of the reinspection program;
- (3) The adequacy of proposed plans for the corrective action program;
- (4) The implementation of the proposed plans for correcting those defects;
- (5) The implications of the preceding four items for purposes of deciding whether to issue an operating license; and
- (6) Management's character and competence for operating the plant.

Respectfully submitted,


(Mrs.) Juanita Ellis

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

'85 DEC 24 A11:25

In the Matter of)
)
TEXAS UTILITIES GENERATING)
COMPANY, et al.)
)
(Comanche Peak Steam Electric)
Station, Units 1 and 2))

OFFICE OF SECRETARY
DOCKETING & SERVICE
Docket Nos. 50-445-1&2
and 50-446-1&2

CERTIFICATE OF SERVICE

By my signature below, I hereby certify that true and correct copies of CASE's Motion to Realign the Dockets or, in the Alternative, to Consolidate the Dockets; Notice of Appearance of Anthony Z. Roisman; Notice of Appearance of Billie P. Garde, and Notice of Appearance of Juanita Ellis have been sent to the names listed below this 23rd day of December 1985, by: Express mail where indicated by *; Hand-delivery where indicated by **; and First Class Mail unless otherwise indicated.

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Washington, D.C. 20555

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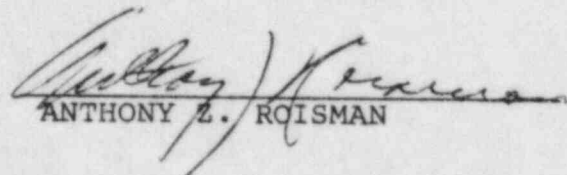
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