

ORIGINAL

UNITED STATES NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

DOCKET NO: 50-445 OL2
50-446 OL2

TEXAS UTILITIES GENERATING COMPANY,
et al.

(Comanche Peak Steam Electric
Station, Units and 2)

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of: :
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TEXAS UTILITIES GENERATING COMPANY, : Docket No. 50-445 OL2
et al. : 50-446 OL2
:
(Comanche Peak Steam Electric :
Station, Units 1 and 2) :
:
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Tuesday, December 24, 1985

The telephone conference in the above-entitled matter
convened at 10:00 a.m.

BEFORE:

JUDGE PETER BLOCH, Chairman
Atomic Safety and Licnesing Board

JUDGE HERBERT GROSSMAN, Member
Atomic Safety and Licensing Board

JUDGE WALTER JORDAN, Member
Atomic Safety and Licensing Board

-- continued --

1 APPEARANCES:

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20 On behalf of the Nuclear Regulatory Commission:

21 LAWRENCE J. CHANDLER, ESQ.
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23 GEARY MIZUNO, ESQ.
24 U.S. Nuclear Regulatory Commission
25 Office of the Executive Legal
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Washington, D. C. 20555

P R O C E E D I N G S

JUDGE BLOCH: Good morning, I'm Peter Bloch, chairman of the two dockets involved in the litigation of the licensing for Comanche Peak Steam Electric Stations 1 and 2. This conference is called in both cases, and shall come to order.

The matters that we are considering today include the order issued by the Appeal Board on December 23, in which the Appeal Board did not take jurisdiction but suggested that the Licensing Board proceed forthwith concerning possible unification of dockets. Also involved is another filing of December 23, a motion to realign the docket which may or may not be in the hands of the parties at this time. I know that it's in the hands of the Licensing Board, except for Dr. Jordan.

With me today are Judge Grossman, who is in my office, and Judge Jordan, who is in Florida. Judge McCollum was unable to join us. We are sitting today in both dockets.

Would Applicants please identify themselves for the record.

MR. DIGNAN: Thomas J. Dignan, Jr., of the firm of Ropes & Gray, 225 Franklin Street, Boston, Mass., and I believe in Dallas also for the Applicant is Mr. Robert Waldrich, and I will be the talking for the Applicants.

1 JUDGE BLOCH: For the Intervenors, CASE?

2 MR. ROISMAN: This is Anthony Roisman, for the
3 Intervenors, CASE, and with me on a different phone is
4 Ms. Billie Garde, and I'm assuming in Dallas is Juanita
5 Ellis.

6 MS. ELLIS: Yes.

7 JUDGE BLOCH: For the Staff of the Commission?

8 MR. CHANDLER: For the Staff, my name is Lawrence
9 J. Chandler. With me is Richard Bachmann, and Geary Mizuno.
10 I'll be speaking for the Staff, Mr. Chairman.

11 JUDGE BLOCH: Okay. The conference call we are
12 holding today is held at the request of the parties, and
13 the parties have positions on docket unification. I would
14 like, first, for the simple statement of each of the
15 parties as to whether they favor unification or not, and
16 then I will call for statements from the parties as to what
17 action they would like the Board to take today.

18 First, for CASE, Mr. Roisman?

19 MR. ROISMAN: Mr. Chairman, our views on that
20 are set forth in the motion filed. Our preference is
21 toward unification, or as we call it consolidation, of the
22 two dockets. But because of our uncertainty about
23 Dr. Malcolm we will also offer in the alternative that
24 there be a realignment of issues between the dockets.

25 JUDGE BLOCH: Judge Malcolm is available. He's

1 no longer dean of the engineering school of Oklahoma as of
2 January 1, 1986, and the scheduling problems for him no
3 longer exist. So I understand that under the circumstances
4 you just favor unification?

5 MR. ROISMAN: Yes.

6 JUDGE BLOCH: For Applicants?

7 MR. DIGNAN: The Applicants favor unification,
8 your Honor.

9 JUDGE BLOCH: And for the Staff?

10 MR. CHANDLER: Likewise the Staff favors
11 unification, Mr. Chairman.

12 JUDGE BLOCH: Other than an order which would
13 effect unification, Mr. Roisman, do you favor any other
14 action by the Board at this time?

15 MR. ROISMAN: No, Mr. Chairman. I don't think
16 any other action is necessary at this time.

17 JUDGE BLOCH: Mr. Dignan?

18 MR. DIGNAN: Your Honor, I'm not sure whether
19 any action is necessary, but I would just like to advise
20 the Board that my view of unification is in conformity with
21 what I understand Mr. Roisman's motion to be, and I would
22 appreciate it if he would correct me if any of my
23 understanding is wrong. And that understanding is passing
24 any of the rhetoric or his dissertation on what has been
25 demonstrated so far or what the issues should be, which I

1 say leave to another day; it is my understanding that CASE
2 favors unification of the docket and that CASE will then
3 start functioning, as do the Applicants, as a single party;
4 and that while they'll divide the work up among lawyers and
5 so forth as they see fit, we will be given one response to
6 a given pleading on behalf of CASE; one attorney will
7 cross-examine a given witness, one attorney will present a
8 given witness, just as is the case with the Applicants in
9 the usual course. And that is the understanding -- if that
10 is the understanding of all the parties, I have nothing
11 further to add.

12 JUDGE BLOCH: Mr. Dignan?

13 MR. DIGNAN: My understanding is that the
14 authority for us to do this unification resides in section
15 2.718 and what we'd really be doing is ceding the authority
16 for Docket 2 back to the Docket 1 Board.

17 MR. DIGNAN: That's correct, your Honor.

18 JUDGE BLOCH: In which case it would be like any
19 other case with only one docket.

20 MR. DIGNAN: That's my understanding, too, and
21 the only thing I think should be clarified -- and maybe it
22 doesn't need to be clarified, I'm assuming as I say this --
23 that that is precisely what we are going to have and that
24 means the rules will be, everybody gets one bite in terms
25 of -- I don't expect to have one -- if a responsive

1 pleading is required to a given document, I don't expect to
2 see one response from Mr. Roisman and another response from
3 Ms. Ellis, in the future.

4 JUDGE BLOCH: Staff?

5 MR. CHANDLER: We would have nothing to add to
6 what Mr. Dignan said. I will have one ancillary thing to
7 bring up at the end of the call, that's all.

8 JUDGE BLOCH: Mr. Roisman, do you have a
9 response to what Mr. Dignan said?

10 MR. ROISMAN: Yes, Mr. Chairman. We certainly
11 will file a single pleading on all issues as would be
12 appropriate. With respect to number of counsel speaking
13 with respect to particular issues or doing examination, I
14 think the practice has been, even within Docket 2, that
15 there have been times when portions of cross-examination
16 have been handled by one of us and portions of
17 cross-examination by others of us, and also with regard to
18 oral argument. Those have not been redundant; it's simply
19 been a matter of how we have chosen to divide
20 responsibility and I don't think they've ever caused any
21 problems in Docket 2.

22 JUDGE BLOCH: That's right. And it has always
23 been clarified --

24 MR. DIGNAN: No problem with that, your Honor.

25 JUDGE BLOCH: Any problem, Mr. Dignan?

1 MR. DIGNAN: I have no problem with that.

2 JUDGE BLOCH: But certainly Mr. Dignan is right
3 in saying that at this point CASE will effectively speak
4 with a single voice, not with multiple voices depending upon
5 different dockets or different issues, and that there would
6 never be two responses to exactly the same thing coming
7 from two different parts of the CASE representation.

8 So, in light of the position of the parties and
9 the power vested in the Board by section 2.718 of the rules,
10 we hereby declare on behalf of both boards that the powers
11 vested in Board 2 are hereby ceded back to Board 1, and
12 Board 1 is now the only docket in existence for the
13 Comanche Peak case. It can be referred to, as it has
14 always been, without any "dash" after the docket number --
15 with a "dash 1"; excuse me.

16 Mr. Chandler, you said you had a question?

17 MR. CHANDLER: Yes, your Honor. The Staff had
18 one --

19 MR. DIGNAN: Your Honor?

20 JUDGE BLOCH: Yes, Mr. Dignan?

21 MR. DIGNAN: Yes. Before Mr. Chandler brings up
22 this collateral matter, could I respectfully make one
23 suggestion on the order?

24 JUDGE BLOCH: Please.

25 MR. DIGNAN: And that is, would there be any

1 merit -- because the Board is presumably created by the
2 Commission, in this case the Docket 2 Board through the
3 delegation, through the chief administrative law judge,
4 that the order specifically say or include a statement that
5 the order is being forwarded to the administrative law
6 judge for such confirmation as he may feel is necessary?
7 I'm just worried about a glitch of somebody taking a
8 position that the jurisdictional prerequisite of a
9 cessation of activity is not in place.

10 JUDGE BLOCH: We will inform the Chairman and
11 also will inform the Appeal Board. My concern is that I do
12 not interpret the power to create boards to be the power to
13 disband them.

14 MR. DIGNAN: Frankly I agree with you, your
15 Honor. What I'm guarding against is the possibility that
16 somebody up the line may decide both of us is wrong.

17 JUDGE BLOCH: We will promptly inform them of
18 what we have done.

19 MR. DIGNAN: Thank you, your Honor.

20 JUDGE BLOCH: Mr. Chandler?

21 MR. CHANDLER: Yes, your Honor. The Staff would
22 request some clarification of one matter, Mr. Chairman. We
23 have now seen, once again, a notice of appearance filed on
24 behalf of Ms. Garde, and it is unclear to us what the
25 nature of her representation is, in accordance with the

1 Commission's regulations, in particular section 2.713.
2 That is to say, I do not understand that Ms. Garde is an
3 attorney-at-law admitted to practice before any of the
4 courts and it is unclear whether she is a member or officer
5 of the intervenor, CASE, and we were wondering what the
6 nature of her representation is. I know we've seen her --
7 two notices of appearance, most recently the one attached
8 to the December 23rd motion, and we previously have seen
9 her identified as one of counsel for CASE.

10 JUDGE BLOCH: Would counsel for CASE like to
11 clarify this matter?

12 MR. ROISMAN: Yes, Mr. Chairman. We believe that
13 the Staff and the Applicants, by their conduct during the
14 prehearing conference on June 14th of 1984, and all times
15 subsequent to then, have wasted any possible objection they
16 might have and have had the benefits of having Ms. Garde
17 treated as a lawyer for purposes of this proceeding. She
18 has been used as another lawyer when Staff and Applicant
19 wanted to have more than one party take more than one
20 representative, taking depositions from CASE. And she has
21 been in that posture, now, for almost 18 months and we feel
22 that if the Staff thought it was wrong, the time to have
23 raised it was when the Applicants pressed for Ms. Garde to
24 be treated as counsel.

25 She is not an officer of CASE, not a member of

1 CASE. She functions in this office in the capacity as a
2 lawyer in that case under my supervision, as any junior
3 lawyer would, and in other matters she is also involved
4 with us, including being the director of the Environmental
5 Whistleblower Protection Project for the Trial Lawyers for
6 Public Justice and --

7 MR. CHANDLER: So it's clear, we were not
8 raising an objection but were seeking clarification. I'm
9 not sure that we are able to waive the Commission's
10 regulations in that sense. We certainly have not objected
11 to Ms. Garde's participation to date. Certainly we
12 recognize in at least two instances, law students have been
13 permitted to assist counsel in proceedings under their --
14 under counsel's direction and supervision, notably in the
15 Southern California Edison proceeding regarding San Onofre
16 2 and 3, as well as the Big Rock proceeding on spent fuel
17 pool modification. We are not asserting an objection to
18 her participation at all, but we are seeking clarification.

19 JUDGE BLOCH: Mr. Dignan, have you a comment?

20 MR. DIGNAN: Some time ago I advised Mr. Roisman
21 that the Applicants would not raise this question and I
22 don't raise it now.

23 JUDGE BLOCH: Under the circumstances the Board
24 sees no prejudice and will take no action with respect to
25 this matter.

1 MR. CHANDLER: None was sought, Mr. Chairman.

2 JUDGE BLOCH: There being no further business --

3 (Discussion off the record.)

4 JUDGE BLOCK: Mr. Reporter, we'd like to resume
5 the record. Judge Grossman will be speaking.

6 JUDGE GROSSMAN: Yes. I would like to make
7 clear on the record that I join in the order transferring
8 authority, for whatever that's worth, just in case there
9 are some obstacles that my concurrence would overcome.

10 JUDGE BLOCH: The hearing is adjourned.

11 (Whereupon, at 10:30 a.m., the hearing was
12 adjourned.)

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NAME OF PROCEEDING: TEXAS UTILITIES GENERATING COMPANY, et al.

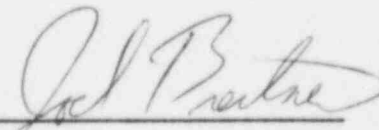
(Comanche Peak Steam Electric Station,
Units 1 and 2)

DOCKET NO.: 50-445-OL2; 50-446-OL2

PLACE: WASHINGTON, D. C.

DATE: TUESDAY, DECEMBER 24, 1985

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