

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD 16 A9:47

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 THE MOTION OF THE STATE  
OF TEXAS FOR THE ADMISSION OF A NEW CONTENTION  
REGARDING THE ADEQUACY OF EMERGENCY PLANNING

Pursuant to 10 C.F.R. §2.730(c), Texas Utilities Generating Co., et al. ("Applicants") hereby serve their answer to the Motion of the State of Texas for the Admission of a New Contention Regarding the Adequacy of Emergency Planning, dated June 9, 1983. For the reasons set forth below, Applicants urge the Board to deny that motion.

I. INTRODUCTION

By Memorandum and Order of June 27, 1979, the Board admitted the State of Texas as a party to the proceeding. Board Order of June 27 at p. 12. Although the Attorney General of the State of Texas had the opportunity to file contentions in this proceeding by May 7, 1979, he chose not to do so. Id. at pp. 2, 12.

Subsequently, in response to contentions regarding emergency planning filed by the intervenor and to this Board's inquiries, nine representatives of federal, state

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and county governments and agencies, and the Applicants, presented testimony and were cross-examined during four days of hearing regarding emergency preparedness (i.e., September 16 and 17, 1982, and May 19 and 20, 1983).<sup>1</sup>

Now, four days before the final session on emergency planning (at which only the NRC witness is scheduled to testify), the Attorney General moves the Board to admit a new contention which alleges that "Somervell County and Hood County do not have the commitment, expertise, and resources to adopt and implement emergency plans that meet all fifteen applicable planning standards of 10 CFR §50.47(b)."

Attorney General's Motion at p. 1. As is discussed more fully below, Applicants maintain that the late-filed proposed contention (1) lacks the requisite specificity and supporting bases required by Commission regulations and (2) is not supported by an appropriate showing required for admission of a late-filed contention. Accordingly, Applicants maintain that this motion must be denied.

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<sup>1</sup> Testimony and cross-examination on emergency planning was concluded during the September, 1982 hearings. The hearings on emergency planning in May, 1983 were necessitated by the replacement of Judges Miller and Cole (who had presided at the September, 1982 hearings) with Judges Bloch and Jordan, who raised Board questions regarding emergency planning.

## II. DISCUSSION

### A. The Legal Standard

A late-filed contention may not be admitted unless it meets the basis and specificity requirements of 10 C.F.R. §2.714(b), and the proponent of the contention demonstrates that a balancing of the factors set forth in 10 C.F.R. §2.714(a)(1)(i)-(v) weighs in favor of admission.<sup>2</sup>

With regard to basis and specificity, the Commission's rules, as amended effective April 26, 1978, require that

. . . the petitioner shall file . . .  
a list of the contentions which  
petitioner seeks to have litigated in  
the matter, and the bases for each  
contention set forth with reasonable  
specificity [(emphasis supplied)  
Section 2.714(b)].

The Statement of Considerations issued when the Commission amended this regulation indicates the importance which the Commission attaches to the basis and specificity requirements, stating that a "proposed contention must be set forth with particularity and with the appropriate factual basis."<sup>3</sup> 43 Fed. Reg. 17798 (April 26, 1978). It is clear that the Commission intends the requirement to

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<sup>2</sup> The standards governing late intervention set forth in 10 C.F.R. §2.714(a)(1) also apply to late filed contentions. See 43 Fed. Reg. 17798 (April 26, 1978).

<sup>3</sup> The Commission's earlier rules similarly imposed the basis and specificity requirements with respect to contentions. Prior to the 1978 amendments, Section 2.714(a), in pertinent part, required that a petitioner provide an affidavit "setting forth with particularity . . . the basis for his contentions . . . ."

establish a threshold test which a contention must meet before it can be admitted as an issue in controversy in a proceeding.

The Appeal Board has explicitly recognized the importance of the basis and specificity requirements as follows:

Another purpose [of the basis-for-contention requirement in Section 2.714] is to help assure that other parties are sufficiently put on notice so they will know at least generally what they will have to defend against or oppose. Still another purpose is to assure that the proposed issues are proper for adjudication in the particular proceeding. In the final analysis, there must ultimately be strict observance of the requirements governing intervention, in order that the adjudicatory process is invoked only by those persons . . . who seek resolution of concrete issues. [Philadelphia Electric Company, et al. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974) (citations omitted).]

In short, what is required of petitioner is that, first, it identify each allegation against which an applicant must defend. However, in NRC proceedings mere "notice pleading" is insufficient, and the Commission's requirements clearly extend beyond the simple "notice pleading" allowed in the Federal courts. Kansas Gas & Electric Co., et al. (Wolf Creek Generating Station, Unit No. 1), ALAB-279, 1 NRC 559, 575, n. 32 (1975). This is a point of particular importance because in NRC licensing

proceedings an applicant bears the burden of proof on any contention admitted (10 C.F.R. §2.732), and thus is entitled to clear and specific notice of the issues on which it is expected to bear that burden. Second, the basis of the contention must be set forth with sufficient specificity so that the Board can determine that there is adequate foundation "to warrant further exploration" and that they state issues "proper for adjudication in the particular proceeding." Peach Bottom, ALAB-216, supra, 8 AEC at 21.

B. The Contention Fails to Meet the  
Basis and Specificity Requirements  
Set Forth in Commission Regulations

As the basis for its proposed contention, the Attorney General references testimony previously presented in this proceeding regarding the issue of emergency planning. Specifically, the Attorney General contends that (1) "[t]he FEMA interim findings indicate a fundamental failure of the county plans to meet NUREG-0654 criteria" (Attorney General's Motion at p. 4) and (2) the testimony of Mr. Skiles and Mr. Born reflects that the "Somervell County emergency plan does not and will not satisfy the criteria of NUREG-0654 . . . ." (Attorney General's Motion at p. 3).<sup>4</sup>

<sup>4</sup> While it does not serve as a basis for the Attorney General's proposed contention, his statement that there is "no testimony in this proceeding from Somervell and Hood County officials concerning their commitment, expertise, and resources to adopt and implement adequate emergency response plans within their jurisdictions" (Attorney General's Motion at p. 4) is at best grossly  
(footnote continued)



As set forth more fully below, Applicants maintain that the Attorney General's attempts to establish a supporting basis with specificity for his late-filed contention falls far short of the requirements set forth in Commission regulations, and, accordingly, his proposed contention must be denied.

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(footnote continued from previous page)

misleading. The record reflects that Mr. Skiles, who has testified at length in the proceeding, has been employed to, inter alia, assist the counties in formulating and modifying their emergency plans. Tr. 7252-3. Indeed, in his capacity as State employee and later an emergency planning consultant, Mr. Skiles has been working with the current Hood County Judge since 1972 and the Somervell County Judge since 1979 regarding emergency planning. Tr. 7309, 7324. He continues to meet with the county officials regarding emergency planning and assists in formulating and modifying their plans. Tr. 7252-4. In short, while Mr. Skiles is not a county "official," he is clearly very knowledgeable regarding all aspects of county planning and preparedness. Further, the record establishes that Mr. Armstrong has met on a regular basis with the County Judges to obtain approval and concurrence regarding the update of plans. Tr. 7251-3.

Perhaps most significantly, the County plans themselves have been signed by the two County judges, reflecting their approval of and commitment to implement the provisions in the plans. Tr. 5515, 7248-53. Further, testimony has been presented which indicates that Texas State law requires the County Judge to implement necessary actions to protect the public health and safety. Tr. 7307-09.

Contrary to the Attorney General's implications, extensive testimony has been given regarding the expertise and resources available to the County Judges to implement the plans (e.g., see, Testimony of Larry J. Skiles, Alton B. Armstrong, Jr., and Clarence L. Born concerning Judge Jordan's Inquiry Regarding Emergency Planning Recommendations" ("Testimony Regarding Judge Jordan's Concerns") at pp. 4-7 (admitted into evidence and bound into the record following Tr. 7220); Tr. 7315-  
(footnote continued)

The Attorney General apparently posits that if the County plans do not describe in detail the method for compliance with each of the evaluation criterion set forth in NUREG-0654, then the plans are inadequate. The Attorney General is not correct. There is no regulatory requirement that the plans contain such detail at this stage. Further, as shown below, the County plans reflect virtual compliance with the standards, and those plans have been adopted and signed by the County Judges. FEMA has found that there is reasonable assurance that the status of off-site emergency planning is adequate.

As the primary supporting basis for his new contention, the Attorney General first attempts to characterize the record in this proceeding as reflecting that FEMA's interim findings indicate a fundamental failure of the County plans to meet NUREG-0654 criteria, and thus, by implication, that FEMA views the County plans as inadequate. This is simply an incorrect reading of FEMA's interim findings.

In fact, FEMA's interim findings confirm the adequacy of the plans as follows:

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(footnote continued from previous page)  
20, 7346-48, 7368, 7379).

In short, the Attorney General's implication that this record is devoid of testimony from or concerning County officials, and their commitment of available resources, is simply in error.

The review of the plans was based on Section II (A through P), Planning Standards and Evaluation Criteria, NUREG-0654/FEMA-REP-1, Rev.1.

Based on this initial review of the relevant State and County Plans there is reasonable assurance at this time that the off-site protection of the public's health and safety is adequate. [Attachment to FEMA Supplementary Testimony of Albert Lookabaugh and John Benton on Emergency Preparedness, admitted into evidence at, and bound into the record following Tr. 7414].

In short, contrary to the Attorney General's assertions, FEMA's interim findings reflect that based on the State and County plans, there is reasonable assurance that off-site protection is adequate in light of the evaluation criteria of NUREG-0654. If there was a "fundamental failure" of the County plans to meet NUREG-0654 criteria, the interim findings would have so reflected such a failure. The Attorney General had the opportunity to cross-examine the FEMA witness, and did so. He should have pursued his approach to completion at that time. - -

Significantly, the Attorney General inadvertently omits or chooses to ignore the subsequent testimony of FEMA witnesses which makes clear that based on criteria set forth in NUREG-0654, there is reasonable assurance that off-site protection of the public health and safety is adequate. See, e.g., Tr. 7416-7. Further, the Attorney General apparently discounts the testimony of experts from the State



of Texas in this area, who concur with FEMA's analysis. See e.g., Testimony Responding to Concerns of Judge Jordan at p. 5, where Mr. Armstrong (Resource Planning Officer, Division of Emergency Management, Texas State Department of Public Safety) stated that "I believe that the present status of emergency preparedness at the State and County levels is more than adequate to protect the public health and safety, even if coordinators were not appointed by the Judges." Mr. Born (Emergency Manager, Response Program, Bureau of Radiation Control, Texas Department of Health) concurred. Id. at pp. 6-7. Mr. Armstrong stated that this conclusion applied to both the Somervell and Hood County plans, and was based on State standards which meet applicable federal standards including NUREG-0654 and 10 C.F.R. 50.47(b). Tr. 7221-3.<sup>5</sup> Applicants maintain that not only does the Attorney General misunderstand the testimony in this regard, but he appears to have a total lack of understanding regarding the FEMA review and acceptance process in which the State is a key participant.

This process was clearly described on the record in September, 1982 by Mr. Born (Tr. 5647-50), as follows:

MR. REYNOLDS: Sir, would you describe the process which gave rise to these comments from the RAC?

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<sup>5</sup> These State standards were approved by the Texas Office of the Attorney General, the proponent of this instant motion. Tr. 7223.

WITNESS BORN: Yes. In accordance with NUREG-0654, the state and local planners developed documents that were submitted for RAC review.

The RAC consists -- and correct me if I'm wrong on the number -- of ten federal agencies, give or take one or two, each with areas of assigned responsibility in reviewing state and local emergency response plans for nuclear power plants.

A copy of the state submission being its plan, the local plan and a cross-reference similar to this one, were submitted to each reviewer. They went through the plan based on the cross-reference and the identified items.

MR. REYNOLDS: By "each reviewer," you mean each RAC participant?

WITNESS BORN: Yes, an individual from each of those agencies. Each had a copy of the whole document, the whole plan, the cross-reference and 0654.

They were assigned various elements specifically to look for. NRC, for example, might have been assigned to look at Element K-7. If they found an appropriate response, they would perhaps so note in the comment, or perhaps they just wouldn't say anything at all.

If they found a deficiency, they would describe the deficiency.

These comments consist both of acknowledgement of something being adequate, and in some instances of an apparent deficiency. It might have been that the reviewer simply didn't feel the information was in great enough detail.

It might have been that he just flat overlooked it, which was the case in some instances where he would say "Missing," or "Unable to locate this information," despite the fact that it was there in the plan correctly cross-referenced.

So any one particular comment doesn't necessarily imply something missing in the plan, simply that reviewer at the time that he made his response felt that something had not been adequately shown to him.

MR. REYNOLDS: What is the next step of the process with regard to these RAC comments?

WITNESS BORN: The next step is ongoing now, and that is, the state and local planners responding to these comments by, first of all, reading them and studying the plan in relationship to the comment and to 0654.

If there is a deficiency, we change the plan. But --

MR. REYNOLDS: Have you -- I'm sorry.

WITNESS BORN: If there is no deficiency, we describe to the commentator why we do not feel it necessary to change the plan.

MR. REYNOLDS: Are you involved in that process?

WITNESS BORN: Yes I am.

MR. REYNOLDS: Personally?

WITNESS BORN: Yes.

FEMA concurred with this description of the review and concurrence process. Tr. 5703-4.

In line with the review process, over the past several months resolution of many of the outstanding issues has been achieved. See e.g., FEMA Staff Supplementary Testimony of Albert Lookabaugh and John Benton on Emergency Preparedness (entered into evidence at and directly following Tr. 7414) at p. 5, wherein FEMA states that:

In fact, we have reviewed additional information from the State and Counties that favorably addresses many of the previously unresolved objectives and review elements set forth in the RAC Consolidated Comments for CPSES.

See also Tr. 5661-64, 5706-19, 7305-6, and the May 13, 1983 letter from FEMA to the Texas Department of Public Safety regarding resolution of additional items (copy attached hereto).

In sum, Applicants maintain that the Attorney General has factually mischaracterized the interim FEMA findings. Those findings do not indicate a "fundamental failure of the county plans to meet NUREG-0654 criteria." Accordingly, the FEMA testimony provides no basis for the Attorney General's proposed contention.

As its next basis for its proposed contention, the Attorney General attempts to characterize testimony of Messrs. Skiles and Born as establishing that the Somervell County plan "does not and will not satisfy the criteria of NUREG-0654." Attorney General's Motion at pp. 2-3.<sup>6</sup> Mr.

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<sup>6</sup> While the Attorney General states that the combined testimony of Mr. Skiles, Mr. Armstrong, Mr. Born, Mr. Tate, Mr. Jones and Mr. Lancaster "raises serious questions concerning the adequacy of emergency planning now and in the future" (Attorney General's Motion at p. 2), the only specificity provided with regard to such very broad allegations is the testimony of Messrs. Skiles and Born, as noted above. In any event, the Attorney General's broad assertion is belied by the record. Indeed, testimony of these individuals reflect an entirely different conclusion. See e.g., Testimony Regarding Judge Jordan's Concerns at p. 5 wherein Mr.

(footnote continued)



Skiles testimony referenced by the Attorney General is quoted below [Tr. 7237; emphasis added]:

JUDGE BLOCH: I think I could shorten things a bit.

What you are saying is that the [County] plan in its current form doesn't address all the [emergency exercise] issues in the [NUREG-0654] evaluation criteria; is that correct?

WITNESS SKILES: That is correct, sir..

JUDGE BLOCH: But that it represents a commitment that at some time in the future the State will accomplish these objectives?

WITNESS SKILES: No sir. It represents a commitment that when exercises are held in the future that the two local counties will cooperate with those exercises to the best of their abilities. It represents a commitment to do what is required of the county by the state and federal guidelines.

JUDGE BLOCH: Would you agree with me that to accomplish some of these evaluation criteria that some additional planning may be necessary?

WITNESS SKILES: No, sir, I would not.

Contrary to the Attorney General's implications, this testimony does not address all planning criteria, but only the criteria regarding the conduct of emergency exercises and drills. This point is made clear in the testimony before, during and after that cited by the Attorney General

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(footnote continued from previous page)

Armstrong, a State representative, stated that "I believe that the present status of emergency preparedness at the State and County levels is more than adequate to protect the public health and safety . . . ." See also Id., at pp. 6-7 where Mr. Born, also a State official, stated concurrence with Mr. Armstrong's above-noted statement.

(e.g., Tr. 7236, 7238). Further, with regard to the Attorney General's implication that Mr. Skiles testified that the County plans do not and will not comply with NUREG-0654 requirements, the Attorney General ignores the context in which the statements are made. In fact, Mr. Skiles testified that in planning for specific drills and emergency exercises, scenario development planning is necessary and required by NUREG-0654 for each drill. Tr. 7238-9, 7241. Mr. Skiles testified that "the 'plan' says that these exercises will be performed in keeping with county, state and federal preparedness guidelines. Those guidelines have been incorporated by reference." Tr. 7235. He also testified that such specific scenario development is not appropriate for inclusion in the emergency plans. Tr. 7237-9, 7241. Further, the Attorney General fails to note the concurrences in this view by Applicants (Tr. 7239-40) FEMA (Tr. 7241-4), and the State of Texas (Mr. Armstrong at Tr. 7234-5, 7238). In all cases, the record makes clear that in the context of emergency exercises and drills, additional planning would be needed for each exercise to be conducted, but that such planning was clearly inappropriate for inclusion in County plans. The Attorney General cross-examined the witnesses fully on this point (starting at Tr. 7234).

In short, this shows once again that the Attorney General mischaracterized the testimony on which he attempts to base his new contention. The testimony of Mr. Skiles referenced by the Attorney General provides no support for its newly proposed contention.

As the final basis for its proposed contention, the Attorney General attempts to characterize the testimony of a State representative, Mr. Born, (Tr. 7264-65; emphasis added) as questioning the adequacy of the County plans:

JUDGE BLOCH: Back on the record. I've been told that Mr. Born has a statement to make.

WITNESS BORN: For the record, the evaluation criteria contained in the text of 0654 are guidance documents. We used those where applicable in our judgment, and where they would not do violence to the plans and the concept of operations at the state and county level.

We did accept and abide by the planning standards, which are regulation, the 16 planning standards, yes, we have accepted those.

We have made every effort to meet them. But specific evaluation criteria, it may or may not be addressed in our plans. If they are not, our cross-reference shows that they are not, and shows why.

JUDGE BLOCH: Is the reason that they might not that sometimes they conflict with the state requirement?

WITNESS BORN: That is correct. Also, some of them simply do not apply even though the planning beside them in 0654 does show state, local and licensee.

JUDGE BLOCH: Are those the only two exceptions, either that they don't apply or they are inconsistent with the law?

WITNESS BORN: I'll take that back. Some of them don't apply because they address using federal assistance. We were unable in the year and a half of developing this plan to get from the federal government a definition of that assistance. Therefore, we could not incorporate it. We instead made provisions for getting state assistance from other states.

JUDGE JORDAN: Will all these deficiencies show up on the FEMA interim findings?

WITNESS BORN: They are not deficiencies.

While the Attorney General attempts to characterize Mr. Born's testimony as reflecting major violations of NUREG-0654 criteria, the clear thrust and intent of that testimony is to the contrary. In explaining the areas where the County plans deviated from the precise wording of the NUREG-0654 evaluation criteria, Mr. Born stated as follows [(emphasis supplied), Tr. 7287-91].:

MR. CASSIDY: Mr. Born, last evening, and I think Mr. Lancaster's statement might have clarified this somewhat, but you made the statement that there were some elements of NUREG-0654 that the State was not going to follow for a particular reason, or particular reasons.

WITNESS BORN: Yes. If I first might point out what we say is some of the evaluation criteria may not be met. The standards, definitely we do address.

MR. CASSIDY: By evaluation criteria, you are talking about the subcategories of planning standards?

WITNESS BORN: That is correct. For example, there is one evaluation criteria which specified that emergency equipment be inventoried quarterly. We do not keep our emergency equipment in emergency kits.



It is in the hands of the inspector every day of the year, and it is adequately inventoried under state law and state requirements on the established cycle.

MR. CASSIDY: Is it a fair statement of your testimony that where the elements that you are referring to have not been complied with, or not addressed specifically, the State has established a higher standard for those elements?

WITNESS BORN: Yes, They have all been addressed. Some, the process of addressing consisted of giving cause for not-abiding with that evaluation criterion. But for offering an alternative that was found acceptable by the RAC.

MR. CASSIDY: Mr. Born, the question was, in each instance that you don't comply, is the level of preparedness always higher than required?

WITNESS BORN: I would have to say as high or higher.

I couldn't make a judgment on whether it was always higher. But until we have a chance to implement this plan.

MR. CASSIDY: With regard to some of the elements, is one of the issues that you are talking about where you don't comply a situation where the NUREG-0654 may indicate that a particular responsibility is a local government responsibility and for reasons of Texas law or otherwise, it happens to be a state function?

WITNESS BORN: Yes.

MR. CASSIDY: And in some cases, is the opposite true? It may be a county function as opposed to a state function, although NUREG-0654 says it is a state requirement?

WITNESS BORN: Yes. There are several where we found what we consider to be a better way to solve the problem or to meet the requirement.

MR. CASSIDY: When you find what you perceive to be a better way, in the planning process, what mechanism do you use -- strike that.

When you are not addressing a specific NUREG-0654 requirement, how do you rectify that with FEMA in their review process?

WITNESS BORN: We submit the alternative approach or the argument against addressing that item in our plan to FEMA for RAC review and comments. If they find it acceptable, we proceed.

If they in turn object to our counter-proposal, we go back through the process of either making the incorporation as they suggest, or again offering reasons why it should not be included.

MR. CASSIDY: And in fact that process is ongoing at the present time; is that correct?

WITNESS BORN: Yes.

In short, the testimony of a representative of the State of Texas expressing the position of the State belies the position advanced in the Attorney General's Motion. Accordingly, Applicants maintain that this testimony does not provide a supporting basis for the Attorney General's late-filed contention.

Thus, the Attorney General has wholly failed to establish adequate basis with specificity supporting his late-filed contention, and his motion should be denied.

C. Attorney General Has Failed to Make the  
Appropriate Showing Required for  
Admission of Late-Filed Contentions

In that the Attorney General's proposed contention is late filed, it must "affirmatively demonstrate that on balance . . . [the five factors specified in 10 C.F.R. §2.714(a)(1)] favor his tardy admission to the proceeding."<sup>7</sup> Applicants submit that the Attorney General has failed to sustain this burden and that consequently his motion should be denied.

1. Good Cause for Lateness

The Attorney General submits, as the "good cause" for his late-filing, that he was previously unaware of alleged "numerous deficiencies" in the County plans, and such deficiencies "only came to light during the most recent round of hearings." Attorney General's Motion at p. 6. First, as shown above, the "numerous deficiencies" cited by the Attorney General do not exist. Second, in any event, we presume that the Attorney General has been intimately involved with the development, review and coordination process regarding such plans for a number of years.<sup>8</sup> Indeed, State representatives were and are intimately involved with the preparations of and coordination with FEMA

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<sup>7</sup> Duke Power Co. (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-615, 12 NRC 350, 352 (1980).

<sup>8</sup> E.g., testimony reflects that the Attorney General was involved in the concurrence of State standards regarding emergency plans. Tr. 7223.

regarding such plans. Accordingly, the Attorney General cannot be heard to say that the State was not aware of the status of such plans previous to the May 19-20 hearings. The Attorney General has failed to establish good cause for his untimely filing, and as a result, the Attorney General bears a much heavier burden with respect to the other four factors in order to justify his late-filing. Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 2), ALAB-304, 5 NRC 6122, 615 (1977). See also Project Management Corp. (Clinch River Breeder Reactor Plant), ALAB-354, 4 NRC 383, 388-89 (1976).

2. Other Means to Protect Petitioner's Interest

With respect to the availability of other means whereby the Attorney General's interest will be protected, it is clear that the substance and concerns raised by the Attorney General's proposed contention have already been the subject of several days of hearings in this regard during which representatives of the State of Texas testified that the County plans are adequate. The Attorney General, along with the Board and CASE, conducted extensive cross-examination of the witnesses of FEMA, Applicants and State. Accordingly, the Attorney General has had an opportunity to examine the issues raised by the contention already. Further, pursuant to 10 C.F.R. §50.47(a), the NRC must make an overall, independent finding regarding these issues before issuance



of an operating license. Accordingly, the Attorney General's interest regarding the issue has been and will continue to be protected. Further, as a practical matter, the State of Texas is a key participant in resolution with FEMA of outstanding issues regarding the County plans. Thus, through the resolution and acceptance process, the Attorney General will have an ample opportunity to protect his interests.

Accordingly, this factor weighs against admission of the Attorney General's late-filed contention.

3. Ability to Contribute to the Record

With respect to the third factor, 10 C.F.R. §2.714(a)(1)(iii), regarding the ability of the Attorney General to contribute to the record, as previously noted, the Attorney General has already had the opportunity to build a record regarding its concerns. Indeed, the experts of the State of Texas have contributed significantly to the record through their testimony under oath on the issues. Accordingly, this fact does not weight in favor of admission of the late-filed contention.

4. Representation of Interest by Existing Parties

As to the fourth factor, i.e., the extent to which the Attorney General's interest will be represented by existing parties, 10 C.F.R. §2.714(a)(1)(iv), as previously noted, the Attorney General has had ample opportunity to

cross-examine FEMA, Staff, State and Applicants' witnesses. Further, there is already a complete evidentiary record on these issues. In short, his interests have been protected.

(5) Broadening of Issues and Delay

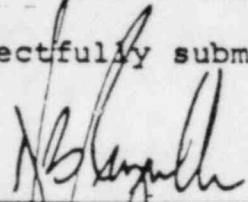
Finally, with respect to whether the Attorney General's request, if granted, will broaden the issues or delay the proceeding, 10 C.F.R. §2.714(a)(1)(v), clearly at this stage of this proceeding admission of the late-filed contention will broaden the issues and delay the proceeding. Accordingly, this factor weighs in favor of denial of the proposed contention.

In sum, none of the factors set forth in 10 C.F.R. §2.714(a)(1) support the admission of a new contention at this late stage of the proceeding. As previously noted, the issue raised by the Attorney General in this proposed new contention has already been the subject of extensive testimony by witnesses representing the State, FEMA, NRC, Staff and County. Thus, the Attorney General has had the opportunity to conduct cross-examination of these witnesses on this issue.

III. CONCLUSION

For the foregoing reasons, Applicants urge the Board to deny The Attorney General's motion to add a new contention.

Respectfully submitted,



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Counsel for Applicants

June 12, 1983



# Federal Emergency Management Agency

Region VI

Federal Center

Denton, Texas 76201

May 13, 1983 JUN 16 09:47

Mr. Robert A. Lansford  
State Coordinator  
Division of Emergency Management  
Texas Department of Public Safety  
P. O. Box 4087  
Austin, Texas 78773

Dear Mr. Lansford:

This will reference your letter, dated March 29, 1983, regarding your response to the RAC comments on the local government plans for Hood and Somervell Counties. We feel that your response to items K.3.b.; K.4.; L.1.; L.4.; and O.1., 4., and 5. has now satisfied our concerns.

We are still concerned, however, with your response to item G.5. This element addresses the furnishing of information to the news media and not the public, as your response indicates. The utility plan, Part 5.0., Page 5-2, Revision 5, last paragraph, covers the item; however, we feel the local plans should reference the fact that these news media briefings will be a coordinated effort between the utility and State and local governments.

Please feel free to discuss this matter with us at any time.

Sincerely,

A handwritten signature in cursive script, appearing to read "R. Dell Greer".

R. Dell Greer

Chief

Natural and Technological  
Hazards Division

cc:

Mr. Clarence Born  
Mr. Larry Skiles



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

RECEIVED

JUN 16 9:47

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Applicants' Answer to the Motion of the State of Texas for the Admission of a New Contention Regarding the Adequacy of Emergency Planning" in the above-captioned matter were had delivered or served by deposit in the United States mail, first-class postage prepaid to the following persons this 13th day of June, 1983.

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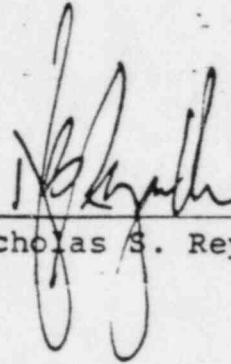
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