

November 3, 1982

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

-- BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
REGULATING & SERVICE
BRANCH

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' RESPONSE TO CASE'S MOTION FOR
RECONSIDERATION OF BOARD'S RULING REGARDING
ATTACHMENTS TO TESTIMONY OF CASE WITNESS JACK DOYLE

Pursuant to 10 C.F.R. §2.730(c), Texas Utilities
Generating Co, et al. ("Applicants"), hereby respond to
CASE's October 23, 1982 "Motion for Reconsideration of
Board's Ruling Regarding Attachments To Deposition/Testimony
of CASE Witness Jack Doyle." For the reasons set forth
below, Applicants urge the Board to strike CASE's motion, or
in the alternative to deny the motion.

I. BACKGROUND

On September 13, 1982, CASE sought to introduce the
deposition¹ of Mr. Jack Doyle as his prefiled testimony.

1 Mr. Doyle had been deposed on August 19 and 20, 1982 by
CASE and cross-examined by Applicants at that time. In
prefiling the testimony of its other witnesses, CASE
indicated it would submit Mr. Doyle's deposition, but also
requested a subpoena "to assure his presence September
13." See CASE's "Testimony of CASE Witnesses and Motion
for Subpoena," dated September 2, 1982.

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However Mr. Doyle was present at the hearing, and the Board indicated that in light of Mr. Doyle's presence he would be expected to present direct testimony at the hearing. Tr. 3587-88. CASE indicated it had intended to use the deposition in lieu of prefiled testimony even though Mr. Doyle was also present at the hearing. Tr. 3588.

Applicants suggested that as a matter of efficiency Mr. Doyle's deposition could be admitted as direct examination and cross-examination, and that Applicants would waive further cross-examination. Tr. 3588-89. The NRC Staff also waived cross-examination. Tr. 3592. Consequently, the Board indicated it would permit Mr. Doyle's deposition to be admitted as his full testimony, both direct and cross-examination. Tr. 3592. Mr. Doyle was subsequently called as a witness and made corrections to his testimony. Tr. 3622-3627. CASE then sought to introduce the attachments to Mr. Doyle's deposition. Tr. 3627-28. The Board stated that the attachments would be admitted as exhibits for "clarification only." Tr. 3628.

On September 14, 1982, CASE introduced supplemental testimony of Mr. Doyle, which had been distributed to the parties the previous day. Tr. 4705. Mr. Doyle was cross-examined and questioned by the Board on his supplemental testimony and the accompanying exhibits. Tr. 4714-4761. The questioning concerned, in part, the exhibits attached to Mr.

Doyle's supplemental testimony, which were photographs of models of particular pipe supports, E.g., Tr. 4719. This questioning focused on the matters raised in Mr. Doyle's supplemental testimony.

Applicants presented a panel of witnesses on September 14-16, 1982 in rebuttal to the testimony of Mr. Doyle. During cross-examination of Applicants' witnesses by CASE, several questions were posed regarding the exhibits attached to Mr. Doyle's direct testimony. The questioning dealt with the details of the pipe support designs reflected in those exhibits. E.g., Tr. 4907, 4908, 4946-47, 4953, 4973 and 5003-10. On redirect examination of Applicants' witnesses, Applicants suggested that clean copies of the drawings attached to Mr. Doyle's testimony on which hand-written notes were made be submitted for the record. Tr. 5190. The Board subsequently directed that those exhibits on which Mr. Doyle's notes appeared be deleted and clean copies submitted. Tr. 5190. CASE made no objection to this ruling. Tr. 5191.

On the last day of the hearings, CASE again raised the matter of the exhibits on which Mr. Doyle had written notes. Tr. 5776. CASE requested that it be permitted to submit, apparently for the record, a separate page setting forth the information in Mr. Doyle's notes. Tr. 5777. The Board denied that request. Id. Applicants suggested, and the

Board agreed, that Applicants should provide Mrs. Ellis with the clean copies which would be submitted and try to work out a stipulation with CASE.² Tr. 5778.

CASE has now filed a motion for reconsideration of the Board's rulings on the Doyle exhibits.

II. APPLICANTS' ANSWER TO
MOTION FOR RECONSIDERATION

A. The Board Should Strike CASE's Motion

CASE's motion for reconsideration is simply another in a long series of supplements to motions and motions for reconsideration requesting the Board to change its previous rulings. CASE does not present new or significant information that could alter the Board's decision, but merely repeats or reformulates arguments presented before. This practice unnecessarily burdens the record, the parties and the Board and is wholly contrary to established rules of practice governing this proceeding. Indeed, the Board has admonished CASE on other occasions to refrain from filing such repetitious pleadings. E.g., Tr. 5320; May 25, 1982 Telegram from Board.

² Applicants have compiled unannotated copies of these exhibits and intend to discuss the procedure for submittal of them into the record with CASE this week.

Accordingly, Applicants urge the Board to strike CASE's motion. In the alternative, Applicants submit the Board should deny CASE's motion on the merits, for the reasons set forth below.

B. General

Movants seeking reconsideration of decisions rendered in NRC adjudicatory proceedings bear a heavy burden. See Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-359, 4 NRC 619,620 (1976). A motion for reconsideration must present more than a mere rehearsal of arguments raised previously. Kansas Gas and Electric Company (Wolf Creek Generating Station, Unit No. 1), ALAB-477, 7 NRC 766, 767 (1978); Houston Lighting and Power Company (South Texas Project, Unit Nos. 1 and 2), ALAB-387, 5 NRC 638, 638 (1977). The motion must set forth sufficient information and arguments not previously advanced to persuade the Board that its original decision was unwarranted. See Wolf Creek, ALAB-477, supra at 768, 770; South Texas, ALAB-387, supra at 638; Maine Yankee Atomic Company (Maine Yankee Atomic Power Station), ALAB-166, 6 AEC 1148, 1149 (1973).

As demonstrated below, CASE has failed to satisfy any of the requirements applicable to motions for reconsideration. Accordingly, Applicants urge the Board to deny CASE's motion.

C. CASE Must Overcome a
Particularly Heavy Burden

While CASE would need to overcome a heavy burden in making a motion for reconsideration, see Catawba, ALAB-359, supra, it must overcome an even greater burden where, as here, it is seeking reconsideration for a second time. When the Board initially made its decision on the Doyle exhibits, CASE raised no objections. Tr. 5191. The following day, however, CASE sought reconsideration of the Board's decision, which the Board declined to alter. Tr. 5776-77. CASE now seeks a third bite at the apple, its second on reconsideration. Applicants submit that CASE has failed to present information that overcomes its particularly heavy burden of persuasion.

D. CASE's Arguments Are Without Merit

CASE raises three arguments in support of its motion. First, CASE contends that Applicants were untimely in raising the matter of Mr. Doyle's notations on the exhibits. Second, CASE suggests that Applicants wrongly implied that CASE had mislead the Board as to the authenticity of the exhibits. Finally, CASE contends that the notations on the drawings are "vital" to Mr. Doyle's testimony and must be included in the record. Applicants demonstrate below that each of these arguments is without merit.

1. The matter of Mr. Doyle's notations was timely raised.

CASE claims that Applicants' suggestion to provide clean copies of the Doyle exhibits was untimely, Motion at 1-4, in that the existence of the notations on Mr. Doyle's exhibits was known to Applicants when Mr. Doyle's deposition was taken and when the Board admitted the material as CASE Exhibit 669B. Although not expressly stated, CASE apparently contends that Applicants should have been precluded from suggesting when they did that clean copies of the exhibits be submitted. To the contrary, Applicants raised the question only after CASE had conducted detailed cross-examination of Applicants' witnesses with regard to those exhibits, e.g., Tr. 4907, 4908, 4946-7, 4953, 4973 and 5008-10. Until that time, the exhibits were either not in the record (at the time the deposition was taken) or were received for "clarification only" (Tr. 3628). Accordingly, Applicants' suggestion was timely made in view of the altered use to which those exhibits were put.

2. CASE has wrongly accused Applicants of suggesting CASE mislead the Board.

CASE once again has resorted to attacking the character of another party in this proceeding, rather than addressing the merits of an issue. In this instance, CASE claims that "the manner in which Applicants' concern was expressed" (regarding the Doyle exhibits) implied that CASE had mislead

the Board as to the authenticity of those exhibits. Motion at 4. To the contrary, Applicants neither intended nor made such an implication. Applicants merely suggested that they arrange with CASE to provide clean copies of the exhibits on which Mr. Doyle had made notes. The Board's ruling was entirely consistent with the rules of evidence and its responsibility for developing a sound record. CASE's accusation provides no basis for changing the Board's original decision.

3. CASE's claim that the notations are vital is unsupported.

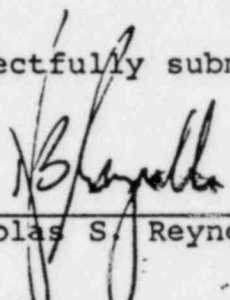
CASE states that the notations on Mr. Doyle's exhibits are a "vital portion" of his testimony. Motion at 6. At the time CASE first sought reconsideration they requested, as they do now, that if Mr. Doyle's notes contained any "vital" information they be permitted to include a page indicating the changes made. Tr. 5776-77. However, neither at that time nor in the instant motion has CASE presented even one example of such information. CASE's vague rehearsal of arguments raised previously affords no basis for reconsideration of the Board's ruling. See Wolf Creek, ALAB-477, supra; South Texas, ALAB-387, supra. Applicants submit that the combination of the information presented by Mr. Doyle on direct and cross-examination (over 400 record pages) and Mr. Doyle's handwritten notes preceeding each

group of exhibits (to which Applicants posed no objection) adequately describe Mr. Doyle's concerns. CASE has failed to carry its burden of persuasion on this matter.

III. CONCLUSION

For the foregoing reasons, Applicants submit that CASE's motion for reconsideration should be stricken. In the alternative, Applicants urge the Board to deny CASE's motion.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Applicants' Response To CASE's Motion for Reconsideration of Board's Ruling Regarding Attachments To Testimony of CASE Witness Jack Doyle," in the above-captioned matter, were served upon the following persons by deposit in the United States mail, first class postage prepaid, this 3rd day of November 1982 or by hand-delivery (*) on November 4, 1982:

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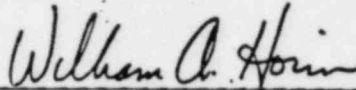
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