

November 18, 1982

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UNITED STATES OF AMERICA '82 NOV 19 A9:34  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD  
SECRETARY  
SERVICE  
BRANCH

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)

APPLICANTS' ANSWER TO CASE'S RESPONSE  
TO BOARD'S DIRECTIVE REGARDING CASE EXHIBITS

Pursuant to 10 C.F.R. §2.730(c),<sup>1</sup> Texas Utilities  
Generating Co., et al. ("Applicants") hereby submit  
Applicants' answer to "CASE's Response To Board's Directive  
Regarding CASE Exhibits," served October 18, 1982. CASE seeks  
to introduce over 240 exhibits in addition to those already in  
evidence which were sponsored by its own witnesses or  
introduced through cross-examination of the Applicants' and  
NRC Staff's witnesses. For the reasons set forth below,  
Applicants oppose admission of these exhibits.

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<sup>1</sup> On November 9, 1982, Applicants submitted their "Request  
for Clarification and, if Necessary, for Leave to File  
Answer to CASE Pleading Regarding Exhibits." For the  
reasons set forth therein, Applicants initially did not  
treat CASE's Response as a motion. However, on November 4,  
1982, the NRC Staff filed an answer to CASE's Response as  
if it were a motion. Accordingly, Applicants sought leave  
of the Board to file an answer to that Response so that the  
views of all the parties on this matter were before the  
Board. Applicants stated in their request that their  
answer would be served by November 18, 1982. While to date  
we have not been granted leave to file, nevertheless we are  
filing this answer on the specified date, recognizing that  
its receipt is conditional on Board approval.

I. BACKGROUND

A. Record on Contention 5(QA/QC)<sup>2</sup>

Evidentiary hearings in this proceeding regarding Contention 5(QA/QC) were conducted on June 7-11, July 26-30 and September 13-17, 1982. Each of the parties has presented extensive evidence, including documentary evidence, on matters raised in that Contention. The transcript of these hearings includes approximately 5000 pages of testimony, cross-examination and Board questioning on Contention 5. In addition, the Applicants, the NRC Staff, and CASE have introduced over 1000 exhibits regarding Contention 5, including testimony and attachments thereto. CASE alone has already introduced over 650 exhibits. Finally, the only witnesses who may yet testify in this proceeding are sponsored by the NRC Staff in rebuttal to the allegations of CASE witnesses Mark Walsh and Jack Doyle.<sup>3</sup> However, it may yet be determined that the testimony of those witnesses is unnecessary.<sup>4</sup>

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<sup>2</sup> A detailed discussion of the status of the record may be found in Applicants' Brief on Status of Record, dated October 8, 1982.

<sup>3</sup> Of course, the opportunity to present surrebuttal testimony might be afforded.

<sup>4</sup> In its October 11, 1982 response to the Board's request for briefs on the status of the record, see "NRC Staff Response to Memorandum and Order of September 22, 1982," the NRC Staff stated that it will present its witnesses on the allegations of Messrs. Walsh and Doyle if "the Board wishes to receive the Staff's assessment of the Walsh/Doyle allegations before reaching a conclusion on Contention 5." Staff Response at 20.

B. CASE Exhibits

At the hearings conducted June 7-11, 1982, CASE introduced 186 exhibits through cross-examination of Applicants' and the NRC Staff's witnesses. Because CASE had not prefiled any of these exhibits, and many were in disarray or were duplications, see e.g., Tr. 1544-57 and 1839-41, a considerable amount of time was spent marking each document and assuring its completeness before its receipt into evidence. See e.g., Tr. 1768. The Board thereafter directed that for the next hearing session, the parties were to prefile both testimony and exhibits. Tr. 1539-43; 1841-1843. The Board also directed that all exhibits be previously displayed to counsel and numbered to enable the parties to proceed in advance regarding objections. Tr. 1842.

On July 19, 1982, CASE transmitted approximately 450 proposed exhibits, along with a "Summary of Exhibits" describing the exhibits it intended to introduce. These exhibits consisted of numerous NRC Inspection & Enforcement Reports ("I&E Reports"), internal memoranda and analyses. In addition, these proposed exhibits included several hundred of Applicants' construction records produced by Applicants during discovery, including Nonconformance Reports ("NCR's"), Deficiency & Disposition Reports ("DDR's") and Deficiency Reports ("DR's").

On July 26, 1982, the first day of the July hearings, Applicants and the NRC Staff indicated that they would not object to the authenticity of the proposed CASE exhibits which were obtained during discovery. See Tr. 2073-75. Accordingly, it was no longer necessary for CASE to introduce those exhibits through Applicants' or Staff's witnesses to establish the authenticity of each document. Tr. 2066-67. The Board noted, however, that rights of Applicants and Staff to object to the admissibility of the proposed exhibits on other grounds were preserved. Tr. 2075.

The Board subsequently suggested that CASE attempt to identify "a manageable group of documents, eliminating the repetitive aspects" of its set of proposed exhibits. Tr. 3010. The Board explained its concerns regarding both the relevance of many of the documents and their probative value absent a showing that the matters noted in the documents were significant to the Board in reaching its decision on Contention 5 and the requested operating licenses. Tr. 3014. In accordance with a suggestion made by CASE, Tr. 3011, the Board directed CASE to consolidate its proposed exhibits, possibly by selecting representative documents and indicating in a summary form the additional documents on each particular matter. Tr. 3034. CASE was unable to do this by the end of that hearing session and the Board directed that it be done by

the September hearings. Tr. 3532. When CASE did not provide its list at the September hearings, the Board permitted it until October 18, 1982 to comply. Tr. 5773.

## II. APPLICANTS' ANSWER TO CASE'S RESPONSE

### A. Admissibility of Evidence in NRC Licensing Proceedings

Section 2.743(c) of the NRC Rules of Practice provides that with respect to either oral and documentary evidence presented by a party pursuant to 10 C.F.R. §2.743(a),

only relevant, material, and reliable evidence which is not unduly repetitious will be admitted. [10 C.F.R. §2.743(c).]

In addition, NRC Atomic Safety and Licensing Boards are empowered to "strike argumentative, repetitious, cumulative, or irrelevant evidence." 10 C.F.R. §2.757(b). In passing on the admissibility of proffered evidence, the Board, while not bound to "strict application of the rules of evidence in judicial proceedings, should exclude evidence that is irrelevant to issues in the case...." 10 C.F.R. Part 2, Appendix A, Section V.(d)(7).

Further, even evidence which may be relevant to an accepted contention, may nonetheless be excluded on the ground that it lacks any probative value. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-82-11, 15 NRC 1383, 1384 (1982). The distinction between

the relevance and probative value or weight of evidence was addressed by the Licensing Board in the Midland proceeding. Therein, the Board noted that, as used by the courts, "materiality...generally refers to "the probative weight of evidence in the decision making process, as judged by the facts and circumstances in the particular case." Consumers Power Company (Midland Plant, Units 1 and 2), 14 NRC 1768, 1780 (1981). The Board defined the concept of materiality, as follows:

...To be 'material' means to have probative weight, i.e., reasonably likely to influence the tribunal in making a determination to be made. A statement may be relevant but not material. [Midland, *supra*, 14 NRC at 1781, citing Weinstock v. United States, 231 F.2d 699, 701 (D.C. Cir. 1956).]

The scope of the Board's authority to rule on the admissibility of evidence is broad. The Appeal Board has held that the standard by which exclusion of evidence may be found to constitute prejudicial error is whether the Licensing Board's ruling affects a substantial right of the party offering the evidence, and the substance of the evidence is made known by way of offer of proof or is otherwise apparent. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-673, 15 NRC 688, 697, n. 14 (1982), (appeal denied, CLI-82-11, *supra*), *citing* FED. R. EVID. 103, U.S. v. Vitale, 596 F.2d 688, 689 (5th Cir. 1979),



cert. denied, 444 U.S. 868 (1980); U.S. v. Callahan, 551 F.2d 733, 738 (6th Cir. 1977); Hochstadt v. Worcester Foundation for Experimental Biology, 545 F.2d 222, 226 n. 4 (1st Cir. 1976). This latitude is particularly broad where the party had an adequate opportunity to develop the proffered (but excluded) evidence by other means, e.g., cross-examination. Id.

Applicants submit that application of the above standards in the instant situation compels the conclusion that admission of the proposed exhibits, as proffered, should be denied.

B. Admissibility of CASE Exhibits

Applicants set forth below their position with respect to each set of documents proffered by CASE. The discussion is arranged in accordance with the categories of exhibits employed by CASE in its October 18, 1982, Response.

1. CASE proposed Exhibits 190A through 197E.

These exhibits consist of eight audits and related documentation conducted by Texas Utilities on Brown & Root, Inc., the constructor for Comanche Peak. CASE argues that these audits "are clear indications" of "trends of noncompliance" during the construction at Comanche Peak in that "the areas of deficiency noted by the audit teams were very similar in nature" during the three-year period the audits cover. CASE Response at 2-4. Applicants submit that these audits present cumulative and repetitious material, and are lacking in probative value.

CASE has already submitted extensive documentary evidence regarding so-called trends, e.g., CASE Exhibits 71-105, including evidence regarding the Brown & Root Construction and QA Departments at Comanche Peak, e.g., CASE Exhibits 53-70. In addition, the NRC Staff has presented both testimony and documentary evidence regarding trends at Comanche Peak. Staff Exhibits 15, 180-195. In this light, CASE Exhibits 190A through 197E are merely repetitious and cumulative and should not be admitted. 10 C.F.R. §§2.743(c) and 2.757(b).

In addition, these proposed exhibits are lacking in probative value. Even assuming arguendo that the concerns presented by CASE are true, e.g., deficiencies were not corrected "in a timely manner" or were similar over the time period covered by the audits, the audits do not present persuasive evidence which could be helpful to the Board's decision-making absent a showing as to the importance and consequences of any trend that could be gleaned from the documents, the specific deficiencies involved, and the adequacy of corrective measures. Accordingly, Applicants submit that these proposed exhibits may properly be excluded as lacking in probative value. San Onofre, supra, CLI-82-11.



2. CASE proposed Exhibits 202 and 203.

Proposed Exhibits 202 and 203 are summaries prepared by CASE of information provided by the NRC Staff. Applicants object to admission of these documents in that no foundation has been established for their admission, they present cumulative and repetitious material and are unreliable.

Exhibit 202 is a one page document evidently prepared by CASE explaining the abbreviations used in notices of violation to denote the relative seriousness of an item of noncompliance. Absent establishment of a foundation for admission, this document should not be admitted. In addition, the NRC Staff has already provided this information in its testimony. Staff Exhibit 13, pp. 10-12. Accordingly, this document is simply cumulative and repetitious evidence that should not be admitted. 10 C.F.R. §§2.743(c) and 2.757(b).

Exhibit 203 is a 184-page summary prepared by CASE of NRC I&E Reports for Comanche Peak. CASE offers this for a limited purpose as "handy reference items" for the Board. CASE Response at 4. Applicants submit this summary is unreliable, contains cumulative and repetitious material, and lacks probative value.

Virtually all the NRC I&E Reports "summarized" in Exhibit 203 have already been received into evidence.<sup>5</sup> Thus, admis-

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<sup>5</sup> Applicants discuss below, in Section II.B.3, the admissibility of I&E Reports which CASE now seeks to introduce in addition to those already submitted by Applicants and the NRC Staff.

sion of this document would merely burden the record with cumulative and repetitious evidence. 10 C.F.R. §§2.743(c) and 2.757(b). In addition, no foundation has been established by CASE for admission of the summary. CASE has stated only that the document summarizes I&E Reports "usually word for word." Tr. 2076. Such a limited assertion is inadequate to establish a proper foundation for admitting the summary. Applicants submit that on these bases alone the summary should not be admitted.

Further, the summary is inaccurate and incomplete, and, therefore, unreliable. It is well established that mere summaries of events or documents are poor evidentiary substitutes for complete records. See Philadelphia Electric Company (Fulton Generating Station, Units 1 and 2), ALAB-657, 14 NRC 967, 977 (1982); See also Pacific Gas & Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-580, 11 NRC 227, 229 (1980)(NRC Staff Security Plan Evaluation Report and summary testimony no substitute for plan itself). In this instance, CASE's summary of "problems" raised in the I&E Reports generally does not include the resolution of those "problems." For example, I&E Report 80-11 (Applicants' Exhibit 44F) involved an infraction which was closed in the same Report. CASE's summary, however, only lists the infraction. CASE proposed Exhibit 203 at 114. In addition, I&E Report 80-08 (Applicants' Exhibit 44E) presented the closure of seven previously unresolved items. CASE's

summary does not present those closures and is thus incomplete and would be of no meaningful value to the Board in deciding the issues of fact. CASE proposed Exhibit 203 at 113-14. The NRC Staff has also presented examples of inaccuracies in this "summary" in its November 4, 1982, Answer to CASE Motions Seeking Admission of Documents, at 14. Accordingly, Applicants submit CASE's summary is unreliable and should not be admitted. See Fulton, supra, ALAB-657, see also, Diablo Canyon, supra, ALAB-580.

3. CASE proposed Exhibits 204 through 297.

CASE's proposed Exhibits 204 through 297 are I&E Reports which have not been otherwise introduced in evidence by Applicants or the NRC Staff. CASE has withdrawn those Reports already admitted. CASE states that its purpose in introducing these reports is to (1) contradict the Applicants' and Staff's testimony, (2) support the testimony of CASE's witnesses, or (3) to complete the record "in some particular regard." CASE's Response at 15. CASE further argues for admission of these Reports claiming that the mere number of I&E Reports introduced for a particular year has some bearing on issues to be decided. CASE's Response at 22. Applicants object to their admission as being unfair to the other parties. Applicants also object to these reports as being irrelevant and lacking in probative value.

To the extent CASE seeks to use these I&E Reports to contradict the testimony of Applicants' and Staff's witnesses, or to support its own witnesses' testimony, CASE should have pursued that course at the hearings. To permit admission of these documents on this basis after the witnesses have presented their testimony would be patently unfair to Applicants and the NRC Staff. See Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 1), 14 NRC 381, 541 (1981). Applicants' and the Staff's witnesses would have no opportunity to respond to whatever material CASE intends to use to contradict their testimony. Further, Applicants and the Staff would be precluded from testing CASE's witnesses on the material CASE intends to use to support their testimony. Accordingly, Applicants object to admission of these documents on that basis as being unfair to the other parties. See Three Mile Island, supra, 14 NRC at 541.

Further, Applicants submit that the proffered I&E Reports are irrelevant and lacking in probative value. Although CASE seeks "to complete the record in some particular regard where the record would be otherwise incomplete," CASE Response at 5, CASE has failed to specify where the record is incomplete and thus how these exhibits are relevant to this proceeding. Indeed, CASE's "brief summary" of the proffered I&E Reports does not explain how particular matters raised in I&E Reports are even relevant to Contention 5. In addition, Applicants note (1) that proposed Exhibits 204 through 208

pre-date issuance of the construction permits and therefore are irrelevant to this operating license proceeding, (2) many other Reports merely involve "unresolved items" which are matters for which more information is required before a determination can be made as to significance, and, therefore, standing alone are also irrelevant to any issues raised in this proceeding, and (3) the nonconformances identified in these reports have been resolved by the Applicants and that resolution confirmed by the NRC Staff (except as noted and addressed in Applicants' testimony<sup>6</sup>) and thus without evidence that those resolutions were inadequate, the Reports are irrelevant and of little probative value to this proceeding. For these reasons, the Applicants submit these reports should not be admitted. 10 C.F.R. §§2.743(c) and 2.757(b); San Onofre, supra, CLI-82-11, 15 NRC at 1384.

Finally, CASE suggests that it may wish to introduce only specific pages of the I&E Reports. CASE Response at 5. Applicants strongly object to admission only of portions of the Reports. Isolated pages of these Reports would be even more lacking in probative value than as now proposed. Also, should the Board admit any of these I&E Reports, Applicants intend to seek leave to introduce those additional Reports which contain the close-outs of any items of noncompliance raised in CASE's Exhibits, since CASE has not included several of these subsequent close-outs, e.g., CASE withdrew I&E Report

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<sup>6</sup> See Testimony of Susan L. Spencer, Applicants' Exhibit 44.

81-07 (proposed Exhibit 285) which contains the close-out of items in I&E Report 80-28 which CASE seeks to introduce (proposed Exhibit 278). For these reasons, Applicants oppose admission of proposed Exhibits 204 through 297.

4. CASE proposed Exhibits 298 through 304.

Only Exhibits 298 and 301 in this category are the subject of CASE's instant request. The remaining exhibits were withdrawn or have already been admitted into evidence. Applicants submit Exhibits 298 and 301 are irrelevant and unreliable and should not, therefore, be admitted.

Exhibit 298, prepared by the NRC Staff, is the "Summary of Caseload Forecast Panel Meeting and Facility Tour at Comanche Peak," dated July 7, 1982. CASE has already sought to introduce this document during cross-examination of the NRC Staff's witnesses. Tr. 2413-16. The Board sustained the Staff's relevancy objection to this document at that time. Tr. 2416. CASE presents no information which would warrant reconsideration of the Board's decision. Further, summaries of meetings are generally unreliable absent verification and examination of a sponsor under oath. Fulton, supra, ALAB-657, 14 NRC at 977. Exhibit 298 overcomes neither of these hurdles. Accordingly, Applicants object to this document as being irrelevant and unreliable.

CASE also proposes that both Exhibits 298 and 301 ("Chapter 0800-0850 (NRC) Notice of Violation-Guidance (cont.), Oct. 1975") be admitted because CASE plans to



cross-examine the Staff's witnesses on the allegations of Messrs. Walsh and Doyle with these documents. Applicants submit that this is an insufficient basis for admission of these documents at this time. Since the only stated purpose for introducing these exhibits is to conduct cross-examination of witnesses the Staff may not even present, the Board should await presentation of their testimony before ruling. Accordingly, the Board should not admit proposed Exhibits 298 and 301 at this time.

5. CASE proposed Exhibits 305 through 570, and 626 through 628.

Proposed Exhibits 305 through 570, and 626 through 628, consist of numerous NCR's, DDR's and DR's for Comanche Peak which Applicants produced during discovery, as well as logs of those construction records, which Applicants also produced. CASE seeks to introduce over 110 of these documents. It states that the purpose of introducing these exhibits is (1) to contradict the testimony of Applicants' and Staff's witnesses, (2) to support the testimony of CASE's witnesses, or (3) to "complete the record in some regard where the record would otherwise be incomplete." CASE Response at 24. CASE also states it will use these documents to demonstrate recurrence of certain problems, which CASE contends indicates a breakdown of the QA/QC program. Id. For the reasons set forth below, Applicants oppose admission of these documents. Applicants submit these documents are cumulative and



repetitious, lacking in probative value, and their admission would be unfair to the other parties. In addition, CASE has not complied with the Board's directive that CASE consolidate these documents.

CASE claims that it has "drastically" cut down on the number of individual construction records it wishes to introduce. CASE Response at 23. However, CASE has actually retained approximately 40 percent of the total number of such documents it originally proffered, and even that number is said to be contingent on having all its I&E Reports (proposed Exhibits 204 through 297) as well as the three logs of construction reports (proposed Exhibits 626 through 628) admitted. Id. Applicants submit CASE has not satisfied the objective of the Board's directive to reduce meaningfully the number of these exhibits.

During the July, 1982 hearing session, in response to the Board's suggestion that it eliminate the repetitive aspects of its documents, Tr. 3010, CASE proposed that it reduce the number of these exhibits by selecting "one or two representative documents for each type of problem," and present a list of additional documents on the same problem rather than the documents themselves. Tr. 3011. The Board indicated that this proposal might have merit to it, Tr. 3011, 3017, and subsequently stated that CASE would have to make some kind of showing along the lines of its proposal to select representative documents, Tr. 3034. CASE agreed to do so. Tr. 3034.

CASE did not, however, fulfill this commitment by the September hearings and was given permission to provide the requested information by October 18, 1982, Tr. 5773, over two and one-half months after it was first directed to consolidate its documents.

CASE's present proposal still does not satisfy the Board's directive. There are over 110 separate construction records listed, and CASE appears to have only generally segregated the records by topic. It appears to Applicants that CASE has separated the documents into the areas of concrete, welding, minimum wall violations, reinforcing bars, anchor bolts, and valves. These are not, however, totally segregated nor clearly identified. Applicants submit CASE has not meaningfully consolidated or organized these documents as directed by the Board. Further, these documents are in addition to the NCR's Applicants' and CASE's witnesses have already submitted as part of their prepared testimony with respect to particular allegations or for other reasons. See e.g., Applicants' Exhibits 122D, E and 141D, E, I-M, and CASE Exhibits 8-12 and 667R, U. Applicants submit these documents are cumulative and repetitious, 10 C.F.R. §§2.743(c) and 2.757(b), and otherwise contrary to the Board's directive to consolidate documents. Accordingly, Applicants object to their admission.

Further, Applicants submit that CASE's proposed exhibits are irrelevant and lacking in sufficient probative value to warrant their admission. As the Board has indicated, the mere fact that a deficiency in construction was identified is not relevant or helpful in resolving the issues facing the Board, absent a demonstration that the resolution of particular deficiencies was inadequate and that inadequacy, either alone or in conjunction with others, is significant to safety. See e.g., Tr. 3013-14, 3019 and 3025. CASE has made no effort to demonstrate how these proposed exhibits are relevant or otherwise persuasive for the Board's decision-making. Accordingly, Applicants submit these documents are irrelevant and lacking in probative value and should not, therefore, be admitted. 10 C.F.R. §2.743(c); San Onofre, supra, CLI-82-11.

CASE's arguments that these documents should be admitted for the purpose of contradicting the testimony of the Applicants' and Staff's witnesses, and to support the testimony of CASE's witnesses, are insufficient bases on which to base admission of documents at this stage in the proceeding. If CASE intended to use the documents for this purpose it should have done so at the time the witnesses testified. To permit admission of the documents for this purpose now would be unfair. The Applicants' and NRC Staff's witnesses would be unable to refute the purported contradictions nor could CASE's witnesses be tested for

competency on these matters. The Board should not admit these documents on these grounds. Three Mile Island, supra, 14 NRC at 541.

Further, CASE suggests that it has "been able to reduce the number of documents and pages" by selecting only certain pages from each NCR for admission. CASE Response at 24. However, even if admission of these documents was not otherwise objectionable, Applicants object to admission of portions of NCR's and not the entire documents. In those instances where extensive evaluation was required to disposition an NCR, there will be documentation attached to the NCR showing this disposition. It is this disposition portion of the NCR's which CASE would exclude from its exhibits. See e.g., proposed Exhibit 510, p. 5 and proposed Exhibit 378, pp. 4-6 and 8-10. It is wholly improper and unacceptable to admit only the portions of these documents identifying a deficiency, without admitting the disposition documentation.

With respect to proposed Exhibits 626-628, the logs of the construction records for Comanche Peak, Applicants submit these are lacking in probative value. These logs present only summary information regarding each item. As such, their usefulness for virtually any purpose is limited. Accordingly, Applicants object to their admission as lacking in sufficient probative value to warrant admission. San Onofre, supra, CLI-82-11.

6. CASE proposed Exhibits 572 through 616.

These documents all concern the ASME Survey of the Brown & Root Quality Assurance Program at Comanche Peak. CASE claims that admission of these documents should be granted in order for the record to be "as complete as possible under the circumstances." CASE Response at 39. CASE blames the Board for creating the need for these documents by not having Applicants produce witnesses from the ASME Survey Teams. Id. With respect to several of the documents, CASE claims they will be able to contradict the testimony of Applicants' witnesses. Applicants submit that CASE should have used these documents at the hearings when Applicants' witnesses were available, and the documents are cumulative and repetitious. Accordingly, Applicants oppose admission of the documents.

At the June and July hearing sessions Applicants presented Messrs. Vurpillat and Reedy as witnesses on the ASME Survey. CASE had ample opportunity to cross-examine those witnesses on these documents at that time. For CASE now to present these documents to contradict that testimony, particularly where several of the documents were addressed to one of the witnesses, e.g., proposed Exhibits 590-92, 598 and 604, would be patently unfair. Three Mile Island, supra, 14 NRC at 541. Accordingly, the Board should not admit these documents on the grounds here advanced by CASE.

Further, in light of the extensive testimony and cross-examination of Applicants' witnesses, these documents simply present cumulative evidence on the ASME Survey. For example, proposed Exhibit 605 has already been introduced as Applicants' Exhibit 45B. In addition, CASE has included several NCR's in its list of proposed exhibits which were generated in response to particular findings of the ASME Survey team. It is these findings that were the precise subject of the testimony of Applicants' witnesses. See Applicants' Exhibits 45 and 46. CASE had ample opportunity to, and in fact did, explore the resolution of these findings during cross-examination of Applicants' witnesses. Tr. 1891-1903, 2042-2060. Thus, these documents are also clearly cumulative and repetitious and should not, therefore, be admitted.

7. CASE proposed Exhibits 617-625<sup>7</sup>.

This category of documents is an assortment of memoranda and reports generated or received by Applicants and produced during discovery which CASE contends either support its contention or raise questions to be answered by the Board. Applicants submit these exhibits lack sufficient probative value to warrant their admission.

CASE claims these documents support its position that changes in the QA program, identification of similar deficiencies at different stages of the project and "use-as-

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<sup>7</sup> Proposed Exhibits 626-628 were addressed, supra, at 15, 19.



is" dispositions are indicative of an inadequate QA program. However, as previously discussed, supra at 17-18, absent evidence that these matters were not properly handled, and had some significant impact on the safety of the plant, the proffered material is of little probative value to the Board. See e.g., Tr. 3019, San Onofre, supra, CLI-82-11. Accordingly, Applicants object to admission of these documents.

8. CASE proposed Exhibits 629 through 645, and 646 through 649.

Proposed Exhibits 629 through 645 are Applicants' Design/Construction Significant Deficiency Analysis Reports. These documents present the initial determination regarding the reportability of a potential deficiency under 10 C.F.R. §50.55(e). Proposed Exhibits 646 through 649 served the same purpose at an earlier stage of the project. However, no information is presented in these documents, or otherwise by CASE, regarding the ultimate disposition of the potential deficiencies. Therefore, standing alone, these documents have little probative value. San Onofre, supra, CLI-82-11; see e.g., Tr. 3019. Accordingly, Applicants submit they should not be admitted.

Further, CASE contends that it will use these documents to contradict the testimony of the Staff's and Applicants' witnesses and support its own witnesses' testimony. CASE also argues these documents should be admitted because the Applicants and the NRC Staff have somehow failed to include

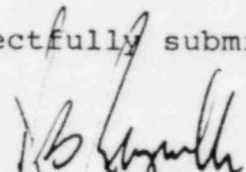


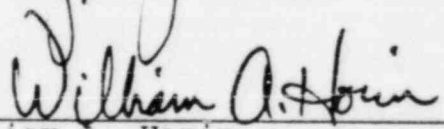
candid and detailed information on unspecified problem areas that renders the record "incomplete and inaccurate." Such claims with respect to testimony already presented are not sufficient bases to warrant admission of the documents. As discussed supra, at 18, to do so would be unfair to the parties who are deprived of the opportunity to refute such challenges to their witnesses' testimony and test the competency of CASE's witnesses on these matters. Three Mile Island, supra, 14 NRC at 541. For these reasons, Applicants submit CASE's proposed Exhibits 629 through 649 should not be admitted.

### III. CONCLUSION

For the foregoing reasons, Applicants oppose admission of CASE's proposed Exhibits. Applicants urge the Board to exclude those Exhibits from the record in this proceeding.

Respectfully submitted,

  
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November 18, 1982

UNITED STATES OF AMERICA  
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Station, Units 1 and 2)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Applicants' Answer to CASE's Response To Board's Directive Regarding CASE Exhibits," in the above-captioned matter, were served upon the following persons by deposit in the United States mail, first class postage prepaid, this 18th day of November 1982:

Marshall E. Miller, Esq.  
Chairman, Atomic Safety and  
Licensing Board  
U.S. Nuclear Regulatory  
Commission  
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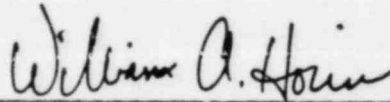
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