



March 29, 1983

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

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 License

APPLICANTS' RESPONSE TO
BOARD QUESTIONS REGARDING
EMERGENCY PLANNING

By Memorandum and Order of March 9, 1983, the Atomic Safety and Licensing Board ("Board") documented the results of a March 8 conference call regarding matters related to the resumption of hearings scheduled for April 4, 1983. During that conference call, the Board questioned whether there was any need to hold open the record for the introduction of final findings of the Federal Emergency Management Agency ("FEMA") regarding offsite emergency preparedness. As discussed more fully below, Texas Utilities Generating Company, et al. ("Applicants") maintain that the record need not be held open to receive such findings.

In this proceeding, only Contention 22 raises issues related to offsite emergency preparedness. In response to this contention, witnesses from FEMA provided testimony and were subject to cross-examination by all parties and

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questioning by the Board. Such testimony was based on FEMA's review of offsite emergency preparedness, including state and local emergency response plans. FEMA's continuing review of this area will eventually result in preparation of its final findings. However, the final FEMA findings must, in part, be based on FEMA's review of the final emergency exercise involving both offsite and onsite emergency response personnel. Tr. 5723. Indeed, based on its policy (shortly to be codified), FEMA cannot issue its final findings until after review of the emergency exercise. 44 C.F.R. §350.8(f) (proposed), 47 Fed Reg. 36386, 36391 (August 19, 1982). See 47 Fed. Reg. at 36388, where FEMA states that the provisions of the proposed rule 44 C.F.R. Part 350 are intended to be FEMA policy until the final rule is issued. See also Tr. 5723-4, where a FEMA witness stated that the process of preparing final FEMA findings would follow that set forth in the proposed rule referenced above. In short, it is clear that FEMA's final findings are, in part, based on, and cannot be issued until after the emergency response exercise now scheduled to be conducted in October 1983.

The NRC has promulgated regulations which address the extent of Licensing Board review required for decisions regarding offsite emergency planning issues. 47 Fed. Reg.

30232 (July 13, 1982). The Commission stated there that "the rule changes clarify that the emergency preparedness exercises are not required for a Licensing Board, Appeal Board, or Commission licensing decision." 47 Fed. Reg. at 30233. As noted above, the emergency exercise must be conducted before (and constitutes an integral part of) the final FEMA findings. Thus, for this Board to await final FEMA findings before issuing a final decision on the operating license application would be contrary to these Commission regulations. Accordingly, the Board should not await issuance of final FEMA findings before rendering its decision regarding Contention 22.*

* Applicants are cognizant of the Licensing Board decision in Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Power Station, Unit 1), ___ NRC ___, Memorandum and Order (slip op. at p. 5) (August 24, 1982), where the Licensing Board stated that the Board's findings regarding issues in controversy involving offsite emergency preparedness would have to be delayed pending review of final FEMA findings. However, in that case the initial FEMA findings and testimony in support of those findings were totally inadequate and without a reasonable basis of support. Id. (slip op. at pp. 6-7). Thus, the Licensing Board there stated that "the absence of any basis for the FEMA witnesses' opinions led this Board to discount FEMA's testimony in its initial decision and for us to conclude that we would not issue an operating license until its final findings related to the contentions had been filed and reviewed." Id. (slip op. at p. 7). In requiring final FEMA findings prior to making the Board's ruling regarding emergency planning contentions, the Board stated that "we wish to emphasize again that our holding is limited to the facts of this case which, we believe, are significantly different from other emergency planning proceedings." Id. (slip op. at (footnote continued)

Respectfully submitted,

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(footnote continued from previous page)
p. 11). Applicants submit that in the Comanche Peak
proceeding, FEMA's testimony with regard to offsite
emergency preparedness is complete, comprehensive and
clearly has a reasonable supporting basis. In short,
circumstances which resulted in the Zimmer holding are
not present here.



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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Applicants' Response To Board Questions Regarding Emergency Planning," in the above-captioned matter were served upon the following persons by express delivery (*) or deposit in the United States mail, first class postage prepaid, this 29th day of March 1983, or by hand delivery (**) on the 30th day of March 1983:

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