

December 3, 1983

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USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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OFFICE OF SECRETARY  
DOCKETING & SERVICE

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' IDENTIFICATION OF ISSUES  
AND PROPOSAL TO ESTABLISH HEARING SCHEDULE

When the Board issued its Proposed Initial Decision on July 29, 1983 (the first Board decision on the merits of any issue in this proceeding), several issues were left open by the Board for clarification or receipt of supplemental evidence. Following various submittals by the parties and further Board decisions, there remain certain open issues which, it has become clear, cannot be efficiently closed through further pleading practice. In addition, the Board in its October 25, 1983, Memorandum established a procedure to address other matters which the Board believes could enable it to reach a final decision without awaiting the results of certain NRC investigations. Thus, there remain open certain issues which must be resolved, and in the near future, if this proceeding is not to be the cause of delay in licensing of Comanche Peak.

The Board is of course aware of the background of this case, which has now entered its third year of hearings (the

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first hearings were held on December 1-3, 1981). Over 9,000 pages of transcript have been generated in seven separate hearing sessions. In fairness to Applicants, the Board should now take the appropriate steps to bring the proceeding to a close. It has become apparent based upon the history of this proceeding that the piecemeal hearings conducted in the past have been ineffectual in closing issues and concluding the proceeding. Further, the replacement of two Board members earlier this year has led, in Applicants' view, to some confusion and misconceptions regarding evidence on issues addressed before the two new members were appointed.

In those circumstances, Applicants believe that a final round of hearings should be convened to address the matters discussed below. Following those hearings, the record should be closed and the Board should proceed to final decision. The hearings should be continuous over consecutive weeks, for five days each week, and the sessions on Monday through Thursday should run for ten hours (or perhaps longer, as the Board deems appropriate). We anticipate that three weeks of hearings may be necessary (and should be scheduled) to complete the record on these matters, assuming that our identification of the issues is adopted, and that four or five weeks may be necessary if our identification is not adopted.

It is not uncommon for NRC Licensing Boards to conduct proceedings in this manner, as this Board well knows. Nor is it unreasonable to demand the participation of every party in such proceedings, regardless of inconvenience or expense.

## I. IDENTIFICATION OF ISSUES

Applicants believe that the following issues, designated by the Board as open and thus requiring further "testimony or proposals" 1/ so that they may be resolved, should be addressed:

1. Results of coatings reinspection
2. Dismissal of Robert Hamilton
3. "Plug welds"
4. Weld rod control
5. Downhill welding
6. Westinghouse coatings
7. Reinspection of polar crane shims

Of these seven issues, we believe that the first four should be addressed in hearings, and that the last three are susceptible to resolution through affidavits in advance of those hearings.

### A. Results of coatings reinspection

The Board has proposed that evidence of the coatings reinspection be presented as a method of resolving the near-white blast issue, 2/ the maximum roughness inspection criteria issue, 3/ and the allegations of intimidation under investigation

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1/ See Memorandum and Order (Reconsideration of Order of September 23, 1983) (October 25, 1983) ("Memorandum and Order (Reconsideration)") at 13.

2/ Memorandum and Order (Reconsideration) at 8.

3/ Memorandum and Order (Emergency Planning, Specific Quality Assurance Issues and Board Issues (September 23, 1983) ("Memorandum and Order (Objections)") at 21.

by the Office of Investigations. 4/ Applicants agree that hearings on the coatings reinspection are appropriate to resolve these issues.

B. Dismissal of Robert Hamilton

As Applicants have stated in past pleadings, the dismissal of Mr. Hamilton was litigated as a matter of occupational safety. However, this Board has gleaned from the record the interpretation that Hamilton's dismissal reflects adversely on Applicants' QA program. 5/ Given this interpretation, the Board should receive additional evidence regarding that matter in the forthcoming hearings so that its concerns may be resolved.

C. "Plug welds"

The Board is not satisfied that the record is adequate regarding the use of "plug welds" at Comanche Peak. 6/ Applicants believe that this matter should be addressed in the forthcoming hearings.

D. Weld rod control

The Board also is not satisfied with the evidence of record regarding weld rod control. 7/ Applicants propose to address the Board's concerns in the forthcoming hearings.

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4/ Memorandum (Procedure Concerning Quality Assurance) (October 25, 1983).

5/ Memorandum and Order (Objections) at 19-20; Memorandum and Order (Reconsideration) at 5-7.

6/ Memorandum and Order (Reconsideration) at 10, 13.

7/ Memorandum and Order (Objections) at 29.

E. Downhill welding

Applicants believe that the Board's concerns regarding downhill welding 8/ may be resolved through affidavits. Accordingly, we propose to file affidavits with the Board in advance of the forthcoming hearings addressing this matter. This approach could significantly shorten the hearings, a result which the parties and the Board presumably desire. If the Board has additional questions after receiving these affidavits (or the affidavits discussed below), then it may so advise Applicants and the matter can be addressed at the forthcoming hearings.

F. Westinghouse coatings

The Board has directed Applicants to inspect a sample of Westinghouse coatings and "report the results of the inspection to the Board." 9/ This inspection is being performed, and the results of it can most efficiently be provided to the Board through affidavits in advance of the forthcoming hearings.

G. Reinspection of polar crane shims

The Board has asked that Applicants honor the intervenor's request for updated information on the reinspection of

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8/ Memorandum and Order (Reconsideration) at 11.

9/ Memorandum and Order (Reconsideration) at 13.

the polar crane shims. 10/ Applicants propose to satisfy this request through affidavits.

In addition to the seven issues discussed above, the Board has identified several other matters which it intends to address in subsequent decisions. Applicants herein request guidance from the Board on whether it would assist the Board and provide a more complete record if Applicants provided affidavits in advance of the hearings, or testimony at the hearings, regarding any of these matters.

One such matter is the allegation by Mrs. Stiner of harassment for testifying in this proceeding. 11/ The Board should note that the intervenor previously moved for a protective order for Mrs. Stiner based on these same allegation. 12/ Applicants responded fully to those allegations in its answer (and accompanying affidavit) to CASE's motion 13/ and the Board subsequently denied the motion. 14/ We draw the Board's attention to this information because it is not in the evidentiary record and, therefore, may have been overlooked by the Board when it initially considered this matter. We urge the

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10/ Memorandum and Order (Objections) at 42.

11/ Proposed Initial Decision at 41.

12/ See "Motion for Protective Order by CASE" (August 12, 1982).

13/ See "Applicants' Answer to CASE's Motion for Protective Order" (August 30, 1982).

14/ See Tr. 4112-17.

Board to consider this material in responding to Applicants' request for guidance on the need for additional record evidence on this issue.

We also ask the Board to consider specific evidence of record on Mr. Atchison's concern regarding incorporation of component modification cards into design revisions. 15/ Because this matter was raised by the ASME Survey Team and addressed in previous hearings, we ask the Board, in providing guidance on the need for additional evidence, to review the record regarding the ASME Survey, in particular, the testimony of Messrs. Vurpillat and Reedy, Applicants' witnesses who addressed this specific concern. 16/

In sum, Applicants ask the Board to examine its decisions with respect to matters the Board intends to address in subsequent decisions, and identify specific topics (if any) it believes need be addressed further. If any such topics are identified, Applicants propose to provide either affidavits prior to the forthcoming hearings or testimony in those hearings addressing such topics.

In its October 25, 1983, Memorandum, the Board identified three issues which it believes could provide assurance of the quality of finished construction at Comanche Peak and thus permit licensing of the plant without awaiting the conclusion

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15/ See Proposed Initial Decision at 43.

16/ See Applicants' Exhibit 45 at 47 and Exhibit 46 at 15-19.



of ongoing investigations. Specifically, the Board has indicated that hearings are appropriate regarding (1) Applicants' reinspection of protective coatings, (2) the Cygna Report, and (3) the first two staff walkdowns of finished safety systems (in addition to the fuel building).

As noted above, Applicants are prepared to address the coatings reinspection in the forthcoming hearings. We believe that proof as to the quality of the finished product (paint) will provide the best indication and basis upon which the Board may rely to close the record and proceed to decision.

With respect to the Cygna Report, however, we believe that it is unnecessary to address that Report in the forthcoming hearings. The allegations under investigation by NRC do not relate to the matters in the Cygna Report, which provides an independent assessment of the adequacy of design. Further, the design adequacy of pipe supports has already been litigated extensively and was the focus of an independent assessment by the NRC Staff in the SIT Report. In these circumstances, we believe that hearings on the Cygna Report would produce cumulative evidence that would not be pertinent to the issue at bar.

With respect to the Board's proposal that hearings are appropriate regarding the first two Staff walkdowns of finished safety systems, we also believe that it is unnecessary to address these matters in forthcoming hearings. The adequacy of construction and inspections of the fuel building



has already been litigated and was the focus of an independent walkdown by the Staff. While minor deviations were found, that walkdown and the evidence of record provides the Board with reasonable assurance that the construction and inspection processes at Comanche Peak are satisfactory. Evidence of other Staff walkdowns would be cumulative and not pertinent to the issue at bar, and hence is unnecessary. Beyond that, the Board should rely on the assurances of the Staff that it intends to monitor closely the completion and turnover of the various plant areas as part of its ongoing inspection and oversight functions.

In any event, it appears unlikely that the Staff could complete two new walkdowns and be prepared to present its reports and other evidence in hearings before April-May of 1984. This estimate is the best judgment of Applicants' counsel based upon the following information and assumptions. We understand that there will be no areas available which the Staff could select for walkdowns until January of 1984 at the earliest. Recognizing that each walkdown will take at least two weeks to perform, it appears likely that two walkdowns would not be completed until early or mid-February of 1984. The Staff would then need to prepare its reports on the walkdowns, a process that could take from thirty to sixty days. The reports and other evidence then must be provided to the Board and parties sufficiently in advance (perhaps 30 days) of the hearings to allow for trial

preparation. This scenario would thus not lead to hearings until April-May of 1984, obviously too late to accommodate hearings and post-hearing pleadings and decision prior to anticipated fuel loading.

We believe that there is other evidence that the Board should receive in the forthcoming hearings which is pertinent to the issue at bar and which, together with the evidence on the coatings reinspection, can provide the Board with the assurances it needs to proceed to decision. Applicants have implemented a comprehensive and aggressive program to reaffirm their total commitment to an effective, independent QA/QC program. This program is structured to encourage all employees at Comanche Peak, including QC inspectors, to report quality concerns. All employees are assured that no interference (such as harassment) with proper performance of QA/QC functions will be tolerated at Comanche Peak. The program includes a "hot line" telephone contact, answered 24 hours a day, so that employees can express their quality concerns anonymously. It also includes the retention of a highly-qualified consultant who functions as the on-site "ombudsman" with whom QC inspectors may communicate directly and personally. We believe that the Board should receive evidence at the forthcoming hearings on the measures taken by Applicants to reemphasize the importance of quality at Comanche Peak and to add additional channels of communication for reporting of quality concerns.

## II. PROPOSED SCHEDULE FOR COMPLETION OF HEARINGS

As noted, hearings in this proceeding have entered their third year. Thousands of pages of transcript have been generated on a multitude of issues. All aspects of Applicants' QA program have been examined, from its application to design and construction to its effectiveness in assuring a quality finished product. Virtually every issue raised by the intervenor which was even remotely related to the QA program has been permitted to be litigated under the broad QA contention. On more than one occasion, hearings have been held in anticipation of concluding the proceeding, only to find some new issue raised by the intervenor either by surprise during the hearing or as a wholly new matter after the conclusion of the hearing. 17/ In either

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17/ For example, without any advance notice, the intervenor presented during the June 1982 hearings a list of witnesses it asked the Board to subpoena to testify on a variety of matters. Consequently, hearings were then scheduled for July to hear testimony by those witnesses. During that hearing session, the intervenor presented Mr. and Mrs. Stiner and Mr. Walsh, again without notice, which necessitated the scheduling of more hearings for September 1982. During the interim period, the intervenor identified Mr. Doyle as a potential witness, and later introduced 370 pages of Mr. Doyle's deposition as his testimony in the September hearing session. Because the Staff was unable to complete its review of these new allegations on such short notice, further hearings were scheduled upon completion of Staff review. Before hearings could be held on those issues, the intervenor sought and was given the opportunity to litigate the results of the NRC Construction Appraisal Team inspection, which was litigated in June of this year, a month after the hearings on the Walsh/Doyle allegations were concluded.

case the result has been that additional hearings are convened by the Board.

Given the nearness of completion of Comanche Peak, we no longer have the luxury of piecemeal litigation. We have no confidence, based on past experience in this case, that the record can be timely closed unless all remaining matters are addressed in a final, continuous hearing.

Accordingly, Applicants urge the Board to schedule a final hearing to commence on January 30, 1984, and to continue until all remaining matters are fully litigated. We anticipate that three weeks of hearings may be necessary (and should be scheduled) to address the matters proposed for hearings herein, and that four or five weeks may be necessary if other matters are addressed. We urge that the hearings be continuous over consecutive weeks, for five days each week, and that the sessions on Monday through Thursday run for ten hours (or longer, as the Board deems appropriate). At the conclusion of the hearings the Board should close the record and call for the expedited filing of proposed findings by all parties.

Only through this process and in accordance with this proposed schedule can the Board assure that a timely decision will be rendered. Applicants are entitled to timely decision-making, and there is no good reason why they should not have it. The NRC licensing process in this case has been an example of appalling inefficiency, having taken three years

of hearings to litigate the allegations of a handful of individuals. While all parties were concerned that those allegations be fully ventilated, that has been done and there is no reason to protract the matter further.

Further, as the Board seems to recognize, it would violate all precepts of due process if licensing were delayed because another arm of the NRC is conducting an investigation. The Board's proposal to account for the issues under investigation by addressing the quality of installed hardware is appropriate. We believe that comprehensive evidence on the coatings reinspection will provide the Board with confidence that the quality of the coatings is assured.

However, we are concerned that the Board may contemplate awaiting the results of the hearings before determining whether it can close the record. There is no time for such a course. It would be grossly unfair to Applicants for the Board to conduct several weeks of hearings early next year, and then decide whether the Board need await the results of the investigation. The Board has been briefed by OI on the scope and substance of its investigation, and should thus have the information it needs to decide now whether the alternative approach it suggests is sufficient. This after all is the purpose of the so-called Byron procedure. If the Board has a reasonable level of confidence that the alternative approach will suffice, then Applicants agree to that approach. However, if the Board is less than confident, then Applicants urge

the Board to allow the parties to address the matters during the upcoming hearings rather than await the outcome of the investigation. If these matters are to be addressed in the hearings, then we request that the Board add two additional weeks to the schedule.

III. PROPOSED FINDINGS  
ON CAT REPORT

The Board has not yet established a schedule for filing of proposed findings on the CAT Report. Applicants propose that the Board schedule the filing of proposed findings by all parties on December 22, 1983. This would allow the Board to issue its decision on CAT prior to the commencement of hearings on January 30, 1984.

Further, the Board should receive into evidence two NRC inspection reports issued subsequent to the hearings on the CAT Report. 18/ Both reports simply confirm the conclusions of the Staff witnesses on the CAT Report which were already presented on the record. Specifically, the first report (I&E Report 83-24/83-15) concerns the four specific areas as to which the NRC issued notices of violation in connection with the CAT inspection. These areas were litigated extensively in the June 1983 hearing session. As for the second report (I&E Report 83-28/83-14), it simply confirms the validity of the CAT inspector's conclusions during the June 1983 hearings

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18/ See I&E Report 83-24/83-15 (August 24, 1983) and I&E Report 83-28/83-14 (October 3, 1983).

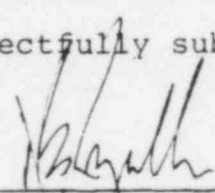


that, upon consideration of Applicants' response to the potential enforcement findings identified by the CAT, those findings were either incorrect or raised no safety concern. Thus, no new notices of violation were issued as a result of this confirmatory inspection.

IV. EXPEDITED RESPONSES TO  
APPLICANTS' PROPOSALS

Time has become of the essence in this proceeding. The Board should call for expedited responses to the Applicants' proposals herein so that the Board may establish the schedule for hearings and identify the issues for hearing at the earliest possible time. We propose that the Board call for the filing of written responses hereto by Thursday, December 8, to be served by overnight delivery. Applicants are serving the instant document by overnight delivery so that it will be received by all parties on Monday morning at the latest.

Respectfully submitted,

  
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December 3, 1983



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
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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)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Applicants' Identification of Issues and Proposal to Establish Hearing Schedule" in the above-captioned matter were served upon the following persons by overnight delivery (\*), or deposit in the United States mail, first class postage prepaid, this 3rd day of December, 1983 or by hand delivery (\*\*) on the 5th of December, 1983.

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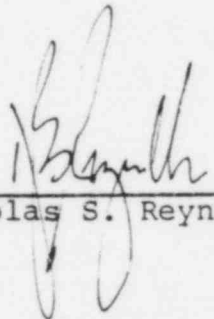
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