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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
TEXAS UTILITIES ELECTRIC) Docket Nos. 50-445 and
COMPANY, et al.) 50-446¹
)
(Comanche Peak Steam Electric) (Application for Operating
Station, Units 1 and 2)) Licenses)

APPLICANTS' ANSWER TO CASE'S MOTIONS
REGARDING BOARD'S 3/15/84 MEMORANDUM

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.730(c), Texas Utilities Electric Company, et al. ("Applicants") hereby submit their answer to CASE's April 2, 1984, "Motions Regarding Board's 3/15/84 Memorandum (Clarification of Open Issues)." In addition, Applicants also provide their response to a question posed by the Board in a conference call with the parties on April 9, 1984.

II. APPLICANTS' ANSWER TO CASE'S MOTIONS

CASE makes a series of motions and requests, denominated 1 through 18 (see CASE Motion at 19-23), which pertain to several decisions of the Board regarding the scheduling and litigation of outstanding issues set forth in its March 15, 1984, Memorandum.

¹ Because CASE's motion concerns, in part, the intimidation issue, Applicants also will serve Judge Grossman with this answer.

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In large measure CASE's motions and requests concern the scheduling of various submittals Applicants and the Staff have been asked by the Board to provide. Pursuant to the Board's request in an April 9, 1984, conference call, Applicants transmitted on April 13, 1984, a schedule for providing these and other submittals. Thus, Applicants have already responded to this aspect of CASE's motion. Applicants respond below, seriatim, to each numbered item in CASE's motion, tracking the numbered motions/requests of CASE.

1. CASE moves that Applicants be required to provide by April 17, 1984, information regarding the reinspection of the polar crane shims (CASE Motion at 19). Applicants submitted this information on April 9, 1984.

2. CASE moves that Applicants be required to provide to CASE, by affidavit, the evidence on which Applicants relied in providing the preliminary results of the paint reinspection program. By letter dated April 13, 1984, Applicants informed the Board and parties that this information would be filed on April 19, 1984.

3. and 4. These items relate to NRC Staff documents. Accordingly, Applicants do not address this portion of CASE's Motion.

5. CASE moves that Applicants be required to provide the information requested by the Board in its January 30, 1984, Memorandum (Records Retrieval) by May 8, 1984, or, in the alternative, provide an estimate of when this material will be presented (CASE Motion at 20-21). By letter dated April 13,

1984, Applicants indicated this information would be submitted in approximately six weeks. Applicants intend to provide a thorough report regarding the records system at Comanche Peak which will be fully responsive to the Board's concerns raised in its Memorandum. Further action by the Board on this matter is unnecessary.

6. This request relates to NRC Staff documents. Accordingly, Applicants do not address this portion of CASE's motion.

7. CASE moves that Applicants be required to submit their response, or a schedule for their response, to the Board's Partial Initial Decision regarding A500 steel by April 17, 1984. Applicants filed their response on April 11, 1984. Accordingly, no action is required by the Board on this aspect of CASE's motion.

8. CASE moves that the Board order Applicants and the NRC Staff to file a schedule, by May 15, 1984, for the completion of various reports that will be employed in future hearings. (Motion at 21.) CASE does not, however, specify which reports it is addressing. Thus, Applicants are unable to respond to specific items to which CASE may be referring. However, as previously noted, Applicants filed a schedule for submission of information requested by the Board regarding a number of matters (see Applicants' letter of April 13, 1984). Thus, CASE's motion in this regard, at least with respect to Applicants, appears to raise a moot question. In any event, Applicants agree that a reasonable schedule should be established regarding matters

necessary for completing litigation of the remaining issues in the proceeding. Accordingly, we do not object to the development of a schedule for submission of information, if it is accompanied by a schedule for litigation of outstanding issues. We urge the Board to so find, and to request that the parties submit detailed schedules for litigation of outstanding issues.

9. CASE moves the Board to reconsider its conclusion that the only testimony of undue pressure on craftspeople is from the Stiners. Applicants oppose this request. It is Applicants' position that allegations of intimidation of craft should not be heard except in circumstances where it can be shown that the alleged intimidation had an actual impact on the final product of safety-related work. The QA/QC inspection program will discover and correct any alleged inadequacies in the work product of craft. It is for this reason that the issue of intimidation should be limited to QC personnel except where it is shown that 1) the result of alleged craft intimidation is materially defective workmanship which, if not corrected, would adversely affect plant safety and 2) the alleged materially defective workmanship affecting plant safety has not been revealed and properly disposed of by the operation of Applicants' QA/QC program. In short, if the QA/QC program is found to be effective, virtually all allegations of craft intimidation would be irrelevant to a decision as to the quality of the ultimate work product.

In any event, Applicants believe that further clarification on this subject should await Applicants' submittal of a proposed standard for judging the intimidation issue. Accordingly, the Board should deny CASE's motion in this regard, pending adoption of that standard.

10. CASE requests that the Board reconsider its decision to close the issue of intimidation with respect to craft. Applicants oppose this request for the reasons stated in paragraph 9. Semantic shadings of concepts such as "discouragement" and "worker morale" will be covered by Applicants in their response to the Board's request for a standard to judge the generic issue of intimidation. Accordingly, as with the preceding item, the Board should deny CASE's motion, pending establishment of that standard.

11. CASE seeks clarification of the Board's conclusion regarding the evidentiary status of Mr. Hamilton's dismissal. We understand the Board's statement to mean that the legal significance, if any, of the dismissal of Mr. Hamilton has not yet been decided. Further consideration of the legal significance of the dismissal of Mr. Hamilton should await the Board's adoption of a standard for judging instances of alleged intimidation and presentation of evidence in light of that standard.

12. CASE requests that litigation of Mr. Stiner's dismissal be deferred pending release of the Office of Investigation's Report on Intimidation. Applicants oppose this request. Trial of the issue of "intimidation" cannot be further delayed.

Applicants have filed a motion for a cut-off date with respect to allegations of intimidation. CASE should prepare now its evidence on this issue without awaiting further OI reports. (See also Response to Item 13.)

13. CASE asks the Board to reconsider its decision to proceed to litigate intimidation issues prior to the completion of OI investigation reports. Applicants oppose this request. As we have indicated, Applicants believe that the trial of this issue should not be further delayed pending completion and receipt of OI investigation reports. OI has already stated that it cannot predict when its investigations will be complete, indicating that it may not complete all investigations prior to Fall 1984. Awaiting completion of those investigations before litigating this issue obviously is unacceptable if the Board is to reach a decision prior to Applicants' scheduled fuel load date. In any event, CASE has not demonstrated that it would be unable to litigate the intimidation issue without the OI Reports. Accordingly, the Board should deny CASE's motion.

14. CASE seeks to have the Board reconsider its determination that parties need not prefile testimony regarding intimidation, but only with respect to Applicants and the NRC Staff. Applicants oppose this request. It is Applicants' position that orderly trial on this issue requires that CASE first establish, if it can, that there has been a practice of discouraging the reporting of nonconforming conditions, which practice undermines the effectiveness of the QA/QC program. Only after CASE has so demonstrated will Applicants be able to respond

in detail to CASE's allegations. In any event, further consideration of this matter should await a decision as to 1) what the standard is by which specific allegations presented by CASE are to be judged and 2) whether a practice has been established. At that time it may well be that specific matters discussed in previously filed affidavits or testimony of CASE's witnesses will be subject to summary disposition, depending on the standard adopted by the Board.

15. CASE moves that the Board reconsider its decisions that the only evidence of record regarding the qualifications of quality assurance supervisory personnel is in the context of the CAT Report and in the testimony of Mrs. Stiner (Motion at 23). CASE identifies two instances in which it believes the record reflects additional evidence on this matter.

First, CASE cites to testimony of Mr. Hamilton concerning disagreements between himself and his supervisors regarding inspection findings. This specific allegation was addressed and disposed of in the Board's July 28, 1983, Proposed Initial Decision (Concerning aspects of construction quality control, emergency planning and Board questions), at 23. CASE did not object to the Board's disposition of this allegation when it had the opportunity to do so (see "CASE's Objections to Licensing Board's Proposed Initial Decision," August 27, 1983, at 16-17). Thus, CASE should not be permitted to attack now the Board's resolution of this matter, particularly given that CASE failed to pose a timely objection to the Board's original decision. The Board should deny CASE's motion in this regard.

The second example which CASE cites regarding "evidence" of unqualified supervisory personnel is a limited appearance statement of Mr. Bronson. We first note that limited appearance statements are not evidence. Iowa Electric Light & Power Company (Duane Arnold Energy Center), ALAB-108, 6 AEC 195, 196 n.4 (1973). Consideration of Mr. Bronson's statement as evidence is not, therefore, permitted. In any event, the statements of Mr. Bronson referenced by CASE contain nothing more than general expressions of dissatisfaction on his part with his supervisors. There are no allegations of specific deficiencies in the required qualifications of any supervisory personnel. Thus, there is no basis for consideration of this material. Accordingly, the Board should deny CASE's motion with respect to Mr. Bronson's statement.

16. CASE moves that the Board revise its Memorandum to reflect what it believes is another instance of "reverse classification". In this regard, CASE cites to Mr. Hamilton's testimony regarding an instance of declassification of items from a safety to non-safety category. Such declassification is not within the scope of the allegation regarding reverse classification, and, thus, is not an additional example of that practice as CASE alleges. Accordingly, the Board should deny CASE's motion on this matter.

17. CASE moves that the Board revise its Memorandum to "recognize that CASE may supplement its expected findings of fact" on the issue of trending. (Motion at 23). Applicants do not dispute that CASE should supplement its expected findings

regarding this matter. Applicants believe CASE should be required to do so. If relevant additional information is disclosed during hearings subsequent to CASE's filing of its expected findings, such supplementation should be accomplished in accordance with the Board's directive that it be done shortly after the conclusion of the hearing session at which such supplementary information is developed. Accordingly, Applicants do not oppose CASE's motion in this regard and urge the Board to require CASE to so supplement its expected findings.

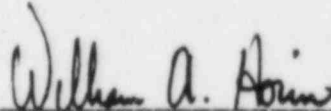
18. CASE moves the Board to permit CASE to provide additional information regarding allegations of Mr. Messerly. Applicants oppose this motion. CASE has had, but failed to take advantage of, numerous opportunities to present specific information regarding these allegations. As the Board notes in its Memorandum, CASE was given the opportunity to conduct on-site discovery to identify unsatisfactory construction activities, including those related to Mr. Messerly's allegation, but declined to do so. Further, as Applicants discussed in their reply to CASE's identification of issues to the Board on this matter (January 30, 1984), at 20-21, CASE twice submitted pleadings regarding Mr. Messerly's allegations but failed to provide sufficient justification for the Board to permit litigation of these allegations. CASE further addressed this question in its December 22, 1983, pleading regarding identification of outstanding issues. In none of these instances did CASE provide the specification necessary to warrant further inquiry in the proceeding. In short, CASE is seeking a fifth

opportunity to convince the Board that this matter should be litigated. The Board correctly disposed of this matter in its Memorandum and should not afford CASE yet another opportunity to inject this matter into the proceeding. Accordingly, the Board should deny CASE's motion.

Finally, the Board requested that Applicants address in this pleading the subject matter of procedures for dealing with confidentiality of various potential witnesses. Applicants believe that resolution of this question should await disposition of other matters presently or soon to be before the Board and parties. First, Applicants will shortly file a motion seeking to obtain the names of confidential sources interviewed by OI. Second, Applicants have filed interrogatories with CASE seeking to obtain the names of all CASE witnesses. It is apparent, that at least in major part, the names of potential CASE witnesses have already been revealed. OI Report 4-84-006, which was released to the parties on April 3, 1984, contains in full the names of 24 persons provided by CASE to OI in August of 1983 in connection with the issue of "intimidation". Thus, to the extent that there may be additional witnesses not previously revealed

for whom CASE or OI seeks some form of protection, that subject should be addressed in that context. Accordingly, Applicants believe the Board should await the results of these efforts before taking further action in this area.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "William A. Horin", is written over a horizontal line.

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UNITED STATES OF AMERICA
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~~OF SECRETARY OF SERVICE~~
~~BOARD~~
~~BRANCH~~

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Applicants' Answer to CASE's Motions Regarding Board's 3/15/84 Memorandum" in the above-captioned matters were served upon the following persons by overnight delivery (*), or deposit in the United States mail, first class, postage prepaid, this 16th day of April, 1984, or by hand delivery (**) on the 17th day of April, 1984.

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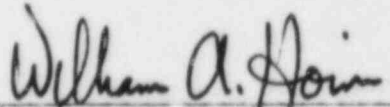
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