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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

11/15/84

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	Docket Nos. 50-445 and 50-446
TEXAS UTILITIES ELECTRIC COMPANY, et al.	
(Comanche Peak Steam Electric Station, Units 1 and 2)	(Application for an Operating License)

CASE'S MOTION FOR RECONSIDERATION
OF BOARD'S 10/31/84 MEMORANDUM (MULTIPLE FILINGS)

In an off-the-record conference call among the Board and parties on 10/23/84, NRC Staff counsel Mr. Mizuno requested an extension until 10/31/84 to respond to the Applicants' 10/4/84 Motion to Strike CASE's Answer to Applicants' Reply to CASE's Answer to Applicants' Motion for Summary Disposition Regarding Consideration of Friction Forces. CASE and Applicants had no objection to an extension of time, except that CASE requested an extension so that we could put our answer into the mail on 11/2/84, since we were attempting to respond to Applicants' Motion for Summary Disposition on QA for Design /1/ and were having to devote our attention and time to that effort. CASE's request was granted (as recognized in Applicants' 10/26/84 Reply to the Board Chairman's "Preliminary Views" Regarding Additional Pleadings, page 4, footnote 5); however, on 10/31/84 CASE was informed by the Board Chairman that the Board had issued its 10/31/84 MEMORANDUM (Multiple Filings) that day. Since the MEMORANDUM had already been issued

/1/ Applicants' Motion for Summary Disposition Regarding Applicants' Quality Assurance Program for Design of Piping and Pipe Supports for Comanche Peak Steam Electric Station.

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prior to CASE's having an opportunity to file its response, CASE awaited receipt of the Board's MEMORANDUM, which we received on 11/5/84.

In reviewing that MEMORANDUM, CASE believes that portions of it are inherently unfair and prejudicial to CASE's due process rights. CASE therefore finds it necessary to file this Motion for Reconsideration of the Board's MEMORANDUM.

BACKGROUND

The Board is well aware of the process begun with the Board's 12/28/83 MEMORANDUM AND ORDER (Quality Assurance for Design), and we will touch on aspects of that process only briefly herein. In its 12/28/83 Order, the Board stated that the record in these proceedings cast doubt on the adequacy of design of the entire plant. The Board suggested that there was a need for an independent design review and the Board required Applicants to file a plan that might help resolve its doubts and the questions raised about the adequacy of design of the plant (pages 1, 2, and 73 through 75). At page 71, the Board stated that, with respect to the design deficiencies which it noted, there were aspects of Applicants' case which the Board would have decided in favor of Applicants, and that its decision to stop where it did was "based on our conclusion that there were enough deficiencies that we could not be satisfied by the quality of design reflected on our record." At pages 73 through 75, the Board set forth specific characteristics of an independent design review, which the Board urged Applicants to consider.

Motions for Reconsideration of the Board's 12/28/83 MEMORANDUM AND ORDER (Quality Assurance for Design) were filed by Applicants, NRC Staff, and CASE on 1/17/84.

Applicants responded to the Board's 12/28/83 Order with their 2/3/84 Plan to Respond to Memorandum and Order (Quality Assurance for Design).

Following the Board's review of the 1/17/84 Motions for Reconsideration filed by Applicants, NRC Staff, and CASE, the Board issued its MEMORANDUM AND ORDER (Reconsideration Concerning Quality Assurance for Design) on 2/8/84. In that Order, the Board stated, in part (excerpted from pages 34 through 36):

> "We are permitting Applicant to reopen the record without a showing of good cause because it does not seem to us logical or proper to close down a multi-billion dollar nuclear plant because of a deficiency of proof. While there would be some 'justice' to such a proposition, there would be no sense to it.
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> "Furthermore, we note that intervenors receive several procedural advantages in our proceedings that also are not fully symmetrical and that compensate for the application of different standards for reopening the record. First, the Board has the authority to raise important issues sua sponte, thereby protecting public safety and the environment even when intervenors may not have raised the issues. Second, the Board has the responsibility to assure the adequacy of the record, thereby causing it to pursue more fully matters of public safety that may not have been fully pursued by intervenors. . . Third, the burden of proof generally falls on applicants, who must therefore attempt to appreciate and rebut, by a preponderance of the evidence, all the implications of all issues raised by intervenors.
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> "In one sense, the reopening of the record does not seem fair. CASE has been put to unnecessary expense because it will have to prove its case twice. In addition, the need to continue disputing an already closed issue is an unnecessary tax on its volunteer resources. . ." (Emphases added.)

Thus, the Board afforded Applicants the opportunity to remedy their deficiency of proof.

On 2/24/84, at the close of that week's hearings, the Board gave Applicants the benefit of its initial impression regarding Applicants' 2/3/84 Plan (see discussions at Tr. 10,337/14-10,340/6). Included in the Board's comments were the following (Tr. 10,338/4-18):

"The decision which we issued was based on concern about both the Walsh/Doyle issues and about the adequacy of the quality assurance plan of the Applicants, particularly under Criterion 1 and 18 of Appendix B. To the extent that the proof is adequate to demonstrate fully that there has been compliance with those two criteria and that there are no serious issues arising out of the Walsh/Doyle concerns, the Applicant's plan may prove to be adequate to demonstrate that the Board should have confidence in the design of Applicant's plan.

"If, however, the plan fails to succeed in producing that level of confidence, we do not anticipate another opportunity to do the design review that we requested as an additional way of giving us confidence. That matter would then fall before the Appeal Board."

The Board thus afforded Applicants the opportunity to supplement their Plan to more adequately address and attempt to resolve the Board's concerns. And on 3/13/84, Applicants filed their Supplement to Applicants' Plan to Respond to Memorandum and Order (Quality Assurance for Design).

DISCUSSION

Following discussions among the Board and parties, on 6/29/84 the Board issued its MEMORANDUM AND ORDER (Written-Filing Decisions, #1: Some AWS/ASME Issues); on pages 1 through 3, the Board discussed the procedures which the Board adopted. The Board stated in part:

"This memorandum and order inaugurates a series of decisions intended to resolve, without further hearings, as many as possible of the design quality assurance and design issues remaining in this case.

". . . we are considering summary disposition subsequent to the issuance of a formal order concerning the issues in controversy. That order is binding in this litigation and provides the framework for consideration of the summary disposition motions.

"Another unusual aspect of the procedure is that we have adopted--with the permission of the parties--a somewhat more lenient standard for granting summary disposition. Whenever we find ambiguities requiring further clarification, we will ask questions (in writing or on the record), request briefs or otherwise seek to clarify matters fairly. Having done that, we will schedule a hearing (or cross-examination of one or more witnesses) only if we determine that the hearing is necessary for us to make a reasoned decision . . ." (First emphasis added; second emphasis in the original.)

"The purpose of this more lenient standard for summary disposition is to avoid unduly prolonged hearings of technical matters, which generally are better resolved based on an understanding of the facts rather than by use of a magical wand to discern truth telling. Our experience in these hearings is that technical issues require careful study and the comparison of the views of the experts called by the parties. This is an arduous task that is helped by cross-examination only when there is substantial lack of clarity in the written filings or there are important disagreements that require clarification and resolution through the oral interchange provided by a hearing. . . "

It was CASE's understanding that these procedures (in conjunction with consideration of the Cygna Reports) were to be the means which Applicants would use to attempt to alleviate the Board's concerns as set forth in the Board's 12/28/83 MEMORANDUM AND ORDER (Quality Assurance for Design). Thus, the Board (with the agreement of the parties) set up procedures which allowed the Applicants to choose the specific items which they would address in their Motions for Summary Disposition, as well as the specific items addressed in their Statements of Material Facts As To Which There Is No Genuine Issue, and the back-up Affidavits for those Material Facts. These specific items chosen by the Applicants were to have been Applicants' opportunity to correct their deficiency of proof and should have been comprehensive enough to thoroughly address the issues. These specific items -- chosen by the Applicants -- also limited the responses which CASE could make to Applicants' Motions for Summary Disposition (see discussion during 7/26/84 conference call at Tr. 13931/13 et seq.).

It is obvious that Applicants hoped to be able to flood CASE with Motions for Summary Disposition and bury us under such a tide of paper that we would be unable to respond to many of the Motions. However, the Board -- following extensive discussions and motions for reconsideration by the parties, and acting properly and necessarily, in recognition of the extremely complex and detailed technical issues involved and the unusually

large number of Motions for Summary Disposition involved, in order to assure a complete record, to be fair, because there was no prejudice to the proceedings, and because CASE would be taking less time than would be allowed to the NRC Staff -- allowed CASE discovery and additional time in which to respond to Applicants' Motions for Summary Disposition, with the requirement that CASE beat the Staff's filing of their Answer to Applicants' Motions (Tr. 13,941/22-13,943/22).

The Board should be aware that, even with the benefit of discovery and some additional time in which to respond, CASE has been unable to thoroughly cover each and every point which should have been responded to. This is especially true regarding the first nine Motions to which we responded, where we were under deadlines to beat the Staff's filing of answers. During the 7/26/84 conference call among the Board and parties, we were told by NRC Staff counsel that (excerpted from Tr. 13,837/24-13,838/25):

> "I can think of one motion right now that we are pretty close to being able to getting (sic) into final shape. What remains is for myself to write up the legal brief accompanying the affidavit. That is all. The other half of the AWS ASME area, I can think of two additional motions which are very close to coming up too. That involves . . .
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> ". . . Friction forces through small thermal movements. At (sic) the summary disposition motions, that is for OBE and FSE (sic). However, on the others, they are a little bit further away from, trying to resolve them. As a matter of fact, the most recent summary disposition motions are very complex. As you know, the applicants have the finite analyses and the tests, and several different areas. I can say that it is a trendmenous (sic) task for the staff to go through it. We are doing the best that we can. I just want the board to recognize that it took the applicants quite a bit of time to do the work. I don't think that the staff should be given any less opportunity to review the in depths (sic) of what the applicants did.
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> "So, at this moment, I can just say that our current schedule calls for everything except for one motion for summary disposition to be filed by August 27th. The one exception is the upper lateral restraint."

And on 8/3/84, CASE was told by Staff counsel that they expected to be filing their answers to the following Applicants' Motions for Summary Disposition during the week of 8/13/84, probably sometime around the 15th: AWS/ASME (design); Richmonds; OBE/SSE Damping Factors; U-Bolts acting as two-way restraints; safety factors; friction; section properties; gaps; and that they were working on and might also have ready answers on generic stiffnesses. On the basis of these and other representations by the Staff, CASE and its two engineering witnesses broke our backs to try to comply with the Board's order (see CASE's 8/6/84 letter to the Board attaching CASE's Answers regarding OBE/SSE damping factors, AWS/ASME (design), and friction, and CASE's 8/29/84 letter to the Board attaching CASE's Answers regarding local displacements, differential displacement (wall-to-wall/floor-to-ceiling), axial restraints, upper lateral restraint, generic stiffnesses, and safety factors).

The Board should also be aware that Messrs. Walsh and Doyle, because of an unusually heavy work load on their jobs at that time which required a lot of overtime for both of them, were unable to adequately and thoroughly review all of Applicants' Motions for Summary Disposition prior to having to ask for documents on discovery. This means that CASE did not ask for all the documents we should have (and would have, had we not been under such severe and, as it later turned out, inaccurate time schedules) on many of the Motions.

It is especially important for the Board to take note of these two deficiencies in CASE's Answers to Applicants' Motions for Summary Disposition, because it means that the Board cannot and should not rely on CASE's having identified and addressed each and every point or problem in

responding to Applicants' Motions. This has already been proved once, because had the Board not requested the raw data supporting Applicants' Table 2 in its 10/18/84 MEMORANDUM AND ORDER (Information Concerning Torques in U-Bolts), neither the Board nor CASE would not have known that Applicants were using a nonrepresentative sample as the basis for their tests of cinched-down U-bolts.

CASE urges that the Board take this into consideration in its review of Applicants' Motions and the answers of the parties, and that the Board ask whatever questions or request whatever documents (from Applicants, NRC Staff, or CASE) it considers necessary to allow the Board to make an informed, reasoned decision regarding these important design/design QA issues. This type of request by the Board is consistent with the understanding which CASE had of the method which was originally agreed to by the parties regarding the use of Motions for Summary Disposition on the design/design QA issues.

If Applicants refuse to provide the information requested by the Board, the Board should deny Applicants' Motion and find that Applicants have again not met their burden of proof sufficiently to reassure the Board that that particular aspect of Applicants' design/design QA program is adequate to assure a plant which will not endanger the public health and safety -- rather than giving Applicants yet another opportunity, again without a showing of good cause, to remedy their deficiency of proof, or giving them the alternative of attempting to find some other way of responding /2/.

/2/ See Applicants' 11/5/84 Motion for Reconsideration of Memorandum and Order (More Detail on Individual Pipe Supports); see also Board's 11/6/84 MEMORANDUM (Applicants' Motion for Reconsideration About Pipe Support Information).

The Board's 6/29/84 Order (and CASE's agreement to the procedure outlined in the Board's Order), as quoted in the preceding, anticipated that whenever the Board found ambiguities requiring further clarification, the Board would "ask questions (in writing or on the record), request briefs or otherwise seek to clarify matters fairly" (emphasis added). CASE had anticipated that such requests by the Board would be something on the order of the Board's specific requests for information contained in its 10/18/84 MEMORANDUM AND ORDER (Information Concerning Torques in U-Bolts) and its 10/18/84 MEMORANDUM AND ORDER (More Detail on Individual Pipe Supports). (It appears that Applicants do not share CASE's views in this regard; see references in footnote 2 on preceding page.)

The Board's 6/29/84 Order (and CASE's agreement to the procedure outlined in the Board's Order) did not anticipate Applicants being allowed carte blanche to answer CASE's answers to Applicants' Motions for Summary Disposition -- and the Board's Order (and CASE's agreement) certainly did not anticipate Applicants being allowed carte blanche to say whatever they wanted to in answer to CASE's answers -- without having to meet any criteria -- while at the same time severely restricting CASE's addressing the statements in Applicants' answers. This, however, is the untenable and unfair situation set forth by the Board's 10/31/84 MEMORANDUM (Multiple Filings).

CASE and its Witnesses Messrs. Walsh and Doyle have attempted to accept the Board's 2/8/84 Reconsideration Order with good grace, and to respond to the Applicants' Motions for Summary Disposition. CASE supports the Board's position that it must assure a complete record; however, as discussed herein, we do not support those portions of the Board's 10/31/84 Order which

would allow only Applicants to complete their portion of the record, without allowing CASE the same privilege.

Applicants should only be allowed to file a third-round filing or response if CASE's answers raise new technical issues (see discussion at Tr. 13,995). For them to comply with this requirement, Applicants should, in their responses to CASE's Answers to Applicants' Motions for Summary Disposition, be required to meet the same four criteria to which the Board would subject CASE: Applicants should have to clearly demonstrate, for each subject matter discussed: (1) relevance, (2) what new material in the last round filing is being responded to, (3) why the party was unable to anticipate this material in its last filing, and (4) the safety significance of the point that is being made -- and the Board should strike any filings by Applicants which do not comply with this directive.

Thus far, the number of third and fourth round pleadings has not been great. However, CASE is now concerned, as is the NRC Staff, that "An unfettered right by either Applicants or CASE to continue disagreeing over the same underlying technical issues in a never-ending set of reply briefs does not further the goal of expeditious resolution of the issues in a fair manner" /3/. It is noteworthy (though not surprising based on the past posture of the Staff in these proceedings) that the Staff further seeks to restrict only CASE -- not Applicants -- in its responses, while at the same time the Staff recognizes that the "Board specifically stated that the reason for allowing Applicants to respond to CASE's answers was the Board's perception that CASE's answers raised new technical issues which may or may

/3/ NRC Staff 11/1/84 Response to Applicants' Motion to Strike CASE's Answer to Applicant's Reply to CASE's Answer on Consideration of Friction Forces, page 4.

not be relevant to the issue sought to be disposed of." Applicants should have to specifically identify any such new technical issues, and should be required to meet the same four criteria which the Board would impose on CASE. However, neither the Board nor the Staff has suggested that Applicants, in their responses to CASE's answers, must meet those four criteria -- nor are Applicants being told that the Board will strike any of Applicants' filings that do not comply with this directive.

CASE submits that, to be fair and even-handed, the Board should not consider either Applicants' replies to CASE's Answers to Applicants' Motions for Summary Disposition (third round reponse) or CASE's Answers to Applicants' replies to CASE's Answers to Applicants' Motions for Summary Disposition (fourth round response) unless any such responses by either Applicants or CASE meet the four criteria set forth in the Board's 10/31/84 MEMORANDUM (Multiple Filings). This requirement should be imposed, at a minimum, regarding Applicants' answer on gaps /4/ and all other third-round answers by Applicants which follow.

In Applicants' replies to CASE's Answers to Applicants' Motions for Summary Disposition received thus far, Applicants have, among other things: reargued their same position, using new arguments and at times new information and new documents; altered or taken a new approach to their previous position, at times using new arguments, new information, and new documents; and used their reply to deliberately misrepresent statements by CASE's Witness(es).

/4/ Applicants' 10/26/84 Reply to (1) CASE's Answer to Applicants' Motion for Summary Disposition Regarding the Effects of Gaps and (2) Board Chairman's "Preliminary Views" Regarding Additional Pleadings.

And in their reply regarding gaps (see Footnote 4 on page 11), Applicants have introduced information which is irrelevant in an effort to sway the Board to their views. Applicants have not made any showing that this information is relevant, but since they are attempting to use it to support their position and to sway the Board, CASE must address it or risk the Board's being misled by it -- thus placing CASE in the untenable position of having to argue not that something is relevant, but that the information contained in Applicants' pleading is irrelevant. This burden should not be on CASE -- the burden should be on Applicants to "clearly demonstrate" the relevance of the material in question. Yet, under the Board's 10/31/84 MEMORANDUM (Multiple Filings), Applicants are not being required to show relevance or to meet any of the four criteria stated by the Board.

CASE also takes strong exception to the following emphasized portion of the Board's 10/31/84 MEMORANDUM (Multiple Filings) where the Board states (page 2):

> ". . . we have now obtained and read the transcripts of the August 8, 9 and 23 meetings between Staff and Applicants. Our understanding of these meetings leaves us without any rational explanation of how Applicants could have come to assure this Board that there were no significant matters raised in those meetings. We trust that Applicants understand the importance of the matters raised by the Staff and the apparent need to supplement their Summary Disposition motions in a clear, responsive fashion. Supplementation appears to be necessary to avoid denial of the filed motions." (Emphases added.)

The Board is offering Applicants yet another opportunity to remedy its deficiency of proof -- again without a showing of good cause (which good cause CASE does not believe exists) -- by supplementing their Summary Disposition motions. Such supplementation will undoubtedly require yet another answer from CASE, thus unnecessarily burdening the Board, the Staff,

and CASE, as well as the record of these proceedings, and serve to unnecessarily delay the proceedings.

Applicants chose to deliberately deceive the Board regarding the significance of the matters raised in the meetings between Staff and Applicants -- even when CASE specifically called such significance to the attention of the Board and Applicants, not once, but on at least three separate occasions: during an off-the-record telephone conference between the Board Chairman, Applicants' counsel, and CASE on 8/27/84; in CASE's 8/29/84 letter to the Board under subject of CASE's Partial Answer to Applicants' Motions for Summary Disposition, page 2, as quoted on page 15 following; and during the 9/5/84 on-the-record conference call among the Board and parties (we do not have a transcript citation because we have not yet made time to make the 30-mile round trip to the Library to get a copy of the transcript, but it was near the end of the conference call); this was also discussed in the off-the-record conference call among the Board and parties on 8/31/84). It should be noted that (at least in CASE's opinion) the NRC Staff counsel were also under an obligation to have corrected Applicants' misrepresentation to the Board.

While CASE can understand (although we were disappointed that the Board chose to believe Applicants rather than CASE) that the Board undoubtedly found it difficult to believe that Applicants' counsel would deliberately misrepresent the significance of the matters raised in the meetings between Applicants and Staff, the fact remains that this is precisely what occurred (as is in effect acknowledged by the Board at page 2 of its 10/31/84 MEMORANDUM (Multiple Filings)).

The Board stated (10/31/84 MEMORANDUM at page 2):

> "Under the circumstances, we should not have required CASE to respond to summary disposition motions with respect to which the Staff has serious doubts. We required CASE to do so based on Applicants' representations that significant matters were not involved. Hence, we unnecessarily subjected CASE to a time deadline and to the likely need to make multiple filings. We will consider this burden in subsequent rulings on time deadlines. Furthermore, we will automatically permit CASE to make fourth- and higher-round responses with respect to any pending motions which CASE believes were significantly questioned by Staff at these meetings. Once CASE makes such a good-faith representation, its obligation to demonstrate the four points listed above will not attach. The filing will be accepted."

We appreciate the Board's statements and consider that its efforts to remedy the damage to CASE are proper and necessary. However, there are a couple of matters which should also be considered.

First, the damage to CASE has been far greater than indicated by the Board in the preceding and does not apply only to the design/design QA issues. CASE was also forced to forego filing complete and adequate welding findings because we had to make a decision between the welding findings and our Answer to Applicants' Motion for Summary Disposition on Richmond inserts. Had we not had to answer Applicants' Motion for Summary Disposition on Richmond inserts at the particular time we did, we would have had enough time to more adequately complete our proposed welding findings; as it was, we did not have sufficient time, and due to the press of other deadlines, we were unable even to file responses to Applicants' and NRC Staff's proposed welding findings.

When CASE filed its answers to six of Applicants' Motions for Summary Disposition on 8/29/84, we advised the Board of the difficulties being encountered regarding our welding findings. From the 8/29/84 letter to the Board from CASE President Mrs. Juanita Ellis (page 2):

"At this point, I am not at all certain that I will physically be able to meet the deadline the Board has set for the welding findings. I have had to make a difficult choice -- the Answers to Motions for Summary Disposition or the welding findings. I have not been able to work on the welding findings for any length of time. Although we do have a few CASE volunteers who are helping with them, there is no one else in our organization who has the background to be able to pull them all together in a logical, orderly fashion for the Board except me. I'll do what I can. As usual, what can't be done won't be. And the record will suffer."

"There is one other matter to which I want to call the Board's attention. Contrary to what was stated by Applicants' counsel during the telephone conversation between the Board Chairman, Applicants' counsel, and me on Monday, 8/27/84, it is my understanding from further conversations with Dr. and Ms. Boltz (who attended the 8/23/84 meeting on behalf of CASE) that there is to be a substantive change in at least one Affidavit, regarding Richmond Inserts, and the Applicants' Motion for Summary Disposition. We ask that the Board check with the Staff and Applicants to ascertain whether or not this is true. If it is, CASE strongly objects to having to answer this Motion without having this change and any accompanying documents in hand, and sufficient time to properly review and analyze them. Our answer is currently scheduled to be put in the mail on 9/10/84. We will appreciate the Board's assistance on this." (Emphasis in the original.)

Mrs. Ellis also advised the Board in the 8/31/84 off-the-record conference call and in the 9/5/84 on-the-record conference call among the Board and parties (near the end of the call) that we would file our answer on the Richmond Inserts, even if it meant we were not able to also file complete and adequate welding findings. This is precisely what happened. We did file our answer on the Richmonds, and it is obvious from our pleading why it was necessary to devote so much time to preparing our response; it was a mammoth effort. Looking back now at that answer, it is a miracle that we were able at the same time to file any welding findings, even the incomplete ones which we did manage to file. Thus, the record is deficient on the proposed welding findings; for example, both Applicants and NRC Staff are satisfied with Applicants' program for weld rod control, even though a careful reading of the record clearly indicates that that program is a

failure and that there is, in fact, no adequate program in effect. This would have been documented for the Board by CASE had we not had to file our Answer to Applicants' Motion for Summary Disposition when we did.

The only adequate remedy to this damage to CASE, which was the direct result of Applicants' deliberate misrepresentations to the Board, would be to allow CASE to supplement its proposed welding findings. However, such a remedy is impossible and worthless if it must run concurrently with the other deadlines and work load CASE is under regarding the design/design QA issues. Applicants' being allowed to continue down their current path of responding to each of CASE's Answers to Applicants' Motions for Summary Disposition without having to make any showing as to good cause, relevance, or any of the other criteria which the Board would impose on CASE, will effectively preclude CASE from ever being able to supplement its proposed welding findings even should the Board allow it. This is necessarily true because at least the information on the welding issues is already in the record; therefore, any time there must be a choice between proposed welding findings and new information (not already in the record) regarding design/design QA issues, CASE must choose the design/design QA issues.

It cannot be argued, in one sense of the word, that CASE should be allowed to supplement our Proposed Findings of Fact and Conclusions of Law Regarding Welding Issues in order to complete the record; obviously, what's in the record, is in the record already. However, there is another compelling reason for allowing CASE to so supplement: to assist the Board. Without such supplementation by CASE, the Board will have to engage in a much more detailed, exacting scrutiny of the record to be certain that its decision does not leave out important points.

CASE therefore moves that, as a partial remedy to the damage done to CASE by Applicants' deliberate misrepresentations to the Board, the Board allow CASE an additional twenty days in which to supplement CASE's Proposed Findings of Fact and Conclusions of Law Regarding Welding Issues. Further, CASE moves that this additional time be time set aside for this specific purpose, without the clock's running on other matters (such as design/design QA pleadings); this would be similar to the time set aside by the Board during hearings.

The second aspect of the Board's MEMORANDUM (last three sentences of the portion quoted on page 14 preceding) which should be considered, is the additional unnecesary and unfair burden imposed upon CASE. In order for CASE to take advantage of the opportunity afforded by the Board's directives, we would first have to again review and analyze the transcripts of the several meetings between Applicants and NRC Staff, attempt to determine those items which the Staff significantly questioned at those meetings, then go through the usual procedures necessary to make filings /5/, all of which would take a large amount of time and effort, in addition

/5/ I.e.: Messrs. Walsh and/or Doyle would have to prepare the information for an affidavit; that affidavit would have to be typed up; Messrs. Walsh and/or Doyle would have to sign and have such affidavit notarized; any necessary accompanying documents would have to be identified, found, and appropriately marked; a cover letter, a letter to Docketing and Service, and a Service List would have to be prepared; copies would have to be run of the pleading; those copies would have to be collated and stapled; envelopes would have to be prepared for the mailing; the pleading would have to be stuffed into the envelopes; the envelopes would have to be weighed and the proper postage applied; and finally the completed pleading would have to be taken to the Post Office for mailing.

This is not a large burden for Applicants or NRC Staff, with their staffs of attorneys, technical people, secretaries, typists, office workers, and the ratepayers' or taxpayers' money to operate with, etc. However, it is a heavy burden indeed for CASE, with its comparatively meager personnel and financial resources.

to the additional financial burden involved.

CASE submits that the proper and fair procedure, because of these particular circumstances, would be for the Board to order:

1. Applicants to file affidavit(s) (not representations by counsel) setting forth:
   (a) the specific details with respect to any of Applicants' Motions for Summary Disposition which the NRC Staff questioned at the several Applicants/Staff meetings;
   (b) an assessment by Applicants of the significance or potential significance of each item identified; and
   (c) an explanation of Applicants' representations to the Board that there were no significant matters raised in the meetings.
2. Applicants to supply the Board with:
   (a) copies of Applicants' Response to NRC Questions of Meeting of August 8-9 and August 23, 1984 /6/ (Applicants provided the Staff and CASE with copies under cover letter of 9/24/84, but sent only the letter without attachments to the remainder of the Service List); and
   (b) any other similar follow-up responses by Applicants to the Staff. (It would then be helpful to the Board for the NRC Staff to review Applicants' pleading and advise the Board

/6/ A portion of Applicants' filing to the Staff was included as Attachment E to CASE's 10/15/84 Motions and Answer to Applicants' Motion for Summary Disposition Regarding Stability of Pipe Supports. This will give the Board an idea of the type of information supplied to the Staff by Applicants.

whether or not they concur with Applicants' assessment regarding the significance of the items in question.)

After the preceding has occurred, CASE should be automatically permitted to file its response to Applicants' (and, if the Board has requested it, NRC Staff's) filings, with the requirement only that CASE make a good-faith representation that it believes its filing to be necessary for a complete record in these proceedings (and without having to demonstrate the four points listed in the Board's 10/31/84 MEMORANDUM).

This would be a more expeditious and logical method of dealing with this particular matter, and -- more importantly -- it would place the primary burden on Applicants (where it properly belongs) rather than on CASE.

CASE submits that the response which the Board should make is to now deny each of Applicants' Motions for Summary Disposition regarding which Applicants misrepresented to the Board the significance of the matters raised in the meetings between Applicants and Staff.

In the alternative, should the Board believe that the need for a complete record is so great and compelling that it is necessary to require or allow additional information regarding these matters, CASE moves that the Board adopt the procedures set forth above.

IN CONCLUSION

It should be noted that CASE does not believe the Board, in its 10/31/84 MEMORANDUM (Multiple Filings), deliberately sought to reward Applicants for their misrepresentations to the Board or to impose unfair

additional burdens on CASE. However, as discussed herein, that is the effect.

The Board's MEMORANDUM as written would allow Applicants to file responses to CASE's Answers to Applicants' Motions for Summary Disposition (third round responses), without their having to show good cause or meet any of the four criteria which the Board's MEMORANDUM would impose upon CASE (i.e., "any such responses must clearly demonstrate, for each subject matter discussed: (1) relevance, (2) what new material in the last round filing is being responded to, (3) why the party was unable to anticipate this material in its last filing, and (4) the safety significance of the point that is being made;" the Board "will strike any filings that do not comply with this directive."). Further, the Board's MEMORANDUM, while expressing puzzlement at "how Applicants could have come to assure this Board that there were no significant matters raised in those meetings," imposes no sanctions upon Applicants for their deliberate misrepresentations to the Board. Instead, the Board's MEMORANDUM, in effect, rewards Applicants by offering them yet another bite at the apple, by way of inviting them to supplement their Summary Disposition motions to avoid denial of the filed motions.

Rather than allowing Applicants more and more opportunities to remedy their deficiency of proof, the Board should now deny each of Applicants' Motions for Summary Disposition regarding which Applicants misrepresented to the Board the significance of the matters raised in the meetings between Applicants and Staff. The Board should also find that Applicants have again not met their burden of proof sufficiently to reassure the Board that each

particular aspect of Applicants' design/design QA program (regarding which the Board has denied Applicants' Motion) is adequate to assure a plant which will not endanger the public health and safety.

CASE so moves.

In the alternative, should the Board believe that the need for a complete record is so great and compelling that it is necessary to require or allow additional information regarding these matters, CASE moves that the Board adopt the following alternative procedures.

CASE moves that the Board:

1. Take note of the fact that the Board cannot and should not rely on CASE's having identified and addressed each and every point or problem in responding to Applicants' Motions for Summary Disposition, and ask whatever questions or request whatever documents (from Applicants, NRC Staff, or CASE) it considers necessary to allow the Board to make an informed, reasoned decision regarding these important design/design QA issues. (See discussion at pages 7 and 8 preceding.)
2. Deny Applicants' Motion regarding any items discussed in item 1 preceding on which Applicants refuse to provide the information requested by the Board, and find that Applicants have again not met their burden of proof sufficiently to reassure the Board that that particular aspect of Applicants' design/design QA program is adequate to assure a plant which will not endanger the public health and safety.

3. Allow Applicants to file replies to CASE's Answers to Applicants' Motions for Summary Disposition (third-round responses) only if CASE's answers raise new technical issues, require Applicants to make a showing of good cause as to why they should be allowed to file third-round response(s), and require Applicants to meet the same criteria which the Board would impose on CASE: that is, Applicants must clearly demonstrate, for each subject matter discussed: (1) relevance, (2) what new material in the last round filing is being responded to, (3) why the party was unable to anticipate this material in its last filing, and (4) the safety significance of the point that is being made -- and the Board will strike any filings by Applicants which do not comply with this directive. (See discussion at pages 9 through 13 preceding.)

4. Revise the last three sentences of that portion of the Board's Order quoted on page 14 preceding, and order:

   A. Applicants to file affidavit(s) (not representations by counsel) setting forth:

      (1) the specific details with respect to any of Applicants' Motions for Summary Disposition which the NRC Staff questioned at the several Applicants/Staff meetings;

      (2) an assessment by Applicants of the significance or potential significance of each item identified; and

      (3) an explanation of Applicants' representations to the Board that there were no significant matters raised in the meetings.

B. Applicants to supply the Board with:

(1) copies of Applicants' Response to NRC Questions of Meeting of August 8-9 and August 23, 1984; and

(2) any other similar follow-up responses by Applicants to the Staff. (It would then be helpful to the Board for the NRC Staff to review Applicants' pleading and advise the Board whether or not they concur with Applicants' assessment regarding the significance of the items in question.)

C. After the preceding has occurred, automatically permit CASE to file its response to Applicants' (and, if the Board has requested it, NRC Staff's) filings, with the requirement only that CASE make a good-faith representation that it believes its filing to be necessary for a complete record in these proceedings (and without having to demonstrate the four points listed in the Board's 10/31/84 MEMORANDUM).

(See discussion at pages 17 through 19 preceding.)

In any event, CASE moves that the Board:

5. Allow CASE an additional twenty days in which to supplement CASE's Proposed Findings of Fact and Conclusions of Law Regarding Welding Issues; and further, set aside additional time for this specific purpose, without the clock's running on other matters (such as design/design QA pleadings); this would be similar to the time set aside by the Board during hearings. (See discussion at pages 14 through 17 preceding.)

During a telephone conversation with Judge Bloch and Applicants' counsel William Horin on 11/12/84, Mrs. Ellis advised them that CASE would be filing this pleading in the next few days and advised them of part of CASE's position: i.e., that the problem with the multiple filings was not only with CASE's filings but with Applicants' as well. It is hoped that this placing Applicants' counsel on notice regarding this pleading may assist in Applicants' making an expeditious response.

Respectfully submitted,

Juanita Ellis

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	}{	
	}{	
TEXAS UTILITIES ELECTRIC	}{	Docket Nos. 50-445-1
COMPANY, et al.	}{	and 50-446-1
(Comanche Peak Steam Electric	}{	
Station, Units 1 and 2)	}{	

CERTIFICATE OF SERVICE

By my signature below, I hereby certify that true and correct copies of CASE's Motion for Reconsideration of Board's 10/31/84 Memorandum (Multiple Filings)

have been sent to the names listed below this 15th day of November, 1984, by: Express Mail where indicated by * and First Class Mail elsewhere.

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