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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

LBP-85-

Before Administrative Judges:

Peter B. Bloch, Chairman  
Dr. Kenneth A. McCollom  
Dr. Walter H. Jordan

**SERVED MAY 24 1985**

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**'85 MAY 24 P3:16**

In the Matter of

TEXAS UTILITIES ELECTRIC COMPANY, et al.

(Comanche Peak Steam Electric Station,  
Units 1 and 2)

OFFICE OF SECRETARY  
Docket Nos. 50-445-OL & OL-2  
50-446-OL & OL-2

ASLBP No. 79-430-06 OL

May 24, 1985

MEMORANDUM AND ORDER

MEMORANDUM  
(Case Management Plan)

After reviewing Applicants' Proposed Case Management Plan<sup>1</sup> and the responsive filings, we have concluded that the Plan requires further elaboration so that subsequent filings will not be overly simplistic, in light of the current condition of the plant and of the record in this case. Furthermore, the Board requires a current assessment by management of the status of the plant and of the extent to which management bears responsibility for adverse plant conditions or wishes to correct or clarify portions of our hearing record.

The SSERs and Board Notices containing transcripts of meetings of the Staff of the Nuclear Regulatory Commission (Staff) raise two kinds

<sup>1</sup> Filed April 26, 1985 by Texas Utilities Electric Co., et al.

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of questions: (1) what is the safety of the plant in light of the Staff findings, and (2) to what extent do adverse findings reflect unfavorably on the competence of Applicants' management? Related to these questions are concerns about whether Applicants now know that portions of our record require correction or that the credibility of some of Applicants' witnesses is subject to substantial doubt for reasons not previously known to the Board. Also of obvious concern is the extent to which Applicants may have failed to demonstrate the adequacy of their design process pursuant to the plan submitted in January 1984 and approved by the Board.<sup>2</sup>

Mootness. Applicants' Case Management Plan refers to mootness, arguing that some issues may be eligible to be deleted from the case because there is no current controversy about them. What Applicants say about mootness is correct, for no one wishes to litigate matters that are truly moot. On the other hand, Applicants should demonstrate

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The parties should address the implications of the Board's previous view that, "We anticipate that the next round of hearings should be the last. At some point, prolongation of hearings would represent a denial of due process to one or more of the parties. We encourage the parties to present their evidence and to prepare their required Proposed Findings with care, being sure to present a reasoned basis for the decision sought from the Board." LBP-84-10, 19 NRC 509 at 531 (1984). Note that we referred to "hearings" in that decision but that the Applicants' summary disposition motions, filed pursuant to its Plan, were given the status of Written Filings, from which the Board was authorized to reach a determination without any formal hearings, unless the Board, in its discretion, chose to hold hearings. LBP-84-25, 19 NRC 1589, 1591 (1984).

mootness with respect to all the questions discussed in the previous paragraph. In the alternative, Applicants may seek stipulations that specific issues are moot, subject to approval by this Board.

Case Management. The Board also requires more from Applicants than their proposed Plan offers. The large number of pending issues requires Applicants to advise us of the issues, including which issues are open or are allegedly closed either by decision of this Board or by stipulation. Applicants also should suggest the order in which the issues may be resolved, considering the scarcity of Citizens Association for Sound Energy's (CASE's) resources and the repetitious pattern of litigation that has characterized this case. Then, Applicants statement of open items may be responded to by others, who may have a different perception or may wish a different order of litigation.

Current Management Views. To assist the Board in assessing the adequacy of Applicants' current management team, the Board requires that by June 15, 1985, Applicants file a statement of their current view of the status of the plant, including their assessment of the adequacy of the record that Applicants have created in this case. This view should delineate the responsibility of individual plant and company officials and executives and assess their performance and, if they are continuing with the company, whether they are competent to continue to perform their current functions. We expect this filing to be a frank, honest assessment. To the extent that there are important current uncertainties, Applicants should describe and explain those uncertainties. Management's ability to understand and willingness to disclose its

understanding of the plant condition and of prior management actions could powerfully influence our subsequent decisions.

Time Schedule. There is sufficient uncertainty about the scope and content of the filing that we are requiring of Applicants that we will not indulge in the apparently fruitless exercise of blindly setting a schedule for responses. CASE will not be subjected to unrealistic time schedules. We will consider as relevant to the scheduling the reasonableness of Applicants' responses to discovery requests.

Discovery. Applicants should respond to CASE's requests for background information about Applicant's officials and consultants. The issue is not likely to self-destruct. With respect to other discovery problems and requests for information, the Board will hold a prehearing conference of one or two days' duration beginning June 3, 1985, unless the parties enter into a stipulation making the conference unnecessary.

Responses. We will require CASE and the Staff of the Nuclear Regulatory Commission to respond to the Case Management Plan that Applicant will file in response to this Memorandum and Order. The responses are expected to be helpful to the Board in defining and resolving issues.

Judge Grossman. Hon. Herbert Grossman, who serves on the Licensing Board for the intimidation portion of this docket, is informed of and concurs in this Memorandum and Order.



ORDER

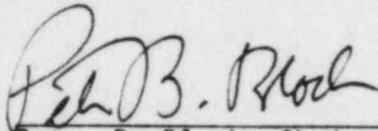
For all the foregoing reasons and based on consideration of the entire record in this matter, it is this 24th day of May 1985

ORDERED:

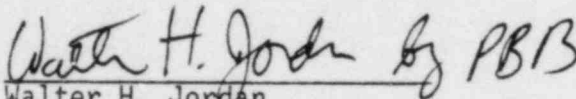
1. Texas Utilities Electric Company, et al., (Applicants) shall file by June 15, 1985, a statement of Current Management Views that complies with the discussion in the accompanying memorandum.
2. Applicants shall file, with reasonable promptness after relevant Staff documents have been made available to them, a Management Plan that complies with the discussion in the accompanying memorandum.
3. Applicants shall respond in a prompt fashion to outstanding discovery requests concerning qualifications of officials and consultants.
4. The Board will convene a prehearing conference at 9 am on June 3, 1985, at a location to be announced in Fort Worth, Texas, to consider the status of pending information and discovery requests, unless the parties reach prior stipulations on all outstanding requests.

5. This is an interlocutory decree.

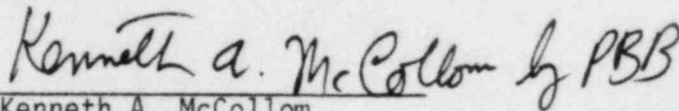
FOR THE  
ATOMIC SAFETY AND LICENSING BOARDS



Peter B. Bloch, Chairman  
ADMINISTRATIVE JUDGE



Walter H. Jordan  
ADMINISTRATIVE JUDGE



Kenneth A. McCollom  
ADMINISTRATIVE JUDGE

Bethesda, Maryland