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July 15, 1985

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Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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Administrative Judge
881 W. Outer Drive
Oak Ridge, Tennessee 37830

Dr. Kenneth A. McCollom
Administrative Judge
Dean, Division of Engineering,
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Oklahoma State University
Stillwater, Oklahoma 74078

Herbert Grossman, Esquire
Alternative Chairman
Atomic Safety and
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U. S. Nuclear Regulatory
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Washington, D.C. 20555

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Re: Texas Utilities Electric Company, et al.
(Comanche Peak Steam Electric Station,
Units 1 & 2) Docket Nos. 50-445 and 50-446

Dear Administrative Judges:

The purpose of this letter is to invite the attention of the Board to a very recent Appeal Board decision in the Diablo Canyon proceeding (ALAB-811)¹ that bears on Applicants' proposed case management plan, filed on June 28, 1985.² Applicants' counsel became aware of ALAB-811 subsequent to the filing of the proposed plan.

1/ Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1&2), ALAB-811, slip op. at 8 (June 27, 1985)

2/ "Applicants' Current Management Views and Management Plan for Resolution of All Issues" (June 28, 1985).

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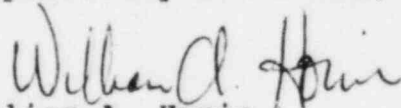
In ALAB-811 the Appeal Board discussed the impact of unfinished construction activities (i.e., a design verification program) for Diablo Canyon, Unit 2, on ongoing adjudicatory proceedings, and held that the results of those activities were not necessary prior to a Board's finding concerning operation of that plant. The Appeal Board stated that "predictive findings are a legitimate component of the Commission's licensing process." ALAB-811, slip op. at 8. Specifically, the Appeal Board wrote that the licensing process:

[C]ontemplates that operating license proceedings generally will be completed before construction of the facility is finished in order to avoid unnecessary and costly delays in plant operation [footnote omitted]. For that reason, adjudicatory hearings typically precede the completion of many of the applicant's construction related activities. If any of the unfinished activities happen to be matters that are challenged in the proceeding, the parties then generally litigate the adequacy of the applicant's program for subsequent action in the particular area.

Id. (emphasis added).

A similar situation is presented in this proceeding. As discussed in the case management plan, Applicants propose that this litigation now focus on the adequacy of Applicants' program under the auspices of the Comanche Peak Response Team to verify design and construction of the plant. See Management Plan, at 42-43. As in ALAB-811, this Licensing Board need not dwell on individual findings, corrective measures, and program outputs in order to make a reasonable assurance determination, if it finds the verification and remedial action program to be adequate. See Management Plan, at 39-41. Implementation of the program and individual corrective measures are properly left to the NRC Staff. ALAB-811, slip op. at 12.

Respectfully submitted,



William A. Horin
Counsel for Applicants

cc: Service List