7/29/85

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	Docket Nos. 50-445OL 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 INITIAL RESPONSE TO
APPLICANTS' 6/28/85 CURRENT MANAGEMENT VIEWS AND
MANAGEMENT PLAN FOR RESOLUTION OF ALL ISSUES

CASE (Citizens Association for Sound Energy), Intervenor herein, hereby files this, its Initial Response to Applicants' 6/28/85 Current Management Views and Management Plan for Resolution of All Issues /1/.

CASE is not responding herein (for the most part) to the substance of Applicants' Comanche Peak Response Team (CPRT) Plan. As discussed in CASE's 7/6/85 letter to the Board /2/ (which we incorporate herein by reference), there are several barriers which still exist which make it impossible for CASE at this time to adequately respond to that part of Applicants' pleading. Neither are we responding herein (for the most part) to Applicants' 7/17/85 "chart which identifies outstanding issues and cross-references those issues to pertinent TRT findings and associated responses"

/1/ CASE sought and was granted leave by Judge Bloch to file this pleading on Monday, 7/29/85, rather than Friday, 7/26/85; neither Applicants nor NRC Staff had any objections.

/2/ Under subject of: CASE's Response to Applicants' 6/28/85 Current Management Views and Management Plan for Resolution of All Issues (and attachment, Comanche Peak Response Team Program Plan and Issue-Specific Action Plans, Revision 2, June 28, 1985)

(which apparently is a supplement to Applicants' 6/28/85 pleading); we are still researching the accuracy of that chart /3/.

There is one statement in Applicants' pleading which, were it not for the serious implications of tnese proceedings, might offer some comic relief to those who have been closely involved with these proceedings for the past several years. However, under the circumstances, Applicants' statement is more of an insult to the intelligence of those individuals. We refer to page 7, where Applicants state:

> "TUGCO management is not satisfied with the status of the plant and would not proceed to operate it, even if authority were to be granted, until all of the outstanding concerns have been addressed, their safety significance determined, generic implications and collective significance considered, and necessary corrective actions have been completed."

This self-serving proclamation is totally at odds with the record of these proceedings. The fact is that Applicants have known about many of these outstanding concerns for years (as discussed in more detail later herein), but they still have kept up a constant and unrelenting barrage of "close the record!" and as recently as September 1984 were even asking

---

/3/ We note, however, from our very brief review to date, that it appears that Applicants are disregarding all Walsh/Doyle issues except for those which Applicants chose to make the subjects of their Motions for Summary Disposition. Although this is not surprising to CASE, it is nonetheless disappointing. It is yet another indication that Applicants' current mindset and approach does not differ from its former mindset and approach, since CASE has pointed out (not once, but several times since February 1985) that, if Applicants intend to attempt to withdraw their Motions for Summary Disposition, CASE considers that all the Walsh/Doyle issues are now open and should be addressed by Applicants.

that the Board allow them to load fuel /4/ -- with many of the problems which are the cause of those outstanding concerns known but still in place, unaddressed and uncorrected by Applicants.

It is important to note that Applicants' constant pleading with the Board to close the record continued even after the many design/design QA issues raised by CASE Witnesses Mark Walsh and Jack Doyle were already known. Applicants' cavalier attitude and apparent total inability to deal with reality and admit the existence of severe and wide-spread problems at Comanche Peak are perhaps best summed up by Applicants' counsel Mr. Reynolds, where he argued during a 10/21/83 conference call (which was after extensive hearings and pleadings had been filed on the Walsh/Doyle allegations but before the Board issued its 12/28/83 Memorandum and Order (Quality Assurance for Design)). He stated (excerpted from Tr. 9122/8-9124/18):

> "I think the bottom line rests in the dispute between the staff and applicants, on the one hand, and the intervenor, on the other, that litigation must end. Unless there are significant new issues that will produce evidence that is not cumulative and that is not repetitious and that is material and is significant, then this record should be closed now.

/4/ See Applicants' 8/7/84 Motion for Authorization to Issue a License to Load Fuel and Conduct Certain Precritical Testing; and Applicants' 9/13/84 Supplement to Motion for Authorization Pursuant to 10 C.F.R. 50.57(c).

(See also CASE's 8/18/84 Partial Answer in Opposition to Applicants' Motion for Authorization to Issue a License to Load Fuel and Conduct Certain Precritical Testing and Motion for Additional Time to Respond; NRC Staff's 8/22/84 Response to Applicants' Motion for Authorization to Issue License to Conduct Fuel Load and Precriticality Testing; Board's 8/24/84 Memorandum (Request for Evidence Relevant to Fuel Loading); and CASE's 10/1/84 Answer to Applicants' 9/13/84 Supplement to Motion for Authorization Pursuant to 10 C.F.R. 50.57(c).)

"The intervenor will never be satisfied that we have enough evidence in the record. The intervenor will always be bringing forward ominous stories about what their next witnesses are going to tell. We have been through this time and again with this intervenor. When we go to trial expecting all these tales of woe, there is nothing there.

". . . There hasn't been one hardware issue that this intervenor has raised that has been borne out as being a significant deficiency. What has been borne out is that each time the intervenor has raised what it thought was a problem, that problem has been addressed by the quality assurance program.

"Now the important question here is the hardware. It is not the quality assurance program. It is the results achieved through construction of the plant. As I stated in my earlier discussion, when the Board receives the filings of the parties on the status of the record regarding the hardware, we believe that the Board will be satisfied that there has been no hardware deficiency resulting from any of the issues Ms. Ellis and CASE has raised.

"Therefore, we think the record should be closed without further hearings and without further consideration of additional staff walkdowns. There is no need for that. We have had one and the Board has been told that the staff will do more. The Board has been told that the staff will do more of completed rooms, including the N-5 walkdown.

"The Board needn't await that result. . . the record in this case this week indicates that there are no serious deficiencies in the applicants' final inspection process. In fact, it confirms that the process works quite well. . .

"There were a few minor deficiencies, a few inspection report modifications needed and changes to procedures, and they have been done. But certainly there is no significant problem that is indicated by the fuel building inspection. And, again, had there been, I think the Board would have had justification for concern. But the Board can take a high level of confidence that applicants' program has worked and it can also take confidence that the staff is going to continue to monitor the applicants' work.

"Therefore, we submit, Mr. Chairman, quite strenuously that after three years of prehearing conferences, discovery, litigation, pleading practice and so forth in this case and seven weeks of hearing, that it is time to draw it to a close. It must end sometime and that sometime is now."

(Emphases added.)

The Board should reject Applicants' bald assertion that they wouldn't turn the plant on even if the Board let them. There is nothing in the record of these proceedings to indicate that there has been a change of heart, goals, or modus operandi. To the contrary, there are already indications that Applicants' holdover management and holdover employees who are currently involved with the new CPRT effort are not telling the new consultants everything they should be told about either the severity and extent of, or the specific details regarding, problems which exist at Comanche Peak. Further, there are already chilling but unmistakable indications that both Applicants' new management and new consultants have been and are being infected with the same mindset. This will be addressed in more detail when CASE responds more fully to the CPRT Plan and we address it only briefly here.

CASE believes now, as it always has, that the fundamental underlying problem at Comanche Peak is one of attitude and mindset. This has not changed -- and Applicants' primary goal is to get this plant licensed and on line. We call the Board's attention specifically to statements made during the 6/14/85 NRC Staff/Applicants meeting by Stone & Webster's Ed Siskin, where he made it very clear that much of what Stone & Webster did would be dictated by expediency /5/. And he stated specifically regarding the

---

/5/ See transcript of 6/14/85 NRC Staff/Applicants meeting, afternoon session, Tr. pages 186/4-5, 194/10-12, 194/15-19, 200/16-17, 203/16-17, 203/20-21.

See also discussion at Tr. pages 250/23-252/12.

mandate given him by new TUGCO Vice President William Counsil, to whom Mr. Siskin reports /6/ (Tr. 195/17-19):

> "Mr. Counsil has been very explicit about getting the thing done properly, but getting it done quickly as well." (Emphasis added.)

CASE believes that it is just this sort of constant implicit and implied pressure to complete the project which has been one of the primary reasons Comanche Peak is in its current condition. It is very discouraging that this attitude seems to have already infected Applicants' latest CPRT efforts. It is also indicative of the attitude and mindset of Applicants' current management.

Although we are not addressing in detail Applicants' CPRT Plan herein, there are some aspects of it which we feel we must briefly address here.

First, it should be noted that there was a misstatement in Applicants' 4/5/85 letter to the Board:

> "On Saturday, March 23, 1985, a meeting took place in Arlington, Texas involving Applicants' Comanche Peak Response Team (CPRT), CASE, and the NRC Staff. Messrs. Walsh and Doyle met with the CPRT to discuss their concerns."

This misstatement was carried over in Applicants' CPRT Plan, Attachment 1, page 3 of 3, first item:

> "On March 23, 1985, the CPRT met with CASE in particular Messrs. Walsh and Doyle, to hear first hand their concerns in the pipe and pipe support area."

The 3/23/85 meeting was primarily between the NRC Staff and CASE, so that CASE could learn about the Staff's positions on various design/design QA issues and clarify CASE's positions where necessary. (It should be noted

/6/ See 6/14/85 transcript, page 202/12.

that this was one of the several instances when we told Applicants that CASE considers all the Walsh/Doyle issues to be open, not just those discussed in Applicants' Motions for Summary Disposition.) There was very little discussion between CASE and Applicants -- certainly nothing like what is implied in Applicants' letter or the CPRT Plan.

Another aspect of Applicants' CPRT Plan which we will address briefly here is the fact that much of its terminology is extremely misleading in and of itself, even to the point perhaps of constituting a material false statement to the Licensing Board. First we must cut through Applicants' rhetoric and get down to the facts of the matter.

We will not at this time discuss all of the instances of this; however, one of the most blatant examples of this is the terminology used to identify the type or category of problem (i.e., self-initiated, external sources, etc.). The Board should recognize that there is absolutely nothing in the CPRT Plan which is in truth self-initiated. To the contrary, Applicants' latest plan is entirely a response to Applicants' perception (for the first time) that the possibility now exists that they are in jeopardy of being denied an operating license, not just by the Licensing Board, but also by the NRC Staff -- unless Applicants take certain steps which they perceive the NRC Staff will require of them in order to get their license /7/.

/7/ A reading of the several transcripts of meetings between Applicants and the NRC Staff over the past several months reveals that, despite the Staff's doing everything but sending up smoke signals telling Applicants what they must do, Applicants have been, and still are, slow to respond. (We will address the adequacy of their response at a later time.)

A truly self-initiated effort would be, for example, if Applicants had decided, on their own, that they needed to find out what the status of their plant, their QA/QC program, the prudency of their management, etc., actually was, and they then hired an outside consultant to investigate this and advise them of the results. Another possible example of a truly self-initiated effort might be if, after problems had been identified through Applicants' QA/QC program at the plant, Applicants decided that they needed to find out what the status of their plant actually was, and they then hired an outside consultant to investigate this and advise them of the results.

It appears that the following fall into one of these two categories: the Lobbin Report /8/, the Ebasco Report /9/, and apparently the MAC Report

---

/8/ See Applicants' 3/5/82 letter to CASE under subject of: Supplementation of Response to CASE Discovery, wherein Applicants informed CASE of the document "Review of the Quality Assurance Program for the Design and Construction of the Comanche Peak Steam Electric Station," prepared by F. B. Lobbin, dated February 4, 1982.

It should be noted that Applicants waited until they had prepared a response to the Lobbin Report before they provided it to CASE; they provided both the Report and Applicants' response at the same time.

/9/ See Applicants' 4/19/82 letter to CASE under subject of: Supplementation of Response to CASE Discovery, wherein Applicants informed CASE of the document "Report of Independent Review and Analysis of QA Records Management Systems for Texas Utilities Services, Inc.," prepared by Ebasco Services Incorporated, dated June 16, 1981, some ten months prior to Applicants' providing it to CASE in response to our 1980 discovery requests.

See also CASE's 4/26/82 letter to Applicants, wherein we stated:

> ". . . we could hardly believe our eyes when we received your letter about the June 16, 1981 Ebasco report. We really had thought that the Board's specific orders to Applicants had taken care of this kind of gameplaying. Apparently we were mistaken. We're frankly quite disappointed in Applicants' actions in this matter."

/10/. Thus, Applicants have a history of being slow (to be charitable) to produce, or (in the case of the MAC Report) of deliberately withholding, this particular type of report (which takes an overall look at Applicants' QA/QC, management, etc.). Further (and perhaps even more importantly), Applicants did not heed the warnings of their own consultants which were contained in those reports.

Applicants might even have claimed that a possible example of a truly self-initiated effort would have been if, after problems had been identified through allegations to the newspaper or NRC Region IV, Applicants decided that they needed to find out what the status of their plant actually was, and they then hired an outside consultant to investigate this and advise them of the results. However, this was not Applicants' response; instead, they have uniformly and consistently denied that the problems even existed, and have attempted to discredit the allegers.

In addition to the preceding, there have been several other opportunities along the way for Applicants to have admitted that there were problems and properly addressed and corrected them. But the record shows

/10/ See Applicants' 5/29/85 letter to the Licensing Board, advising them that Applicants had "identified" a document which they should have provided to CASE in response to our 1980 discovery requests, and attaching a copy of the document, a Management Quality Assurance Audit conducted by the Management Analysis Company (the MAC Report), dated May 17, 1978.

See also Applicants' 6/12/85 letter to the Licensing Board, wherein it is admitted that the MAC Report was deliberately withheld by a top management official and that other top managements officials were also aware of the the report, including some who have testified in these proceedings.

that Applicants' steadfast and unchanging position has been one of denial, even when problems were called to their attention in the operating license hearings and even (in the case of design/design QA issues) in the face of the Licensing Board's 12/28/83 Order.

Although we are not addressing in detail Applicants' CPRT Plan herein, it is already obvious that they are still refusing the admit that design/design QA problems even exist.

Applicants have had numerous opportunities, over a period of several years, to adequately respond to construction, design, QA/QC, and management problems at Comanche Peak: when first identified by workers still employed at the plant; when first identified as a result of current or former employees going to the news media or NRC Region IV (including Region IV's "investigations" of the allegations); when brought to their attention in the operating license hearings; when brought to their attention by Licensing Board Order; when brought to their attention by the TRT investigation (prior to letters from the TRT or SSER's being issued); when brought to their attention during meetings over the past year or so with the NRC Staff and/or Applicants' consultant, Cygna Energy Services; when brought to their attention by letters from the TRT; through various pleadings filed by CASE during the past several years; and when finally brought to their attention by issuance of the NRC Staff's Supplemental Safety Evaluation Reports (SSER's).

Thus, Applicants have had numerous opportunities, over a period of several years, to take what might have been legitimately or at least

marginally termed "self-initiated" action. It is important to note that Applicants' initial response to the TRT's letters was to have the TRT's concerns addressed by the same individuals who were responsible for allowing the problems to develop to begin with. It was only when the TRT rejected this approach that Applicants went back to the drawing board and came up with their latest plan. And it was not until the NRC's Technical Review Team (TRT), after reviewing Applicants' initial inadequate response to the TRT's letters, ultimately led Applicants by the hand and told them with great specificity what the TRT required from Applicants, that Applicants finally came up with what could be called their ultimate get-well plan (Revision 2 of their original deficient efforts in what appears destined to be a long-running series) -- the CPRT Plan, which is itself inadequate in many respects (as will be discussed in detail in later pleadings).

This is not self-initiation. For Applicants to now claim that any part of their CPRT Plan is "self-initiated" is an assault upon the intelligence of anyone who has followed these proceedings. The CPRT Plan is, in fact, as far removed from being self-initiated as anything could possibly be.

Applicants' cannot even claim a truly self-initiated response to the TRT's findings. A truly self-initiated response to the TRT's findings might have been: Preferably prior to (but at a minimum at the time of) the issuance of the TRT's letters, Applicants should have issued an immediate stop work order, then initiated a 100% reinspection of design, followed by a 100% reinspection of construction -- performed by truly independent consultant(s) under guidelines such as those set forth in the Board's

12/28/83 Memorandum and Order (Quality Assurance for Design). Applicants did not, and cannot (indeed, they dare not) adopt this approach -- because they know that a 100% reinspection of design and construction would prove not only that there are even more severe and more numerous safety problems at Comanche Peak than are now apparent, but that there is also a good possibility that the Licensing Board and the NRC Staff would come to the conclusion that the plant is in such a deficient state that it is, in fact, unlicensable. Applicants are also aware that it would be difficult, if not impossible, for them to control the ultimate results and implementation of such reinspections.

Instead, Applicants' overall response in actuality is to do only what the NRC Staff (not the Licensing Board) tells them they must do in order to get an operating license. They are hoping desperately that the Staff will accept Applicants' Plan which Applicants claim will (at some unspecified time in the future) resolve all concerns, and that with the Staff's backing, Applicants can then persuade the Licensing Board to accept Applicants' promises of future fixes.

However, the record of these proceedings is already strewn with broken promises by Applicants (which will be discussed in detail in a later pleading), and the Board cannot depend upon Applicants' promises in this instance.

If the Board were to rule predictively, it would have to rule that Applicants will not keep their promises in the future, any more than they have kept their promises in the past -- and that the operating license must therefore be denied.

CASE would like at this point to make a prediction of its own. We predict that the Board will be presented with yet another of Applicants' plans next year . . . and the year after that . . . and the year after that . . . and the year after . . . etc., etc. This prediction is supported by Applicants' statements at pages 29-35, where they appear to be arguing that the Licensing Board cannot refuse to allow Applicants to relitigate over and over and over again.

At some point the Board should tell Applicants that fixing a little piece of the problem this year, and a little piece next year, etc., ad infinitum and ad nauseum, is not sufficient to assure the public health and safety -- nor is it sufficient for Applicants to obtain an operating license for Comanche Peak.

Nowhere in the CPRT Plan is Applicants' refusal to deal with problems more obvious than regarding the Walsh/Doyle allegations and other design/design QA issues. Initially none of the design/design QA issues were to be addressed in Applicants' CPRT Plan. And it was not until the 2/26/85 meeting with the Applicants and TRT that Applicants stated that the CPRT would also be responding to the Walsh/Doyle allegations and other design/design QA issues. Although CASE is still reviewing Applicants' CPRT Plan and related documents recently received, one thing is already clear. Even now, Applicants are refusing to deal head-on with the Walsh/Doyle pipe support allegations. It became obvious during the 6/14/85 NRC Staff/ Applicants meeting that what Applicants propose regarding pipe support

issues is, in effect, a no-fault insurance program which would totally avoid ever having to admit that Jack Doyle and Mark Walsh were correct and that there are indeed severe problems with the design/design QA regarding pipe supports.

Perhaps even more importantly, this no-fault insurance program would allow Applicants to avoid having to identify the root causes or generic implications of the problems, or having to evaluate for the Board the role Applicants' management played in allowing the problems to develop and to go uncorrected, thereby bringing about the current deficient and unlicensable status of this plant.

This approach obviously not only will totally fail to address the timely-raised and duly accepted issues raised in these proceedings -- which have not yet been resolved and will not be resolved by Applicants' CPRT Plan -- it will also fail to assure that the public health and safety will be protected. Applicants' current approach regarding pipe support design/ design QA issues should be rejected by the Licensing Board.

CASE strongly opposes Applicants' proposed withdrawal of their Motions for Summary Disposition regarding pipe support design/design QA (page 8 of Applicants' 6/28/85 pleading). Applicants made an agreement. They now propose to deliberately and flagrantly disregard and discard that agreement. Applicants have not been able to persuade the Board through their Motions for Summary Disposition, and in fact, they are in deeper trouble now than when they filed those Motions. But these documents, along with Applicants' sworn evidentiary affidavits, are in the record by agreement of the Board

and all parties -- and one can't change history (much as Applicants would like to be able to).

Should the Board rule favorably upon Applicants' proposed withdrawal of their Motions for Summary Disposition, it would severely damage CASE's due process rights (not to mention the damage which would be done to the credibility of the Licensing Board itself and CASE's faith in the licensing process). We are confident that the Board will neither renege on the good-faith agreement entered into by the Board and all parties, nor will the Board allow Applicants to renege on it. Applicants' desire to withdraw their Motions for Summary Disposition, coupled with their no-fault insurance CPRT Plan, constitute an admission by Applicants (though they still refuse to admit it) that there are severe deficiencies in their pipe support design and design QA. The entire matter of how to best address and resolve the Walsh/Doyle allegations and design/design QA issues will be addressed by CASE in more detail in a later pleading.

Applicants (pages 12-16) avoid responding to the Board's request regarding prior management actions, allegedly on the grounds that "management believes that it would be premature to assess 'prior management actions' until Applicants' plan to address the issues has been implemented and some results are available for evaluation." However, they then demonstrate their ability to make premature assessments and reiterate their often-stated view that "Applicants also believe that its management has always been committed to constructing and operating a safe plant" and that

"we have no basis upon which to conclude that Applicants' prior management was not fully committed to the quality of construction and safe operation of the plant," etc., etc. /11/. This once again demonstrates Applicants' total inability to face the fact that their QA/QC program, for both design and construction, has been a dismal failure for years -- resulting in a plant that is indeterminate at best and totally unlicensable at worst.

Applicants claim (pages 9-10 and 64) that there have been new changes in management personnel, and that this should give the Board assurance that everything will be found and corrected, thus in effect making everything which has gone before moot. However, this claim has yet to be explored through discovery and responses to discovery. Further, many of the same individuals who have been involved in the past are still in their previous or superior positions and/or are involved in the CPRT Plan one way or another. In addition, there is no indication that the same engineering personnel are not still involved.

Throughout these proceedings, Applicants have continually distorted and skewed precedents which they have cited. In many instances, Applicants have not made the necessary showing that many of the cases cited are applicable to Comanche Peak and have cited cases where circumstances were far different and not applicable to Comanche Peak (for instance, they have continually

/11/ It is noteworthy that Applicants do not specifically identify the (presumably current) management, Applicants, or "we" to whom they refer.

ignored the fact that the circumstances regarding Diablo Canyon are far different from those at Comanche Peak, since at Diablo Canyon issues had already been explored in hearings and Applicants had already been granted an operating license by a Licensing Board, unlike the situation at Comanche Peak). And Applicants have continuously and totally failed to address the fact that Applicants in the Comanche Peak proceedings voluntarily participated in an agreement between the Board and all parties whereby last year's Applicants' Plan was to have been the basis for the Board's making a decision as to whether or not the entire plant had been properly designed. There has been no representation by Applicants that such was the case at Diablo Canyon.

Applicants filed (without leave of the Board) what amounted to a supplemental brief to their Management Views and Management Plan, in the form of a letter to the Board dated July 15, 1985. The purpose of the letter was purportedly to accurately advise the Board of a recent holding by the Appeal Board in Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-811, slip op. at 8 (June 27, 1985), which Applicants believe supported their position.

In fact, what Applicants have done is to continue a pernicious and persistent practice of misciting cases in the apparent hope that CASE will be unable to respond, given our lack of access to the opinion and/or the absence of a lawyer in the main docket of this case. Applicants allege that ALAB-811 supports their argument that this Board need not consider the adequacy of the actual implementation of either the CPRT or of the

recommendations which come from the implementation of the CPRT. In quoting out of context from ALAB-811, Applicants (undoubtedly with the specific intention of deceiving) failed to advise the Board of the numerous and crucial differences between that case and this case.

While urging the Board to (as we are sure they will) read ALAB-811, we think one example from the opinion is sufficient to prove how grossly Applicants have deliberately distorted the Appeal Board's holding. While holding that it was not necessary to wait for implementation of the verification program for Unit 2 in order to resolve contested issues related to Unit 2, the Appeal Board went on to say that the reason it could in this instance allow such an extraordinary result was because it had already had a hearing on essentially the identical verification program and its implementation for Unit 1, a fact of course not pertinent here. In ALAB-811, the Appeal Board explains the justification as follows (slip opinion, page 10):

> "Because of the virtual identity of design of the two units, the record evidence of the scope of PG&E's Unit 2 verification program, combined with the detailed evidence of the extent and the results of the Unit 1 verification, provides an adequate basis for our findings (albeit predictive ones) with respect to Unit 2." (Emphases added.)

It is highly unlikely, given the extensive modifications being made in Unit 2 that make it different from Unit 1, that this argument would be even be applicable in some subsequent hearing on the licensability of Unit 2.

Fortunately in this instance, counsel for CASE in Docket 2 had occasion to read ALAB-811 and to provide the insight discussed here for purposes of Unit 1. That is not a fortuitous circumstance which CASE in the main docket

can count on in the future, nor that it has had available in the past. All that merely underscores the importance of this Board's saying in the strongest possible language that it will no longer tolerate from Applicants' counsel (who, contrary to the representations made last January, continue to be the same counsel as have abused and misused the process over the years in this case) this long-standing practice which is particulary harmful where Intervenor appears essentially pro se.

There are almost as many comments and response which CASE would like to make to Applicants' statements in its 6/28/85 pleading as there are statements. We have addressed only a few herein, and our failure to specifically address others should not be construed to be agreement by CASE.

In conclusion, CASE is unable to respond adequately and completely to Applicants' 6/28/85 pleading at this time because:

(1) We are still reading, digesting, and analyzing Applicants' recent pleadings (including their massive CPRT Plan);

(2) Applicants' CPRT Plan is still not complete (as discussed on page 2, item 1, of CASE's 7/6/85 letter to the Board);

(3) There are still numerous discovery requests yet to be answered, as well as a formal Motion to Compel which CASE will file at the appropriate time (as discussed in CASE's 7/6/85 letter to the Board and as authorized by the Board's 7/22/85 Memorandum and Order (Motions Related to the MAC Report)); CASE expects to rely upon some of these answers in our response;

(4) There are still numerous discovery requests yet to be filed regarding Applicants' CPRT Plan, related matters, and recent events (which CASE is in the process of preparing at this time), as well as a formal Motion to Compel which CASE anticipates may well be necessary;

(5) CASE now has the transcripts of the 6/13/85 and 6/14/85 NRC Staff/Applicants meetings, and (as we had anticipated in our 7/6/85 letter to the Board, page 3, footnote 3) it is necessary that transcript corrections be made;

(6) The NRC Staff/Applicants meeting scheduled for 7/19/85 (discussed on page 3, item 3, of CASE's 7/6/85 letter to the Board) has been postponed. The meeting is to be rescheduled (date as yet unspecified) and expanded to three days; CASE will be given the opportunity on the third day to present a statement to the NRC Staff. We anticipate that there will be additional information contained in the transcript of that meeting to which we will want to refer in our response to the Applicants' filings, and that it will probably be necessary to make corrections in that transcript.

CASE does not accept Applicants' assessment of the current state of the record, their claims of mootness, their identification of open issues, their approach, or their timetable (none of which makes any sense in the context of these proceedings). Nor do we accept as adequate Applicants' proposals on page 73 of their 6/28/85 pleading regarding discovery.

As has been stated before, CASE believes that it is irrational and imprudent to even address the issue of whether the plant was properly constructed until we know if it was properly designed (or, more accurately, the extent of the improper design). This view was supported recently in dictum in Consumers Power Company (Midland Plant, Units 1 and 2), LBP-85-2, January 29, 1985 "(if the design is inadequate, however, the sufficiency of implementation becomes irrelevant.)" In CASE's view, the prudent course for Applicants to pursue would be to address, if they can, the indeterminate nature of the plant design and take whatever actions resolution of that issue requires. (Applicants' latest plan totally avoids addressing the adequacy of the original design of pipe supports.) Then, if the license application is still viable, Applicants should proceed to address the question of whether the plant "as-built" is safe by performing a 100% reinspection of construction. Any reinspections, in order to be acceptable, must be performed by a truly independent organization which will not only perform the reinspection, but also perform or at least closely monitor implementation of any fixes they may recommend (unlike Applicants' current plan).

CASE is very conscious of the Board's previous admonitions that parties have a responsibility to present an orderly case to the Board /12/. CASE is still in the process of preparing a coherent, comprehensive proposal of how we believe the rest of the case should be handled. We are unable at this

/12/ See Board's 8/15/83 Memorandum and Order (Motion to Supplement and Correct Record) and Board's 9/1/83 Memorandum and Order (Motions to Reopen the Record and to Strike), page 7, second paragraph.

time, primarily because of the uncertainties associated with receipt of discovery responses, to set forth a proposed schedule for the remainder of the hearings. However, any proposed schedule should be keyed to the timing and adequacy of responses to discovery requests; only in this way will it be possible for the Board to fulfill its promise to CASE that Applicants' delays will not prejudice CASE.

CASE will supplement our response as soon as possible.

Respectfully submitted,

Juanita Ellis

(Mrs.) Juanita Ellis, President
CASE (Citizens Association for Sound Energy)
1426 S. Polk
Dallas, Texas 75224
214/946-9446

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 Initial Response to Applicants' 6/28/85 Current Management Views and Management Plan for Resolution of All Issues

have been sent to the names listed below this 29th day of July, 1985, by: Express Mail where indicated by * and First Class Mail elsewhere.

Administrative Judge Peter B. Bloch
U. S. Nuclear Regulatory Commission
4350 East/West Highway, 4th Floor
Bethesda, Maryland 20814

Judge Elizabeth B. Johnson
Oak Ridge National Laboratory
P. O. Box X, Building 3500
Oak Ridge, Tennessee 37830

Dr. Kenneth A. McCollom, Dean
Division of Engineering,
Architecture and Technology
Oklahoma State University
Stillwater, Oklahoma 74074

Dr. Walter H. Jordan
881 W. Outer Drive
Oak Ridge, Tennessee 37830

Nicholas S. Reynolds, Esq.
Bishop, Liberman, Cook, Purcell
& Reynolds
1200 - 17th St., N. W.
Washington, D.C. 20036

* Geary S. Mizuno, Esq.
Office of Executive Legal
Director
U. S. Nuclear Regulatory
Commission
Maryland National Bank Bldg.
- Room 10105
7735 Old Georgetown Road
Bethesda, Maryland 20814

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

Chairman
Atomic Safety and Licensing Appeal
Board Panel
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Mr. Robert Martin
Regional Administrator, Region IV
U. S. Nuclear Regulatory Commission
611 Ryan Plaza Dr., Suite 1000
Arlington, Texas 76011

Lanny A. Sinkin
3022 Porter St., N. W., #304
Washington, D. C. 20008

Dr. David H. Boltz
2012 S. Polk
Dallas, Texas 75224

William Counsil, Vice President
Texas Utilities Generating Company
Skyway Tower
400 North Olive St., L.B. 81
Dallas, Texas 75201

Docketing and Service Section
(3 copies)
Office of the Secretary
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Ms. Billie P. Garde
Government Accountability Project
1901 Que Street, N. W.
Washington, D. C. 20009

Renea Hicks, Esq.
Assistant Attorney General
Environmental Protection Division
Supreme Court Building
Austin, Texas 78711

Anthony Z. Roisman, Esq.
Trial Lawyers for Public Justice
2000 P Street, N. W., Suite 611
Washington, D. C. 20036

Mr. Owen S. Merrill
Staff Engineer
Advisory Committee for Reactor
Safeguards (MS H-1016)
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Robert A. Wooldridge, Esq.
Worsham, Forsythe, Sampels
& Wooldridge
2001 Bryan Tower, Suite 2500
Dallas, Texas 75201

Thomas G. Dignan, Jr., Esq.
Ropes & Gray
225 Franklin Street
Boston, Massachusetts 02110

Ms. Nancy H. Williams
Project Manager
Cygna Energy Services
101 California Street, Suite 1000
San Francisco, California
94111-5894

Mark D. Nozette, Counselor at Law
Heron, Burchette, Ruckert & Rothwell
1025 Thomas Jefferson Street, N. W.,
Suite 700
Washington, D. C. 20007

Juanita Ellis

(Mrs.) Juanita Ellis, President
CASE (Citizens Association for Sound Energy)
1426 S. Polk
Dallas, Texas 75224
214/946-9446