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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of)
)
TEXAS UTILITIES GENERATING)
COMPANY, et al.)
)
(Comanche Peak Steam Electric)
Station, Units 1 & 2))

'85 DEC -9 A11:34

Docket Nos. 50-445-1&2
50-446-1&2

CASE MOTION TO STRIKE STAFF ANSWER TO
APPLICANTS' PETITION FOR DIRECTED CERTIFICATION
OF LICENSING BOARD ORDER OF OCTOBER 31, 1985.

The Staff's purported response to the Applicants' Petition for Directed Certification is in fact a staff petition for directed certification of the Hearing Board's alleged refusal to define the scope of jurisdiction of Docket 2. Orders in which the Hearing Board defined or could have defined the scope of Docket 2 were issued as early as the Board's oral statements during the prehearing conference on June 14, 1984, through the Board's Order of August 29, 1985 (Governance). The October 31 Order was not addressed to that issue. The absence of a ruling on the scope of the jurisdiction of Docket 2 is also not the subject of Applicants' November 4 Petition for Directed Certification.

Applicants in their Petition complain of the process for dealing with discovery and evidence between the two Dockets and assume that the scope of the issues in the two dockets is known.

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Applicants' requested relief is that (Pet., p. 12):

The Licensing Boards should be instructed to conduct their activities as separate entities within their respective jurisdictions and to rule accordingly.

Staff in its Answer to the Petition (12/2/85) focusses on an entirely different complaint: the alleged failure of the Licensing Board to respond to Staff requests to define the scope of the jurisdiction of Docket 2. See, e.g., Staff Answer at p. 14 ("In short, the parties do not have a definitive statement by the Licensing Boards regarding the scope of jurisdiction of each docket, the role and relationship of the Licensing Board, and consequently the proper docket in which issues should be litigated.") and p. 12 ("The Licensing Boards have failed to clarify, either in the October 31, 1985 Order or the Fair Warning Memorandum, the nature and relationship of each Licensing Boards' respective jurisdiction, and to distinguish matters at issue before the Docket 2 Licensing Board from those matters before the Docket 1 Licensing Board."); see also pp. 23, 27-28.

The issue presented by the Staff filing is not part of

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In their Memorandum In Response to Appeal Board Order of November 8, 1985 (11/14/85) Applicants describe their position as follows (p.1):

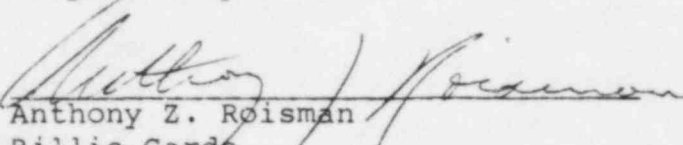
Applicants contended that the Licensing Boards' order at issue in effect does away with any and all limitations or distinctions as to the scope of the individual jurisdiction of the two Boards....

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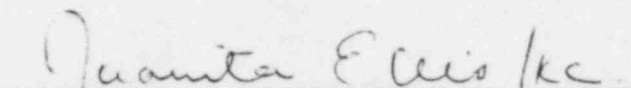
To the extent the Staff complains that the process for fair warning is inadequate, that complaint is premature since the Hearing Board stated that prior to December 7 parties could suggest the process they favored and the Board would subsequently decide on that process. Memorandum (Fair Warning of Citations to Other Dockets) 11/6/85, p.2.

Applicants' Petition and CASE has not had any opportunity to address it. The proper procedure for Staff to follow to assure CASE its full procedural rights and to comport with the strict requirements for directed certification requests is to file its own petition for directed certification. Because the Staff's present pleading is directed at an issue not properly before the Appeal Board and as to which CASE has had no opportunity to respond, the Staff Answer should be stricken as irrelevant and superfluous matter.³

Respectfully submitted,


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³

The Staff does not appear to believe that directed certification is warranted on the issues pressed by Applicants with the possible exception of the fair warning issue. Staff Answer, pp. 27-28; see fn. 2 supra.

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)	and 50-446-1&2
(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 to Strike Staff Answer to Applicants' Petition for Directed Certification of Licensing Board Order of December 4, 1985 have been sent to the names listed below this 26th day of November, 1985, by: Express mail where indicated by *; Hand-delivery where indicated by **; and First Class Mail unless otherwise indicated.

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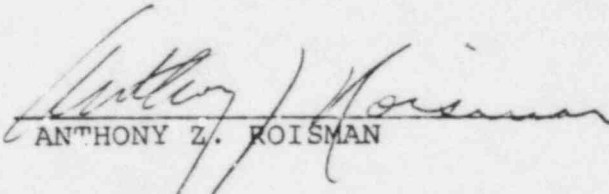
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