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12/6/85

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

TEXAS UTILITIES ELECTRIC  
COMPANY, et al.

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

Docket Nos. 50-445<sup>85</sup>  
and 50-446

(Application for an  
Operating License)

DOCKETED  
USNRC

DEC -9 P3:39

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

CASE'S (DOCKET 1) COMMENTS ON  
BOARDS' 11/6/85 MEMORANDUM (FAIR WARNING  
OF CITATIONS TO OTHER DOCKET)

In their 11/6/85 Memorandum (Fair Warning of Citations to Other Docket), the Licensing Boards stated that comments on the point discussed in that Memorandum might be filed prior to December 7, 1985 /1/. CASE's (Docket 1) comments are contained herein.

As argued by CASE in Docket 2, we do not agree that there is an obligation to prenotify on the use in one docket of evidence from the other docket in these proceedings /2/.

/1/ Today (the date on which these comments were to have been filed) CASE in Docket 1 received Applicants' 12/5/85 Motion for Extension of Time for Comments on Memorandum of November 6, 1985, which deprived CASE in Docket 1 of the opportunity to respond in writing to Applicants' Motion prior to the Boards' having to rule. We telephoned and left word for Judge Bloch today that CASE in Docket 1 joins in CASE's Docket 2 written pleading being hand-delivered to the Board Chairman today.

/2/ Further, if this case were in one docket, there would be no question that there is no requirement that we identify all the uses intended to be made of any particular evidence; the party offering evidence has no initial duty to identify why that evidence is relevant or even to identify what it is relevant with reference to. Any such identification would be required only upon objection by another party. It is CASE's position that, just as we may file prefiled testimony

(continued on page 2)

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CASE in Docket 2 has also argued that, nonetheless, the procedure which had been used in Docket 2 of filing detailed preliminary proposed findings of fact met any legitimate objections and that that such procedure should still be followed in Docket 2. In Docket 1, the Board has sometimes utilized expected findings of fact (for the 1984 Cygna and welding hearings), but we note that that process is dramatically and appropriately different and less formalized than the detailed preliminary proposed findings of fact utilized in Docket 2. For example, in Docket 2 evidentiary depositions have been (and will probably continue to be) used extensively; in Docket 1 evidentiary depositions have not usually been used. In Docket 2, CASE is represented by counsel; in Docket 1, CASE is not represented by counsel. The approach of filing detailed preliminary proposed findings of fact is uniquely well suited for parties represented by counsel and much less suited to an intervenor without legal representation. In addition, in Docket 1 evidence developed during the hearings themselves (often during cross-examination of witnesses) has been of great importance. It was only

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/2/ (continued)

without indicating why it is relevant or what particular point it proves, we too may prenotify about evidence that is expected to be used from the other docket without having to say why it is relevant or what particular point it is relevant to. If another party objects, they are free to do so, and (just as we would have to with any other testimony), we would have to explain why at that time.

during the Cygna hearings themselves, for example, that we were able to elicit the views and testimony of Cygna's Dr. Bjorkman /3/.

For these reasons, it is not practical in Docket 1 to file detailed proposed findings of fact in advance. If they were, they would necessarily be sketchy because there would be so much evidence that would be missing that nothing would be advantaged by their filing /4/. Thus, unlike the situation in Docket 2, something as formal as the detailed preliminary proposed findings of fact would not be acceptable or necessary in Docket 1.

/3/ Another of the reasons cross-examination has been so important in Docket 1 proceedings has been that hearings have at times proceeded without CASE's having the opportunity to review necessary documents adequately in advance of hearings, a situation which we are hopeful will not arise again.

For instance, on one occasion CASE was faced with a situation where CASE Witness Jack Doyle flew in on Saturday morning and saw for the first time some of the documents from Cygna which were utilized by CASE for hearings which began the following week (and additional documents were delivered too late to even review them prior to the beginning of hearings).

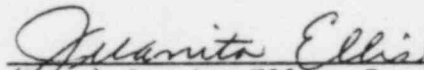
Further, prior to the welding hearings, Applicants did not provide documents and information which had been requested on discovery prior to the hearings, and have in fact never provided such discovery, although it was ordered by the Board during the welding hearings (see Tr. 11964/21-11965/13; see also CASE's 8/7/85 Request for Supplementation of Applicants' Answers to Previous CASE's Discovery Requests to Applicants, page 6 beginning with Question 7 of CASE's 4/20/82 Tenth Set of Interrogatories to Applicants and Requests to Produce, through page 12, question S38; see also CASE's 2/25/85 Fourth Set of Interrogatories to Applicants and Requests to Produce Re: Credibility, Question 10, pages 23 and 24).

/4/ CASE does not believe that the proposed findings of fact filed in advance of the Cygna and welding hearings were very helpful to the Board or any of the parties.

CASE's Proposal \*

If there are portions of the record from the other docket on which a party intends to rely, CASE understands that there is a need for notification to be made early enough for each of the other parties to have a reasonable opportunity to defend against those portions. What CASE proposes is that, in such an instance, by the time of the filing of the prefiled testimony for the last scheduled hearing in this docket, each of the parties be required to have identified what portions of the record in the other docket they intend to rely upon in this docket.

Respectfully submitted,



(Mrs.) Juanita Ellis, President  
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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 ELECTRIC	}}	Docket Nos. 50-445-1
COMPANY, <u>et al.</u>	}}	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 (Docket 1) Comments on Boards' 11/6/85 Memorandum (Fair Warning of  
Citations to Other Docket)

have been sent to the names listed below this 6th day of December, 1985,  
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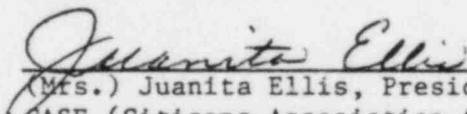
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