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CMT Trammell 12/27/85

December 11, 1985

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Mr. Robert K. Gad III, Esquire
Ropes and Gray
225 Franklin Street
Boston, Massachusetts 02110

Dear Bob,

Thank you for your timely response to CASE's discovery request for the thirty deviation reports and corresponding non-conformance reports. However, after a careful review of the same I can see that your request to provide the NCR's in lieu of the deviation paper on CPRT related deficiencies will not satisfy our discovery needs. I hope we will be able to resolve this problem satisfactorily.

A review of the history of the CPRT discovery provides the following relevant background:

1. In CASE's May 28, 1985, letter requesting informal discovery we sought all information developed by the CPRT in response to findings of the NRC TRT inspection. (See May 24, 1985 letter, # 12(a)(b), 13.)

2. On July 3, 1985, the May 24 letter was converted to formal discovery questions.

3. On July 29, 1985 CASE filed a motion to compel responses to the questions identified above.

4. On August 13, 1985 you objected to the production of any further materials on a number of grounds, and specifically did not provide the requested CPRT documents because "...Applicants consider the material already provided to be responsive..."

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5. On August 16, 1985, the Board overruled your objections, stating: "Discovery shall now be in order if it relates to the activities or findings of the Staff's Technical Review Team (TRT) or the Applicants' Comanche Peak Response Team (CPRT) that are directly or indirectly related to Contention 5." (Board Order, p.2).

6. On September 4, 1985, CASE again requested the CPRT generated deviation and deficiency paper. (See #8(a)(b).)

7. On October 9, 1985, you objected to these requests as "irrelevant to Docket-2 and duplicative of and redundant to Docket-1 discovery." (Pg. 26)

8. On November 12, 1985, during a pre-hearing conference you agreed to provide the information requested at the end of the CPRT's work. We objected to the production schedule, and insisted that we needed the deviation reports to begin our own analysis of the adequacy of the corrective action program and prepare for hearings. (Tr. 24,245 - 24,259.)

To be specific, Mr. Roisman stated that CASE wants to start its work with the deficiency paper, and then do its own evaluation of the finding. (Tr. 24,246; 24,256.) We do not want to rely on the judgments and conclusions of any of Applicants' employees, including the third party employees.

9. In response to our request you offered us NCR's, which, according to you, are generated by each deviation report. (Tr. 24,249.)

10. We agreed to take a look at the NCR's to determine if they were an acceptable substitute to the deviation reports and then to get back to the Board if they were not. (Tr. 24,257; 24,277.)

Now that we have reviewed the materials you have provided, it is clear that CASE's original request for the baseline identification of a deviation contains exactly the type of raw data we are seeking. The NCR's on the other hand do not contain the raw data and are often conclusory and vague. The NCR's themselves would not have provided us with the type of information we need to do our evaluations.

For example, the deviation report contains a detailed description of the deviation, an identification of the attribute and procedure which was violated or unacceptable, comments by the reviewer, and the engineering evaluation of the third-party reviewer. The NCR, on the other hand, contains only a short-hand description of the nonconforming condition and no evaluation or description of the actual deviation. In other words, between the deviation report and the NCR there has already been a significant evaluation performed, apparently by site personnel, which is incorporated into the NCR. Further the NCR disposition contains conclusions which appear to be unsupportable by the information

contained on the NCR. (See NCR # E85-100847X and Deviation Report No. I-E-CDUT-37-02.)

Another concern is that the volume of material you have indicated is available on the NCR's (approximately 400 NCR's) is far short of the number of deviations which have apparently already been identified. I glanced through Martin Jones's presentation of electrical findings at the March 6, 1985, meeting between the NRC and TUGCo and noted that in response to only one inspection effort (butt splices) which reviewed 572 splices there were 100 splices found which were not on the drawings, 143 splices on the drawings which were not found in the field, 24 cases where the crimps were made using the wrong size tool, 8 cases where the wrong sleeve sizes were used, 10 cases where the insulation that is extruded onto the splice itself was split, 3 cases of strand wire curled outside the barrel, and 14 cases where the crimp itself was improper. It is my understanding that each of these items resulted in a deviation report. However, under the current offer by you none of these materials will be made available to us. My rough estimate is that there are well over 4,000 such identified deviations which have been publicly acknowledged through correspondence and the monthly meetings.

Additionally, it is clear from reviewing the deviation reports that the attribute or inspection checklists are necessary to understand what the deviation findings indicate. That is, the deviation report is written up, according to the information provided on the form, in response to an inspection performed pursuant to a particular attribute or inspection item. As you know we have been requesting the checklists for several months now both formally and informally.

As you can see, the process you suggested is not going to be adequate for our needs. I propose we use the following schedule to either resolve or clarify our differences. By December 20, 1985 you inform us by phone or mail if you are going to make the deviation reports available to CASE for inspection and copying, and, if so, the conditions of such production. If we find that proposal acceptable we will continue to work with you informally to set up a schedule for production that accommodates our mutual needs. If we are unable to resolve our differences by December 20 CASE will file a motion to compel.

If we do not hear from you by close of business on December 20th we will assume you do not intend to voluntarily produce the deviation reports and we will file our motion to compel.

Sincerely,

Billie Pirner Garde