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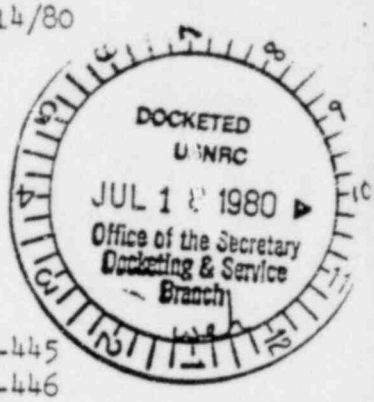

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of		
APPLICATION OF TEXAS UTILITIES GENERATING COMPANY, ET AL. FOR AN OPERATING LICENSE FOR COMANCHE PEAK STEAM ELECTRIC STATION UNITS #1 AND #2 (CPSES)		Docket Nos. 50-445 and 50-446

CASE MOTION FOR RECONSIDERATION OF CERTAIN CASE CONTENTIONS DENIED OR REWORDED IN THE BOARD'S ORDER SUBSEQUENT TO THE PREHEARING CONFERENCE OF APRIL 30, 1980 OR IN THE ALTERNATIVE MOTION FOR CERTIFICATION OF CONTENTIONS DENIED IN THE BOARD'S ORDER

On June 16, 1980, following the filing by all parties of a complete report on each contention and a pre-hearing conference on April 30 and May 1, 1980, at which the contentions were discussed, the Board issued its Order Subsequent to the Prehearing Conference of April 30, 1980. In this order, the Board accepted some of CASE's contentions and rejected certain others. CASE maintains that each of its contentions should have been accepted and submits this, its Motion for Reconsideration of Certain Case Contentions Denied or Reworded in the Board's Order Subsequent to the Prehearing Conference of April 30, 1980 or in the Alternative Motion for Certification of Contentions Denied in the Board's Order[1]. In support whereof, CASE would respectfully show the following:

1/ The Board orally authorized CASE to file this motion out of time.

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1. CASE Contention 1. The past record of the Applicant clearly demonstrates an unwillingness to voluntarily comply with procedures and regulations necessary to assure the health and safety of the public; therefore, the requirements of 10 CFR 50.40 (a, c and d), 50.57 (a) (1,2,3 and 6), 50.57(b), 51.20 and 51.21 have not been met, and a favorable cost/benefit analysis cannot be struck.

The Board denied CASE Contention 1 as being "too vague and overly broad." CASE's basis for this contention, however, reveals that CASE had very specific and verifiable concerns to which this contention is addressed. We cited specific instances in support of this contention, including lawsuits which clearly indicate an established practice of violating laws and regulations and demonstrate that Applicants' general established operating practices will create the risk of permanent and irreparable injury to the public and the environment for which there is no adequate remedy if Applicant is allowed to operate CPSES.

In addition, a belief that the contention is "overly broad," is not, in this particular instance, adequate grounds for denying the Contention. If the contention were overly broad, the Board and/or the NRC Staff should work with this citizen intervenor group to narrow the contention to ensure that the concerns which the bases indicate are real and substantial are dealt with in these hearings. In fact, the Staff proposed very similar wording in its 4/10/80 NRC Staff's Report on Its Position Concerning the Admissibility of Intervenors' Contentions (pages 30 and 31), which was filed at the same time CASE filed its 4/10/80 Position on Contentions. After discussions with the Staff and Applicant,

CASE attempted to refine the wording to more accurately represent what we were trying to litigate. The Staff objected to the wording previously proposed by CASE:

> The applicant cannot be depended upon to adequately protect, either in the normal or the emergency operation of the Comanche Peak Nuclear Power Plant (CPSES), the health and safety of the public and the individuals represented by CASE, and should therefore not be allowed to operate the plant.

But Staff further stated:

> "At best, these references would support a more narrow contention - that Applicants have demonstrated a lack of commitment to comply with applicable regulations established to protect the health and safety of the public, sufficient to assure that they will adequately comply with the environmental and safety regulations associated with the operation of a nuclear facility. The Staff is of the view that a reformulation of this contention in this manner would alleviate the Staff's concerns over the vagueness of the contention as presently worded."

To ignore the issue of whether or not the Applicants will comply with procedures and regulations necessary to assure the health and safety of the public in hearings to determine whether or not they should be granted a license to operate a nuclear power plant is to ignore one of the basic findings which must be made before granting such a license, as stated in 10 CFR 50.57(a)(3):

> "Pursuant to § 50.56, an operating license may be issued by the Commission...upon finding that:
>
> ...(3) There is reasonable assurance (i) that the activities authorized by the operating license can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the regulations in this chapter..."

CASE urges the Board to reconsider its ruling on this contention and that it be accepted as a valid contention for consideration in these hearings, or that at a minimum the Board narrow the contention in the manner previously suggested by the Staff and admit it with that wording.

2. CASE Contention 3. Requirements of the National Environmental Policy Act (NEPA) and 10 CFR 50 and 51 have not been met and a favorable cost/benefit analysis cannot be made, because:

(a) The Environmental Report (ER) is inaccurate in that actual and projected figures for the Applicant's capabilities, demands and reserves, are inaccurate and incomplete;

(b) The ER is incomplete in that Applicant has failed to consider significant factors which must be included in order to make an accurate cost/benefit analysis; and

(c) If the changes indicated in (a) and (b) above are made, so that the ER is accurate and complete, a cost/benefit analysis favorable to the operation of Comanche Peak nuclear plant cannot be made.

The Board denied this Contention and stated:

"CASE contention 3 has two main thrusts--there is no need for the power from the facility and alternatives are available, e.g., lignite, gas, coal, energy conservation, peak load pricing and solar. As stated in our rejection of ACORN's contentions 26 and 27, the criteria of significant new information must be met to make the issues of need for power and alternative sources of energy acceptable at the Operating License proceeding. We have determined that no significant new information has been presented for these issues which were considered at the Construction Permit proceeding and the contention is rejected."

The Board has completely ignored that portion of the contention which regards inaccuracies and incompleteness in the Environmental Report (ER). No reason whatsoever is given for rejecting this portion of the contention. CASE

submits that this portion of the contention is certainly a litigable issue and should be accepted.

With regard to the need for power, the Board has supplied no basis for its statement that "no significant new information has been presented." CASE has clearly pointed out in its bases for this contention that the use of energy has changed dramatically as a result of the extremely significant increase in costs of energy since 1974. We live in a completely different energy world due to the oil embargo, increased costs of fuel and electricity, double-digit inflation, higher costs of living, and increasing use by electricity consumers of measures to conserve energy. In 1974, the Applicants asserted that the Comanche Peak plant would be needed to meet demand in 1980 and 1982. It is significant that in the summer of 1980, with continuous record-breaking heat and electricity usage, Applicants still maintain embarrassingly high reserve capacity, without the Comanche Peak plant. Even if the projections made by the Applicants in 1974 were reasonable (which CASE disputes), the fact that the actual reserve capacity has proven to be almost 3½ times what had been projected (59.3% reserve capacity in 1979 when 17.3% had been projected) is a clear indication that the projections had to either have been made in bad faith or based on inaccurate information.

If information such as the dramatic change in costs, uses of energy, and the tremendous increase in reserve capacity since 1974 is not the kind of new information that is significant in terms of the regulations, we would appreciate

an explanation as to what the Board believes the term "significant new information" does mean and what examples of significant new information might be. 10 CFR 51.21 states that Applicants at the operating license stage shall submit an Environmental Report "which discusses the same matters described in §51.20 but only to the extent that they differ from those discussed or reflect new information in addition to that discussed in the final environmental impact statement prepared by the Commission in connection with the construction permit." (Emphasis added.) CASE believes any decision to ignore the significant new information presented by CASE which has rendered the Applicants' prior projections so dramatically inaccurate will amount to an unwritten decision by this Board to ignore altogether the need criteria, contrary to the written regulations on which Intervenors have relied and by which the Applicants are bound. Such an unwritten decision is not only inconsistent with this Board's authority, but more importantly is a violation of this Board's obligations and responsibilities under the regulations.

Tied to the need for power are certain specific alternatives, spelled out in CASE's bases for this contention, which were not available at the time of the construction hearings but which are now available. Clearly this represents significant new information and under the regulations must be considered in the Environmental Report at the operating license stage.

CASE maintains that this contention is a valid one and urges that the Board reconsider its ruling and admit each of the contention's parts in this proceeding.

3. CASE Contention 8. The ER fails to analyze the probability of the occurrence of a Class 9 accident and the potential costs in terms of health and dollars, which failure results in: (1) violation of the requirements of 10 CFR 51.22 and 51.23, violation of the requirements of the National Environmental Policy ACT (NEPA) in general and specifically the guidelines set down by the President's Council on Environmental Quality (CEQ), and violation of the requirements of the Atomic Energy Act; and (2) preventing the completion of a valid or accurate cost/benefit analysis as required by 10 CFR 51.20 and 51.21.

The Board denied CASE Contention 8 as "not being required" as a matter of Commission policy. However, it is important to note that the Commission policy referred to is the Commission's June 9, 1980 "Statement of Interim Policy" (emphasis added). As stated on page 2 of the Commission's Statement, the comment period will not expire until September 11, 1980. CASE plans to submit comments regarding this interim policy as numerous other concerned citizens and Intervenors will. In the meantime, CASE urges the Board to reconsider its ruling denying this contention and instead certify it to the Commission in light of the fact that it is an "interim policy" and not a final policy.

Furthermore, CASE contends that this contention should be reviewed and admitted as a proper contention in the licensing stage in that it deals with what have previously been referred to as Class accidents, which results in this contention's having the greatest impact upon the entire licensing procedure. To not require the Applicants to discuss or consider a Class 9 accident in the Environmental Report and in the licensing procedure would result in the licensing

Board, the NRC Staff, the Intervenors and the entire licensing proceeding omitting discussion of what is obviously the single most important safety and environmental issue dealing with a nuclear power plant.

CASE would point out that on page 10 of the Interim Policy Statement the Commission has specifically stated that "Environmental Reports submitted by applicants for construction permits and for operating licenses on or after July 1, 1980 should include a discussion of the environmental risks associated with accidents that follows the guidance given herein." (Emphasis added.) The significance of that requirement is that it causes the Applicants to review, consider, and appreciate a Class 9 accident scenario. To require consideration of a Class 9 accident only in the Final Environmental Impact Statement results in the NRC Staff fully understanding the impact of a Class 9 accident rather than the Applicants who will be operating CPSES. Consequently, CASE urges that the Applicants be required to deal with the Class 9 scenario in the Environmental Report at the operating license stage. CASE intends to file comments with the Commission on its Interim Policy Statement concerning the effect of an arbitrary cut-off date, namely July 1, 1980, as set forth on page 10 of the Statement. The more rational approach would be to require that all applicants in the licensing stage (both construction and operating) deal with Class 9 accidents in their ER's, and more preferably to require a consideration of Class 9 accidents in an amended or a supplemental ER for every existing operating nuclear power plant. CASE sees no

rationale for distinguishing between a plant which has not submitted its ER until July 2, 1980, and a plant presently producing electricity, other than mere economics of insignficant amounts. If the justification for the arbitrary cut-off date is dollars and cents to produce or supplement the ER, then the public should know that the health and safety of the public has been jeopardized for that reason.

To deny the members of CASE the right of including the Class 9 issue in the licensing hearing concerning this local nuclear power plant would be to deny those members equal protection under the law as guaranteed by the U. S. Constitution in that citizens surrounding and living in the vicinity of other nuclear power plants will have the benefit of a Class 9 review by the Applicant of their particular nuclear plant while the citizens of this community will be deprived of such crucial review.

In summation, CASE feels this Board should either accept Contention 8 as a valid contention or certify this contention to the Commission for a ruling under 2.730(f) due to the following three factors: (1) The overall importance and effect of this contention; (2) the fact that the policy statement is an interim policy statement; and (3) certification is definitely "necessary to prevent detriment to the public interest or unusual delay or expense."

4. Accepted Contention 5. The Applicants' failure to adhere to the quality assurance/quality control provisions required by the construction permits for Comanche Peak, Units 1 and 2, and the requirements of Appendix B of 10 CFR Part 50, and the construction practices

employed, specifically in regard to concrete work, mortar blocks, steel, fracture toughness testing, expansion joints, placement of the reactor vessel for Unit 2, welding, inspection and testing, materials used, craft labor qualifications and working conditions (as they may affect QA/QC), and training and organization of QA/QC personnel, have raised substantial questions as to the adequacy of the construction of the facility. As a result, the Commission cannot make the findings required by 10 CFR §50.57(a) necessary for issuance of an operating license for Comanche Peak.

The Board accepted this contention with the statement "the Board is of the opinion that the language proposed by the NRC Staff is sufficiently broad to encompass the subject matter of each intervenor's QA/QC contention." CASE discussed the wording of this contention in its 5/12/80 Motion in Support of Retaining Present Wording of Quality Assurance/Quality Control Contention (CASE Contention No. 19). At this time, we will merely reiterate that the problems at the Comanche Peak plant are not narrow; to the contrary, they are numerous and of diverse types. We are concerned primarily with the Board's deciding on wording which accurately reflects CASE's concerns and which will not limit us to an extent which would preclude our pursuing some of these concerns as indicated.

One problem we have with the list of construction practices employed, as contained in the wording accepted by the Board, is that it's hard to tell whether all of our concerns can be contained in the wording. We're concerned (1) whether or not some of our contentions fit in there; and (2) regarding violations which indicate a pattern.

In our 5/7/79 Supplement to Petition for Leave to Intervene and Contentions by CASE (Citizens Association for Sound Energy), we stated:

> "There are numerous other problems with construction and procedures which are indicated in the I&E (Inspection and Enforcement) reports, and CASE would incorporate them all herewith by reference. It is our intention to pursue them in detail during the hearings, and to present related testimony by expert witnesses."

There are numerous problems identified in the I&E reports which were included in our above statement on page 54 (item 7) of our 5/7/79 Contentions. Our concern is that we may not be able to pursue some of the problems covered by those other I&E reports under the present wording of the contention. It appears to CASE that the primary intent of the rewording of the contention is to limit discovery.

CASE believes that the specific construction practices listed in the wording accepted by the Board demonstrates an established pattern of violations and problems. In the discovery procedure we should be allowed to pursue additional violations which may be revealed as part of that pattern. We believe it's safe to assume that the discovered violations do not include all of the violations which have actually occurred. If this plant and these Applicants had a good record, this assumption might be arguable. But CPSES is being built by people who have a terrible, proven record (as shown in the investigation by the NRC at the South Texas Nuclear Project), overseen by people who have clearly demonstrated an unwillingness to voluntarily comply with procedures and regulations necessary

to assure the health and safety of the public (as demonstrated in CASE's Contention 1, which was denied by the Board), and we have evidence from the NRC's own I&E reports that indicate there are continuing problems and violations regarding vital areas of concern at CPSES. This Intervenor does not intend to use this contention to merely have an excuse to examine all the records of the Applicants; but we do believe that we should be able to pursue the construction problems related to those which we know about already and which are revealed. The Board has the authority and the ability to control discovery and to prevent Intervenors from abusing the discovery process by engaging in a mere fishing expedition so that the interests of the Applicants are protected. But on the other hand, this fear of possible abuse should not cause serious problems to be overlooked in the licensing procedure. This process is an unusual legal process in that the Commission is charged with protecting the public and discovering the true facts, and has great discretion in exercising its duties in order to discover those facts. Technical distinctions and wording should not obscure that responsibility.

CASE can (and will, if the Board desires) provide specific instances of I&E reports which concern problems not covered by the present wording of this contention. However, as indicated in CASE's 5/12/80 Motion in Support of Retaining Present Wording of Quality Assurance/Quality Control Contention, to try to list each specific problem area in the wording of the contention would be burdensome, cumbersome, and go far beyond "reasonable specificity."

For these reasons, CASE urges that the Board revise the wording of this contention to the following:

> The Applicants have failed to adhere to the requirements of Appendix B of 10 CFR Part 50 and to the quality assurance/quality control provisions required by the construction permits for CPSES, Units 1 and 2. As a result, the Commission cannot make the findings required by 10 CFR 50.57(a) necessary for issuance of an operating license for CPSES.

5. Accepted Contention 23. Neither the Applicants nor the Staff has adequately considered the health effects of low-level radiation on the population surrounding CPSES, inasmuch as the CPSES design does not assure that radioactive emissions will be as low as is reasonably achievable.

There are many aspects of this contention, as discussed in the bases presented by CASE. Our concern initially with the rewording of the contention by the Board was that certain parts of the contention as submitted by CASE might be lost or limited by the revised wording. This concern was strengthened by the Applicants' 7/1/80 Statement of Objections to Prehearing Conference Order and Motion for Modification. In this filing, the Applicants argued that the first part of the contention, dealing with the health effects of low-level radiation, is a challenge to Commission regulations and should be deleted, and that the language of the second part of the contention should be changed, leaving the wording of the contention:

> "The CPSES design does not assure that radioactive emissions will be as low as is reasonably achievable."

One aspect of this contention is that the design, construction, and

proposed operation of the plant will not ensure that radioactive emissions will be as low as is reasonably achievable, which means that the Applicants have not complied with 10 CFR Part 50, Appendix I.

A second aspect of this contention is that there has been an increase in knowledge regarding the health effects of radiation since the time the Final Environmental Impact Statement at the construction permit stage was completed, but the Applicant has not addressed the changes due to such increased knowledge. (See pages 37 and 38 of CASE's 4/10/80 Contentions.) At the time of our filing CASE's 4/10/80 Contentions, the Applicants and the Staff were asking that the Board defer ruling on this. If the Board agrees with the Applicants that this aspect of the contention is a challenge to Commission regulations, CASE requests that the Board either defer ruling on the contention pending resolution by the Commission of the Rulemaking proceeding indicated in the March 20, 1980 FEDERAL REGISTER, Pages 18023 through 18026, "10 CFR Part 20, Standards for Protection Against Radiation" (see page 39 and Attachment D of CASE's 4/10/80 Contentions); or in the alternative, we request the Board to certify this aspect of the contention to the Commission under 2.730(f), since it meets the criteria of that regulation:

> "...prompt decision is necessary to prevent detriment to the public interest or unusual delay or expense."

Whatever the Board's decision regarding this aspect of the contention, CASE would reiterate its position that the <u>full</u> impact <u>of CPSES</u> must be addressed <u>somewhere</u>; and to the extent that it is not addressed by the aforementioned

rulemaking proceeding, it must be addressed (if necessary after the rulemaking proceeding is completed) in the operating license hearings in order to comply with the requirements of 10 CFR 50.57, 51.20, 51.21, 51.22 and 51.23, before an operating license can be issued.

A third aspect of this contention is that the Applicants simply have not done the things necessary to adequately consider the health effects of low-level radiation on the population surrounding CPSES. For example, as pointed out in CASE's 5/7/79 Contentions (p. 55, item 10) and incorporated by reference into our 4/10/80 Contentions (p. 37, paragraph 3):

> "The February 13, 1979 letter from Robert L. Baer to R. J. Gary indicated that the applicant must provide an Offsite Dose Calculation Manual (ODCM). It is impossible without this manual to be assured that 10 CFR 50.57(a)(3) and 10 CFR 50.57(a)(6) have been complied with. It should be supplied, reviewed, and approved by the staff and intervenors before issuing an operating license."

As far as CASE knows, this manual still has not been prepared (at least CASE has received no indication that it has been). Until this is done, Applicants have failed to adequately consider the effects of low-level radiation on the population surrounding CPSES, as stated in the first part of this contention.

There is significant new information available on the adverse health effects that low-level radiation will have on the population surrounding CPSES which was not available at the time of the construction permit stage. However, Applicants have not adequately considered the effects of low-level radiation on

the population surrounding CPSES in light of this new and significant knowledge of radiation effects. For example: Appendix 11A of the Final Safety Analysis Report (FSAR) deals with Compliance by the Applicants with Appendix I of 10 CFR 50. The calculations which the Applicants have made fail to take into account this increased knowledge in several areas, including: the effect of radiation on the gonads of swimmers in Squaw Creek, although current knowledge clearly indicates that there is greater effect on the gonads than had been previously assumed; and the effect of radiation on nursing mothers and their babies, although there is an increase in the number of mothers who breast-feed their babies over the number for the past several years and there is increased knowledge about the effects of radiation on them. On page 11A-6 of the FSAR, Applicants state:

> "All usage and consumption values, transport times, bioaccumulation factors, dose conversion factors, and other constants utilized were those suggested in Reg. Guide 1.109."

Regulatory Guides are just that -- guides. They do not have the force of law. Also, the Applicants appear to have used the original Regulatory Guide, which was first put out for comment in March 1976 (at least Applicants do not indicate that they used a revision); however, this Guide was revised in October 1977, with considerable change; a footnote on the cover page of the revision stated:

> "The substantial number of changes in this revision has made it impractical to indicate the changes with lines in the margin." (Emphasis added.)

Thus, it is not clear that the Applicants have even used the most current Guide. Even had they used the most current Guide, they have not taken advantage of the

increased knowledge of radiation effects which might be expected of reasonably prudent men. Therefore, they have not adequately considered the effects of low-level radiation on the population surrounding CPSES, as stated in the first part of this contention.

So we actually have three separate and distinct aspects of this contention, all of which should be addressed before granting the Applicants an operating license for CPSES:

(1) The design, construction, and proposed operation of CPSES will not ensure that radioactive emissions will be as low as is reasonably achievable, which means that the Applicants have not complied with 10 CFR Part 50, Appendix I;

(2) There has been an increase in knowledge regarding the health effects of radiation since the time the Final Environmental Impact Statement at the construction permit stage was completed, but the Applicants have not addressed the changes due to such increased knowledge; and

(3) The Applicants simply have not done the things necessary to adequately consider the health effects of low-level radiation on the population surrounding CPSES.

CASE maintains that the first and third aspects of this contention are clearly litigable and should be retained. The second aspect is equally important, and CASE urges that the Board retain it also; in the alternative, we urge that the Board either defer ruling on this aspect or certify it to the Commission.

The initial primary concern CASE had with the wording of the contention as accepted by the Commission was that the addition of the wording "inasmuch as the CPSES design does not assure that radioactive emissions will be as low as is reasonably

achievable" would limit the scope of the contention in regard to some aspects of CASE's concerns, as previously set forth. If the Board's interpretation of the wording allows the inclusion of these concerns, we have no objection to the wording of the contention as accepted by the Board. However, if the Board's interpretation of the contention as worded would limit CASE from pursuing the other aspects of our contention, we have strong objections.

6. Other rejected contentions. CASE also believes that CASE Contentions 6(b), 6(e), and 10 are valid contentions and asks that the Board reconsider its ruling on them and that they be admitted for litigation in these proceedings.

7. CASE requests reconsideration of the contentions which were denied in the Board's order of June 16, 1980, and if the Board chooses not to admit those contentions that it certify them to the Appeal Board or, where requested, to the Commission. We further request reconsideration of the wording of the approved Contention 5 and, if the Board's interpretation is unfavorable, approved Contention 23; further, if the Board's decision on the second aspect of accepted Contention 23 is unfavorable, we request that it be certified to the Commission.

WHEREFORE, PREMISES CONSIDERED, Intervenor CASE prays that the Board grant this motion in all particulars and that all contentions be accepted, and for any other relief to which CASE may show itself to be entitled.

Respectfully submitted,

Juanita Ellis

(Mrs.) Juanita Ellis, President
CASE (Citizens Association for Sound Energy)
1426 S. Polk
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July 14, 1980

CERTIFICATE OF SERVICE:

By my signature below, I hereby certify that copies of "CASE MOTION FOR RECONSIDERATION OF CERTAIN CASE CONTENTIONS DENIED OR REWORDED IN THE BOARD'S ORDER SUBSEQUENT TO THE PREHEARING CONFERENCE OF APRIL 30, 1980 OR IN THE ALTERNATIVE MOTION FOR CERTIFICATION OF CONTENTIONS DENIED IN THE BOARD'S ORDER" have been served on the names on the attached Service List by deposit in the United States mail, first class, this 14th day of July, 1980.

Juanita Ellis

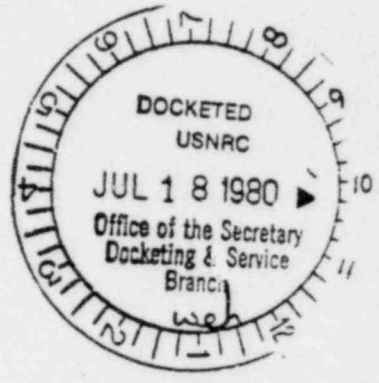
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

APPLICATION OF TEXAS UTILITIES GENERATING COMPANY, ET AL. FOR AN OPERATING LICENSE FOR COMANCHE PEAK STEAM ELECTRIC STATION UNITS #1 AND #2 (CPSES)

Docket Nos. 50-445
and 50-446



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