

TIC

8005130 597

April 10, 1980

m

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
TEXAS UTILITIES GENERATING)	Docket No. 50-445
COMPANY, <u>et al.</u>)	50-446
)	
(Comanche Peak Steam Electric)	
Station, Units 1 and 2))	

APPLICANTS' STATEMENT OF POSITIONS
ON PROPOSED ACORN CONTENTIONS

Texas Utilities Generating Company, et al. (Applicants) hereby submit a statement of their positions regarding the admissibility of contentions proposed by the Texas Association of Community Organizations For Reform Now (ACORN or Intervenor) in the captioned proceeding. This statement is being submitted in accordance with the Board's Order Scheduling a Prehearing Conference, dated March 20, 1980.

The Applicants' positions are based on wording of ACORN's proposed contentions developed by the parties. We understand that ACORN has adopted this revised wording as a substitute for the original wording of its proposed contentions. The renumbering of the proposed contentions is as agreed to by the parties. Applicants have treated Intervenor's Supplemental Petition and Contentions dated May 7, 1979, as setting forth the sole bases for the contentions proposed by

ACORN. Applicants' positions on these contentions are set forth below:

I. General Principles Regarding Admission of Proposed Contentions

To be admitted in this proceeding, Intervenor's contentions must raise issues which fall within the scope of this proceeding as set forth in the Notice of Hearing, 44 Fed.Reg 47999 (August 16, 1979) and must comply with Commission regulations governing admission of contentions, 10 CFR §2.714(b), and Commission case law. See, Northern States Power Company (Prairie Island, Units 1 and 2), ALAB-107, 6 AEC 188, 194 (1973), aff'd, BPI v. Atomic Energy Commission, 502 F.2d 424, 429 (D.C. Cir. 1974). In particular, Section 2.714(b) of 10 CFR Part 2 requires that a petitioner to intervene must provide, along with a list of proposed contentions, the "bases for each contention set forth with reasonable specificity." In explaining the reasons for this basis-for-contention requirement, the Appeal Board in the Peach Bottom proceeding articulated specific grounds for dismissing a proposed contention. That Appeal Board found that a contention must not be admitted if:

1. it is an "attack on applicable statutory requirements";
2. it "challenges...the basic structure of the Commission's regulatory process", i.e., Commission regulations;
3. it lacks the particularity to enable parties to know at least generally what they will have to defend, i.e., the issue must be concrete and litigable;

4. it raises an issue "not proper for adjudication in the particular proceeding" or pertaining to the particular power plant; or
5. it merely advances generalizations regarding a party's views of what applicable policies ought to be.

[Philadelphia Electric Co., et al. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974).]

As discussed in Peach Bottom, supra, the purpose of the basis requirement of 10 CFR §2.714(b) is to enable the parties to know at least generally what they will have to defend against or oppose. While the basis need not consist of a detailing of the evidence offered in support thereof, that basis must be identified with reasonable specificity. Peach Bottom, supra; Mississippi Power & Light Company (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 426 (1973). "In the final analysis, there must be strict observance of the requirements governing intervention, in order that the adjudicatory process is invoked only by those persons who have real interests at stake and who seek resolution of concrete issues," Peach Bottom, supra; Virginia Electric and Power Company (North Anna Power Station, Units 1 and 2), ALAB-146, 6 AEC 631, 633 (1973). Indeed, special care should be taken where a hearing is not necessary, as is the case at the operating license stage, to assure that proposed contentions raise issues that are clearly open to adjudication in this proceeding. Cincinnati Gas and Electric Company (William H. Zimmer Nuclear Power Station), ALAB-305, 3 NRC 8, 12 (1976).

In light of the principles discussed above, ACORN has failed to set forth contentions which warrant admission in this proceeding. For the most part ACORN merely cites generic "issues" with no basis demonstrating the applicability of those issues to Comanche Peak. To admit these contentions would make a mockery of the standard for admission of contentions. It would permit intervenors to frame admissible contentions by simply restating language from any NRC source concerning any generic or unrelated topic with respect to nuclear power reactors. Obviously, this result would be contrary to Commission rules and case law, and public policy.

II. Applicants' Postions On ACORN's
Proposed Contentions

A. Contentions Concerning Unresolved
Generic Safety Issues

ACORN has set forth several contentions which deal exclusively with unresolved generic safety issues. For reasons discussed below Applicants oppose admission of those contentions in this proceeding.

The admissibility of contentions which deal with unresolved generic safety issues is governed by 10 CFR §2.714(b) and by the principles set forth by the Licensing and Appeal Boards in the River Bend proceeding. Gulf States Utilities Company (River Bend Station, Units 1 and 2),

LBP-76-32, 4 NRC 293 (1976); ALAB-444, 6 NRC 760 (1977).

The Commission's regulations governing the admissibility of contentions, 10 CFR §2.714(b), require that each contention be supported by a basis set forth with reasonable specificity. With respect to contentions concerning generic unresolved safety issues, the Licensing Board in River Bend stated that there must be a demonstration of:

nexus between the general discussion in the TSAR [1/] and any deficiency in the...application and the findings [the Board] must make....
[River Bend, supra 4 NRC at 313.]

In other words, the Intervenor must show both a nexus between the unresolved generic safety issue and the particular reactor under review and that there is a deficiency in the application on those issues.

In affirming the Licensing Board's treatment of the contentions dealing with unresolved generic safety issues, the Appeal Board in River Bend noted:

The mere identification of a generic technical matter which is under further study by the Staff (such as a TSAR item or Task Action Plan) does not fulfill this obligation [to establish the nexus between the issue and the reactor under review],

1/ Unresolved generic safety issues are now set forth in NRC Task Action Plans discussed in NUREG-0410 and NUREG-0510, which supersede the Technical Safety Activities Report (TSAR).

even if the matter has some patent relationship to the category of reactor under review.... To establish the requisite nexus between the permit or license application and a TSAR item (or Task Action Plan), it must generally appear both (1) that the undertaken or contemplated project has safety significance insofar as the reactor under review is concerned; and (2) that the fashion in which the application deals with the matter in question is unsatisfactory, that because of the failure to consider a particular item there has been an insufficient assessment of a specified type of risk for the reactor....
[River Bend, supra 6 NRC at 773 (emphasis added).]

An additional factor which should be considered by this Board in ruling on ACORN's proposed contentions on unresolved generic safety issues is that this Board is required to determine for itself that such issues for Comanche Peak have been adequately dealt with by the Staff in the SER, whether or not those issues are raised in contentions admitted in the proceeding. See Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-491, 8 NRC 245 (1978). These issues will not, therefore, be left unexamined prior to issuance of the operating license for CPSES, even if ACORN's proposed contentions relating thereto are denied.

With respect to ACORN's contentions on unresolved generic safety issues, ACORN has failed to establish a nexus between the unresolved generic safety issues it raises and the safe operation of Comanche Peak. Rather, ACORN has merely recited certain unresolved issues by reference to NUREG-0410 and NUREG-0510 without demonstrating that the

issues are applicable to Comanche Peak and have been unsatisfactorily addressed in the application. ACORN's references to discussions in the "Black Fox testimony" 2/ simply fails to establish a nexus to Comanche Peak. This shortcoming is highlighted by the fact that Comanche Peak is a Westinghouse Pressurized Water Reactor (PWR) and Black Fox is a General Electric Boiling Water Reactor (BWR). Thus, ACORN has not established a sufficient basis for admitting its contentions on unresolved generic safety issues, as required by 10 CFR §2.714(b) and by the decisions in River Bend, supra.

ACORN Contentions 1, 2, 3, 4, 6, 7, 12, 13, 15, 16, 17, 18, 19, 21, 22 and 23 deal with such unresolved generic safety issues. For the reasons discussed above, and for additional reasons discussed below with regard to each specific contention, Applicants submit that these ACORN contentions should be denied.

Proposed Contention 1

The CPSES design fails to adequately account for the effect of asymmetric loading resulting from a pipe break in the area between the reactor vessel and the shield wall. [FORMERLY "Safety" Contention 1.]

As the basis for this contention ACORN merely cites the statement of the issue in NUREG-0410 and NUREG-0510, and

2/ The reference is to the NRC Staff testimony in Public Service Company of Oklahoma, et al. (Black Fox Station, Units 1 and 2), Docket Nos. STN 50-556, 50-557.

a "description of the problem" in the Black Fox testimony. There is no attempt to identify a nexus between the issue and Comanche Peak, and in fact ACORN states that the issue "was not identified in the Westinghouse design." For these reasons as well as those discussed generally above, ACORN Contention 1 should be denied.

Proposed Contention 2

NRC Staff review is inadequate to identify and correct modes of interaction between reactor systems in the CPSES design which can adversely affect the redundancy or independence of safety systems.
[FORMERLY "Safety" Contention 2.]

Again, ACORN cites as the basis for the contention the statement of the generic issue in NUREG-0410 and NUREG-0510, and the Black Fox testimony. As additional bases ACORN discusses an "example of systems interaction", at the Zion reactor. ACORN fails, however, to demonstrate a nexus to Comanche Peak in that no attempt is made to show that the same equipment is present or the same sequence of events could occur at Comanche Peak. The vague reference to the Three Mile Island accident also fails to demonstrate a nexus to Comanche Peak. Furthermore, the entire contention is vaguely worded in that no explanation is offered for the terms "modes of interaction", "reactor systems" and "safety systems". For these reasons as well as those discussed generally above, ACORN Contention 2 should be denied.

Proposed Contention 3

Neither the Applicants nor the Staff has a reliable method for evaluating or ensuring that Class IE safety-related equipment is designed to accommodate the effects of and to be compatible with the environmental conditions associated with the most severe postulated accident; thus, General Design Criterion 4 has not been satisfied. [FORMERLY "Safety" Contention 4.]

In addition to general references to NUREG-0510 and the Black Fox testimony, ACORN alleges that Applicants have not "committed to all of the proper standards" for complying with General Design Criteria (GDC) 4 of 10 CFR Part 50, Appendix A. However, ACORN fails to identify any basis to support this allegation, either with respect to failures to commit to applicable standards or failures to meet those commitments.

Furthermore, ACORN's apparent challenge to the ability of safety-related equipment to withstand environmental conditions associated with the most severe postulated accident is totally without supporting basis. ACORN fails to identify the environmental conditions with which it is concerned or to explain the meaning of the "most severe postulated accident". As such, the contention is unacceptably vague. Further, in the event ACORN is referring to Class 9 accidents, consideration of those accidents in individual licensing proceedings is precluded as a matter of law. Offshore Power Systems (Floating Nuclear Plants), CLI-79-9, 10 NRC 257 (1979). Accordingly, for these reasons and those discussed generally above, ACORN Contention 3 should be denied.

Proposed Contention 4

Neither the Applicants nor the Staff has reliable methods for evaluating and ensuring that structures, systems and components important to safety are designed to withstand the effects of the safe shutdown earthquake without losing the capability to perform their safety functions; thus, General Design Criterion 2 has not been satisfied. [FORMERLY "Safety" Contention 4.]

ACORN again recites that this issue is identified in NUREG-0510 and the Black Fox testimony. For the reasons discussed generally above, this is not an adequate basis for admission of this contention. ACORN also makes unsupported conclusions concerning the effects of aging and cumulative radiation on the ability of electrical equipment to withstand seismic stresses caused either by an "original quake" or aftershocks. No bases are offered to support these statements. In addition, there is a reference to an NRC order requiring shutdown of five plants. ACORN fails, however, to demonstrate that this shutdown order is in any way related to Comanche Peak. These general statements fail to satisfy the basis and specificity requirements of 10 CFR §2.714(b). Accordingly, ACORN Contention 4 should be denied.

Proposed Contention 6.

The D.C. Power System for the CPSES plant fails to meet the single failure criterion as defined in 10 CFR Part 50, Appendix A. [FORMERLY "Safety" Contention 6.]

ACORN supplies no basis in support of Contention 6 other than the general reference to NUREG-0410 and the Black Fox testimony. As such, this proposed contention simply

lacks any supporting basis. For the reasons discussed generally above, ACORN Contention 6. should be denied.

Proposed Contention 7

The CPSES design does not provide adequate, reliable instrumentation to monitor variables and systems affecting the integrity of the reactor core, the pressure boundary or the containment after an accident, in violation of General Design Criterion 13 of Appendix A of 10 CFR Part 50. [FORMERLY "Safety" Contention 7.]

ACORN discusses in general terms the instrumentation at Three Mile Island and its "inadequacy" for post-accident monitoring. However, ACORN fails to demonstrate any nexus between this contention and Comanche Peak. Further, the general reference to NUREG-0410, NUREG-0510 and the Black Fox testimony is not an adequate basis to support admission of this contention. Accordingly, ACORN Contention 7 should be denied.

Proposed Contention 12

Applicants lack the ability to detect and size flaws within (1) the reactor vessel and (2) pipes within the containment. [FORMERLY "Safety" Contention 13.]

As the purported basis for this contention, ACORN merely cites to the discussion of the generic issue in NUREG-0410. ACORN provides no basis to demonstrate a nexus to Comanche Peak or any inadequacy of the treatment of this issue in the Comanche Peak application. Thus, there is no adequate basis to support admission of Contention 12. Accordingly, ACORN Contention 12 should be denied.

Proposed Contention 13

Applicants' FSAR fails to present a means for dealing with pressure transients produced by component failure, personnel error, or spurious valve actuation which exceed the pressure/temperature limits of the reactor vessel. [FORMERLY "Safety" Contention 14.]

ACORN merely states as the purported basis for this contention that it is presented as a generic issue in NUREG-0410 and discussed in the Black Fox testimony, where examples of pressure transients are identified. These general statements fail to demonstrate any nexus between Comanche Peak and the generic issue or the discussion in Black Fox. This is an inadequate basis for admission of the contention. Accordingly, ACORN Contention 13 should be denied.

Proposed Contention 15

The CPSES design fails to protect against corrosion within the steam generators which causes cracking of pipes and leakage of radioactive water. [FORMERLY "Safety" Contention 20.]

ACORN sets forth as the purported basis for this contention a vague assertion that Westinghouse PWRs are "particularly plagued" with unspecified corrosion problems. A report of two NRC Staff personnel on the corrosion problem in some reactors is also cited. ACORN fails, however, to identify with particularity the specific problem it would have litigated, and has not demonstrated a nexus between the information it cites and Comanche Peak. In addition, ACORN's

general reference to the generic issue of steam generator tube corrosion in NUREG-0410 is an insufficient basis to support the proposed contention. Accordingly, ACORN Contention 15 should be denied.

Proposed Contention 16

The CPSES design is inadequate to prevent a water hammer problem which could affect a number of critical safety components.
[FORMERLY "Safety" Contention 21.]

Again, ACORN simply refers to NUREG-0410 and the Black Fox testimony as identifying this generic issue. This is an inadequate basis for admission of this issue in the Comanche Peak case. In addition, the vague assertion that this is a "serious" problem affecting all PWRs and involving some (unidentified) "safety components" is unsupported both with respect to its substance and with respect to showing of a nexus to Comanche Peak. Thus, Contention 16 is not supported by sufficient bases to permit its admission in this proceeding. Accordingly, ACORN Contention 16 should be denied.

Proposed Contention 17

The CPSES design does not adequately address the possibility of a steam line break inside containment, nor does it insure the ability of equipment within containment to survive such an event so as to assure safe shutdown of the plant.
[FORMERLY "Safety" Contention 23.]

In support of this contention, ACORN offers only a general and unsupported conclusions that main steam line break analyses "are seriously inadequate". ACORN fails

to provide any basis for this conclusion or for its speculation as to the ability of "equipment within containment" to survive a steam line break. Also, ACORN fails to identify how the Comanche Peak application inadequately deals with this issue. Furthermore, ACORN cites only to "NUREG-1040" [sic] as recognizing this as a generic issue, and at no point supports its base allegation that the problem affects "all" PWRs of the "Comanche Peak type." Consequently, no nexus between the generic issue and Comanche Peak is shown. Accordingly, ACORN Contention 17 should be denied.

Proposed Contention 18

The CPSES design does not adequately insure the reliable operation of on-site emergency power.
[FORMERLY "Safety" Contention 24.]

ACORN refers to two generic issues identified in NUREG-0410 which concern on-site emergency power. ACORN completely fails to show any nexus between these issues and the Comanche Peak design. In addition, ACORN does not specify why that design does not insure the reliable operation of on-site emergency power. Accordingly, ACORN Contention 18 should be denied.

Proposed Contention 19

The CPSES design has not adequately resolved a generic safety problem for pressurized water reactors wherein the steam generator and reactor coolant pump support materials are subject to lamellar tearing and low fracture toughness.
[FORMERLY "Safety" Contention 25.]

ACORN simply asserts that this is a "high priority safety problem" for reactors "of the Comanche Peak type" and

is identified as a generic issue in NUREG-0410. For the reasons discussed generally above these general statements are inadequate bases for admitting Contention 19. Accordingly, ACORN Contention 19 should be denied.

Proposed Contention 21

The CPSES design has not given due consideration to the need to withstand an act of sabotage.
[FORMERLY "Safety" Contention 27.]

ACORN merely asserts that there is "no assurance" that Comanche Peak is adequately protected against sabotage, and contends that the Comanche Peak design does not give "due consideration" to the need to withstand an act of sabotage. There is no attempt to particularize the aspects of the Comanche Peak design that are inadequate for protection against an act of sabotage. Such generalized statements are not adequate bases to allow the Board to admit this contention.

In addition, ACORN states that "sabotage" is identified as an unresolved generic issue in NUREG-0410. ACORN makes no attempt to establish a nexus between this issue and Comanche Peak. For the reasons discussed generally above this is an insufficient basis for admitting this contention.

Furthermore, ACORN states that a Texas court has allowed consideration of sabotage in condemnation proceedings for Comanche Peak. This is totally irrelevant to the consideration of the ability of Comanche Peak to meet NRC requirements concerning protection against sabotage. It is, therefore, an inadequate basis for admitting Contention 21.

Finally, insofar as ACORN Contention 21 might be viewed as challenging the adequacy of NRC regulations for the protection of Comanche Peak against an act of sabotage (Part 73), such an attack is forbidden by Commission regulations without a showing of special circumstances pursuant to 10 CFR §2.758. Since ACORN has not made the required showing of special circumstances, any portion of the contention which challenges Commission regulations must be denied. Potomac Electric Power Company (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 88-89 (1974). Accordingly, ACORN Contention 21 should be denied.

Proposed Contention 22

The CPSES design fails to protect against accidents involving the movement and handling of heavy loads in the vicinity of spent fuel at the facility.
[FORMERLY "Safety" Contention 28.]

ACORN merely asserts as a purported basis for this contention that an unresolved generic issue on the general topic of movement of heavy loads around spent fuel is identified in NUREG-0410. No further explanation is offered. Thus, Contention 22 fails to set forth an adequate basis and should be dismissed.

Proposed Contention 23

The CPSES design does not adequately protect against potential damage from turbine missiles to systems essential to the cooling and safe shutdown of the plant.
[FORMERLY "Safety" Contention 30.]

ACORN simply asserts as a purported basis that turbine missiles are an unresolved generic safety issue identified in NUREG-0410. No further explanation is offered. Accordingly, Contention 23 is not supported by an adequate basis and should be dismissed.

B. Remaining Contentions

Proposed Contention 5

Present fire protection measures proposed by Applicants are not adequate to minimize the probability and effect of a fire from disabling the electrical cables for all redundant safety systems; thus General Design Criterion 3 has not been satisfied.
[FORMERLY "Safety" Contention 5.]

Applicants submit that ACORN Contention 5 should be denied because it is not supported by a reasonably specific basis as required by 10 CFR §2.714(b). In support of this contention ACORN cites the Browns Ferry fire in 1975 and several unspecified tests on fire protection materials and systems. Such generalized statements, with no particularization of the applicability to Comanche Peak, are insufficient to satisfy the basis and specificity requirements of 10 CFR §2.714(b). ACORN also maintains that present regulatory practice regarding fire protection (Regulatory Guide 1.75) is inadequate to provide the protection required by General

Design Criterion (GDC) 3 of 10 CFR Part 50, Appendix A. Yet no basis is set forth to show that fire protection measures taken for Comanche Peak fail to meet GDC 3. ACORN has, therefore, failed to supply a reasonably specific basis in support of Contention 5, which should be denied.

Proposed Contention 8

The CPSES design does not adequately account for failure of passive components in fluid systems important to safety.
[FORMERLY "Safety" Contention 8.]

Applicants oppose admission of ACORN Contention 8 because it is not supported by a reasonably specific basis as required by 10 CFR §2.714(b) and it is unacceptably vague. In support of Contention 8 ACORN generally asserts that application of the single failure criterion to "passive components" has not been adequately considered by Applicants or the NRC Staff. ACORN fails, however, to particularize its concern by identifying the "passive components" with which it is concerned or specifying how it contends single failure criteria should be applied to "passive components." Also, ACORN does not indicate why the Comanche Peak design fails to adequately address the unspecified concern. In addition, ACORN mentions this is "an open issue in RESAR-3, the design for this plant," without identifying how this assertion affects Comanche Peak. These vague generalizations and unsupported conclusions are not adequate bases to support admission of Contention 8. In any event, the

failure to particularize which "passive components" and which "fluid systems important to safety" are the subject of ACORN's concerns renders the Contention unreasonably vague and unacceptable for admission in a licensing proceeding. Accordingly, ACORN Contention 8 should be denied.

Proposed Contention 9

The CPSES design does not provide adequate equipment outside of the control room to promptly put the reactor in hot shutdown and so maintain it until attaining cold shutdown, also from outside the control room, as required by General Design Criterion 19 of Appendix A to 10 CFR Part 50.
[FORMERLY "Safety" Contention 9.]

Applicants oppose admission of Contention 9 because ACORN has failed to set forth a basis with reasonable specificity, as required by 10 CFR §2.714(b). ACORN sets forth as a purported basis for Contention 9 the conclusory and unsupported statement that Applicants and Staff have made, in evaluating the plant, the "unreasonable assumption that whatever caused the evacuation from the control room did not damage any of the equipment in the control room." ACORN sets forth no information to support this statement or its ultimate conclusion that if the control room were damaged "the plant could well lose shutdown capability." Absent a supporting basis, ACORN Contention 9 is inadmissible in this proceeding and should be denied.

Proposed Contention 10

Neither the Applicants nor the Staff has adequately considered the effects of aging and cumulative radiation on safety-related equipment which must be seismically and environmentally qualified, thus, General Design Criterion 4 has not been satisfied.
[FORMERLY "Safety" Contention 10.]

Applicants oppose admission of Contention 10 because ACORN does not set forth with reasonable specificity a basis for the contention, as required by 10 CFR §2.714(b). In support of Contention 10 ACORN merely asserts that "insufficient account" is taken of the effects of aging and cumulative radiation on "safety related equipment." ACORN also concludes, without support, that aging "can progressively weaken components." At no point is any basis offered for these generalized statements and conclusions. And at no point does ACORN particularize any inadequacies in the Comanche Peak application with regard to the consideration given by Applicants and the NRC Staff to aging and the cumulative effects of radiation on Comanche Peak safety-related equipment. There is not, therefore, an adequate basis to support admission of Contention 10. Accordingly, ACORN Contention 10 should be denied.

Proposed Contention 11

The CPSES design fails to address the possibility of a Class 9 Accident.
[FORMERLY "Safety" Contention 11.]

Applicants oppose admission of ACORN Contention 11 because it raises an issue which is proscribed from

consideration in individual licensing cases and is about to become the issue of a general rulemaking. In Offshore Power Systems (Floating Nuclear Plants), CLI-79-9, 10 NRC 257 (1979) the Commission refused to set aside the present policy against evaluation of the consequences of Class 9 accidents in individual licensing proceedings for land-based reactors. Therein, the Commission determined that the rulemaking proceeding on Class 9 accidents should be completed before further consideration of the issue in individual licensing cases. The Commission stated:

It is neither necessary or appropriate for us to employ this particular adjudicatory proceeding to resolve the generic issue of consideration of Class 9 accidents at land-based reactors. Such a generic action is more properly and effectively done through rulemaking proceedings....Therefore, we are not today expressing any views on the question of environmental consideration of Class 9 accidents at land-based reactors.

[Offshore Power Systems, supra, 10 NRC at 262.]

Consequently, it would not be appropriate to admit ACORN Contention 11 in light of the Commission's determination in Offshore Power Systems, CLI-79-9, supra, and the upcoming rulemaking proceeding on the issue. See, Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), LBP-80-___, ___ NRC ___, slip op., at 2-3 (March 10, 1980); See also, Public Service Company of Oklahoma et al. (Plack Fox Station, Units 1 and 2), CLI-80-8, ___ NRC ___, (March 21, 1980).

Furthermore, ACORN misplaces its reliance on the events at Three Mile Island as evidence that the probability of Class 9 accidents is not as low as previously contemplated, and that such accidents should therefore be considered in this proceeding. Contentions raising the issue of Class 9 accidents (which have relied on this same basis) have been repeatedly dismissed in individual licensing proceedings and should be dismissed in the instant case also. For example, the Licensing Board in the Susquehanna proceeding recently rejected a general contention seeking to have Class 9 accidents considered in light of the events at Three Mile Island. Pennsylvania Power & Light Company (Susquehanna Steam Electric Station, Units 1 and 2), LBP-79-29, 10 NRC 586, 591 (1979). In that ACORN's Contention 11 is a similar general Class 9 contention to the one raised in the Susquehanna proceeding, and is also without specific bases that would warrant consideration of Class 9 accidents for Comanche Peak, it must be denied.

Proposed Contention 14

Incorporated in Board's QA/QC contention.
[FORMERLY "Safety" Contentions 16, 17, 18, 19 and 29.]

Applicants oppose admission of ACORN Contention 14 as incorporated in the Quality Assurance/Quality Control (QA/QC) contention admitted by the Board because it is vague and not supported by a basis set forth with reasonable specificity as required by 10 CFR §2.714(b). As worded by

the Board 5/ the QA/QC contention is vague and is so broadly framed that it does not adequately specify issues capable of being argued in this proceeding. Simply stated, Applicants are not provided with sufficient guidance by the Board's proposed contention to permit Applicants to understand what issues will be litigated. Furthermore, the bases set forth by ACORN do not support the general nature of the contention as worded. Consequently, it would not be proper for the Board to admit the QA/QC contention as worded in the Board's Order.

Proposed Contention 20

The CPSES design does not adequately insure that safety-related water supplies will be available for plant operation in the event of ice build-up at the service water intake structure.
[FORMERLY "Safety" Contention 26.]

Applicants oppose admission of Contention 20 because ACORN has failed to set forth with reasonable specificity a basis in support of the contention, as required by 10 CFR §2.714(b). In support of this contention ACORN asserts simply that ice storms have "been known to occur" in the Dallas/Ft. Worth area and "certain lignite plants" were previously "incapacitated" by "freezing water resources". ACORN fails, however, to offer any support for these general assertions and does not set forth any basis to show how these occurrences would support a finding that Comanche Peak

5/ See, "Order Relative to Standing of Petitioners to Intervene," (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-79-18, 9 NRC 728, 733 (1979).

would have problems with "ice build-up at the service water intake structure," or that such ice build-up, if it were to occur, "could have disastrous consequences" for Comanche Peak. At no point does ACORN assert a basis that would support a finding that adequate cooling water would not be available to Comanche Peak in the event of such an "ice buildup." ACORN has failed, therefore, to set forth sufficient bases to support admission of the contention. Accordingly, ACORN Contention 20 should be denied.

Proposed Contention 24

Applicants have failed to comply with 10 CFR Part 50, Appendix E, regarding emergency planning, because there is no provision for emergency planning for Glen Rose or the Dallas/Ft. Worth metroplex.
[FORMERLY "Safety" Contention 31.]

Applicants oppose admission of Contention 24 because ACORN has not set forth with reasonable specificity a basis supporting admission of this contention, as required by 10 CFR §2.714(b). In support of this contention, ACORN asserts only that Applicants' effort to meet emergency planning requirements are less than those of "the Three Mile Island applicant." However, this unsupported assertion fails to suggest in any way how Applicants emergency plans are inadequate with respect to Comanche Peak. ACORN also states that Applicants have not demonstrated sufficient coordination with State and local officials to accomplish evacuation of the Dallas/Ft. Worth metropolitan area in the event of the worst postulated accident. ACORN fails to

identify the regulation which requires such evacuation capability. Furthermore, ACORN asserts without support that there are "insufficient facilities" for first-aid treatment in the Glen Rose area. ACORN has failed to supply adequate bases in support of this contention. Accordingly, ACORN Contention 24 should be denied.

Proposed Contention 25

Neither the Applicants nor the Staff has adequately considered the health effects of low-level radiation on the population surrounding CPSES.
[FORMERLY "Safety" Contention 32.]

Contention 25 and the bases set forth by ACORN in support thereof do not allege that Applicants will not meet applicable standards governing routine emissions of radioactive effluents set forth in the Commission's regulations at 10 CFR §50.34a and 50.36a, and Appendix I to 10 CFR Part 50. Thus, to the extent that the contention questions the acceptability of effluent releases in compliance with Appendix I, it is a proscribed challenge to that regulation. In any event, the contention is vague and lacking in supporting basis, and should be denied for this reason alone.

If the Board should conclude that Contention 25 meets the requirements of 10 CFR §2.714 (a result which we oppose), we submit that the Board should defer ruling on the admissibility of Contention 25 pending resolution by the Commission of the following question certified to it by

the Appeal Board in Public Service Company of Oklahoma
(Black Fox Station, Units 1 and 2), ALAB-573, 10 NRC ____
(December 7, 1979), slip op. at 29:

"Where routine radioactive emissions from a nuclear powerplant will be kept 'as low as is reasonably achievable' in accordance with Appendix I, is litigation of the health effects of those emissions in an adjudicatory proceeding involving initial licensing barred by 10 CFR §2.758 as an impermissible attack on Commission regulations?"

The Commission accepted this question on certification and received briefs on April 7, 1980.

Because ACORN Contention 25 appears to raise issues that will be addressed by the Commission in their consideration of the certified question in the Black Fox proceeding, Applicants believe it would be appropriate to defer ruling on the admissibility of Contention 25. The Board should note that another licensing board deferred ruling on a similar contention on this basis. See Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), LBP-80-__, 11 NRC ____, ____ (March 10, 1980), slip op. at 74.

Proposed Contention 26

The energy to be generated by CPSES is unneeded, unsalable and uneconomically priced in view of the order of the Texas Public Utility Commission in Docket No. 14, and thus a favorable cost-benefit balance cannot be struck. [FORMERLY "Environmental" Contention 1.]

Applicants oppose admission of Contention 26 because ACORN has failed to set forth a basis with reasonable

specificity in support of the contention, as required by 10 CFR §2.714(b). In support of Contention 26, ACORN asserts that Applicants will have reserve margins "which approximate 50 percent...until well past 1981." In addition to not setting forth any basis to support this statement, ACORN fails to demonstrate its significance in light of the 40 year life which would be authorized by the operating license for Comanche Peak. ACORN's reference to estimated reserve margins in a Texas Public Utility Commission proceeding similarly lacks a demonstration of applicability to the issue of the need for the power generated by Comanche Peak during its operating life. ACORN also fails to support the bald assertion that the order in Docket No. 14 will affect the cost-benefit analysis for Comanche Peak. In addition, ACORN's general statements regarding the accuracy of Applicants projected reserve margins lack specificity. And in any event, ACORN fails to show that the figures were not reasonable at the time made, Wolf Creek, ALAB-462, infra, 7 NRC at 328, or unacceptable in light of the uncertainty inherent in demand projections, Nine Mile Point, ALAB-264, infra, 1 NRC at 365. See also, discussion regarding Contention 27. ACORN fails, therefore, to set forth a sufficient basis.

Furthermore, the issue of need for power is generally not appropriate for consideration at the operating license stage absent a showing of significant new information developed after examination of the issue in the construction permit review, Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73, 86 (1979), or a demonstration that there is "something about the case that suggests that a detailed review would produce some conclusions that would be of significance to the operating license decision." Denial of Petition for Rulemaking, PM-50-4, 45 Fed.Reg. 10492, 10494 (February 15, 1980). See also, discussion regarding Contention 27. ACORN has failed to raise any significant new information which would warrant reexamination of this issue at this point in the proceedings. Accordingly, ACORN Contention 26 should be dismissed.

Proposed Contention 27

Applicants have failed to demonstrate a need for the power to be generated by CPSES because:

- a. The reserve margins presented in the ER reflect adequate margins through 1985 without CPSES.
- b. The figures for the Applicants' capabilities, demands and reserves set forth in the ER are inaccurate, incomplete and out of date.

[FORMERLY "Environmental" Contention 2.]

Applicants oppose admission of Contention 27 because ACORN has not set forth with reasonable specificity a basis for this contention, as required by 10 CFR §2.714(b), and the contention seeks to litigate an issue which is not

appropriately raised at the operating license stage of the proceedings. In general, the issue of need for power is more appropriately raised at the construction permit stage of the proceedings. Pennsylvania Power and Light Company, et al. (Susquehanna Steam Electric Station, Units 1 and 2), LBP-79-6, 9 NRC 291, 303-4 (1979). Indeed, the need for the power to be generated by Comanche Peak was established by the Licensing Board at the construction permit stage of this proceeding. Texas Utilities Generating Company, et al. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-74-75, 8 AEC 673, 689 (1974).

In the absence of "significant new information... developed after the construction permits review" an issue (such as the need for power) which was already considered in the construction permit proceedings should not be considered anew at the operating license stage. Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73, 86 (1979); 10 CFR §51.21. Furthermore, ACORN's generalized statements set forth as a purported basis for alleging that reserve margins are adequate through 1985 without Comanche Peak, and ACORN's allegations concerning the accuracy of the Applicants' demand and reserve figures, lack the required specificity. In fact, ACORN fails even to contend that reserve margins are adequate beyond 1985, only 3-4 years into the 40 year operational life of Comanche

Peak. ACORN fails, therefore, to set forth any basis to support the conclusion that "actual" demand and reserve figures would alter the need for power determination already made at the construction permit stage.

In any event, Applicants' projected demand and reserve figures are not required to predict precisely what the actual figures will turn out to be. It is accepted policy that "the most that can be required is that a forecast be a reasonable one in the light of what is ascertainable at the time made." Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 328 (1978), aff'd per curiam, Mid-America Coalition for Energy Alternatives v. NRC, 590 F.2d 356 (D.C. Cir. 1979). Furthermore, because some margin of error is unavoidable, Applicants' demand projections are not automatically suspect if they turn out to be "conservative," i.e., "they tend to project future loads closer to the high than to the low end of the demand spectrum", and indeed, such a result is preferable to underestimation of required generating capacity in light of the "serious" consequences if such capacity were ever to be insufficient to meet demand. Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 397, 410-411 (1976). Because this contention lacks the required specificity and basis it should not be admitted in this proceeding. Accordingly, ACORN Contention 27 should be denied.

Proposed Contention 28

The Applicants have not considered the costs of replacement of major pieces of equipment and their disposal in their cost-benefit balance.
[FORMERLY "Environmental" Contention 4.]

Applicant opposes admission of Contention 28 because ACORN fails to set forth with reasonable specificity a basis for the contention, as required by 10 CFR §2.714(b). ACORN offers no basis in support of this contention. Instead ACORN merely asserts that Applicants "have not considered" the costs of replacing "contaminated pipes" and "large pieces of machinery," and these costs "must" be considered in the cost-benefit analysis. ACORN does not provide any support for its assertion that those costs are significant for Comanche Peak or for its conclusion that those costs "must" be considered. Accordingly, ACORN Contention 28 should be denied.

Proposed Contention 29

Applicants have not considered the environmental effects of storage and ultimate disposal of nuclear waste in their cost-benefit balance.
[FORMERLY "Environmental" Contention 5.]

Applicants oppose admission of Contention 29 because ACORN has failed to set forth with reasonable specificity a basis for the contention, as required by 10 CFR §2.714(b), and the issue is the subject of a general Commission rulemaking and cannot be raised in an individual licensing proceeding.

Insofar as ACORN attempts to raise the issues of environmental effects of storage of nuclear waste on-site for the duration of the license or the disposal of such waste, no basis has been set forth in support of that assertion. ACORN has failed to specify any instances where Applicants consideration of environmental effects associated with those activities does not satisfy Commission regulations. This portion of Contention 29, is therefore, inadmissible for lack of specificity and basis.

To the extent that ACORN is attempting to raise the issue of storage of nuclear waste beyond the duration of the license, this issue is the subject of a general Commission rulemaking proceeding and may not, therefore, be raised in individual licensing proceedings. Potomac Electric Power Company (Douglas Point Nuclear Generating Station, Units 1 and 2; ALAB-218, 8 AEC 79, 85 (1974)). The Commission has initiated a rulemaking to "reassess its degree of confidence that radioactive wastes produced by nuclear facilities will be safely disposed of, to determine when any such disposal will be available, and whether such wastes can be safely stored until they are safely disposed of." 44 Fed.Reg. 61372 (October 25, 1979). The Commission specifically stated that:

during this proceeding the issues being considered in the rulemaking should not be addressed in individual licensing proceedings.

The issues are more appropriately addressed in a generic proceeding of the character here envisaged.

[44 Fed.Reg. 61373 (October 25, 1979)]

Accordingly, ACORN Contention 29 should be denied.

Proposed Contention 30

The Applicants have failed to postulate the possibilities, the effect on the environment, and the cost of "cleanups" which necessarily follow a nuclear accident such that a favorable cost-benefit balance cannot be struck. [FORMERLY "Environmental" Contention 6.]

Applicants oppose admission of Contention 30 because ACORN fails to set forth with reasonable specificity a basis for the contention, as required by 10 CFR §2.714(b), and it is speculative. ACORN fails to provide any basis for contending that unspecified costs of "cleanups" for accidents such as occurred at Three Mile Island should be considered in the Applicants' cost-benefit analysis. No support is provided for finding that such accidents should be considered likely at Comanche Peak, particularly in that Comanche Peak is a Westinghouse reactor, and Three Mile Island is a Babcock and Wilcox reactor. ACORN also fails to indicate which Commission regulations would require consideration of those costs. Consequently, the accidents which ACORN suggests would cause "clean-up costs" must be considered strictly hypothetical and the contention speculative. ACORN has not, therefore, satisfied the requirements of basis and specificity in 10 CFR §2.714(b) and ACORN Contention 30 should be denied.

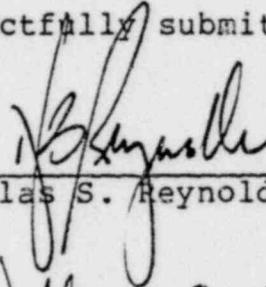
Proposed Contention 31

The Applicants have not considered the costs of safely decommissioning the facility after its useful life in the cost-benefit balance.
[FORMERLY "Environmental" Contention 7.]

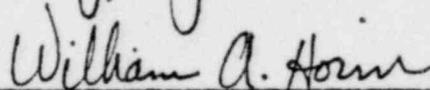
Applicants oppose admission of Contention 31 because ACORN has failed to set forth with reasonable specificity a basis for this contention, as required by 10 CFR §2.714(b), and the issue is the subject of a general Commission rule-making and should not, therefore, be considered in this individual licensing proceeding. As a purported basis for this contention, ACORN merely states that "total decommissioning costs in dollars and the incremental burden upon the environment should both be considered in the cost-benefit analysis." ACORN has failed to identify any inadequacies in Applicants' consideration of decommissioning cost in the cost-benefit analysis. Instead, ACORN simply asserts that such costs "should be considered" in the cost-benefit analysis. This is an inadequate basis for the contention. Furthermore, the issue of decommissioning is the subject of a generic rulemaking which is examining, inter alia, the methods, costs and environmental impacts of decommissioning power reactors. See 43 Fed.Reg. 10370 (March 13, 1978). Consequently, it would not be appropriate to consider the issues raised in this contention in an individual licensing proceeding. Potomac Electric Power Company (Douglas Point

Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC
79, 85 (1974). Accordingly, ACORN Contention 31 should be
denied.

Respectfully submitted,



Nicholas S. Reynolds



William A. Horin

DEBEVOISE & LIBERMAN
Counsel for Applicants
1200 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 857-9800

Date: April 10, 1980

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
TEXAS UTILITIES GENERATING) Docket Nos. 50-445
COMPANY, et al.) 50-446
)
(Comanche Peak Steam Electric)
Station, Units 1 and 2))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Applicant's Statement Of Positions On Proposed ACORN Contentions," in the captioned matter were served upon the following persons by deposit in the United States mail, first class postage prepaid this 10th day of April, 1980.

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

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

Dr. Forrest J. Remick, Member
Atomic Safety and Licensing
Board
305 E. Hamilton Avenue
State College, Pennsylvania 16801

Marjorie Ulman Rothschild, Esq.
Office of the Executive
Legal Director
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Dr. Richard Cole, Member
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

David J. Preister, Esq.
Assistant Attorney General
Environmental Protection
Division
P. O. Box 12548
Capitol Station
Austin, Texas 78711

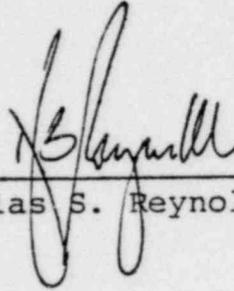
Chairman, Atomic Safety and
Licensing Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Mr. Richard L. Fouke
CFUR
1668B Carter Drive
Arlington, Texas 76010

Mrs. Juanita Ellis
President, CASE
1426 South Polk Street
Dallas, Texas 75224

Mr. Chase R. Stephens
Docketing & Service Section
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Mr. Geoffrey M. Gay
West Texas Legal Services
406 W.T. Waggoner Building
810 Houston Street
Fort Worth, Texas 76102



Nicholas S. Reynolds

cc: Homer C. Schmidt
Spencer C. Relyea, Esq.

April 10, 1980