

May 4, 1982

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



In the Matter of  
Texas Utilities Generating Company, et al.  
(Comanche Peak Steam Electric Station, Units 1 and 2)  
Docket Nos. 50-445 and 50-446

Dear Mrs. Ellis:

This is to confirm our telephone conversation of April 27, 1982, concerning certain interrogatories and requests for documents contained in "CASE'S Third Set of Interrogatories and Requests to Produce to NRC Staff," April 20, 1982, ("CASE'S Third Set"). I contacted you by telephone on April 27, consistent with the Licensing Board's direction, to discuss certain of these interrogatories and requests to produce and to attempt to reach agreement as to the information and documents to be provided. In an effort to expedite the Staff's responses to these requests, this letter and enclosures are being forwarded in lieu of a formal response to the interrogatories and requests for documents contained in CASE'S Third Set identified below. The following information is provided in response to these interrogatories and requests to produce:

Interrogatory 10:

In this interrogatory, CASE states that the information in the "trend analyses" appears to be incomplete and requests that the Staff provide for inspection and copying the entire original trend analyses for 1976, 1977, 1978 and 1979, including all "informal notes, handwritten notes, internal memoranda and any other pertinent information." (CASE'S Third Set, at 11).

The copies of trend analyses personally provided to you at the conclusion of the Staff's "Caseload Forecast Panel" meeting in Arlington, Texas on April 13, 1982, consist of pages from internal memoranda, not part of the Comanche Peak files or previously transmitted to the Applicants or made publicly available.

As stated during our telephone conversation, trend analyses were performed not only for Comanche for the years specified above, but for other facilities as well. Thus, for each year for which trend analyses were performed

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(1976, 1977, 1978 and 1979), there is a memorandum containing trend analyses for a number of facilities. The trend analysis for each facility is contained in separate pages of the same memorandum. You were provided with copies of the pages from the memoranda containing the trend analyses for Comanche Peak (as well as the memoranda requesting trend analyses for those years). The information in the trend analyses provided to you may appear "incomplete" because you were not provided with copies of the pages containing the trend analyses for other facilities. Such information relating to other facilities is not relevant to any issue in this proceeding and is certainly not necessary for a proper decision. 10 CFR § 2.720(h)(2)(ii); Texas Utilities Generating Company (Comanche Peak Steam Electric Station, Units 1 and 2), Licensing Board "Protective Order," March 23, 1982, at 3 (Unpublished Order) and "Order (Following Conference Call)," April 2, 1982, at 4 (Unpublished Order). Therefore, the Staff does not intend to provide such information relating to other facilities, as part of discovery in this proceeding.

The Staff agreed, in our telephone conversation, to make available for inspection and copying, at the NRC's Region IV offices in Arlington, Texas, the documents it has containing trend analyses for Comanche Peak and the memoranda requesting such trend analyses. In some cases, the documents are originals and in other cases, copies. As I explained to you, the Staff is not required, as a general rule, to make available in response to discovery requests, originals of documents, as opposed to copies.<sup>1/</sup> I understand that you consider the arrangements described above satisfactory. With respect to these trend analyses for Comanche Peak, the Staff has informed me that it has no "informal notes, handwritten memos, internal memoranda, or any other pertinent information," other than those documents previously provided to you. As we discussed, even if there were such documents, the Staff could properly withhold from disclosure uncirculated handwritten notes and certain types of internal memoranda containing opinions and recommendations of individual staff members: See Porter County Chapter of the Izaak Walton League of America, Inc. v. United States Atomic Energy Commission, 380 F.Supp. 630 (N.D. Ind. 1974) (Copy attached).

Interrogatory 16:

This interrogatory refers to a January 14, 1977 memorandum from Mr. William A. Crossman and requests that the information he stated he already had be provided to CASE.

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<sup>1/</sup> Staff counsel is aware, however, that the Licensing Board, based on certain circumstances, ordered the Applicants to make available to CASE for inspection and copying, certain original documents sought by CASE in its discovery against Applicants.

The document containing this information is available for inspection and copying in the NRC's Region IV offices, in Arlington, Texas, along with the documents to be provided for inspection and copying in response to Interrogatory 10.

Interrogatories 27 and 28:

These interrogatories ask about "the promise of confidentiality" provided to individuals "who make allegations or point out problems" and whether "the promise of confidentiality extends to hearings."

The nature and degree of confidentiality afforded to individuals making allegations to the NRC is discussed in the enclosed Appeal Board decision in Houston Lighting and Power Company (South Texas Project, Units 1 and 2), ALAB-639, 13 NRC 469 (1981).

Interrogatory 30

This interrogatory requests that the Staff provide for inspection and copying:

all original documents dealing with all the pumps ordered for Comanche Peak from Hayward Tyler Pump Company, including all documents dealing with inspections of any or all pumps ordered, all NRC reports on the subject of Hayward Tyler pumps, congressional investigations regarding Hayward Tyler pumps, handwritten notes, internal memoranda, and any other pertinent information known to the NRC. Include in your response all documents regarding the investigation by the NRC of this matter, not just for Comanche Peak but the entire investigation.

As I stated during our conversation, documents dealing with inspections of any or all pumps ordered for Comanch Peak are reasonably obtainable from other sources, in particular, the Applicants. Thus, this aspect of your request should be directed to the Applicants. 10 CFR § 2.720(h)(2)(ii).

During our telephone conversation, I explained that two requests have been filed under the Freedom of Information Act ("FOIA") for documents relating to the Hayward Tyler pump matter. The Staff is willing to provide you with copies of documents made available in response to these FOIA requests. The twenty-nine (29) documents provided in response to FOIA Request #82-117 (see attached list) are available for inspection and copying in the NRC's Washington Public Document Room ("PDR"). Rather than merely referring you to the PDR, where you may obtain copies of these documents at a minimal charge (5¢/pg.), in an effort to expedite the proceeding and to be cooperative, the Staff has enclosed these documents, consisting of approximately one hundred and forty (140) pages. As I explained to you, it is not certain whether originals of these documents exist and if so, where such originals are

located. In addition, the Staff would consider it burdensome to locate such originals, which, even if found, would not be sent elsewhere for inspection and copying. You agreed that copies of the documents would be sufficient, although you indicated that, based on the documents provided, you may request additional documents. Any such further requests would be considered by the Staff as they are received. In addition, the second FOIA request (#82-193), is pending before the NRC and the Staff will also send you the documents made publicly available in response that request as soon as such documents are made publicly available. Such documents will also be available in the PDR for inspection and copying.

You should be aware, as I emphasized in our conversation, that a request for documents is satisfied before the Commission, as in court, by producing them for inspection and copying. 10 CFR § 2.741, 2.744 and 2.790; Rule 34, Federal Rules of Civil Procedure. Pennsylvania Power and Light Company and Allegheny Electric Cooperative, Inc. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 338 (1980). With respect to the I&E reports previously requested by CASE as part of discovery, you requested that you be notified by telephone when such documents were available. In each instance the Staff notified you by telephone as soon as the documents were available. At your request, the Staff agreed to send the documents to you. However, in that case, and in the case of the documents requested in your latest interrogatories, when the Staff notifies you that the documents are available for inspection and copying, the Staff has discharged any obligation it had to make such documents available as part of discovery.

Sincerely,

Marjorie U. Rothschild  
Counsel for NRC Staff

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Enclosures:

1. 630 F.Supp. 630
2. ALAB-639, 13 NRC 469 (1981)
3. Documents made available in response to FOIA Request #82-117

cc w/o enclosure: Service List

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