

10/11/82

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF RESPONSE TO MEMORANDUM
AND ORDER OF SEPTEMBER 22, 1982

I. INTRODUCTION

On September 22, 1982, the Atomic Safety and Licensing Board ("Licensing Board") issued a "Memorandum and Order ("Order") in which it noted that at the close of the evidentiary hearings held September 13-17, 1982, it:

". . . requested briefs from the parties concerning necessary documents and information which the Board needs in order to close the evidentiary record, and the dates by which such evidence will be available (Tr. 5766)." (Order, at 2).

According to the Licensing Board:

". . . these briefs should address what materials, studies and documents the Board needs to develop a full record and conclude evidentiary hearings on . . . contentions, as well as the dates when these materials will be available (Tr. 5766-68, 5772)." (Order, at 4).

The Licensing Board stated that at the hearing it:

". . . indicated that it was particularly concerned with filings to be supplied by the Staff, but it did not limit the briefs to considering only Staff materials (Tr. 5766)." (Order, at 4).

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In its Order, the Licensing Board directed that the briefs shall address the following questions:

- (1) What filings, documents or materials are necessary to assure an adequate record on all contentions, including the allegations of Mr. Walsh and Mr. Doyle, especially where those allegations concern the quality of the design and installation of safety-related pipe hangers. This should include a discussion of when the Staff will address these and other allegations.
- (2) The significance of the remaining SSERs both in terms of their relation to the contentions and of the effect their scheduling may have on the conclusion of this hearing.
- (3) All regulatory and procedural requirements which the Board must find are satisfied if it is to authorize the issuance of operating licenses for the Comanche Peak plant. [footnotes omitted] (Order, at 4-5).

The Staff has addressed these questions as set forth below.

II. BACKGROUND

During the evidentiary hearing sessions in this proceeding,^{1/} evidence has been presented with respect to Contentions 5,^{2/} 22,^{3/} and

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- ^{1/} Evidentiary hearing sessions were held on December 2-3, 1981; June 7-11, 1982; July 26-30, 1982, and September 13-17, 1982.
 - ^{2/} Contention 5 generally asserts that the Applicants' quality assurance/quality control ("QA/QC") program during construction was deficient and that operating licenses accordingly should not be issued. See Section III.B.1., infra.
 - ^{3/} Contention 22 asserts that the Applicants have failed to comply with the requirements of 10 CFR Part 50, Appendix E because of certain alleged deficiencies in the Comanche Peak emergency plan. See Section III.B.2., infra.

25,^{4/} as well as the questions posed by the Licensing Board regarding the Applicants' QA/QC program for operation ("Board Question" No. 2) and deletion of the Boron Injection Tank ("BIT").^{5/}

The first evidentiary hearing session was held December 2-3, 1981, at which the Applicants and the Staff presented direct testimony concerning Contention 25 (which as explained in footnote 4, supra, is no longer an issue in controversy) and Board Question No. 2. (Tr. 506-662). In addition, the Staff, in accordance with 10 C.F.R. § 2.743(g), offered into evidence its Safety Evaluation Report ("SER")^{6/} and Final

^{4/} The Licensing Board subsequently dismissed that contention (relating to Applicants' financial qualifications) in view of the amendment to regulations "removing financial qualifications issues...from consideration in operating license proceedings." Licensing Board's "Order (Following Conference Call)," April 2, 1982, at 3; 10 C.F.R. § 50.47(a)(4).

The other contentions admitted by the Licensing Board in its "Order Subsequent to the Prehearing Conference of April 30, 1980," June 16, 1980, were subsequently dismissed by the Licensing Board, upon the withdrawal of the sponsoring intervenors or upon summary disposition.

^{5/} Testimony concerning Board Questions 1 (related to handling hydrogen gas in the containment) and 3 (related to resolution of Safety Issue TAP A-9, "ATWS") was not presented at the evidentiary hearing sessions since the Licensing Board determined that the information which the Applicants and Staff supplied prior to the June hearing session was sufficient "for the purposes for which the Board raised those questions." (Tr. 693, 730-31). See Board Exhibits 1A, B, C, D and E (hydrogen control) and Board Exhibit 3 ("ATWS").

^{6/} See "Safety Evaluation Report Related to the Operation of Comanche Peak Steam Electric Station, Units 1 and 2," July 1981 and Supplement No. 1 ("SSER"), October 1981. Subsequently, on January 1982, the Staff issued Supplement No. 2 to its SER ("SSER No. 2"). The Staff served copies of SSER No. 2 upon the Board and parties. (See Letter from Staff counsel to Licensing Board members and the parties dated February 19, 1982).

Environmental Statement ("FES")^{7/} related to the operation of Comanche Peak. These documents were admitted into evidence as Staff Exhibits 1, 2 and 3, respectively. (Tr. 291) The Intervenor, Citizens Association for Sound Energy ("CASE") did not present any direct testimony concerning the issues considered at the December hearing session.

Another evidentiary hearing session was convened June 7-11, 1982, to consider Contention 5, Board Questions 1 and 3, and the Board's questions concerning deletion of the BIT.^{8/} The Applicants and the Staff, in accordance with the schedule adopted by the Licensing Board, pre-filed written direct testimony regarding Contention 5.^{9/} The direct testimony pre-filed by the Applicants and the Staff concerning Contention 5 addressed the basic issue raised in Contention 5, namely, the adequacy of the Applicants' QA/QC program during construction. The Staff's testimony reflected its inspection and investigative findings with respect to the Applicants' implementation of the QA/QC program during construction, including actions by the Applicants to correct deficiencies arising during construction.

After testifying concerning the deletion of the BIT (Tr. 734-770; 771-783), but prior to presentation of the Applicants' pre-filed written direct testimony on Contention 5, the Applicants and the Staff provided

^{7/} See "Final Environmental Statement Related to The Operation of Comanche Peak Steam Electric Station, Units 1 and 2," September 1981.

^{8/} See fn. 5, supra, regarding Board Questions 1 and 3.

^{9/} With respect to Contention 5, see Applicants' Testimony of David N. Chapman, et al. and "Testimony of NRC Staff (Region IV) Regarding Contention 5."

oral direct testimony in response to the Licensing Board's request at the June 7, 1982 hearing session (Tr. 694). That testimony concerned allegations raised by CASE on June 3, 1982^{10/} with regard to cracks in the Comanche Peak Unit No. 1 reactor cavity shield wall and the rock overbreak which occurred during Comanche Peak excavation. (Tr. 789-1401). CASE presented no direct testimony regarding these matters. At the close of the June hearing session, the Applicants began presentation of their direct testimony pre-filed May 24, 1982 addressing the adequacy of the Comanche Peak construction QA/QC program. (Tr. 1402-1904).^{11/} However, the hearing adjourned on June 11, 1982, before Applicants had completed this testimony.

On June 10, 1982, the Licensing Board adopted a schedule for another evidentiary hearing session to be held July 26-30, 1982. (Tr. 1539-43). The schedule adopted by the Board provided an additional period for further discovery, identification of witnesses and pre-filing of written direct testimony, since CASE had stated during the June hearing session (see, e.g. Tr. 1464) that potential witnesses had recently contacted CASE with allegations relating to the Applicants' QA/QC program, and that CASE wished to present testimony from these individuals.^{12/}

^{10/} "Intervenor Citizens Association for Sound Energy's Motion to Stay Licensing Board's Order Scheduling Hearings on Contention 5 for June 7," June 3, 1982.

^{11/} During the course of Applicants' testimony, the Licensing Board allowed an NRC Staff witness, Robert G. Taylor, to testify regarding certain questions which arose as Applicants' witnesses were testifying. (Tr. 1711-1738).

^{12/} In an Order dated July 13, 1982, the Licensing Board subsequently modified this schedule to extend the deadline for filing testimony to July 19, 1982. See "Order," July 13, 1982.

The hearing session resumed July 26, 1982, at which time Applicants continued their testimony. Such testimony included not only the testimony pre-filed May 24, 1982, but the additional testimony pre-filed by the Applicants on July 19, 1982, concerning "the Lobbin Report"^{13/} and certain allegations made by CASE in connection with Contention 5 relating to moment limiting restraints, pipe whip restraints and shims in the polar crane girder support bracket assemblies.^{14/} Presentation of this testimony was completed on July 26, 1982 (Tr. 1927-2306).

On July 27, 1982, the Staff presented its written direct testimony pre-filed May 24, 1982 concerning the adequacy of the Comanche Peak QA/QC program during construction, as well as Staff's supplemental testimony pre-filed July 19, 1982. (Tr. 2312-2706). The Staff's supplemental testimony consisted of 1) errata and addenda correcting and updating the testimony pre-filed May 24, 1982;^{15/} 2) testimony regarding the Staff's annual assessments of Applicants' performance^{16/} and testimony regarding the Staff's inspection and investigative findings concerning the allegations made by a former QA inspector employed by Brown and Root, Inc.

^{13/} See Testimony of B. R. Clements and Frederick B. Lobbin.

^{14/} See Testimony of David N. Chapman, et al.

^{15/} "Errata and Addenda to NRC Staff's Direct Testimony Pre-Filed on May 24, 1982."

^{16/} "Supplemental Testimony of William A. Crossman, Robert C. Stewart and Robert G. Taylor Regarding Annual Assessments of Applicants' Performance (Contention 5)."

("B&R") at the Comanche Peak site, whom CASE stated at the June hearing session (Tr. 1451-53, 1457) it intended to call as a witness.^{17/}

Although CASE had pre-filed testimony on July 16, 1982 and July 19, 1982, by several former workers at Comanche Peak,^{18/} prior to presentation of their testimony, on July 29, 1982, another individual, Mark Anthony Walsh, who had made a limited appearance on July 28, 1982, testified concerning alleged irregularities in the Applicants' design of pipe supports and pipe frames (Tr. 2712-2718). Subsequently, CASE witnesses Charles A. Atchison and Robert and Cordella Hamilton offered their pre-filed written direct testimony. Since the testimony of other CASE witnesses was not completed at the close of the July hearing session, on July 30, 1982, the Board established another hearing schedule providing for resumption of the hearing on September 13, 1982, as well as a further period for limited discovery and for filing rebuttal testimony. (Tr. 3535-3562).^{19/}

The Applicants, the Staff and CASE pre-filed written testimony on September 2, 1982. The Applicants' and Staff's testimony consisted of direct testimony concerning Contention 22 (relating to emergency

^{17/} "Testimony of NRC Staff Members Robert G. Taylor and Donald D. Driskill Regarding NRC Staff Investigation and Inspection Findings on Allegations by Charles Atchison."

^{18/} See Testimony of Charles A. Atchison, et al.

^{19/} The purpose of the resumed hearing was to complete testimony on Contention 5 and to take testimony on Contention 22. As confirmed by the Licensing Board in its "Scheduling Order," August 6, 1982, the schedule called for pre-filed written testimony to be in the hands of the Licensing Board and the parties on September 3, 1982, and for the hearing to commence September 13, 1982.

planning)^{20/} and testimony in rebuttal to the testimony of the CASE witnesses who testified at the July hearing session.^{21/} CASE filed "revised" testimony of Henry and Darlene Stiner,^{22/} supplemental testimony of Mark Walsh^{23/} and in addition, a deposition taken by CASE of Jack Doyle.^{24/}

At the hearing session commencing September 13, 1982, CASE resumed presentation of the testimony of its witnesses: Mr. and Mrs. Stiner (Tr. 4014-4369); Mr. Walsh (supplemental testimony) (Tr. 3611-3615) and Mr. Doyle (Tr. 3532-4011; 4706-4761). The Applicants then testified in rebuttal to Mr. Walsh and Mr. Doyle (Tr. 4768-5305). The Staff's

^{20/} See 1) Applicants' testimony of Richard A. Jones, *et al.* (a panel) and Alton B. Armstrong, *et al.* (a panel), and 2) "NRC Staff Testimony of David M. Rohrer Regarding Emergency Planning (Contention 22)" and "FEMA Staff Testimony of Albert Lookabaugh and John Benton Regarding Emergency Planning" (Contention 22.)

^{21/} The Applicants filed the testimony of C. Thomas Brandt, *et al.* (a panel) and Kenneth L. Scheppele, *et al.* (a panel).

The Staff filed "NRC Staff Testimony of Joseph I. Tapia and W. Paul Chen In Rebuttal to the Testimony of Mark Anthony Walsh Concerning The Design of Pipe Supports."

^{22/} See "Testimony of Henry A. Stiner Witness for Intervenor CASE (Citizens Association In Sound Energy)" and "Testimony of Darlene K. Stiner Witness for Intervenor CASE . . ."

^{23/} See "Supplementary Testimony of Mark A. Walsh Witness for CASE . . ."

^{24/} See "Oral Deposition of Jack Doyle," Vols. I and II, August 19-20, 1982.

rebuttal testimony followed. (Tr. 5323-5396).^{25/} However, the Licensing Board suspended cross-examination of the Staff's panel (Tr. 5384, 5391-94), stating that:

" . . . the conclusions reached by the panel were incomplete and tentative (Tr. 5382-87)." Memorandum and Order of September 22, 1982, at 3.

As the Licensing Board further noted in its Order:

The Board suspended their cross-examination (Tr. 5384, 5391-94) until the witnesses had completed their analyses of the allegations made by Mr. Walsh and Mr. Doyle and could present their professional conclusions concerning the safety of the plant's piping system and pipe supports (Tr. 5385, 5407, 5413-16) [footnote omitted]. (Order, at 3).

Evidence concerning the only remaining contention (Contention 22, relating to emergency planning), was then presented and completed (Tr. 5428-5764). At the close of the hearing session (Tr. 5766), the Board requested that the parties submit briefs by October 12, 1982, concerning:

" . . . necessary documents and information which the Board needs in order to close the evidentiary record, and the dates by which such evidence will be available (Tr. 5766)." Order, at 1.

^{25/} The purpose of the Staff's testimony was to address five broad areas of concern raised by Mr. Walsh relating to the Applicants' design of pipe supports and pipe frames. (Tapia/Chen, Tr. 5334, 5335). The Staff's testimony set forth the initial findings and opinions of the Staff witnesses on these matters, based upon their review of Mr. Walsh's testimony and Mr. Tapia's special inspection at the Comanche Peak site. The Staff witnesses indicated that the Staff will conduct a special inspection in view of the allegations of Mr. Doyle, the other intervenor witness whose testimony a few days earlier contained similar allegations to those of Mr. Walsh. (Tr. 5353). The Staff's testimony was received into evidence, "subject to cross-examination." (Tr. 5332).

In its September 22, 1982 Order, the Board directed that the parties address three questions. (Order, at 1-2). The Staff's discussion below addresses these questions.

III. DISCUSSION

The three specific matters the Licensing Board asked to be addressed are:

- (1) What filings, documents or materials are necessary to assure an adequate record on all contentions, including the allegations of Mr. Walsh and Mr. Doyle, especially where those allegations concern the quality of the design and installation of safety-related pipe hangers. This should include a discussion of when the Staff will address these and other allegations.
- (2) The significance of the remaining SSERs both in terms of their relation to the contentions and of the effect their scheduling may have on the conclusion of this hearing.
- (3) All regulatory and procedural requirements which the Board must find are satisfied if it is to authorize the issuance of operating licenses for the Comanche Peak plant. [footnotes omitted] (Order, at 4-5).

Discussion of these matters is of necessity interrelated.

A. Findings of Fact and Conclusions of Law are Required Only for the Matters in Controversy

The scope of matters upon which Licensing Boards are to make findings in contested operating license proceedings is specified in 10 C.F.R. 2.760a:

In any initial decision in a contested proceeding on an application for an operating license for a production or utilization facility, the presiding officer shall make findings of fact and conclusions of law on the matters put into controversy by the parties to the proceeding and on matters which have been determined to be the issues in the proceeding by the Commission or the presiding officer. Matters not put into controversy by the parties will be

examined and decided by the presiding officer only where he or she determines that a serious safety, environmental, or common defense and security matter exists...."

As pointed out above, the only matters in controversy between the parties remaining in the proceeding are those encompassed by Contentions 5 and 22, both of which are safety issues. There are no other issues which have been determined to be matters in controversy in the proceeding.

Although the Board asked certain "Board Questions"^{26/} to be addressed by the Applicants and the Staff,^{27/} we do not believe that the Board had determined that these matters constituted serious safety, environmental or common defense and security matters pursuant to 10 C.F.R. 2.760a.^{28/} Rather, the Staff believes that the Board sought information to assist it in making such a determination if appropriate. The Applicants and Staff fully addressed each of the Board's questions.^{29/} The Board explicitly found, with respect to Board Questions 1 and 3, that the information the Applicants and the Staff provided is sufficient "for the purposes for which the Board raised those questions." (Tr. 693, 730-31). The Staff also submits that the information provided by the Applicants and the Staff in response to the other questions ("Board Question No. 2" and the questions concerning deletion of the "Boron Injection Tank") is comprehensive and responsive and thus is also sufficient to demonstrate that no

^{26/} See p. 3, supra.

^{27/} See the Licensing Board's "Order Subsequent to Prehearing Conference of April 30, 1980," June 16, 1980 and "Order Following Conference Call," April 2, 1982.

^{28/} Cf., Texas Utilities Generating Company (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-81-36, 14 NRC 1111 (1981).

^{29/} See p. 3, supra.

serious safety question exists with respect to such matters. Thus, on the basis of the present record on these questions, the Board may conclude that with respect to each of these matters no "serious safety, environmental, or common defense and security matter exists," and need make no findings under 10 C.F.R 2.760a.

B. In Order to Authorize Issuance of Operating Licenses, The Licensing Board Must Find that Comanche Peak Satisfies or Will Satisfy Applicable Commission Regulations

With respect to safety issues in controversy as to which the Board is to make findings, the fundamental obligation of a Licensing Board in determining whether an operating license application satisfies the standards for licensing is to ascertain compliance with Commission regulations.^{30/} Thus insofar as Contentions 5 and 22 are concerned, the Licensing Board must determine whether the evidence demonstrates that the Comanche Peak facility satisfies or will satisfy the applicable requirements of the Commission's regulations.

1. Contention 5

Contention 5 asserts that because of Applicants' failure to comply with the QA/QC requirements of the construction permits, failure to

^{30/} Maine Yankee Atomic Power Company (Maine Yankee Atomic Power Station), ALAB-161, 6 AEC 1003 (1973). See also Maine Yankee Atomic Power Co. (Maine Yankee), ALAB-161, 6 AEC 1003, 1006 (1973), remanded for elaboration, CLI-74-2, 7 AEC 2 (1974), further statement of Appeal Board views, ALAB-175, 7 AEC 62 (1974), affirmed sub nom., Citizens for Safe Power v. N.R.C., 524 F.2d 1291 (D.C.Cir. 1975). Accord, Potomac Electric Power Company (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-277, 1 NRC 539, 545 (1975) and Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, 42 (1977) citing Maine Yankee, supra. - both construction permit cases.

comply with QA/QC requirements of Appendix B to 10 C.F.R. Part 50 and because of certain construction practices, there are substantial questions as to the adequacy of construction of the facility and as a result the findings of 10 C.F.R. 50.57(a) cannot be made.^{31/}

The principal regulations involved in this contention are 10 C.F.R. 50.57(a)(1),^{32/} and 10 C.F.R. Part 50, Appendix B, "Quality Assurance Criteria for Nuclear Power Plants . . .". These provisions of the regulations bear upon whether the facility can be operated without

31/ In particular, Contention 5 states:

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 C.F.R. 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 C.F.R. 50.57(a) necessary for issuance of an operating license for Comanche Peak.

32/ 10 CFR § 50.57(a)(1) provides:

(a) Pursuant to § 50.56, an operating license may be issued by the Commission, up to the full term authorized by § 50.51, upon finding that:

(1) Construction of the facility has been substantially completed, in conformity with the construction permit and the application as amended, the provisions of the Act, and the rules and regulations of the Commission . . .

endangering the public health and safety, which is the finding encompassed by 10 C.F.R. 50.57(a)(3).

Thus, in order to authorize issuance of operating licenses for Comanche Peak, the Licensing Board must find, with respect to this contention, that the Applicants have developed and implemented their QA/QC program in a manner which provides reasonable assurance that the facility can be operated without endangering the health and safety of the public. Consolidated Edison Company of New York (Indian Point Station, Unit No. 2), LBP-73-33, 6 AEC 751, 755-56 (1973), affirmed, ALAB-188, 7 AEC 323, 336 (1974), remanded on other grounds, CLI-74-23, 7 AEC 947 (1974) (See discussion on p. 18, infra and footnote 34, p. 17, infra); Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), LBP-77-68, 6 NRC 1127, 1154-55 (1977), affirmed, ALAB-491, 8 NRC 245 (1978). However, as the Appeal Board observed in Indian Point:

Whether licensing can be authorized in light of existing deficiencies obviously depends on the significance of the deficiencies. For example, deficiencies may include non-compliance with regulatory criteria which have to be satisfied in order for the necessary findings for licensing authorization to be made . . . But this is not translated into an overall requirement that there can be no licensing if there are any outstanding deficiencies even though the necessary licensing findings can be made.

Consolidated Edison, 7 AEC at 334.

Moreover, as pointed out by the Licensing Board and subsequently quoted with approval by the Appeal Board:

No quality assurance program, however thorough, can guarantee that there will be no errors in design or construction, or failures of equipment, or misoperation in a nuclear plant.

Id., quoting Consolidated Edison Company, LBP-73-33, 6 AEC 751, 755-56.

The Evidentiary Record on Contention 5

The record in this proceeding with regard to Contention 5 consists of a number of parts. The Applicants' and Staff's initial testimony provided a comprehensive discussion of the Applicants' QA/QC program and its implementation during construction. We believe that this testimony would support a finding that the QA/QC program and its implementation conform in an overall fashion with the requirements of the construction permits and with the requirements of Appendix B. If unrebutted, it would support a conclusion that the QA/QC program assures that plant has been and is being constructed and will continue to be constructed in conformance with the construction permit requirements, the application as amended, and the Commission's regulations.

Intervenors have offered testimony of certain witnesses containing allegations of specific irregularities in the construction QA/QC program and assertions of specific construction deficiencies. If the Board were to find such evidence convincing, it could infer that the Applicants' QA/QC program may not be fully effective. The Applicants have presented rebuttal testimony refuting the assertions of irregularities and deficiencies and the significance of the allegations.

In terms of addressing the deficiencies alleged by CASE's witnesses, the Staff has offered evidence concerning the specific construction deficiencies alleged by Mr. Atchison. That Staff testimony refutes the existence of significant deficiencies in the construction of Comanche Peak. The Staff has also offered testimony regarding its initial find-

ings with respect to some of the matters alleged by Mr. Walsh (which may correspond to matters alleged by Mr. Doyle) and indicated that it would subsequently evaluate the other allegations of deficiencies made by Messrs. Walsh and Doyle.

The Applicants have asserted that:

. . . the record as it stands right now is more than adequate for the Board to make findings on the allegations raised by Mr. Walsh and Mr. Doyle. (Tr. 5416).

At this stage, since the Staff's assessment of the Walsh/Doyle allegations is not complete, the Staff can neither affirm nor deny whether the Applicants' response is in fact complete and satisfactory with respect to the Walsh/Doyle allegations. As pointed out during the September hearing, the Staff is undertaking an inspection to examine the allegations raised by Messrs. Walsh and Doyle (Tr. 5353) and will inform the Board and parties of its findings when they are completed.

If the Licensing Board concludes that the evidence of record is sufficient for it to make findings on the issues in controversy in Contention 5, it may close the record now and proceed to its decision.^{33/} If the results of the Staff assessment of the Walsh/Doyle allegations simply confirm the prior Staff and Applicant evidence, there may be no need for any further evidence to be introduced into the record. If on the other hand, the Staff inspection concludes that evidence of record is incomplete, inaccurate or otherwise unsatisfactory with respect to the

^{33/} In order to close the record, the Board should act on the Chen/Tapia testimony of September 17, 1982, which has been admitted thus far only on a limited basis. (Tr. 5332).

Walsh/Doyle allegations, the Staff would promptly bring this information to the attention of the Board and the parties.

As an alternative, if the Board concludes that the evidence of record is sufficient on the QA/QC and construction deficiency issues of Contention 5 to conclude that any remaining deficiencies (not resolved by the evidence already admitted) would not have a significant bearing on the required findings, post hearing resolution of the remaining minor aspects could be left to the Staff in accordance with the guidance of the Commission in Consolidated Edison Company of New York (Indian Point Station, Unit No. 2), CLI-74-23, 7 AEC 947 (1974), provided the intervenors were accorded a "reasonable opportunity to be heard on the Staff's report. . ." ^{34/} Id. at 949.

A third alternative, if the Board itself wishes to receive the Staff assessment of the Walsh/Doyle allegations before reaching a conclusion on Contention 5, would be for the Board to hold the record open for receipt of the Staff evidence, and upon receipt, afford the parties an opportunity to be heard on the Staff evidence. The exact procedure would depend on the nature of the findings in the Staff evidence. For example, the findings may be such that submission of affidavits is sufficient for the Board, with an opportunity for responding affidavits from the parties. It may be that the parties could show a need for cross-examination of witnesses or the Board may find interrogation of witnesses to be valuable. We believe that determination of the appropriate procedure for the introduction of the Staff evaluation on the Walsh/Doyle allegations can await

^{34/} Depending on the specific matters involved, this may or may not include further evidentiary hearings. Consolidated Edison Company, 7 AEC 947, at 949 (footnote 3).

the completion of the evaluation and its submission to the Board and the parties.

Keeping the record open on the Staff report on the Walsh/Doyle allegations is consistent with the guidance of the Commission in Consolidated Edison Company, CLI-74-23, in which the Commission noted that: ". . .the 'post hearing' approach should be employed sparingly and only in clear cases. In doubtful cases the matter should be resolved in an adversary framework prior to issuance of licenses, reopening hearings if necessary." Id., 7 AEC at 952. See also Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 and 2), ALAB-298, 2 NRC 730, 736 (1975); Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-461, 7 NRC 313, 318 (1978).

In addition to its report concerning the Walsh/Doyle allegations, the Staff has also indicated that it will also conduct a final inspection of seismic stress calculations based on as-built conditions, as reflected in NRC Bulletin 79-14, "Seismic Analysis for As-Built Safety-Related Piping Systems" (Tr. 5338, 5413-5414). To the extent that the Walsh/Doyle allegations are resolved without need to complete the 79-14 inspection, we believe that the questions involved in 79-14 are sufficiently minor, with respect to the issues raised by Contention 5, that the Board can close the record without awaiting the Staff's 79-14 report.^{35/}

Another matter having a potential connection with the QA/QC issues involved in Contention 5, is the matter reflected in Board Notification 82-90,

^{35/} As the Licensing Board has stated, it does not necessarily have to await this inspection in order to close the record on Contention 5. (Tr. 5408-5409). The Board left this judgment up to the Staff. (Tr. 5409).

"Welds in Main Control Panels," September 8, 1982.^{36/} We will supplement Board Notification 82-90 and advise the Board specifically as to whether we believe that this matter, in fact, has a material bearing on the issues raised in Contention 5 or affects any evidence submitted in the proceeding, or whether there is any other reason that the hearing record needs to be amplified with respect to this matter.

The Staff indicated that there will be forthcoming supplements to the Staff's Safety Evaluation Report ("SSER's").^{37/} No issue currently projected to be covered in these SER supplements has a substantial bearing on matters raised by Contention 5 (See Attachment 1).^{38/} The Staff

^{36/} The Licensing Board's Memorandum and Order (fn. 4, at p. 4) cites Revision 1 (September 17, 1982) to IE Information Notice 82-34, whereas Board Notification 82-90 was accompanied by the August 20, 1982 version of IE Information Notice 82-34. With respect to Comanche Peak, the Board Notification may have some relevance to Contention 5.

^{37/} The remaining SER supplements are significant in this proceeding only insofar as they relate to the matters in controversy. 10 C.F.R. § 2.760a. Duke Power Company (William B. McGuire Nuclear Station, Units 1 and 2) ALAB-669, 15 NRC 453, 457 (1982. cf. Texas Utilities Generating Company, CLI-81-36, 14 NRC 1111 (1981). As the Appeal Board noted in McGuire:

Under the Commission's requirements for operating license proceedings, a Licensing Board's role is limited to resolving matters that are raised either by parties or by the Board sua sponte. All other matters that must be considered prior to the issuance of the requested operating license are the responsibility of the Director [Office of Nuclear Reactor Regulation] alone. 10 C.F.R. § 2.760a; Consolidated Edison Co. (Indian Point, Units 1 and 2), ALAB-319, 3 NRC 188, 190 (1976). 15 NRC 457, at fn. 1.

^{38/} The Licensing Board, based on the information the Staff provided at the hearing in response to the Board's inquiries (Tr. 5417; 5426), listed in its September 22, 1982, Order the items which will be covered in forthcoming SER supplements. (Order at 2). Based upon revised projections for submittal of information by the Applicants and a reappraisal of the effort necessary to resolve the remaining open items, the Staff has readjusted its projection of the open items to be covered in the remaining SER supplements. (See Attachment 1). As indicated in Attachment 1, the Staff now expects to issue SER supplement No. 3 within the next four weeks, rather than October 15, 1982. The estimated issuance dates for the other SER supplements have not changed.

expects to include in its last SER supplement its report on the Applicants' "Independent Design Verification Program" ("IDVP"). The IDVP is a special assessment of near-term operating license applicants to insure that the facility in question has been designed and built in accordance with the application, i.e., the Final Safety Analysis Report ("FSAR"). This special assessment is confirmatory in nature and as such the Staff does not expect that it would negate a finding that the Applicants' QA/QC program has been implemented in a manner which provides reasonable assurance that the facility can be operated without endangering the health and safety of the public. Of course if the IDVP cast doubt on the adequacy of the Applicants' QA/QC program, such information could provide the basis for a motion to reopen the record by the Staff or any other party.

In summary, the Staff believes that with the exception of the matters relating to the Walsh/Doyle allegations, and Board Notification 82-90, the record on Contention 5 can and should be closed. We expect to be able to indicate an explicit view on whether the record can be closed or whether there is any need for supplementation of the record on matters raised by that Board Notification within approximately three weeks. With respect to the Walsh/Doyle allegations, the record may be closed without further Staff evidence if the Board believes that the Applicants' evidence is complete and satisfactory on these allegations. Since the Staff has not yet completed its review of the Walsh/Doyle allegations, it cannot affirm whether the Applicants' evidence on this issue is in fact complete and satisfactory. If the Board wishes to receive the Staff's assessment of the Walsh/Doyle allegations before reaching a conclusion on Contention 5, it should hold the record open only on this aspect of Contention 5 to receive the Staff assessment and responses from the parties. The Staff

expects to complete its evaluation of the Walsh/Doyle allegations by December 31, 1982.

2. Contention 22 (Emergency Planning)

Contention 22 raises six specific issues relating to the adequacy of the Applicant's Emergency Plan, the State of Texas Emergency Management Plan ("State Plan"), and the Hood and Somervell Counties' Emergency Operations Plans ("County Plans") and asserts that, as a result of these asserted deficiencies, Applicants have failed to comply with 10 C.F.R. Part 50, Appendix E.^{39/}

^{39/} Specifically, Contention 22 states:

Applicants have failed to comply with 10 C.F.R. Part 50, Appendix E, regarding emergency planning, for the following reasons:

- a. The FSAR does not identify state or regional authorities responsible for emergency planning or who have special qualifications for dealing with emergencies.
- b. No agreements have been reached with local and state officials and agencies for the early warning and evacuation of the public, including the identification of the principal officials by titles and agencies.
- c. There is no description of the arrangements for services of physicians and other medical personnel qualified to handle radiation emergencies and arrangements for the transportation of injured or contaminated individuals beyond the site boundary.
- d. There are no adequate plans for testing by periodic drills of emergency plans and provisions for participation in the drills by persons whose assistance may be needed, other than employees of the Applicant.
- e. There is no provision for medical facilities in the immediate vicinity of the site, which includes Glen Rose.
- f. There is no provision for emergency planning for Glen Rose or the Dallas/Ft. Worth metroplex.

The principal regulations relevant to this contention are 10 C.F.R. § 50.47, "Emergency Plans" and 10 C.F.R. Part 50, Appendix E, "Emergency Plans for Production and Utilization Facilities." In 10 C.F.R. § 50.47(b) the Commission has set forth 16 standards which emergency response plans must meet, in order to provide adequate protective measures in the event of a radiological emergency. These provisions are supplemented by the provisions of 10 C.F.R. Part 50, Appendix E. Although the NRC Staff must assure that all 16 standards have been met by the onsite and offsite emergency plans, the Board's responsibilities are considerably more narrow. Pursuant to 10 C.F.R. § 2.760a, the board is to determine whether those aspects of emergency planning raised by Contention 22 satisfy the applicable regulations.

Specific provisions applicable to the particular issues raised in Contention 22 are as follows: with respect to Contention 22(a), the applicable provisions are 10 C.F.R. §§ 50.47(b)(1) and (3); with respect to Contention 22(b) the applicable standards are 10 C.F.R. 50.47(b)(5) and (6); with respect to Contention 22(c) the applicable standard is 10 C.F.R. § 50.47(b)(12); with regard to Contention 22(d) the applicable standard is 10 C.F.R. § 50.47(b)(4); with respect to Contention 22(e), the applicable standard is § 50.47(b)(12); and with respect to Contention 22(f), the applicable standard is 10 C.F.R. 50.47(b)(10).

The Section 50.47(a)(1) and 50.47(b) findings do not necessarily correspond to the actual state of emergency preparedness at the time the finding is made by the Board (the date of issuance of an Initial Decision.) Applicants may demonstrate a reasonable assurance of adequacy based "in part on future actions." Southern California Edison Company (San Onofre Nuclear Generating Station, Units 2 and 3), LBP-82-____, ____ NRC ____ (May 14, 1982), (Slip Opinion at 76-77). The Commission's Statement of

Consideration on amendments to Section 50.47, clearly sets forth the Commission's view that emergency preparedness findings are "predictive":

The findings on emergency planning required prior to issuance of a license would, insofar as satisfactory implementation of preparedness are concerned, [are] essentially predictive in nature.

46 Fed. Reg. 61134-35 (December 15, 1981).^{40/}

The concept of predictive findings in emergency preparedness is also embodied in Section 50.47(c)(1). That Section provides that the Commission may issue an operating license, despite the existence of Staff-identified deficiencies in the on-site and off-site emergency plans, if, inter alia, "adequate interim compensating actions have been or will be taken promptly." 10 C.F.R Section 50.47(c)(1) (emphasis added).

Thus, a Licensing Board may conclude that emergency planning actions are sufficient to satisfy the applicable regulations, if the available evidence demonstrates reasonable assurance that the applicable requirement will be satisfactorily implemented at the time the facility is authorized to operate.^{41/}

^{40/} The proposed amendment was modified and then adopted by the Commission, 47 Fed. Reg. 30232 (July 13, 1982).

^{41/} On July 13, 1982 (47 Fed. Reg. 30232), the Commission modified 10 C.F.R 50.47 and Appendix E to make clear that no NRC or FEMA findings concerning the state or adequacy of offsite emergency preparedness are necessary for issuance of operating licenses authorizing fuel load and low power operation up to 5% of rated power. Thus, findings with respect to offsite issues can be based on evidence demonstrating reasonable assurance that the applicable requirement will be implemented by the time the plant is licensed to operate beyond 5% rated power. It should be noted that as of this point in the proceeding, the Applicants have not requested a low-power license pursuant to 10 C.F.R. 50.57(c).

The Evidentiary Record On Contention 22

The record evidence on this contention consists of the written testimony of the Applicants^{42/} and the Staff. The Staff presented the testimony of Staff witness David Rohrer (NRC Staff Exhibit 202, Tr. 5665) as well as the FEMA Testimony of Albert Lookabaugh and John Benton. (NRC Staff Exhibit 203, Tr. 5696). CASE presented no witnesses. The Applicant's, Staff's and FEMA testimony demonstrates that contrary to the allegations in Contention 22, emergency planning for Comanche Peak is satisfactory with the exception of certain deficiencies pointed out by FEMA's witnesses, Messrs. Benton and Lookabaugh.

Messrs. Lookabaugh and Benton specifically identified certain specific deficiencies in the State Plan and County Plan in their written testimony (Staff Exhibit 203) pp. 9-10, as well as their testimony upon cross-examination. See, e.g., Tr. 5709, (State Plan does not indicate that Hood County Hospital is a County owned hospital); Tr. 5715-16 (State Plan needs list of hospitals with capability to treat radiologically contaminated persons); Tr. 5717-18 (County Plans require letters of agreement for non-county ambulance services). The record also shows that some of the deficiencies identified in their written testimony were corrected by the time of their oral testimony at the hearing session. See, e.g., Tr. 5709-11 (letter of agreement with Johnson County Memorial Hospital). The FEMA witnesses also testified that they had received commitments from State

^{42/} See pp. 8 (footnote 20) - 9.

officials that deficiencies would be corrected. See, e.g., Tr. 5716-17 (letters of agreement will be referenced or incorporated in the State Plan). The deficiencies in the State Plan and County Plans which were identified by FEMA witnesses are minor. Moreover, all that remains to be done is to implement and verify the corrective actions. This entails clear, non-judgemental confirmatory action. See, e.g., Tr. 5712-13 (letter of agreement from Stephenville Hospital will rectify deficiency regarding identification of hospitals able and willing to treat contaminated individuals).

In San Onofre, the Licensing Board noted that where there are minor deficiencies in an emergency plan, "on-the-record procedures, including cross-examination, would be unlikely to affect" the resolution of the deficiency. Thus, post-hearing resolution of minor deficiencies is acceptable. The Board also noted that where the Staff's resolution involves confirmation that a particular commitment had been actually implemented (e.g., the purchase of emergency equipment), post-hearing confirmation of the commitment was acceptable. San Onofre, slip opinion at 76-77. However, where "large elements of judgment and expertise" are needed to resolve the question of adequacy, the Board held that post-hearing resolution was not a viable basis for making Section 50.47(a) findings. Id. 77-79. This approach is similar to the one adopted by the Licensing Board in Cincinnati Gas and Electric Co. (Wm. Zimmer Nuclear Power Station, Unit 1) LBP-82-48, ___ NRC ___ (June 21, 1982), (slip opinion). The Licensing Board agreed with the Staff that when "clear courses of corrective action are present, deficiencies may be corrected by means of a licensing condition." The Board held that there were "clear courses of

action" for correcting deficiencies regarding, inter alia, the availability and responsibility of volunteers, the transport of disabled individuals, and radio communications. Id.

The Staff submits that, on the basis of the record evidence, the Board can reasonably conclude that these deficiencies can and will be corrected before the Comanche Peak facility is authorized to operate at full power. Indeed, this conclusion is substantiated by the FEMA Interim Findings, dated September 29, 1982 which conclude "[B]ased on this initial review of the relevant State and County plans there is reasonable assurance at this time that the off-site protection of the public's health and safety is adequate. . ." Although the FEMA Interim Findings have not been introduced, it is the Staff's position that the record on Contention 22 is complete and may be closed. For here, the Board has the full views of FEMA on the admitted contentions as set forth in the testimony of Messrs. Lookabaugh and Benton, and the FEMA Interim Findings, prepared by the same two FEMA officials who testified in the proceeding, simply confirm the evidence offered in the hearing by the same witnesses, and thus is unnecessary cumulative evidence.^{43/}

^{43/} In Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1, LBP-81-59, 14 NRC 1211 (1981) ("TMI-1 Restart") the Licensing Board was confronted with the issue of the weight to be given to FEMA Interim Findings, when there was extensive testimony by a FEMA witness regarding those Findings. The Board stated that the Interim Findings, a three page document serving as a "convenient summary of FEMA's views", is entitled to "no weight independent of the extensive FEMA testimony." TMI-1 Restart, 14 NRC at 1465. In addition, Atomic Safety and Licensing Boards in two operating license proceedings have closed the record, and in one case issued an Initial Decision on emergency preparedness matters, without the introduction of FEMA's Interim Findings into the record. Pennsylvania Power and Light Company (Susquehanna Steam Electric Station, Units 1 and 2), LBP-82-____, NRC ____ (April 12, 1982) (Slip Opinion); Detroit Edison Company ____ (Enrico Fermi Atomic Power Plant, Unit 2), Docket No. 50-341.

While the Staff concludes that FEMA's Interim Findings are not necessary to assure a complete record in this proceeding, the Staff is furnishing, by separate cover, a copy of the Interim Findings to the Board and the parties.

Emergency planning matters will be covered by SSER No. 3. These include matters covered by Contention 22 for which the SSER is expected to be merely confirmatory of the evidence of record. It will also include additional emergency planning matters not encompassed by Contention 22. There may also be certain emergency preparedness issues covered in later SSER's, but these do not relate to issues raised in Contention 22.^{44/}

Summary

The Staff submits that the record on Contention 22 is sufficient to allow the Board to make necessary findings regarding Contention 22. There is no need to keep the record open to receive the FEMA Interim Findings in evidence or to await further Staff SER Supplements. Thus, the Staff concludes that the record on Contention 22 should be closed.

^{44/} For example, TMI Action Plan Item III.A.1.2 "Upgrading emergency support facilities," which relates to the "Emergency Operations Facility" and "technical support center," is still an outstanding issue for Comanche Peak. However, since Contention 22 does not contest the adequacy of such facilities, this issue is not relevant to Contention 22.

IV. CONCLUSION

For the reasons set forth above, the Staff concludes that the Board should close the record on Contention 22 and on all aspects of Contention 5 with the exception of the matters relating to the Walsh/Doyle allegations and Board Notification 82-90.

Respectfully submitted,

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Counsel for NRC Staff

Geary S. Mizuno/mur

Geary S. Mizuno
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 11th day of October, 1982.

FORTHCOMING SUPPLEMENTS TO THE STAFF'S
SAFETY EVALUATION REPORT ("SSERs")

SSER No. 3 (Within the next four weeks)

Outstanding Issues

- 1) Transfer of the containment spray system from the injection mode to the recirculation mode.
- 2) Low-temperature overpressure protection system control design.
- 3) TMI-Action Plan
 - II.F.1 Additional accident monitoring instrumentation, attachments 1, 2 and 3.
 - III.A.2 Improving licensee emergency preparedness, long-term (a few confirmatory items may remain)
 - III.D.1.1 Integrity of systems outside containment likely to contain radioactive material.

Confirmatory Issues

- 1) Missile barriers between redundant trains of safety-chilled water system pumps and chillers.
- 2) Stress limits for Class 2 and 3 austenitic pipe bends and elbows.
- 3) Staff review of PAD-3.3 computer program incomplete.
- 4) Control and protection system interaction for feed-water line isolation actuation.

Licensee Conditions:

- 1) The applicant must provide control room position indication and alarm for manual valves ISI-047 and I-8717.
- 2) The applicant must conform to Regulatory Guide 1.97, Revision 2.

SSER No. 4 (March 1983)

Outstanding Issues

- 1) Preservice and inservice inspection program for compliance with 10 CFR § 50.55a(g).
- 2) Fire protection program including alternate safe shutdown system and conformance with Appendix R.
- 3) TMI Action Plan
 - I.C.1 Guidance for evaluation and development of procedures for transients and accidents.
 - I.C.8 Pilot monitoring of selected emergency procedures for interim operating license applicants.
 - I.D.1 Control room design review.

Confirmatory Issues:

- 1) Staff review of WECAN computer program incomplete
- 2) Periodic leak testing of pressure isolation valves.
- 3) Steam generator reference leg temperature compensation and low-low steam generator level setpoint per IE Bulletin 79-27.
- 4) Confirmation of procedure review per IE Bulletin 79-27.
- 5) Handling of heavy loads in conformance with the guidelines of NUREG-0612.
- 6) Documentation of applicant's commitments on fire protection.
- 7) Protection against flooding of safety-related compartments from a failure in the circulating water expansion joint.
- 8) TMI Action Plan:
 - I.C.2 Shift and turnover procedures
 - I.C.5 Procedures for feedback of operating experience to the operating staff.
 - I.G.1 Special low-power testing and training

II.E.1.1 Recommendation GL-3; Verification by test of the capability of the turbine-driven AFW pump to operate for two hours without ac power.

II.E.4.2 Containment isolation dependability

SSER No. 5 (June 1983)

All other outstanding or confirmatory items or license conditions identified in SSER No. 2 which require resolution prior to the issuance of an operating license for Unit 1.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)

TEXAS UTILITIES GENERATING)
COMPANY, et al.)

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

Docket Nos. 50-445
50-446

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO MEMORANDUM AND ORDER OF SEPTEMBER 22, 1982," in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, or, as indicated by a double asterisk, through hand delivery, this 12th day of October, 1982.

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***/ In order to comply with the Licensing Board's Order requiring that the parties' responses to the Board's Order be in the Board's hands by October 12, 1982, copies were served on Dr. McCollom and Mrs. Ellis by "Airborne" overnight delivery on October 11, 1982, and by first class mail on October 12, 1982.

Atomic Safety and Licensing Appeal
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