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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 and
COMPANY, <u>et al.</u>	)	50-446
	)	
(Comanche Peak Steam Electric	)	(Application for
Station, Units 1 and 2	)	Operating Licenses)

APPLICANTS' BRIEF REGARDING  
STATUS OF RECORD

In accordance with the Board's Memorandum and Order, dated September 22, 1982, Texas Utilities Generating Co., et al. ("Applicants") hereby submit their brief on the state of the record as it relates to the findings needed for decision in the captioned proceeding. More specifically, as directed by the Board, this brief addresses (1) whether any additional evidence is necessary to assure an adequate record on all contentions, (2) the significance of the remaining issues and their schedule with respect to contentions and the conclusion of the hearings, and (3) regulatory and procedural requirements that must be found satisfied by the Board in order for it to render an initial decision authorizing issuance of operating licenses.

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As to the first and second questions, Applicants maintain that the present record is adequate for decision without supplementation, and that the record need not be held open to receive the forthcoming SSER on emergency planning. As to the third question, Applicants maintain that the Board must find that, taking into account the Staff (and Commission) review process, there is reasonable assurance that applicable requirements have been or will be met insofar as the matters raised by the contentions are concerned, and that subject to findings by the NRC Staff and authorization by the Commission, an operating license can be issued. The Board need not find that the Staff's review of every matter in contention is complete as of the time of its decision if the evidentiary record is adequate on the matters in contention and the post-decision procedures followed by the Staff provide reasonable assurance that the Staff will satisfy itself on those matters prior to issuing a license.

I. ADEQUACY OF RECORD FOR INITIAL DECISION  
ON ISSUANCE OF OPERATING LICENSES

Applicants' position on the nature of the record required for a decision in an operating license proceeding is founded on the scope of such a proceeding and the roles of the Licensing Board, the NRC Staff and the Commission in such a proceeding. The scope of evidence required for, and the type of findings to be made in, an initial decision depend on

whether the proceeding involves the issuance of a construction permit or an operating license. In an operating license proceeding, a hearing is not mandatory. If one is held, the scope of the hearing and the findings to be made by the Licensing Board may be far narrower than at the construction permit stage. See Consolidated Edison Company of New York (Indian Point, Units 1, 2 and 3), ALAB-319, 3 NRC 188, 190 (1976). The Board is not required in an operating license proceeding to consider whether Staff review of matters arising under the Atomic Energy Act has been adequate. Some matters at this stage are to be resolved not by the Licensing Board, but by the NRC Staff and the Commission. Accordingly, Applicants begin with a discussion of the principles which govern Licensing Board decisions at the operating license stage, before addressing the question of the adequacy of the record in the instant proceeding.

A. Role of Atomic Safety and Licensing Boards in Operating License Proceedings

1. Contested Issues

It is axiomatic that Licensing and Appeal Boards have only the jurisdiction and authority which is delegated to them by the Commission. Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170 (1976); Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear 1), ALAB-249, 3 AEC 980, 987 (1974). In operating license proceedings,

such jurisdiction and authority extends only to matters put into controversy by the parties or as to which the presiding officer determines that a serious safety, environmental or common defense and security matter exists. 10 C.F.R. §2.760a, 10 C.F.R. Part 2, Appendix A, Section VIII.<sup>1</sup> Accordingly, at the operating license stage, the Board need not make findings in its initial decision as to the ultimate issues, but is to make findings only on matters in controversy. Id.; See also "Statement of Consideration, Final Rule, Restructuring of Facility License Application Review and Hearing Process", 37 Fed. Reg. 15127 (July 28, 1972).<sup>2</sup> Thus, insofar as is pertinent here, the Board need only consider the contested issues raised in Contentions 5 and 22. See discussion, infra, in Section III.

## 2. Uncontested Issues

At the operating license stage, uncontested matters are to be considered and resolved by the NRC Staff (without Board supervision) before it issues the license, and the Board is neither required nor expected to pass judgement on those

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1 Such a determination is to be supported by specific findings. See Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-81-36, 14 NRC 1111, 1114 (1981).

2 In addition, the Board is to make certain findings regarding the status of unresolved generic safety issues. Gulf States Utilities Co. (River Bend, Units 1 and 2), ALAB-444, 6 NRC 760 (1977); Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-491, 8 NRC 245 (1978). The status of the record on these issues is discussed infra, at p.23, n.32.

matters. Indian Point, ALAB-319, supra, 3 NRC at 190; Portland General Electric Co. (Trojan Nuclear Plant), ALAB-181, 7 AEC 207, 209, n. 7 (1974); 10 C.F.R. §2.104(c). Accordingly, matters which neither the parties nor the Board itself (pursuant to its sua sponte authority) have not raised are not within the scope of this proceeding.

These principles are in contrast to those which apply to the construction permit stage, where Licensing Boards must not only resolve all contested issues but must also make all other findings which are prerequisite to the issuance of the permit. Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 774 n. 26 (1977); Indian Point, ALAB-319, supra, 3 NRC at 189-190; 10 C.F.R. §2.104(b).

B. Role of NRC Staff In Operating License Proceedings

1. Contested Issues

The Appeal Board has stated that "the NRC Staff does not occupy a favored position at hearings." Consolidated Edison Company of New York (Indian Point, Units 1, 2 and 3), ALAB-304, 3 NRC 1, 6 (1976).<sup>3</sup> The Licensing Board must evaluate the Staff's evidence in the same light as the presentations of other parties, and the Staff's views "are in no way binding upon" the boards. Id.

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<sup>3</sup> See Southern California Edison Co. (San Onofre, Units 2 and 3), ALAB-268, 1 NRC 383, 400 (1975); Vermont Yankee Nuclear Power Corp. (Vermont Yankee Station), ALAB-194, 7 AEC 431, 445 (text accompanying fns. 27-29), 446 (1974).



The NRC Staff is not required to present evidence (including rebuttal evidence) on all contested matters subject to hearing. See 10 C.F.R. §2.743(a). It is the Applicants, having as they do the ultimate burden of proof on issues raised in the proceeding, 10 C.F.R. §2.732, who must bear the risk of nonpersuasion in the proceeding. C.f. South Carolina Electric & Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), CLI-82-10, 15 NRC \_\_\_ (June 22, 1982), slip op., Separate Opinion of Commissioner Gilinsky at 4. Intervenors have only a burden of going forward to present sufficient information to warrant initiation of an inquiry into the matters raised. Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-471, 7 NRC 477, 489, n. 8 (1978). The Staff, on the other hand, has no evidentiary burden regarding matters raised under the Atomic Energy Act.<sup>4</sup>

Indeed, the Board is not required to await making a decision on contested matters until satisfactory NRC Staff testimony is presented. See, e.g., South Carolina Electric & Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-663, 14 NRC 1140, 1163 (1981). In Summer, the Appeal Board noted

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4 In contrast to this rule is the situation regarding issues raised under NEPA. In the context of environmental issues (not litigated in this proceeding), the Staff itself is required to carry the burden of proof that it has complied with NEPA and therefore present sufficient evidence to enable a Board to reach a decision on those issues. Boston Edison Co. (Pilgrim Nuclear Generating Station, Unit 2), ALAB-479, 7 NRC 774, 793-94 (1978).

that if the Licensing Board was dissatisfied with NRC Staff evidence regarding certain seismic issues, the Board had the option of simply rejecting the Staff evidence and deciding the issue without regard to it, i.e., on the basis of other evidence in the record. Accordingly, even the inadequacy (or incompleteness) of the Staff's review of a particular issue arising under the Atomic Energy Act is not a bar to a Licensing Board proceeding to a decision in an operating license case.

## 2. Uncontested Issues

As discussed above (as to the role of licensing boards), at the operating license stage uncontested matters are to be considered and resolved by the NRC Staff, without Board supervision. Indian Point, ALAB-319, supra, 3 NRC at 190; Trojan, ALAB-181, supra, 7 AEC at 209, n.7. Again, this is different from the practice at the construction permit stage where Licensing Boards must assure themselves of the adequacy of Staff reviews. River Bend, ALAB-444, supra; Indian Point, ALAB-319, supra.

## II. STATUS OF RECORD ON CONTENTIONS

### A. Background

Applicants set forth in Appendix A to this Brief a review of the contentions originally admitted in this proceeding and their status. As discussed in Appendix A, because of the withdrawal or dismissal of parties or

contentions or both, the only contentions which require decision are Contention 5 (QA/QC) and Contention 22 (emergency planning). Contention 5 was the subject of evidentiary hearings on June 7-11, July 26-30, and September 13-16, 1982. Contention 22 was litigated on September 16-17, 1982. The record on both Contentions 5 and 22 is extensive. Both Applicants and Staff have presented several witnesses on various issues raised by the two Contentions and have introduced relevant documentary evidence on those issues. CASE has cross-examined the witnesses of Applicants and Staff at length, and has presented several witnesses on Contention 5. CASE also has introduced hundreds of documents on both Contentions. Appendix B to this pleading provides an overview of the evidence presented by all parties on Contention 5 (with the exception of the allegations of Messrs. Walsh and Doyle, which are discussed below) and Contention 22.

Further, Applicants address in detail below the status of the record on Contention 5 with regard to the allegations of CASE witnesses Walsh and Doyle and whether there is a need for supplementation. We also address the record on Contention 22 with regard to the forthcoming supplement to the Staff's SER which will include emergency planning matters, and whether the record must be held open to receive



it. Applicants submit that the record on all matters relevant to these Contentions is adequate and requires no supplementation.

B. Contention 5

The focus of the inquiry by the Board in its Memorandum and Order regarding Contention 5 concerns the testimony of CASE's witnesses Mark A. Walsh and Jack Doyle. Mr. Walsh originally appeared at the July session of hearings to present a limited appearance statement. The Board subsequently permitted CASE to present Mr. Walsh as a CASE witness, although Mr. Walsh had not previously been identified as a witness for CASE. Consequently, Mr. Walsh presented testimony on July 29, 1982,<sup>5</sup> and was cross-examined by Applicants and questioned by the Board.<sup>6</sup> Mr. Walsh's primary concerns involved consideration by pipe support designers of stresses induced by thermal expansion of pipe supports.

Following conclusion of the July hearing session, CASE requested and the Board issued a subpoena to enable CASE to depose Mr. Doyle. Mr. Doyle was described by CASE as possessing information supporting Mr. Walsh's allegations and other information relating to alleged inadequate design of pipe supports at Comanche Peak.

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5 CASE Exhibit 659.

6 See Tr. 3074 et seq.

Prior to the resumption of hearings on September 13, 1982, Applicants and the NRC Staff prefiled rebuttal testimony on the allegations of Mr. Walsh.<sup>7</sup> CASE submitted the deposition of Mr. Doyle as his direct testimony<sup>8</sup> and later introduced supplemental direct testimony of both Messrs. Walsh and Doyle.<sup>9</sup>

At those hearings Applicants presented their prefiled rebuttal testimony on Mr. Walsh's allegations<sup>10</sup> and also provided additional written rebuttal testimony on Mr. Doyle's allegations.<sup>11</sup> Applicants' witnesses consisted of a panel of experts in the areas of (1) the ASME Code (Mr. Reedy), (2) structural engineering (Mr. Scheppele and Mr. Finneran), (3) pipe support engineering and the STRUDL code (Dr. Chang), and (4) pipe stress analyses (Mr. Krishnan). These witnesses were subjected to extensive cross-examination and Board questioning on their testimony regarding the allegations of both Mr. Walsh and Mr. Doyle.<sup>12</sup>

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7 See Applicants' Prefiled Testimony of Messrs. Scheppele, Reedy, Chang, Finneran and Krishnan, Applicants' Exhibit 142; NRC Staff Prefiled Testimony of Messrs. Chen and Tapia, marked for identification as NRC Staff Exhibit 201.

8 Tr. 3631-4010, CASE Exhibit 669.

9 Supplemental Testimony of Mark A. Walsh, CASE Exhibit 668; Supplemental Testimony of Jack Doyle, CASE Exhibit 683.

10 Tr. 4766, Applicants' Exhibit 142.

11 Tr. 4784, Applicants' Exhibit 142F.

12 Tr. 4832-5305.

On September 16, 1982, the NRC Staff presented its panel of Dr. Chen and Mr. Tapia<sup>13</sup> in rebuttal to the allegations of Messrs. Walsh and Doyle.<sup>14</sup> Their testimony consisted of prefiled direct testimony (Staff Exhibit 201) and additional oral examination.<sup>15</sup> The prefiled testimony of the Staff was received subject to cross-examination.<sup>16</sup> However, as discussed below, cross-examination of the Staff witnesses was not completed and thus, the evidentiary status of their written testimony remained conditional. Consequently, the evidentiary record regarding all contested aspects of Contention 5 was complete except for the conclusion of cross-examination on rebuttal testimony of the NRC Staff regarding the allegations of Messrs. Walsh and Doyle. We address below in Section III. A. whether there is a need for additional information on the record with respect to these allegations.

C. Contention 22

Applicants set forth in Appendix B hereto an overview of the evidence presented on Contention 22 at the September hearings. The Board's present question regarding the status of the record on Contention 22 revolves around the upcoming issuance of an SER Supplement which will address emergency

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13 Tr. 5326.

14 Tr. 5323.

15 Tr. 5351-5356.

16 Tr. 5332.

planning matters. At the conclusion of the testimony on emergency planning, the NRC Staff moved to close the record on Contention 22.<sup>17</sup> The Board, however, denied the motion because a forthcoming supplement to the Staff's SER (SSER-3), which will address emergency planning, is scheduled to be issued in October, 1982. Accordingly, the only remaining matter left regarding the record on Contention 22 is whether the record must be held open for SSER-3. This question is addressed below in Section III, B.

III. NO NEED FOR ADDITIONAL INFORMATION ON THE RECORD

For the reasons discussed below, Applicants submit that there is no need to receive additional evidence on the record with respect to either Contention 5 or Contention 22. An adequate record has been established on both Contentions that would enable the Board to make the necessary findings with respect to all contested issues.<sup>18</sup> Accordingly, the record

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17 Tr. 5326.

18 In its September 22, 1982 Memorandum and Order the Board implied at p. 4, n.4 that information regarding I&E Information Notice No. 82-34, Rev. 1, might be within the scope of matters for which additional information need be presented. However, this matter has not been raised as a contested issue in this proceeding and accordingly is beyond the scope of issues the Board need address. 10 C.F.R. § 2.760a; See Indian Point, ALAB-319, supra, 3 NRC at 190. Beyond that, there is absolutely nothing in the record to suggest that Notice 82-34 raises a serious safety issue that warrants sua sponte attention from the Board or that the NRC Staff will handle the matter, as it handles all matters raised in such notices, in a less than satisfactory manner.

should be closed on all matters and proposed findings called for by the Board promptly, leading to issuance of an initial decision by the Board.

A. Contention 5

As indicated above, cross-examination on the Staff's prefiled testimony on Messrs. Walsh and Doyle was suspended and the condition for its receipt into evidence was not fulfilled. This situation arose following discussions at the hearing regarding two points, viz., (1) the purported scope and preliminary nature of the Staff's rebuttal testimony, and (2) the purpose and import of the NRC confirmatory analysis to be performed pursuant to I&E Bulletin 79-14 and its relevance (or lack thereof) to the concerns of Messrs. Walsh and Dole regarding pipe support design. The Board ultimately determined that because of the preliminary nature of the Staff's testimony, cross-examination on that testimony should be terminated.<sup>19</sup>

With regard to the first point, the Board expressed a concern at the hearings that the Staff was unable to provide conclusions on the record regarding the allegations of Mr. Doyle and suggested the Staff provide its conclusions at some future time. Tr. 5382-85. However, as Staff counsel subsequently stated (1) the purpose of the Staff's rebuttal testimony was to present opinions regarding the requirements of the ASME Code with respect to the allegations of Messrs.

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<sup>19</sup> Tr. 5384, 5391-94.



Walsh and Doyle, Tr. 5408 and 5412-13, (2) the Staff believed the combined testimony of Staff and Applicants provided a satisfactory record on those matters, Tr. 5412 and 5414, and (3) the Staff planned no further testimony on these allegations, Tr. 5412. Applicants submit that in view of the evidence already in the record and the Staff's position, as clarified, regarding the purpose and scope of its rebuttal testimony, there is no need to adduce additional evidence (including Staff evidence) on these issues. We recognize, of course, that the Board cannot rely on matters not in evidence, and must take into account the limited cross-examination and limited analysis in weighing the Staff testimony.

We believe that Applicants' rebuttal panel adequately addressed the merits of the issues presented by Messrs. Walsh and Doyle. Applicants' witnesses thoroughly examined the principal topics raised in the allegations, viz., ASME Code requirements, thermal expansion, instability of pipe supports, and the iterative design review process from preliminary design to verified, "as built" configuration. Applicants also presented testimony and evidence on the confirmatory analysis in response to Bulletin 79-14 (which analysis was ongoing at the time these allegations arose) and the further assurances it provides that the piping and support systems have been properly constructed and will function as designed.

Applicants' panel provided extensive testimony of highly qualified experts on these subjects.<sup>20</sup> This included Applicants' testimony addressing the allegations raised by Mr. Walsh and Mr. Doyle regarding ASME Code requirements. The Staff's proffered testimony did not contradict those conclusions. See Staff Exhibit 201.

As for the second point, the Board may have been given the incorrect impression that the Staff intended to conclude its 79-14 analysis before it could present final testimony on these allegations. See Tr. 5414-15, 5416 (11. 3-7), and September 22, 1982, Memorandum and Order, at p. 3, n.3. Applicants submit that the Staff did not intend, nor is it necessary, that the 79-14 analysis be completed before the Board may issue its initial decision.

The purpose of both the Staff's and Applicants' testimony on the 79-14 process was to demonstrate, in addition to the lack of merit of the individual allegations regarding particular pipe support designs raised by Messrs. Walsh and Doyle, that there are additional safeguards already in place, i.e., the 79-14 confirmatory analysis, to assure that, when completed and verified by the Applicants in the "as built" configuration, the piping and support systems have been constructed as designed and will function as intended. Thus, the purpose of the testimony regarding the 79-14 process was not to address the merits of particular

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<sup>20</sup> See, Applicants' Exhibit 142.

allegations regarding support designs, but to show that there was in place a mechanism to verify proper design and installation. This process is important because it placed the "snapshot" observations of Messrs. Walsh and Doyle in the proper perspective, viz., that pipe support designs are not finalized until construction is complete and the verification processes fulfilled.

There is an adequate record on this program without considering the Staff's rebuttal testimony. Applicants presented testimony on the iterative nature of the pipe support design process,<sup>21</sup> on the 79-14 process<sup>22</sup> and introduced their procedures for complying with that process.<sup>23</sup> The Staff introduced I&E Bulletin 79-14 explaining the program.<sup>24</sup> No rebuttal to this evidence was presented by the Intervenor. Accordingly, sufficient evidence already exists on the record for the Board to evaluate the 79-14 program for the purpose for which it is meaningful to the contested issue.

For the foregoing reasons Applicants submit that the Board should not hold open the record to complete cross-examination of the Staff's witnesses (and thereby receive the

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21 See, e.g., Applicants' Exhibits 142, pp.33-35 and 147, and Tr. 4969-70, 4988-4990.

22 Applicants' Exhibit 142, pp. 33-35.

23 Applicants' Exhibits 150 and 151.

24 NRC Staff Exhibit 201C.

evidence) or for additional Staff testimony. As discussed previously, the NRC Staff does not occupy a favored position at hearings, Indian Point, ALAB-304, supra, 3 NRC at 6, and Staff testimony on issues raised under the Atomic Energy Act is not essential to the Board in issuing an initial decision at the operating license stage, Summer, ALAB-663, supra, 14 NRC at 1163. Thus, the adequacy of the Staff's prefiled testimony is not at issue in this proceeding, and the incomplete status of cross-examination on that testimony need not and should not prevent closing the record, even where that testimony has not been received into evidence. The Board may simply not rely on, or give less weight to, such incompletely tested testimony.

Further, with respect to Bulletin 79-14, that process serves as confirmation that the designs of pipe supports and piping systems have been translated into properly constructed components and as constructed will perform the functions for which they are intended. In contrast, the allegations of Mr. Walsh and Mr. Doyle concern design considerations (either generic or with respect to particular supports) which have been adequately rebutted on the merits. There being no unresolved matters or contention regarding Bulletin 79-14, the Board may properly leave the satisfactory completion of the program for Staff confirmation. See Consolidated Edison Company of New York (Indian Point Station, Unit 2), CLI-74-23, 7 AEC 947, 951-52 (1974). Further, in two recent

operating license cases (both involving reopening) the Commission has made clear that it retains to itself and to the Staff the function of resolving outside the context of an adjudicatory proceeding matters which involve lengthy Staff investigations or confirmatory programs. Metropolitan Edison Co. (Three Mile Island, Unit 1), CLI-82-12, 15 NRC \_\_\_ (July 16, 1982). Cincinnati Gas & Electric Co. (Zimmer Nuclear Power Station, Unit 1), CLI-82-20, 15 NRC \_\_\_ (July 20, 1982).

Accordingly, there is no need to leave the record open for additional Staff testimony on these allegations or to complete cross-examination on the Staff testimony originally proffered.

B. Contention 22

As discussed above, the Board denied the motion of the NRC Staff to close the record on Contention 22 because a supplement to the SER regarding emergency planning has not been issued. Applicants submit that it is unnecessary to await issuance of that SSER to close the record on Contention 22.<sup>25</sup> Of course, the question may become moot shortly in that the SER (and FEMA Findings) in question are to be issued shortly. Nevertheless, Applicants maintain that the Board is not compelled to leave the record open for review of the SSER (or FEMA Findings) and possible incorporation of them into

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25 Similarly situated are the final FEMA Findings regarding off-site emergency preparedness. Applicants submit that the FEMA Findings involve the same considerations applicable to SSER-3, and therefore believe the record need not be held open to receive those Findings.



the record. Applicants set forth below the principles which would govern a decision as to whether to supplement the record with SSER-3 and the FEMA Findings.

In its September 22, 1982, Memorandum and Order, the Board cites Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 15 NRC \_\_\_ (1982), slip op. at pp. 11-18 in support of its ruling. The Catawba decision cited by the Board concerned a Licensing Board's "conditional" admission of contentions pending receipt of Staff documents (ER and SER), before requiring the intervenor to specify those contentions as required by 10 C.F.R. § 2.714. We believe that Catawba is inapposite because it involved the inability of an intervenor to specify contentions until related Staff documents are available, whereas here the situation involves the unavailability of Staff documents which relate to a contention (emergency planning) admitted over two years ago and on which the Staff and FEMA have already presented sworn testimony and have been cross-examined.<sup>26</sup> In this regard, Applicants note that Staff's review is a continuing one, extending up to the time of license issuance and beyond. To await completion of Staff reviews and issuance of every SSER (even those related to contested issues) before closing the record could result in

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<sup>26</sup> Obviously if there were significant new matters raised in SSER-3 that contradicted the Staff's testimony, the Staff would be obligated to so advise the Board promptly. E.g., Duke Power Co. (McGuire Nuclear Station, Units 1 and 2), ALAB-143, 6 AEC 623, 625 (1973).

an open record up to issuance of the final SSER, often immediately prior to issuance of a license. Such a situation is untenable in NRC licensing practice, particularly where the Staff has presented its position in sworn testimony during evidentiary hearings. Had the Staff and FEMA not presented testimony on emergency planning and been cross-examined by the Intervenor, there may have been a plausible argument favoring Board receipt of the SSER and the FEMA Findings on emergency planning. But where, as here, the Staff and FEMA have stated their positions on the merits and been tested on those positions through cross-examination, no need or justification exists for the Board to postpone closing the record to receive the SSER or FEMA Findings.

Further, even if Catawba obtains here, there was clearly sufficient publicly available information to litigate Contention 22. Both the Applicants'<sup>27</sup> and the State and local emergency response plans<sup>28</sup> were available to CASE in virtually final form months prior to litigation. The positions of the two reviewing agencies, the NRC<sup>29</sup> and

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<sup>27</sup> Applicants' emergency response plan for Comanche Peak was provided to CASE along with Applicants' FSAR, and has been periodically updated. The most recent full revision is Revision 3, dated May 21, 1982. Minor changes were made in Revision 4, dated August 20, 1982.

<sup>28</sup> See 47 Fed. Reg. 30869 (July 15, 1982), and Applicants' August 4, 1982 letter to CASE.

<sup>29</sup> See July 23, 1981, letter to R.J. Gary from Robert L. Tedesco, referenced in the SER for Comanche Peak (Rev. 0, July, 1981) at p. 13-20; NRC Staff Testimony of Mr. Rohrer, Staff Exhibit 202.

FEMA,<sup>30</sup> were available in the form of both detailed written comments and prefiled testimony. That the position of the NRC or FEMA was not in a formal document (SSER or Findings) is not meaningful. The Staff's position on an issue need not be supplied on the record "through the vehicle of the SSER", but may be supplied by other evidence. See e.g., Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 775 n. 28 (1977).<sup>31</sup> By analogy, the form of the evidence presented by FEMA is not important. What is important is that appropriate and complete evidence was available and presented in this case.

For these reasons, the Board should find that there was sufficient publicly available information to afford a fair hearing and to develop an adequate record on all issues raised by Contention 22. Accordingly, the Board should order the closing of the record on Contention 22 and direct the prompt submission of proposed findings by the parties.

In sum, Applicants believe the record on all issues is adequate to enable the Board to issue an initial decision. Applicants suggest, however, that if the NRC staff wishes to

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30 See August 6, 1982, letter to CASE from Clarence L. Born, Texas Department of Health, with Attachments, CASE Exhibit 728A-K; FEMA Testimony of Messrs. Benton and Lookabaugh, Staff Exhibit 203.

31 Applicants note that CASE has an unqualified "ironclad obligation" to have obtained and examined publicly available information. Catawba, ALAB-687, supra, slip op. at 13. Thus, CASE should not be heard to complain that it failed to examine any of those documents.

submit additional testimony on the allegations of Messers. Walsh and Doyle, the Board nonetheless should close the record on all matters except those specific allegations. In that event, additional hearings should be conducted only if the Board determines them to be necessary after reviewing the written submittals. See Consolidated Edison Co. (Indian Point Station, Unit No. 2), CLI-74-23, 7 AEC 947, 951-52 (1974).

IV. ADDITIONAL REGULATORY AND PROCEDURAL REQUIREMENTS

At the operating license stage, Licensing Boards need only make findings regarding matters placed in controversy by the parties or raised by the Board sua sponte. See discussions supra at 3-7. The Board is also to make additional determinations regarding the status of generic unresolved safety issues. See discussion supra at p.4, n.2.<sup>32</sup> The Board does not make the ultimate findings regarding issuance of the license at the operating stage. Accordingly, in this proceeding the regulatory requirements applicable to the Board's decisionmaking are those implicated by the

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32 The Staff has presented the information regarding unresolved generic safety issues to enable the Board to make the required findings. See discussion supra at p. 4, n.2. The Staff's information is presented as Appendix C to the SER (Staff Exhibits 1 and 2). Although the Staff intends to submit additional information on certain of those issues in a later supplement to the SER, sufficient information has already been presented or is available on all issues to enable the Board to make the necessary findings. See River Bend, ALAB-444, supra at 774-75.

Contentions, e.g., appropriate portions of 10 C.F.R. Part 50, Appendix B (Quality Assurance), and of 10 C.F.R. §50.47 and Part 50, Appendix E (Emergency Planning). See 10 C.F.R Part 2, Appendix A, § VIII (b). Additional regulatory or procedural requirements are not within the scope of the Board's review at the operating license stage.

V. CONCLUSION

For the foregoing reasons, Applicants urge the Licensing Board to close the record on all issues at this time, to order prompt submission of proposed findings and to issue an initial decision. In the alternative, the Board should close the record on all issues except those raised by Messers. Walsh and Doyle.

Respectfully submitted,

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October 8, 1982

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## APPENDIX A

### STATUS OF MATTERS RAISED IN PROCEEDING

#### I. Contentions

On June 16, 1980, the Board issued its Order Subsequent to the Prehearing Conference of April 30, 1980, in which it designated 25 contentions for litigation in this proceeding. In addition, three Board Questions were set forth to be addressed by the Applicants and NRC Staff. The 25 contentions were sponsored either solely or jointly by three Intervenor; Citizens Association for Sound Energy ("CASE"), Texas Association of Community Organizations for Reform Now ("ACORN"), and Citizens for Fair Utility Regulation ("CFUR"). Both ACORN and CFUR withdrew from the proceeding before evidentiary hearings were conducted on their contentions, leaving CASE the sole Intervenor. CASE has litigated three contentions (Contentions 5 [QA/QC], 22 [Emergency Planning] and 25 [Financial Qualifications]), while other contentions it had solely maintained or sponsored jointly with ACORN or CFUR were withdrawn or dismissed from the proceeding, as explained below. The status of each of the 25 admitted contentions is set forth in the following discussion.

#### A. ACORN Contentions

Of the 25 contentions admitted on June 16, 1980, twelve contentions (Contentions 10-21) were solely sponsored by ACORN, three (Contentions 4, 5 and 23) and portions of two

others (Contentions 22(f) and 24(a)) were jointly sponsored by ACORN and other Intervenors. On June 16, 1981, ACORN filed a motion for voluntary dismissal from the proceeding. By Order dated July 24, 1981, the Board dismissed ACORN from the proceeding and, following Commission review, dismissed ACORN's contentions in an Order, dated January 12, 1982.

B. CFUR Contentions

Seven of the 25 contentions originally admitted (Contentions 1-3 and 6-9) were solely sponsored by CFUR and two (Contentions 4 and 5) were jointly sponsored by CFUR and other Intervenors. On May 26, 1981, Applicants filed a motion to strike Contentions 2, 7 and 8 for failure to provide responses to discovery requests as previously ordered by the Board in its Memorandum and Order, dated April 13, 1981. The Board granted Applicants' motion with respect to Contention 8. Memorandum and Order, LBP-81-22, 14 NRC 150 (1981).

On November 20, 1981, Applicants submitted a Stipulation entered into by Applicants and CFUR regarding Contention 9. That Stipulation provided for the voluntary withdrawal of Contention 9 by CFUR in consideration of certain agreements between the parties. At the prehearing conference on December 1, 1981, the Board accepted the request for dismissal of the contention. Tr. at 21. See Order Subsequent to Prehearing Conference of December 1, 1981, December 18, 1981 at 2.

On January 19, 1982, Intervenor CFUR filed a motion with the Board requesting the withdrawal for all purposes of its previously admitted Contentions 4 and 6. On January 19, 1982, CFUR and Applicants filed a joint motion to dismiss Contention 1 from the proceeding, following negotiation of an agreement between those parties. By Order dated January 25, 1982 the Board granted those motions and dismissed Contentions 1, 4 and 6 from the proceeding.

On January 26, 1982, Applicants filed a motion for summary disposition of CFUR Contentions 2 and 7. The Staff filed an answer supporting the Applicants' motion for summary disposition of those contentions on February 12, 1982. Intervenor CFUR filed no answer opposing the motion for summary disposition. Instead, on February 23, 1982, CFUR filed a motion for voluntary withdrawal of its remaining contentions (Contentions 2, 3 and 7). On March 5, 1982, the Board dismissed Contentions 2 and 7. By Order dated April 2, 1982, the Board also dismissed Contention 3.

#### C. CASE Contentions

Contentions 22(a-e), 24(b-d) and 25 were originally admitted as CASE contentions. CASE was joint sponsor of Contentions 5, 22(f), 23 and 24(a). In the Board's July 24, 1981 Memorandum and Order regarding ACORN's motion for voluntary dismissal, it designated CASE as lead party on Contention 23, subject to indication by CASE as to whether it would take the lead party role on that Contention in lieu of

ACORN'S withdrawal. On August 10, 1981, CASE informed the Board that it would not assume that role. Accordingly, Contention 23 was dismissed by Board Order, dated August 21, 1981.

On October 17, 1981 CASE filed a motion requesting that Contention 24 (cost/benefit) be deferred from consideration at the evidentiary hearings scheduled for December pursuant to the Board's Scheduling Order of July 23, 1981. CASE stated that in the alternative, if the motion to defer consideration were not granted, the Board should grant CASE voluntary withdrawal of Contention 24. The Board declined to defer consideration of Contention 24 and therefore granted CASE's motion to withdraw the Contention. Memorandum and Order, October 23, 1981, at p. 6.

On December 1-3, 1981, the Board conducted hearings on CASE Contention 25, concerning the Applicants' financial qualifications to operate the facility. However, on March 31, 1982 the Commission published in the Federal Register (47 Fed. Reg. 13750) a final rule eliminating financial qualifications reviews of electric utilities in licensing hearings for nuclear power reactors. Each of the Applicants for the Comanche Peak facility is an electric utility. Accordingly, in its Order of April 2, 1982, the Board ordered that no further consideration would be given to Contention 25 in this proceeding.

Accordingly, only Contention 5 (QA/QC) and Contention 22 (Emergency Planning) remained for litigation in this proceeding. An overview of the hearings held on these contentions is presented in Appendix B.

## II. Board Questions

In its June 16, 1980, Order the Board identified three Board Questions to which the Applicants and the NRC Staff were to respond. These questions concerned hydrogen control (Board Question 1), operating quality assurance program (Board Question 2), and anticipated transients without scram ("ATWS")(Board Question 3).

At the evidentiary hearings conducted December 1-3, 1981, Applicants and the NRC Staff presented testimony regarding the operating quality assurance program for Comanche Peak.<sup>1</sup> Their witnesses were subjected to cross and Board examination.

With respect to Board Questions 1 and 3, in the Board's April 2, 1982 Order, it indicated that the Applicants or the Staff may file information with the Board which answers these questions prior to scheduled hearings. On April 19, 1982, Applicants submitted detailed information regarding Board Question 1 in the form of an affidavit of Fred W. Madden, Jr. (Board Exhibit No. ). On May 7, 1982, the NRC Staff submitted its response to Applicants' answer to Board

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<sup>1</sup> See Applicants' Testimony of Messrs. Clements, Chapman, Jones and Vega, Applicants' Exhibits B, 9, 10 and 12. See also NRC Staff Testimony of Mr. Spraul, NRC Staff Exhibit 5.



Question 1. The Staff's response included affidavits of David Shum and Robert L. Palla. On May 7, 1982, the NRC Staff submitted its answer to Board Question 3. With their answer the Staff submitted the affidavits of Messrs. David W. Pyatt, James W. Clifford, and Marvin W. Hogges.

Based upon its assessment of the information provided by the Applicants and the Staff, the Board determined that it was unnecessary to take formal evidence on the matters presented in Board Questions 1 and 3. Accordingly, the Board informed the Applicants and Staff that it would be unnecessary to present testimony with respect to Board Questions 1 and 3.

### III. Boron Injection Tank

By Order dated April 2, 1982, the Board requested that in light of information presented in CFUR's February 23, 1982 motion for voluntary withdrawal, that the NRC Staff, and the Applicants if they so desired, present pertinent information regarding deletion of the Boron Injection Tank for Comanche Peak. In that Order, the Board indicated that it was seeking a description of the system which is to be deleted, the purpose of the system, its status with regard to the Comanche Peak facility, the basis for its deletion, and the means by which its functions will be performed if there is not to be a Boron Injection Tank. Accordingly, the NRC Staff submitted on May 7, 1982 a response to the Board's request for information concerning the BIT. With its response the Staff

presented the affidavit of Mr. Sammy Diab. At the hearing on June 7, 1982 the Applicants presented two witnesses, Mr. Fred W. Madden, Jr. and Ms. Melita P. Osborne. The Staff also presented Mr. Sammy Diab as a witness.

## APPENDIX B

### OVERVIEW OF EVIDENTIARY RECORD ON CONTENTIONS 5 AND 22

#### I. Contention 5

Contention 5 (QA/QC) has been the subject of three weeks of adjudicatory hearings (June 7-11, July 26-30 and September 13-16, 1982). At the first week of hearings, Applicants and the NRC Staff presented direct testimony on matters concerning Contention 5.<sup>1</sup> These witnesses were subject to extensive cross and Board examination throughout that week and upon resumption of the hearings in July.

Upon resumption of the hearings in July, Applicants presented a panel of witnesses regarding allegations raised by CASE during the June session, and the Staff presented supplemental testimony by the same witnesses it presented in June.<sup>2</sup> CASE presented five witnesses which it had previously

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<sup>1</sup> See Applicants' Prefiled Testimony of Messrs. Chapman, Vega, Vurpillat and Reedy, and Ms. Spencer, Applicants' Exhibits 42, 43, 45, 46 and 44; Applicants' Direct Testimony of Messrs. Mason, Merritt, Scheppele, McGrane and Tolson, regarding rock overbreak and shrinkage cracks, Tr. 789-915; NRC Staff Prefiled Testimony of Messrs. Crossman, Stewart and Taylor regarding Applicants' QA/QC program, Staff Exhibit 13; and direct testimony of the same panel, with Mr. Tapia, regarding rock overbreak and shrinkage cracks, Tr. 1260-1312.

<sup>2</sup> See Applicants' Prefiled Testimony of Messrs. Clements and Lobbin regarding the Lobbin Report, Applicants' Exhibits 118 and 119, respectively; see also NRC Staff Prefiled Supplemental Testimony of Messrs. Crossman, Stewart and Taylor, NRC Staff Exhibit 180.

identified.<sup>3</sup> Applicants and the NRC Staff presented direct testimony on the allegations presented by those individuals in their depositions<sup>4</sup> and Applicants presented rebuttal testimony on matters raised for the first time in the direct testimony of CASE's witnesses.<sup>5</sup> CASE was also permitted to call as additional witnesses three individuals (Messrs. Walsh and Stiner, and Mrs. Stiner) who initially sought to present limited appearance statements. Mr. Walsh presented testimony on July 29, 1982. The other individuals, Mr. and Mrs. Stiner, were rescheduled to and did testify when further hearings resumed in September. At the September hearings Applicants also prefiled and presented rebuttal testimony on the allegations raised by CASE's witnesses at the July hearings.<sup>6</sup> A detailed discussion of the evidence presented at the September session regarding the allegations of CASE

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<sup>3</sup> Messrs. Miles, Gates, Atchison, and Hamilton and Mrs. Hamilton, submitted prefiled testimony and appeared at the hearings; CASE Exhibits 655 (and 657), 651, 650 (and 656), 653 and 642, respectively.

<sup>4</sup> See Applicants' Prefiled Testimony of Messrs. Tolson, Chapman, Boren, Barber, McGrane, Merritt and Scheppele, Applicants' Exhibits 122-128, respectively; see also NRC Staff Prefiled Testimony of Messrs. Taylor and Driskill, NRC Staff Exhibit 197.

<sup>5</sup> See Rebuttal Testimony of Messrs. Scheppele, McGrane and Merritt, Tr. 2986-2992.

<sup>6</sup> See Applicants' Rebuttal Testimony of Messrs. Brandt, Tolson, Purdy, Vurpillat and Smith, Applicants' Exhibit 141.

witnesses Walsh and Jack Doyle (identified by CASE as a witness after the July session) is presented in the Brief itself.

## 2. Contention 22

On September 16-17, 1982, Applicants presented direct testimony on the allegations presented in Contention 22. Applicants presented two panels of witnesses, one addressing on-site emergency planning matters,<sup>7</sup> and the second addressing off-site emergency planning matters.<sup>8</sup> Both panels were available for cross and Board examination. The NRC Staff presented direct testimony by the individual responsible for reviewing the Applicants' emergency plan.<sup>9</sup> That witness was available for cross and Board examination. In addition, the Federal Emergency Management Agency ("FEMA") presented direct testimony of two witnesses on FEMA's review of the State and local emergency plans.<sup>10</sup> These witnesses were also subject to cross and Board examination. CASE presented no witnesses. Both Applicants' Emergency Response Plan<sup>11</sup> for the Comanche Peak facility and the State and local Emergency Response Plans<sup>12</sup> have been introduced.

<sup>7</sup> Testimony of Messrs. Jones, Lancaster and Linneman, Applicants' Exhibit 143.

<sup>8</sup> Testimony of Messrs. Armstrong, Born, Skiles and Tate, Applicants' Exhibit 144.

<sup>9</sup> Testimony of Mr. Rohrer, NRC Staff Exhibit 202.

<sup>10</sup> Testimony of Messrs. Benton and Lookabaugh, Staff Exhibit 203.

<sup>11</sup> Applicants' Exhibit 143 D.

<sup>12</sup> Applicants' Exhibit 144E and F.



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 and  
COMPANY, et al. ) 50-446  
 )  
(Comanche Peak Steam Electric ) (Application for  
Station, Units 1 and 2) ) Operating Licenses)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Applicants' Brief Regarding Status Of Record," in the above-captioned matter were served upon the following persons by express delivery (\*), or by deposit in the United States mail, first class postage prepaid, this 8th day of October 1982, or will be served by hand delivery (\*\*)  
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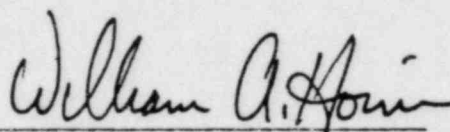
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