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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING APPEAL BOARD

DOCKETED
USNRC

Administrative Judges:

Alan S. Rosenthal, Chairman
Dr. W. Reed Johnson
Thomas S. Moore

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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

ORDER

December 30, 1982

Oral argument on the issues presented by the NRC staff's appeal from the Licensing Board's September 30, 1982 order in this operating license proceeding will be held at 9:30 a.m., on Wednesday, January 19, 1983, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland. ^{1/} The staff and the intervenor, Citizens

1/ That order denied the staff's motion for reconsideration of the Licensing Board's August 4, 1982 order. Because of the existence of possible doubt respecting the appealability of the two orders, the staff filed in the alternative a petition for directed certification under 10 CFR 2.718(i). We find it unnecessary to resolve the appealability question. The issues considered and determined in the orders below clearly warrant our review at this time, whether undertaken in response to the appeal or, rather, under directed certification. Thus, assuming without deciding that the orders are not now appealable, the petition for directed certification is granted.

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Association for Sound Energy (CASE), are each allotted 40 minutes for the presentation of argument; the staff will be heard first and may reserve a reasonable portion of its time for rebuttal.

For their part, the applicants have explicitly declined to take a position on "the specific legal and policy questions" raised by the appeal. Instead, their brief is confined to the assertedly "related" question of whether any party to the proceeding has been prejudiced by the staff's refusal to disclose the identity of certain persons interviewed in the course of an investigation conducted by it. This question appears of very limited, if any, significance with respect to the outcome of our review of the orders below. Accordingly, the applicants will be heard on it for no more than five minutes (between the arguments of the staff and CASE).

The parties are, of course, free to address at oral argument all issues presented by the orders below. We will, however, wish particularly to explore the question whether, assuming the existence ab initio of an informer's privilege with regard to disclosure of the identity of the interviewees here involved, that privilege was waived or otherwise rendered inoperative when the interviewees affirmatively indicated to the staff that they had no objection to such disclosure. In this connection, the parties should be prepared to discuss the rationale underlying

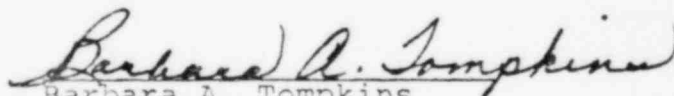
the recognition of an informer's privilege and whether that rationale has any application in the circumstances at bar. Additionally, the parties should be familiar with the holding and discussion in Westinghouse Electric Corp. v. City of Burlington, Vermont, 351 F.2d 762 (D.C. Cir. 1965) and Black v. Sheraton Corp. of America, 47 F.R.D. 263 (D.D.C. 1969), affirmed, 564 F.2d 550 (D.C. Cir. 1977).^{2/}

At argument, the parties need not indulge in detailed recitations of the background of the case. Rather, their counsel or other representative should proceed immediately to the issues at hand.

Each party is to inform the Secretary to this Board, by letter mailed no later than January 11, 1983, of the name of the person who will present argument on its behalf.

It is so ORDERED.

FOR THE APPEAL BOARD


Barbara A. Tompkins
Secretary to the
Appeal Board

^{2/} Although the September 30, 1982 order may have mooted the question, staff counsel nevertheless should also be prepared to address the obligation of the staff to comply with a directive of a Licensing Board in the absence of a stay of the directive either by that Board or higher authority.