

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

3/15/83  
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USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

'83 MAR 18 10:58

In the Matter of

APPLICATION OF TEXAS UTILITIES  
GENERATING COMPANY, ET AL. FOR  
AN OPERATING LICENSE FOR  
COMANCHE PEAK STEAM ELECTRIC  
STATION UNITS #1 AND #2  
(CPSES)

Docket Nos. 50-445  
and 50-446

CASE'S MOTION FOR RECONSIDERATION  
REGARDING HEARINGS ON  
WALSH/DOYLE ALLEGATIONS

Pursuant to 10 CFR 2.730, CASE (Citizens Association for Sound Energy),  
Intervenor herein, hereby files this, its Motion for Reconsideration Regarding  
Hearings on Walsh/Doyle allegations.

BACKGROUND

During the July 1982 operating license hearings, Mark Anthony Walsh made  
a limited appearance statement in which he requested that he be heard by the  
Board regarding what he considered to be major problems with pipe supports at  
the Comanche Peak nuclear plant. The Board allowed Mr. Walsh to testify as a  
CASE witness and he testified the next day.

On August 19-20, 1982, CASE took the deposition of Jack Doyle, who supported  
many of the concerns of Mr. Walsh and expanded and elaborated on them. Mr. Doyle's  
deposition was later admitted into evidence as his prefiled testimony, along with  
brief supplementary testimony in order to demonstrate some of his concerns with  
models which he had specially made up for the enlightenment of the Board so that  
it could more clearly understand some of his concerns.

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During the September 1982 operating license hearings, the Applicants presented testimony in rebuttal to the concerns of Mr. Walsh and Mr. Doyle. Mr. Walsh cross-examined Applicants' rebuttal panel on behalf of CASE.<sup>1</sup>

The concerns expressed by Messrs. Walsh and Doyle are very complicated, detailed, and difficult matters, covering (by the NRC Staff's count) some nineteen different areas.<sup>2</sup> During the September hearings, CASE had a carefully prepared order of cross-examination questions, based on subjects, which we attempted to follow during cross-examination. However, since these questions were based on subjects rather than closely tracking the written testimony of Applicants' witnesses, it was not always readily apparent where we were headed in our cross-examination. This was made more difficult because Mr. Walsh, although an expert in his field, had no previous experience in cross-examination techniques (other than the brief experience gained while questioning Applicants' witnesses during their depositions), coupled with the fact that CASE is not represented by an attorney and CASE's representative was able to offer little assistance to Mr. Walsh in his cross-examination.

CASE recognizes that the preceding made it difficult for the Board to always be able to follow our cross-examination and that this contributed, at least in part, to CASE's being limited by the Board in our cross-examination of Applicants' witnesses. However, for whatever reasons, the fact is that CASE was severely limited in the time allowed for cross-examination of Applicants' witnesses<sup>3</sup>, and many of our prepared cross-examination questions were

<sup>1</sup> See transcript beginning with page 4878.

<sup>2</sup> See NRC Staff's cover letter of February 22, 1983, to which was attached I&E report 82-26/82-14, which the Staff stated it expected to be the basis of its rebuttal testimony regarding the Walsh/Doyle allegations.

<sup>3</sup> See especially tr. 5052, 5068-5070, 5090-5097 (tr. p. 5091 should come after 5097), 5170-5171, 5306-5307, 5311-5312, 5319.

never asked and answered in the record. We were also not allowed to place portions of the depositions of Applicants' witnesses into evidence as we requested.

In the September hearings, the NRC Staff also filed testimony in rebuttal to the testimony of Messrs. Walsh and Doyle.<sup>4</sup> However, the Staff's witnesses had not fully evaluated the concerns raised by Mr. Doyle at the time of the hearings<sup>5</sup>, and the Board suspended the taking of evidence with reference to Contention 5 "until the Staff tells us if they're ready to proceed." The Board further stated<sup>6</sup>:

"In this case we will have prefiled written rebuttal testimony after your witnesses have (a) completed their analysis of the testimony of Mr. Doyle and Mr. Walsh, and secondly, when they have sufficiently analyzed whatever they're going to do with these codes which have been the subject matter of a good deal of discussion here by the expert witnesses, and they're in a position to tell us and to show us by prefiled testimony that their witnesses are ready to address these questions." (Emphases added.)

On February 24, 1983, CASE finally received the NRC Staff's I&E Report 82-26/82-14, under cover letter dated February 22, 1983; this report was in regard to an NRC Special Inspection Team's investigation into the allegations of Messrs. Walsh and Doyle. In their cover letter, the Staff stated "that the enclosed inspection report will form the basis for the Staff's testimony on that subject." It should be noted that this was some five months after the September hearings, seven months after Mr. Walsh testified in July, and six months after Mr. Doyle's deposition. Immediately upon receipt of the Staff's I&E Report 82-26/82-14, CASE began work reading, analyzing, and preparing Admissions to be used pursuant to 10 CFR 2.742 in discovery to the NRC Staff based on this inspection report.

<sup>4</sup> See tr. 5324-5396, 5407-5426, and Staff Exhibit 201 (Testimony of NRC Staff Witnesses Tapia and Chen).

<sup>5</sup> Tr. 5352.

<sup>6</sup> Tr. 5409. (See also tr. 5382-5417.)

On March 8, 1983, the Licensing Board initiated a conference call to discuss resumption of the hearings. During that conference call, reference was made several times to a Notice of Resumed Evidentiary Hearing prepared by the Board on March 4, 1983. CASE had not yet received that Notice, although Applicants and NRC Staff had.<sup>7</sup>

On Saturday, March 12, 1983, CASE received a copy of the Licensing Board's March 9, 1983, Memorandum and Order (Memorializing Conference Call). It is receipt of this Memorandum and Order which necessitates the instant pleading.

#### DISCUSSION

CASE is filing the instant pleading because there is no indication in the Licensing Board's March 9, 1983, Memorandum and Order (Memorializing Conference Call) to indicate CASE's strong concern and protestations during the conference call on March 8 regarding the Walsh/Doyle allegations and the Board's scheduling of hearings on the Staff's rebuttal to those allegations the week of April 4-8, 1983.

We stated in that conference call that there was no way that we could be adequately prepared in 3-1/2 weeks to cross-examine on the 58-page document it took the NRC Staff at least five months to prepare. We pointed out that there were numerous documents which we needed in order to thoroughly analyze the Staff's I&E Report 82-26/82-14, which the Staff had stated was expected to be the basis for its rebuttal testimony. We also pointed out that we had already prepared

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<sup>7</sup> On Thursday, March 10, 1983, CASE advised the Secretary of Board Chairman Miller that we had not yet received a copy of the Notice and requested that we be sent another copy Express Mail so that we could have it by the week-end. It was suggested that, since the Notice (although prepared on March 4, 1983) was not served until March 7, 1983, CASE contact Chairman Miller's secretary again if it was not received by the next day; it was received the next day, March 11, 1983.

some Admissions for use in discovery (pursuant to 10 CFR 2.742). The Board stated that we could not file those Admissions, but that we were to instead obtain our admissions when we cross-examined the Staff's witnesses during the April hearings. The Board also denied, at least for the present, CASE's request that the order of business be changed so that the Walsh/Doyle allegations could be last, so that we would not be rushing to get through with them so that we could complete other issues to be considered during the hearing.

Applicants and NRC Staff told the Board that they would promptly supply CASE with documents cited in the Inspection Reports and other necessary data through informal discovery. We also indicated that we very likely would not have time to adequately address the other matters to be considered in the April hearings because we would have to spend all our time in preparation on the Walsh/Doyle allegations, because we feel that they are of such great importance to these proceedings. Contrary to what had been stated in the September hearings (see page 3 of this pleading), the Board further stated that it would not require the Staff to prefile rebuttal testimony. Further, there was no indication that the Staff will be required to address the codes as was stated in the September hearings.

CASE strongly objects to the Board's haste in bringing the Staff's rebuttal testimony regarding the Walsh/Doyle allegations to trial the week of April 4-8, 1983. We made our concerns in this regard known in the conference call and the Board made it clear that it had no intention of allowing additional time for preparation and discovery on this matter. We therefore had not planned to file a Motion for Reconsideration, but rather had intended to devote our full time and energies to preparing for the upcoming hearings. Further, we are mindful

of the Board's statements in its March 1, 1983, Memorandum and Order. We have no wish to incur the Board's displeasure by filing the instant pleading.

However, because of the wording of the Board's March 9 Memorandum and Order, it is essential that we file the instant pleading in order to make our record for later use on appeal.

Since the March 8 conference call, CASE has contacted both the NRC Staff and Applicants by phone and we have mailed them (by Express Mail on March 11) a list of over 200 specific documents and items referenced and relied on by the NRC Special Inspection Team in I&E Report 82-26/82-14; we will be in contact with them early this week after they have had an opportunity to review the list.

Further, CASE discussed with the NRC Staff counsel the possibility of our sending to them on a strictly informal basis the 35 pages of Admissions which we had already prepared by the time of the March 8 conference call (see CASE's March 11 letter to NRC Staff counsel). The Staff counsel expressed no interest in reviewing those Admissions even on an informal basis in an effort to reach stipulations which would save everyone time and effort in the upcoming hearings. Such stipulations on these informal Admissions would have helped cut down on the number of questions which CASE would have to ask to complete the record on the Walsh/Doyle allegations during the hearings. We estimate at this time that to address the nineteen specific areas of concern identified by the NRC Special Inspection Team in I&E Report 82-26/82-14, we would have to ask approximately 1,000 questions on cross-examination. Probably 90% of those questions could be covered in far fewer Admissions and Interrogatories than would be required in cross-examination.

It is obvious that the Board is not going to allow CASE to ask 1,000 questions

on cross-examination of the Staff's witnesses during the April hearings. Indeed, CASE does not relish the thought of either attempting to do so or of having to severely cut down on the number of questions necessary to complete the record. These matters could and should be handled in accordance with standard NRC discovery provisions as set forth in 10 CFR; this is the primary purpose of discovery as CASE understands it -- to cut down on the time involved in trial and to sharpen and focus the issues to those which are necessary to complete the record. (See ALAB-613, Appeal Board decision in Susquehanna, September 23, 1980.)

We therefore fully expect that we will be severely limited in our cross-examination questions just as we were in the September hearings. (We do plan to be better organized and to follow a format which will be more easily understood; however, this will do nothing to lessen the number of questions.) This is especially true since the Board has indicated in its March 9 Memorandum and Order that it wishes to tour the plant, possibly on Friday, April 8, 1983; this will mean that there will be only four days of hearings rather than five (we assume).

There are other aspects of the Walsh/Doyle allegations which have a bearing on the schedule of the hearings. The Board is well aware of the problems CASE has had in obtaining copies of the design criteria for pipe supports at Comanche Peak. We are still pursuing this matter (see CASE's March 11, 1983, letter to the Licensing Board under subject of Response to CASE's 1/28/83 Request for Show Cause Order). We fully expect to again encounter difficulties in obtaining this information from Applicants prior to the April 4-8 hearings, and there is simply not enough time to go through the hassle of trying to do so in the time available. We do not believe that the Board condones the idea of having secret pipe supports at Comanche Peak any more than CASE does. We had planned to ask for this information again (as indicated in our March 11 letter)

since Applicants did not avail themselves of the option regarding proprietary information in regard to I&E Report 82-26/82-14. (See CASE's March 11 letter to the Board.) However, since there is no formal discovery being allowed regarding the Walsh/Doyle allegations and because the time is so short before the April hearings, we do not anticipate that we can possibly have the design criteria and related information in time for the April hearings. And we are still pursuing our request for a Show Cause order, but it apparently will not be resolved before the April hearings. Thus, if the Board does not reconsider its order regarding the Walsh/Doyle allegations, it may well be that Applicants are in actuality allowed to construct and use secret pipe supports at Comanche Peak, simply because we have never had the opportunity to review and analyze the design criteria being used by two of the three primary designers of pipe supports at the plant.

It should also be noted that CASE has not yet received SSER 3, which the Staff stated in the March 8 conference call they would have completed by the end of the week (which would have been March 11) and would send to all parties express immediately.

There are, as noted by the Board in its March 9 Memorandum and Order, several Board Notifications and other reports which have been filed in the Comanche Peak proceeding. CASE is especially concerned with the Construction Appraisal Team (CAT) Inspection of Comanche Peak (BN 83-29), filed March 2, 1983. This is obviously pertinent to CASE's Contention 5. However, the Notification states that there would be an inspection report which is expected to be issued in early April 1983. In the March 8 conference call, the Staff was unable to provide information as to just when this information would be available.

Further, CASE has just received a copy of I&E Report 82-25/82-13 (under



cover letter dated February 28, 1983, held 10 days, and received by CASE on March 12, 1983). This I&E Report is very important, since it bears directly on matters raised by CASE witness Charles Atchison, and confirms concerns expressed by him. The cover letter states, in part:

"The discoveries at the Comanche Peak facility of weld defects in components which had been previously inspected and accepted at the vendor facilities by Texas Utilities Generating Company (TUGCO) personnel raise concerns in regard to compliance of TUGCO source surveillance activities with the requirements of Criterion VII of Appendix B to 10 CFR Part 50. It is acknowledged that a recent action was initiated (Reference: R. J. Gray/G. L. Madsen (sic) letter dated December 27, 1982) to improve the effectivity of weld inspection by TUGCO source surveillance personnel; namely, the retention for training purposes of a consulting firm with specific expertise in the field of ASME and AWS welding requirements. This action does not in itself, however, fully resolve present NRC concerns in regard to the scope and overall effectivity of the TUGCO source surveillance program.

"An NRC inspection in July 1982 of a TUGCO manufacturer (i.e., Chicago Bridge and Iron Company), revealed instances of vendor failure to adequately control inprocess fabrication activities. Examples of deficiencies noted included: failure to comply with the preheat and interpass temperature requirements of welding procedure specifications, absence of QA program provisions for assuring performance of required nondestructive examination of weld repairs, absence of required repair cavity documentation for performance of weld repairs after final assembly postweld heat treatment, improperly maintained welder qualification records, and shipment of a component containing an unresolved dimensional nonconformance. As identified in the enclosed inspection report, our review of TUGCO vendor QA records for this manufacturer showed that approximately 90 percent indicated unacceptable vendor inspection performance for the time period of 1980 through 1982. This vendor had, however, been denoted by your rating system as having an acceptable performance for 1980 and 1981.

"The results of this inspection and that performed of the identified vendor bring into question whether current surveillance practices sufficiently address vendor inprocess activities, and whether the TUGCO vendor performance measurement system gives a sufficient weighting to significant identified product deficiencies and deficiencies of a recurring nature. Accordingly, you are requested to evaluate these areas of concern and, in addition to the response noted above, provide to us a description of those actions which have been or will be implemented to more effectively assess vendor performance and assure timely vendor corrective actions."

(Emphases added.)

There are other recent developments which have bearing not only on Applicants' alleged construction completion date of about the end of September 1983 but on CASE's Contention 5 as well. For example, the modification of the steam generators to mitigate the vibration induced tube damage observed at a non-domestic reactor using the same model steam generator; and the statement by the NRC Resident Inspectors that:

"It appears at this time that paper work cleanup in engineering and QA area may delay fuel load even though physical construction is complete. Engineering change paper has been so massive that QA may have problem accounting for all of it in the hardware/records for acceptance purpose."

(See NRC Staff's 3/3/83 Response to Board Order Requesting Information; emphasis added.)

In regard to the scheduling of the Walsh/Doyle allegations, CASE's task will be made even more difficult because Jack Doyle has indicated that there is no possibility that he can come to the hearings at that time because he has only recently obtained employment following a complaint to the Department of Labor. And Mark Walsh, having now obtained his degree, began work on a new job the end of January and it is unlikely that he will be able to attend the hearings, since he will have been employed at his new job only about two months by the time of the April hearings. This will place the full burden of dealing with and cross-examining on these extremely complex matters squarely on the shoulders of Mrs. Ellis, as CASE's primary representative. With more advance notice of hearings, it is likely that at least one of these gentlemen would be available at the hearings. However, scheduling their attendance on such short notice will probably be impossible and might even jeopardize their new jobs.

The Board, in its March 4 Notice of Resumed Evidentiary Hearing, stated:

"Public confidence in the ability and willingness of NRC to investigate QC allegations by 'whistleblowers' is very important to perceptions of the integrity of our adjudicatory process."

CASE is in full agreement with this statement. And we believe the Licensing Board is taking some very positive steps with regard to the Atchison matter -- steps which will help restore the public confidence in NRC proceedings.

However, it is equally important that the Licensing Board in these proceedings act affirmatively to maintain public confidence in the integrity of our adjudicatory process in another regard. By its rulings in regard to the swift conclusion of the Walsh/Doyle matter, the Board is giving the appearance that it has made a pre-judgement that everything stated in the NRC Staff's I&E Report is true and that everything has been or will be taken care of, or that there was no technical basis for the concerns of Messrs. Walsh and Doyle to begin with. CASE does not believe that this is the Board's intention. We prefer, rather, to believe that the Board looked at the Staff's I&E Report and simply did not realize the magnitude of the task it is asking CASE to complete in the short time before the April hearings.

A thorough review of the vitally important and complex matters referred to in the Staff's I&E Report 82-26/82-14 reveals an entirely different picture from that presented by the conclusions of the report. Assuming that we are supplied with the documents we have requested in time for them to be useful for the hearing (which we do not for a minute believe we will be, by the way), CASE expects to show and to document that not only the Applicants, but the NRC Staff itself, is violating the commitments in the Applicants' FSAR and other documents, NRC regulations, ASME Code and other industry requirements, and even fundamental engineering principles.

We are fully prepared to fulfill the requirements and responsibilities

placed upon us as an Intervenor. We are fully prepared to take the time and effort required to analyze the numerous documents referenced and relied on by the NRC Special Inspection Team as set forth in I&E Report 82-26/82-14<sup>8</sup>. However, we simply cannot do this in the severely restrictive time frame currently set by the Licensing Board.

There is another aspect regarding this matter which we did not discuss during the March 8 conference call which is of concern to us. On February 24, Board Member Richard Cole (who was the only remaining original member of the Board) withdrew because of scheduling problems and a new Board member, Dr. Jordan, came on board. CASE is not familiar with Dr. Jordan's background, but with all due respect, we submit that it would be physically impossible for anyone to come in in the middle of hearings on issues as complex and lengthy as the Walsh/Doyle allegations and be expected to familiarize himself with the matters involved by the time of the April hearings. It is difficult at best to follow cross-examination regarding these matters and CASE believes that it would be very nearly impossible for Dr. Jordan to do so under these conditions. Dr. Jordan should not be placed in the same position that the NRC Staff was in in the September hearings of not having completed reading and analyzing the testimony of CASE's witnesses prior to the hearing. Dr. Jordan should, in fairness to him, have adequate time to review the materials already in the record and familiarize himself with them so that he can fully and actively participate in the hearings and add his input and expertise to the proceedings regarding these matters. He should, in fairness to the witnesses (of all parties), have sufficient time

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<sup>8</sup> We are even prepared to travel to the hearings, as will be necessary, on Easter Sunday and the seventh day of Passover, although this will impose a religious burden on CASE's representative and Board members who will be attending the hearings.

to do so. And he should have sufficient time to do so to make certain that the record of these proceedings does not suffer.

CASE does not object to having hearings in April regarding the Atchison matter and related issues. In fact, we believe that the Board's actions in this regard are very positive and timely.

We are somewhat more concerned with the emergency planning issue, however. The recent letter from Judge Crump indicates that there are problems with at least one aspect of emergency planning, the accident warning siren system. Further, as indicated previously in this pleading, we have not yet received the Staff's SSER 3, and would like to have some time to review it prior to hearings on it.

We also do not object to discussion or testimony regarding the Board Notifications and other reports which have been filed in the Comanche Peak proceeding. In fact, we would like to have more information regarding these matters ourselves.

CASE believes that it would be able to go forward with the Atchison matter and related issues, Board Notifications and other reports, and (assuming we receive the Staff's SSER 3 right away as promised) the emergency planning issue. We would like to call some witnesses ourselves regarding the Atchison matter and related issues (such as the NRC Staff's handling of allegations of whistleblowers), and perhaps regarding emergency planning as well. These issues, in conjunction with the Board's desire to tour the plant on Friday, April 8, would, we believe, make up a full week even without the Walsh/Doyle allegations being included. If the Walsh/Doyle allegations are to be included, we will have to devote our full time and energies in preparation for cross-examination on that matter, which will mean that we will have to virtually ignore the other issues insofar as preparation for trial, while at the same time will have to do a half-way job regarding the Walsh/Doyle allegations. If the Board does not reconsider its order, the record of these proceedings will be sadly

deficient regarding not only the Walsh/Doyle allegations but the Atchison matter and related issues and emergency planning as well.

CASE'S MOTIONS

For the reasons stated herein, CASE hereby moves that the Licensing Board:

(1) Reconsider its March 4, 1983, Notice of Resumed Evidentiary Hearing and its March 9, 1983, Memorandum and Order (Memorializing Conference Call) in regard to the Walsh/Doyle allegations;

(2) Remove the Walsh/Doyle allegations from the schedule of the April 4-8, 1983, hearings;

(3) Grant CASE ninety days (sixty days following the April hearings) in which to analyze, obtain documents, conduct normal discovery as set forth in 10 CFR, and prepare for trial and cross-examination of the NRC Staff's witnesses regarding the 58-page I&E Report 82-26/82-14 which it took the Staff five months to prepare; and

(4) If it wishes to deny CASE's instant motion, leave it in the record rather than strike it, to preserve our record for appeal.

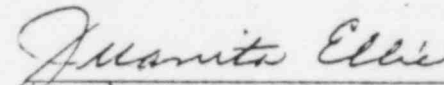
The granting of CASE's instant motions would not cause any delay in Applicants' alleged fuel load date, since Applicants' current end-of-September 1983 estimate is already changing because of the contingencies which led the NRC Staff to estimate the end of December 1983 as a more likely fuel load date.

Further, the Board should balance the need to avoid unnecessary delay in the completion of the proceeding with the necessity for a complete record which will assure that hearings have been conducted fairly and without prejudicing the rights of any party, and lead to a decision which will not further damage public confidence in the ability and willingness of the NRC to fully investigate QC allegations by "whistleblowers" and in the adjudicatory process. CASE's instant motion is necessary. The additional time requested by CASE regarding

the Walsh/Doyle allegations is necessary. And the granting by the Board of the additional time CASE has requested is necessary, not only to prevent further damage to the credibility of the NRC and its entire regulatory process, but to help avoid the necessity of an appeal by CASE which must surely follow should the Board not reconsider regarding the Walsh/Doyle allegations.

We are not asking for an unreasonable amount of time. We are asking for due process.

Respectfully submitted,



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(Mrs.) Juanita Ellis, President  
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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of

APPLICATION OF TEXAS UTILITIES  
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COMANCHE PEAK STEAM ELECTRIC  
STATION UNITS #1 AND #2 (CPSES)

Docket Nos. 50-445  
and 50-446

CERTIFICATE OF SERVICE

By my signature below, I hereby certify that true and correct copies of  
CASE'S MOTION FOR RECONSIDERATION REGARDING HEARINGS ON WALSH/DOYLE ALLEGATIONS

have been sent to the names listed below this 15th day of March, 1983,  
by: Express Mail where indicated by \* and First Class Mail elsewhere.

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|---|---|
| * Administrative Judge Marshall E. Miller<br>U. S. Nuclear Regulatory Commission<br>Atomic Safety and Licensing Board<br>Washington, D. C. 20555      | Alan S. Rosenthal, Esq., Chairman<br>Atomic Safety and Licensing Appeal Board<br>U. S. Nuclear Regulatory Commission<br>Washington, D. C. 20555 |
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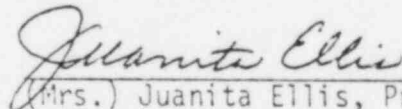


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