

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

Before Administrative Judges
Marshall E. Miller, Chairman
Dr. Kenneth A. McCollom
Dr. Richard F. Cole

DOCKETED
USNRC

'82 DEC -8 AIO :30

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

SERVED DEC 8 1982

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

(Application for
Operating Licenses)

December 7, 1982

ORDER
(Proposed Findings of Fact; CASE Exhibits)

I.

By its Memorandum and Order entered September 22, 1982, the Board requested briefs concerning the status and effect of certain documents to be filed by the Staff. These filings included SSER-3, dealing in part with Applicants' emergency preparedness plans, and the rebuttal testimony of certain Staff witnesses regarding the Walsh/Doyle testimony on the safety of the plant's piping system and pipe supports.^{1/} Responses and briefs were filed by the Intervenor CASE on October 9, by the Staff on October 12, and by the Applicants on October 12, 1982.

^{1/} These questions were described more fully in the September 22 Order at 2-4.

1502

In a letter to the Board dated November 15, 1982, Staff counsel stated:

"In the 'NRC Staff Response to Memorandum and Order of September 22, 1982,' filed October 12, 1982, the Staff stated that it expected to issue Supplement No. 3 to its Safety Evaluation Report ('SSER No. 3') 'within the next four weeks.' Response, at 19. The technical staff has advised Staff counsel that SSER No. 3 will not be issued within that time frame. Staff counsel will inform the Board and parties as soon as that supplement is issued and will provide copies of the supplement."

In its Response filed October 12, the Staff stated in part that since it "...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... The Staff expects to complete its evaluation of the Walsh/Doyle allegations by December 31, 1982."^{2/}

Finally, on November 4, 1982, the Board received a memorandum from Thomas M. Novak, Assistant Director for Licensing, Division of Licensing, NRR. This memorandum was entitled "Board Notification - Welds In Main Control Panels At Comanche Peak (Board Notification No. 82-116)." The covering letter from Staff counsel bearing the same date stated that the matter involved in this notification "...is still unresolved insofar as Comanche Peak is concerned... Until further information is developed, it is not clear whether the matter referred

^{2/} NRC Staff Response, etc., pp. 20-21.

to in this Board Notification has a significant relationship to the issues in controversy in this proceeding."

In view of the unresolved issues and uncompleted analyses described above, the Board will not close the evidentiary record at this time as urged by the Applicants. However, in order to expedite this proceeding while awaiting the Staff's filings, the parties are directed to file provisional proposed findings of fact on all controverted matters covered to date in the evidentiary record. This will include evidence with respect to Contentions 5 (QA-QC program during construction) and 22 (emergency plans), as well as Board Question No. 2 (QA-QC program for operation) and deletion of the Boron Injection Tank (BIT).^{3/} 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 evidentiary hearing sessions since the Board determined that the information which the Applicants and Staff supplied was sufficient "for the purposes for which the Board raised

^{3/} The Board dismissed Contention 25 (relating to Applicants' financial qualifications) in view of the amendment to regulations "removing financial qualifications issues...from consideration in operating license proceedings." Board's "Order (Following Conference Call)," April 2, 1982, at 3; 10 CFR §50.47(a)(4). The other contentions admitted by the Board in its "Order Subsequent to the Prehearing Conference of April 30, 1980," entered June 16, 1980, were subsequently dismissed by the Board, upon the withdrawal of the sponsoring intervenors or upon summary disposition.

those questions." (Tr. 693, 730-31). See Board Exhibits 1A, B, C, D and E (hydrogen control) and Board Exhibit 3 ("ATWS"). At the Board's request, the Applicants and the Staff also provided testimony concerning allegations raised by CASE with regard to cracks in the reactor cavity shield wall and the rock overbreak which occurred during excavation (Tr. 1402-1904).

It is the Board's belief that the evidence adduced to the present time constitutes the great bulk of the evidentiary record in this proceeding. The parties are therefore directed to file simultaneously their proposed findings of fact based on the present record.^{4/} No prejudice will result to the parties if subsequent evidence is admitted which might change some of these proposed findings, because such provisional findings may be supplemented or modified as a result of further information when the record is closed. All parties are therefore directed to file provisional findings of fact on the evidentiary record to date, covering all controverted issues in this proceeding. Such proposed findings of fact shall be in the hands of the Board by January 14, 1983.

^{4/} CASE's proffer of exhibits not yet ruled upon is discussed in Section II, post.

II.

CASE on October 18, 1982, filed a response to the Board's directive regarding CASE's exhibits which had been offered into evidence at various times during the course of the evidentiary hearing. Although not so denominated, this filing was in fact a motion to receive a large number of CASE's exhibits into evidence. The Staff filed an answer opposing this motion on November 4, 1982. The Applicants did not initially treat CASE's filing as a motion, but on November 9 asked leave to file an answer by November 18. An answer was filed by Applicants on the latter date, opposing the motion. Leave to file such answer is granted, and the Board has considered it together with all of the other filings in ruling upon the admissibility of CASE's exhibits.

After reviewing the evidentiary record in this proceeding as well as the filings of the parties, the Board has determined that the following CASE exhibits, as marked for identification, are hereby admitted into evidence:

Admitted CASE Exhibits

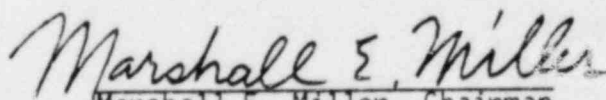
190A-197E. 204-208, 211, 215, 218, 220, 222-23, 225, 227,
230, 234, 236, 247-48, 253, 267, 278-79, 284, 286-88, 290,
292, 293, 295-96. 301. 305-07, 310-12, 314, 316, 318-19,
321-22, 325, 328-29, 331, 333-37, 339, 343-46, 348, 350-53,
357, 361-65, 378, 382, 385, 387, 392-93, 396-99, 402-03, 406,
449-59, 478-80, 482-84, 489-90, 492-93, 497-98, 500, 502-07,
510, 512, 514-15, 518, 520-21, 523-25, 528-30, 533-42, 545-46,
550, 557, 560-61, 563, 565, 569. 590-92, 595-96, 598, 602-16.
617, 619-21, 623-28. 629-45, 646-49.

The remaining CASE exhibits proffered in its motion are not admitted into evidence, either because they have been withdrawn or because the Board has determined that the objections to their admissibility are sustained.

CASE's motion for reconsideration of our prior ruling, holding that clean copies of exhibits attached to the testimony (by deposition) of Mr. Jack Doyle must be substituted for drawings on which handwritten notes have been added,^{5/} is denied. The Board admitted the deposition and its exhibits under the impression that they were authentic original documents, not annotated by the witness. Good cause to change the record or our ruling has not been shown,^{6/} and hence reconsideration will not be granted.

It is so ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


Marshall E. Miller, Chairman
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 7th day of December, 1982.

^{5/} Tr. 3588-89, 3627, 5778, 5190, 5777.

^{6/} Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-359, 4 NRC 619, 620(1976); Kansas Gas and Electric Company (Wolf Creek Generating Station, Unit No. 1), ALAB-477, 7 NRC 766, 767(1978).