

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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USNRC

ATOMIC SAFETY AND LICENSING BOARD

'82 DEC 22 A10:38

Before Administrative Judges

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

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| In the Matter of | } | Docket Nos. 50-445 |
| TEXAS UTILITIES GENERATING COMPANY, <u>et al.</u> | } | 50-446 |
| (Comanche Peak Steam Electric Station, Units 1 and 2) | } | (Application for Operating License) |
| | } | December 21, 1982 |

RECONSIDERATION OF DECEMBER 7, 1982 ORDER

By an Order entered December 7, 1982, the Board directed the parties "to file provisional proposed findings of fact on all controverted matters covered to date in the evidentiary record" by January 14, 1982 (p. 3). Inasmuch as the great bulk of the evidentiary record has been completed,^{1/} the parties were directed to file simultaneously their proposed findings of fact on the present record. It was further indicated that "such provisional findings may be supplemented or modified as a result of further information when the record is closed" (p. 4).

1/ Extensive evidentiary hearings were held December 1-4, 1981, June 7-11, July 26-30, and September 13-17, 1982.

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The Intervenor CASE filed a motion for reconsideration of the foregoing Order on December 14, 1982, reciting a number of additional matters it wished to develop and seeking to supplement the present record. The Applicants also sought reconsideration of that portion of the Order providing for the simultaneous filing of proposed findings of fact, by allowing the Applicants to reply to the proposed findings of the other parties, but otherwise supported the Order.

Without pausing to analyze at length the representations of the Intervenor, an extension of time will be granted in which to file the provisional proposed findings of fact. Good cause has been shown to allow more time for these filings, and the date is therefore extended to and including February 25, 1983. Further, proposed findings of fact regarding the Walsh/Doyle allegations will not be included in these proposed findings, and a date therefor will be fixed after the record has been closed on evidence pertaining to such allegations.

The simultaneous filing provision of the Order will not be reconsidered. First, it should be noted that these proposed findings are expressly stated to be open to subsequent modification or supplementation. The Applicants will therefore have ample opportunity to reply to matters raised by other parties. In addition, there is apparently some confusion about the proper scope of "proposed findings of fact" as described in 10 CFR §2.754. Findings of fact are not meant to be argumentative nor to fulfill the function of a brief or closing

argument. Such proposed findings of fact should be keyed to the testimony, exhibits or other evidence of record and they should stand on their own. Proposed and proven facts do not depend upon what other parties assert, but upon the record evidence cited by the proponent.

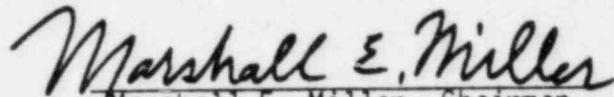
The Board intends, as it has previously informed the parties during trial, to request closing arguments that will cover in depth all controverted matters. It is contemplated that such closing arguments will not be pro forma, but will cover the scope of proposed findings of fact, as well as conclusions of law and legal arguments.

Section 2.754 includes not only proposed findings of fact, but also covers "conclusions of law and briefs." It is the latter documents which are more likely to necessitate reply by the Applicants, who will be given a reasonable opportunity to file reply briefs. However, it is not desirable for briefs or legal arguments to masquerade as proposed findings of fact, which occurs if their respective functions are not carefully analyzed. The Applicants do not dispute that the presiding officer "may establish provisions for the filing of proposed findings that differ from those prescribed in 10 CFR §2.754" (Motion, p. 2). Accordingly, for the foregoing reasons provisional proposed findings of

fact (except for the Walsh/Doyle allegations) based upon the present record shall be filed simultaneously February 25, 1983.

► It is so ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

A handwritten signature in cursive script that reads "Marshall E. Miller".

Marshall E. Miller, Chairman
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 21st day of December, 1982.