

7/28/83

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

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APPLICANTS' 7/15/83 SUMMARY OF THE RECORD
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CASE (Citizens Association for Sound Energy), Intervenor herein, hereby files this, its Answer to Applicants' Summary of the Record Regarding Weave and Downhill Welding filed July 15, 1983. The Board indicated in the telephone conference call of 7/19/83 (see transcript) that parties would be afforded an opportunity to respond to Applicants' pleading.

CASE's Answer

The history of Applicants' response to allegations and concerns raised by CASE's witnesses has been one which included as a primary ingredient the personal attack upon the credibility of the witnesses themselves and even personal attacks upon CASE's primary representative in these proceedings and Billie Garde with the Government Accountability Project (GAP) in Washington, D.C.¹ This practice is continued in Applicant's 7/15/83 pleading regarding Henry Stiner and Charles Atchison.

¹ Applicants' February 8, 1983, Answer to CASE Motion (And Supplement) for Protective Orders was so venomous and of such a serious nature that CASE felt that its intervention in these proceedings might be jeopardized even to the extent that CASE would be ordered out of the hearings by the Licensing Board, absent an Answer to the serious charges which Applicants falsely leveled at CASE, Mrs. Ellis, and Ms. Garde. CASE's 2/21/83 Motions to: (1) Respond to Applicants' Charges of Misconduct by CASE; (2) Strike Applicants' February 8, 1983 Answer to CASE Motion (and Supplement) for Protective Orders; and (3)
(continued)

On page 4 of their pleading, Applicants state that ". . . Mr. Stiner admitted his criminal (felony) record . . ." and state that this should influence both the weight to be afforded his testimony and the credibility of the witness.

CASE agrees that the Board should consider this. But let's talk about the real world and the logic back of Mr. Stiner's testimony. It has been a constant amazement to CASE that Henry Stiner ever decided to testify in these proceedings to begin with. He knew that his record would be brought up -- to what extent was not known, but he had to assume that everything would be brought out, before the news media and the spectators as well as the Board. He did not seek to hide his record; in fact he mentioned it himself in his testimony, and stated that "I hope the Board won't disregard my testimony because of it. And I hope the Applicants aren't allowed to build it up to

1 (continued)

Impose Sanctions Against Applicants (under cover letter to the Board dated 2/21/83) and CASE's 2/21/83 letter to the Board to which was attached the Affidavit of Billie Garde responded to these untrue and unwarranted charges.

In Applicants' 2/8/83 pleading, they also attempted to discredit Roy Combs, whom CASE had identified as a future CASE witness and who could have supported many of the allegations made by Henry and Darlene Stiner; Mr. Combs was one of the individuals Henry Stiner told the NRC investigators to talk to regarding its investigation into his allegations.

(It should be noted that all three of the individuals identified by CASE as future witnesses and for whom CASE had requested protection by the Licensing Board who were at that time employed at Comanche Peak are no longer employed there. Roy Combs and Freddy Ray Harrell were included in a layoff shortly after the Licensing Board struck CASE's 2/21/83 and related pleadings in its March 1, 1983 Memorandum and Order; Lester Smith quit when he was offered another job right before the pending layoff, convinced that he would be included in the layoff following the Board's striking of CASE's pleadings. It should also be noted that the Licensing Board, in its 3/1/83 Memorandum and Order, denied CASE's plea that "the Board not allow Applicants to benefit at CASE's expense by their attempts to either discredit CASE or to rob CASE of valuable and necessary time for preparing its provisional proposed findings of fact" by denying CASE's 2/24/83 Motion for Leave to File Additional Provisional Proposed Findings of Fact.)

the press so much that everyone loses sight of the real issues I'm talking about in my testimony." (CASE Exhibit 666, 9/1/82 Testimony of Henry A. Stiner, page 52; see also pages 48-52.) In undisputed testimony, Mr. Stiner stated (page 48) that NRC investigator Driskill stated that "probably there would be a federal hearing in which Brown & Root and the Applicants would have high-priced attorneys present that would take my past criminal record and just chew me up and spit me out."

Knowing all this, and knowing that his wife Darlene (the only one working in their family because Henry couldn't find work) might well lose her job at Comanche Peak if he and she testified -- knowing that they had nothing to gain and everything to lose by testifying, why did Henry Stiner (with the concurrence of his wife, who was pregnant at the time) decide to testify? The answer is simple, as reflected in the testimony of both Henry and Darlene Stiner: because the concern they had about the manner in which Comanche Peak had been constructed was so great that they felt they had to come forward, to try to see that problems that they knew about were corrected before Comanche Peak was allowed to go into operation. As Henry Stiner stated (CASE Exhibit 666, page 53):

" . . . when you look at a hanger and say, that hanger's got a weave weld on it, that in itself may not be such a big deal. But when you put together everything we're saying, we're talking about hangers with weave welds which haven't been repaired right, no verification that Hilti bolts have been properly torqued, plug welds being used on hangers, no verification of weld repairs by QC, cover-ups, and all the rest. When you add them all up, there are too many defects on those hangers, so that you can't tell what the contractor is going to be turning over to the Applicants. All together, the safety significance is much more important. We hope the Board will consider it in that light."

See also CASE Exhibit 667, 9/1/82 Testimony of Darlene K. Stiner, pages 73-74 (tr. 4197-4198).

Henry and Darlene Stiner should be commended for having the courage to come forward and testify in these proceedings. Most people who have worked or currently are working at Comanche Peak will not come forward with their concerns, for fear of jeopardizing their present and future livelihood.

As Darlene Stiner stated (tr. 4197-4198):

"When people know or believe they'll be fired for testifying at hearings like this, they get scared. They have families to take care of; all they're thinking about is if they can put a meal on their table. Brown & Root is a major means of support for the people in the area; it may be the biggest means of support for all I know. Many people that I know in this area live from paycheck to paycheck. If their livelihood is threatened in any way, they're not going to be looking down the road for safety. They're looking at today; how they're going to feed their family today, this week, next month, not what is going to happen with the safety of that nuclear plant years down the road.

"I feel like if people out there, the people who work at the plant, were told, if they had something to fall back on, a job--if they were sure that they would not be blackballed for telling the truth--I feel like a lot, an awful lot of them would come forth.

"But that is just not happening. Since the whole deal with Chuck Atchison being fired from Comanche Peak and then from that plant in Louisiana, people have gotten scared."

Although the Board obviously cannot and should not disregard the fact that Henry Stiner does have a record, CASE submits that the very fact that he made the deliberate decision to testify, especially under these circumstances, in itself adds credibility to his testimony. The Board should also take this into consideration in regard to his credibility and the weight to be given to his testimony.

Further, Darlene Stiner confirmed and expanded upon the testimony of Henry Stiner. As she stated in her testimony, some of the allegations which the NRC was investigating were made not by Henry Stiner, but by her. Her credibility was never challenged by anyone in these proceedings, and Applicants do not attempt to challenge her credibility in their 7/15/83 pleading

(preferring instead merely to ignore it, and apparently hoping that the Board will do likewise).

Applicants also state (page 4) that "Mr. Stiner . . . admitted to have fabricated his claim of a 'GED' high school equivalency degree on his application for employment. See Applicants' Proposed Finding 227." It should be noted that in Applicants' Proposed Finding 227, the only reference about this is to Applicants' Exhibit 145, which is merely a copy of Mr. Stiner's 12/4/79 Brown & Root Application for Field Employment -- there is no reference to any transcript pages where Mr. Stiner purportedly "admitted to have fabricated his claim of a 'GED' high school equivalency degree on his application for employment."

CASE submits that Applicants' failure to reference a transcript section in this regard was not just an omission, but a deliberate and willful attempt to mislead this Board. We believe this because a reading of the transcript pages pertaining to this matter (tr. 4486/8-4487/23 and 4490/10-25) does not support Applicants' statement. It is clear from Mr. Stiner's testimony that he believed that he had achieved his GED degree, based on the statement on the U. S. Armed Forces Institute report which states (CASE Exhibit 666A):

"This report certifies that Henry A. Stiner has achieved satisfactory scores on the TESTS OF GENERAL EDUCATIONAL DEVELOPMENT HIGH SCHOOL LEVEL in accordance with the national standards of the American Council on Education"

Applicants submitted no testimony or documents which would indicate that Mr. Stiner had not in fact achieved the necessary scores on the GED tests to qualify him for his GED degree. All that was required in order

for him to have obtained a copy of the actual degree was for him to send and get it. Further, there is no rational reason (and Applicants have not even attempted to provide one) to suppose that Mr. Stiner deliberately attempted to deceive anyone in this matter, especially in light of the fact that he himself attached to his testimony a copy of the very document on which Applicants now base their bogus statement.

This is another of many examples of the lengths to which Applicants are willing to go to attempt to discredit CASE's witnesses and avoid dealing with the issues raised by those witnesses regarding potentially serious safety problems at Comanche Peak.² Another example is Applicants' counsel's deliberate disobeying of very clear instructions of the Board as to the limits to be discussed in the public hearing regarding Mr. Stiner's record (tr. 4471-4477) -- this occurred on three separate occasions following the Board's instructions (tr. 4482/23-4483/8, 4486/1-7, 4489/15-20).

Applicants' statements regarding the qualifications of Henry and Darlene Stiner is equally deliberately misleading. Applicants state (page 4) ". . . with respect to the weave welding allegations, CASE's witnesses (Henry and Darlene Stiner) testified as lay witnesses, and did not purport to render or be qualified to render an engineering judgment regarding the structural significance of their allegations (Tr. 4028, 4271, 4274)."

² See details, pages 28-31, CASE's 2/21/83 Motions to (1) Respond to Applicants' Charges of Misconduct by CASE; (2) Strike Applicants' February 8, 1983 Answer to CASE Motion (and Supplement) for Protective Orders; and (3) Impose Sanctions Against Applicants. In addition, see tr. 3172/12-24 wherein Applicants attempt to discredit Mark Walsh (in addition to what is indicated in CASE's 2/21/83 pleading). We are attaching a copy of pages 28-31 from our 2/21/83 Motion, because we are not certain whether the Board retains copies of stricken pleadings; we are attaching them rather than repeating what has already been stated.

Although CASE witnesses Henry and Darlene Stiner are not and did not claim to be engineers, they did not testify as lay witnesses with respect to the weave welding allegations, as Applicants would have the Board believe. Henry Stiner testified regarding weave welding in his prefiled testimony (CASE Exhibit 666, 9/1/82 Testimony of Henry A. Stiner, pages 8, line 14, through 17, line 18; page 33, line 6 through 34, line 13; page 53, lines 11-20) and in his cross-examination testimony (4269/1 through 4275/2, 4295/14 through 4296/22, and 4355/19-4366/25). His qualifications were attached to his prefiled testimony (CASE Exhibits 666A-1, 666A-2, 666A-3, 666A-4, 666A-7, 666A-8, 666A-9); CASE Exhibits 666A-7 through A-9 are certificates issued by Brown & Root certifying that Henry Stiner had completed the Brown & Root Training Course "PIPE WELDING SMAW PCWC 412 GT," "CP-CPM 6.9 PROCEDURES PCGI 311 GT," and that he was authorized (on an interim basis) to perform welding following satisfactory completion of standard tests C10 11065 R2 and A10 10046 R5 on 6/19/81 following his rehiring, respectively. His qualifications were also discussed in his cross-examination testimony (tr. 4269/19-4272/13, 4303/12-4304/13, 4364/10-4365/25).

In his testimony, Mr. Stiner made it clear that he was testifying as an expert welder (tr. 4269/19-4272/5). He further testified that he had some personal knowledge as far as quantitatively knowing what happens in the way of strength if too much heat was applied during weave welding (tr. 4363/12-4365/5). There was never any testimony presented to indicate that Mr. Stiner was not, in fact, an expert welder. Further credibility is added to his expert welding capabilities by the very fact that Applicants rehired him in 1981, even though he stated on his job application that he had a felony

record (Applicants Exhibit 146; CASE Exhibit 666, Henry Stiner testimony, 9/1/82, page 29, lines 23-25, and 32, line 17 through 33, line 18; tr. 4488/20-4489/14 and 4491/1-5).

Darlene Stiner testified regarding weave welding in her prefiled testimony (CASE Exhibit 667, 9/1/82, Testimony of Darlene K. Stiner, page 23, line 13, through page 30, line 1, and page 60, line 16, through page 61, line 5) and in her cross-examination testimony (tr. 4086/8-4092/16; 4099/6-4100/14). Her qualifications were attached to her prefiled testimony (CASE Exhibits 667A, 667C through 667N); CASE Exhibits 667C through 667E, 667H through 667L are certificates and Notices of Completion for her many achievements, including: Certificates that she has completed the Brown & Root Training Courses for "STRUCTURAL WELDING (SMAW) PCWC 451 GT" (667C), "CP-CPM 6.9 PROCEDURAL TRAINING PCGI 311 GT" (667H), "MAGNETIC PARTICLE INSPECTION PQYX 200 GT" (667I), "LIQUID PENETRANT PQYX 210 GT" (667J), "VISUAL TESTING QVT 301 GT" (667L); Notices of Completion for "STRUCTURAL WELDING (SMAW) PCWC-451-GT" (667D), "Visual Testing QVT-301-GT" (667K); and Interim Welding Authorization to perform welding following satisfactory completion of standard test, for Applicable Standard Tests C-10 (11065) and A-10 (10046) (CASE Exhibit 667E). It should also be noted that she was obviously considered to be an excellent employee, as demonstrated by her 5-year service pin award received on 7/82 (CASE Exhibit 667B) and the fact that she was granted an additional 60 hours sick leave because of her "length of service and dedication to Brown and Root" (CASE Exhibit 667V, Interoffice Memo from C. T. Brandt to G. R. Purdy, dated May 21, 1982; see also tr. 4035/14-4037/13). Her qualifications were also discussed in her cross-examination testimony (tr. 4028-10-4030/4 and 4038/1-4042/19).

In her testimony, Mrs. Stiner made it clear that she was testifying as an expert welder and as an expert quality control inspector (tr. 4028/9-15, 4038/1-4039/21, 4042/3-10). There was never any testimony presented to indicate that Mrs. Stiner was not, in fact, an expert welder and an expert quality control inspector. Further credibility is added to her expert capabilities by the very fact that Applicants granted her the additional 60 hours sick leave; it is reasonable to assume that they would not have so rewarded an unqualified employee who didn't know what she was doing.

It should be pointed out that then-Board Chairman Marshall Miller cautioned both NRC Counsel and Applicants' Counsel against misstating and diminishing Mrs. Stiner's qualifications and expertise (tr. 4039/14-17, 4029/15-24). Yet here again, Applicants' attorney is deliberately misstating and diminishing Mrs. Stiner's qualifications and expertise in their 7/15/83 pleading. CASE submits that this is a blatant attempt to deliberately mislead this Board on the part of Applicants' attorney.

Applicants similarly attempted to deal with CASE witness Charles Atchison's concerns by attacking his credibility and expertise (Applicants' 7/15/83 pleading, pages 4 and 5). It is undisputed that Mr. Atchison misrepresented his educational background; it will follow him the rest of his life. The details about this and about Applicants' firing of Mr. Atchison are contained in two documents primarily: The 12/3/82 Department of Labor Administrative Law Judge's decision (admitted into evidence as CASE Exhibit 738 by Board Memorandum and Order dated January 4, 1983); and the 6/10/83 Decision and

Final Order by Department of Labor Secretary Raymond J. Donovan (which was the basis for the Licensing Board's 7/6/83 Memorandum and Order, Collateral Estoppel; Atchison Case). CASE will not belabor the record by going into great detail regarding these documents and their contents, since the Board is well aware of their contents. We will, for the record, mention only some key portions pertinent to this pleading.

The 12/3/82 Department of Labor Administrative Law Judge's decision (hereinafter referred to as ALJ) was "a detailed, closely reasoned opinion and proposed order, finding that Mr. Atchison's wrongful discharge as a quality control (QC) inspector by Brown and Root resulted from his complaints about and reporting of construction defects and quality control deficiencies." (Then-Board Chairman Marshall E. Miller, Board 1/4/83 Memorandum and Order, page 2.) The ALJ stated that she carefully analyzed all of the evidence documentary and testimonial in reaching her decision (ALJ, page 13). The 6/10/83 Decision by Department of Labor Secretary Donovan (hereinafter referred to as Donovan) agreed with the ALJ's finding that a violation occurred and that Brown & Root's alleged reasons for firing Mr. Atchison were not credible and were pretextual (Donovan, pages 11 and 17 especially). The Licensing Board in its 7/6/83 Memorandum and Order found that the Donovan decision should be binding in this proceeding pursuant to the doctrine of collateral estoppel.

Applicants' own records clearly indicate that Mr. Atchison was an excellent employee, that he scored high on all his tests and always received high marks from his instructors, and that his supervisors Richard Ice and Randy Smith,

and Mr. Smith's supervisor, Mike Foote, rated him efficient, very thorough, excellent or outstanding (ALJ pages 5, 6, 16, 19, 20, 24, and 25; Donovan pages 4, 8, 18-19, 23, 24). As stated on page 24, Donovan:

"When Atchison worked in Purdy's group before being transferred to Brandt's group, his supervisor, Richard Ice, rated him as an efficient, very thorough inspector. He had scored high in all his tests and been rated excellent or outstanding by his supervisor under Brandt, Randy Smith. Indeed, Mike Foote, who was Randy Smith's supervisor and reported to Brandt, had gone to Purdy before April 12, 1982 to try to get Purdy to convince Brandt to promote Atchison . . . With respect to Purdy's claimed inability to place Atchison after Brandt transferred him, Richard Ice testified that he had an outstanding request for an additional inspector and would have accepted Atchison."

It should be noted that the high opinion of his supervisors of Mr.

Atchison and his work was shared by others within Brown & Root, as demonstrated by Exhibits admitted into the Department of Labor hearings (attached):

Exhibit PX 5, 4/2/80 Interoffice Memo to Bill Eakin, Corporate Level III (Mechanical) from Rose M. Klimist, then-B&R Site QA Manager:

"Mr. Charles Atchison has demonstrated his abilities as a competent instructor and is considered to be qualified to conduct required training courses, which encompass our site construction procedure, CP-CPM 6.9 and appendices.

"I have verified his abilities by monitoring classes during his presentations; therefore, request his certification as an instructor."

Exhibit PX 6, 4/2/80 Interoffice Memo to Bill Eakin from D. D. Beddingfield, Quality Engineer (Mechanical) Instructor:

"Mr. Charles Atchison has demonstrated an outstanding ability to conduct training as an instructor in CP-CPM-6.9 and appendices. He is also proficient in preparing lesson plans for classroom presentation.

"From February 13, 1980 to April 1, 1980, Mr. Atchison has conducted approximately one hundred and twenty (120) hours of formal instruction under my direct supervision.

"Mr. Atchison displays a good Quality attitude, and deportment in class is excellent. I, therefore, recommend his certification as instructor."

Exhibit PX 7, Interoffice Memo to R. M. Klimist from W. C. Eakin, Jr., Mechanical Fabrication Corp. Level III, dated 4/9/80:

"Mr. Charles Atchinson (sic) is hereby approved as a mechanical fabrication inspection training instructor. Mr. Atchinson (sic) is considered qualified to conduct all training courses required for certification as a Mechanical Fabrication Inspector.

"This approval does not constitute appointment or certification to any level of Mechanical Inspector as described in the Brown & Root Personnel Training Manual or subsequent superseding control documents or procedures.

"All lesson plans used for courses which are intended to be used as partial fulfillment of the training requirements for a Mechanical Fabrication Inspector must be submitted to the Corporate Level III for review and approval. All examinations used for certification purposes must be approved by the Corporate Level III, including grading of completed classroom and field practical examinations."

Exhibit PX 11, Interoffice Memo to T. B. Maxwell (Project NDE Level III) from D. D. Beddingfield, Project Level III (Mechanical), dated 9/8/80:

"Mr. Charles Atchison . . . has worked for the past nine months under my direction and supervision, teaching and training QC inspectors in the Mechanical, Fabricator and AWS D1.1 Visual Examination of Welds (Limited). Fabrication instruction encompasses inspection of piping, component supports, welding processes, post weld heat treatment, pressure testing and documentation.

"Mr. Atchison has approximately 2500 hours lecture time in this discipline, and I recommend: that this time spent lecturing be supplemented in lieu of field inspections, that he be certified as Level II Visual Inspector in satisfactory compliance with Part II, Supplement C of the B&R Personnel Training Manual."

Exhibit PX 14, Interoffice Memo to J. V. Hawkins from T. B. Maxwell, Project NDE Level III, dated 10/2/80:

"Based on past instruction and experience, Mr. Charles Atchison . . . is authorized to instruct and test Visual Training courses in Class V hangers and AWS D1.1 Weldments, Unlimited VT Training. Mr. Atchison now has full Level II VT certification obtained on September 8, 1980, certified MIFI Level II September 8, 1980."

It should also be noted that Applicants' witnesses confirmed that the document marked "CPSES Brown & Root Certification Training Course, Level II,

Visual Examination, Prepared by Charles Atchison, Approved by James Hawkins, Brown & Root QA/QC Manager, 12/11/80, and Approved by James O. Regan, 12/11/80, Brown & Root Project NDE Level III" was prepared by Charles Atchison, was an authentic document which was what it purported to be, and that it was used for general training purposes at Comanche Peak. (Tr. 4626/3-4628/7.)

Mr. Atchison's record of performance at Comanche Peak is indicated by the specific jobs he was qualified to and performed (see ALJ pages 4, 5, 17, and 24; Donovan 3, 20, 22-23). As discussed in Donovan (pages 2 and 3):

"Charles Atchison was hired by Brown & Root to work as a documentation specialist . . . promoted to instructor in nondestructive examination (NDE) of welds . . . trained for and certified as a Quality Assurance Auditor, certified as a Level II Visual Inspector and Fabricator Inspector, and certified as a Lead Auditor . . . appointed training coordinator for the training of Brown & Root inspection personnel . . . until he was transferred, at his own request, to field inspections . . . certified as a Level III Mechanical Equipment Inspector 'for training only' . . . certified in Level II Liquid Penetrant Examinations. . . In the course of obtaining these promotions and certifications, Mr. Atchison took a number of exams on which he always scored in the 90's, except for an 83 on the Fabricator Inspector test. Evaluations of his performance by his supervisors were always above average, excellent or outstanding, including the evaluation given on the day he was fired as part of the termination process."

At the time Mr. Brandt was questioning Mr. Atchison's ability as a liquid penetrant inspector, according to Donovan, pages 19-20:

". . . Atchison . . . had just recently been tested and certified in Level II liquid penetrant examination, receiving a composite score of 93.4 . . ."

Further, from Donovan, pages 22-23:

". . . Atchison . . . was the only pipe whip restraint installation inspector . . . he had from 8-13 crews' work to inspect . . ."

It is clear from the record that, contrary to Applicants' statements and implications (7/15/83 Summary, pages 4-6), Mr. Atchison was a well-qualified and trained expert in his field, which included inspection of welding.

In the case of Mr. Atchison, the Board should also consider another factor -- the fact that the matters which he has reported to the NRC have proven to be substantial problems with a sound technical basis. This has been shown to be true in regard to his concerns regarding Chicago Bridge & Iron (see NRC Staff Exhibits 123 and 124, I&E Report 80-20), which resulted in a Notice of Violation for "Unsuitable Weld Surface Condition As Required By Magnetic Particle Test Procedures," following Mr. Atchison's advising the NRC of welding deficiencies in CB&I pipe whip restraints. (Also ALJ at 9.)

The concerns Mr. Atchison brought out in regard to CB&I pipe whip restraints which were reported on what was later to become NCR 296 led to the NRC's investigation report 82-10/82-05 (NRC Staff Exhibit 199). In ALJ, page 14:

"The Nuclear Regulatory Commission's July 7, 1982 Region IV investigation of NCR #296 resulted in a finding that the pipe whip restraints which were the subject of NCR #296 were deficient. Further the NRC's investigative report indicates that between February 10, 1982 and April 2, 1982, TUGCO's QA was experiencing increasing weld problems in the pipe whip restraints of their CB&I vendor, and with this vendor's QA/QC program."

This is addressed in Donovan, pages 7 and 17; on page 17, it is stated:

"NCR's 296 and 361, however, as well as the '822 level' incident, raised questions with broad implications for the quality control program. NCR 296 revealed the poor quality of the work being done by CB&I, a major supplier, as well as the inadequacies of CB&I's preshipment inspections and TUGCO's inspections upon receipt of pipe whip restraints. Backfit or re-inspections of 56 CB&I pipe whip restraints had to be done and CB&I had to be called in to repair the defects found. The '822 level' incident raised similar questions, and NCR 261 would have called into question many inspections previously completed." /3/

³ It should be noted that it is also stated in Donovan, page 17: "(It would appear that the basic question Atchison was raising in NCR 361, that official inspections may have been performed on non-ASME items by employees only trained for ASME inspections, was never answered. Responsibility for these inspections was formally assigned to Brown & Root non-ASME trained personnel, by the quality control manual, but Atchison was questioning whether other employees may have actually performed such inspections which were accepted as part of the official quality control system.)" (Emphasis added.)

More recently, the NRC issued two Notices of Violation regarding CB&I deficient conditions, in I&E Report 82-25/82-13 (CASE Exhibit 849, attached).

In the February 28, 1983, cover letter, the NRC stated, 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 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.)

It is not clear from the wording of the NRC's letter whether or not the NRC intends that TUGCO review other vendor surveillance practices to ascertain whether there may be similar problems with other vendors; nor is it clear from the letter whether or not the NRC intends to pursue this matter further regarding other vendors. However, in an 11/29/82 meeting with the NRC, CASE representative Juanita Ellis was told that "Anything that was purchased with weldment which was bought by source inspection originally with no subsequent onsite inspection will now receive an onsite inspection . . . it has brought up an area that we feel now the licensee needs to fully respond to and look at again and that is vendor welding -- vendor-supplied weld components." It is not clear from the unofficial transcript of that meeting whether this will involve only NPSI and CB&I or if other vendors will also be included. See CASE's 12/21/82 Brief⁴, especially page 16 and Attachment 7, Page 3.

One thing is certain -- there is also a problem with NPSI pipe whip restraints. This is detailed in CASE's 12/21/82 Brief⁴, pages 12-17 and Attachments 3-8. We will not burden the record by repeating what was contained therein, but we incorporate it herein by reference.

Briefly, this involved an I&E Report, 82-14, which was sent out by NRC Region IV, then revised rather substantively and reissued (the first time that this has ever happened, to CASE's recollection). (See CASE Exhibits 735, 736, and 739, attached.) This report, in its final version,

⁴ See CASE's 12/21/82 Brief in Opposition to the NRC Staff's Exceptions to the Atomic Safety and Licensing Board's Order Denying Reconsideration of September 30, 1982, filed with the Atomic Safety and Licensing Appeal Board in these proceedings (regarding Atchison-related matters).

stated "Region IV does plan to perform additional inspections of vendor shop performed welding and this issue remains open." The special, unannounced inspection of NPSI pipe whip restraints was in response to Mr. Atchison's concerns expressed in the July 30, 1982, licensing hearings.

I&E Report 82-22 (CASE Exhibit 737, attached) also dealt with NPSI pipe whip restraints. It stated that following the further investigation which disclosed numerous other nonconforming weld conditions in the immediate area of the NPS Industries supplied main steam pip-whip restraint located outside the reactor containment building (RCB) 1 (see CASE's 12/21/82 Brief⁴, especially page 17 and Attachment 8, page 5):

"The NRC inspectors toured the structure and visually examined approximately 75% of the vendor supplied welding. Anomalies such as undercut, lack of fusion, porosity, incomplete welds, undersize welds, overlaps, insufficient weld throats, and base material defects were noted in most sections of the structure . . . The NRC inspectors did not perform a total visual inspection due to the lack of complete staging around the structure." (Emphases added.)

Thus, it is obvious that Mr. Atchison's credibility is enhanced by the fact that the matters which he has brought to light have proven to be substantial problems with a sound technical basis in fact.

Applicants would have the Board believe that everyone who has testified as a CASE witness on welding issues is suddenly incompetent, untrustworthy, unreliable, and/or lacking credibility. As demonstrated in the preceding, this representation by Applicants is untrue and deliberately misleading. Further, Applicants apparently are forgetting the fact that Henry and Darlene Stiner and Charles Atchison are individuals who were trained and certified

by the Applicants (or their contractor, Brown & Root). It is to be hoped that they did know something about their jobs while they were employed at Comanche Peak, since they were there for several years building and inspecting (and in the case of Mr. Atchison, training others) the plant. If, as Applicants assert, these individuals with all their certifications and training are incompetent, untrustworthy, unreliable, and/or lacking credibility, this means that Applicants entire QA/QC program as well as their welding construction program must be called into question -- there could be no confidence placed in the competence, trustworthiness, reliability or credibility of the other welders and inspectors who have been similarly trained and certified by the Applicants.

Lack of Credibility of Applicants' Witness Brandt

In their 7/15/83 pleading, Applicants have made a major point of attempting to discredit CASE's witnesses. CASE agrees that the Licensing Board must concern itself with the credibility of all the witnesses in these proceedings in order to fulfill its responsibility to see that the health and safety of the public is protected -- all witnesses, including Applicants' witnesses (for purposes of this particular pleading, specifically with Applicants' witness Brandt).

CASE submits that Applicants' witness Brandt has proven, by his statements under oath in these and the Department of Labor proceedings, that he is not a credible witness. CASE further believes that Mr. Brandt's statements under oath in these proceedings may well constitute material false statements (although

CASE is not represented by an attorney in these proceedings, we draw this conclusion from the Board's 3/4/83 Notice of Resumed Evidentiary Hearing, to which was attached a statement of the Commission regarding material false statements). This is, of course, something which the Board itself will have to decide, not CASE. There is much in our record to support CASE's statement; however, for purposes of the instant pleading, we will confine ourselves to only a few specific instances.

Two documents which have much to say about the credibility of Applicants' witness Brandt are the 12/3/82 Department of Labor Administrative Law Judge's decision (admitted into evidence as CASE Exhibit 738 by Board Memorandum and Order dated January 4, 1983), and the 6/10/83 Decision and Final Order by Department of Labor Secretary Raymond J. Donovan (which was the basis for the Licensing Board's 7/6/83 Memorandum and Order, Collateral Estoppel; Atchison Case). Some of the terms used by the ALJ and Secretary Donovan were:

"inconsistent" (ALJ, pages 7, 13, 16, 20, 21)

"shifting interpretations" (ALJ at 24)

"not credible" (ALJ at 4; Donovan at 11, 20, 21)

"cannot believe" (ALJ at 14)

"unbelievable" (ALJ at 20, 21)

"just does not ring true" (ALJ at 21)

"disbelieve and find pretextual" (ALJ at 25)

"totally illogical and unconvincing" (ALJ at 9)

statements "skewered, and not fully reflective of the actual facts as they occurred" (ALJ at 15)

"stated reasons conflict" (ALJ 18)

"unconvincing, unbelievable, and irrational -- it just does not make sense" (ALJ at 21)

"does not provide any reasonable basis" (ALJ at 21)

"strange" (ALJ at 21)

"lack of legitimacy" and "not legitimate reason" (ALJ at 22)

"reactions not logical" (Donovan at 21)

"testimony . . . incredible, false and pretextual" and so found (ALJ at 21)

See also: ALJ at 6, 8-10, 12, 17, 20-23, 26; Donovan at 6, 9, 15, 16, 20, 21, 22, 23.

The ALJ stated at 4:

"My evaluation of the respondent's (Brown & Root's) witnesses' testimony itself, and when analyzed with their pre April 13, 1982 records, and their pre and post April 12, 1982 statements, convinces that their proffered explanation of the non-protected reasons for complainant's (Atchison's) termination is not reasonable nor credible and is pretextual. The question of complainant's credibility plays little, if any, part in this finding and conclusion." (Emphasis added.) (See also Donovan at 11.)

As pointed out by the Licensing Board in these proceedings (1/4/83 Memorandum and Order, at 4):

". . . allegations of wrongful discharge of a QC inspector for reporting construction defects is a serious matter, and . . . 'labor practices such as the firing of employees who report construction deficiencies can have serious safety implications.'"

An additional concern is the motivation and thinking behind the firing of Charles Atchison. As discussed by the ALJ and Secretary Donovan:

"Brandt's concern, on viewing the problem raised by Atchison through Smith and Foote was the fact that the vendor defects Atchison visually noted were 'at the closest 3 to 4 feet away from the weld he was suppose (sic) to inspect,'" . . . (ALJ at 11)

". . . I . . . also find that when the subject matter of Atchison's NCR #296 was brought to Brandt's attention, the initial question raised was: '(h)ow did the inspector come to identify the defects'. 'They were concerned about how did he find them;' and that there was some questions (sic) raised as to whether Atchison in so reporting was inspecting outside his area of responsibility . . ." (ALJ at 15)

"At one point during this 'NCR 296 incident' Randy Smith was asked by Brandt or Foote how it was that an inspector came to inspect welds done by CB&I, which was beyond the scope of Smith's inspectors' responsibilities." (Donovan at 8)

"Many of the reactions of Atchison's supervisors to these incidents are highly questionable in the circumstances and lend support to the ALJ's finding that the stated legitimate reasons for his transfer and discharge were pretextual." (Donovan at 17)

It is apparent from the preceding that Mr. Brandt's concern was not in identifying the problems promptly and seeing that they were corrected, but with Mr. Atchison's refusal to wear blinders in performing his duties as a QC inspector. As stated in the Speed Letter from Mr. Brandt to Mr. Purdy dated 4/12/82 (the day Mr. Atchison was fired) (CASE Exhibit 650C, Attachment to 7/16/82 prefiled Testimony of Charles A. Atchison):

"Subject employee has been assigned the responsibility of inspection of pipe whip restraint installation.

"Subject employee has demonstrated a lack of ability in performing assigned task, in that he refuses to limit his scope of responsibility to pipe whip restraints, and insists in getting involved in other areas outside his scope. Consequently, his services are no longer required." (Emphasis added.) (See also ALJ at 6.)

This is also reflected in termination Counseling and Guidance Report dated 4/12/82 when Mr. Atchison was fired (CASE Exhibit 650D.)

CASE is convinced that there is a long-standing, deeply-ingrained practice not only of discouraging inspectors and crafts people from writing up non-conformances or reporting them, but for firing individuals such as Mr. Atchison who make waves by refusing to ignore what they consider to be nonconformances or deficiencies in the interest of expediency at Comanche Peak. We will be addressing this matter further in the near future (following the filing of findings of fact on the Walsh/Doyle allegations, which is presently due to be in the mail by 8/15/83). However, we consider Mr. Atchison's firing to

be indicative of the thinking and attitude behind this practice.

There are other specific instances regarding the welding issues where Mr. Brandt's testimony has been inconsistent, where he has given shifting interpretations, where he has given illogical and conflicting testimony.

One of the most striking examples of Mr. Brandt's shifting interpretations is discussed at tr. 4519/12-4525/2, as demonstrated from these excerpts:

Q. (Mrs. Ellis): "Mr. Brandt, we discussed this somewhat yesterday, and I've got just one final question. On Page 30 of the testimony under Answer 93 (Applicants' Exhibit 141), the last sentence states: 'Examples of welding procedures which specifically permit the use of weave welding are attached as Attachments N through V.'

"How is it, sir, that these particular examples indicate the use of weave welding when not a single one of these documents indicate anything other than the use of stringer bead?

BY WITNESS BRANDT:

A. "Ma'am, as I believe I tried to explain on at least two occasions yesterday, we're talking about a matter of semantics. . ."

(Judge Miller entered the discussion to be certain he understood what was really being said and what was meant by it . . .)

JUDGE MILLER: ". . . I don't want to get your testimony involved in semantics and my understanding of it involved in anything of that kind.

". . . I don't want to get an answer that depends upon bringing to bear a certain perception of what you mean at different times or anybody means at different times of different terms. Do you understand my position?"

WITNESS BRANDT: "I'm not real clear, sir. But I think I can explain what I mean by semantics. . ."

"I'm not saying it's -- what I've said or what my testimony says is up for grabs. What I'm saying is when I refer to weave welding -- personal and professional opinion -- I'm talking about welding that's made with transverse oscillation of the arc, and that the weld -- the electrode -- the welding electrode is moved transverse back and forth across the weld groove, or in a fillet weld across the two pieces of the T-joint."

JUDGE MILLER: "All right. Now apart from that, I want to see how that compares with the terms as they are used in the testimony of this panel of which you're a part and those exhibits.

"Is it the same, or is it different?"

WITNESS BRANDT: ". . . The term 'weave weld' the only place that I know of that it's defined -- and it wasn't defined there until recently -- is in ASME Section 9."

JUDGE MILLER: "Hold that a minute now.

"Will you look at the two documents that we're looking at, that I'm asking you about. And I'll give you a chance, if you need to explain. I know you've partially explained, but I want to get a straight answer before we get an explanation.

"I want to know whether or not those terms are used as you're being interrogated. If they are, why say so. If you need to explain then beyond that, fine.

"But I don't want to get into a dance at the very beginning of the interrogation. Now do you see the terms?"

WITNESS BRANDT: "The term 'weave weld' is not used in those attachments, no, sir."

JUDGE MILLER: "All right. Is the term 'weave weld' used in your testimony; that is, the testimony of this panel?"

WITNESS BRANDT: "Yes, sir."

JUDGE MILLER: "Are they used correctly, as they're used in the testimony of the panel and as used in the exhibits?"

WITNESS BRANDT: "In my opinion, yes, sir. It's a matter of interpretation or as what I was referring to as a matter of semantics as to what is a weave weld.

"At what point in the oscillation, how far do you have to oscillate the arc before it becomes a weave as opposed to being a stringer?"

JUDGE MILLER: "Well, that sounds very recondite to me. I'm not an expert, and I've got some experts who will ask you questions after a while.

"But why wasn't that explanation proffered in this written testimony? We had to go into it here when you start giving professional opinions, modifications and the like.

"My question is: Why wasn't it set forth clearly and explicitly in that testimony that you say is yours?"

"I'll withdraw the question.

"All right. I think I understand the situation now. I wish that in answering questions, you'd answer as the terms appear. If you want to dissent from them or explain them, all right.

"But in cross-examination, answer directly what you're being asked, because you're giving an explanation first, and you're getting -- it's your imposition of semantics, not hers.

"So in fairness now, I'm asking you to stay on her level. And in fairness, if you need to get into some semantics explanation beyond what you've given, you'll be given that opportunity. Okay?"

WITNESS BRANDT: "Okay."

JUDGE MILLER: "Proceed."

There are other areas regarding which Mr. Brandt has given shifting testimony. For example, at tr. 4540/20-4542/3:

MRS. ELLIS: "On Page 32 of Answer 100, you state that 'The purpose of torque seal is that it serves as a preliminary indicator that a satisfactory torque value has been attained and to reduce the necessity for retorquing.'

"Does the presence of torque seal on a bolt reduce the necessity for retorquing or eliminate retorquing effort?"

BY WITNESS BRANDT:

A. "It certainly doesn't eliminate the retorquing efforts, ma'am. . .

MRS. ELLIS: "Would you look at your deposition testimony. It's CASE Exhibit 681, on Page 28, Line 21. The question was asked: 'And what is the purpose of the torque seal?'

"Could you read your answer on Line 23?"

BY WITNESS BRANDT:

A. "It says, 'To eliminate retorquing efforts.'"

MRS. ELLIS: "Isn't that statement inconsistent with what you just stated?"

BY WITNESS BRANDT:

A. "Yes, ma'am, it is.

"If I might add a word of explanation . . ."

And at tr. 4567/13-4571/19:

MRS. ELLIS: "Prior to voiding an NCR, if you were a part in question, would you normally go out and inspect the nonconforming condition yourself?"

BY WITNESS BRANDT: "It would depend on the situation, ma'am."

MRS. ELLIS: "In the case where you don't go out and look at it, how do you decide on the disposition of it? Is it based on the paperwork?"

BY WITNESS BRANDT: "No, ma'am. If, for example -- Maybe I could clarify by giving a couple of examples.

"If the nonconforming condition which had been reported was a non-safety-related item, non-safety related and non-seismic, there's no need to check it as it falls outside the scope of the QA program.

"In that case it would be a simple voiding of it. If it was a matter of an inspector saying something existed, and I was going to void the NCR, I would go personally and see that what he had purported to say existed. If I didn't feel it was rejectable, I would certainly go see it myself."

MRS. ELLIS: "Would you normally discuss this nonconforming condition with the reporting inspector prior to voiding the NCR?"

BY WITNESS BRANDT: "Occasionally it's prior to, ma'am. Occasionally it's after the voiding. In many instances, the inspector signs the NCR himself stating that the reason that the nonconforming condition that he had reported is invalid has been explained to him and he now understands why."

MRS. ELLIS: "All right. I'm not sure I followed your answer. To be clear, you normally would discuss it with the reporting inspector, sometimes prior and sometimes after the fact; is that correct?"

BY WITNESS BRANDT: "Yes, ma'am."

MRS. ELLIS: "Mr. Brandt, would you look at your deposition, CASE Exhibit 681, on Page 80 -- or actually I believe it begins on Page 79 with Line 24. Do you have that, sir?"

BY WITNESS BRANDT: "Yes, ma'am."

MRS. ELLIS: "The question was asked: 'Do you discuss the nonconforming condition with the inspector who submitted the NCR before you void it?'

"And your answer was, 'Do I?'

"And the question was asked, 'Yes.'

"And could you read your answer on Line 4 of Page 80?"

BY WITNESS BRANDT: "The answer is: 'No.'"

MRS. ELLIS: "Isn't that inconsistent with what you just stated?"

BY WITNESS BRANDT: "No, ma'am, b-cause if you read the next line of the deposition, the question reads on: 'Do you know if his superior discusses it with him?'

"And the answer is: 'Normally, yes, ma'am.'

"I believe the question I just fielded from you was, 'Is it discussed,' not whether I discussed it with him or not.

"If I misunderstood the question, I'm sorry. I do not normally discuss it with the inspector. It is discussed with the inspector, though, normally."

MRS. ELLIS: "All right. When an NCR is voided, so do (sic) the procedures provide that the reporting inspector or his immediate supervisor be provided with a copy of the NCR?"

BY WITNESS BRANDT: "I can read the procedure, if you'd like -- take a quick look at the procedure."

MRS. ELLIS: "Well, if you need to --"

JUDGE MILLER: "You can answer that yes or no, can't you?"

WITNESS BRANDT: "I don't think it's procedurally required."

JUDGE MILLER: "The answer is no."

MRS. ELLIS: "Would you look at Applicants' Exhibit 60, Mr. Brandt, on Page 3, under 3.1.5.1, 'Voiding an NCR.' . . . And could you read that for us, sir?"

WITNESS BRANDT: "'The quality control supervisor or his designee may at any time disposition an NCR to state 'Not a nonconforming condition,' or similar wording. He shall provide justification for such a disposition. The QC supervisor or his designee shall sign for closure for voided NCR's. When an NCR is dispositioned in this manner, the original is forwarded to the NCR coordinator, and a copy is forward (sic) to the QC discipline supervisor of the inspector of record.'"

One of the most recent instances of Mr. Brandt's inconsistent statements occurred in the June 1983 hearings, as excerpts from tr. 8415-8418 demonstrate:

BY MR. TREBY: "I would like to go back to the example of the person observing the cable pull, which you say is a simple task and is being performed by the Level 1 inspector. When he is observing the cable pull, is he also looking for such things as spacing of the cable within the tray, bend radii matters as the cable is being pulled through that?"

WITNESS TOLSON: "No, sir."

(There followed a discussion about in-process inspections and post-verification procedures and cable watching.)

WITNESS BRANDT: "If I could clarify the issue by adding something, the cable pulling activity is governed by a specific inspection instruction. All it covers is cable pulling. 'Witness Cable Pull,' I think, is the title of the instruction. There are inspectors that are certified to certify inspections in accordance with that instruction. There are also inspectors who are certified to perform inspections in accordance with the post-construction verification inspection. There are inspectors certified to perform cable separation inspections in accordance with 11.3-29. Basically all inspectors are certified to perform inspections in accordance with a specific inspection instruction."

(There followed a discussion about termination procedures.)

WITNESS BRANDT: ". . . It is simply a matter of pulling cable from Point A to Point B There would be a certification for witnessing cable terminations."

BY MR. TREBY: "Mr. Brandt, I am going to show you an instruction which is identified as QI-QP--1.3-26.6, which is entitled, 'Verifying Cable Pulling Operations.'"

(Handing document to witness)

"Is this the correct instruction for verifying cable pulling operations?"

WITNESS BRANDT: "Yes, sir."

MR. TREBY: "And is this the instruction which would be used by the Level 1 inspector who was observing the cable pulling?"

WITNESS BRANDT: "Yes, sir."

MR. TREBY: "Would you please read into the record 3.1.1, just the introduction, and then the 'B' part?"

WITNESS BRANDT: "'During cable pulling operations, the QC inspector shall monitor the raceway through which the cable is being pulled. During the monitoring, the inspectors concerned should consist of but not be limited to the following criteria:' and then it lists an 'A,' and 'B' reads: 'The QC inspector shall determine the minimum bend radius for the cable being installed or removed -- refer to Attachment No. 1 -- and shall include minimum bend radius inspection during their surveillance. Areas of major concern where minimum bend radius violations are most likely to occur are at points of entry to and exit from pull points, equipment panels, et cetera.'"

MR. TREBY: "Based on that instruction, how can you say that the Q1 inspector would not be looking at radial bend concerns?"

WITNESS BRANDT: "That was not my statement, Mr. Treby. Your question was that they would be looking for spacing, and listed two or three other items. I might have said no. What I meant was not necessarily. The inspector performing the cable pulling inspection would verify only those attributes contained in that particular instruction."

Thus, as demonstrated by these few examples of Mr. Brandt's testimony, Mr. Brandt has proved that he is not a credible witness (to the extent that his testimony may constitute material false statements).

Expertise of Applicants' Witness Brandt Is Brought Into Question

Applicants would have the Board believe that Mr. Brandt is the expert on welding and that "for whatever purpose the Board weighs the evidence on these issues, it must assign, as a matter of law, greater weight to the testimony of an expert such as Mr. Brandt over that of CASE's lay witnesses." (Applicants' 7/15/83 pleading at 5.) They also state that "as a matter of law, the Board may rightfully presume that the testimony of Messrs. Stiner and Atchison, whose lack of credibility has been clearly demonstrated, is not credible." (Applicants' 7/15/83 pleading at 6.)

As we have already demonstrated herein, the qualifications and expertise of Henry Stiner, Darlene Stiner, and Charles Atchison accord them expert status in these proceedings. Further, the inconsistent, shifting, and unbelievable testimony of Mr. Brandt has damaged his credibility to the extent that the Board should not rely upon his testimony absent documentation to support his allegations. It should also be noted that, unlike Messrs. Stiner and Atchison, Mr. Brandt's incredible testimony has been in regard to substantive matters which could make a difference in the decision this Licensing Board will make as to whether or not to grant Applicants an operating license for a nuclear power plant. In addition, Mrs. Stiner's credibility stands unchallenged in the record.

In regard to Mr. Brandt's expertise, there are certain things in the record which also call it into question. For example, regarding NCR 296, the Department of Labor decisions state:

"Later in March 1982, Atchison was asked by a craftsman supervisor to look at the welds on some pipe whip restraints which had not yet been installed. He saw some defects, marked them and told Randy Smith. After Foote and Brandt looked at the welds, Brandt ordered that an NCR be written (which became NCR No. 296) and the defects mapped. Atchison was instructed to map the defects as part of a four-man team. When this was done the first time, Brandt was dissatisfied because he felt there could not be as much porosity as shown on the map. Brandt ordered the weld defects to be mapped again; Atchison was not involved in this second mapping of defects. Brandt still felt that the second map showed too much porosity; he was irritated that it was taking so long to resolve the question of how many defects there were in these pipe whip restraints. Then Brandt learned from the supplier, CB&I, that its contract called for the use of ASME welding standards whereas Brandt had told his staff to use American Welding Society (AWS) standards in inspecting these pipe whip restraints. Brandt acknowledge his mistake and ordered the defects to be mapped again under the correct standard. Some defects were found and they were repaired by CB&I; in addition, 'back-fit' inspections were done on 56 CB&I pipe whip restraints already installed." (Donovan at 7, emphases added.)

The ALJ stated regarding this matter that:

". . . Brandt testified he had problems accepting the rejectable porosity readings of the 25 year veteran inspector involved in the NCR #296 mapping." (ALJ at 16, footnote 8, emphasis added.)

(See also Donovan at 19.)

Regarding the "822 level" incident:

"Brandt himself said nothing could be conclusively determined (regarding defects) until the paint was removed. Brandt's opinion at the time was that the porosity did not exceed permissible levels, but when the matter was finally resolved several months later, some rejectable porosity was found, although not as much as Atchison first indicated." (Donovan at 18, emphasis added.)

"Although they were covered with paint, Brandt did not think there were porosity defects; he thought the 'linear indications' were caused by the paint, but he could not concur or disagree with the finding. . ." (Donovan at 5 and 6, emphases added.)

Further questions are raised about Mr. Brandt's expertise by the statements in I&E Report 82-25/82-13 (CASE Exhibit 849, attached). (See page 15 of this pleading for further details.) As stated therein, the discoveries at Comanche Peak of weld defects in CB&I components which had been previously inspected

and accepted by TUGCO "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." The report goes on to state:

"It is acknowledged that a recent action was initiated 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." (Emphasis added.)

The date of the cover letter from the NRC was February 28, 1983; the NRC inspection was conducted November 22-24, 1982, after Mr. Brandt's testimony in September 1982. If Mr. Brandt is as expert as Applicants would have the Board believe, why was it necessary for TUGCO to hire a consulting firm for training purposes with specific expertise in the field of ASME and AWS welding requirements? And why didn't Applicants make the Board aware of this?

And finally, it should be noted that Mr. Brandt is the Non-ASME QA/QC Supervisor at Comanche Peak -- there is no indication that Mr. Brandt is an expert on the ASME Code, although his affidavit attached to Applicants' 7/15/83 pleading deals with the requirements in the ASME Code regarding Charpy impact testing in regard to weave welding. (In fact, Mr. Brandt's statement at tr. 4430/16-23 would seem to indicate that he is not an expert on the ASME Code.)

Thus, the extent of Mr. Brandt's expertise is also in question, as indicated by the preceding.

WEAVE WELDING AND DOWNHILL WELDING

Applicants would have the Board believe that the only evidence in the record that weave welding or downhill welding is a problem at Comanche Peak is the testimony of Henry and Darlene Stiner, and Charles Atchison; and on pages 6 and 7 of their 7/15/83 pleading, they state: "In short, the Board apparently is suggesting that Applicants further pursue allegations made by CASE witnesses who have been shown to be either incredible or lay witnesses, or both, even though the allegations were addressed by uncontroverted expert testimony of Applicants' witnesses which demonstrate that those allegations are unfounded and in any event insignificant from a safety standpoint."

The facts do not support Applicants' statement. As demonstrated herein, it was not only Charles Atchison who discussed downhill welding, but also Henry Stiner; Applicants completely ignored this fact in their pleading. Further, there is additional evidence in the record to support Henry and Darlene Stiner's testimony regarding weave welding, as demonstrated herein. This is yet another instance of Applicants' misstating the facts in a deliberate attempt to mislead the Board.

Weave Welding (or Beading)

Henry Stiner testified regarding weave welding in his prefiled testimony (CASE Exhibit 666, 9/1/82 Testimony of Henry A. Stiner) page 8, line 14, through page 17, line 18; page 33, line 6, through page 34, line 13; and page 53, lines 11-20. In his testimony, he discussed specific welding procedures and codes which prohibit or limit the use of weave welding at Comanche Peak, instructions by his welding instructor that weave welding was not allowed at Comanche Peak, and that he was told under pain of being fired to weave weld and not to let QC or the NRC catch him weave welding (pages 8-11).

Mr. Stiner stated that he identified areas where weave welds could be found when he talked to NRC investigators: the South Yard Tunnel; the Auxiliary Building; the North Yard Tunnel; the North Pump Room; the Reactor 1 Demineralized Water Tank Room; and "every place I had ever worked, weave welds, porosity, undercut and overlap could be found . . . unless the surfaces of the welds were ground off and the welds were capped (as the I&E Report states)."

(Page 11, first emphasis added.)

In his Affidavit attached to Applicants' 7/15/83 pleading, Mr. Brandt stated:

"To determine whether any of the areas specified by the Stiners could contain weave welds with excessive bead width on pipe hangers constructed with material requiring charpy impact testing /1/, the particular areas which the Stiners believed contained weave welding were identified. Specifically, Mr. Stiner identified five areas in which he contended weave welds existed (CASE Exhibit 666 at 11). These five areas are (1) South Yard Tunnel; (2) Auxiliary Building; (3) North Yard Tunnel; (4) North Pump Room; and (5) Reactor 1 Demineralized Water Tank Room. In addition, Mrs. Stiner identified two instances in which she believed weave welding had occurred, involving two pipe hangers in the Auxiliary Building (CASE Exhibit 667 at 24, 29). . .

/1/ The scope of the Stiners' allegation concerns only pipe hangers. (CASE Exhibit 666 at 11; CASE Exhibit 667 at 24, 29-30.)"

Applicants' witness completely ignored Mr. Stiner's statement that weave welding had occurred at every place Mr. Stiner had worked, and there is no evidence in the record that Applicants attempted to ascertain what other areas might have been involved. There is also no evidence in the record that Applicants attempted to ascertain whether any other welders at Comanche Peak had weave welded and at what locations such weave welding might have occurred.

There is evidence in the record, however, which supports Henry and Darlene Stiner's testimony in this regard. In Mr. Stiner's prefiled testimony (CASE Exhibit 666), he discussed the NRC's investigation into the allegations made by him and his wife regarding weave welding (pages 11-17). As pointed out by Mr. Stiner and in the investigation report (I&E 81-12, Staff Exhibit 178), Mr. Stiner gave the NRC investigators the names of five additional welders whom he stated were aware of weave welding being done. Mr.

Stiner identified the three names he was able to remember at the time of his testimony (Roy McCombs - sic, should be Roy Combs, who has since been laid off, see Footnote 1, page 2 of this pleading; Al Marcoot and Fred Coleman)⁴. The results of the NRC's investigation are discussed in Mr. Stiner's testimony at pages 11-17, which should be read in their entirety; it includes a detailed analysis of the inconsistencies between the I&E Report and the back-up "sanitized" notes of the investigator (CASE Exhibit 666C, Attachment to Henry Stiner's testimony). In addition to Darlene Stiner's confirmation of weave welding, based on her own personal observations (see CASE Exhibit 666C-16, Individual B), Individuals C, D, E, F, and G, identified in I&E Report 81-12 (Staff Exhibit 178) as B&R structural welders at CPSES, all stated (according to the I&E Report) that "weave welds were not authorized for use at CPSES." (Staff Exhibit 178, Report page 5.) Further, the "sanitized" back-up notes indicate that welders C, D, E, F, and G indicated that: "had one guy doing it" - quit - experience welders have repaired most of his work - don't often see weave - I don't use it - most guys pretty good - QC inspectors will catch it - no knowledge of grinding/capping weaves (Individual C, CASE Exhibit 666C-24); weaving does happen - inexperienced welders/bad fitups - not often - usually capped or ground (Individual D, CASE Exhibit 666C-22); is a lot of weave welding going on on hangers - inexperienced people doing weaves - foreman make welders grind smooth - can't ID areas (Individual E, CASE Exhibit 666C-23); weave welding forbidden - never seen it (Individual F, CASE Exhibit 666C-25); and weave forbidden - never seen (Individual G, CASE Exhibit 666C-26).

⁴ Roy McCombs was identified as one of the individuals whom CASE requested the Board to issue subpoenas for to support the Stiners' allegations (see July 28, 1982, letter from CASE to Board listing individuals CASE requested the Licensing Board to subpoena); Darlene Stiner was the only witness in support of Henry Stiner's testimony for whom the Board issued a subpoena.

In Applicants rebuttal testimony (Applicants' Exhibit 141), Mr. Brandt states (page 30, Answer 93):

"Q93. Is weave welding permitted by Brown & Root welding procedures for component supports?

"A93. (Brandt) Yes. Weave welding up to four times the core diameter of the weld rod being utilized is permitted by Brown & Root welding procedures. Examples of welding procedures which specifically permit the use of weave welding are attached as Attachments N through V." (Applicants' Exhibits 141N through 141V.)

However, an examination of Applicants' Exhibits 141N through 141V shows (under TECHNIQUE (WQ-410) Stringer or Weave Bead, right-hand column, 4th block) that in each and every instance the technique to be used is stated to be "Stringer." In most cases, on page 2 of the instruction under Instructions this is confirmed by the sentence: "All welding shall utilize stringer beads."

Thus, as discussed at tr. 4519/12-4525/1, and as evidenced by Applicants' own exhibits, the examples of welding procedures which Mr. Brandt claimed specifically permit the use of weave welding not only do not support Mr. Brandt's claim, but in fact support the testimony of Henry and Darlene Stiner. This puts the lie to Applicants' statement in their 7/15/83 pleading where it is stated: "Mr. Brandt presented uncontroverted testimony regarding the applicable codes and procedures and appropriate inspection practices for weave and downhill welding."

Applicants' Exhibit 141 purported to be Applicants' testimony in rebuttal to the testimony of Henry and Darlene Stiner. However, there is one glaring omission which was never specifically addressed by Applicants regarding welding procedures used at Comanche Peak.

On page 8 of Applicants' 7/15/83 pleading, it is stated:

"As was demonstrated by Applicants' expert witness, CASE's witnesses misunderstood the intent of applicable codes and procedures regarding weave welding. Specifically CASE's witnesses alleged that various welding codes and procedures prohibited weave welding, but could not specify the nature of the alleged prohibitions. In fact, these witnesses simply asserted that all weave welding was prohibited. CASE Exhibit 666 at 8-10; CASE Exhibit 667 at 23."

These statements give the impression that CASE's witnesses simply made a general statement that all weave welding was prohibited, without giving any specifics. However, this is not the case. If one reads the pages referenced in the preceding, Henry Stiner testified (CASE Exhibit 666, page 8, lines 19-24):

"C-10 and A-10 are actually codes for a welding process. The welding procedures for the C-10 and A-10 welding process codes are 11032, 11065, and 10046. The procedure that states that weave welding is not to be used is CPM-6.9. This is also indicated on the Weld Parameter Guides issued from the rod shack to each welder when material is picked up; if you go over the maximum bead width, you'd be weave welding." (Emphases in the original.)

Darlene Stiner testified, in part (CASE Exhibit 667, page 23, line 21, through page 24, line 7):

"First of all, let me say that weave welding is not allowed at CPSES. When I was in welding training school, Mike Adcock, my instructor, told me that welding in a weaving motion is not allowed. . .

"As a QC inspector, I was aware of the fact that weave welding was not allowed because of my welding training. It also stated in CPM 6.9 Appendix D that bead width over 4 cord wire diameters wide is not allowed. Depending on the size of the weld you are using, if you are using 1/8" rod, that's 1/2", in other words, four times whatever size rod you're using is the maximum bead width allowed."

As indicated in his testimony and in the certifications and Interim Welding Authorization attached to his testimony (CASE Exhibits 666A, pages 7, 8, and 9), Henry Stiner was authorized to weld to CP-CPM 6.9 Procedure,

C-10 11065 R2, and A10 10046 R5 codes and procedures. (See Affidavit attached.)

As indicated in her testimony and in the certification attached to her testimony (CASE Exhibit 667 H), Darlene Stiner was authorized to weld to CP-CPM 6.9 Procedure; and, as indicated in the Interim Welding Authorization attached to her testimony (CASE Exhibit 667 E), she was also authorized to weld to C-10 (11065) and A-10 (11046) codes and procedures.

Thus, the statement on page 5 of Applicants' 7/15/83 pleading that "Mr. Brandt presented uncontroverted testimony regarding the applicable codes and procedures and appropriate inspection practices for weave and downhill welding" is also untrue in this regard. In fact, Applicants' witnesses did not rebut the Stiners' testimony regarding these specific welding codes and procedures; Applicants never stated specifically that procedures 10046, 11065, or 11032 (which is interchangeable with and often used instead of 11065) did not prohibit or limit the use of weave welding at Comanche Peak. Applicants never brought forward these specific procedures, even though they were the procedures which the Stiners stated were the ones used at Comanche Peak and to which they were certified.

Similarly, Applicants never stated specifically that procedure CPM-6.9 did not prohibit or limit the use of weave welding at Comanche Peak. Applicants never brought forward this specific procedure, even though it was one of the procedures which the Stiners stated were used at Comanche Peak and to which they were certified.

CASE submits that in order for the record of these proceedings to be complete in this regard, Applicants should be ordered to produce these specific procedures so that the Board can see for itself what is contained in them.

Applicants' witness Brandt states in his Affidavit attached to their 7/15/83 pleading (Affidavit pages 1 and 2):

". . . the only material on which weave welding resulting in excessive bead width is considered to be of concern in the ASME Code is material that requires Charpy impact testing. The purpose of limiting bead width for welds on materials requiring impact testing is to control effective heat input because excessive heat input could cause broadening and subsequent embrittlement of the heat affected zone."

In the first place, Applicants have provided nothing from the ASME Code to document that only Charpy impact tested material is of concern. This Board has made clear that if there are Codes involved, it wants to see the wording of the Codes so that the Board can interpret the language itself. (As was clearly demonstrated during the discussions, briefs, and oral arguments concerning thermal expansion stresses resulting from constraint of free-end displacement following a LOCA, the ASME Code is not always all that easy to interpret.) CASE urges that the Board require Applicants to produce the portion of the ASME Code which confirms this statement.

There are other questions raised, however, even if one were to accept Applicants' representation that only Charpy impact tested material is of concern. For example, in the Report of ASME Nuclear Survey Conducted October 12-14, 1981 (CASE Exhibit 590, letter from ASME to Brown & Root notifying B&R that a Resurvey was required and detailing deficiencies noted in B&R's program), the following statement was made:⁵

"The deficiencies noted in your program include, but are not limited to, the following items which require corrective action:

". . . II. Implementation

". . . (D) Control of Construction Processes -

". . . (2) Welding Procedure Specification 11012 for welding with impact test requirements did not specify the travel speed but instead controlled the heat input by Volt/amp range and maximum bead width for a given electrode diameter. The Procedure Qualification Record 010AB127 for this WPS recorded a beam width greater (sic) than that allowed by the WPS."

⁵ See also CASE Exhibit 614, 3/19/82 letter from ASME to Brown & Root regarding this matter. CASE does not have Applicants' follow-up to this letter; however, there is nothing in the record to indicate that there was ever a back-fit or research conducted on the completed welds that had been done in the past.

Welding Procedure Specification 11012 was one of the Procedures which Applicants' witness Brandt submitted which he alleged supported Applicants' position that weave welding was acceptable at Comanche Peak (Applicants' Exhibit 1410). Although Applicants' Exhibit does indicate a Travel Speed (Range), it should be noted that the date of this procedure (Revision 6) is 3/12/82. It is therefore apparent that, at least prior to the 10/81 ASME Survey and probably prior to the 3/12/82 revision of Procedure 11012, the effective heat input was not properly controlled, according to ASME inspectors during their 10/81 ASME Survey.

It should also be noted that most of the other procedures submitted by Mr. Brandt were revisions dated after the 10/81 ASME Survey:

<u>Procedure</u>	<u>Applicants' Exhibit</u>	<u>Revision No.</u>	<u>Date of Revision</u>
11010	141N	5	2/26/82
11031	141P	4	1/13/82
10047	141R	5	4/13/82
88025	141U	5	3/16/82
88032	141V	8	1/12/82

Further, the following procedures do not specify the travel speed:

<u>Procedure</u>	<u>Applicants' Exhibit</u>	<u>Revision No.</u>	<u>Date of Revision</u>
11031	141P	4	1/13/82
10032	141Q	8	4/3/79
10047	141R	5	4/13/82
12010	141S	1	3/20/81
12012	141T	1	5/13/81
88032	141V	8	1/12/82

It therefore is obvious that many of Applicants' procedures did not specify the travel speed prior to the 10/81 ASME Survey, and that many of their procedures still do not specify the travel speed, according to Applicants' own exhibits. This in turn means that the heat input was not controlled properly for all of the items welded according to those procedures. Obviously, this lack of control in and of itself does not mean that each and every such weld is deficient; however, it does mean that each and every such weld is now questionable in regard to its strength.

It should also be noted that Applicants do not answer the question with which the Board is primarily concerned: ". . . we do not understand the configuration of the welded joints well enough to accept Applicants' explanation without further information. In particular, we do not understand how grinding cures any weakness of a joint that may exist due to weave beading." The reason Applicants did not answer the Board's concerns is obvious -- the answer does not support Applicants' position. Grinding obviously does not cure any weakness of a joint that may exist due to weave beading.

Mr. Brandt's explanation that "(t)he further you grind into the weld, the narrower the weld is going to get" (tr. 4651) only indicates that you have less weld remaining, which would certainly not make the weld any stronger, or correct any weakness of the joint. See also Stiner Affidavit attached, at 6 and 7.

With regard to the heat input, Applicants' Exhibits 141N through 141V (attached to Mr. Brandt's testimony) all state that preheat and interpass temperature (above 150°F) shall be checked using temperature indicating crayons

(or an approved equal). However, neither temperature indicating crayons nor any other temperature checking method is usually used by the welders at Comanche Peak (see Affidavit of Henry and Darlene Stiner, attached, at pages 4-6). This further indicates that each weld where heat input was not controlled properly is now questionable in regard to its strength.

Downhill Welding

Applicants would have the Board believe that only Mr. Atchison addressed downhill welding in his testimony, and that if they can relieve the Board's mind regarding Mr. Atchison's concerns (which they assume concern only root-and-cover pass welds), "then the Board may not require further inquiry on this subject." (Applicants' 7/15/83 pleading at 12.)

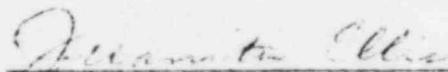
However, Mr. Atchison is not the only person who addressed downhill welding in his testimony. Henry Stiner also addressed it briefly in his testimony (CASE Exhibit 666, 9/1/82 Testimony of Henry A. Stiner, pages 45-46), in which he stated that "lots of times, people will run a downhill weld instead of doing it correctly." He also testified that the effects of downhill welding are: "You have slag, trapped inclusions, lack of fusion and various other undesirable weld conditions. There is a process for downhill welding, but it's not allowed on the jobsite at all." (Mr. Brandt confirmed that downhill welding is not allowed by Brown & Root onsite, although CB&I down allow it on the welding of their pipe whip restraints; see tr. 4601.) In addition, all but one procedure submitted by Mr. Brandt (Applicants' Exhibits 141N through 141P and 141R through 141V) state that the welding progression is to be upward; only 141Q states that the welding progression shall be "E6010 Downward, E7018 Upward."

Mr. Stiner's testimony regarding downhill welding is clarified further in the Affidavit of Henry and Darlene Stiner attached hereto, at pages 2 and 3. As stated therein, downhill welding is not supposed to be used normally, and then the welder is supposed to be qualified or requalified to do it. Both Mr. and Mrs. Stiner did some downhill welding, under orders, although they were not qualified for downhill welding.

SUMMARY

In summary, there are still many unanswered questions regarding the extent of and repair of weave welding at Comanche Peak, and the extent of and repair of downhill welding at Comanche Peak. The Board should not close the record without further investigation and evidentiary hearings regarding these matters. CASE urges that the Board request the State of Texas, as a party and an interested State in these proceedings, to pursue the investigation of these matters. In the alternative, we urge that the Board request the NRC Office of Investigations in Washington to pursue such an investigation.

Respectfully submitted,



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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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 (CPSSES)

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 to Supplement the Record; and CASE's Answer to Applicants' 7/15/83

Summary of the Record Regarding Weave and Downhill Welding

have been sent to the names listed below this 28th day of July, 1983,
by: Express Mail where indicated by * and First Class Mail elsewhere.

Attachments sent to names marked by * only

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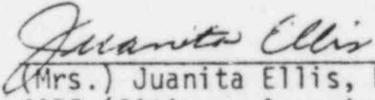
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