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January 30, 1984 20

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	Docket Nos. 50-445 and
TEXAS UTILITIES ELECTRIC	)	50-446
COMPANY, ET AL.	)	
	)	(Application for
(Comanche Peak Steam Electric	)	Operating Licenses)
Station, Units 1 and 2)	)	

APPLICANTS' REPLY TO CASE'S  
IDENTIFICATION OF ISSUES

I. INTRODUCTION

Texas Utilities Generating Company, et al. ("Applicants") hereby submit their reply to CASE's Response to Applicants' Identification of Issues, filed December 23, 1983. During the conference call on January 12, 1984, the Board authorized the filing of replies to CASE's pleading, and scheduled those replies for filing by January 30, 1984 (Tr. 9254). The Board indicated that it would receive the filings of Applicants and the Staff, and would then issue a ruling providing the parties with a list of the remaining issues (Tr. 9221-22). Accordingly, we provide below Applicants' response to those issues raised by the intervenor in its December 23 pleading.<sup>1</sup>

<sup>1</sup> CASE filed its Clarification of Issues in 12/23/83 Pleading ("Clarification") on January 16, 1984. Accordingly, we also (footnote continued)

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Before presenting our response, we wish to comment on a few matters. The first several pages of CASE's pleading are dedicated to the reiteration of unwarranted accusations and unfounded rhetoric regarding Applicants. As we have stated before, we do not intend to engage in such useless debate. It simply distracts the Board and other parties from their efforts to identify and seek means for bringing this proceeding to a timely conclusion.

There are two matters raised by CASE which we believe warrant a brief response. These matters concern questions which are germane to the manner in which the Board conducts the remainder of this proceeding and, thus, we believe are important for the Board to consider. The first question which we believe warrants a response is CASE's implication that the Board has no obligation to attempt to complete this proceeding in a manner consistent with the scheduled fuel load date for Comanche Peak. The Commission has made it clear that licensing proceedings should be conducted efficiently and fairly, consistent with the Rules of Practice, so as to avoid any unnecessary delay in the operation of a facility. Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452 (1981). It is clearly the responsibility of the Licensing Boards to conduct a fair and equitable proceeding. Such fairness must be balanced and must extend to all parties. Fairness to Applicants includes

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(footnote continued from previous page)  
address below CASE's comments in its Clarification, to the extent they alter or supplement its original position.

the conduct of the proceeding in an efficient manner so as to avoid any unnecessary delay. The conduct of the proceeding in this regard may require extensive hearings and/or expedited consideration of issues, even if such efforts may be burdensome to some or all the parties. Contrary to CASE's assertions, however, these burdens do not justify restructuring the hearing process if otherwise avoidable delay may result.

The second matter which we believe warrants comment concerns the evidentiary threshold that must be overcome in order to raise new issues or to reopen the record to relitigate questions on which the Board has already ruled. At no point in its pleading does CASE acknowledge that particular tests must be satisfied before such matters may be litigated. As this Board recently recognized, an intervenor must demonstrate good cause, based on consideration of several factors, before such issues may be litigated (See Special Prehearing Conference Order (Late Contention on Hot Functional Testing), November 23, 1983). Accordingly, absent such a demonstration, the Board should decline to consider further issues identified in CASE's pleading which are either wholly new issues or concern matters on which the Board has already ruled.<sup>2</sup>

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<sup>2</sup> These issues are, of course, distinguishable from issues as to which the Board has not already closed the record and has indicated a willingness or intent to receive additional evidence. Such issues obviously do not require a special demonstration of good cause.

II. APPLICANTS' REPLY TO CASE'S IDENTIFICATION OF ISSUES

Applicants discuss below, in the order presented by CASE in its pleading, the issues which CASE believes remain to be resolved. The Board should note that the intervenor includes in its list both issues which the Board has already determined will require the presentation of additional evidence and other issues which CASE believes require the taking of further evidence. In some instances, CASE simply acknowledges the existence of an unresolved issue (e.g., issues which the Board has indicated will be considered in subsequent decisions) but requests no particular action by the Board. Generally, Applicants agree with CASE's identification of matters which the Board has previously indicated would require the presentation of additional evidence to resolve. With respect to the issues which CASE believes may require further hearings, however, we disagree with CASE's assessment of many of these issues.

A. Rock Overbreak

CASE does not request that additional hearings be held on this subject. Rather, CASE merely quotes the Board's previous determination (see Proposed Initial Decision, at 10) that certain aspects of this issue would not be covered in that decision. (CASE Response at 9.) We see no reason for the Board to take any further action on this topic at this time.

B. "Other Specific Allegations Raised  
in the Context of Contention Five"

Quoting from the Board's Proposed Initial Decision (where the Board noted that certain issues were not addressed in that Decision), CASE contends that it may be necessary to have further hearings regarding "the overall QA/QC program". CASE does not, however, identify any specific issue or question which it believes needs be addressed. Such a broad, undefined request obviously does not lend itself to meaningful response by Applicants. As this Board has recognized, only "concrete", "litigable" issues may be raised in licensing proceedings.<sup>3</sup> Further, with respect to CASE's suggestion that issues within this topic "could be addressed in findings", we request the Board to provide clear guidance. As discussed in Applicants' January 17, 1984, Motion for Reconsideration (at 16-19), raising new arguments for the first time in proposed findings is not permitted in NRC practice. Accordingly, the Board should make it clear that it does not intend in the future to consider new issues or arguments raised in findings.<sup>4</sup>

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<sup>3</sup> See Special Prehearing Conference Order (November 23, 1983) at 5, citing Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20 1974) at 20-21.

<sup>4</sup> For example, CASE claims that the topic of trending "will probably not need to be covered in hearings" and, instead, may be addressed in findings (Clarification at 6). We assume the Board intends that CASE specify every claim and argument it intends to raise in the expected findings has directed be filed.

C. Polar Crane Shims

As CASE indicates, the Board has requested that Applicants provide information regarding the inspection of shims in the polar crane bracket assemblies. Applicants will submit an affidavit providing this information shortly.

D. Protective Coatings

CASE identifies three general areas regarding protective coatings as to which it believes hearings should be conducted. The first area concerns allegations of intimidation of QC inspectors. Applicants believe that all allegations of intimidation should be considered at one time, probably upon issuance of the NRC Office of Investigations ("OI") reports regarding such allegations, unless the OI matter is not concluded seasonably. The extent to which each allegation should be litigated may be determined at that time.

Second, CASE also identifies particular coatings procedures which were criticized by Mr. Hamilton. Applicants intend to include in their testimony regarding the coatings reinspection program evidence concerning the criteria applicable to near-white blast, maximum roughness and Westinghouse coatings. As to the specific allegation of Mr. Hamilton regarding adhesion testing, as CASE notes, the record on this issue was closed by the Board in its September 23, 1983, Memorandum and Order (at 21). Because CASE has provided no cause for reopening this matter, Applicants do not intend to address it further. We do intend, however, to

address the testing methods employed in the reinspection program in the context of our testimony on that program. With respect to the allegation regarding Mr. Hamilton's dismissal, Applicants have already indicated their agreement with CASE that additional evidence should be received on this topic (see Applicants' January 26, 1984, Answer to CASE's Motion for Reconsideration). Applicants intend to include this testimony within the scope of their evidence regarding the coatings reinspection program.<sup>5,6</sup>

Finally, CASE notes that the allegation of Mr. Hamilton regarding the inadequate disposition of certain NCRs was left open by the Board's July 29, 1983, Proposed Decision. The dispositions with which Mr. Hamilton disagreed concerned the criteria for the repair of minor defects and the disposition of an event involving smoke from Kelly heaters. The latter issue

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5 With respect to CASE's argument that the Board permit only pertinent and material testimony and not allow any "redundant" testimony, we only note that we agree that the usual procedures applicable to the presentation of evidence, including the presentation of relevant, material, and not unduly repetitious evidence, would apply (see 10 C.F.R. § 2.743(c)).

6 With respect to CASE's request that Applicants provide information regarding the results of the coatings reinspection program, Applicants intend to submit with written direct testimony any documents Applicants intend to rely upon in their testimony. Our testimony will address the full coatings reinspection program and, thus, will include any documents relevant to the results of that program. In addition, we intend to comply with the Board's request that parties file documents relating to open issues with reasonable promptness (Memorandum and Order (Scheduling Matters), December 28, 1983, at 1). We also note that this topic will not be litigated until the March or April hearing sessions. Accordingly, CASE's request is premature.

was closed by the Board in its September 23, 1983, Memorandum and Order (at 22). CASE does not present any reason to reopen the record regarding this disposition. With respect to the allegation regarding the repair of minor defects, the Board has not addressed Applicants' objections to the disposition of this matter.<sup>7</sup> CASE also mentions the memorandum of Mr. Lipinsky. Applicants have already noted their intent to present testimony on this matter (see Applicants' Proposed Schedule For Next Hearing Session, January 9, 1984, at 2).

E. Removal of Cable Trays

CASE contends that an allegation regarding the removal of cable trays, which this Board has previously indicated would be considered in a subsequent decision, should be the subject of further hearings. The Board was clear in its Proposed Initial Decision that because this matter was also raised in the context of the CAT Report that it would be appropriate to consider this in the context of the decision on the CAT findings. CASE presents no reason why the Board should take further evidence on this question. CASE also does not provide any reason for disputing the Board's conclusion that it would be appropriate to address this allegation in connection with its decision on the

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<sup>7</sup> Applicants submitted the affidavit of Mr. Brandt regarding various open issues identified in the Board's Proposed Initial Decision, including the allegation regarding the repair of minor defects (see Applicants' Objections to Proposed Initial Decision (August 27, 1983), at 39-40). It appears the Board has not yet ruled on Applicants' objections in this regard. Accordingly, we request that the Board indicate whether it accepts Applicants' objections.

CAT findings. Accordingly, the Board should decline to reconsider its decision that this question should be addressed in future hearings.

F. Termination of Henry Stiner

CASE notes that Henry Stiner's allegation regarding his termination has not yet been addressed by the Board, which noted its intent to address this allegation in a later decision (Proposed Initial Decision at 28). CASE does not, however, request further hearings on this question. Nevertheless, the Board recently determined that this matter was open and subject to litigation. Specifically, the Board indicated it had "left open the question of whether Mr. Stiner was fired for engaging in a protected activity." (Memorandum and Order (Additional Scheduling Order), January 3, 1984 at 3-4). Applicants note that Mr. Stiner's remedy with respect to a complaint that he was fired for engaging in a protected activity rests exclusively through a proceeding before the Department of Labor. 42 U.S.C. § 5851(b)(1); 10 C.F.R. § 50.7(b). In any event, Applicants have noted the Board's interest in this question as a matter related to management's commitment to quality control. Accordingly, we intend to submit to the Board an affidavit addressing this allegation. We believe this affidavit will provide sufficient information for the Board to determine whether further hearings need be conducted.

G. Welding Practices

CASE identifies numerous allegations regarding welding practices at Comanche Peak which it believes should be the subject of future hearings. The evidentiary status of these allegations varies, ranging from matters on which the record has been closed to questions which the Board considers to remain open. In addition, subsequent to CASE's Response, the Board issued its Memorandum and Order (Additional Scheduling Order), January 3, 1984, in which it expressed its desire that Applicants and Staff address the overall regulatory context of welding, including the relationship between the AWS and ASME Codes (Memorandum and Order at 6-7), in addition to several specific welding allegations. In view of the Board's broad interest in welding, Applicants intend to present testimony to address the relationship between the AWS and ASME Codes and the several open welding issues, viz., weave beading, welding of misdrilled holes, downhill welding and weld rod control. Accordingly, Applicants are in general agreement with CASE regarding the need for further testimony regarding welding issues.

H. Torque Seal

CASE evidently would have the Board take further testimony regarding the allegations concerning the use of torque seal. However, as CASE notes, this matter was closed by the Board in

its September 23, 1983 Memorandum and Order. CASE presents no reason for questioning the Board's disposition of this topic and, thus, the Board should not revise its conclusions.

I. Hanger SW-1-102-106-Y33K

CASE does not indicate whether it believes additional hearings on this matter are necessary. Further, as CASE notes, the Board closed this matter in its September 23, 1983 Memorandum and Order. CASE does not present any justification for the Board to reconsider its previous disposition or to reopen the record on this matter. Accordingly, the Board should find that no additional hearings are necessary on this topic.

J. LPT on Fuel Pool Liner

As CASE notes, the Board closed the record on this issue in its September 23, 1983 Memorandum and Order. Although again not specifying whether it believes additional hearings are necessary on this topic, CASE states that Mrs. Stiner "does not agree" with the disposition of this allegation. However, that simple statement does not provide any justification for the Board to reconsider its disposition of this matter. Accordingly, we believe the Board should state that no further hearings are necessary on this issue.

K. Disposition of Pipe Hanger

CASE correctly notes that the Board closed the record on this matter in its September 23, 1983 Memorandum and Order, and again does not specifically request a hearing on this topic. In any event, CASE presents no reason for the Board to reconsider its previous disposition of this allegation. Accordingly, the Board should find that no further evidence is required.

L. Reclassification of Materials

This matter involves the Board's disposition of an allegation regarding the tracability of materials employed for purposes which originally are not classified as safety-related but which are subsequently reclassified as safety-related. CASE does not dispute the Board's disposition of this allegation. Accordingly, the Board should not find that further consideration of this issue is necessary.

In addition to the above, CASE notes that Mr. Miles, who testified in this proceeding, raises a new allegation in a recently submitted affidavit regarding the derating of the polar crane. CASE contends that this relates to the material tracability issue already disposed of by the Board "as well as possibly" the allegation regarding polar crane shims. CASE would have Applicants "supply information" regarding this matter.<sup>8</sup> The

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<sup>8</sup> The Board should note that Mr. Miles' affidavit regarding this topic is not in the record and raises here a wholly new matter for which the required demonstration has not been made to require the Board to consider the allegation in the first instance, let alone require Applicants to provide information on the issue.

facts regarding the rating of the polar crane are set forth in FSAR § 9.1.4.3.1. As noted there, the polar crane is used during construction for lifts of up to 475 tons. Such use does not, however, relate to the safety-related purposes the polar crane will be used for during operation. The crane is ultimately rated according to the loads (up to 175 tons) it may lift during operation. (See FSAR at pp. 9.1-47 to 48.) Thus, CASE's claims present no basis for the Board to inquire further into this matter.

M. Heat Input During Welding

CASE asserts that a question regarding control of heat input during welding, which it raised in connection with its assertions regarding weave and downhill welding, should be addressed in hearings. As already noted, Applicants intend to address both weave and downhill welding in testimony to be presented in the February hearings. Questions relevant to CASE's allegations may be addressed at that time.

N. Personnel Qualifications

CASE contends that hearings should be held to address the allegations made by its witnesses regarding the qualifications of supervisory and other personnel at Comanche Peak. CASE does not provide reasons for the Board to revise its previous conclusions regarding these allegations. We believe the Board has correctly disposed of these issues. The Board has found that the mere fact that an employee disagrees with a decision made by his supervisor does not present a serious question regarding the supervisor's qualifications. The Board also correctly found that absent a demonstration that there are significant faults in procedures there is no reason to question the qualification of supervisory personnel. (Proposed Initial Decision at 23.) Similarly, the Board has determined, correctly in our opinion, that the question of inspector qualifications should be considered in connection with the decision regarding the CAT findings (Proposed Initial Decision at 41). In short, CASE has provided no justification for the Board to reconsider its prior determinations regarding personnel qualifications.

Further, the recent allegations by CASE regarding supervisor qualifications (in affidavits accompanying its November 28, 1982, pleading) are not properly before the Board. CASE has not made the required demonstration for raising issues untimely. Further, CASE does not provide sufficiently specific information that would enable the Board to determine whether an important

safety question exists which warrants additional hearings. Accordingly, the Board should find that no additional hearings are necessary to address these allegations.

O. Chicago Bridge & Iron Welding

CASE argues that the Board "erroneously" closed the record regarding allegations by Mr. Atchison concerning welding on pipe whip and moment restraints supplied by Chicago Bridge and Iron. CASE cites an NRC Inspection & Enforcement Report (I&E Report 82-25/82-13 (CASE Exhibit 849)) in support of its assertion that additional hearings should be held on this topic. CASE's argument boils down to an assertion that the NRC should have taken more severe enforcement action than it did on this matter (the NRC identified two Level V violations<sup>9</sup>), claiming that the discussion of the inspection results in the cover letter does not "correspond" to the NRC's categorization of the identified violations as of minor safety concern. In its January 3, 1984, Memorandum and Order (Additional Scheduling Order) the Board stated that although CASE's request for the Board to reconsider this matter is tardy, it was inviting Applicants and Staff to file comments on the facts involved.

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<sup>9</sup> NRC regulations define Level V violations as being "of minor safety or environmental concern." 10 C.F.R. Part 2, Appendix C, Section III.

Applicants believe that, with one exception, the record is adequate regarding this matter. The Board should note that of the three areas addressed in the inspection, two were identified by the NRC as involving violations of NRC requirements. The NRC issued a notice of violation, classifying these as Level V violations, which as noted above are considered by the NRC to involve violations of minor safety concern. Applicants' responses to these items provided appropriate corrective action.<sup>10</sup> Further, the Board should note that the events addressed there occurred in 1980 and 1981, prior to even more aggressive corrective measures Applicants implemented in 1982 with respect to CB&I activities. Those measures have already been fully addressed in this proceeding, as summarized in Applicants' Objections to Proposed Initial Decision, at 67-70. We submit that whatever significance the activities in 1980 and 1981 (referred to in the NRC's findings) may have had, is fully attenuated by Applicants' subsequent corrective actions. With respect to the third area addressed in the NRC inspection report, as to which the NRC determined no enforcement action was warranted and which concerns the matters identified by CASE in its motion, the Board should note that Applicants addressed this concern in the cover letter to our response to the I&E Report. There we pointed out that when concerns arise as a result of

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<sup>10</sup> Applicants' response to these violations (attached hereto) was transmitted by letter dated March 30, 1983, to the NRC. We ask the Board to admit this response into the record as Applicants' Exhibit 173, in accordance with the procedure outlined by the Board for the receipt of all inspection reports (Memorandum and Order (Additional Scheduling Order), January 3, 1984 at 7).

source inspections and/or audits of vendors, the level of reinspection and special audit activity is increased. Applicants' in fact responded to such concerns with respect to CB&I by taking positive steps to monitor more closely CB&I activities (See Applicants' Proposed Findings, February 23, 1983, at 95-97). Accordingly, we urge the Board to reaffirm its previous decision that the record in this matter is closed and to find that CASE has not presented sufficient justification for reopening the record to take further evidence.

P. NPSI Restraint Welding

As CASE notes, this issue was closed by the Board in its September 23, 1983, Memorandum and Order. Further, although given the opportunity to seek reconsideration of this Memorandum and Order, CASE did not do so. Thus, CASE's instant objection to the Board's closing the record on this issue is untimely, as the Board has recognized (Memorandum and Order (Additional Scheduling Order), January 3, 1984 at 4-5). However, given the Board's invitation for additional comment by Applicants and Staff (id.), we provide below additional information regarding this topic.

The Board should first note that none of the I&E Reports cited by the CASE regarding NPSI welding included any violations or deviations. Rather, the NRC identified as open or unresolved items questions regarding Applicants' vendor source inspections of welding. As noted in I&E Report 82-22 (CASE Exhibit 737) Applicants had begun a comprehensive review of source inspection

activities. As noted above with respect to the I&E Report regarding CB&I welding, Applicants took several steps (independent of NRC findings) to improve this process, with special emphasis on weld inspection. These measures included clarification and reemphasis of program requirements with inspection personnel.<sup>11</sup> Further, Applicants retained the services of an experienced consultant to conduct retraining and to monitor source inspection activities to assure that necessary proficiency is exhibited by inspectors.<sup>12</sup>

In sum, the concerns identified by the NRC regarding source inspections were independently identified by Applicants and resulted in appropriate corrective action. CASE has not demonstrated that a significant safety concern exists with respect to this topic, and the Board should find there is none. Accordingly, the Board should decline to reconsider its prior decision to close the record on this topic.

Q. Liquid Penetrant Testing

This allegation (concerning the use of liquid penetrant test kits by uncertified personnel) was closed by the Board in its September 23, 1983 Memorandum and Order (at 33-34). CASE does not contend that additional hearings should be held on this issue. Further, CASE does not dispute the facts on which the

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<sup>11</sup> See Applicants' (Proposed) Exhibit 173 at 2.

<sup>12</sup> Id; see also December 27, 1982, Letter from R. J. Gary (TUGCO) to G.L. Madsen (NRC), Re: Response to SALP Report at 2 (Attachment B). Applicants request this letter be received into evidence as Applicants' Exhibit 174.

Board based its conclusions and, thus, there is no reason for requiring additional hearings on this topic.<sup>13</sup> Accordingly, the Board should find that further inquiry into these allegations is unnecessary.

R. Dunham Allegations

CASE notes that the NRC is presently investigating allegations raised by Mr. Dunham relating to the coatings program at Comanche Peak. These allegations relate both to the adequacy of the coatings program and an assertion by Mr. Dunham that he was improperly dismissed. As already noted, Applicants intend to present testimony on the coatings program and allegations of intimidation. Mr. Dunham's allegations, therefore, will be addressed in the context of hearings on those issues.

CASE also notes in connection with this matter that two allegations previously addressed by the Board ("unstated management directive to overlook problems" and approval of a Tennessee Wall, Tube and Metal audit), the implications of which the Board intends to address in a subsequent decision, relate to the general question of management's commitment to quality

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<sup>13</sup> Mr. Atchison's disagreement with the Board's disposition of this matter does not provide justification for the Board to reconsider its prior conclusions. Further, the allegation regarding liquid penetrant inspections on the fuel pool liner have also been properly disposed of (See Section II.J. above) and CASE presents no reason for the Board to reconsider its conclusion on this matter either.

assurance. CASE does not, however, request that additional hearings be held, and Applicants do not believe that further evidence regarding these matters is warranted.<sup>14</sup>

S. Messerly Allegations

Under the heading "Concerns Raised by CASE Witnesses", CASE argues that hearings should be held with respect to the allegations of Mr. Messerly. In support of its request CASE references an NRC inspection report (I&E Report 83-27) which addressed Mr. Messerly's allegations and asks the Board to review CASE's November 9 and 30, 1983, pleadings in this regard. Neither of these pleadings, however, raises any serious safety questions that would justify examining in this proceeding Mr. Messerly's allegations. Applicants believe those allegations were thoroughly reviewed in I&E Report 83-27. In addition, Applicants examined Mr. Messerly's affidavit, attached to CASE's November 28, 1983, Answer to Board's 10/25/83 Memorandum, to determine whether any significant questions were raised regarding the adequacy of NRC's investigation into Mr. Messerly's claims. As the Board will observe, no significant claim is raised in that

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<sup>14</sup> CASE's assertion that "discouragement from doing the job right to begin with" should be included in hearings on intimidation is similarly unfounded. As the Board has previously noted, assertions such as the need for rework or low worker morale (to which this assertion relates) are not relevant to the question of the quality of the final product absent a simultaneous demonstration that appropriate quality control procedures were not implemented and corrective action, as necessary, was not taken (see Proposed Initial Decision at 14, 17).

affidavit that brings into question the adequacy of the NRC investigation. Accordingly, the Board should find that there is no reason to litigate Mr. Messerly's claims in this proceeding.

T. Document Control

CASE notes that the Board has stated that the allegation of Mr. Atchison regarding document control will be addressed in a later decision. We agree that this topic may be addressed in a later decision and urge the Board to find that further hearings are not necessary to address this matter.<sup>15</sup>

U. Torquing of Bolts

CASE notes this allegation was closed in the Board's September 23, 1983 Memorandum and Order. CASE presents no information that suggests the Board should reconsider its prior determination. Accordingly, the Board should find this allegation has been properly disposed of and will not be the subject of future hearings.

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<sup>15</sup> We ask the Board to refer to the discussion in Applicants' December 3, 1983 Identification of Issues (at 7), where we draw the Board's attention to certain evidence of record regarding the specific allegation made by Mr. Atchison.

V. Quenching of Welds

This allegation was closed in the Board's September 23, 1983 Memorandum and Order, as CASE notes, and no information is presented that would warrant further inquiry into this allegation. Accordingly, the Board should find that further inquiry to address this topic is unwarranted.

W. Number of Quality Control Inspectors

CASE discusses in this portion of its pleading the Board's disposition of an allegation by Mr. Atchison regarding the adequacy of the number of QC inspectors. CASE does not argue that additional hearings need be held on this matter. Absent a demonstration that the Board's previous disposition of this allegation was incorrect, there is no reason for further pursuit of this topic, and the Board should so find.

X. Cold Springing of Pipe

CASE apparently disagrees with the Board's disposition of an allegation regarding the cold springing of two pipes. CASE correctly notes that the Board closed the record on this issue in its Memorandum and Order of September 23, 1983 (at 36). CASE suggests, however, that the reason the Board disposed of the allegation in the manner it did was because CASE did not dispute the relevance of the documents on which the Board relied in its disposition of this issue. CASE does not, however, present any

information now that suggests the Board incorrectly resolved the matter. Accordingly, the Board should find that further inquiry is unwarranted.

Y. Operating Quality Assurance Program

CASE asserts that if the Board makes certain determinations regarding the construction QA/QC program, that the Board may need to require further hearings regarding the operating quality assurance program for Comanche Peak, which the Board addressed in Board Question 2. CASE does not request at this time that the Board conduct further hearings. Accordingly, these comments by CASE simply are premature and do not require any action by the Board.

Z. Separate Hearings for Unit Two

CASE suggests that separate licensing hearings regarding Comanche Peak, Unit 2 may be necessary. CASE does not ask the Board to take any action now, however, instead indicating that CASE "will address this in more detail at the appropriate time." Accordingly, the Board need not address this matter.

AA. Reactor Vessel Mirror Shield

CASE correctly notes that the Staff is to submit information to the Board regarding the observation during a hot functional testing that the reactor vessel mirror shield had contacted the shield wall. The Staff recently confirmed that it would provide information on this matter to the Board shortly. (Tr. 9252.)

BB. Computerization of Nonconformances

CASE states that it is unsure whether the Board has disposed of a question to which Applicants responded by affidavit concerning the computerized tracking systems at Comanche Peak. Nevertheless, CASE states that it believes further hearings should be conducted. In support of this assertion CASE refers to the Caseload Forecast Panel discussion regarding the punchlist for items yet to be resolved prior to completion. We note that the Board's questions regarding the computerization of nonconformances addressed the more narrow question of routine tracking and trending of nonconformances and inspection reports during construction and, thus, is not directly related to the establishment of a punchlist for determining the schedule for completion of the facility. Further, Applicants submitted the affidavit of Mr. Tolson, by letter dated October 11, 1983, responding to the Board's questions on this matter and addressed these and related Board questions in hearings held October 17 and 18, 1983 (see Tr. 9047-74). In Applicants' opinion, the

information provided to the Board fully clarifies the record on these questions. Accordingly, the Board should deny CASE's request for additional hearings.

CC. Other Matters Identified by CASE Witnesses

Again without requesting particular action by the Board, CASE identifies various matters raised by its witnesses which it characterizes as involving questions "which the Board found not to be a problem." Each of these matters was addressed by the Board in its July 29, 1983, Proposed Initial Decision. For the most part, CASE did not seek reconsideration of these matters when given the opportunity to do so by the Board. Thus, a request for the Board to reconsider its disposition of those questions now is untimely. Further, CASE presents no new information for the Board to consider. With respect to the low worker morale allegation, CASE refers to the affidavits submitted with its November 28, 1983 pleading where the affiants addressed this matter. However, the Board has correctly analyzed the significance of allegations regarding low worker morale when it determined that morale would raise a concern for health and safety only if it resulted in defective work being "accepted as the final product". (Proposed Initial Decision at 17 (emphasis added).) CASE's affidavits do not address, let alone demonstrate, that the final product after QC inspection, and rework if

necessary, was adversely affected. Accordingly, CASE has not demonstrated any need for the Board to reassess or reconsider its previous determinations regarding these issues.

DD. Stiner Allegation Regarding Harassment

CASE seeks to include within the hearings on intimidation an allegation by Mrs. Stiner that she was subject to harassment after her testimony in the September, 1982, hearings, and prior to her leaving Comanche Peak in December, 1982. CASE does not, however, request that the Board conduct further hearings regarding Mrs. Stiner's allegations of harassment prior to the September, 1982 hearings, as discussed in Applicants' December 3, 1983 pleading at 6-7. Nonetheless, subsequent to CASE's request, the Board ruled that Mrs. Stiner's allegations regarding harassment is an open issue that may be litigated (Memorandum and Order (Additional Scheduling Order), January 3, 1984, at 3-4). Accordingly, the Board has already ruled on this question.<sup>16</sup>

EE. Staff Walkdowns of Finished Safety Systems

CASE argues that additional hearings should be held to consider the results of Staff walkdowns of finished safety systems. The Board has already determined that hearings will be held on this subject (Memorandum and Order (Additional Scheduling Order), January 4, 1984 (at 2-3)). Accordingly, the Board need not take any further action regarding litigation of these inspections.

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<sup>16</sup> Of course, CASE must specify the facts on which this allegation is premised before Applicants would be able to respond.

FF. CYGNA Report

Subsequent to the filing of CASE's pleading, the Board found that hearings regarding the CYGNA Report should be conducted. Hearings on this topic are scheduled for the week of February 20, 1983. Accordingly, the Board need not take any further action regarding this matter.

GG. Applicants' Followup Inspection of Protective Coatings

As CASE recognizes, Applicants have agreed that hearings need be held on this topic and intend to present testimony to address not only the reinspection but the individual allegations raised by Mr. Hamilton (see discussion supra, Section II.D).

HH. Applicants' Commitment to Quality Assurance

CASE opposes Applicants' request to present evidence regarding its program to reemphasize the importance of quality at Comanche Peak and to assure that inspectors are afforded proper organizational freedom, discussed in Applicants' December 3, 1983 pleading (at 10). CASE contends that such testimony should be accepted only in conjunction with the testimony of CASE's witnesses discussed in its pleading. Applicants submit that this information is relevant to the issues in this case and that it will assist the Board in deciding those issues.<sup>17</sup>

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<sup>17</sup> Indeed, this information is directly relevant to the question of management's attitude toward and response to allegations  
(footnote continued)

## II. Results of OI Investigations

CASE argues that the Board should include within the scope of hearings to be conducted in this proceeding the results of ongoing investigations by the NRC Office of Investigations. Subsequent to CASE's filing, the Board determined that hearings on intimidation issues will be deferred, pending completion of the OI investigations. Thus, no further action regarding this matter is necessary at this time (see Memorandum and Order (Scheduling Matters), December 28, 1983, at 4).

### JJ. Site Tour

CASE requests that the Board include as part of the issues for hearings the site tour which the Board indicated would be conducted by CASE to identify "specific problems". CASE recently moved for reconsideration of the Board's determination in this regard, and Applicants and Staff responded to CASE's position on this matter in their response to CASE's motion, filed January 26, 1984. The Board should refer to those pleadings in addressing this matter.

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(footnote continued from previous page)  
of intimidation or harassment, which CASE argues in its Clarification should be an issue in this proceeding (see CASE's Clarification at 3).

KK. Change in Material Properties for A500 Steel

As Applicants noted in the January 12, 1984 conference call (Tr. 9217-18), they intend to submit their response to the Board's order concerning the change in material properties for A500 steel. Accordingly, no further Board action regarding CASE's request is necessary.

LL. Pipe Support Design Allegations

Since CASE submitted its pleading the Board has issued a Memorandum and Order regarding pipe support design allegations (see Memorandum and Order (Quality Assurance for Design), December 28, 1983). In that Memorandum the Board requested that Applicants submit a plan to address concerns raised therein by the Board. As Applicants noted in their Motion for Reconsideration (January 17, 1984), they intend to submit such a plan which will entail the presentation of additional evidence in this proceeding.

MM. Credibility of Witnesses

CASE lists as a separate open item the credibility of Applicants' and Staff's witnesses.<sup>18</sup> CASE does not explicitly request

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<sup>18</sup> CASE supplemented its position regarding this topic in its Clarification, where it claims that "at some point in the future" CASE will seek to reopen the record to consider the validity of statements made by (unidentified) Applicants' witnesses in affidavits. CASE argues that material false statements were made by those witnesses. (Clarification at 5, 6.) We urge the Board to direct CASE to identify immediately each instance where CASE believes such statements have been made, or waive the opportunity to raise them in the  
(footnote continued)

additional hearings on this topic but considers it a "potential issue for hearings." Applicants submit that this topic is not capable of segregation from the litigation of individual issues and, thus, must be addressed simultaneously with the presentation of testimony on particular topics. All parties are afforded ample opportunity to pursue the qualifications and credibility of witnesses as they are presented. Accordingly, hearings to address this topic alone are not necessary.

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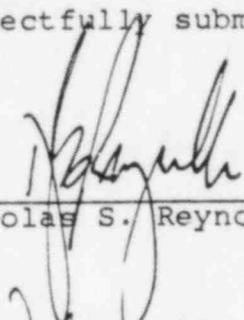
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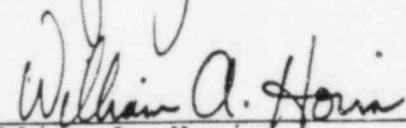
future. It is untenable for Applicants to be subjected to such serious charges without any specification of the facts on which the claims are founded.

NN. Proposed Findings Regarding CAT Report

CASE also argues that proposed findings regarding the CAT Report should not be required at this time. We note that the Board has already granted CASE's request in this regard (see January 4, 1984 Memorandum and Order at 2-3). Accordingly, no further action by the Board is required.

Respectfully submitted,

  
\_\_\_\_\_  
Nicholas S. Reynolds

  
\_\_\_\_\_  
William A. Horin

Counsel for Applicants

Bishop, Liberman, Cook,  
Purcell & Reynolds  
1200 Seventeenth Street, N.W.  
Washington, D.C. 20036  
(202) 857-9817

January 30, 1984

TEXAS UTILITIES GENERATING COMPANY

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ATTACHMENT A  
Applicants' Exh. 173

R. J. GARY  
VICE PRESIDENT  
AND GENERAL MANAGER

March 30, 1983  
TXX-3650

Mr. G. L. Madsen, Chief  
Reactor Project Branch 1  
U. S. Nuclear Regulatory Commission  
Office of Inspection and Enforcement  
611 Ryan Plaza Drive, Suite 1000  
Arlington, Texas 76012

Docket Nos.: 50-445  
50-446

COMANCHE PEAK STEAM ELECTRIC STATION  
RESPONSE TO NRC NOTICE OF VIOLATION  
INSPECTION REPORT NO. 82-25/13  
FILE NO.: 10130

Dear Mr. Madsen:

We have reviewed your letter dated February 28, 1983 on the inspection conducted by Messrs. J. T. Conway, H. W. Roberds, and R. C. Stewart of activities authorized by NRC Construction Permits CPPR-126 and CPPR-127 for Comanche Peak Steam Electric Station Units 1 and 2. We have responded to the findings listed in Appendix A of that letter.

To aid your understanding of our response, we have repeated the requirement and your finding followed by our corrective action. We feel the enclosed information is responsive to the Inspector's finding.

TUGCo management is committed to continually improving our Quality Assurance program and offers the following in response to your concerns regarding the effectiveness of the TUGCo source surveillance program.

Our primary means for evaluating vendor performance is through source inspections and audits. When problem vendors are identified, the TUGCo Vendor Compliance (VC) group intensifies its reinspection of the product which is done after the vendor's inspection has been completed. As always, noncompliances identified are documented and resolved prior to shipment. The VC inspection report includes a vendor rating number (which evaluates vendor performance rather than product). This inspection report is reviewed by TUGCo Quality Assurance Services who take further action when indicated, usually in the form of a special audit. In some instances, TUGCo has conducted management meetings and discussions; assigned project employees to vendor facilities; removed a vendor from the Approved Vendors list; and issued stop work orders.

March 30, 1983

Subsequent to ~~your~~ inspection, we clarified and re-emphasized to all VC personnel the need for VC inspections to be detailed and thorough. As discussed in our response to the SALP report (R. J. Gary to G. L. Madsen, dated 12/27/82), we are taking steps to improve the weld inspection proficiency of VC personnel. In addition, increased emphasis is being placed on examination of hardware during audits. For selected vendors, we have begun to use certified inspectors in addition to the regular audit team members. We have also initiated the practice of scheduling selected vendor audits and source surveillances concurrently when recurring hardware problems have been identified.

TUGCo is most concerned with ensuring final product quality. Through detailed reinspection of the equipment prior to shipment together with audits which identify and correct hardware as well as programmatic weaknesses, TUGCo is able to control product quality prior to shipment to CPSES.

Very truly yours,

*R. J. Gary*

RJG:aq

cc: MRC Region IV - (0 + 1 copy)

Director, Inspection & Enforcement (15 copies)  
U. S. Nuclear Regulatory Commission  
Washington, DC 20555

APPENDIX A

NOTICE OF VIOLATION

Texas Utilities Generating Company  
Comanche Peak Steam Electric Station

Dockets: 50-445/446  
Permits: CPPR-126  
CPPR-127

Based on the results of an NRC inspection conducted during the period of November 22-24, 1982, and in accordance with the NRC Enforcement Policy (10 CFR Part 2, Appendix C), 47 FR 9987, dated March 9, 1982, the following violations were identified:

A. Certification of Inspectors

10 CFR Part 50, Appendix B, Criterion XVII, states, in part, "Sufficient records shall be maintained . . . . The records shall . . . include . . . qualification of personnel . . . ."

Section 17.1.17, "Quality Assurance Records" of the QA Program for design and construction contained in the FSAR Amendment 25, dated August 7, 1981, states, in part, ". . . records that are required to be maintained . . . include . . . personnel certification . . ."

Section 3.2 of Procedure CQP-YC-4, "Guidelines for Certifying Vendor Compliance Inspection Personnel," states, "Certifications are valid for three years. The certification expiration date will be stated on the certification."

Contrary to the above, a review of QA training records for eight inspectors revealed the following:

1. The Level III inspector was not recertified until July 13, 1982, following certification to SMT-TC-1A on July 28, 1977.
2. The certification expiration date was missing from the records for all inspectors.

CORRECTIVE ACTION TAKEN AND THE RESULTS ACHIEVED:

The certificate discussed in item A.1 was erroneously issued with a five-year certification period, i.e. an expiration date of July 28, 1982. The latest Level III re-certification was made on July 13, 1982 and expires on July 13, 1985. This is in compliance with current procedure requirements.

In response to A.2, a review was conducted on 23 inspector certification letters. No instances were found where the expiration

date was missing from the inspector's certification records. This review included certification letters for all inspectors.

#### CORRECTIVE STEPS WHICH WILL BE TAKEN TO AVOID FURTHER VIOLATIONS

A matrix system was initiated and will be maintained to track certification expiration dates. In addition, procedure requirements have been reviewed with appropriate personnel. No preventive action is required for item A.2.

#### DATE WHEN FULL COMPLIANCE WILL BE ACHIEVED

All corrective actions have been completed.

#### B. Audits

10 CFR Part 50, Appendix B, Criterion XVIII, states, in part, "The audits shall be performed in accordance with . . . checklists . . . Followup action, including reaudit of deficient areas, shall be taken . . ."

Section 17.1.18, "Audits" of the QA program for design and construction contained in the FSAR, Amendment 29, dated December 21, 1981, states, in part, ". . . TUGCO QA: 3. Provides auditing checklists . . . 8. Requires reauditing of deficient areas . . ."

Section 4.2.1 of ANSI N45.2.12, "Requirements for Auditing Quality Assurance Programs for Nuclear Power Plants, Draft 3, Revision 0, states, "An individual audit plan describing the audit to be performed shall be developed and documented." Section 4.3.2.1 states, in part, "Checklists . . . shall be used to ensure depth and continuity of audits." Section 5.2 states, in part, "Records shall be generated and retained for all audits. Records shall include . . . audit plans . . ."

Section 19 of ANSI N45.2-1971, "Quality Assurance Program Requirements for Nuclear Power Plants" states, in part, "Deficient areas shall be reaudited until corrections have been accomplished."

Contrary to the above, a review of the QA records for nine audits relating to MPS Industries revealed the following:

1. Audit plans were missing for four audits conducted in October 1978, May 1979, July 1980, and November 1980.
2. Checklists were missing for two audits conducted in October 1978 and May 1979.
3. Two deficiencies identified in an audit conducted in October 1980 were not evaluated for implementation of corrective action during a subsequent audit conducted in November 1981.

#### CORRECTIVE ACTION TAKEN AND THE RESULTS ACHIEVED:

The records for those audits discussed in B.1 were reviewed to ensure that all appropriate information was available.

The two audits identified in item B.2. were scheduled as a result of problems identified during release inspections. The checklists used for these audits were the inspection reports detailing those specific problems and these were in the audit file. A memo to that effect has been placed in the file.

Audit TRP-10, conducted December 20-21, 1982 included verification of the open items noted in B.3.

#### CORRECTIVE STEPS WHICH WILL BE TAKEN TO AVOID FURTHER VIOLATIONS

TUGCo procedure DQI-CS-4.5 was revised to require the audit team leader to prepare an audit plan which identifies the previous applicable audits and open items requiring follow-up. The audit plan, along with the checklist is then approved by the Supervisor, QA Audits.

#### DATE WHEN FULL COMPLIANCE WILL BE ACHIEVED

All corrective actions have been completed.

R. J. GARY  
VICE PRESIDENT  
AND GENERAL MANAGER

December 27, 1982

Mr. G. L. Madsen, Chief  
Reactor Projects Branch 1  
U.S. Nuclear Regulatory Commission  
Office of Inspection & Enforcement  
611 Ryan Plaza Drive, Suite 1000  
Arlington, TX 76012

Dear Mr. Madsen:

SUBJECT: Response to SALP Report

This will provide our response to the observations made in the NRC's Systematic Assessment of Licensee Performance (SALP) Board Report of Comanche Peak Steam Electric Station (CPSES) and the subsequent meeting held on December 8, 1982 regarding that report.

Although Section A is titled Plant Operations - Preoperational Testing, NRC inspection activities were directed primarily toward the review of preoperational test procedures and the witnessing of several of these tests. The performance analysis does not refer to activities of the Plant Operations organization.

Of the seventy-nine (79) engineers who are directly involved in preoperational testing, fifty-four (54) of them had nuclear power plant startup experience prior to their assignment to CPSES. A large majority of the remainder had either fossil plant startup experience or military nuclear experience prior to their assignment. All personnel assigned to the startup group who are responsible for directing testing activities meet the education and/or experience requirements specified by the NRC.

The primary basis for all test schedules issued to date have been sequence of test activities required to support other tests. Those systems not having a required sequence were fixed early in the scheduled time frame to place emphasis on construction completion and early identification of engineering and construction problems. All schedules have been reviewed by personnel having actual nuclear plant startup experience on several plants. Prior to issuance, all startup schedules have been coordinated and agreed to with engineering and construction management and scheduling personnel as well as the individuals responsible for performing the necessary engineering and construction activities.

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While the lack of timely production of preoperational test procedures has hampered the test schedule to a minor degree, there is no indication this was caused by lack of actual nuclear plant startup experience.

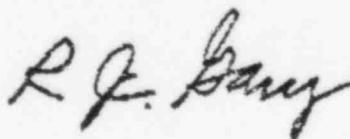
We consider our overall Vendor Compliance (VC) program to be an effective, useful part of the Texas Utilities Generating Company (TUGCO) Quality Assurance (QA) effort. The VC program includes vendor source inspections performed by qualified TUGCO personnel at the vendors' facilities. In performing these inspections TUGCO personnel use checklists which are developed by extracting requirements (weld, dimensional, documentation, etc.) from the specification which have been imposed upon the vendor. During the inspection the TUGCO source inspector verifies the vendor has satisfied the requirements by completing the checklist. He will then release the equipment for shipment as all requirements are met. This program was developed to assure equipment meets specification requirements prior to shipment to CPSES.

While we consider this program to be effective, TUGCO QA management is committed to improvement. One area in which we have recognized a need for improvement is performing inspections of vendor supplied welds. As a result we have retained the services of Reedy, Herbert, Gibbons, & Associates (RHG&A) to assist in an on-the-job retraining program for our source inspectors specifically in this area. RHG&A is a consulting firm consisting of highly qualified individuals considered throughout the industry to be experts in the field of ASME and AWS welding requirements.

As a part of the program RHG&A is accompanying our source inspectors on selected trips when weld inspections are required. These consultants observe the source inspectors as they perform their work for the purpose of determining their overall effectiveness, thoroughness and knowledge of welding code requirements and strengthening those areas that might need improvement. When completed this retraining program will have included all persons who perform source inspections for TUGCO. Final results will be included in a report to the Manager, QA from RHG&A.

This program was first implemented on November 30, 1982 at Reliance Electric with more than satisfactory results. It will continue until the Manager, QA is completely satisfied that all VC personnel are capable of performing weld inspections to the applicable ASME or AWS requirements.

Very truly yours,



RJG:cp

bc: L. F. Fikar  
J. B. George  
J. C. Kuykendall  
D. N. Chapman ✓  
H. C. Schmidt

DOCKETED

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD  
OFFICE OF DOCKETING & SERVICE BRANCH

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Applicants' Reply to CASE's Identification of Issues," in the above-captioned matter were served upon the following persons by overnight delivery (\*), or deposit in the United States mail, first class, postage prepaid, this 30th day of January, 1984, or by hand delivery (\*\*) on the 31st day of January, 1984.

\*\*Peter B. Bloch, Esq.  
Chairman, Atomic Safety and  
Licensing Board  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Chairman, Atomic Safety and  
Licensing Appeal Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

\*Dr. Walter H. Jordan  
881 West Outer Drive  
Oak Ridge, Tennessee 34830

Mr. William L. Clements  
Docketing & Service Branch  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

\*Dr. Kenneth A. McCollom  
Dean, Division of Engineering  
Architecture and Technology  
Oklahoma State University  
Stillwater, Oklahoma 74074

\*\*Stuart A. Treby, Esq.  
Office of the Executive  
Legal Director  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

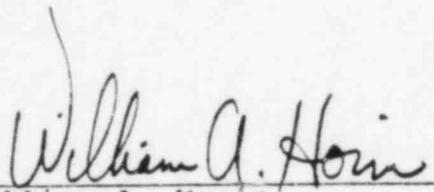
Mr. John Collins  
Regional Administrator,  
Region IV  
U.S. Nuclear Regulatory  
Commission  
611 Ryan Plaza Drive  
Suite 1000  
Arlington, Texas 76011

Chairman, Atomic Safety and  
Licensing Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

David J. Preister, Esq.  
Assistant Attorney General  
Environmental Protection  
Division  
P.O. Box 12548  
Capitol Station  
Austin, Texas 78711

\*Mrs. Juanita Ellis  
President, CASE  
1426 South Polk Street  
Dallas, Texas 75224

Lanny A. Sinkin  
114 W. 7th Street  
Suite 220  
Austin, Texas 78701

  
William A. Horin

cc: Homer C. Schmidt  
Robert Woolridge, Esq.