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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 (CPSES)

Docket Nos. 50-445
and 50-446

CASE'S ANSWER TO MOTIONS FOR RECONSIDERATION
OF BOARD'S MEMORANDUM AND ORDER (QUALITY ASSURANCE FOR DESIGN)
BY APPLICANTS AND NRC STAFF

On 1/17/84, both Applicants and the NRC Staff filed Motions for Reconsideration of the Board's 12/28/83 Memorandum and Order (Quality Assurance for Design). CASE (Citizens Association for Sound Energy), Intervenor herein, hereby files this, its Answer to Applicants' and NRC Staff's Motions[1].

As discussed herein, CASE urges that the Board deny both Applicants' and NRC Staff's Motions in their entirety.

CASE'S ANSWER TO NRC STAFF'S MOTION

The Staff's Motion asks that the Board reconsider that portion of its 12/28/83 Order which states (page 2):

[1] On 1/29/84, CASE contacted Judge McCollom (having been unable to contact Board Chairman Bloch) and requested a two day extension to 2/1/84 in which to respond to Applicants' and Staff's Motions; the extension was granted.

> "It is the applicants' position that 'Appendix B does not address inadequate designs but rather addresses the conformance of installed hardware and the inspections to the design.' We conclude that this position is unacceptable. The applicant and staff, which agrees with it, have adopted a fallacious interpretation of Appendix B..."

The Staff argues that the quoted portion of the Board's Order does not accurately reflect the Staff's position on design quality assurance, and goes on to argue that when taken in context, NRC Staff witness Robert Taylor clearly was attempting to make the point that Appendix B does not require that design deficiencies be identified and controlled by documents designated as "non-conformance reports," and that Mr. Taylor was not testifying as to whether Appendix B as a whole addressed quality assurance for design when he stated (Tr. 6707/17-20):

> "Appendix B, in dealing with nonconforming conditions, does not address nonconforming design. It only addresses the conformance of the installed hardware and the inspection thereof to the design."

The Staff appears to be arguing that Mr. Taylor did not say what he said. One does not have to be an expert in linguistics to see the similarities between the quoted portion in the Board's Order and what Mr. Taylor stated in his testimony in the hearings; it is almost word-for-word the same. CASE reviewed portions of the transcript suggested by the Staff as supporting their statement, as well as other transcript portions (Tr. 5407/17-5408/7, 6675/24-6711/2). Contrary to the Staff's assertions, CASE finds nothing in those transcript pages to support the Staff's position that the Board took Mr. Taylor's testimony out of context in any way. (Further, it has been CASE's experience in these proceedings that the Board reviews the transcript carefully before issuing its Orders, with very rare exceptions; this is not one of those exceptions.)

Mr. Taylor could have said:

> "Appendix B, in dealing with nonconforming conditions, does not require that design deficiencies be identified and controlled by documents designated as 'non-conformance reports.' However, Appendix B as a whole does address quality assurance for design."

He did not.

Mr. Taylor could have said anything he wanted to to clarify his meaning if he thought it necessary. He is a very articulate man, and during the hearings he was not bashful at speaking his mind. In regard to the subject at hand, during the hearings it was very obvious at the time what Mr. Taylor was saying, what he intended to say, and that he said exactly what he meant to say. There is simply no way at this late date that other words can be put into his mouth. The Staff has no basis for arguing after-the-fact that the Licensing Board and CASE (and even Applicants) did not hear what they heard or read what they read in the transcript. As former Board Chairman Miller once told CASE, you can't change history.

In addition, reviewing the portions of the Staff's Proposed Findings or the regulations cited by the Staff in its pleading does not reveal any support for the Staff's assertion that the Board was incorrect in its assessment of the Staff's position on this matter.

CASE urges that the Board deny the Staff's Motion for Reconsideration. If the Staff now wishes to change its position, that is another matter which the Staff should take up with the Board. However, the state of the current record in these proceedings is very clear in this regard.

CASE'S ANSWER TO APPLICANTS' MOTION

CASE urges that the Board deny Applicants' Motion in its entirety, based upon the good reasons discussed herein.

In answering Applicants' Motion, CASE incorporates herein by reference the attached Affidavits of Jack Doyle and Mark Walsh. However, since both Affidavits are rather lengthy and since some of the information is quite detailed and complex (and therefore difficult for CASE to accurately summarize), we have not attempted herein to summarize and restate them; we have instead referenced them at the applicable portions of our Answer to assist the Board in following their Affidavits in a logical manner. To properly evaluate them, it would be helpful for the Board to consider them first as they are referenced within CASE's Answer and again as total affidavits by Messrs. Doyle and Walsh.

We will first address the issues in the order in which the Applicants have addressed them, followed by a brief summary:

Page 2, first paragraph of Applicants' pleading:

Although Applicants claim that in their pleading they have raised to the Board only "those selected important issues which we believe warrant reconsideration on the basis of the existing record" (emphasis added), Applicants' Motion in fact is composed almost exclusively of a discussion of their Attachment A, "Summary of Quality Assurance Program for Design of Pipe Supports for Comanche Peak Steam Electric Station." This "document" (if it can be called that) is apparently an orphan, with no father or author. Where was it during the hearings? It appears that one of several things

applies here: (1) Applicants had this "Summary" all the time and just happened to come across it again now, after the Board's adverse ruling; (2) It is a "document" prepared by Applicants' attorneys and is nothing more than counsels' wish list; or (3) (and CASE believes this to be the applicable option) This "document" is what Applicants think the Board wants to hear and bears little or no resemblance to what is actually in place at Comanche Peak.

Applicants admit throughout their pleading that this "Summary" is not evidence. They also admit that the Board cannot make its rulings based on extra-record evidence, which this clearly is. Applicants' attorney cannot testify, and for the Board to give any weight or consideration whatsoever to Applicants' "Summary" or any portions of their pleading which refers to that "Summary" would be tantamount to accepting Applicants' counsel's bald assertions as testimony and evidence.

A further consideration which must weigh heavily against Applicants' pleading is that it is untimely in the extreme. Applicants have had more than ample time and occasion to propose additional hearings if at any time they felt they were warranted. Applicants chose not to do this. Instead, Applicants have subjected the Licensing Board and parties to a constant barrage of pleadings and arguments to hurry up and close the record because "delay" by the Board could adversely impact Applicants' phony fuel load date.

Applicants were arguing as far back as September 16, 1982, that "the record as it stands right now is more than adequate for the Board to make findings on the allegations raised by Mr. Walsh and Mr. Doyle." (Tr. 5416/11-14.) Applicants' constant haranguing to close the record has continued right up

until the Board's 12/28/83 Order when Applicants finally perceived that they had had their chance and they blew it. For example, consider the following, from Applicants' 12/3/83 Identification of Issues and Proposal to Establish Hearing Schedule, pages 1 and 2:

> "The Board is of course aware of the background of this case, which has now entered its third year of hearings (the first hearings were held on Decmeber 1-3, 1981). Over 9,000 pages of transcript have been generated in seven separate hearing sessions. In fairness to Applicants, the Board should now take the appropriate steps to bring the proceeding to a close. . . Applicants believe that a final round of hearings should be convened to address the matters (unrelated to the Walsh/Doyle allegations) discussed below. Following those hearings, the record should be closed and the Board should proceed to final decision." (Emphases in the original.)

Throughout their pleading, Applicants admit that the Board cannot find that Applicants' pipe support design process satisfies the requirements of 10 CFR Part 50, Appendix B. They argue that the Board should not find them in violation of Appendix B but should instead, without any basis in the record, allow Applicants to basically go back and start over at this late date. CASE can just imagine the response of the Applicants and NRC Staff had CASE made such a suggestion! In fact, the Board has refused to allow CASE to supplement the record in some instances already. In its 9/1/83 Memorandum and Order (Motions to Reopen the Record and to Strike), the Board denied CASE's very modest request to supplement the record in regard to Walsh/Doyle allegations. CASE will not reiterate what is in the Board's Order at this time; however, the Board's Order in that instance is instructive, and the Board must require Applicants to abide by the same requirements as it applied to CASE. The Board cannot use a double standard in these proceedings.

Page 3, first full paragraph, ". . . a consequence of focussing in the hearings only on the latter stages of the design process, rather than the entire process, including the earlier stages on which the Board focussed in its Memorandum and Order." As will be discussed in more detail later in this pleading, Applicants had no reason to ignore the earlier stages of the design process. Indeed, this has been one of their problems all along, not only in these proceedings but in the design of Comanche Peak as well. It is only now, after Applicants have applied for an operating license, that the Licensing Board is able to evaluate the entire design process. There was never any reason for Applicants to expect that the Board would be concerned only with the latter stages of the design process. Further, Applicants and the NRC Staff witnesses went through many iterations to attempt to prove that all problems could await determination at final vendor certification, rather than being handled as they occurred.

Page 3, last paragraph, continued on page 4, regarding the Board's conclusion that the pipe support design process for Comanche Peak does not provide for the prompt identification and correction of design errors, etc. We will discuss this in more detail later in this pleading.

Page 4, top of page, "additional evidence is necessary." CASE asked both Mr. Walsh and Mr. Doyle to address Applicants' proposal that additional hearings be held on the closed Walsh/Doyle items, and they did so in their attached Affidavits. See Doyle Affidavit, page 10, lines 3-12, and Walsh Affidavit, page 10, line 16, through page 11, line 6.

Mr. Walsh's point about the lack of seriousness of Applicants about these proceedings is well taken. The Board specifically addressed one glaring

example of Applicants' not taking these proceedings seriously in its 12/28/83 Order (pages 52-53), and Applicants' Motion for Reconsideration is final verification and proof of their cavalier attitude.

Another consideration must be the gross unfairness of subjecting CASE and its witnesses to reopening the hearings on closed Walsh/Doyle matters. Neither Mr. Walsh nor Mr. Doyle is being paid by CASE as a consultant in these proceedings. They have sacrificed greatly of their time, their money, and their efforts for one reason -- to do everything in their power to bring before this Licensing Board facts necessary for it to have in order to assure itself that Comanche Peak has been designed and built such that the public health and safety will not be jeopardized if and when it goes into operation. One cannot buy this kind of determination, dedication, and integrity. It would be contrary to all established legal precedents and grossly unfair at this late date to ask or expect Messrs. Walsh and Doyle to go through such grueling and demanding proceedings all over again.

Were we to have further hearings on the Walsh/Doyle allegations, the expense and drain on CASE would also be heavy, perhaps heavier than we could bear. We will not belabor the point of the personal and financial sacrifices which have been made by CASE and its all-volunteer, unpaid, workers. The fact that CASE and its witnesses have been able to endure to this point is, in and of itself, a miracle. We have been faced with a continuing battle not only in the hearing room but in the continuing and increasing need to raise additional funds.

There is no doubt that Applicants, were they allowed to reopen the hearings on closed Walsh/Doyle allegations, would be able to assemble an impressive array of expert witnesses to dazzle the Board. There is no doubt that they could outspend CASE by huge margins. There is no doubt that a reopening of hearings on closed Walsh/Doyle allegations would severely strain CASE's resources in every way.

Having said all that, however, were the Board to decide to reopen the hearings, CASE and its witnesses would do everything possible to continue to bring the facts to the Board. It should be pointed out that, were the Board to reopen hearings on the Walsh/Doyle allegations, it would be necessary in all fairness to reopen the hearings on all the Walsh/Doyle allegations. As has been pointed out several times in the past, no one with the NRC Staff has ever sat down with Messrs. Walsh and Doyle and gone over all of their concerns. Mark Walsh had one day to prepare his direct testimony for the July 1982 hearings. (He made a limited appearance statement one day and testified the next day.) Jack Doyle flew down from Massachusetts for his deposition (later accepted as his direct testimony) on August 19 and 20, 1982, flew back immediately after his deposition, then testified in the September 13-17, 1982 hearings. Since that time, both Mr. Walsh and Mr. Doyle have recalled many additional concerns about the design/construction of Comanche Peak. See Doyle Affidavit, page 4, lines 5-9, and Walsh Affidavit, page 7, line 9, through page 9, line 16.

In addition, there are a number of new witnesses and previous witnesses who have both corroborating and new information regarding the Walsh/Doyle allegations. There was not enough time for CASE to put its witnesses in

touch with one another prior to their testifying. For example, Henry and Darlene Stiner had not been in touch with Jack Doyle regarding welding matters; Mr. Doyle had not had the benefit of knowledge of welders as to what was actually being done in the field and therefore he could not address the impact of construction on design. Another example is that Robbie Robinson had information regarding oversize holes being drilled in base plates, of which Messrs. Walsh and Doyle were unaware but which ties in with their Walsh/Doyle allegations[2]. There is much new evidence that the existing witnesses have pertaining to the safety aspects of Comanche Peak which was either disallowed lacking timely response or overlooked in the heat and rush of argument; for example: cosmetic recapping to cover excessive porosity and undercutting of welds, failure to apply preheat to metals over 3/4" thickness, lack of control of heat input during welding, lack of use of heat indicating crayons for welding, downhill weld passes in inaccessible areas, inappropriate procedures for welding of fillet welds (minimum welds accomplished using more than one pass as required by Code), the use of core wire as a back-up for mismatch which is then welded over, the use of counterfeit hangers (made from reclaimed material without traceability), violations of hole sizes for base plates and tube steel, etc. Were hearings on closed Walsh/Doyle allegations reopened, Messrs. Walsh and Doyle should be allowed to evaluate testimony of past and future CASE witnesses insofar as they might apply to the Walsh/Doyle allegations; for example, introduction of high residual stresses due to excessive heat input during welding (which was observed on several

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[2] See Affidavit of Howard J. Robinson, page 7, bottom portion of page, attached to CASE's 11/28/83 Answer to Board's 10/25/83 Memorandum (Procedure Concerning Quality Assurance).

of the larger supports which visually indicate gross distortions).

Further, CASE would have to request additional discovery regarding Applicants' "new" information on their QA/QC program for design. Since Applicants propose to basically retry all of the Walsh/Doyle allegations apparently, this discovery could be quite extensive, time-consuming, and costly.

As can be readily seen, Applicants' proposal to reopen the hearings on closed Walsh/Doyle allegations would almost inevitably result in the delay which Applicants claim they want to avoid in regard to their alleged fuel load date. This fact must also weigh heavily against granting Applicants' Motion for Reconsideration.

II.A., pages 5 through 9 (general): Applicants give no valid reasons for the Board to reconsider. Basically, it appears that Applicants have proved that the Board is correct in its assessment.

II.A.1., There is no evidence in the record that Applicants' procedures comply with the intent of Appendix B.

The same general arguments apply for Applicants as were discussed on pages 1-3 of this pleading. The record is clear regarding Applicants' position in this matter; the Board's assessment was correct.

Page 6, first five lines: If one were to accept this argument, one must also assume that the system failed, since whenever a design deficiency was pointed out, it was the Applicants and the NRC Staff who claimed that such a charge was without merit because the design cited was not vendor certified.

II.A.2., page 6, continued top of page 7: Although NCR's by that terminology need not be used, whatever documents are used (by whatever name) must still include the parameters required by Criterion XVI. There is no evidence that Applicants have an adequate substitute for NCR's; in fact, the evidence indicates that they do not.

Page 7, first full paragraph, last three lines: But Applicants and the NRC Staff's only concern was with the final vendor certification, as is clearly shown by the bulk of their testimony on this matter.

Page 8, first full paragraph: As CASE has indicated previously, in very few instances were Messrs. Walsh and Doyle's concerns limited to design only. Part of the problem with design is that Applicants have engaged not just in preliminary design, but in preliminary construction as well. In some instances, construction preceded design. In other instances, supports which had been designed erroneously (unstable, for example) were actually constructed and in place in the field[3]. This means that, even if one were to accept Applicants' arguments about the use of NCR's (which CASE emphatically does not), Applicants are still in violation of 10 CFR Part 50, Appendix B requirements because the supports were not only designed incorrectly, they had also been constructed and were actually in place in the field in their deficient condition. Thus, according to Applicants' own procedures regarding construction deficiencies, an NCR should have been written.

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[3] Many of the support drawings provided by Mr. Doyle were marked "As-Built" and "Issue for Construction." (See CASE Exhibit 669B, Attachment to Doyle Deposition/Testimony, items 3D thru 3G, 4I thru 4M, 4-O thru 4T, 5B, 7C-7D, 8U, 8V, etc., etc.

II.A.2., page 8, footnote 6: Applicants and NRC Staff have ignored the fact that the hardware is the result of design; therefore, as discussed in the preceding, the design is the basic source of institutionalizing hardware problems if left until the end.

II.A.3., page 9; re: 10 CFR 50.55(e): As the Board is aware, CASE addressed this matter at some length in the Walsh/Doyle Proposed Findings, so we will not reiterate those arguments here. We would comment that when problems were found in 1981 and action does not occur until after the September 1982 hearings, we are hard put to see how such a system can be considered as complying with 10 CFR Part 50, Appendix B, or 10 CFR 50.55(e).

II.B., page 10; Footnote 9, re: Mr. Vivirito's testimony on seismic requirements, etc.: The intent of Mr. Vivirito's statements was obvious, and the Board correctly interpretted them. The thrust and intent of the testimony was that if fossil fuel plants designed without the NRC requirements ride out earthquakes satisfactorily, then there's no need to be concerned about the NRC requirements for nuclear plants in this regard.

Further, CASE's objection was due to the utilization of the "experimental data" to attempt to prove Applicants' position.

(Re: Bottom of page 10, continued at bottom of page 11): The fact that the Board Chairman used the term "flecks" at the previous day's hearing session is irrelevant. Mr. Vivirito's use of the word "flecks" was a matter of convenience; he could have used another synonymous word if he had thought of it.

Mr. Vivirito's statements reflect his attitude which in turn is an example to engineers working under him. It is reasonable for the Board

to assume that Mr. Vivirito's public statements (which were not made casually, but were under oath) reflect the feelings of the company he represents, as well as the feelings of the Applicants. It is also reasonable for the Board to assume that, based on this, the Board cannot rely upon the engineering judgements made by Gibbs & Hill engineers to give sufficient attention to the importance of minimum requirements imposed by Code or by regulation.

II.B., pages 10 and 11: Applicants in effect admit that the Board "was justified in concluding that the present record does not demonstrate the existence of a quality assurance program for design of pipe supports that promptly identifies and corrects deficiencies." They also admit that they erred in their assessment of what the Board expected in these proceedings. See discussion on page 7, re: Page 3, first full paragraph, in this pleading. Applicants have had sufficient opportunity throughout these proceedings to bring forward proof if it had existed. Any "proof" submitted at this point in time must necessarily be viewed with suspicion by the Board. Any "proof" prior to 12/28/83 must be considered in this light; any "proof" after 12/28/83 is necessarily too late to assure that Comanche Peak has been built and can be operated such that the public health and safety will not be endangered.

Applicants should have known what the Board expected of them, if for no other reason than because of the experience of their counsel. This is not counsel's first experience in NRC hearings of this type[4]. Counsel

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[4] It is CASE's understanding that Applicants' counsel was involved just recently in a decision in the WPPSS proceedings, for example.

erred in this regard, without any good reason. The Licensing Board has made clear on several occasions that it is interested in the broad overall question of the quality assurance program for design of pipe supports, rather than only in a few isolated specific matters relating to the overall program.

CASE cannot now be charged with the responsibility for the error of Applicants or their counsel; however, a favorable ruling at this point on Applicants' Motion by the Board would in effect do just that. Counsel for Applicants or his client should not be allowed to profit from his/their own error.

Page 12, middle of page, ". . . the Board should note that design control and verification measures are established by each support design organization from the inception of the design process." If this were accurate, one must wonder how so much got by the earlier verification -- unless if such a system existed at any time, it suffered a complete collapse.

Page 12, last sentence of first paragraph: Applicants claim that CMC's are trended and cite as examples of such trending CASE Exhibits 48, 49A, and 50. A review of those CASE Exhibits revealed the following:

1. First, it should be noted that the only documentation that CMC's are trended in any manner which Applicants cited were these three CASE Exhibits (which, if CASE is not mistaken, Applicants objected to at the time they were admitted into evidence), which are dated 1981

2. There is no indication of what the CMC Review will be used for or that the CMC's are used to promptly correct and/or preclude repetition of problems.

3. There is no trending category shown for instability problems or other Walsh/Doyle-identified problems -- although according to testimony in these proceedings, the problem of instability of pipe supports was known to Applicants in 1981, which happens to be the very period covered by CASE Exhibits 48, 49 and 50.

4. There is no indication on these exhibits that Applicants had identified the problem of instability of pipe supports or that any effort was made to preclude repetition of the problem.

5. There appears to be no rhyme or reason for the number of CMC's reviewed; there is no identification of the methodology used to determine how many or which CMC's would be reviewed for each group. The percentage reviewed varies in each case. For example, from CASE Exhibit 48A:

Out of 11,400 CMC's issued from 1/1/81 thru 7/1/81 on pipe alone, 537 CMC's were reviewed = 4.9%.

6. There is no indication whether the sample reviewed was selected by Production or by QC, or what criteria were used to select the sample, which may well have been skewed in some manner to begin with.

7. As pointed out in CASE Exhibit 48B, "a large number of unsat (unsatisfactory) conditions get corrected in the field without ever being documented." (Emphasis added.)

8. A review of the documents cited reveals that this "trending" is totally inadequate and clearly does not satisfy the requirements of 10 CFR Part 50, for prompt identification and correction of deficiencies. In short, Applicants' citation, rather than supporting their position, again proves CASE's point and the Board's ruling.

9. Although there does appear to have been some small effort made to preclude repetition of a few items (see CASE Exhibit 48D and 49B), there is no indication that efforts were made to preclude repetition of continuing numerous CMC-identified problems such as:

Installation/fabrication (when CMC's are issued to correct installation/fabrication errors);

As-built (CMC's that as-built field conditions);

Redesign (when as-designed condition/configuration will not work); or

Drafting error.

10. The one indication in these exhibits of the TUGCO Site QA Supervisor's concern about these "trends" is contained in CASE Exhibit 50, wherein Mr. Tolson (with copy to Mr. Brandt) stated that he wanted to discuss the 4th quarter 1981 Corrective Action Summary report with Engineering's Mr. Merritt regarding "improvements in certain areas (which) would provide greater assurance of obtaining your schedule objectives." (Emphasis added.) Thus, the one concern of the TUGCO Site QA Supervisor documented in these Exhibits is for production and scheduling objectives, rather than for the quality of the design and construction of Comanche Peak.

Applicants state (page 7 of their pleading) that:

> "Under Applicants' quality assurance program, NCRs are employed primarily[3] to document construction/hardware deficiencies, in accordance with 10 C.F.R. Part 50, Appendix B Criterion XV, 'Nonconforming Materials, Parts and Components.' As has already been fully litigated in this proceeding, NCRs are not the only acceptable method of documentation in the quality assurance program (e.g., Tr. 8971-73). Further Applicants use the NCR mechanism to satisfy the corrective action requirements of Criterion XVI applicable to nonconforming conditions addressed by Criterion XV (FSAR 17.1, p. 17.1-39). In contrast, corrective action measures for design that satisfy Criterion XVI employ mechanisms other than NCRs..." (Emphases in the original; footnote omitted.)

The implication is very clear that Applicants do use NCR's to document construction/hardware deficiencies.

Before proceeding further, it should be noted that Applicants referenced Tr. 8971-73 in support of their statement that "NCRs are not the only acceptable method of documentation in the quality assurance program." However, this portion of the transcript does not discuss or support the use of CMC's in the manner which Applicants have indicated they are used. Instead, this portion of the transcript has to do with NRC Staff witness Robert Taylor's discussion of the use and trending of IR's and NCR's -- there is nothing in that discussion about CMC's.

CASE does not accept Applicants' premise regarding the use of CMC's. Even if one were to accept that premis, however, a review of CASE Exhibits 48A, 49A, and 50 reveals that Applicants, in their bar graphs for CMC's have broken them down into:

a. Construction type problems; and

b. Engineering type problems.

It appears to CASE that, based on Applicants' own testimony and pleading, all of the construction type problems should have been reported on NCR's, rather than on CMC's. Thus, Applicants are again in violation of 10 CFR Part 50, Appendix B, and their own stated procedures and FSAR. Further, handling those items on CMC's makes it appear that there are fewer deficiencies than is actually the case, circumvents the intent of documented review and follow-up by engineering (as is the case with NCR's), and skews the entire QA/QC process.

(It should be noted that there are several portions of CASE Exhibits 48, 49, and 50 which identify problems pointed out in the CAT Report and the Cygna Report, indicating a continuing uncorrected trend of non-conformances in certain areas. It should also be noted that there are other interesting aspects of these exhibits, such as the fact that 51 out of 550 NCR's were voided during the 4th quarter of 1981 (last page of Exhibit 50), for example. These will be discussed later at a more appropriate time; however, CASE wanted to call them to the Board's attention.)

Page 12, last paragraph, continued on page 13: This is inaccurate; see Doyle Affidavit, page 1, lines 5-10.

Page 13, top of page: But again, instability, diaphram action, web bending, etc., were never addressed until after the September 1982 hearings. (As the Applicants and NRC Staff stated, this was not required until final vendor certification.)

II.B., pages 10-14 (general): It should be noted that almost without exception, Applicants refer not to transcript pages or documents which are in the record, but rather to Applicants' attached "Summary". As discussed previously, this "Summary" has no basis in fact or in the record.

Further, Applicants admit that there is an "absence of affirmative record evidence." However, as discussed previously, Applicants have had every opportunity to present evidence regarding these matters and chose not to do so.

II.C., page 16 (general): CASE is hard put to understand Applicants' logic as expressed in II.C. as compared with the Applicants' position expressed previously in their pleading. It appears that this section could

better be used to argue CASE's position in opposition to Applicants' Motion for Reconsideration.

Page 17, quoted portion: CASE finds this portion especially interesting since it fully supports CASE's position that Applicants should not be allowed to introduce massive amounts of new material into the proceeding at this point after having failed in their first attempt to convince the Board. Applicants have already had their opportunity.

Page 17, bottom of page, continued top of page 18: Applicants cite a portion of the Appeal Board's ruling which stated that they "were obligated to do more than merely raise scientific objections in their proposed findings by reliance on officially noticeable information." This does not appear to be applicable here, since CASE did more -- we participated fully, presenting testimony of Messrs. Walsh and Doyle on several occasions, along with detailed analyses and calculations. The documents and arguments presented supported the Walsh/Doyle testimony; Applicants had every opportunity to address the issues raised in that testimony -- and blew it.

II.D. regarding unstable pipe supports: page 20, top of page, regarding Mr. Kerlin: See Doyle Affidavit, page 1, lines 11-15.

Page 20, near bottom of page, re: "Had Mr. Doyle reported this alleged deficiency to his supervisor . . ." etc.: This is not true. See Doyle Affidavit, page 1, line 16, through page 2, line 11.

Page 21, 2nd paragraph (first full paragraph): Applicants' argument is without merit. See Doyle Affidavit, page 2, lines 12-20.

Page 21, last sentence, regarding "potentially unstable supports":

See Doyle Affidavit, page 2, lines 21-23.

Page 21, footnote 22: See Doyle Affidavit, page 2, line 24, through page 3, line 6.

Page 22, last 5 or 6 lines: But these corrections to instability only began to occur after they were brought forward as part of the Walsh/Doyle allegations, and then Applicants made an impermissible fix.

Page 22, footnote 24: Where were these "documented communications" during the months of hearings and pleadings on the Walsh/Doyle allegations? As admitted by Applicants, the Board cannot rely on this extremely late material (which even now Applicants have not filed) in reaching a decision on this point.

Page 23, last paragraph, continued on page 24, regarding Applicants' efforts to cast doubt on the credibility of Messrs. Walsh and Doyle. First, it should be noted that this portion of Applicants' pleading is far different from what is contained on page 26.

Further, this portion is inaccurate. See Doyle Affidavit, page 3, lines 7-16. (Note: The Circuit Breaker referred to by Mr. Doyle is included as attachments to the Affidavit of Mark Walsh, attached to CASE's 11/28/83 Answer to Board's 10/25/83 Memorandum (Procedure Concerning Quality Assurance). See also Mr. Walsh's Affidavit attached to that pleading, page 4, last answer on page.)

Page 24, last paragraph, continued on page 25: It should be noted that the NRC Staff, in its Motion for Reconsideration, did not ask that the Board reconsider this portion of its Order, thereby apparently indicating its concurrence with the Board's Order in this regard.

Page 25, last paragraph: How can one challenge a CMC which only calls for a change without citing the reason? This would be argument from a negative base. Additionally, why was no memo issued to prevent future instability problems?

II.E., page 26, last paragraph, continued on page 27, regarding the roles of Messrs. Walsh and Doyle at Comanche Peak. This hasty back-pedalling by Applicants is truly amazing to observe! They are now trying to give the impression (since their former approach has now back-fired on them) that Messrs. Walsh and Doyle were very knowledgeable and looked at a lot of supports at Comanche Peak -- a complete reversal of all of Applicants' previous statements and positions in these proceedings.

At the same time, Applicants seem to be implying that Messrs. Walsh and Doyle fooled around more than they should have and perhaps were not tending to their jobs as they should have.

Further, there are clear undertones that Messrs. Walsh and Doyle were engaged in activities which were outside their scope of responsibility (just as Chuck Atchison was when he reported obvious deficiencies outside his area of responsibility). One must wonder whether Messrs. Walsh and Doyle might not also have been fired had Applicants realized that they were looking at what was actually installed in the field. In addition, CASE has been informed (by someone who wants to remain confidential, for very obvious

reasons) that Applicants have now instructed people that they are not to go out into the field and look at what is actually installed.

See also Doyle Affidavit, page 3, line 17, through page 4, line 9, and Walsh Affidavit, page 7, line 1, through page 10, line 14. It should be noted that Messrs. Walsh and Doyle have not discussed all of the problems which they saw on their field tours.

II.E.1. Stresses on pipes caused by U-bolts; page 28, first paragraph, in reference to U-bolt material: See Doyle Affidavit, page 4, lines 10-20.

Page 28, second paragraph: See Doyle Affidavit, page 4, lines 21-25.

Page 29, top of page: See Doyle Affidavit, page 5, lines 1-5.

Page 29, last paragraph: See Doyle Affidavit, page 5, lines 6-8.

Page 30, first full paragraph: How does one determine if problems exist within the U-bolt subsequent to start-up? Also, in 10 CFR, it is stated that design must be functional under all operating conditions; however, Applicants have not addressed this.

Page 31, in reference to (stiff) quoted portion: See Doyle Affidavit, page 5, lines 9-13.

Page 31, middle of page, regarding pre-tensioning: See Doyle Affidavit, page 5, lines 14-20.

Page 32, first paragraph: See Doyle Affidavit, page 5, lines 21-23.

Page 32, last paragraph: See Doyle Affidavit, page 5, line 24, through page 6, line 2.

II.E.2. American Welding Society (AWS) Code. Pages 33-37: See Walsh Affidavit, page 11, lines 8-25.

Page 34, indented portion: See Doyle Affidavit, page 6, lines 3-16.

Page 34, last paragraph, and page 35, first full paragraph: See Doyle Affidavit, page 7, lines 4-13.

Page 34, continued on page 35, footnote 36: See Doyle Affidavit, page 6, line 17, through page 7, line 3.

Page 36, first full paragraph: Again, if such criteria were in place, why was it violated so often, as noted in those problems found by Applicants in the normal design review, but always after September 1982. There are no documents in the record to prove that these were found by the normal design review prior to September 1982 hearings (and if such documents were produced at this time, they would be late filed with no good reason, as well as being suspect).

Page 36, last paragraph, continued on page 37: See Doyle Affidavit, page 7, line 14, through page 8, line 2.

II.E.3. Generic stiffness values. Page 37, last paragraph: See Doyle Affidavit, page 8, lines 3-17; also, see Doyle Affidavit, 8, line 18, through page 9, line 19.

II.E.4. Differential seismic displacement. Pages 38 and 39. There is no documentation that the supports were still under review at that time. To the contrary, the only documentation in the record about these are two of these supports which were included in CASE Exhibit 669B, Attachment to Doyle Deposition/Testimony, items 7C and 7D. There was no indication on the drawing

that a violation had occurred or that there was any problems with the supports, nor is there any indication in the record that these supports had been hold-tagged or identified in any other manner to indicate that the supports might not be acceptable to engineering.

Page 39, note 41: Another example of the preceding.

II.E.5. Richmond Inserts - testing. Page 39, last paragraph, continued on page 40: See Doyle Affidavit, page 9, line 20, through page 10, line 1.

II.E.7. Richmond Inserts - axial torsion. Page 41, 4th line. CASE agrees with Applicants that the record is adequate on this issue (although we obviously do not agree with Applicants' conclusions). We note that Applicants admit that they have "no references to additional evidence to help clarify," then inappropriately attempt to bolster their position by referring to unidentified, phantom "outside experts" with whom they have allegedly discussed this issue and who allegedly agree with the positions taken by the Applicants and the Staff. The Board should place no credence in this unsupported (even by name identification) statement by Applicants. Having struck, those phantom "experts" move on without cross-examination or rebuttal. CASE submits that the Board has ruled correctly on this issue.

Attachment A, "Summary of Quality Assurance Program for Design of Pipe Supports for Comanche Peak Steam Electric Station." As discussed previously, Applicants have had sufficient opportunity throughout these proceedings to present whatever evidence and witnesses they deemed necessary. See pages 4-11 of this pleading for detailed discussion. Applicants have admitted that Attachment A is not in evidence and that the Board cannot rely upon it in making its decisions. The Board therefore should give Attachment A

no weight whatsoever. Further, as stated in the "Scope and Purpose of Summary" portion of Attachment A, its scope goes beyond the QA/QC program for design and describes Applicants' entire alleged QA/QC program for safety-related design activities at Comanche Peak. This flagrant attempt to bolster the record and influence the Board should not be allowed. It appears to CASE that the Board should mentally, if not physically, strike Attachment A and all references to it or information which relies on it in Applicants pleading. Certainly Applicants should not be allowed to use it now as the basis for saying "Hey, wait a minute -- let's go back and start over." -- just because they got an adverse ruling from the Board.

In addition, see Walsh Affidavit, page 1, line 5, through page 6, line 23.

In conclusion:

Applicants, in their pleading, are basically saying that:

(1) The Board didn't read the transcript; or

(2) If the Board read it, they referenced it out of context; or

(3) If the Board read it in context, they either (a) didn't understand it; or (b) misapplied it.

CASE rejects Applicants' basic premises, as should the Board. The record is clear, and the Board has correctly interpretted it and referenced it.

For the good reasons stated herein, CASE urges that the Board deny Applicants' Motion for Reconsideration in its entirety, and that the Board give no weight to Applicants' Attachment A or any references or portions of Applicants' pleading which rely upon Attachment A or any other extra-record references contained in Applicants' Motion.

Respectfully submitted,

Juanita Ellis

(Mrs.) Juanita Ellis, President
CASE (Citizens Association for Sound Energy)
1426 S. Polk
Dallas, Texas 75224
214/946-9446