

2/2/84

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF RESPONSE TO CASE'S (1) DECEMBER 23, 1983 RESPONSE TO APPLICANTS' IDENTIFICATION OF ISSUES, AND (2) JANUARY 16, 1984 CLARIFICATION OF ISSUES IN 12/23/83 PLEADING

I. INTRODUCTION

CASE has identified some 45 issues in its "Response to Applicants' Identification of Issues and Proposal to Establish Hearing Schedule" (December 3, 1983) ("Response") which it asserts should be litigated in this proceeding. In a second pleading, CASE has offered further comments on six of the 45 issues which it believes remain to be resolved.^{1/} CASE's Clarification of Issues in 12/23/83 Pleading (January 16, 1984) ("Clarification"). The Board authorized the Staff and Applicants to file replies to CASE's 12/23/83 Response in its "Memorandum and Order (Scheduling Matters)" (December 8, 1983), and its "Memorandum and Order (Additional Scheduling Matters)" (January 3, 1984).^{2/} The Staff hereby

^{1/} According to CASE, the 45 issues listed apparently are not an inclusive list of issues which CASE believes remain to be resolved. See CASE's Clarification, p. 2.

^{2/} The Board has extended the deadline for responding to CASE's 12/23/83 Response to January 30, 1984. Tr. 9254-55.

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responds to both CASE's 12/23/83 Response, and its January 16, 1984 Clarification.

II. BACKGROUND

CASE's 12/23/83 Response was occasioned by "Applicants' Identification of Issues Proposed to Establish Hearing Schedule" (December 3, 1983) ("Applicants' Proposal"), in which the Applicants identified several issues which it believed required resolution. Applicants' Proposal, p. 3. Applicants' Proposal also suggested that there was no need to litigate the issues in the Board's proposed alternative procedure. See October 25, 1983 "Memorandum (Procedure Concerning Quality Assurance)." The "NRC Staff Response to Applicants' Identification of Issues and Proposal to Establish Hearing Schedule" ("Staff's Response to Applicants' Proposal"), was filed on December 23, 1983.

Following the receipt of the Staff's Response to Applicants' Proposal and CASE's Response, the Board issued two Scheduling Orders which resolved some of the outstanding issues raised by the parties. Memorandum and Order (Scheduling Matters) (December 28, 1983) ("1st Scheduling Order"); "Memorandum and Order (Additional Scheduling Matters)" (January 3, 1984) ("2nd Scheduling Order"). The Board indicated that in addressing CASE's 12/23/83 Response, where the Board had already resolved an issue a citation to the record containing the Board's resolution would be a sufficient reply.^{3/}

^{3/} The Board also provided that a statement by CASE acknowledging that the Board has resolved an issue would also be sufficient as a reply. 1st Scheduling Order, paragraph 2, p. 2.

III. DISCUSSION

The Board directed that the Staff's and Applicants' responses should parallel the order of presentation in CASE's 12/23/83 Response 1st Scheduling Order, paragraph 2, p. 2. In accordance with the Board's direction, the Staff shall respond seriatim to CASE's list of issues which it contends should be litigated. The Staff will address any new points made by CASE in its Clarification regarding issues which it previously identified in its 12/23/83 Response as part of its response to that issue.

A. Overall QA/QC Program Adequacy

CASE's Response and CASE's Clarification both state that the adequacy of the "overall QA/QC Program" at CPSES must be addressed at hearings. Contention 5 has been broadly construed by the Board as encompassing the adequacy of the overall QA/QC program for construction at CPSES. Tr. 714. This proceeding is now at the stage where CASE's specific concerns with regard to construction quality, and QA/QC program deficiencies have been identified, discovery conducted on those subjects, and evidence presented at hearings. The Board has issued a "Proposed Initial Decision" (July 29, 1983), which was modified by two Board orders. Memorandum and Order (Emergency Planning, Specific Quality Assurance Issues) (September 23, 1983); Memorandum and Order (Reconsideration of Order of September 23, 1983) (October 25, 1983). The three Board orders resolved many issues, and left others unresolved. Therefore, it only remains for the Board to resolve these previously unresolved issues. CASE cannot, as it implies in both its Response and its Clarification,

expect to raise new issues related to the adequacy of the QA/QC program at CPSES for the first time at this late stage in this proceeding, in their findings of fact, or in their arguments after the close of the evidentiary record, without showing good cause. To do so would deny the Staff and Applicants of an "effective chance to respond to crucial facts." Union Electric Co. (Callaway Plant, Unit 1), ALAB-740, 18 NRC ___ (slip opinion at 11). The Staff agrees with CASE that, to the extent that the Board has not resolved the implications of any specific finding with regards to the overall issue of QA/QC program adequacy (such as in the rock overbreak and Walsh/Doyle concerns, see CASE's Response, p. 9), the issue remains unresolved.

B. Specific Issues

1. Polar Crane Shim Reinspection (CASE's Response, pp. 9-10)

The Staff agrees with CASE that the results of the Applicants' reinspection of the polar crane shims should be admitted into evidence, in accordance with the Board's September 23, 1983 Order, p. 42.^{4/}

2. Documentation Deficiencies in the Protective Coatings Area (CASE's Response, p. 10)

The Staff disagrees with CASE's position that this issue should be litigated. The documentation deficiencies alleged by Mr. Hamilton were found by the Board to have been corrected or to have no safety significance. July 29, 1983 Proposed Initial Decision ("Proposed Decision"), pp. 20-21. Unless CASE submits affidavits or other evidence

^{4/} Applicants appear to have the same position on this matter, see Applicants' Proposal, p. 3.

that such deficiencies were not corrected,^{5/} the Staff opposes reopening this issue for further litigation.

3. Intimidation of Quality Control Inspectors in the Protective Coatings Area (CASE's Response, pp. 10-12)

The Staff agrees with CASE that the alleged intimidation of QC inspectors in the protective coatings area remains an unresolved issue.^{6/} See Proposed Decision, p. 22; October 25, 1983 Order, pp. 3-4. As discussed in Section 6, infra, the J.J. Lipinsky memorandum relates to this issue, and is presently the subject of a Region IV inspection. Board Notification 83-196 (January 18, 1984). In addition, the Board is also aware that OI also has completed an investigation of intimidation of coatings QC inspectors in response to allegations made by Mr. William Dunham. Id.

The Board has deferred litigation of this issue, pending completion of all OI investigations on this matter. 1st Scheduling Order, p. 4. The Staff supports the Board's deferral of this issue and further urges the Board to defer consideration of this matter until the Region IV inspection on the J.J. Lipinsky memo is also completed. Region IV currently expects the inspection on this matter to be completed in March 1984 and a report issued in April, 1984. Board Notification 83-196.

^{5/} The Board has stated that it is "relevant to reopen issues in what already appears to be an open-ended proceeding." 2nd Scheduling Order, p. 4. However, the Board indicated that it would consider motions to reconsider previously resolved issues if appropriate affidavits and arguments providing good cause why the Board should reopen previously resolved issues were filed by the parties. See 2nd Scheduling Order, p. 2, n.2 and pp. 4-5.

^{6/} Applicants appear to have the same position: see Applicants' Proposal, pp. 3-4.

4. Coating Inspection Procedures Criticized by Robert Hamilton (CASE's Response, pp. 10-11)

CASE identifies four subissues for litigation under this general subject: (1) near white blast; (2) maximum roughness; (3) adhesion testing, and (4) Westinghouse coatings. The Staff agrees with CASE that near white blast, maximum roughness, and Westinghouse coatings are unresolved matters which require further evidence. Board's September 23, 1983 Order, p. 21; Board's October 25, 1983 Order, pp. 8, 13. Applicants also hold this position, and have indicated that they intend to present evidence on this issue as part of their presentation on their reinspection program for protective coatings. See Applicants' Proposal, pp. 3, 5. The Staff disagrees with CASE's position that its allegation that any paint that passed an adhesion test would be acceptable, should be further litigated. The Board has resolved these issues in Applicants' favor. Board's September 23, 1980 Order, p. 21. CASE submits no affidavits or other evidence that Mr. Brandt's affidavit incorrectly represented that there are criteria other than adhesion for inspecting coatings. Unless CASE submits such evidence, the Board should not reopen this issue (see note 5, supra).

5. Dismissal of Robert Hamilton (CASE Response, p. 11; CASE's Clarification, p. 5)

The Board has ruled that Mr. Hamilton's termination will not be relitigated unless the Board rules otherwise. 2nd Scheduling Order, pp. 1-2. However, CASE filed a Motion for Reconsideration of the Board's Scheduling Orders which specifically requests that the Board reconsider its decision on this matter. See CASE's Motion for Reconsideration of

Scheduling Orders (January 13, 1984), pp. 8-9. Applicants have filed an Answer to CASE's Motion which supports CASE's Motion to the extent that Applicants agree that additional testimony on Mr. Hamilton's termination should be admitted into evidence. Applicants' Answer to CASE's Motion for Reconsideration of Scheduling Orders (January 26, 1984) pp. 8-9.

The Staff continues to object to CASE's Motion to open the record on whether Mr. Hamilton's termination was "entirely pretextual". See Staff Response to CASE's Motion for Reconsideration of Scheduling Orders (January 26, 1984), pp. 8-9. The Staff also states, in light of Applicants' support of CASE's motion, that Applicants must show by affidavit or other evidence, that there are significant new matters which must be litigated on Mr. Hamilton's termination before the record can be opened on this issue. In sum, the Staff concludes that the issue of Mr. Hamilton's termination should not be reopened, unless a party shows that there is significant new evidence necessary to a full and complete record on this issue (see note 5, supra).

6. J.J. Lipinsky Memorandum (CASE's Response, p. 12)

As set forth in Board Notification 83-196 (January 18, 1984), and in a January 6, 1984 memorandum from T. F. Wasterman, Region IV to Gordon Edison, NRR (attached to Board Notification 84-015, January 23, 1984), Region IV has initiated a special inspection to address, inter alia, the information contained in the J. J. Lipinsky memorandum. As set forth in Section 3 above, the Staff agrees with CASE that this is an unresolved

issue, but that litigation of this concern should be deferred pending completion of all NRC investigations and inspections regarding intimidation of QC inspectors in the coatings area, including the NRC inspection on the J. J. Lipinsky memorandum. See 1st Scheduling Order, p. 4.

7. Inadequate Disposition of Paint Defect Repairs (CASE's Response, p. 12)

The Staff agrees with CASE that this issue, with one exception, remained unresolved in the Board's Proposed Decision and that further evidence is necessary on this issue. The issue of inadequate paint repairs should be addressed as part of the Applicants' paint and coatings reinspection program. See Section 4, above. The exception is with regard to Kelley heaters, which the Board closed in its September 23, 1983 Order at page 22. Unless CASE submits further affidavits or evidence showing that the information in Mr. Brandt's affidavit which the Board relied upon in its resolution of this issue is incorrect, the Board should not reopen the matter of Kelley heaters (see note 5, supra).

8. Undocumented Removal of Cable Trays (CASE's Response, p. 13)

The Staff agrees with CASE that the Board has not yet resolved this issue, but would consider the issue at the same time that the Board considered the CAT Report. Proposed Decision pp. 25-26. In this posture, the parties can present additional evidence on this issue. The Staff currently plans to present additional evidence regarding documentation of cable trays as part of its presentation on the Staff's walkdown inspections.

9. Termination of Henry Stiner (CASE's Response, p. 13)

The Staff finds that this issue remained unresolved in the Board's Proposed Decision (p. 28; see also 2nd Scheduling Order, pp. 3-4), and that additional evidence is necessary to resolve this issue.

10. Weave Beading of Welds (CASE's Response, pp. 13-14)

The Staff finds that weave beading of welds was closed by the Board in its September 25, 1983 Order at page 24. CASE now requests that the affidavit of Henry and Darlene Stiner (attached to CASE's July 28, 1983 Answer to Applicants' 7/15/83 Summary of the Record Regarding Weave and Downhill Welding) be considered by the Board. While the Board has not explicitly reopened the issue of weave beading, it has indicated its interest in the entire subject of welding, and requested the Applicants and Staff to submit legal briefs and affidavits addressing welding. 2nd Scheduling Order, pp. 6-7. The Staff plans to address these welding issues in the future.

11. Plug Welds (CASE's Response, p.14)

The Staff agrees with CASE that the acceptability of plug welds is an issue which remains unresolved. See Board's Proposed Decision, pp. 32-33; September 23, 1983 Order, pp. 24-26; October 25, 1983 Order, p. 10. Accordingly, the Staff finds that further evidence to resolve the Board's concerns on this issue should be admitted into the record.^{7/}

^{7/} Applicants apparently also hold this position. See Applicants' Proposal, pp. 3-4.

12. Downhill Welds (CASE's Response, pp. 14-15)

The Staff agrees with CASE that the issues of downhill weld occurrence and acceptability remain unresolved. Board's Proposed Decision, pp. 33-34; September 23, 1983 Order, pp. 26-28; October 25, 1983 Order, pp. 10-11. The Board has requested legal briefs and accompanying affidavits on this issue. 2nd Scheduling Order, pp. 6-7. The Staff intends to address this matter in the future.^{8/}

13. Weld Rod Control (CASE's Response, p. 15)

The Staff agrees that weld rod control is an unresolved issue, and that further evidence is necessary to resolve the Board's concerns on this matter.^{9/} Board's Order, pp. 34-36; September 23, 1983 Order, pp. 29-30; October 25, 1983 Order, p. 11.

14. Torque Seal Resulting In No Further QA Check (CASE's Response, p.15)

The Staff disagrees with CASE's position that this issue should be further litigated. The Board has resolved this matter on page 30 of its September 23, 1983 Order, based on Mr. Ronald Tolson's affidavit which states that inspection procedures for Hilti bolts requires checking of four attributes. Unless CASE submits further affidavits or evidence contradicting Mr. Tolson's affidavit, or otherwise showing that Hilti

^{8/} Applicants take the view that the downhill welding issue may be resolved by affidavits, and proposed to file such affidavits in advance of a hearing addressing this subject. Applicants' Proposal, pp. 3, 5.

^{9/} Applicants apparently also hold this position. See Applicants' Proposal, pp. 3-4.

bolts are not being properly inspected for torque, the Board should not reopen this issue (see note 5, supra).

15. Hanger SW-1-102-106-Y33K (CASE's Response, p. 15)

The Staff disagrees with CASE that the Board should allow further evidence as to whether or not Hanger SW-1-102-106-Y33K has an unacceptable gap (mismatch). This issue was resolved by the Board (September 23, 1983 Order, p. 31), and CASE presents no additional evidence that the explanation of Mr. Brandt in his affidavit (which the Board relied upon in its resolution of this subject) is incorrect. Unless CASE submits affidavits or other evidence showing that the information relied upon by the Board was incorrect, the Board should not reopen this issue (see note 5, supra).

16. Liquid Penetrant Testing of Fuel Pool Liner (CASE's Response, p. 16)

The Staff concludes that the Board should not reopen the issue of whether liquid penetrant testing of the fuel pool liner was proper. The Board resolved this issue, on the basis of Mr. Tolson's statement in his affidavit that the craftperson performing the testing was not performing the required QA inspection. Board's September 3, 1983 Order, p. 31. Although CASE asserts that Mrs. Stiner continues to disagree with the Board's assessment or Applicants' statements (Response, p. 16), CASE does not present new affidavits or other evidence that would show that Mr. Tolson's affidavit was incorrect. Accordingly, the Board should not reopen this issue (see note 5, supra).

17. Ineffective Action on Pipe Hanger Previously Approved By QA (CASE's Response, p. 16)

The Staff disagrees with CASE's contention that this concern should be the subject of further litigation. The Board resolved this issue in its September 23, 1983 Order, acknowledging that Mrs. Stiner's concern was not based upon any actual knowledge about the structural capabilities of the support. Board's September 23, 1983 Order, pp. 31-32. Unless CASE submits affidavits of a qualified expert or other reliable evidence showing that the pipe support presents a problem, the Board should not reopen this issue (see note 5, supra).

18. Traceability of Materials (CASE's Response, pp. 16-17)

The Staff does not agree with CASE's position that this issue must be further litigated. The Board resolved this issue by finding that traceability of materials is required only for QA program construction. Proposed Decision, p. 40. The Board rejected the possibility that items not previously subject to the QA system could later become subject to the QA system and added into the system. Id. CASE does not present any affidavits or other evidence that some uncontrolled materials were, in fact, added to the materials required to be controlled by QA. Nor does CASE present any legal arguments that the Board's understanding of the traceability requirements of the Commission (and/or the Applicants' own procedures) is incorrect. For these reasons, the Staff concludes that the Board should not reopen the matter of materials traceability. (see note 5, supra).

19. Derating of Polar Crane (CASE's Response, p. 17)

The Staff finds that Mr. Mile's concern about the polar crane was first identified in his affidavit which was attached to CASE's Answer to Board's 10/25/83 Memorandum (Procedure Concerning Quality Control) (November 28, 1983). This matter was not previously identified by CASE as an issue, and therefore has not been litigated. Nor has Mr. Mile's affidavit been admitted into the record. Hence, the Staff does not view this as a matter which must be resolved in this proceeding. Moreover, the Staff finds that the polar crane derating is a normal procedure which was discussed in section 9.1.4.3.1 of the Applicants' Final Safety Evaluation Report ("FSAR") for CPSES. The Applicants have stated in a November 21, 1983 letter to the Staff that the polar crane has been derated to 175 tons for operations, and that proof testing has been successfully completed. The Staff will be reviewing the test of the polar crane and will be reporting its evaluation in a future supplement to the Safety Evaluation Report ("SER") for CPSES. Since the Staff is currently evaluating the subject as part of its ongoing safety review, the Board should not designate the polar crane derating as a new issue in this proceeding. See Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-81-36, 14 NRC 1111, 1112-3 (1981); Carolina Power and Light Co. (Shearon Harris Power Plant, Units 1, 2, 3 and 4), CLI-80-12, 11 NRC 514, 516-17 (1980).

20. Heat Input Control for Welding (CASE's Reponse, p. 17)

CASE's concerns about heat input control for welding were first identified in CASE's Answer to Applicants' 7/15/83 Summary of the Record Regarding Weave and Downhill Welding (July 28, 1983), and in the attached affidavits of Darlene and Henry Stiner. These affidavits have not been admitted into the record, and in any case were submitted after CASE's original concerns on welding were litigated. Heat input for welding has not been previously identified by CASE as an issue, and therefore this subject was not litigated at the hearings on Contention 5. Hence the issue of heat input for welding is not properly an issue in this proceeding. However, the Board has expressed an interest in the legal requirements governing this criteria, stating that it believed that this welding criteria may be relevant to the Walsh/Doyle concerns. 2nd Scheduling Order, pp. 6-7. The Staff will be addressing this matter in the future.

21. Unqualified QA/QC Supervisory Personnel (CASE's Response, pp. 17-18)

The Staff agrees with CASE that the issue as to whether there are "unqualified" supervisory personnel at CPSES, and whether Mrs. Stiner was unqualified for a QA position she held, are issues which were not resolved by the Board. See Board's Proposed Decision, p. 41. Accordingly, the Staff believes that the Board should receive additional evidence on this matter.

22. Chicago Bridge and Iron Pipe Whip and Moment Restraints
(CASE's Response, pp. 18-19)

The Staff does not agree with CASE's position that the Board's decision resolving Mr. Atchison's specific concerns about Chicago Bridge and Iron ("CB&I") pipe whip and moment restraints should be reopened on the basis of Inspection Report 82-25/82-13 (February 28, 1983). Mr. Atchison's concerns were with specific construction/fabrication deficiencies on certain restraints fabricated by CB&I. The Board resolved his concern by relying upon the Applicants separate reinspection program findings for these restraints. Board's September 23, 1983 Order, p. 32. By contrast, the Staff's concern in Inspection Report 82-28/82-14 was with the Applicants' review of CB&I's performance, and does not question the effectiveness of Applicants' own QA inspection activities on-site at CPSES. Accordingly, this does not affect the Board's factual findings regarding the adequacy of Applicants' follow-up on Mr. Atchison's specific concerns about pipe whip and moment restraints fabricated by CB&I.

Nonetheless, the Staff recognizes that CB&I's QA program adequacy, and Applicants' QA program's failure to detect CB&I's programmatic problems are relevant to the issues being litigated under Contention 5. Since the Board has admitted this Inspection Report into the record, the Staff concludes that this concern must be resolved by the Board.

23. NPSI Pipe Whip Restraints (CASE's Response, pp. 20-21)

The Staff does not agree with CASE's position that the Board's resolution of Mr. Atchison's specific concerns about NPSI pipe whip restraints should be reopened on the basis of Inspection Reports 82-14

(November 18, 1982) and 82-22 (November 10, 1982). Inspection Report 82-14 confirms the Board's finding that the specific concern raised by Mr. Atchison on warpage in a pipe bumper was not a problem, since the warpage was within AWS acceptable limits. Inspection Report 82-22 does not address Mr. Atchison's concern about warpage. Rather, this inspection report discusses construction deficiencies involving an NPSI-fabricated pipe whip restraint, which were reported to the NRC by the Applicants as a potentially reportable 50.55(e) item. Since neither Inspection Report 82-14 or 82-22 contains information which shows that the Board's factual finding on Mr. Atchison's concern about warpage in a particular restraint was incorrect, the Staff concludes that the Board should not reopen its inquiry into the acceptability of warpage in an NPSI pipe bumper.

However, the Staff recognizes that to the extent that Mr. Atchison had general concerns about NPSI's capability to properly fabricate pipe restraints, that Inspection Report 82-22 is relevant to that subject. Accordingly, the Staff concludes that this concern must be resolved by the Board, and that further evidence should be admitted into the record on this matter. At the time of issuance of Inspection Report 82-22, Region IV had not yet completed its inspection of NPSI, and that subject was unresolved in the inspection report. Region IV has not yet completed its review of this item from Inspection Report 82-22, and it cannot currently predict when its review of this item will be completed.

24. Uncertified Employees Performing Liquid Penetrant Testing
(CASE's Response, p. 20)

The Staff disagrees with CASE's contention that this issue should be reopened by the Board. The Board resolved this issue on pages 33-34 of its September 23, 1983 Order, relying on Mr. Brandt's testimony that employees who borrowed Mr. Atchison's liquid penetrant testing kit did so solely for obtaining liquid penetrant testing training. Although Mr. Atchison may continue to disagree with this resolution (CASE's Response, p. 20), neither CASE nor Mr. Atchison offer any new evidence that Mr. Brandt's testimony was incorrect. Unless CASE submits such new evidence (see note 5, supra), the Board should not reopen this issue.

25. Intimidation of QC Inspectors and Craftpersons (CASE's
Response, pp. 21-23)

CASE has indicated that as part of this general subject, two specific issues should also be explicitly considered and resolved by the Board: (1) an allegation by Mr. Atchison that there was an unstated management directive to overlook problems, and (2) Mr. Atchison's contention that he was pressured to approve a Tennessee Wall, Tube and Metal Audit.

The Staff generally agrees with CASE's position that intimidation of QC inspectors and craftpersons at CPSES is an unresolved issue, and that further evidence is necessary on this subject. See, e.g., Proposed Decision, pp. 41-42; Memorandum (Procedure Concerning Quality Assurance) (October 25, 1983), p. 2; 1st Scheduling Order, p. 4. It is also clear that the Board indicated that it would weigh Mr. Atchison's allegation regarding an unstated management directive when it received evidence on

the NRC's investigations and inspections on the subject of intimidation. Proposed Decision, p. 42. However, the Staff disagrees with CASE's assertion that the entire subject of Mr. Atchison being pressured to approve the Tennessee Wall, Tube and Metal audit is still unresolved. As set forth on page 35 of the Board's September 23, 1983 Order, the Board stated that it was "not concerned with the propriety of closing the audit..." Thus the Staff finds that the correctness of closing the audit has been resolved by the Board. Unless CASE submits affidavits or evidence showing that the Board's conclusion was incorrect, the Staff opposes reopening that aspect of the subject. The Staff submits that what remained unresolved by the Board is whether or not the supervisor's pressure on Mr. Atchison reflects adversely on the Applicants' QA program. Id.

With regard to scheduling hearings on this subject, the Staff points out that the Board has deferred hearings on this matter until completion of all OI investigations on intimidation. 1st Scheduling Order, p. 4. The Staff supports the Board's deferral, and further requests the Board to defer its consideration of this matter until Region IV's inspection reports on this subject have also been completed. See Section 3, supra.

26. Robert Messerly Allegations and Inspection Report 83-27
(CASE's Response, p. 23)

The Staff finds that Mr. Messerly's concerns were first raised in a February 3, 1983 affidavit and during an April 14, 1983 interview with Region IV staff. His affidavit was not admitted in the record in this proceeding, nor were his concerns a subject of litigation. Accordingly, his concerns are not currently issues in this proceeding. Region IV's inspection of CPSES based upon Mr. Messerly's concerns is set forth in Inspection Report 83-27 (September 29, 1983). As discussed more fully in that inspection report, NRC Region IV determined that no violations or deviations were identified based upon Mr. Messerly's affidavit and interview. The Staff recognizes that Mr. Messerly's concerns relate to issues in this proceeding. However, as set forth in Inspection Report 83-27, Region IV did not substantiate Mr. Messerly's concerns. Moreover, CASE has not submitted any new information (whether by affidavit or other evidence) that questions the correctness of Region IV's resolution of Mr. Messerly's concern. Unless CASE submits affidavits or other evidence showing that Region IV's conclusions were incorrect (see note 5, supra), the Staff concludes that Mr. Messerly's concerns, as resolved by Inspection Report 83-27, should not be made an issue in this proceeding.^{10/}

^{10/} CASE also requests that concerns on intimidation raised by its witnesses should be the subject of hearings. CASE references its November 9, 1983 and November 30, 1983 pleadings in support of its request. The Staff finds that these pleadings refer to the William Dunham matter and the J. J. Lipinsky memo, and therefore duplicate CASE's requests in other portions of its Response identifying these issues as open. Therefore, the Staff will not repeat its position on these matters, but refers the Board to Section 3, supra, for the Staff's position on the status of these subject matters.

27. Transmission of Component Modification Cards to Document Control Center and Subsequent Incorporation Into Appropriate Document (CASE's Response, p. 23)

The Staff agrees with CASE that this issue has not yet been resolved by the Board. Proposed Decision, p. 43.

28. A-490 Bolt Torquing (CASE's Response, p. 23)

The Staff disagrees with CASE's position that the issue of A-490 bolt torquing should be reopened. The Board resolved this issue on pages 35-36 of its September 23, 1983 Order, relying on statements in Mr. Brandt's affidavit that bolt torquing tests had been run, torquing values incorporated into site procedures, and previously torqued bolts were being reverified. CASE does not present any new evidence that Mr. Brandt's statements in his affidavit, and the Board's resolution of this issue, were incorrect. Unless CASE submits such evidence, the Board should not reopen this issue (see note 5, supra).

29. Quenching of Welds at CPSES (CASE's Response, p. 23)

The Staff does not agree with CASE that this issue should be reopened by the Board. Although the Board originally did not understand why weld quenching is prohibited and why the weld quenching viewed by Mr. Atchison was acceptable (Proposed Decision, p. 44), the affidavit submitted by Mr. Brandt resolved the Board's questions. September 23, 1983 Order, p. 36. CASE's Response does not present any new information showing that Mr. Brandt's affidavit, and the Board's subsequent

resolution, were incorrect.^{11/} Unless CASE submits affidavits or other evidence showing that the Board's resolution was incorrect, the Board should not reopen this issue (see note 5, supra).

30. Inadequate Number of QA Inspectors at CPSES (CASE's Response, p. 24)

The Board has closed its consideration of this subject with regard to Mr. Atchison's allegations, but has left unresolved the NRC Construction Appraisal Team's (CAT's) analogous concerns. Proposed Decision, p. 45. Although CASE appears to recognize the current posture of this subject as determined by the Board (CASE's Response, p. 24), it is unclear whether it agrees or disagrees with the Board's decision. CASE's reference to page 4 of its Response is singularly unhelpful, since that page contains a general discussion of CASE's position that intimidation at CPSES is an accepted management practice. In any event, the Staff is in agreement with the Board's position on the status of this subject.

31. Cold Springing of Reactor Coolant Lines (CASE's Response, p. 24)

The Staff opposes CASE's contention that this issue should be reopened. The Board resolved this issue in its September 23, 1983 Order, when it accepted: (1) Applicants' explanation as to how they identified the system that this deficiency occurred on, and (2) the record evidence

^{11/} CASE's Response states rather cryptically, "Board did not understand this issue. (7/29/83 Proposed Decision, p. 44)..." It is unclear whether CASE was merely paraphrasing the Board's Proposed Decision, or whether it was claiming that the Board's eventual resolution of this issue was indicative of a misunderstanding by the Board. If CASE meant the latter interpretation, the Staff reiterates that CASE presents no basis for its assertion.

on the identification and disposition of this deficiency. September 23, 1983 Order, p. 36; Proposed Decision, p. 46. CASE has not presented any information, by affidavit or otherwise, that the Board's resolution was incorrect. Accordingly, unless CASE submits such information, the Staff opposes reopening of this issue (see note 5, supra).

32. QA Program for Operations (CASE's Response, pp. 24-25)

The Staff does not agree with CASE that Board Question 2, relating to the QA Program for operation of CPSES, should be reopened. The Board closed its consideration of this issue on pages 34-35 of its Proposed Decision. CASE does not present any new information, by way of affidavits or other evidence, showing that the Board's conclusion that this should not be raised as a 10 C.F.R. Section 2.760a sua sponte question was incorrect. Unless CASE submits such information, the Staff concludes that the Board should not reopen this issue (see note 5, supra).

33. Separate Licensing Hearings for Unit 2 (CASE's Response, p. 25)

CASE's request that separate hearings be held for Unit 2 of CPSES is not an identification of an issue to be litigated. Rather, CASE's request should have properly been filed as a motion. Nonetheless, the Staff will address CASE's request at this time. The Staff opposes CASE's request. Nothing in the Commission's regulations require that separate licensing proceedings be held for each unit of a multiple unit nuclear reactor plant. The Commission specifically rejected such a requirement when it recently denied a petition for rulemaking that sought amendments to the Commission's regulations that would have limited the scope of an

operating license proceeding to a single reactor unit, even if the unit was one of several similar units constructed on the same site. 47 Fed. Reg. 46524 (October 19, 1982). The Atomic Safety and Licensing Appeal Board specifically noted this Commission action when it denied an intervenor appeal of a licensing board denial of his untimely petition to intervene. Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-758 (January 24, 1984) (slip opinion at p. 8, n. 18). In the Seabrook proceeding, the intervenors contention alleged that an application for an operating license for a two-unit plant was premature because one of the units was only 22 percent complete. In denying the intervenor's appeal, the Appeal Board expressed its opinion that separate licensing proceedings for individual units of a nuclear power plant are not required. Id. The Staff submits that there is no legal basis for requiring a separate licensing proceeding for Unit 2 of CPSES, and opposes CASE's motion requesting that the Board order a separate proceeding for Unit 2.

34. Reactor Vessel Mirror Shield (CASE's Response, p. 25)

The Staff disagrees with CASE's assertion that this subject is an unresolved issue in the record which must be resolved. The Board's inquiry on Inspection Report 83-34/83-18 (September 12, 1983) was made informally to the Staff. CASE never expressed any interest on this subject in any of its previous pleadings, or by any of its witnesses. Accordingly, the Staff does not regard this subject to be an issue which the Board should resolve on the record. The Staff intends to respond to the Board's informal inquiry by affidavit in the near future. However,

the Staff does not regard the Board's inquiry as a record issue, and therefore opposes CASE's attempt to inject it as an unresolved issue into this proceeding.

35. Computerization of Non-Conformance Reports (CASE's Response, pp. 25-26)

The Staff agrees with CASE that this currently is an unresolved issue, but disagrees that further hearings should be scheduled to address this subject. The Board issued a "Memorandum (Board Questions on Computerization of Non-Conformances)" (September 20, 1983) which posed six questions regarding computerization of non-conformance reports ("NCRs") to Applicants, based on the Board's earlier-expressed questions on this subject stemming from the June, 1983 hearing session. Applicants responded to the Board's questions on October 11, 1983 by submitting an affidavit by Ronald G. Tolson. The Board has recently issued its "Memorandum (Record Retrieval)" (January 30, 1984) indicating that the Board had some unresolved questions on this subject.

36. Low Worker Morale (CASE's Response, pp. 26-27)

The Staff disagrees with CASE that the issue of low worker morale should be reopened. As the Board stated in its July 29, 1983 Proposed Decision, there is no concern with low worker morale if construction is only approved when it is done correctly. Proposed Decision, p. 14. In light of the Board's resolution of this issue, it is the Staff view that CASE's efforts should be directed to identifying specific construction deficiencies which were not corrected. The Board has provided CASE

with the opportunity to identify such construction deficiencies. See Section 43, infra. However, CASE has not identified specific construction deficiencies. Id. Accordingly, the Staff concludes that there is no reason to reopen the issue of worker morale.

37. Harrassment of Darlene Stiner (CASE's Response, p. 27)

CASE represents in its Response that the allegations of Mrs. Stiner regarding harrassment after she testified in the CPSES proceedings are set forth in an affidavit attached to CASE's Answer to Board's 10/25/83 Memorandum (Procedure Concerning Quality Assurance) (November 28, 1983). See CASE's Response, p. 27. Thus, this was not an issue which was timely raised by CASE and which was addressed by the other parties at hearings. Therefore, Mrs. Stiner's allegation of harrassment is not a record issue which must be resolved. The Staff also notes that Mrs. Stiner's affidavit was attached to a CASE pleading which was supposed to have identified specific construction deficiencies in response to the Board's direction to do so. See Board's Memorandum (Procedure Concerning Quality Assurance), p. 3; telephone conference call of October 21, 1983, Tr. 9124-28. It is highly irregular for CASE to now raised additional allegations of harrassment in a pleading which was supposed to address an entirely different issue.

Nonetheless, the Staff recognizes that Mrs. Stiner's allegation is relevant to the subject of intimidation of QC inspectors and craftpersons. (See Section 25, supra). Accordingly, the Staff concludes that the Board may determine that Mrs. Stiner's allegations of harrassment is a new issue which must be resolved on the record.

To the extent that CASE also identifies Mrs. Stiner's earlier allegations of intimidation and harrassment (CASE Exhibit 667, pp. 63-72) as unresolved issues, the Staff agrees with CASE that this issue remains unresolved by the Board. See 2nd Scheduling Order, pp. 34; Proposed Decision, p. 41. OI is presently conducting an investigation into this matter; however, it is currently unable to project when its investigation will be completed and an investigation report issued.

38. Staff Walkdown Inspections (CASE's Response, pp. 27-28)

The Board has stated that it intends to receive evidence on the next two Staff walkdown inspections as part of its "alternative" course of action. Memorandum (Procedure Concerning Quality Assurance) (October 25, 1983), p. 2; 2nd Scheduling Order, pp. 5-6 (affirming Board's intent to adopt the alternative course of action set forth in the Board's October 25, 1983 Memorandum).

39. Cygna Report (CASE's Response, p. 29)

The Board has stated that it intends to receive evidence on the Cygna Report. Memorandum and Order (Procedure Concerning Quality Assurance) (October 25, 1983), p. 2; 2nd Scheduling Order, pp. 5-6.

40. Applicants' Reinspection of Protective Coatings (CASE's Response, pp. 29-30)

The Staff agrees with CASE that this subject has not been resolved by the Board, and that further evidence is necessary. See Memorandum (Procedure Concerning Quality Assurance) (October 25, 1983), p. 2; 2nd

Scheduling Order, pp. 5-6. Applicants have indicated that they intend to provide evidence on their protective coatings reinspection program. Applicants' Proposal, pp. 3-4.

The Staff also notes that Board Notification 84-015 (January 23, 1984) informed the Board that Applicants had notified the Staff of a potentially reportable deficiency under 10 C.F.R. Section 50.55(e). The deficiency related to the acceptability of Applicants' reinspection of coatings, due to possible problems in calibrating the testers for adhesion. The Staff submits that this Board Notification is relevant to the issue of the adequacy of Applicants' reinspection program, and should be addressed by the parties.

41. Applicants' QA Program Changes (CASE's Response, pp. 30-31)

The Staff agrees with CASE and Applicants that evidence of the Applicants' implementation of a "comprehensive and aggressive program to reaffirm their commitments to an effective independent QA/QC program" (Applicants' Proposal, p. 10) may be admitted into the record. The Staff finds that this subject is directly relevant to the issue of QC inspector and craftpersons intimidation. Accordingly, the Staff agrees with CASE that this subject be litigated in conjunction with the issue of QC inspector and craftpersons intimidation, and that the other parties be afforded the opportunity to submit testimony and other evidence on the Applicants' program.

42. Referral of OI Investigations on Intimidation (CASE's Response, p. 31)

As discussed in Sections 3 and 25 above, the Board has deferred hearings on this subject. 1st Scheduling Order, p. 4.

43. Board's Site Tour (CASE's Response, p. 32; CASE's Clarification, p. 5)

The Staff continues to hold the position expressed in its Comments on CASE's Request for Chart of "Show and Tell" Trip to Comanche Peak (December 23, 1983) that CASE has not complied with the Board's direction^{12/} that CASE must submit affidavits identifying with specificity the construction deficiencies and their locations that CASE wishes the Board to view while on-site. Also, the Staff reiterates its view set forth on pages 4-7 of its Response to CASE's Motion for Reconsideration of Scheduling Orders (January 26, 1984) that in light of CASE's professed unwillingness to engage in discovery under the terms set forth in the Board's 1st Scheduling Order, that the Board should withdraw the opportunity for discovery which the Board afforded CASE.

44. Effect of Welding on A500 Steel

The Staff agrees with CASE that this issue has not been finally resolved by the Board.^{13/} See Partial Initial Decision (Change in Material

^{12/} See Memorandum (Procedure Concerning Quality Assurance) (October 25, 1983); telephone conference call of October 21, 1983, Tr. 9124-28.

^{13/} Applicants have indicated that they intend to file a legal brief and supporting affidavits on this matter. Telephone conference call of January 12, 1984, Tr. 9217-18.

Properties for A500 Steel) (October 6, 1983). The Board has also indicated that it sees some relationship between the A500 steel issue and the Board's December 28, 1983 "Memorandum and Order (Quality Assurance for Design)" ("Memorandum on Quality Assurance"), as well as the concerns on weave welding, downhill welding, pre-heat requirements and cap welding raised by the Stiners. 2nd Scheduling Order, pp. 6-7.

45. Walsh/Doyle Concerns (CASE's Response, p. 32)

The Staff agrees with CASE that the concerns raised by Messrs. Walsh and Doyle have not been finally resolved by the Board, and that further evidence on these concerns is necessary. See Memorandum on Quality Assurance (December 28, 1983). The method and schedule for resolving the Walsh/Doyle concerns must await the Applicants' filing^{14/} of their proposed plan to address the Board's concerns on these issues.

46. Credibility and Competence of Applicants' and NRC Staff Witnesses (CASE's Response, p. 33; CASE's Clarification, pp. 5-6)

The Staff disagrees with CASE's contention that the credibility and competence of the Applicants' and Staff's witnesses is a separate, discrete issue which must be resolved by the Board. CASE's Response, p. 33. The credibility and "competence" (presumably, the "expert" nature of a witness' testimony) is always a matter which the Board members must assess in weighing the evidence. See, e.g., Pacific Gas and Electric Co.

^{14/} Applicants have stated that they intend to file a plan responding to the Board's suggestion in its December 28, 1983 Memorandum on Quality Assurance that an independent design verification be implemented for CPSES.

(Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-78-36, 8 NRC 567, 572 (Licensing Board not bound by previous determination of another Licensing Board panel that individual witness was expert). However, the Board is not required to make specific findings regarding the credibility and competence of a witness (except, of course, when the "expert" nature of witness' testimony is challenged by a party). The Board should reject CASE's contention on this matter.

CASE also states in its clarification that it intends to file a motion in the future to reopen issues previously resolved by the Board in whole or part by relying on affidavits filed by Applicants' witnesses. CASE's clarification, p. 5. CASE asserts that the basis for their motion will be that Applicants' affiants made "material false statements." Id. Until CASE files its motion, the Staff does not regard CASE's representation as requiring a response at this time.

47. Trending (CASE's Clarification, p. 6)

CASE suggests that this subject "not need to be covered in hearings," but then states that they plan to address the subject of "trends or patterns of non-conforming conditions..." in their proposed findings, and in their final argument. The Staff reiterates its discussion on pages 7-8 of its Response to Applicants' Motion for Reconsideration of Memorandum (Quality Assurance for Design) (January 27, 1984) that CASE cannot raise new technical or substantive arguments for the first time following the closing of the record on an issue.

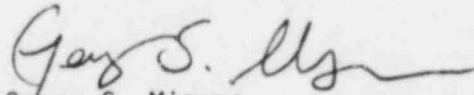
48. Proposed Findings on CAT Report (CASE's Response, p. 33)

The Board has granted CASE's request that proposed findings on the CAT Report be deferred. 2nd Scheduling Order, pp. 2-3.

IV. CONCLUSION

For the reasons discussed above, the Staff supports in part, and opposes in part, CASE's identification of the issues which should be litigated in this proceeding.

Respectfully submitted,



Geary S. Mizuno
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 2nd day of February, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)

TEXAS UTILITIES GENERATING)
COMPANY, et al.)

(Comanche Peak Steam Electric)
Station, Units 1 and 2))

Docket Nos. 50-445
50-446

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO CASE'S (1) DECEMBER 23, 1983 RESPONSE TO APPLICANTS' IDENTIFICATION OF ISSUES, AND (2) JANUARY 16, 1984 CLARIFICATION OF ISSUES IN 12/23/83 PLEADING" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or deposit in the Nuclear Regulatory Commission's internal mail system (*), or by express mail or overnight delivery (**), this 2nd day of February, 1984:

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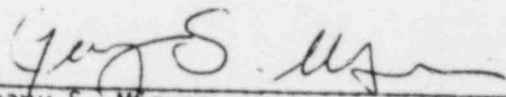
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