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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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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 PARTIAL ANSWER TO APPLICANTS' PLAN TO RESPOND TO MEMORANDUM AND ORDER (QUALITY ASSURANCE FOR DESIGN)

CASE (Citizens Association for Sound Energy), Intervenor herein, hereby files this, its Partial Answer to Applicants' Plan to Respond to Memorandum and Order (Quality Assurance for Design). In their 2/3/84 pleading, Applicants requested (page 9) that "the Board . . . shorten the time allowed so that responses from the intervenor and the Staff are filed by February 10 (by overnight delivery)." As soon as CASE received Applicants' pleading (on 2/6/84), we informed the Board Chairman that we opposed Applicants' request. The Chairman requested that we attempt to file by 2/10/84 at least a partial response indicating whether or not CASE believes Applicants' plan is on the right track. We are therefore filing this pleading; however, it should be noted that we do not consider this to be our complete or final answer to Applicants' Plan. We propose to file that answer within the time allowed for such answer (twenty days) or, if the Board grants the attached Motion for Extension of Time, to be placed in the mail by March 5, for overnight delivery to the Board and parties.

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As indicated herein, CASE emphatically does not believe Applicants' proposed Plan is adequate to satisfy the Board's concerns. At page 2 of Applicants' pleading, they discuss what they perceive the need to be concerning supplementation of the evidentiary record. CASE has discussed this thoroughly in its 2/1/84 Answer to Motions for Reconsideration of Board's Memorandum and Order (Quality Assurance for Design) by Applicants and NRC Staff. To briefly summarize:

Applicants' desire to reopen the record is untimely in the extreme. This fact alone should weigh so heavily against such reopening that the Board should not allow Applicants to do so. It would not be allowed were CASE to attempt to do so. Applicants themselves chose not to propose additional hearings in a timely fashion. In fact, Applicants themselves continually and stridently argued (since 9/16/82) that the record was adequate and that it should be closed. Applicants, in their 1/17/84 Motion for Reconsideration of Board's Memorandum and Order (Quality Assurance for Design), admitted repeatedly that the Board cannot find that Applicants' pipe support design process satisfies the requirements of 10 CFR Part 50, Appendix B. There is no justification in the record or in any of Applicants' pleadings for going back and starting over at this late date.

Further, there are many instances in the record already where CASE has been denied the opportunity to reopen or supplement the record. One of the costliest of these was when CASE was denied the opportunity to late file provisional proposed findings of fact, although CASE presented what we still consider to be good reason for doing so. In that instance, Applicants' ploy worked to accomplish precisely the goal they intended, and the Licensing Board

agreed with Applicants and denied CASE's motion.[1]

As discussed in our 2/1/84 Answer, the currently-constituted Board has refused to allow CASE to supplement the record (even modestly) already in regard to the Walsh/Doyle allegations[2]. To allow Applicants to now basically go back and relitigate closed issues all over again would be completely contrary to all concepts of fairness and severely prejudice CASE's rights in these proceedings. The damage would be not only physical and financial, but would also severely damage CASE's spirit to continue. There are already numerous examples in the early record of these proceedings when CASE's rights have been severely prejudiced, to the point where we had thought that an appeal would be essential and winnable. However, CASE was heartened and hopeful that the established system of litigation before the Licensing Board could work upon reading the Board's 12/28/83 Memorandum and Order (Quality Assurance for Design). Were the Licensing Board at this time to backtrack from its strong and justified position and allow Applicants to succeed in their latest ploy[3] and relitigate closed Walsh/Doyle issues, CASE would again have to question whether the intent of these licensing proceedings is truly to see that the plant has been built safety so that the public health and safety will be protected, or just to assure that the plant is licensed. If Applicants were not prepared to litigate, they should have folded their tent,

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[1] In all fairness, it must be noted that the currently-constituted Licensing Board went to considerable time and trouble researching the record in many instances on its own. However, there were still many valid issues and points which should have been raised (and might later have been had CASE been represented by counsel) which are now lost forever, and will never be dealt with by the Licensing Board.

[2] See Board's 9/1/83 Memorandum and Order (Motions to Reopen the Record and to Strike).

[3] Applicants' attorney is not a novice, but rather a litigation-wise veteran.

withdrawn their application for an operating license, gone back to the drawing board, and come back when they had their act together. They have deliberately and carefully chosen the path they have taken. The Board should not now allow Applicants to profit from their own deliberate actions. Nor should the Board force CASE to be severely injured from Applicants' own deliberate actions. To do so would create an additional built-in imbalance in a system already near-fatally flawed by its unfairness to intervenors -- not only in these proceedings, but to be used as a precedent in other proceedings as well. In addition to all of the other multitude of problems encountered by intervenors, the Board will have added the use of a double standard which would not be allowed in other legal settings.

In its 2/1/84 Answer to Motions for Reconsideration[4], CASE discussed the gross unfairness of subjecting CASE and its witnesses to reopening the hearings on closed Walsh/Doyle matters. Anyone who comes forward to testify in proceedings such as these does so at extreme personal risk, financially and otherwise. Aside from the fact that relitigation such as is proposed is unfair, it is also counterproductive in several ways, not the least of which is that it will act as yet another discouragement to individuals who are concerned about construction or design coming forward with their concerns. CASE believes that the example which will be set by the Board should it grant Applicants' motion to relitigate closed issues will send as clear a signal to prospective witnesses in hearings such as these as has been so effectively sent by Applicants' pattern of firing craft and QC personnel for reporting problems or making waves.

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[4] See CASE's 2/1/84 Answer to Motions for Reconsideration of Board's Memorandum and Order (Quality Assurance for Design) by Applicants and NRC Staff; especially pages 8 and 9.

Further, the Board's granting Applicants' proposal to relitigate must necessarily further decrease the confidence of the public in the fairness of the Nuclear Regulatory Commission as a regulatory agency. CASE submits that the NRC cannot, at this point in time, afford to deliberately further undermine public confidence and trust. The agency is beset on all sides as it is, without adding further fuel to the fire.

Another fact which must weigh heavily and which should, in and of itself, be sufficient reason to deny Applicants' motion to relitigate is that Applicants' proposal would almost inevitably result in delay.[5] As everyone knows, delay (perhaps above all else) is to be avoided in NRC licensing proceedings. The one way which CASE sees as open to the Board to help avoid delay would further severely prejudice CASE's rights. CASE believes that part of Applicants' new master plan is to overwhelm CASE with new witnesses, new studies, new reports, etc., etc., while at the same time pushing to rush, rush, rush (ignoring the fact that it is because of Applicants' own actions that the delay occurred in the first place). Thus, the intervenor would be deprived of sufficient time to adequately prepare and litigate its case. Again, CASE urges that the Board not condone and support Applicants' strategy.

It should be noted that CASE does not agree with Applicants' identification of issues. However, we have not at this time analyzed the record to assure that all issues be addressed. We intend to address this portion of Applicants' pleading when we file our complete Answer.

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[5] See CASE's 2/1/84 Answer to Motions for Reconsideration, especially pages 9 through 11.

It should be noted, however, that Applicants' identification of issues (pages 5-7, A. Issues to be Addressed) is in large part devoted to self-fulfilling prophesies, wherein the Applicants have specified what the outcome is to be to begin with. This again clearly demonstrates that Applicants' attitude is to attempt to persuade the Licensing Board that the plant is safe -- not to identify and correct problems.

On page 4 of their pleading, Applicants state that they have retained Ebasco Services, Inc. to assist in the coordination of the efforts, and state that Applicants also will call upon NPSI, ITT-Grinnel, PSE, Westinghouse and Gibbs & Hill, in addition to Ebasco, to support the efforts. The reason given for this is "(I)n order to provide independence from the pipe support design organizations and the Engineer." However, the fact of the matter is that Ebasco is itself presently employed onsite; in fact, Mr. Brandt, one of Applicants' primary witnesses in these proceedings, is himself employed by Ebasco (under contract to Applicants). How this can provide "independence" is a mystery to CASE, and is unexplained by Applicants in their pleading. Further, it is not clear what part the listed organizations will be playing in the "independent" design review. Will they be correcting problems as they are identified by CYGNA (if any problems are identified)?

Applicants go on to state that they will retain the "services of an expert from the academic community . . . an indisputable expert." However, Applicants' proposed plan is deficient in that they have not even identified

who this alleged "expert" is to be. Further, there is no indication of the criteria which will be used to select this expert (it is conceivable that the only criteria might be that such expert say what Applicants want to hear). It is also unexplained how such an expert, who will presumably be selected by Applicants, for purposes explained to him by Applicants, after discussions held with Applicants, and paid by Applicants, can be considered to "provide additional independence." Since Applicants have not named their expert, it would appear that they are having difficulty locating one who meets their unexplained criteria.

Finally, Applicants state that "in order to provide even further independence and assurance on the adequacy of pipe support design at Comanche Peak," Applicants intend to commission Cygna Energy Services to perform an independent design review, a selection which Applicants claim "is in accord with the Board's recommendation." However, the Board's Order cited by Applicants does not recommend Cygna, contrary to Applicants' assertion; the Board only stated that Cygna appeared to meet the one criteria of Independence and Qualifications.

Further, as demonstrated by the testimony of CASE witnesses Jack Doyle, Mark Walsh, and Dobie Hatley[6], Cygna was not independent in the Cygna Report. CASE maintains that it is not sufficient for Cygna to "employ the same methodology and to retain the same independence and reliability that it utilized for the prior effort," as Applicants propose. This will be discussed at

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[6] Although this testimony is not yet in the record, it has been prefiled and will be discussed during the upcoming February 20-24 hearings.

some length in the upcoming hearings. CASE is strongly opposed to Cygna's conducting the independent design review.

In conclusion, on its face, Applicants' proposal is totally inadequate and non-responsive to the Board's concerns. It falls far short of any semblance of what the Board has indicated it wants. The fact that Applicants have responded in this fashion clearly indicates that they have no idea of the seriousness of the problem or the need for them to come up with a serious response. Applicants propose to address only the Walsh/Doyle concerns, and only those Walsh/Doyle concerns as Applicants' perceive them. At this point in time, the Board cannot be certain whether or not there has been a QA/QC breakdown which is pervasive enough to deny the operating license. However, it is clear that the Board can't look just at the little window offered by Messrs. Walsh and Doyle. That doesn't tell them anything other than what they already know. What is needed now is very detailed and specific criteria, which has already been hammered out at several plants which have produced audits of quality that have ended up saying how many and which problems there were, how long it would take to fix them, etc. Such an audit would provide the Board with exactly the information it is seeking. Relitigating closed Walsh/Doyle allegations will not do it; that will only provide Applicants with another bite at the apple. CASE plans to include in its complete answer to Applicants' Plan specific, detailed information regarding what CASE believes is needed in a plan to satisfy the Board's concerns and give them the information it needs and is seeking.

The Licensing Board must eventually make a decision in this case. But it must make that decision based upon specific, documented information. It must make the determination as to whether or not what has been presented to them by Applicants bears any resemblance to what is really going on at Comanche Peak. The Board obviously does not want, nor can it or the NRC afford, another Zimmer on its hands. The reason the NRC is losing its credibility is not because utilities are building bad plants, but because the NRC is licensing bad plants. CASE believes that its complete response to Applicants' Plan will assist the Board in assuring that it does not license a bad plant.

Respectfully submitted,

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

By my signature below, I hereby certify that true and correct copies of CASE's PARTIAL ANSWER TO APPLICANTS' PLAN TO RESPOND TO MEMORANDUM AND ORDER (QUALITY ASSURANCE FOR DESIGN) and CASE'S MOTION FOR EXTENSION OF TIME TO ANSWER APPLICANTS' PLAN TO RESPOND TO MEMORANDUM AND ORDER (QUALITY ASSURANCE FOR DESIGN)

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