

DOCKETED  
USNRC  
December 22, 1983

'83 DEC 23 A9:16

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

APPLICANTS' RESPONSE  
TO CASE'S "IDENTIFICATION"  
OF ALLEGED DEFICIENCIES  
FOR SITE VISIT

In an effort to assure that this proceeding would be completed in a timely manner, the Board has sought to establish a reasonable process by which it could receive evidence from the intervenor regarding the adequacy of construction of Comanche Peak. See Memorandum (Procedure Concerning Quality Assurance) (October 25, 1983). The Board proposed that the intervenor submit allegations of "specific" construction deficiencies of which it claimed already to have knowledge and which the Board could then view on site. This document was to be subject to strict nondisclosure restrictions. Memorandum at 3. In response to this request, the intervenor filed two documents which purport to satisfy the Board's instructions and which the intervenor claims should serve as the basis for the

8312270156 831222  
PDR ADOCK 05000445  
PDR  
G

D503

Board to undertake a site visit. However, this material is no more than a littany of previously raised general allegations of deficiencies which is wholly lacking in the specificity the Board sought. Applicants strenuously object to the Board's reliance on any of the material now before it as the basis for conducting a site visit.

Before addressing in more detail the material supplied by the intervenor, Applicants note that they do not object in principle to the concept of the Board visiting the site to examine construction deficiencies which it has reason to believe exist. We are particularly willing, and indeed anxious, for the Board to explore any specific allegations to ascertain for itself the adequacy of construction at Comanche Peak. Although we do not believe the visit contemplated by the Board is necessary for it to render a favorable decision regarding the safety of the facility, and that the more appropriate method for handling these allegations would be through the investigatory and inspection arms of the Commission independent of these proceedings, we endorse the overall concept initially put forth by the Board. However, we strongly object to the manner in which the intervenor would have the Board turn its invitation to identify specific deficiencies into an open license to wander the site without any firm indication that particular deficiencies exist. For this reason we object to further pursuit of this process.

RESPONSE TO "IDENTIFICATION" OF DEFICIENCIES

Applicants must first note that it is impossible to provide a reasoned reply to the alleged categories of deficiencies presented by the intervenor. No specific information has been provided that would enable Applicants to assist the Board in determining, as it initially contemplated would occur (Memorandum at 3), whether a site visit is warranted.<sup>1</sup> The intervenor raised only categories of alleged deficiencies and those categories have been raised previously in the proceeding and addressed in the Board's decisions. No additional detail has been provided, as the Board requested, that would give any reason to question the adequacy of the Board's disposition of those matters or to raise new matters. Accordingly, we are constrained by lack of information from providing any detailed response on the particular allegations. However, Applicants strongly believe that there are several reasons why the Board should simply cut off further pursuit of this approach.

In the first instance, the Board has afforded the intervenor more than ample opportunity to provide information regarding existing construction deficiencies, and yet the only information disclosed provides no indication that the alleged

---

<sup>1</sup> Although the Board first directed the intervenor to provide information regarding known "specific identified quality deficiencies" (Memorandum at 3), the Board has since relaxed that standard to allow some identifying information not to be disclosed. However, the Board's direction did not permit such vague references that it would be impossible to ascertain whether there is any assurance that the alleged deficiencies still exist and can be observed, or that the deficiencies raise an actual safety concern.

deficiencies still exist (if they even existed in the first instance), that they could be found by the intervenor, or that they involve any matter which raises a true safety concern that could justify the Board making a site visit. Indeed, the intervenor does not even attempt to assure the Board there is a likelihood that it will be able to identify any of the alleged deficiencies. Rather, the intervenor presents a string of disclaimers, asking the Board not to place too much importance on this exercise in case its "witnesses" cannot find any deficiencies. (See e.g., CASE's December 5, 1983, Response at 4).<sup>2</sup> If the intervenor itself does not have any confidence in this procedure, the Board certainly should not find any assurance that it is likely to produce evidence relevant and useful to the case. In sum, the intervenor simply has not set forth a reasonable basis for the Board to inquire further.

Another important factor which is now evident and which significantly detracts from the viability and fairness of this process is that the intervenor is now asking for a blank check to physically inspect various aspects of plant construction. The intervenor would have the Board transform a process,

---

<sup>2</sup> In addition, quick review of the affidavits the intervenor produced demonstrates that the affiants do not have much confidence in their ability to identify deficiencies. See, e.g., the following affidavits which respond to the question of whether there are deficiencies which the affiant can identify: Doyle affidavit at 6 ("Even those items which I testified to in August of 1982 I couldn't find today . . ."); Krolack affidavit at 7 ("I'm not sure I could find it now, . . ."); Messerly affidavit at 3 (" . . . I doubt it."); Hamilton affidavit at 9 ("I might still be able . . ."); Stiner affidavit at 2 ("I'm not sure how we could actually show the Board . . .").

originally proposed as a way to identify discrete alleged deficiencies, susceptible to identification and observation by the Board, into an opportunity to conduct unlimited discovery by wandering through the plant.

To illustrate this point, the Board need only hypothesize any type of deficiency and compare that to the supposed "description of problem" list on the "restricted use" table presented by the intervenor. We are hard-pressed to postulate a deficiency which could not be argued to come within at least one, if not more, of the categories of "problems". In addition, the intervenor has excluded few safety-related buildings or areas from its list of "locations" which it wishes to inspect. Furthermore, the intervenor has estimated the process could take more time than many NRC inspections or any hearing session yet conducted in this proceeding. In effect, the intervenor is asking for the opportunity to wander the plant at will, for weeks, in an attempt to discover deficiencies which may or may not exist. It would simply be unjust and unfair at any time, let alone at this late date, when the stated purpose of this exercise is to enable the Board to conclude the proceeding, to subject Applicants to such a process, affording the intervenor the free reign it seeks. Extensive discovery has already been conducted, and lengthy hearings addressing virtually the same allegations by many of the same individuals also have been conducted. It would be a gross distortion of the adjudicatory process to accede to the

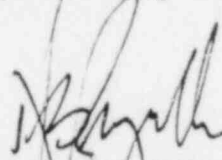
intervenor's vague proposal, particularly where there is so little assurance that any deficiencies exist or could be identified.

In sum, it is now evident that the process which the Board envisioned for resolving specific alleged construction deficiencies cannot work. Even though the intervenor has been given several chances to provide information which would give the Board a reasonable basis to believe that safety-related deficiencies would be identified by a site visit, it has failed to do so. Instead, we are confronted with an open shopping list of areas and supposed deficiencies, and a wholly unreasonable estimate of time to perform the requested inspection. It would simply be a waste of time and resources of all parties and the Board to pursue this matter further. Accordingly, the Board should abandon this approach.

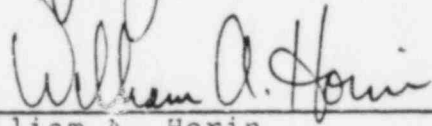
Finally, because Applicants firmly believe that there is no basis for conducting a site visit, we do not set forth here the procedures we would urge be followed for such a visit. However, if the Board determines that it will visit the site, Applicants will promptly provide proposed procedures to the Board. In any event, we ask that if the Board decides to conduct a site visit that it be scheduled at the earliest possible time. It is essential that the Board determine whether it will be necessary to address any information disclosed as a result of that visit during the upcoming

hearings. It is not practical to wait until the end of January, as the intervenor suggests, and yet provide sufficient time to prepare for the hearings.

Respectfully submitted,



Nicholas S. Reynolds



William A. Horin

Counsel for Applicants

DEBEVOISE & LIBERMAN  
1200 Seventeenth Street, N.W.  
Washington, D.C. 20036  
(202) 857-9817

December 22, 1983



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 and
COMPANY, <u>et al.</u>	)	50-446
	)	
(Comanche Peak Steam Electric	)	(Application for
Station, Units 1 and 2)	)	Operating Licenses)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Applicants' Response to CASE's "Identification" of Alleged Deficiencies For Site Visit" in the above-captioned matter were served upon the following persons by overnight delivery (\*), or deposit in the United States mail, first class, postage prepaid, this 22nd day of December, 1983, or by hand delivery (\*\*) on the 23rd day of December, 1983.

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

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

\*Dr. Walter H. Jordan  
881 W. Outer Drive  
Oak Ridge, Tennessee 37830

Mr. Scott W. Stucky  
Docketing & Service Branch  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

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

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

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

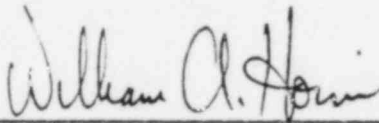
Chairman, Atomic Safety and  
Licensing Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555



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

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

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

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

cc: Homer C. Schmidt  
Spencer C. Relyea, Esq.