

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING APPEAL BOARD

'83 OCT 27 A11:39

Administrative Judges:

Alan S. Rosenthal, Chairman
Dr. W. Reed Johnson
Thomas S. Moore

October 27, 1983

OFFICE OF SECRETARY
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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

MEMORANDUM

On October 11, 1983, we issued an unpublished memorandum with reference to the Licensing Board's October 6, 1983 "partial initial decision" in this operating license proceeding.¹ Our purpose in doing so was to alert the parties to our substantial doubt that the "partial initial decision" -- which ruled upon only one of the "many pending issues" in the proceeding -- "dispose[d] of at least a major segment of the case" and thus was final for appellate purposes. Toledo Edison Co. (Davis-Besse Nuclear Power Station), ALAB-300, 2 NRC 752, 758 (1975). In light of that doubt, we suggested to the parties that they

would be well advised not to place too great weight upon either the label placed on the October 6 issuance or the Licensing Board's

¹ LBP-83-63, 18 NRC ____.

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representation that the issuance is appealable as a matter of right. Rather, any party desirous of seeking immediate review of the ruling in question might wish to consider accompanying its appeal with an alternative petition for directed certification under 10 CFR 2.718(i) (assuming, of course, that the party is persuaded that the standards governing the grant of that relief are met).

October 11 memorandum at 4; footnote omitted.

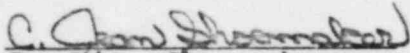
The time to appeal has now expired without the filing of exceptions. Because there is no prescribed time limit for seeking directed certification, such relief may still be sought.² In all events, we will continue to treat the October 6 issuance as a wholly interlocutory order. If not reviewed at this juncture on directed certification,³ it will remain subject to our possible examination at the

² The parties are reminded, however, that we expect petitions for directed certification to be filed with reasonable dispatch. See Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-741, 18 NRC ____, ____, fn. 2 (September 15, 1983).

³ We intimate no opinion, of course, on whether the standards for directed certification are met here. See Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 2 and 3), ALAB-742, 18 NRC ____, ____, (September 19, 1983) (slip opinion at 4-7).

conclusion of the proceedings below should circumstances
then so warrant.

FOR THE APPEAL BOARD


C. Jean Shoemaker
Secretary to the
Appeal Board