

499

06/05/84

DOCKETED  
USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'84 JUN -6 A11:33

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

In the Matter of  
  
TEXAS UTILITIES ELECTRIC  
COMPANY, et al.  
  
(Comanche Peak Steam Electric  
Station, Units 1 and 2)

}  
}  
}  
}  
}

Docket Nos. 50-445/2  
50-446/2

NRC STAFF'S RESPONSE TO APPLICANTS' MOTION TO OBTAIN ACCESS TO  
INFORMATION REGARDING INVESTIGATIONS AT COMANCHE PEAK OR  
FOR ALTERNATIVE RELIEF

I. INTRODUCTION

On May 10, 1981, Applicants moved "to be granted access to informa-  
tion provided to the Licensing Board regarding investigations now being  
conducted by the Office of Investigations ("OI") into allegations of  
intimidation at Comanche Peak." Motion at 1. In the alternative, should  
Applicants be denied access to this information, Applicants moved "that  
the Licensing Board not allow into evidence and not rely in any respect  
on this information." Motion at 2.

II. DISCUSSION

Staff Counsel provided Applicants' Motion to OI. The Director of OI  
has authorized the attached Statement of Position be filed in response to  
the Applicants' Motion. NRC Staff believes that the response from OI ade-  
quately addresses Applicants' request for access to the information  
provided to the Licensing Board ex parte in camera.

DESIGNATED ORIGINAL

Certified By AS DSOJ

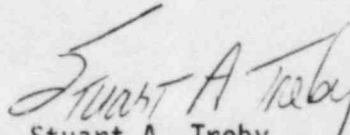
B406060402 B40605  
PDR ADOCK 05000445  
PDR

The alternative relief requested by the Applicants is that in camera ex parte information provided to the Board not be allowed into evidence and not be relied upon by the Board in its decisions. The Staff will only offer into evidence relevant portions of those OI reports provided to all parties. In these circumstances, we fail to see the need for the alternative relief requested by the Applicants. A Board's decision must be based upon the evidence of public record. No ruling conforming this basic tenet of law is required from the Board.

### III. CONCLUSION

For the reasons set forth in the attached Statement of Position by OI the Applicants' Motion should be denied. In the event the Board believes disclosure of in camera ex parte information provided by OI is necessary to avoid prejudice to the Applicants, the procedures in the Statement of Policy<sup>1/</sup> should be followed.

Respectfully submitted,



Stuart A. Treby

Assistant Chief Hearing Counsel

Dated at Bethesda, Maryland  
this 5th day of June, 1984

---

<sup>1/</sup> "Investigation and Adjudicatory Proceedings; Statement of Policy,"  
48 Fed. Reg. 36358 (1983) ("Statement of Policy").

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

STATEMENT OF POSITION BY THE OFFICE OF INVESTIGATION

The Commission has promulgated a Statement of Policy providing procedures relating to how the NRC Staff, OI, and adjudicatory boards are to treat information regarding pending inspections and investigations that is material to the issues in controversy in NRC's adjudicatory proceedings. The procedures include in camera ex parte disclosure to the Commission's adjudicatory boards of information concerning the pending inspection or investigation by the NRC Staff with notice to the other parties that such disclosure will be made. In any case where the Board feels that disclosure to other parties is required, it can direct such disclosure under protective order or otherwise. However, if the Staff or OI is still concerned that disclosure could compromise the inspection or investigation, the Staff or OI may petition directly to the Commission for relief and the Board should refrain from ordering disclosure until it has received Commission guidance. Statement of Policy at 36359.

The policy statement gives recognition to the legitimate confidentiality requirements of OI and to the concept that unrestricted disclosure could compromise an inspection or investigation. As noted by the Appli-

cants (Motion at 10), OI has a confidentiality agreement which it executes with those persons who wish to provide information in confidence to the Commission. (See Attachment). This agreement contains a provision that the identification of a person providing information in confidence could be compelled by orders or subpoenas issued by courts of law, hearing boards, or similar legal entities. However, OI is obligated to make reasonable efforts to protect the identity of the person and, if such efforts proves unsuccessful, to attempt to inform the person of any such action before disclosing his/her identity. Attachment, paragraph 3.

In this proceeding, an in camera ex parte briefing took place on October 17, 1983 and the NRC Staff provided to the Board both complete copies and redacted copies of OI Reports 4-83-001, 4-83-013 and 4-84-006. Applicants and the other parties were provided with only redacted versions of the OI Reports and were not given any substantive information regarding the in camera ex parte briefing. Motion at 7. The essence of Applicants argument is that they cannot be deprived of information, yet have that same information play some part in the decision-making process. Applicants request that they should be granted access to all information before the Board submitted by the Staff with respect to allegations regarding intimidation or such information should not be before the Board. Motion at 10.

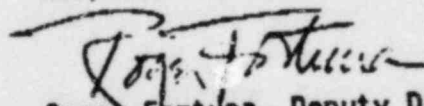
OI submits that Applicants' motion should be treated as a request to the Board to disclose information provided to the Board by OI. Pursuant to the procedures in the Statement of Policy, the Board must determine whether disclosure is required to avoid prejudice to Applicants. This office's view is that disclosure is not warranted. The in camera ex parte oral session was primarily concerned with scheduling matters, much



of which has been disclosed to the parties. The portions of the OI reports which have been redacted relate to the identity of the person providing the information. The facts regarding the substance of the allegation of intimidation are adequately disclosed. The Applicants have offered no demonstration of prejudice should the Board not disclose the information currently excluded from the redacted version.

However, should the Board believe disclosure is necessary to avoid prejudice to the Applicants, the Board should direct OI to release the information. Upon such direction by the Board, OI, in accordance with the Statement of Policy, will again review the information to determine if it can be released or, if OI concludes release would compromise OI's activities, it will petition directly to the Commission for relief.

Respectfully submitted,



Roger Fortuna, Deputy Director  
Office of Investigations

Dated at Walnut Creek, California  
this 5th day of June, 1984

(Original to source of information, NRC to retain signed copy of duplicate original)

I have information that I wish to provide in confidence to the U. S. Nuclear Regulatory Commission (NRC). I request an express pledge of confidentiality as a condition of providing this information to the NRC. I will not provide this information voluntarily to the NRC without such confidentiality being extended to me.

It is my understanding, consistent with its legal obligations, the NRC, by agreeing to this confidentiality, will adhere to the following conditions:

- (1) The NRC will not identify me by name or personal identifier in any NRC initiated document, conversation, or communication released to the public which relates directly to the information provided by me. I understand the term "public release" to encompass any distribution outside of the NRC with the exception of other public agencies which may require this information in furtherance of their responsibilities under law or public trust.
- (2) The NRC will disclose my identity within the NRC only to the extent required for the conduct of NRC related activities.
- (3) During the course of the inquiry or investigation the NRC will also make every effort consistent with the investigative needs of the Commission to avoid actions which would clearly be expected to result in the disclosure of my identity to persons subsequently contacted by the NRC. At a later stage I understand that even though the NRC will make every reasonable effort to protect my identity, my identification could be compelled by orders or subpoenas issued by courts of law, hearing boards, or similar legal entities. In such cases, the basis for granting this promise of confidentiality and any other relevant facts will be communicated to the authority ordering the disclosure in an effort to maintain my confidentiality. If this effort proves unsuccessful, a representative of the NRC will attempt to inform me of any such action before disclosing my identity.

I also understand that the NRC will consider me to have waived my right to confidentiality if I take any action that may be reasonably expected to disclose my identity. I further understand that the NRC will consider me to have waived my rights to confidentiality if I provide (or have previously provided) information to any other party that contradicts the information that I provided to the NRC or if circumstances indicate that I am intentionally providing false information to the NRC.

Other Conditions: (if any)

I have read and fully understand the contents of this agreement. I agree with its provisions.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of source of information  
Typed or Printed Name and Address

Agreed to on behalf of the US Nuclear Regulatory Commission.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature  
Typed or Printed Name and Title

Revision 1.



John T. Collins  
William L. Brown  
U.S. Nuclear Regulatory Commission  
611 Ryan Plaza Drive, Suite 1000  
Arlington, TX 76011

Mr. Michael D. Spence, President  
Texas Utilities Electric Company  
Skyway Tower  
400 North Olive Street, L.B. 81  
Dallas, TX 75201

Lanny Alan Sinkin  
114 W. 7th, Suite 220  
Austin, TX 78701

Atomic Safety and Licensing Board  
Panel\*  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Docketing and Service\*  
Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

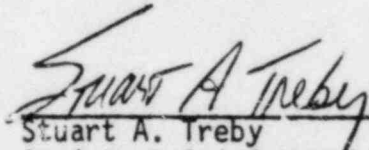
Billie Pirner Garde  
Citizens Clinic Director  
Government Accountability Project  
1901 Que Street, N.W.  
Washington, DC 20009

Robert A. Wooldridge  
Worsham, Forsythe, Sampels & Wooldridge  
2001 Bryan Tower, Suite 2500  
Dallas, TX 75201

Ellen Ginsberg, Esq.\*  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Atomic Safety and Licensing Appeal  
Board Panel\*  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Anthony Z. Roisman, Esq.  
Trial Lawyers for Public Justice  
2000 P Street, N.W., Suite 611  
Washington, DC 20036

  
Stuart A. Treby  
Assistant Chief Hearing Counsel