SC1

C A S E

(CITIZENS ASSN. FOR SOUND ENERGY)

1426 S. Polk
Dallas, Texas 75224
214/946-9446

June 7, 1984

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

Dear Mr. Spence:

Subject: In the Matter of
Texas Utilities Generating Company, et al
Comanche Peak Steam Electric Station,
Units 1 and 2
Docket Nos. 50-445 and 50-446 OL

CASE's Comments on Your Letter
to CASE dated June 1, 1984

In regard to your letter to CASE dated June 1, 1984, and your attached proposed Stipulation, we have the following comments.

First, as indicated in the letter to you being sent today in this same envelope (under Subject of: Barriers to Settlement On Design and Design QA Issues), there are certain matters which we believe must have your immediate attention and affirmative action in order for any meaningful discussions about settlement to continue. We urge that you carefully review our letter and give it your immediate attention.

One thing which is particularly distressing to CASE is that Applicants seem to be able to separate somehow what is going on regarding other matters (such as those discussed in our 6/7/84 letter on Barriers to Settlement) from our settlement negotiations. CASE is unable to do this quite so easily as Applicants appear to be able to. We feel that we are basically dealing with one utility (although obviously Texas Utilities is also representing the small owners of Comanche Peak in the operating license hearings), both in the rate hearings and in the operating license hearings. This is especially true since Mr. Wooldridge began working in the operating license hearings as he has in the past in the rate hearings. It is obvious that Applicants' actions in both hearings are inseparably linked.

What is also becoming increasingly obvious is that Applicants are committed to a pattern of pressuring, harassing, and intimidating CASE as an Intervenor in both the rate hearings and the operating license hearings. As I stated during our meeting on Friday, May 25, my personal reaction to this is that after a while, such tactics become counterproductive with me and make me want to fight instead of settle. However, as the primary representative of CASE in the operating license hearings, I am trying very hard to continue to work

D503

towards a settlement on the design and design QA issues -- because if a satisfactory settlement can be worked out which protects the rights of all parties while at the same time assuring that the issues can be adequately addressed and resolved, I am convinced that it would be in the public interest and beneficial to all parties (and much easier on all of us than having to continue with the trying of the complex and difficult design issues in the context of hearings).

I shall continue to attempt to work towards a settlement of the design and design QA issues. However, **I must have your help and full cooperation.** Quite frankly, I am very disappointed that I have to date heard nothing from either you or Nick Reynolds regarding the deep concerns expressed over a week ago.

However, with my rose colored glasses firmly in place, I am assuming that you will want to see that these matters are resolved immediately and that we can continue our negotiations regarding a possible settlement on the design and design QA issues, and with that hope, we offer the following discussion. It should be noted that there are still many specific details which we are still researching and have not yet addressed. The following are simply some comments on the specific points you discussed in your letter of June 1.

It appears to CASE that we are still a long way from being in agreement on the two matters set forth in our May 11, 1984, letter to Nick Reynolds as being non-negotiable. One was discussed in the first full paragraph on page 3 of our May 11 letter -- what, if anything, will be done regarding the specific problems brought out by Messrs. Walsh and Doyle during the recent hearings. As stated therein:

> "One of the non-negotiable items which CASE believes must be included in any settlement would be that Applicants and Cygna first must admit that there are problems, what the problems are, and what Applicants propose to do about them, when they propose to do it, etc. In other words, as a prerequisite for the settlement, what are Applicants prepared to admit needs to be reanalyzed, redesigned, etc., what are they going to do about it, when are they going to do it, etc.?"

To briefly recap our discussion on May 25 regarding this, you indicated (as you did in your June 1 letter) that you wanted CASE to provide a specific list of the issues brought out by Messrs. Walsh and Doyle during the recent hearings which we believe should be addressed. As we stated at that time, one of our problems is that we are currently in the process of attempting to respond to the numerous (I believe eleven so far) Motions for Summary Disposition which Applicants have filed since May 16 /1/. As we stated at that time, we are certain that Applicants numerous engineers and consultants

---

/1/ This is part of the pattern of harassment and intimidation to which I referred previously. It is obvious that the very detailed technical information set forth in Applicants' Motions was not prepared overnight and that Applicants have been deliberately sitting on the Motions in favor of filing them all at once in an attempt to overwhelm and bury CASE in an avalanche of paper.

have been going over the transcripts and other documents with a fine tooth comb and that they must surely by now have identified the specific problem areas with which CASE's witnesses are concerned. Your reply, to the best of our recollection, was that we are engaged in an adversarial proceeding and that Applicants did not consider that there were any problems. Our response was that we would attempt to provide you with a specific list as quickly as possible, but that we do have time limits by which we must respond to the Motions for Summary Disposition (whereas we do not have a specific time limit by which we must reach an agreement). We are attempting to work on both the responses to the Motions for Summary Disposition and preparing the specific list which you request. We will supply the list as soon as we have it completed.

With regard to your comment regarding our specific proposal on a substitute for the component cooling water system as the subject of the Phase 4 IDVP, we have already suggested an alternative possibility (see page 4, item (4), of our 5/11/84 letter). We will be in touch with you later with additional information on this item.

As far as your suggestion that we set Wednesday, June 13, as the target for concluding these negotiations, this would now appear to be impossible in light of the problems identified in our 6/7/84 letter on Barriers to Settlement. As stated therein, we believe that we must have immediate and affirmative action by Applicants on those matters before any further meaningful settlement negotiations can take place. The ball's in your court.

As to the specific items discussed in your proposed Stipulation: On page 2, item 1, one element of our discussion which was left out is that the services of Messrs. Walsh and/or Doyle would be on a continuing basis (whether Cygna was onsite or not), since they would have to spend a great deal of time reviewing documents, etc.

Further, as we discussed during our 5/25/84 meeting, unless Messrs. Walsh and/or Doyle were able to take a leave of absence from work for the two or three months or so of the IDVP, the ability to participate in meetings (item 2, page 2) would be virtually meaningless for the most part. We suggested that, should it be impossible for either of them to take a leave of absence, CASE would like to have an alternative consultant of our choosing (under the same terms as discussed for Messrs. Walsh and Doyle). You were opposed to this suggestion or to any possibility of having an alternative counsultant looking over Cygna's shoulder.

Regarding item 3 (page 3), this should be expanded to include all oral, written or other communications.

One item which was not discussed in your proposed Stipulation was our statement that we had anticipated that the NRC Staff would be more actively involved than you indicate. As we understand your position, it is that both Applicants and CASE would have input to Cygna, which would then prepare its report for presentation to the NRC Staff. To the best of our recollection, you indicated that you did not believe it was appropriate for the NRC Staff to be an active participant and to have input to Cygna during the IDVP.

(It appears to CASE that Applicants' position in this regard may be contrary to some of the provisions of the new statement of protocol provided to Applicants and Cygna on 5/31/84 from Mr. Eisenhut.) Applicants' proposal in this regard is not acceptable to CASE. It appears to us that we would be in precisely the same situation with such a procedure as we were with the Cygna Report and that CASE's input would be relegated to being a comment on Cygna's report. This is not the kind of full participation we envision or will accept.

The other non-negotiable prerequisite for a settlement, as was discussed in our 5/11/84 letter (last paragraph, page 6) would have to be that CASE must have the ability to reinvolve the Atomic Safety and Licensing Board should we simply not be able to assure that our concerns would be adequately addressed and resolved in any other way. In your proposed Stipulation (II., bottom of page 3, continued on page 4) you set forth Applicants' proposal for reinvolvement of the Licensing Board. As discussed during our 5/25/84 meeting, CASE does not like the use of the term "bad faith." As we explained, this has a connotation which we do not like, and it is really irrelevant to our concerns -- if something is wrong, it's wrong, and it doesn't really matter whether it is wrong because of the bad faith of the NRC Staff or not -- it's still wrong, and CASE wants it corrected. Further, the burden of proving bad faith on the part of the NRC Staff is an impossible one (although it might be possible to set forth specific detailed procedures which would have the same basic effect). For example, CASE is not prepared to state that what we consider to be wrong in the Staff's SIT Report was wrong because of bad faith per se; that isn't the point.

As we discussed during our 5/25/84 meeting, CASE believes it must be able to reinvolve the Licensing Board if we believe our concerns are not being adequately dealt with, and we discussed the possibility of a standard which would require a showing that we had attempted to get our concerns resolved with Applicants and NRC Staff, had not been able to do so, plus the additional criteria of having to show that there was a genuine issue of controversy. We did not even discuss the requirement of having to make a showing that a stay is appropriate in accordance with 10 C.F.R. 2.788(e) as was included in Applicants' proposed Stipulation -- and this proposal is not acceptable to CASE.

There was much discussion during our 5/25/84 meeting about trust -- primarily trust in Applicants. But we also pointed out that we believe it is appropriate for Applicants to also show some trust in CASE. We have demonstrated our good faith throughout these proceedings, and (as we pointed out) there have been several times when Messrs. Walsh and/or Doyle have admitted an error or agreed that, once additional information was provided, they were satisfied with an answer and withdrew their concern. CASE and its witnesses have no desire to continue forever with protracted, excruciatingly difficult and complex hearings on design and design QA issues. We have demonstrated that we are not merely trying to delay things, but that we have legitimate and important concerns which must be dealt with. We believe that Applicants should trust CASE to the extent that they can rely on CASE and Messrs. Walsh and Doyle not to attempt to reinvolve the Licensing Board on matters which are frivolous or about which we do not believe there is a

genuine issue of fact in controversy which is of sufficient significance and importance that it warrants further consideration by the Licensing Board.

As indicated previously, CASE is continuing to work on reviewing, discussing, and preparing more detailed procedures and methods whereby we might yet reach a settlement on some of the design and design QA issues. The preceding are merely some comments on some of the items contained in your June 1 letter. We look forward to your early reply to our 6/7/84 letter on Barrier to Settlement so that we can continue with serious negotiations.

Sincerely,

CASE (Citizens Association for Sound Energy)

Juanita Ellis

(Mrs.) Juanita Ellis
President

cc: Service List -- Dockets 50-445 and 50-446