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283114  
UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

APPLICANTS' RESPONSE TO CASE'S PROPOSED FINDINGS OF FACT ON WELDING ISSUES

I. INTRODUCTION

On September 7, 1984, Texas Utilities Electric Company, et al. ("Applicants") and the Nuclear Regulatory Commission ("NRC") Staff filed proposed finding of fact regarding welding issues raised by Citizens Association for Sound Energy ("CASE") in the captioned proceeding.<sup>1</sup> CASE filed proposed findings on these issues on September 9, 1984.<sup>2</sup> During the conference call of September 5, 1984, the Atomic Safety and Licensing Board ("Licen-

<sup>1</sup> "Applicants' Proposed Findings of Fact In the Form of a Partial Initial Decision"(September 7, 1984)("Applicants Proposed Findings"); "NRC Staff Proposed Findings of Fact on Weld Fabrication"(September 7, 1984)("Staff Proposed Findings").

<sup>2</sup> "CASE's Proposed Findings of Fact on Welding Issues" (September 9, 1984)("CASE's Proposed Findings").

sing Board") stated that all parties could file responses by September 28, 1984 (Tr. 4,269). Applicants' response to CASE's Proposed Findings is set forth below.<sup>3</sup>

## II. APPLICANTS' RESPONSE

### A. CASE's Characterization of the Record

During hearings on these issues, the Board reaffirmed that it would only rely on evidence in the record in reaching its decision. Accordingly, the Board stated that when referencing documents in proposed findings, all parties "must cite the reference to where they were admitted into evidence." (Tr. 11,195.) In many instances in its proposed findings, CASE has failed to do this. (See e.g., pages I-12, 13, 14 and 15; II-2, 7 and 8; and III-12 and 13.) Indeed, in these and other instances, the material referenced appears not to be in evidence in this proceeding at all. A partial listing of such instances follows:

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<sup>3</sup> In its proposed findings, CASE states that it has been unable to complete its "welding findings due to the workload currently being experienced." CASE states that it will file a formal motion to supplement its proposed findings at a later date. (CASE's Proposed Findings at 1.) While Applicants will respond formally if CASE files such a motion, Applicants note that hearings on these issues were completed on April 24, 1984, over 4 1/2 months before proposed findings were filed. (Hearings involving CASE's and Applicants' witnesses were completed on March 23, 1984, over 5 1/2 months before proposed findings were filed.) Against the background, the Board should conclude that CASE has had ample time to complete its proposed findings on these issues, and the Board should proceed to decision on the pleadings before it. In this regard, Applicants note that the Board has instructed the parties repeatedly to prepare proposed findings at the close of evidentiary hearings so that unbalanced workloads are avoided.

1. Page 3, lines 20-24: CASE cites a transcript of a meeting which Applicants do not believe is in the record.
2. Page 6, lines 1-3: CASE cites an "off-the-record discussion between the Board" and parties.
3. Page I-12, lines 19-23 and page II-2, lines 24-26: CASE cites attachment B of Mr. and Mrs. Stiner's prefiled testimony which was not admitted into evidence. Tr. 11,069-70.
4. Portions of pages I-13, II-7, and III-12 and all of pages I-14 and 15, II-8, and III-13: CASE quotes an affidavit of Mr. Doyle not admitted into evidence. (Applicants note that the issue addressed by Mr. Doyle in his affidavit was dismissed by the Board pursuant to Applicants Motion for Summary Disposition (Memorandum and Order of June 29, 1984).
5. Page II-3, lines 4, 9, 10 and 17-19: CASE cites to or provides quotes from portions of pages 16 and 17 of Mrs. Stiner's prefiled testimony which were stricken at Tr. 10,282.

Even though the above listing does not represent an exhaustive review, it is clear that CASE has failed to adhere to the Board's instructions to cite only to evidence of the record. Further, it is equally clear that CASE disregarded the Board's direction to reference the location where documents it cited were admitted into evidence. (Tr. 11,195.) Apparently in instances where CASE could find the location where documents were admitted into evidence, it referenced the location (e.g., CASE's Proposed Findings at I-7, II-5 and III-3.) Where CASE could not find the location, it chose to cite the documents in any event.

Further, where CASE does provide supporting references in the record for its statements, in many instances CASE has mischaracterized and distorted the testimony.<sup>4</sup> While CASE's Proposed Findings appear to contain many such instances, a few examples of this are noted below:

1. Page I-13, lines 31-33: CASE states that "the design requirements of AWS, whether for qualified or prequalified procedures, must still be considered by those designing welded joints at Comanche Peak (NRC Staff Witness Smith, Tr. 12,176/13-12,177/3." While this issue is irrelevant to those before the Board, the cited section of transcript does not address or even speak to the "design requirements of AWS, whether for qualified or prequalified procedures . . . ." In short, this statement is a fabrication by CASE and a misrepresentation of what was said by Staff Witness Smith.
2. Page II-6, lines 6-9: CASE states that "NRC Staff Witness Collins testified that the biggest problem with illegal downhill welds may be found at the root of the weld, which traps slag and lacks sufficient penetration, and those cannot be evaluated by visual inspection (Tr. 12,159)." (emphasis in the original.) The cited material does not even mention downhill welding, much less alleged problems with it or where such problems can be found. The cited reference related to weave welding. In short, CASE has misrepresented the record in this regard.
3. Page III-5, lines 14-18: CASE states that Applicants testified that, even using highly skilled welders, Applicants were unable to make unacceptable repair welds of misdrilled holes, implying that Applicants were trying to convince the Board that it was impossible to make unacceptable welds. This is not what the testimony reflects. On the same page of Applicants' testimony cited by CASE for this proposition, Applicants clearly testified that by using abnormal techniques, these skilled welders were able to make an unacceptable weld with slag deposits. Applicants'

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<sup>4</sup> Also, CASE has made numerous unsupported statements in its proposed findings. A cursory reading of pages 2 through 7 of CASE's Proposed Findings is illustrative of this practice, see e.g., page 2, lines 8-10 and page 3, lines 4-13.

Exhibit 177 at 37. Applicants testified that unacceptable repair welds of misdrilled holes with significant slag deposits were tested and found to be structurally adequate. Applicants' Exhibit 178 at 43-4.

4. Page III-5, line 23 through page III-6, line 3: CASE obviously misrepresents the testimony to make it appear that Applicants were trying to conceal relevant facts from the Board. CASE states that Applicants did not present testimony regarding Mr. Stembridge until after CASE had received the Staff's testimony discussing this incident, implying that Applicants were forced into presenting such testimony. This is an obvious attempt to mislead the Board. The correct sequence is that Mrs. Stiner first named Mr. Stembridge as being involved in alleged incorrect practices during the hearing on February 23, 1984 (Tr. 10,286-88, 10,541). With such information, Applicants investigated the incident, and at the next hearings (March 19-23, 1984), Mr. Baker presented testimony in this regard (Tr. 11,781-86). As CASE stated, Staff prefiled testimony on this issue was not filed until mid-April, 1984, and was not received into evidence until April 24, 1984.

In sum, it is clear that CASE's Proposed Findings fail to comply with 10 C.F.R. § 2.754(c), which requires that "Proposed findings of fact shall be . . . confined to the material issues of fact presented on the record, with exact citations to the transcript of record and exhibits in support of each proposed finding." (Emphasis added.) Further, CASE's Proposed Findings reflect a willful disregard of the clear direction of the Board that citations to documents must also reflect the location in the record where the document was admitted into evidence (Tr. 11,195). Finally, in many instances the Proposed Findings significantly mischaracterize and distort the testimony in the proceeding.

All parties to NRC proceedings must meet their hearing obligations or face appropriate sanctions. See e.g., Wisconsin Electric Power Company (Point Beach Nuclear Plant, Unit 1), ALAB-719, 17 NRC 387 (1983) (dismissing petitioner for failure to appear at prehearing conference); see also Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 454 (1981). One of the obligations of all parties, as noted above, is to assure that representations in the proposed findings are accurate and reflect the testimony in the record. If this obligation is breached, it imposes unwarranted and virtually impossible burdens on all parties with the results being decisions of the administrative tribunal which are in error due to reliance on erroneous representations. (See e.g., the Board's Memorandum and Order of December 28, 1983 (at 47-8) relying on CASE's erroneous characterization of testimony later retracted by Memorandum and Order of February 8, 1984 (at 28-9).)

Of course if testimony or Board instructions are particularly confusing or convoluted, there may be some errors or differences of opinion as to how the testimony should be viewed. This may give rise to "inaccuracies" in proposed findings. But this is not the case here. CASE has clearly failed to comply with 10 C.F.R. § 2.754(c), willfully disregarded the clear instructions of the Board and clearly misrepresented testimony which was not at all confusing. Applicants submit that in view of CASE's actions, sanctions are warranted and necessary. In

view of the substantial procedural and substantive flaws in CASE's Proposed Findings, Applicants move that CASE's Proposed Findings be stricken.

In any event, Applicants request that, at a minimum, the Board strike those portions of CASE's Proposed Findings in conflict with 10 C.F.R. § 2.754(c) and Board direction. (In this regard, Applicants have not detailed in this response all instances of inaccuracies in CASE's Proposed Findings.) Further, the Board should admonish CASE that in the future (under threat of sanctions), CASE must assure that it accurately represents the testimony it relies upon, complies with Board directions and includes in its proposed findings only material which has been received into evidence.

#### B. Credibility

In its proposed findings, CASE attempts to portray Mr. and Mrs. Stiner as individuals who were so totally motivated by a deep concern for plant safety that they decided to bring safety concerns "to the NRC months before they decided to testify in these proceedings...." CASE's Proposed Findings at 2. However, evidence reflects that the Stiner's motivation in bringing allegations of widespread unsafe welding practices to the NRC Staff (which Applicants submit that the record reflects are false) had little, if anything, to do with a concern that the plant was unsafe. Mr. Stiner testified that when he was fired, he was very angry and desperately wanted to get his job back (Tr.

51,718). After unsuccessful attempts to get his job back using normal methods (Tr. 4,239-40), Mr. Stiner testified that he felt that by making safety allegations to the NRC Staff Applicants could be forced into rehiring him (Tr. 51,718).<sup>5</sup> In short, in bringing allegations of "safety concerns" to the NRC, Mr. Stiner was attempting to get his job back.

Significantly, when asked for specifics as to their allegations, neither Mr. nor Mrs. Stiner was able to provide a number of specific examples that supported their allegations of widespread violations of welding procedures (See Applicants' Proposed Findings at pp. 18, 26, 36-7 and 65). (CASE's complaint that it was unfair for the Staff and Board to ask Mr. and Mrs. Stiner to provide specific information (e.g., "hanger numbers, locations, times, dates, names, etc.") to determine the safety significance of their allegations is obviously unreasonable and unrealistic. CASE's Proposed Findings at 3-4.) Further, when presenting testimony regarding the few alleged specific examples of improper welding practice, CASE's witnesses gave testimony which contained numerous and significant inconsistencies. See e.g., Applicants' Proposed Findings at 8-18. (Regarding CASE's argument that the

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<sup>5</sup> This testimony is not part of the record in this phase of this proceeding. Accordingly, Applicants understand that the Board cannot rely on such testimony for its findings. However, Applicants present the conflicting testimony of Mr. Stiner to refute CASE's allegations regarding motivation.



Stiners should be viewed as credible witnesses because of the inconsistencies (CASE's Proposed Findings at 7), more twisted logic is difficult to fathom.)

CASE also stated that Applicants' witnesses were not subjected to "brutal attacks on their personal integrity and credibility." CASE's Proposed Findings at 4. Applicants disagree. As the proceeding progressed, Mr. and/or Mrs. Stiner personally accused each of Applicants' craft witnesses of making improper welds, directing that welds be made in violation of procedures, keeping watch for QC inspectors while illegal welding took place, or firing Mr. Stiner because he reported a gouge in a pipe.<sup>6</sup> In responding to these personal attacks as well as CASE's allegations of widespread violations of procedures, Applicants' witnesses provided testimony which, while not always favorable,<sup>7</sup>

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<sup>6</sup> Significantly, the most brutal allegations were against Mr. Coleman who testified that he had been "born and raised" in the area near CPSES (Tr. 11,572). Mr. Coleman testified that in addition to his immediate family, other relatives lived and owned property in the area (Tr. 11,572 and Applicants' Exhibit 177 at 10). (For example, Mr. Coleman lives on his sister's land which is immediately adjacent to the plant site (Tr. 11572).) Applicants maintain the fact that Mr. Coleman has close, lifelong friends and relatives in this area provides an added measure of credibility to his testimony; it is reasonable to assume that an individual would not do anything that may have a direct and potentially adverse impact on lifelong friends and family members. (See Tr. 11,572.) Applicants also note that other craft witnesses testified that they intended to remain in the area after completion of the plant (See e.g., Applicants Exhibit 177 at 11 and Tr. 11,742.)

<sup>7</sup> See e.g., testimony regarding Mr. Stembridge (Tr. 11,781-86) and some welding foreman knowing if NRC inspectors were on site (Tr. 11,516-17).

was internally and externally consistent.<sup>8</sup> While CASE somehow equates such consistency with untruthfulness (CASE's Proposed Findings at 7), Applicants maintain that it reflects the credibility of its witnesses, particularly in view of the Board's sequestration of the witnesses.

In sum, CASE has failed to provide persuasive evidence or arguments that significantly bolster the credibility of Mr. and Mrs. Stiner or reflect adversely on the credibility of Applicants' witnesses. Rather, CASE provides its view of this administrative proceeding as one where allegations need not be substantiated with or supported by detailed facts, where cross-examination should not be used in an attempt to ferret out those facts, and where inconsistent testimony is equated with truthful-

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<sup>8</sup> In its Proposed Findings at III-7, CASE states that Mr. Baker's testimony that Mr. Stembridge was demoted but not fired is in direct conflict with Applicants' Exhibit 177 at 34-35 and Answer 41 at 37. Applicants disagree; there is no conflict between disciplinary actions regarding Mr. Stembridge and the cited sections of Applicants' testimony. At another location in Applicants' testimony (not cited by CASE), however, Applicants testified that it was "common knowledge" that if a foreman was caught directing a welder to violate welding procedures, the foreman would be terminated. (See Applicants' Exhibit 177 at 11.) While Mr. Stembridge was not standing watch for a QC inspector (he was not even in the area (Tr. 11,783)), he did direct a welder to violate procedures. The fact that he was not terminated due to extenuating circumstances (although there was a great deal of discussion regarding termination (Tr. 11,786)) is not in direct conflict with the Applicants' witnesses' understanding of the basic policy regarding this issue, i.e., such actions constitute a termination offense. While Mr. Stembridge was not terminated, the punishment was indeed harsh -- demotion with no hope of ever again being a supervisor.

ness and consistent testimony with lying. This view obviously is contrary to the basic principles that form the basis of our administrative process.

C. Specific Issues

While Applicants maintain that CASE's Proposed Findings raise no relevant points not addressed in Applicants Proposed Findings, Applicants will provide a few comments on the specific issues raised by CASE.<sup>9</sup> (In addition, on each issue raised by CASE, Applicants question the accuracy of CASE's references to the record, as noted above.)

1. Weave Welding

CASE attempts to characterize the weave welding issue as whether the welding procedures authorize the technique of weave welding (CASE's Proposed Findings at I-9 through I-12). Appli-

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<sup>9</sup> In addition to the basic issues litigated regarding welding (i.e., weave welding, downhill welding, weld rod control, welding misdrilled holes and preheat), CASE sought to raise in its proposed findings other issues not relevant to the proceeding such as (1) welder qualification (CASE's Proposed Findings at 4) (denied by the Board at Tr. 9,937), (2) failure of Applicants to provide information on witnesses in accordance with discovery requests (CASE's Proposed Findings at 5) (resumes of Applicants' expert witnesses were provided in prefiled testimony subsequently received into evidence as Applicants Exhibit 177), (3) limited access welding (CASE's Proposed Findings at 11)(denied by the Board at Tr. 10849), (4) harassment and intimidation (CASE's Proposed Findings at 2-3 and II-1)(being addressed in a different phase of this proceeding), and (5) material traceability (CASE's Proposed Findings at II-3 and 4)(specifically addressed and resolved by the Board in its July 29, 1983 Proposed Initial Decision at 29-30).

cants would simply note that unrefuted testimony reflects that the welding procedures of concern were qualified using a weave weld technique (Tr. 9991). Accordingly, CASE's position is not only immaterial to the true issue posed by weave welding (See Applicants' Proposed Findings at 20-21), but also without a valid supporting basis.

CASE spends a great deal of time pointing out alleged failures of the NRC Staff to follow up allegations of Mr. and Mrs. Stiner allegedly made to the NRC. See e.g., CASE Proposed Findings at I-4 through 8. While Applicants submit that this issue is not relevant, Applicants maintain that irrespective of how the NRC responded to Mr. and Mrs. Stiner's allegations in the past, both Mr. and Mrs. Stiner had an adequate opportunity to present all of their concerns for resolution before this Board.

CASE states that the Staff testified that with regard to weave welding, "visual inspection cannot detect slag or cracks which are not on the surface . . . (Tr. 12,158/14-12,159/8 and 12,187/2-21)."<sup>10</sup> Applicants note that CASE failed to report on further Staff testimony that the width of the weave or whether a welder used a bead or weave technique has no impact on slag inclusions; it is a function of the skill of the welder. Tr. 12,168-9. The Board recognized this and discouraged questions on this subject. Tr. 12,185 and 12,194. In any event, the record

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<sup>10</sup> Applicants note that once again CASE mischaracterizes the record - the Staff did not address cracks. Indeed, given the welding process, Applicants question whether a crack in the weld could be below the surface without being filled in with subsequent passes.

reflects that the welding codes allow slag inclusion, up to a certain amount, without rejection of the weld. Tr. 11,215 and 12,186.

2. Downhill Welding

Applicants have no comments.

3. Welding of Misdrilled Holes

CASE alleges that Applicants never addressed Mr. Stiner's concerns regarding welding of misdrilled holes on cable tray supports in the cable spreading room (where Mr. Stiner performed such welding). CASE's Proposed Findings at III-2. Contrary to CASE's assertion, Applicants' testimony reflects that a QC inspection program regarding such supports was ongoing and effective (Tr. 10,038-9, 11,401-07). Further, Applicants' conducted tests regarding this issue. (Applicants' Exhibit 177 at 43-4). In short, CASE is incorrect.

4. Weld Rod Control and Preheat

CASE has not filed any proposed findings of fact and conclusions of law with respect to weld rod control and preheat. These issues should, therefore, be deemed waived pursuant to 10 C.F.R. § 2.754(b). See Florida Power & Light Company (St. Lucie Nuclear Power Plant, Unit 2), ALAB-280, 2 NRC 3,4 at n.2 (1975).

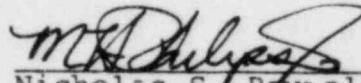
By remaining silent on these issues, CASE failed to meet its obligation and is in default under the Commission's regulations. Texas Utilities Generating Company (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-83-43, 18 NRC 122,124 (1983). Moreover, CASE has a burden of going forward with respect to issues raised by contentions. See e.g., Commonwealth Edison Co. (Zion Station, Units 1 and 2), ALAB-226, 8 AEC 381,388-89 (1974). By failing to file proposed findings, CASE has failed to meet its burden of going forward on these issues. Accordingly, the Board should dismiss these issues from this proceeding.

### III. CONCLUSION

From the foregoing and Applicants Proposed Findings, Applicants maintain that the allegations raised by Mr. and Mrs. Stiner (i.e., weave welding, welding of misdrilled holes, downhill welding, weld rod control and preheat) are not reflective of a significant or systematic breakdown in the QA/QC program. In addition, Applicants maintain that there is

reasonable assurance that these allegations are not reflective of any condition that could adversely impact the safe operation of the plant.

Respectfully submitted,



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COMPANY, et al. ) 50-446 *loc*  
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Response to the NRC Staff's Proposed Findings of Fact on Welding Issues" and "Applicants' Response to CASE's Proposed Findings of Fact on Welding Issues" in the above-captioned matter were served upon the following persons by deposit in the United States mail, first class, postage prepaid, this 28th day of September, 1984.

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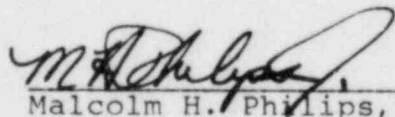


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