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October 4, 1984 ⁸⁴ OCT -5 11:27

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 <i>OL</i>
TEXAS UTILITIES ELECTRIC)	50-446
COMPANY, ET AL.)	
)	(Application for
(Comanche Peak Steam Electric)	Operating Licenses)
Station, Units 1 and 2))	

APPLICANTS' MOTION TO STRIKE CASE'S ANSWER
TO APPLICANTS' REPLY TO CASE'S ANSWER TO
APPLICANTS' MOTION FOR SUMMARY DISPOSITION
REGARDING CONSIDERATION OF FRICTION FORCES

CASE filed on October 2, 1984, an answer to Applicants' reply to CASE's answer to our motion for summary disposition regarding consideration of friction forces. Applicants filed their motion on May 16, 1984. CASE filed its answer on August 6, to which Applicants' replied (as authorized by the Board (Tr. 13,995)) on September 19. CASE's latest "answer" is unauthorized. Accordingly, Applicants move the Board to strike that answer.

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G PDR

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Apparently recognizing that its "answer" was not authorized, CASE seeks to justify its filing, seeking the Board's approval of its filing. CASE does not, however, move for permission to submit the answer. Nevertheless, CASE's pleading should be treated as a motion for authorization to file its answer.¹

It is clear that the Rules of Practice do not contemplate CASE's filing (10 C.F.R. §2.749(a)). Nor has the Board authorized CASE to submit further material on the issue. Indeed, the Board has recognized even Applicants' reply was not "of right" and authorized such a pleading because the Board felt it needed additional information (Tr. 13,993, 13,995). The Board has not made such a finding with respect to CASE's "answer", and CASE presents no valid reason for the Board to do so. CASE merely asserts it believes its answer is "necessary" for a complete record and that they did not have sufficient time to prepare their original answer.

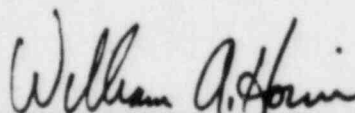
It is not acceptable to presume as CASE has that the Board contemplates open-ended litigation. To the contrary, the Board has sought to bring litigation of these issues to a close (see August 22, 1984, Conference Call). Indeed, sound administrative practice dictates that litigation of these already extensively litigated issues must come to an end. Further, CASE had more than adequate time (over two and one-half months) to respond to

¹ Our instant motion should, therefore, be treated as our answer to CASE's "motion". Accordingly, the Board need not entertain even more responsive pleadings and should rule promptly.

Applicants' motion. Thus, its claim that it is justified in filing its answer because it had "too short a time" to file its initial answer is unfounded. In short, CASE presents no valid basis for the Board to authorize yet another round of pleadings.² Accordingly, we move the Board to strike CASE's answer.

Finally, because CASE is likely to attempt to submit further "answers", Applicants move the Board to establish clearly that such pleadings are not authorized and will be automatically stricken in the future.³

Respectfully submitted,



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October 4, 1984

² As the bearer of the ultimate burden of proof, Applicants submit they should be permitted to respond to CASE's latest answer if the Board authorizes its submission.

³ Applicants just received "CASE's Answer to Applicants' Reply to CASE's Answer to Applicants' Motion Regarding Alleged Errors Made in Determining Damping Factors for OBE and SSE Loading Conditions," dated October 2, 1984. That "answer" should be included within the scope of the instant motion and, therefore, should also be stricken.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Motion to Strike CASE's Answer to Applicants' Reply to CASE's Answer to Applicants' Motion for Summary Disposition Regarding Consideration of Friction Forces," in the above-captioned matter was served upon the following persons by express delivery (*), or deposit in the United States mail, first class, postage prepaid, this 4th day of October, 1984, or by hand delivery (**) on the 5th day of October, 1984.

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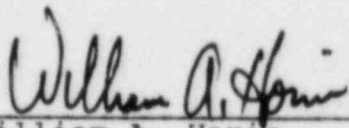
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