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November 15, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION NOV 15 P3:29

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

DOCKETING & SERVICE
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In the Matter of:)	
)	
TEXAS UTILITIES ELECTRIC)	Dockets Nos. 50-445-2 and
COMPANY, <u>et al.</u>)	50-446-2
)	
(Comanche Peak Steam Electric)	(Applications for
Station, Units 1 and 2))	Operating Licenses)

APPLICANTS' MOTION TO CONTINUE
CONFERENCE AND TO REQUIRE INTERVENOR
TO FILE ITS MOTION IN WRITING

Applicants Texas Utilities Electric Company, et al.
move the Board to postpone the conference now scheduled for
10:00 a.m. Friday, November 26, and to require Intervenors
to file the motion proposed to be argued at that conference
in writing.

1. During the afternoon of Wednesday, November 14,
counsel for Applicants was advised by an NRC secretary that
the Board had scheduled a conference call for 10:00 a.m.
Friday morning to argue an Intervenor motion to disqualify
Mr. Gallo from representing Joseph J. Lipinsky in hearings.
At our request, the secretary ascertained that Intervenor
had not reduced the motion to writing, and had no plans to
do so.

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2. Applicants' counsel advised the secretary of our belief that a motion to disqualify should be filed in writing. At a minimum, we suggested, Intervenor should be required to provide the parties with a written summary of the factual and legal bases for the motion prior to argument. Counsel repeated these concerns to the Board's Chairman in a telephone conference a few minutes later.

3. At the Chairman's prompting, counsel for Intervenors convened a conference call with counsel for Applicants and NRC staff--but without counsel for O.B. Cannon--to review the factual and legal bases for Intervenors' motion to disqualify. Intervenor referred to certain J.J. Lipinsky diary notes, to a November 28, 1983 letter from R.B. Roth to Nicholas S. Reynolds, and miscellaneous memoranda and notes. Intervenor cited a Canon of the Model Code of Professional Responsibility, a Disciplinary Rule, and one appellate case as the legal bases for the motion to disqualify, and indicated that Intervenor might cite additional authorities at the Friday conference, as disclosed by additional research.

4. Intervenor identified what it perceives to be the conflict of interest issue as early as mid-October, based on Intervenor's review of documents produced in discovery by O.B. Cannon & Son on October 10. We understand that nothing in the testimony of the O.B. Cannon witnesses, filed on November 5, caused Intervenor to change its view of the

conflict issue as it relates to Mr. Gallo and Mr. Lipinsky. Intervenor could, and should, therefore, have submitted its motion long before the eve of hearings on these witnesses. The late date of the motion forces hasty preparation by counsel and hasty consideration by the Board.

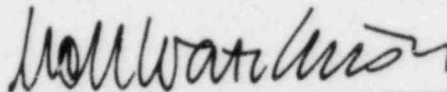
5. We request the Board to order Intervenor to submit its motion in writing, with an opportunity for written responses, so that the Board may consider the facts and authorities with deliberate consideration. A motion to disqualify counsel represents no casual matter, and may require the presentation and evaluation of complex and subtle material, both factual and legal. In Applicants' view, oral argument is inadequate to the task.

6. For the foregoing reasons, we move the Board to continue the conference scheduled for 10:00 a.m. Friday, November 16, and to order Intervenor to present its motion in writing.

7. Postponement of consideration of Intervenor's motion to disqualify Mr. Gallo's representation of Mr. Lipinsky necessarily requires postponement of Mr. Lipinsky's appearance before the Board. Applicants propose that hearings regarding Mr. Roth, Mr. Norris, and Mr. Trallo go forward, as scheduled, commencing on November 19, with Mr. Lipinsky's appearance to be rescheduled as appropriate. We propose postponement of Mr. Lipinsky's appearance

reluctantly. Had Intervenor raised this issue earlier, as it could have, the matter could have been resolved without the postponement of any witness' appearance.

Respectfully submitted,



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November 15, 1984

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NUCLEAR REGULATORY COMMISSION

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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document in the above-captioned matter was served upon the following persons by hand-delivery,* overnight delivery,** or by deposit in the United States mail,*** first class, postage prepaid, this 15th day of November, 1984:

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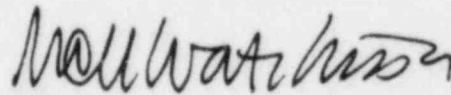
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