

ORIGINAL

UNITED STATES  
NUCLEAR REGULATORY COMMISSION

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IN THE MATTER OF:

DOCKET NO: 50-445-OL2  
50-446-OL2

TEXAS UTILITIES GENERATING COMPANY, et al.

(Comanche Peak Steam Electric Station,  
Units 1 and 2)

LOCATION: BETHESDA, MARYLAND

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of:
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TEXAS UTILITIES GENERATING COMPANY, : Docket Numbers
et al. :
: 50-445-OL2
: 50-446-OL2
(Comanche Peak Steam Electric :
Station, Units 1 and 2) :
:
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Nuclear Regulatory Commission  
4350 East/West Highway  
Room 550  
Bethesda, Maryland

Thursday, November 15, 1984

The telephone prehearing conference in the above-entitled matter convened at 10:00 a.m.

BEFORE:

PETER BLOCH, Chairman  
Atomic Safety and Licensing Board

WALTER H. JORDAN, Member  
Atomic Safety and Licensing Board

APPEARANCES:

On behalf of Applicants:

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On behalf of Citizens Association for  
Sound Energy:

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P R O C E E D I N G S

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JUDGE BLOCH: Good morning, this is Peter Bloch,  
Chairman of the Operating License Board for the Comanche  
Peak Steam Electric units 1 and 2. The Applicant is  
designated as Utilities Electric Company, et al. The  
docket number is 50-445 and 50-446.

OPERATOR: Excuse me, this is the operator,  
Mr. Wade.

MR. WADE: Go ahead, please.

JUDGE BLOCH: Thank you. The principal purpose  
of this morning's conference call and the one that was  
announced is to consider a discovery motion in which CASE  
is seeking Gibbs and Hill specification from the  
Applicants.

I would, however, like to respond orally to the letter  
of November 14 sent to me by Nicholas Reynolds seeking  
clarification of a memorandum issued by the Board on  
November 9, 1984, entitled "Official notice concerning  
pipe support." The reference in that memorandum is the  
two pages in a transcript of a meeting between Staff and  
Applicants held in Bethesda on October 23, 1984. The  
reference on page 66 states that there were deficient  
supports found during hot functional testing. Our concern  
there is whether any of the deficiencies corroborate  
allegations of the Intervenors with respect to improper

1 design of pipe supports.

2 On page 59, there is a statement that there will be  
3 retests associated with thermal expansion, and we would  
4 like to know the extent to which any of the results from  
5 the hot functional testing corroborate Intervenors's  
6 allegations that thermal expansion has not been properly  
7 considered by the Applicants in the design of pipe support;  
8 and, also, whether they might corroborate it with respect  
9 to local stresses on pipes.

10 Now, Mrs. Ellis, it's your motion.

11 MS. ELLIS: Yes, sir.

12 MR. HORIN: Mr. Chairman, before we begin, I  
13 would just like to point out the Board chairman indicated  
14 that there was a pending motion. In actuality, the CASE  
15 has no motion before the Board regarding this discovery  
16 matter. The CASE had a letter requesting that Applicants  
17 discuss with CASE certain documents which Applicants had  
18 not provided on this informal discovery on this motion,  
19 and CASE has no motion for reconsideration of the Board's  
20 previous ruling that Applicants didn't have to provide any  
21 documents from this matter.

22 So, technically, we have no motion, and there is really  
23 nothing formal that is compelling the parties to do this.  
24 Applicants are engaging in this simply to help the process  
25 move along properly, but we have no pending motion that

1 compels any party or the Board at this point.

2 JUDGE BLOCH: Mr. Horin, since you started,  
3 could you refresh my recollection as to the reasons for  
4 the decision that there would be no discovery on this?

5 MR. HORIN: In the Board's -- in a conference  
6 call on August 22, we had a lengthy discussion of the  
7 schedule for CASE's filing of various motions, including  
8 the design QA motion, summary disposition. The Applicants  
9 argued at that point that a discovery request which  
10 Mrs. Ellis had submitted on that motion was overly broad  
11 and burdensome, and the Board ruled at that time that  
12 Applicants did not need to provide any of the documents  
13 requested by Mrs. Ellis.

14 But that if -- but Mrs. Ellis could use the absence of  
15 documents in her motion to demonstrate that they were unable  
16 to provide an adequate response.

17 JUDGE BLOCH: Going back to earlier in the case,  
18 though, is this matter covered by CASE's continuing  
19 requests for documents relating to the basis of  
20 Applicants' claim?

21 MR. HORIN: There is no -- I don't know.

22 JUDGE BLOCH: I thought there was an outstanding  
23 discovery request that had been granted much earlier that  
24 required Applicants to disclose documents relating to the  
25 basis for its claims in this proceeding.

1                   MR. HORIN: The only continuing discovery  
2 obligation, which I am aware, is the obligation under the  
3 Commissioner's Rules of Practice, which require Applicants  
4 to update any previous interrogatories or supplement if,  
5 under the Commission's rules, they find any that were  
6 inaccurate at the time they were provided or no longer are  
7 fully responsive.

8                   But I am not aware of a continuing obligation to  
9 provide documents simply because they are in support of  
10 Applicants' position on various matters.

11                   JUDGE BLOCH: Okay. Mrs. Ellis, with this  
12 clarification, would you like to present your position?

13                   MS. ELLIS: Yes. I would like to mention that  
14 in addition to what the Council said, the Board also said  
15 that CASE used -- not providing the documents as a basis  
16 for asking the Board to deny Applicants' motion;  
17 furthermore, the overly broad and burdensome aspect of  
18 this, I think, as well as the established discovery  
19 criteria, that this is not an adequate reason for not  
20 answering interrogatories or requests for documents.

21                   In addition --

22                   JUDGE BLOCH: I am sorry, I didn't get that last  
23 argument?

24                   MS. ELLIS: That I think that as far as it being  
25 overly broad and burdensome, I think that it is a

1 well-established fact or well-established precedent that  
2 the number of documents required and so forth is not a  
3 reason for not having discovery. And I think that --

4 JUDGE BLOCH: Do you recall what our previous  
5 ruling was, Mrs. Ellis? What is your understanding of the  
6 position at this time?

7 MS. ELLIS: Okay. I believe your previous  
8 ruling was the Applicants did not have to provide  
9 documents. But if they did not provide the documents,  
10 that is the basis for the Board denying the motion.

11 MR. HORIN: Mr. Chairman, this is Mr. Horin. I  
12 can quote the Board's ruling for you. I have the  
13 transcript before me.

14 JUDGE BLOCH: I am sure the ruling was: if you  
15 did not have a document and it was an inadequacy, that it  
16 did not establish there was no genuine issue of fact that  
17 you could state that. That's the essence of it, isn't it,  
18 Mr. Horin?

19 MR. HORIN: Right, she said -- I think speaking  
20 to Mrs. Ellis, she said I think what you will have to do  
21 is use the absence of those documents as the reason for  
22 denying summary disposition. You will have to show why  
23 the Board should not consider that the record is adequate  
24 and cannot reach a recent decision without those documents.

25 JUDGE BLOCH: Okay. So now, under those

1 circumstances, Mrs. Ellis, could you tell us why you think  
2 we could not reach a recent decision without your ability  
3 to discover the Gibbs and Hill specification?

4 MS. ELLIS: Yes, I would like to address one  
5 further thing to this Board. As far as continuing  
6 discovery requests, there has been -- there is a  
7 continuing discovery request with the basis for any  
8 testimony. Our position on that would be, I think, in  
9 effect, this is taking the place of testimony in these  
10 proceedings, because of the unusual manner in which the  
11 summary disposition motion was handled.

12 JUDGE BLOCH: Let me ask Mr. Horin to respond to  
13 that. Is this the equivalent of testimony because these  
14 written filings, motions, can be the basis for a final  
15 Board decision?

16 MR. HORIN: I don't know. That is strictly an  
17 interpretation I would agree with. I would point out that  
18 when we began this process of summary disposition, that  
19 Applicants and the Board and parties agreed that we would  
20 be providing documents which we relied upon in our various  
21 motions and whatever backup information we felt was  
22 necessary to assist CASE and the Staff in reaching a  
23 recent response.

24 I think that ruling or that practice would take  
25 precedence over whatever other previous discovery requests

1 Mrs. Ellis is talking about here.

2 JUDGE BLOCH: So that the argument here is  
3 whether or not you have relied on these specifications?

4 MR. HORIN: That's correct.

5 JUDGE BLOCH: Now, Mrs. Ellis, have they relied  
6 on these specifications, or is there some other reason why  
7 you must have it in order for the Board to be able to  
8 reach a recent decision?

9 MS. ELLIS: Yes, and I am prepared to go through  
10 that. I would point out one further thing with regard to  
11 what the Court said a moment ago.

12 There is a motion before the Board, CASE's October 30  
13 motion for additional time, in our second partial answer,  
14 and in that we specifically state as one of the briefs  
15 that there are documents which Applicants have refused to  
16 provide, and I would also note that the time is passed for  
17 Applicants to have responded actually to that. I believe  
18 the 9th would have been the time that they should have  
19 responded to this.

20 However, we have no objection to their going ahead and  
21 responding today.

22 JUDGE BLOCH: Are you responding, Mr. Horin?

23 MR. HORIN: To that motion, I contacted  
24 Mrs. Ellis -- and I should have mentioned this earlier in  
25 the conference call -- I contacted Mrs. Ellis and Mr. Mizuno

1 yesterday. Contacting Mrs. Ellis, it would be all right  
2 if we addressed that motion today and she agreed with that  
3 and I contacted Mr. Mizuno to inform him that that would  
4 be the case.

5 JUDGE BLOCH: Okay, so we lost control of the  
6 agenda, but that's okay.

7 All right, now, Mrs. Ellis still.

8 MS. ELLIS: All right. I will be referring to  
9 our August 15 request for documents. Does everyone have a  
10 copy of that handy where I could just refer to item  
11 numbers rather than reading the whole thing?

12 JUDGE BLOCH: We are all interested in getting  
13 the Hill, aren't we?

14 MS. ELLIS: No, as I mentioned in our October 18  
15 letter and which I also indicated verbally to Mr. Horin, I  
16 think all of the items which were mentioned in Applicants'  
17 October 4 response, where they state the specific items  
18 that they do not plan to provide, that all of those, we  
19 believe, we should have.

20 JUDGE BLOCH: All right. Your October 18 letter?

21 MS. ELLIS: All right.

22 JUDGE BLOCH: Which letter in August?

23 MS. ELLIS: Our letter would be dated August 18.  
24 Applicants' response where they identify the items they  
25 did not plan to provide is dated October 4.

1 JUDGE BLOCH: Your letter is August 18 --

2 MR. HORIN: 15.

3 JUDGE BLOCH: 15?

4 MS. ELLIS: That's right.

5 JUDGE BLOCH: Hold for a moment.

6 MR. HORIN: Mrs. Ellis, this is Mr. Horin.

7 While the parties are getting their documents, I would  
8 just like to point out --

9 JUDGE BLOCH: Is this off the record?

10 MR. HORIN: No.

11 JUDGE BLOCH: Okay.

12 MR. HORIN: -- that the October 30 motion does  
13 not itself seek the production of the document. It deals  
14 with an extension of time exclusively and in fact asks for  
15 the extension regardless of whether or not Applicants  
16 provide documents. That is not a motion for the  
17 production of these documents.

18 JUDGE BLOCH: I had an August 14 letter. That's  
19 not it?

20 MS. ELLIS: August 15.

21 JUDGE JORDAN: This is Walter Jordan. I have  
22 the August 15 letter, which is 30 pages listing a request  
23 for documents.

24 MS. ELLIS: Yes, there are a number of those  
25 which Applicants are refusing to provide, which I do

1 believe we need to have, sir. Mr. Horin?

2 JUDGE BLOCH: All right. Why don't we try to --  
3 I am having difficulty finding it. Let's try to proceed  
4 in a way that I can understand it.

5 MS. ELLIS: All right. Okay. In regard to what  
6 Mr. Horin just said, in the last paragraph of our October  
7 30 motion, it states: "In the alternative should  
8 Applicants decide to provide additional documents which we  
9 have requested, we ask that we be allowed to place our  
10 additional response in the mail one month from the date of  
11 the receipt of the last document provided by Applicants on  
12 this subject."

13 MR. HORIN: I am not disputing that you have  
14 requested them informally, Mrs. Ellis. I am saying  
15 there's no motion pending.

16 MS. ELLIS: As I said, I think that this is part  
17 of our motion.

18 JUDGE BLOCH: Okay. The question is, as I  
19 understood from the discussion earlier -- I phrased the  
20 question, the question was whether the Applicants relied  
21 on any of these documents.

22 MS. ELLIS: All right. I am prepared to proceed  
23 with each of these. Now, this is a rather lengthy list.  
24 If the Board wants to go through each one, I will be glad  
25 to do that.

1           JUDGE BLOCH: Why don't we refer to them? We  
2 will have to do it one at a time with Mr. Horin responding  
3 each time.

4           MS. ELLIS: All right.

5           JUDGE BLOCH: Mrs. Ellis, may I suggest an  
6 alternative?

7           MS. ELLIS: All right.

8           JUDGE BLOCH: In our October 4 letter, I grouped  
9 them into groups, and if you agree that those groups are  
10 appropriate groupings, we can handle them by categories as  
11 opposed to individually.

12           MS. ELLIS: I think I have the way I have it set  
13 up to go through them as listed on our sheet here, which I  
14 think will be generally by groups anyway.

15           The first one is item 3, "Gibbs and Hill specification  
16 MS-200, all revisions."

17           I think we can cover item 3 and item 4 together. Item  
18 4 is "Gibbs and Hill specification MS-46-A, all revisions."  
19 These are referred to not only in the affidavit, which are  
20 the page numbers which we referenced in our request, but  
21 also Applicants' statement of material facts.  
22 Specifically, material cite number 2 states: "Regulatory  
23 requirements and licensing commitments set forth in the  
24 license application are incorporated to design  
25 specifications by Gibbs and Hill or Comanche Peak for both

1 piping (class 2 and 3) and support. These specifications  
2 are transported to the responsible design organization for  
3 incorporation in their design process.

4 "Westinghouse, with the Gibbs and Hill specification in  
5 its design of nonclass 1 auxiliary pipe, and in item 3 of  
6 their material facts, they -- each of the pipe support  
7 design organizations has incorporated the Gibbs and Hill  
8 specification applicable to the design of pipe support in  
9 their design process. This specification is incorporated  
10 into each organization's design, for instance, including  
11 drawings, procedures, instructions and guidelines as  
12 appropriate (in accordance with established procedures)."

13 And in the affidavit itself, there are specific  
14 references on pages 16, under "Gibbs & Hill," which states  
15 that the process for class 2 -- "a class 2 and 3 piping  
16 and support design begins with the generation of design  
17 specification of Gibbs and Hill. The design  
18 specifications for piping, separate design specifications,  
19 are prepared for piping, for instance, MS-200 (and for  
20 support) MS-46 A (and are transmitted to the responsible  
21 design organization)."

22 On page 25, under "Westinghouse," it states: "The  
23 other specification is developed by Gibbs and Hill, it  
24 pertains to all as the code class 2 and 3 piping."

25 On page 32 of the affidavit, under "NPSI," it states:

1 "NPSI pipe support design activities are covered by Gibbs  
2 and Hill specification, MS-46-A."

3 On page 43, under "pipe support engineering," it states:  
4 "MS-46-A was adopted as a required reference for PSE,  
5 section 1, of the PS Engineering Guideline."

6 On page 57, it states: "The Gibbs and Hill design  
7 specification, MS-200" -- then it has the title, standard  
8 as to which as-built analyses are performed.

9 I think that that's -- those are the specific  
10 references made in the affidavit and in the statement of  
11 material facts.

12 So these two specifications are basically the backbone  
13 of many of Applicants' procedures to begin with.

14 JUDGE BLOCH: Okay. Mr. Horin?

15 MR. HORIN: Mrs. Ellis is incorrect in her  
16 representation that these specifications are the backbone  
17 of Applicants' procedure. These specifications contain  
18 the technical criteria by which designs are performed.

19 The motion which is involved here is a motion for  
20 summary disposition regarding the design QA program. The  
21 motion focuses upon the process and the procedures by  
22 which Applicants perform their design review.

23 We did not rely upon the substance at any point in this  
24 motion of those design specifications, and Mrs. Ellis can  
25 look at any of the references where we mention that those

1 exist, and she will not be able to point to a single  
2 instance where we cite to any segment or any page of those  
3 design specifications.

4 In short, the content of those specifications is not  
5 relevant to the purpose of Applicants' motion.

6 JUDGE BLOCH: The existence, is that what you  
7 are relying on?

8 MR. HORIN: The existence of those documents and  
9 the process by which those documents are transmitted. And  
10 we mentioned specifically the procedures by which that  
11 occurs, and have provided those to Mrs. Ellis.

12 JUDGE JORDAN: This is Walter Jordan. Has the  
13 content of those specifications been relied upon in any  
14 other of the proposed summary dispositions? I speak  
15 particularly of the case, for example, of the  
16 specifications for stiffness of pipe supports as compared  
17 to the motion, the amount of motion.

18 MR. HORIN: I am aware of one motion in which we  
19 relied upon a page from one of those design specifications  
20 and provided that to Mrs. Ellis. I, off the top of my  
21 head, I cannot say whether any segment of the other  
22 specifications were relied -- I do not recall any. I  
23 believe that if we had, and Mrs. Ellis felt that it was  
24 important to her responses, and we hadn't already provided  
25 it, she certainly would have asked for it. I do not

1 recall in any instance such as that to objecting to  
2 providing where we had specifically relied upon a segment.

3 JUDGE JORDAN: Okay, thank you.

4 JUDGE BLOCH: Mrs. Ellis, would you like to  
5 rejoin to that before the Staff comments? On the design  
6 QA summary disposition motion, is it not the case that  
7 they are not relying on those technical specifications,  
8 other than the fact that they exist? Why is it that you  
9 need them?

10 MS. ELLIS: I think that on page 4 of  
11 Applicants' affidavit -- well, first, I think it should be  
12 realized that Applicants' motion for summary disposition  
13 is a very far-reaching and wide-ranging for those  
14 documents; and on page 4 of the Applicants' affidavit it  
15 states: "This affidavit provides Applicants' response to  
16 the first task of the plan. The task, as stated in the  
17 Applicants' plan, is to provide a detailed description of  
18 the iterative design process for piping and pipe support,  
19 including the discussion of the design control process  
20 during all stages of design, with reference to risk  
21 procedures that govern the design control and cite process  
22 and a discussion of the various documents employed as part  
23 of the QA/QC process, standing for quality insurance,  
24 quality control, for instance, including CMC, NCRs and  
25 BCAs, (as justification for use of the documents of the

1 quality control program, pending document retention)."

2 So I think that this is regarding the entire design  
3 control process during all stages of design, according to  
4 their own statement.

5 JUDGE BLOCH: Mr. Horin, is that correct? Is  
6 that the scope that you intend by the motion?

7 MR. HORIN: I think it's important to focus on  
8 the item which Mrs. Ellis read. The use of the word  
9 "process" -- the "iterative design process"; the "design  
10 control process"; the "design and procedures that govern  
11 the design control process"; the "discussion of various  
12 documents employed as part of the QA/QC process";  
13 specifically, referencing CMCs and BCAs.

14 As I stated before, we are talking about the process,  
15 the program, and we again at no point in this motion rely  
16 upon the content of those specifications. And Mrs. Ellis  
17 will be able to confirm that we at no point cite any  
18 section of those specifications.

19 JUDGE BLOCH: Mr. Horin, as I understand the  
20 principal argument CASE is making, is that if they were  
21 able to see those specifications, they would be able to  
22 know whether you have systematically fulfilled your SFAR  
23 commitment. Now is that relevant to the motion or not?

24 MR. HORIN: We are talking about fulfilling the  
25 technical commitments in the SFAR?

1           JUDGE BLOCH: That you took the commitments of  
2 the SFAR and put them in the design procedure. If you  
3 didn't do that, the iterative process wouldn't work very  
4 well. If you did do it, it would seem relevant to the  
5 design process.

6           MS. ELLIS: Mr. Bloch.

7           JUDGE BLOCH: Well, I would like Mr. Horin's  
8 response first.

9           MR. HORIN: Our position is that the process  
10 that we are speaking of here is not the process which  
11 confirms the technical substance of any of Applicants'  
12 designs. It is the process and procedures by which  
13 Applicants perform or by which Applicants transmit  
14 information in the design process.

15           JUDGE BLOCH: That's true. But there could be  
16 two sources of errors in the iterative design process.  
17 One would be errors made by junior people, and another  
18 would be errors coming out of the fact that the design  
19 procedures themselves introduce the errors. If it was the  
20 latter, it seems to me the iterative process may not  
21 correct things very well.

22           Is that or is that not relevant to the motion?

23           MR. HORIN: That latter category is not the  
24 focus of our motion. It's not the substance -- I am not  
25 disagreeing with the Board that that is not something that

1 is not relevant overall to Applicants' design process, but  
2 I think by reviewing the issues, the technical design  
3 issues that are being examined here in the proceeding, we  
4 are addressing that context or that category of  
5 Applicants' activity. This motion here is strictly the  
6 process itself.

7 JUDGE BLOCH: Mrs. Ellis?

8 MS. ELLIS: I believe that if that's true, the  
9 Applicants need to change their affidavit.

10 On page 5 on their affidavit, it states: "We are  
11 providing in this affidavit a detailed description of the  
12 design process for piping and pipe support, and of the QA  
13 program as it applies to this piping and support design  
14 process.

15 "Section 2, we demonstrate that Applicants have been  
16 committed to the implementation of a QA program for design  
17 activities since the inception of the Comanche Peak  
18 project." We also describe in section 3 --

19 MR WADE: Is there a reason to believe that the  
20 QA program would or would not be covered by these  
21 specifications?

22 Mr. Horin, would the existence of the QA program be  
23 documented as part of these procedures?

24 MR. HORIN: I am afraid I don't understand the  
25 Board's point.

1           JUDGE BLOCH: These specifications are technical  
2 specifications. And they do not include, for example,  
3 requirements for QA design.

4           MR. HORIN: No, in fact the Board can refer to  
5 the chart which Applicants included in their motion and  
6 with which we reference these specific procedures. They  
7 are used to satisfy -- in which Applicants rely upon in  
8 this motion, which are used to satisfy the different  
9 categories, criterion, in appendix B. The specific  
10 section that is most applicable here is the third  
11 criterion, the design control criterion, part A  
12 translation of design and quality control documents into  
13 design documents.

14          If the Board will look, in each case we refer to  
15 specific procedures. We are not relying upon the  
16 specifications themselves. We provided those procedures  
17 to Mrs. Ellis.

18          JUDGE BLOCH: Okay, Mrs. Ellis. I am sorry for  
19 the interruption. Please continue.

20          MS. ELLIS: I think the next statement will  
21 clarify things a little further.

22          We also describe in section 3 the process for the  
23 design of piping and support at Comanche Peak. There we  
24 demonstrate that each of the organizations involved in the  
25 design of piping and pipe support has implemented a

1 program applicable to all stages of the design process  
2 that provides assurance that errors or deficiencies in  
3 design will be identified and corrected.

4 They are not talking just about the paper procedures.  
5 They are going beyond this in their motion and saying that  
6 they are looking at the entire process for the design of  
7 piping and support, not just for the procedures, but for  
8 the design.

9 JUDGE BLOCH: You are saying the test of whether  
10 it's been implemented is reflected in these specifications?

11 MS. ELLIS: Exactly. And if the procedures are,  
12 in fact, adequately implemented from the specifications,  
13 we can't know that unless we look at the procedures and  
14 compare them with the specifications.

15 MR. HORIN: The procedures do not relate to the  
16 content of the specifications. The procedures are  
17 established to assure that information is transmitted,  
18 that reviews are conducted, activities such as that. The  
19 procedures do not address, you know, the technical content  
20 of the specification.

21 The sentence that Mrs. Ellis just read is actually --  
22 actually is exactly the point I am trying to make here.  
23 That is that we demonstrate that each of the organizations  
24 involved in the design of piping and pipe supports has  
25 implemented a program applicable to all stages of the

1 design process, a program. That's the whole point of our  
2 motion, and the procedures which we reference in the  
3 tables, which are attached to our motion, are the  
4 procedures that we are talking about here.

5 JUDGE BLOCH: I take it Mrs. Ellis's point is to  
6 have the procedures to implement them and the test of that  
7 is whether they were reflected in these specifications.  
8 Is that a reasonable way to put that question?

9 MR. HORIN: I, frankly, do not see the --

10 JUDGE BLOCH: No connection, huh?

11 MR. HORIN: Yes.

12 JUDGE BLOCH: Mrs. Ellis, would you continue?

13 MS. ELLIS: I think that's basically our  
14 argument. I am looking.

15 JUDGE BLOCH: What do you see as a nexus between  
16 the procedures and the specification?

17 MS. ELLIS: I think the Board has pretty  
18 accurately decided. If you have these which are  
19 fundamentally built in to these other procedures, I am  
20 looking for a specific reference. Just a second.

21 In addition, on page 57 of Applicants' affidavit, it  
22 states specifically that the Gibbs and Hill design  
23 specification MS-200 is the standard which as-built  
24 analyses were performed.

25 And certainly this is an important part of what goes on

1 as far as the design of the plan.

2 If Applicants -- if Applicants' whole premise in this  
3 is only about the procedures themselves, I really think a  
4 clarification is needed of their affidavit, because it  
5 certainly is not the way I read it.

6 MR. HORIN: I would just like to ask Mrs. Ellis  
7 to show how having that specification would in any way  
8 effect or in any way -- yes, in any way affects the  
9 interpretation of that portion of our motion.

10 We say "that is the standard by which as-built analyses  
11 are performed." I don't think she disputes that. We say  
12 "establishes specification requirements." She doesn't  
13 dispute that. We are not saying that we are getting into  
14 the technical merits of those specifications here. We are  
15 just saying that that is the document, it exists.

16 MS. ELLIS: Okay.

17 JUDGE BLOCH: Mrs. Ellis, one more short comment  
18 and then I want the Staff to comment.

19 MS. ELLIS: On page 39 -- just a moment. On  
20 page 39 of the affidavit under "ITT Grinnell," it states  
21 that: "Gibbs & Hill specification MS-46-A is the  
22 controlling project design specification for pipe support  
23 design activities by ITT Grinnell. This specification is  
24 reviewed, accepted and implemented in accordance with  
25 section 23 H-2.0 by ITT Grinnell QA manual, at section

1 QCES 2.3.0 of ITT Grinnell Corporation, Engineering  
2 Services, Quality Service Manual."

3 So these procedures supposedly, or the specifications,  
4 supposedly is reviewed, accepted and implemented in  
5 accordance with these procedures. We can't tell that  
6 unless we can compare the procedures with the  
7 specifications.

8 MR. HORIN: Mrs. Ellis is missing the point.  
9 How would having the specifications affect the evaluation  
10 of those procedures?

11 JUDGE BLOCH: Dr. Jordan?

12 JUDGE JORDAN: Yes, I am now here. I was off a  
13 bit.

14 JUDGE BLOCH: I see, you were off the line.

15 JUDGE JORDAN: Somehow or other, the line was  
16 dead. I don't think I missed anything. Go ahead. I do --  
17 before we get through, Peter, I want to address -- if the  
18 relevance is questionable, we may want to address the  
19 license -- the Applicants' responses in terms of "overly  
20 burdensome" reason for not complying with the discovery  
21 request.

22 JUDGE BLOCH: Judge Bloch. That could relate to  
23 message if we decide to grant the discovery. Let's not  
24 get into that now.

25 JUDGE JORDAN: I agree.

1 JUDGE BLOCH: Mr. Treby or Mr. Mizuno?

2 MR. MIZUNO: This is Mr. Mizuno. Normally the  
3 NRC Staff does not get involved in disputes between the  
4 other parties involving discovery, and so we would not  
5 make any -- take any opposition at this time regarding a  
6 request by CASE for certain documents. However, if the  
7 Board feels that observations by the Staff would be  
8 helpfu. in clarifying the blue book, the issues that are  
9 at hand that Staff wants me to make a few observations at  
10 this time.

11 JUDGE BLOCH: We would appreciate your  
12 assistance.

13 MR. MIZUNO: The Staff would tend to agree with  
14 the Applicants that if their summary disposition motion on  
15 QA courses or pipe design courses is limited solely to  
16 whether procedures exist for QA design, that the document --  
17 I am here referring to the Gibbs and Hill specification --  
18 do not appear to be relevant or necessary to answering the  
19 Applicants' summary disposition motion, primarily because  
20 there is a difference between the technical specification,  
21 which usually deals with how designs are actually to be  
22 generated and checked; whereas the procedures, the QA  
23 procedures by which the flow of paper is supposed to occur,  
24 it usually contains a separate document and it is usually  
25 contained within specifications.

1           However, the Staff would also note that we do not --  
2           our observation, at least at this time, is that  
3           Applicants' summary disposition motion, if limited to  
4           solely whether procedures exist, or QA pipe support design,  
5           would not be sufficient to address wholly the Board's  
6           concern regarding this issue as set forth in their  
7           December 28, 1983, design QA order and the reconsideration  
8           order of February 28.

9           The Staff believes that a much more inclusive story  
10          must be presented by the Applicants to not only show that  
11          procedures exist, but also that the procedures have been  
12          caught -- I am sorry -- these procedures have been  
13          complied with and properly implemented at Comanche Peak.  
14          Since obviously implementation is the most important and  
15          bottom line consideration of any program, these comments  
16          that we just made or essentially, what we state, a  
17          reiteration of the comments that the Staff made in its --  
18          comments by the Applicants' plan in which we set forth  
19          what we felt was necessary for Applicants to show  
20          compliance with 10 CFR part 2 of appendix B. That ends  
21          that comment at this time.

22                    JUDGE BLOCH: Mr. Horin, do you have a brief  
23                    rebuttal to any of that?

24                    MR. HORIN: Yes. I would just like to point out  
25                    that Applicants recognize the Staff's comments on our

1 original plan, and that is part of that, in response to  
2 those comments as well as the Board's comment, we  
3 implemented the CYGNA phase 3 effort to address the  
4 implementation of aspects of the Applicants' design QA  
5 prospects with respect to certain designs in appendix QA-B.  
6 This motion addresses the item in our February 3 plan  
7 which Mrs. Ellis quoted earlier concerning the process.

8 The evidence and assurance to provide the Board as to  
9 the adequacy of that implementation has been undertaken  
10 through the CYGNA phase 3 effort.

11 JUDGE BLOCH: I take it from that response,  
12 Applicants do not plan to voluntarily file the matrix of  
13 pipe supports requested by the Board?

14 MR. HORIN: The matrix? Which matrix is that?

15 JUDGE BLOCH: The one that started with ID  
16 numbers on stable supports and traces through the  
17 deficiencies and how they were discovered and tried.

18 MR. HORIN: Applicants are going to provide  
19 something to the Board on that, certainly.

20 JUDGE BLOCH: So that could be relevant there.

21 MR. HORIN: Certainly.

22 JUDGE BLOCH: The Board is prepared to rule.

23 MS. ELLIS: May I ask a question?

24 JUDGE BLOCH: Yes. Mrs. Ellis?

25 MS. ELLIS: Yes. Am I understanding correctly

1 that Applicants are stating that this motion for summary  
2 disposition does not have to do with the implementation at  
3 all; is that correct?

4 MR. HORIN: It addresses the fashion in which  
5 the motion is implemented, and that is, the implementation  
6 part of the motion is part 5 of the motion, beginning on  
7 page 66, and in there we go through and demonstrate how  
8 various aspects of how the design QA program is  
9 implemented. To the extent that implementation is  
10 addressed in a latter portion of the motion, we do address  
11 implementation.

12 But the initial part of the motion deals with the  
13 program, and it deals with the procedures which are  
14 established. It does not deal with the technical  
15 substance of the specification.

16 JUDGE BLOCH: Am I correct, even in part 5 we  
17 deal with implementation -- you are talking about  
18 procedural things, not empirical evidence of  
19 implementation; am I correct about that?

20 MR. HORIN: We provide in there evidence of  
21 audits, demonstrating how different audits were conducted.  
22 We provided a whole package of documentation supporting  
23 those as examples of how these different design review  
24 functions are implemented.

25 JUDGE BLOCH: Mrs. Ellis, do you have a very

1 brief rebuttal to what the Staff said?

2 MS. ELLIS: No, not to what the Staff said.

3 JUDGE BLOCH: The Board is prepared to rule.  
4 The Board will not order that these documents be turned  
5 over.

6 However, to the extent that we should substantively  
7 determine that the Applicants have relied on the substance  
8 of these procedures, rather than on their existence, then  
9 the motion for summary disposition either will be denied  
10 or there will be a Board request for further information.

11 What is the next matter, Mrs. Ellis?

12 MS. ELLIS: All right. On page 24 of  
13 Applicants' affidavit, they discuss -- well, a number of  
14 specific audits that have been done, and they state, for  
15 instance, during the design process, including the  
16 as-built stress analysis Applied Mechanics, with initial  
17 capital letters: "Has been audited by Gibbs and Hill  
18 quality insurance 14 times." Nine of the 14 internal  
19 audits were performed on as-designed piping stress  
20 analysis process. The remaining audits focused on the  
21 as-built piping stress analyses, and there are a number of  
22 others listed here of various types of audits, similar to  
23 this.

24 We have asked for copies of the audits, and if  
25 Applicants are now saying that they are only relying on

1 the fact that these audits were done, and not whether the  
2 audits were adequate, or whether they identified problems  
3 or anything like that, I don't think we really need them.

4 But if Applicants are relying in any way on these  
5 audits to show that the system works, and that they did  
6 identify problems, where problems existed, then I think we  
7 need them.

8 JUDGE BLOCH: Mr. Horin, on this one, I am not  
9 sure that the mere existence of audits would be very  
10 helpful to the Board unless the audit has some substance  
11 to them. What do you think?

12 MR. HORIN: Applicants have, in addition to the  
13 same point we made with respect to the specifications --  
14 again, we are not relying on the content of any of these  
15 audits here. But we would point out what we are relying  
16 upon are the audit procedures; and, again, the Board may  
17 refer to the chart which Applicants provided, and under  
18 criterion 18, I believe it is, which deals with audits,  
19 Applicants reference the procedures for each of the piping  
20 and support design organizations, and we have provided  
21 those to Mrs. Ellis.

22 We would just point out that Mrs. Ellis has, over the  
23 course of this proceeding, had access to virtually every  
24 audit that's been performed on Comanche Peak and has  
25 copies of many, many audits.

1 JUDGE BLOCH: Not Gibbs and Hill so, right?

2 MR. HORIN: Certainly the PEPCO audits of Gibbs  
3 and Hill she had. Those are the TDHs she referred to, I  
4 know Mrs. Ellis has.

5 MS. ELLIS: We have no audits on Applied  
6 Mechanics.

7 MR. HORIN: I don't know if that is correct or  
8 not, but I would point out that over the course of the  
9 last three years of this proceeding, Mrs. Ellis has had  
10 access to Applicants' audit files, and we think that it  
11 would be -- this is one where we clearly get to point up  
12 front where it would be burdensome for Applicants to again  
13 produce all these audits that we have previously made  
14 available to Mrs. Ellis.

15 JUDGE BLOCH: Is the problem letting her have  
16 access or producing it?

17 MR. HORIN: Well, the principal problem is  
18 producing it. That is where the burden arises.

19 Obviously, the burden from having to reproduce audits  
20 doesn't exist in terms with respect to access. But I wish  
21 to emphasize that we have a two-prong objection here. Not  
22 only that, but also, that again the substance of the  
23 audits is not referenced in our affidavit. We merely  
24 point out that those are the procedures and that they have  
25 been conducted.

1                   JUDGE BLOCH: Gibbs and Hill are the vendors for  
2 the pipe support?

3                   MR. HORIN: These are audits by Applicants of  
4 each of their contractors which include Gibbs and Hill,  
5 Westinghouse, ITT and TUSI. We would also need Gibbs and  
6 Hill internal audits. I am not sure the Gibbs and Hill  
7 internal audits were the ones Mrs. Ellis has had previous  
8 access to.

9                   MS. ELLIS: No, we have not. I am still not  
10 sure I got the answer to my question as to what Applicants  
11 really mean by their statements about these anyway.

12                   JUDGE BLOCH: Are you relying on that the  
13 procedures exist and that the audits exist, Mr. Horin?

14                   MR. HORIN: We are relying upon whatever  
15 statements we make in our motion here. I am not relying  
16 on the discussion of the contents of any specific audits.

17                   JUDGE BLOCH: The problem is, if you are relying  
18 upon the contents of the specific audits, we might deny  
19 the motion the same way we denied the previous motion. It  
20 seems to me if you are relying upon the contents of those  
21 audits, they should be made available. If you are not,  
22 and I can understand they might not --

23                   MR. HORIN: Just a second here.

24                   JUDGE BLOCH: Now, of course, we can remedy that  
25 by issuing the same type of order that we just issued and

1 provide, of course, that you can voluntarily provide those  
2 documents, then Mrs. Ellis would have an opportunity to  
3 respond. That would remedy any problem that you  
4 discovered subsequently.

5 MR. HORIN: Applicants certainly would not  
6 object to the same ruling from the Board. As I understand  
7 the Board's ruling, it was that if the Board determines  
8 that there is a need to examine the contents of these  
9 documents, if the Board would subsequently identify that,  
10 if the Board felt that Applicants' motion required  
11 examination of the contents of those sort of documents for  
12 the Board to adequately address it.

13 JUDGE BLOCH: What we said was that under those  
14 circumstances, we could either deny that portion of the  
15 motion or commit ourselves to certain documents. We  
16 didn't commit ourselves to do that. It would depend on  
17 what we thought was missing and what the significance was.

18 JUDGE JORDAN: Walter Jordan. Mr. Bloch, you  
19 will remember I have in the last few days brought up in  
20 the motion that we have never yet seen the results of the  
21 audit of Gibbs and Hill.

22 JUDGE BLOCH: Results from the audit of Gibbs  
23 and Hill by Applicants?

24 JUDGE JORDAN: Yes.

25 JUDGE BLOCH: Those are specifically things that

1 Mrs. Ellis had access to. But not on Mechanical, is that  
2 right?

3 MR. HORIN: That's what she says. I don't know  
4 the breakdown, as far as I was aware. The TUGCO audits of  
5 Gibbs and Hill were all made available.

6 JUDGE BLOCH: Well, perhaps what we could do is  
7 to order that audits of mechanical properties done by  
8 TUGCO of Gibbs and Hill should be turned over. Would that  
9 be one or two documents, would that be nothing?

10 MS. ELLIS: Applied Mechanics.

11 MR. HORIN: Our motion states that at the time  
12 we filed our motion, TUGCO had audited Gibbs and Hill  
13 Applied Mechanics twice.

14 JUDGE BLOCH: Does Staff wish to comment on that?

15 MR. MIZUNO: This is Mr. Mizuno. No. Instead  
16 of commenting, perhaps we would like a little  
17 clarification, or perhaps raise an issue, because we have  
18 been using the term "rely upon the contents of a document"  
19 when we were talking about the audit just a while ago, and  
20 before that the specification. I think in the Staff's  
21 mind, we have -- you would like for the -- I guess, the  
22 Applicants, as well as the Board, to clarify what they  
23 mean by "rely upon the contents." Because from what the  
24 Staff sees, it's not sufficient just to have a document --  
25 for instance, an audit that exists -- but presumably the

1 implementation of a program, a proper implementation of a  
2 program depends, in part, upon the fact that the audit was,  
3 in fact, doing its job correctly in accordance with the  
4 procedures that were set forth for the audit.

5 JUDGE BLOCH: My understanding, Mr. Mizuno, is  
6 that Applicants have narrowed the scope of their request  
7 for summary disposition in such a way that the empirical  
8 information about how the QA program is being implemented  
9 will be subsequently litigated with respect to CYGNA  
10 matters, and they are not relying on this motion for that;  
11 is that right, Mr. Horin?

12 MR. HORIN: To the extent that that is our  
13 principal demonstration of the implementation. But we, as  
14 I said before, we have a portion of this motion which does  
15 address implementation, and we have attached with our  
16 motion examples of various audits from the different  
17 groups. I don't happen to have a list of which of those  
18 audits were provided, but we did provide examples of the  
19 different audits.

20 So to the extent that we are demonstrating how it is  
21 implemented, we are using that in our -- or relying upon  
22 this in our motion, but we are not relying upon the  
23 substance of any individual audit.

24 MR. MIZUNO: In that case, the Staff feels that  
25 the statements in the summary disposition motion, which

1 talk about the number of audits that were done, is  
2 essentially irrelevant to the question of whether  
3 procedures exist that said audit should be done or which  
4 way the audit should be conducted.

5 On that basis -- well, that's our comment. We don't  
6 think that the statements are relevant to the issue which  
7 the Applicants might have summary disposition on. The  
8 statements -- the statements could be deleted and  
9 presumably Applicants' summary disposition motion would  
10 still be as persuasive as before. We just don't believe  
11 that the statement regarding the audits that were done is  
12 relevant to the question of whether procedures exist.

13 The question of whether audits were done or not, in  
14 accordance with the procedures, is the question of  
15 implementation.

16 JUDGE JORDAN: But is this part of the summary  
17 disposition motion?

18 MR. MIZUNO: My understanding was that  
19 implementation was not to be covered in this summary  
20 disposition motion. Rather --

21 JUDGE BLOCH: Part 5 does. That's the problem.  
22 Could you do any further scope of part 5, Mr. Horin, as  
23 you see it?

24 MR. HORIN: Part 5 provides examples for the  
25 Board and the parties of the -- I would have to say

1 implementation.

2 JUDGE BLOCH: Of course examples -- is that the  
3 same as an example? You can always pick out examples, if  
4 you show something as being implemented. It would seem to  
5 me you would somehow have to represent what was happening  
6 in the program, not just pick up some successes.

7 MR. HORIN: Well, we picked up examples where  
8 some deficiencies were identified both in the design  
9 control process and in the design review, in the audit  
10 process, and included examples of the follow-ups where  
11 some of those audits were conducted. We didn't pick out  
12 audits where nothing was found.

13 JUDGE JORDAN: Are those audits being requested  
14 as part of the discovery?

15 MR. HORIN: The audits that we discuss in the  
16 implementation program, or in the implementation program  
17 of our motion, were previously provided --

18 JUDGE JORDAN: Okay.

19 MR. HORIN: -- as part of a package that was  
20 approximately an inch and a half of documents that went  
21 along with the motion.

22 JUDGE BLOCH: So the audits on Applied Mechanics  
23 are not in part 5?

24 MR. HORIN: I would have to go through and,  
25 certainly, I don't know -- I would just have to go through

1 and check. I don't know if those specifically were --

2 MS. ELLIS: Could you give me the pages, again,  
3 Bill, for the implementation portions of the affidavit?  
4 It started on page 66; correct?

5 MR. HORIN: Right.

6 MS. ELLIS: Goes through --

7 MR. HORIN. Goes through the end, anyway.

8 MS. ELLIS: Okay. Go ahead. I think we will  
9 have some problem with that.

10 JUDGE BLOCH: Mr. Mizuno, do you have a further  
11 comment?

12 MR. MIZUNO: -If the audits are referenced or are  
13 necessary for consideration of part 5, if the Staff would --  
14 it would be Staff's observation that it would appear to be  
15 relevant, but that Mrs. Ellis could look at those  
16 documents.

17 JUDGE BLOCH: We are prepared to rule.

18 MS. ELLIS: I have one further comment I would  
19 like to make, if I may.

20 One of the things that Dr. Jordan stated was that the  
21 Board had not yet seen the results of the audits by Gibbs  
22 and Hill of the Applicants. I would just like to point  
23 out that this is a deficiency of proof on the part of the  
24 Applicants, and it is not up to CASE to supply copies of  
25 those audits to the Board.

1 In regard to the specific items, beginning on page 66,  
2 there are a number of outstanding discovery requests on  
3 those pages which have not been supplied.

4 I would like to let the Board know about those.

5 JUDGE BLOCH: On what page?

6 MS. ELLIS: Beginning on page 66 of Applicants'  
7 affidavit and going through the end, Mr. Horin said that  
8 those had to do with the implementation portion.

9 JUDGE BLOCH: Yes.

10 MS. ELLIS: Those items -- there are many of  
11 them which have not been provided that we asked for  
12 discovery on. So we do need to go through those, I  
13 suppose, at some point.

14 MR. HORIN: I think we should, Mrs. Ellis, so we  
15 can show the Board that we have provided the documents  
16 which are relevant to this portion.

17 JUDGE BLOCH: Okay, we are prepared to rule.

18 MS. ELLIS: Okay. Go ahead with that.

19 MR. HORIN: May I make one response to the point  
20 Mrs. Ellis just said?

21 JUDGE BLOCH: I hope there is some end to this.

22 MR. HORIN: No, I will pass. Never mind.

23 JUDGE BLOCH: We are prepared to treat as a  
24 separate category the request for the audits on Applied  
25 Mechanics. Those particular audits of Gibbs and Hill by

1 TUGCO are of special interest because of the nature of the  
2 pipe support intention. We believe those two audits  
3 should be turned over.

4 The request for the other audits are denied with the  
5 same condition as we previously applied with respect to  
6 the Gibbs and Hill specification, that is, to the extent  
7 that the Applicants rely on the substance of the audit  
8 documents rather than their mere existence. The summary  
9 disposition motion either will be denied or there will be  
10 a Board request for further information.

11 To the extent that Applicants, in their review of the  
12 motion, should choose to supply further information  
13 because of this condition, we expect prompt notification  
14 and would establish a filing schedule for CASE.

15 Now, Mrs. Ellis, can we cover everything else you are  
16 requesting by making the same ruling, that the requests  
17 are denied on condition of the Board's action on the  
18 summary disposition motion?

19 MS. ELLIS: As I understand what Mr. Horin said,  
20 I don't believe so, because if my understanding is --  
21 correct me if I am wrong on this, Mr. Horin, that in the  
22 implementation portion of the motion beginning on page 66  
23 and continuing on through the end of the affidavit, that  
24 Applicants are relying on the substance of the item to  
25 support the implementation of the procedures and so forth;

1 is that correct?

2 MR. HORIN: I think we would have to go through  
3 the various categories, because the categories which you  
4 are requesting, and I assume we are talking about, are the  
5 A and I procedures -- the documents, the individual  
6 nonconformance reports or logs, that sort of thing. Those  
7 are not on the implementation program. I think that the  
8 Board's previous ruling would certainly apply to each of  
9 those categories that, as I understand, you would say  
10 applied to this portion of the motion.

11 JUDGE BLOCH: Mr. Horin?

12 MR. HORIN: Yes.

13 JUDGE BLOCH: You said previously just a few  
14 moments ago that you thought some of the documents were  
15 provided earlier. I am a little concerned that if we  
16 implement our order, we are going to need a list of what  
17 those documents were.

18 You were relying on part of the fact you have turned  
19 over some documents previously; am I right?

20 MR. HORIN: Yes.

21 JUDGE BLOCH: Is that listed in your letter, or  
22 is it listed somewhere where we can make easy reference?

23 MR. HORIN: The documents which we provided with  
24 our motion, all parties have copies of those documents.

25 JUDGE BLOCH: Okay. So it was with respect --

1 what date was that?

2 MR. HORIN: July 3.

3 JUDGE BLOCH: It is attached to the document,  
4 that's all you are referring to. You are not referring to  
5 things earlier in the procedure?

6 MR. HORIN: I was also referring to an earlier  
7 stage of the procedure where we made available to  
8 Mrs. Ellis all of the TUGCO audits that Applicants had  
9 performed, including those performed on Gibbs and Hill.

10 JUDGE BLOCH: Okay. I am not sure that the  
11 context was the same, so we should have expected  
12 Mrs. Ellis to have gotten relevant materials that way.  
13 She doesn't have permanent possession of it, does she?

14 MR. HORIN: She has the opportunity to make  
15 copies and I know she made lots of copies.

16 JUDGE BLOCH: Yes, but she didn't know which  
17 ones were related to this motion. I guess you don't know  
18 which ones she made copies of?

19 MR. HORIN: I would not have that record.

20 JUDGE BLOCH: Mrs. Ellis, do you know which ones  
21 you have copies of?

22 MS. ELLIS: Not without a lot of digging. I  
23 don't know even with digging if I could come up with that  
24 information. When we were looking at the audit previously,  
25 we were looking at it from an entirely different context

1 from the design-to-design basis.

2 JUDGE BLOCH: Okay. Mrs. Ellis, is there  
3 anything else we must handle in terms of your information  
4 request? Should we issue another information request  
5 order in the same way.

6 MS. ELLIS: Do we need to do through the items  
7 that Mr. Horin suggested on page 66 that have not been  
8 specifically supplied?

9 JUDGE BLOCH: I don't think so, if we issue a  
10 general order stating the same conditions. Mr. Horin,  
11 what would you think?

12 MR. HORIN: I would not think we would have to.  
13 Applicants would agree to that same general information.

14 JUDGE BLOCH: That is, that Applicants would  
15 supply the information if you think they were relying upon  
16 it. If they don't supply it, we would merely not consider  
17 that they were relying on the substance of the material  
18 cited. Is that acceptable, Mrs. Ellis?

19 MS. ELLIS: All right. Can we have a timeframe  
20 in which Applicants will let us know about that?

21 JUDGE BLOCH: Okay. Mr. Horin, would you like  
22 to do that?

23 MR. WADE: Mr. Wade. I am sorry, I didn't get  
24 the question.

25 JUDGE BLOCH: Mrs. Ellis would like to know

1 within what time you could review particularly part 5 of  
2 the filing to see if you were relying on the substance of  
3 the documents Mrs. Ellis cited there and wants as to  
4 merely the existence of the document.

5 MR. WADE: I would think it would take us a week  
6 to go through that.

7 MR. HORIN: Why don't we put that after  
8 Thanksgiving?

9 JUDGE BLOCH: Why don't we make it the first  
10 Monday in December? So we will expect Applicants to have  
11 that information for Mrs. Ellis as of the first Monday in  
12 December, and if there are no documents, there will be no  
13 further filings with respect to that. But if there are,  
14 we would have to decide on a filing deadline.

15 Now, it is therefore understood that the same order we  
16 have issued with respect to the previous discovery motions  
17 is applicable as well to the other items that Mrs. Ellis  
18 is requesting, and I acknowledge they were not discovery  
19 motions, they were requests.

20 So the same principal will apply to the remaining  
21 requests.

22 Now, you have the motion, Mrs. Ellis, for the further  
23 right to file. Would you like to argue that now?

24 MS. ELLIS: Well, I think that really I am at  
25 this point totally confused as to what we really need to

1 answer with this motion. Based upon what Applicants have  
2 said, if they are not relying on much of the substance,  
3 and we are not concerned with whether or not these  
4 procedures are adequate, whether or not they adequately  
5 incorporate the specification requirements --

6 JUDGE BLOCH: Wait a second. They did not say  
7 they were relying on the adequacy of the procedures.

8 MR. HORIN: We are relying on the procedure.

9 JUDGE BLOCH: They are relying on the adequacy  
10 of the procedures.

11 MR. HORIN: Those are what we provided  
12 Mrs. Ellis.

13 MS. ELLIS: Okay. I think we still need  
14 additional time. As to how much time we will need, I am  
15 not really sure at this point, because I am not sure what  
16 part of our answer still will need to be responded to or  
17 supplemented in light of what Applicants have just said.

18 I need to get this information to Mr. Balforsur and I  
19 guess have him listen to the same tape, because I assume  
20 it will be a while before I get the transcript, mine anyway.

21 JUDGE BLOCH: Mrs. Ellis, we established a  
22 procedure previously, when you have already filed on time.  
23 I would like to know why it is not satisfactory here. The  
24 procedure was that you could file a supplementary  
25 statement, and the Board could consider whether it's

1 necessary for the adequacy of the record, and the Staff,  
2 of course, can consider the substance of it if it's  
3 important. Why isn't that adequate in this instance, as  
4 we thought it might be for other things?

5 MS. ELLIS: Okay. So we can supplement it and  
6 the Board will decide whether that's necessary for an  
7 adequate record.

8 JUDGE BLOCH: Yes, whether it's necessary for an  
9 adequate record. Yes, we invited you generally to do that.

10 MS. ELLIS: Okay, I guess that will be  
11 sufficient to get it moving. I still am somewhat confused  
12 as to exactly what Applicants' motion for summary motion  
13 on the design and design QA aspect, as to what it really  
14 means.

15 MR. HORIN: Mr. Chairman, if that's the Board's  
16 ruling with respect to the extension, might I have an  
17 opportunity to put just a couple of facts on the record?

18 JUDGE BLOCH: Sure.

19 MR. HORIN: I would point out that Applicants  
20 filed their motion on July 3 of this year.

21 JUDGE BLOCH: I am sorry. We said that there  
22 was no right to reply. Do you understand that?

23 MR. HORIN: I agree. I just wanted to put --  
24 one of the things that you did say was that Mrs. Ellis  
25 would have an opportunity to demonstrate why it was

1 necessary for the Board to look at it. I think it's  
2 relevant, relevant facts as to why the Board should even  
3 consider of Mrs. Ellis, is whether she has fulfilled the  
4 obligations of the parties in the NRC licensing proceeding.

5 MS. ELLIS: Judge Bloch, I think I will have to  
6 respond to that.

7 JUDGE BLOCH: Wait. I don't think there's any  
8 need for that. The invitation the Board made has nothing  
9 to do with the rights of the party. It has to do with the  
10 Board's obligations to see there is an adequate record on  
11 technical issues. The issues are very complex. We would  
12 invite any party, the Staff, the Applicants, Mrs. Ellis,  
13 for the sole purpose of advising the Board on its  
14 obligations to have an adequate record, to file  
15 information that we would consider as to whether we needed  
16 an adequate record with respect to that.

17 It has nothing to do with lateness. On a formal filing,  
18 which we would have to consider, there would have to be a  
19 showing of good cause for late filing. These other  
20 matters, we can decide not to consider without any opinion.

21 There would not have to be any opinion as to why we may  
22 not choose to consider them. We may choose as a voluntary  
23 matter to explain why we think it's necessary or not  
24 necessary, but we may not do it. It's entirely within the  
25 Board's discretion. That's the only ruling we are making.

1 We don't think there's a right to reply further; we are  
2 not ruling there is.

3 Is the comment that you are going to make, Mr. Horin,  
4 one that is necessary to advance the procedure at this  
5 point, or is it just something you would like to say?

6 MR. HORIN: Well, it was something I would like  
7 to say, but given the Board's clarification, I will  
8 abstain.

9 JUDGE BLOCH: Okay.

10 MS. ELLIS: There is one further thing I would  
11 like to clarify further.

12 JUDGE BLOCH: Is this going to advance the  
13 proceeding?

14 MS. ELLIS: I hope so.

15 JUDGE BLOCH: All right. Please try.

16 MS. ELLIS: Is Applicants' motion for summary  
17 disposition claiming or designed to show that Applicants'  
18 program for properly identifying and correcting design  
19 deficiencies is adequate?

20 MR. HORIN: That the program itself and the  
21 procedures established pursuant to that program is  
22 adequate and satisfies the requirements of the NRC.

23 JUDGE BLOCH: But the implementation of the  
24 program is not covered, is that correct, except with  
25 respect to some statements in part 5?

1           MR. HORIN: With respect to part 5, there, we  
2 demonstrate how it is implemented. That is in furtherance  
3 in demonstrating that the program does work. But the  
4 implementation, with respect to any specific audit or any  
5 specific specification, is not covered.

6           JUDGE BLOCH: I think that's probably the best  
7 we can do right now, Mrs. Ellis. If that creates a  
8 problem you had not anticipated, you might file a motion  
9 with the Board.

10           MS. ELLIS: I think one of the problems that I  
11 can immediately see is that we had construed Applicants'  
12 motion to be much more far-reaching than what they have  
13 indicated. We certainly had not thought that they were  
14 relying primarily on CYGNA to cover the implementation  
15 portion. In light of this new information, it may be  
16 necessary for us to have additional discovery covering  
17 CYGNA.

18           JUDGE BLOCH: I see. You thought this matter  
19 would resolve the CYGNA questions as well?

20           MS. ELLIS: I thought they were relying more on  
21 regarding implementation on this motion.

22           JUDGE BLOCH: Okay. I take it, therefore, that  
23 you have material which you now consider under their  
24 present understanding to be irrelevant to the motion as  
25 filed, that you nevertheless think is relevant to an issue

1 pending in the proceeding?

2 MS. ELLIS: Yes.

3 JUDGE BLOCH: Okay. Well, the Board has under  
4 advisement the Applicants' motion, the Applicants'  
5 response to your first summary disposition motion, and I  
6 expect that when we resolve that matter, it will cover  
7 whether or not you could file an additional summary  
8 disposition motion with respect to implementation matters  
9 that you thought were relevant to this summary disposition  
10 motion.

11 MS. ELLIS: All right.

12 JUDGE BLOCH: Are there any other further  
13 matters that anyone would like to cover at this time?

14 JUDGE JORDAN: I would like to raise one other  
15 question with Mr. Horin. This is Mr. Jordan.

16 MR. HORIN: Yes, sir.

17 JUDGE JORDAN: I believe you said at one other  
18 time that you felt that the motions for summary  
19 disposition were complete, were adequate, and that no  
20 supplements would be necessary. Is that still the  
21 Applicants' position?

22 MR. HORIN: In response to a -- the Board's  
23 recent ruling, where the Board suggested that Applicants  
24 may want to supplement their motion, Applicants do not now  
25 feel that is the case, and we are reviewing the specific

1 transcripts which the Board referenced to assure ourselves  
2 of that fact.

3 JUDGE JORDAN: Okay, I see. Okay.

4 MR. HORIN: So we will apprise the Board.

5 JUDGE BLOCH: Thank you. Any other necessary  
6 business?

7 MS. ELLIS: There is one thing that I would like  
8 to mention very briefly, because I have not had time to  
9 answer it in writing. In the Applicants' letter dated  
10 October 22, they address a statement which I made about  
11 the agreement on the -- the protective agreement on some  
12 of the things with ITT Grinnell and Westinghouse.  
13 Applicants were correct that we had received the  
14 agreements. We had not looked at them -- that would have  
15 been a more accurate characterization. There is a better  
16 aspect of that.

17 Part of our citing of the protective agreement was that  
18 that would be approved by the Board, and thus far, we have  
19 received nothing from the Applicants, no signed copy or  
20 anything, where Westinghouse or ITT Grinnell have signed  
21 the agreements which we signed and sent or gave to the  
22 Applicants on October 22, I believe it was.

23 MR. HORIN: I just received -- I received a few  
24 days ago one that was signed, and I just received the  
25 other one and I will be transmitting those.

1 JUDGE BLOCH: Is the Board going to be asked to  
2 approve a protective order?

3 MS. ELLIS: Yes. Yes, that was part of our  
4 agreement in the protective order was that the Board had  
5 to approve it. So we have not --

6 JUDGE BLOCH: Well, Mr. Horin, do you agree?

7 MR. HORIN: Not a protective order in the sense  
8 that -- no. I guess we would ask that the Board disagree  
9 that it is an appropriate means and should be adhered to  
10 by the parties.

11 MS. ELLIS: The agreement states -- well, each  
12 of the agreements state that this agreement is subject to  
13 the approval of the county state and licensing.

14 JUDGE BLOCH: Okay. So we will have a motion.

15 MS. ELLIS: Yes. To the extent, in light of  
16 this new information, that we feel we need to address  
17 anything in the protective agreement, we will need  
18 additional time.

19 JUDGE BLOCH: Why don't we have a separate  
20 motion on that once you have had a chance to look at the  
21 documents and know whether it is required?

22 MS. ELLIS: All right.

23 MR. HORIN: When did we provide those,  
24 Mrs. Ellis?

25 MS. ELLIS: I don't have all of it here. I have

1 just the note. We signed the protective agreement on  
2 October 21. We picked up the documents on October 22 and  
3 gave the Applicants the cites and the protective agreement.

4 JUDGE BLOCH: The reason you haven't looked at  
5 it, you consider it not to be a final document yet?

6 MS. ELLIS: Correct. And we certainly didn't  
7 want to address anything in the protective agreement  
8 absent the signed document from Westinghouse.

9 JUDGE BLOCH: Good. Any further necessary  
10 business?

11 MR. HORIN: I would just point out, we indicated  
12 to Mrs. Ellis that we accepted those agreements. She  
13 shouldn't have been holding up -- although I commend her  
14 for her caution, she shouldn't have been holding up any  
15 preparation simply because she hadn't had a signed  
16 agreement.

17 JUDGE BLOCH: We would like to acknowledge the  
18 reporter's report and particularly her unwillingness to  
19 interrupt the hearing. Further the hearing is concluded.

20 (Whereupon, at 11:25 a.m., the hearing was  
21 concluded.)

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23

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CERTIFICATE OF OFFICIAL REPORTER

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NAME OF PROCEEDING: TEXAS UTILITIES GENERATING COMPANY, et al.

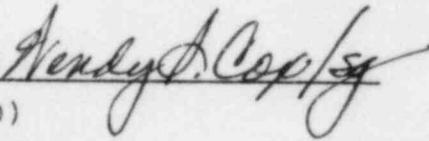
(Comanche Peak Steam Electric Station,  
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