

ORIGINAL

UNITED STATES
NUCLEAR REGULATORY COMMISSION

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)

TELEPHONE CONFERENCE

LOCATION: WASHINGTON, D. C.

PAGES: 24033 - 24067

DATE: TUESDAY, FEBRUARY 5, 1985

TR-01

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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: TEXAS UTILITIES GENERATING COMPANY, :
: et al. :
: Docket Nos. 50-445-OL2
: (Comanche Peak Steam Electric : 50-446-OL2
: Station, Units 1 and 2) :
: TELEPHONE CONFERENCE
-----X

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Suite 402
444 North Capitol Street
Washington, D. C.

Tuesday, February 5, 1985

The above-entitled matter came on for conference, pursuant
to notice, at 10:00 a.m.

BEFORE:

JUDGE PETER BLOCH, Chairman
Atomic Safety and Licensing Board

JUDGE HERBERT GROSSMAN, Member
Atomic Safety and Licensing Board

JUDGE WALTER JORDAN, Member
Atomic Safety and Licensing Board

JUDGE KENNETH A. McCOLLUM, Member
Atomic Safety and Licensing Board

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P R O C E E D I N G S

JUDGE BLOCH: Good morning, this is a prehearing conference in the Texas Utilities Electric Company, et al, operating license case, docket numbers 50-445 and 50-446 covering both dockets.

In preliminary discussions, among the parties, it appears to the board that the subject matter for today's conference probably will be quite limited. The principal subject matter will be the scheduling of the O.B. Cannon witnesses for testimony, and another subject matter will be a setting of target dates by which we may be able to discuss the general status and an effective method for bringing closure to the issues in the case.

If there is no objection, I will call on parties with respect to the O.B. Cannon matter. On that matter, let us hear first from Mr. Gallo, whose witnesses are directly concerned.

MR. GALLO: Judge Bloch, I guess I would rather, since the hearings for the O.B. Cannon witnesses were recessed and cancelled as a result of the board's ruling on the Applicants' request, I guess I would like to hear the Applicants' position with respect to their matters first.

JUDGE BLOCH: Mr. Wooldridge.

MR. WOOLDRIDGE: From the Applicants' standpoint,

1 it is our understanding that the NRC Staff has established
2 a panel of senior personnel to review the harassment and
3 intimidation issues to formulate what they say is a final
4 Staff position on those issues.

5 They have a tentative schedule, as I understand it, to
6 complete that by the end of February, but probably the
7 week or so thereafter before they would have a position.

8 It would be our thought that if it is not inconvenient
9 to Mr. Gallo's people or any of the other parties, we
10 should resume the hearing on O.B. Cannon and harassment
11 and intimidation generally following having come to a
12 conclusion to our position in the case.

13 JUDGE BLOCH: Is it possible under that scenario,
14 Mr. Wooldridge, as you see it, that we might not need the
15 O.B. Cannon testimony at all, depending on the findings of
16 the Staff and the Applicants' reaction to it?

17 MR. WOOLDRIDGE: Your Honor, I would say there
18 is always that kind of a possibility. It is very early
19 for us to be --

20 JUDGE BLOCH: I was just thinking that that is a
21 possible additional reason for doing it your way.

22 MR. WOOLDRIDGE: It certainly could be.

23 JUDGE BLOCH: Mr. Gallo, would you like to
24 comment on that?

25 MR. GALLO: If I could ask a question first,

1 Judge Bloch? It would be of the Staff. Is Mr. Wooldridge's
2 assessment of when the Staff position might be ready
3 correct or is that -- is it a reasonable estimate of when
4 it might be correct?

5 MR. TREBY: It certainly is the hope and
6 expectation of the Staff that they will complete their TRT
7 SSER by the end of the month. Having said this, I must
8 confess in all candor that the Staff has not been able to
9 meet some of the deadlines it suggested in the past on the
10 schedule that they have suggested, I can tell you at this
11 point that the goal of the Staff is to issue all of its
12 technical review team SERs by the end of the month.

13 The technical review teams divided its work up into
14 seven areas: electric and instrumentation, civil and
15 structural, mechanical and piping, quality assurance and
16 quality control, coatings, test programs, and
17 miscellaneous. This past weekend, I guess they issued the
18 first of their SERs which covered two of these groups;
19 electrical and instrumentation and test program.

20 I have been informed that actually the document that
21 was issued is missing a few pages. And there in fact may
22 be a reissuance of that document. Drafts of the other
23 documents are in various stages and the Staff is
24 diligently working at getting them. As I indicated
25 earlier, the goal is to get these out by of end of

1 February.

2 The Staff has also established two task forces which I
3 believe the board and parties have been made aware of by
4 means of a board notification. One of these task forces
5 or panels is a panel on harassment and intimidation.

6 They are currently working and hope to conclude their
7 deliberation by the end of February. And I believe
8 Mr. Wooldridge is probably correct in that it will
9 probably take a week or so thereafter, having concluded
10 the discussions amongst them to come out with some sort of
11 report.

12 My understanding is that they intend to come out with
13 some sort of a written document.

14 There is another task force that was set up, also which
15 deals with quality assurance, quality control in a broader
16 sense than just harassment and intimidation. Their
17 efforts are also hoping to be concluded the end of
18 February, beginning of March time frame.

19 JUDGE BLOCH: How does the Staff stand on the
20 O.B. Cannon postponement? Do you think that is
21 appropriate also?

22 MR. TREBY: Yes. The Staff thinks that that is
23 appropriate.

24 Number one, the Staff now is on this path of getting
25 its documents done. To start holding hearings now is

1 going to take away some of the Staff's resources and may
2 have an impact on it. I think that the best approach
3 would be to let the Staff complete its work and then start
4 up with the O.B. Cannon witnesses.

5 JUDGE BLOCH: Mr. Roisman.

6 MR. ROISMAN: I still would like to hear
7 Mr. Gallo answer the question. I think it is very
8 important to know what he and his clients want.

9 JUDGE BLOCH: Mr. Gallo, what is your response
10 to the Applicant's suggestion?

11 MR. GALLO: Given the circumstances as
12 articulated by Mr. Wooldridge and the explanation offered
13 by Mr. Treby, and your own hope that maybe it wouldn't be
14 necessary to recall the witnesses at all, on behalf of the
15 Cannon client, I would not object to the position offered
16 by Mr. Wooldridge.

17 JUDGE BLOCH: Mr. Roisman.

18 MR. ROISMAN: So long as Mr. Gallo's clients are
19 not anxious to get this over with, insofar as just the
20 limited question of the O.B. Cannon witnesses, I would not
21 press to have them go ahead. But I am definitely going to
22 state that our position is that we were ready to go ahead,
23 the case was ready to go ahead on the O.B. Cannon
24 witnesses when they were originally scheduled and we are
25 ready to go ahead now and if they are postponed; they are

1 postponed at the request of some other party, not at our
2 request.

3 JUDGE BLOCH: How do you feel about the
4 likelihood that we won't even be ready for a full status
5 conference in the case until, at the earliest, it sounds
6 to me, the middle of February and more likely the
7 beginning of March?

8 MR. ROISMAN: I think that position presupposes
9 the answer to a number of questions which we have pressed
10 in the filing that we made late last night. One of them
11 is an apparent presupposition on the part of the Staff and
12 the Applicant that the SSER represents some kind of an
13 existential wiping out of the TRT reports. In our
14 judgment, that is not so. The TRT is the expert. The
15 SSER represents the Staff and Utilities' political answer
16 to the experts' concern.

17 In our judgment, the time is ripe now to answer the
18 issue that we have presented in our motion which is, not
19 only is the plant already irreparably indeterminate in
20 terms of the construction meeting safety requirements, and
21 is it then appropriate for the board to order or to, in
22 effect, give the Applicant the choice: You can lose your
23 license or you can do a reinspection program under the
24 board's auspices.

25 The SSER process, as it was used, for instance, at the

1 Waterford plant, Mr. Eisenhut has indicated some
2 attraction to that approach, was to attempt to transfer
3 what are board functions, namely, deciding the safety of
4 the plant, from the board to the Staff. And the SSER is
5 the vehicle for an attempt to do that.

6 So we think the SSER -- as far as hearings are
7 concerned, our position is that the hearings should not be
8 held until the reinspection is done. We are very clear on
9 that.

10 On the question of the status and so forth, we think
11 that it is perfectly appropriate to discuss the hearing --
12 the status of the hearing immediately. We would have been
13 ready today. We understand a postponement until the end
14 of next week or so. And we feel that the, of course, the
15 answer to the motion which we filed should be filed within
16 the time limits prescribed by the Commission's regulation,
17 with a modest amount of extension if some party requests
18 it, but we think it should be done promptly.

19 JUDGE BLOCH: Did you receive the SSER?

20 MR. ROISMAN: No, we did not. We heard exactly
21 what Mr. Treby just said, that it had come out, that it
22 was then essentially -- that it was missing something, and
23 that it was probably going to be reissued. But we have
24 never gotten a copy.

25 JUDGE BLOCH: The SSER is a product of the

1 technical review team.

2 MR. ROISMAN: It is a product of the technical
3 review team with a number of political levels within the
4 Commission added on top of it. The January 8 letter is a
5 product of the TRT.

6 JUDGE BLOCH: This.

7 MR. TREBY: I have to disagree with what
8 Mr. Roisman is saying. The January 8 letter, and I
9 believe also the September 18 letter, were letters that
10 were sent out by the TRT team or I guess, actually I
11 believe they were both signed by Mr. Eisenhower, in which
12 they indicated that this was interim information and that
13 here were some items that the Staff wanted some more
14 information on. The Staff has consistently stated in
15 these hearings that those letters were requests for
16 information and are in no way reports of the TRT, other
17 than to the extent that they may indicate some preliminary
18 findings.

19 The report of the TRT is contained in the SER. They
20 are not coming out. And these SERs are being issued by
21 the TRT. And they are not being issued by some political
22 bodies, whatever the phrase is that Mr. Roisman is using.

23 MR. ROISMAN: We have already received from the
24 Staff an indication that this is being handled at the
25 upper management level; that is, people who are skilled in

1 advancing in the agency rather than necessarily skilled in
2 any technical area, because we have got a letter dated
3 January 8 that tells us they have set up these two senior
4 management groups who are going to ultimately develop the
5 Staff position.

6 Secondly, Mr. Treby can call black white, but it
7 doesn't change the fact that there is nothing about that
8 January 8 letter that looks like a request for information.
9 It represents findings. They say, "we found, we found, we
10 found." It is -- if the substance of Mr. Treby's position
11 is that the TRT letters are not going to -- he doesn't
12 consider them evidence, that they don't represent people
13 who will be called as witnesses in the hearing, then we
14 have got a real disagreement here. If his position is
15 that, oh, yes, all those are evidence and the SSER is
16 evidence, I don't quarrel with that. All I am saying is
17 that our position is the SSERs are unessential for
18 purposes of answering the questions that we have put
19 forward in our motion.

20 JUDGE BLOCH: Are you sure you want to take that
21 position before you read the SSER?

22 MR. ROISMAN: Yes, I think there is enough
23 evidence right now. They may support it. I am not trying
24 to prejudge whether they do or don't. They may support it.
25 They may oppose it or they may be irrelevant to it. But

1 our whole point was that when you reach a certain point in
2 the process, you reach that point in the process before it
3 has the power and we think should exercise it to say, we
4 have seen enough, we now know what it is you are going to
5 need to do.

6 JUDGE BLOCH: I don't understand the rush.
7 Assuming that there is going to be additional information
8 coming out in the SSER, which is the Staff position, and
9 that there is this old information available and that your
10 proposal is a really major reinspection of everything, why
11 not give the Applicant time to receive and digest the SSER
12 before they take what we hope will be a responsible
13 position in the proceeding? What is the rush to go ahead
14 and save a month on the schedule on the scenario you are
15 setting up?

16 MR. ROISMAN: First of all, maybe because I have
17 been sold on the need for a rush getting the hearings
18 resolved by everything that has been said before this
19 morning's telephone call. The Applicant has always said,
20 let's rush, let's hurry, let's do it. In fact the
21 standard position in the licensing hearing has been, you
22 don't wait for the Staff to finish its position. If we
23 had done that, we wouldn't have spent four grueling weeks
24 in Glen Rose. We wouldn't have already had six weeks of
25 hearings on the harassment/intimidation question.

1 The board has said before that the parties are not free
2 to suddenly switch their positions when it seems to be to
3 their strategic advantage. They think the Applicant has
4 been dealt a body blow of death-defying proportions and
5 they would like to get some breathing space.

6 I feel that they are not entitled to that. They didn't
7 want to give CASE any breathing space when it asked for it.
8 We went to hearings before we had a Staff position on
9 anything. There wasn't even a TRT operating. I don't
10 think it would be reasonable to do that, since Mr.
11 Eisenhut, at least, is quoted in the newspaper as saying
12 that his theory is that what the Staff will do is write an
13 SSER which ultimately says, we see lots of problems, the
14 Applicant has come to us, they have done a mea culpa, we
15 have now accepted their mea culpa and if they implement
16 all the things they say they are going to implement, there
17 is reasonable assurance that based on that fact we will
18 supervise their implementation, and we can tell the board
19 it is time for you guys to get out of the deciding process.

20 That in our judgment is wrong. That is an evasion of
21 the board.

22 JUDGE BLOCH: Where did they say --

23 JUDGE GROSSMAN: I just wanted to find out
24 whether Applicant and NRC Staff feel that at this moment
25 they cannot respond to the brief that CASE just submitted.

1 Does the Staff feel that it has to await the issuance of
2 all those SERs before it can respond?

3 MR. TREBY: Absolutely. Putting aside the fact
4 that we have only had this brief in our hands for a half
5 hour, I think that the more important question is that
6 this is asking for some sort of a view as to what further
7 action should be taken into this case. Before the Staff
8 will be prepared to answer that question, the Staff needs
9 to complete its work, the work of the TRT, and also of its
10 task force so that it can have a position. I think that
11 unfortunately one of the problems that we have had in this
12 case is that the Staff has not had a position and tried to
13 go along and to take sort of non-positions as we keep
14 moving along.

15 I think it is time to change that. At this point, we
16 think that it is necessary, before we respond to any
17 pleadings such as the one that the Intervenors have just
18 filed, for the Staff to complete its work, have a position,
19 so that it can intelligently respond to the motion.

20 JUDGE GROSSMAN: I understand from what you have
21 said that if there is no slippage, you feel that you would
22 be ready sometime during March, is that it? At the
23 beginning of March?

24 MR. TREBY: Yes, that is my understanding from
25 the project manager of the TRT. That is Mr. Noonan, who

1 is charged with the task of coordinating all of this stuff
2 and getting the various documents completed and published.

3 JUDGE GROSSMAN: Is there any time limit that
4 you would like us to suggest, that you would like to
5 suggest now, taking, probably based on the final SER
6 coming out? In other words, if the final one in the
7 series comes out March 7th, would you be willing to commit
8 yourself now to some time limit for response to CASE's
9 brief, let's say, two weeks after that? Do you have
10 anything like that in mind now, Mr. Treby?

11 MR. TREBY: No, Judge Grossman. I guess what I
12 do have in mind is to perhaps have another prehearing
13 conference early in March and at that time give a status
14 report. And at that time know what SERs are out,
15 hopefully all of them. And if not, why not. And also at
16 that time be able to commit to a time to respond to this
17 pleading.

18 JUDGE GROSSMAN: I take it Applicant is in
19 agreement with this.

20 MR. WOOLDRIDGE: Without regard to the question
21 of whether we should wait, as as Judge Bloch says, to
22 receive and digest the SERs, I think we ought to at least
23 have the opportunity to receive and digest the motion by
24 Mr. Roisman. We learned of that 30 minutes before this
25 conference call. As I understand it, it is 50 or more

1 pages in length. I do not think it would be productive
2 for me to address the arguments of Mr. Roisman at this
3 time, although I obviously do not agree with a lot of it.

4 It would be our thought that Mr. Roisman's motion
5 should follow the normal course, and if we can reply
6 timely, we will do so. If we feel that additional time is
7 needed to respond to it, we will seek a request from the
8 board that additional time be granted. I just don't know
9 at this stage what our position would be in that regard.

10 JUDGE BLOCH: So we could postpone a ruling on
11 that until you have had a chance to assess it?

12 MR. WOOLDRIDGE: Yes. I would suggest that the
13 board consider scheduling another conference call at or
14 about March 1 to discuss this in more detail, and without
15 prejudicing any party to this proceeding to ask for an
16 earlier conference with the board if the circumstances
17 justify it.

18 JUDGE GROSSMAN: Right now we do have the ball
19 in our court.

20 MR. WOOLDRIDGE: That is correct.

21 JUDGE GROSSMAN: So we do have to take some
22 action at this conference.

23 JUDGE BLOCH: You wanted to read it first and
24 tell us later, right?

25 MR. WOOLDRIDGE: I would like to read it and

1 determine that there is a time limit for responding to
2 CASE's brief.

3 MR. TREBY: That we would have to set aside in
4 order to follow that schedule which is what the Staff and
5 Applicant are requesting at this juncture.

6 JUDGE BLOCH: Mr. Wooldridge, are you requesting
7 that yet? I didn't understand why you were.

8 MR. WOOLDRIDGE: No. If I understand the
9 question, Judge Bloch, I am not requesting that. What I
10 am saying is that I don't see that it is necessary for us
11 to wait to address Mr. Roisman's motion until we have the
12 final Staff position on all issues. That does not mean
13 that when we do reply to the motion, we might not suggest
14 that the matter be stayed and considered after that
15 position has been made known. But I can't address that.
16 I just don't know. I haven't read the motion.

17 JUDGE BLOCH: Just one moment off the record.

18 (Discussion off the record.)

19 JUDGE BLOCH: We still haven't heard from
20 Ms. Ellis about her opinion as to how we should go forward.
21 I would like to hear from her also.

22 MS. ELLIS: First of all, I want to call the
23 board's attention specifically to, I believe it is the
24 first footnote which sets forth our basic position, which
25 is that we don't think that any sort of reinspection is

1 appropriate until the design issues are going to be
2 addressed. However, it appears that that has already
3 basically been taken out of our hands and that some sort
4 of a reinspection is planned. I wanted to make very clear
5 that we have not changed our position on that. That we
6 still believe that is right. We think that the design
7 issues should be handled, and whatever flows from that
8 should be handled before any kind of reinspection of the
9 hardware is done.

10 However, if a reinspection of any kind is going to be
11 done, then we think that the, what Mr. Roisman has stated
12 in our pleadings should come into play.

13 Another thing, as far as the timing on the issues of
14 the O.B. Cannon matters and so forth, I think that I would
15 defer that to Mr. Roisman on any part of that side of the
16 case.

17 So, I think that also as far as any responses or
18 anything like that to our motion which they have filed, I
19 think that that also would be appropriate to defer that.

20 JUDGE BLOCH: Mr. Treby, I take it that the
21 civil and structural task forces will go to cover the
22 design issues; is that correct?

23 MR. TREBY: They are going to cover some of them.
24 I am not sure that they are covering all of the design
25 issues.

1 JUDGE BLOCH: Are they going to be covered by
2 the task forces whether they are finished, are all of them
3 going to be covered?

4 MR. TREBY: I believe that the design issues are
5 being looked at principally with regard to the various
6 motions for summary disposition. I believe that some of
7 the design matters may have been looked at by the
8 technical review team, but the technical review team
9 efforts were mainly directed toward construction and what
10 the as built plant looked like.

11 JUDGE BLOCH: Is the Staff therefore planning
12 still to go ahead on answers to defer the summary
13 disposition motions independent from the SERs?

14 MR. TREBY: Yes. The Staff is planning to issue
15 some answers to the motion.

16 JUDGE BLOCH: Is that what Applicant wants, to
17 remain with a summary disposition motion, which we call
18 "written filings motions," pending in the form that they
19 are and that we should analyze and decide them when the
20 Staff responds?

21 MR. WOOLDRIDGE: Judge Bloch, this is
22 Mr. Wooldridge, we are not sure at this point about that
23 for several reasons. One is, we are not sure what the
24 contention 5 panel intends to do -- that is, the NRC Staff
25 panel, intends to do about the design issues. It is our

1 understanding that the Staff's technical people still have
2 some additional questions to ask of the Applicant in
3 connection with at least some of those summary disposition
4 motions. Those matters should fitted into the overall
5 plan of how we finally decide to resolve all of these
6 issues, and I don't have -- how they interreact and
7 interplay with each other, I am not sure at this point. I
8 don't know when the Staff intends to file a reply. But I
9 assume they are not going to be filing them for at least
10 several weeks if they have additional questions.

11 JUDGE BLOCH: It sounds to me like there may be
12 room for discussion between the Staff and the Applicant
13 and CASE about what the status is of those written filing
14 motions so that Staff won't be spinning wheels if the
15 Applicants have a view of them as not being their final
16 position. I am not sure exactly what you are saying. It
17 seems a little vague to me.

18 MR. WOOLDRIDGE: It is vague, your Honor. I
19 will have to acknowledge that. What we want to do is to
20 avoid a substantial amount of duplication. We have the
21 same process going on in three separate arenas; that does
22 not seem to us to be an efficient way to handle it. We
23 have not determined, as yet, just exact exactly how these
24 parts are going to fit together. That is the process we
25 are going through now in responding to the TRTs.

1 JUDGE BLOCH: One second off the record.

2 (Discussion off the record.)

3 JUDGE BLOCH: The board is prepared to rule on
4 the status of the case?

5 MS. ELLIS: I wasn't through.

6 JUDGE BLOCH: I am sorry, Ms. Ellis.

7 MS. ELLIS: No, I am sorry. In addition, I
8 would point out that in the pleading which was just filed,
9 as we indicated in our part of the hearings, we will be
10 making a major filing regarding Cygna which just ties in,
11 obviously, with the design issues and with the (inaudible).
12 We think that there are some specific things that the
13 board should have in hand before we have any further
14 conference calls about the design issues. There have been
15 several letters, in addition to the one which was sent to
16 the board by Cygna recently which had come out recently,
17 which the board should have in hand. We will provide
18 those to the board at the time we make our filing.

19 In addition, there are several transcripts of recent
20 meetings which we believe the board should have in advance
21 of discussing these. Some of them we will be quoting from,
22 some of them we will ask the board to take official notice
23 of. But we believe that there is sufficient information
24 contained that the board should have the entire transcript
25 to review rather than having just portions. We don't feel

1 that they should have to provide those. We think the
2 Staff should provide those.

3 JUDGE BLOCH: Staff has been providing some of
4 them, and I suspect that if you requested specific
5 sections be served on the board that the Staff may be able
6 to accommodate you. I think if you deal with that
7 informally, you may have some success.

8 MS. ELLIS: All right. Those are some of the
9 things that we do plan to file in the near future. In
10 addition, there is one other matter regarding the status
11 of the CASE that I think should be brought up at this time.
12 That is that case expects to file shortly some new and
13 significant information on the welding issue and asks the
14 board to hold the record open on that, as we have in our
15 motion for reconsideration. We ask the board to hold the
16 record open on that until we have it in hand. We expect
17 to have it shortly, probably this week.

18 JUDGE BLOCH: My inclination is not to rule on
19 anything that is pending, even the couple of matters on
20 which all of the filings have been made. Would you like
21 to comment on that?

22 MS. ELLIS: I would just like to put all the
23 parties on notice that this information will be
24 forthcoming. Part of it would be in the form of board
25 notification from the Staff, which I understand they are

1 considering at this point. If not, CASE will make its own
2 board notification and additionally, some information
3 regarding codes. I did want to put everybody on notice
4 about that.

5 In addition, to raise one other question which we
6 believe is applicable to the case or possibly applicable
7 to the case, we would ask the Applicants if they have any
8 information on it at this point. It is our understanding
9 that the Brown & Root has the -- that the Brown & Root
10 ASME N-stamp expires on March 15, 1985. We would like to
11 find out if there has been any discussion about that. If
12 there will be a reinspection bias me at that time, which I
13 would assume would be the case. If there is such a
14 reinspection, we will be interested in it and will be
15 wanting discovery.

16 MR. TREBY: I would like to make one comment on
17 something the board said which is with regard to ruling on
18 any pending matters. I would like to support the view
19 that the board not rule on any matters that may be pending
20 before it now, such as things like welding or stuff, until
21 the Staff has issued its documents.

22 My understanding is that one of the things that the TRT
23 looked at was some welding matters. And my understanding
24 is that there may be some information with regard to that
25 that will come out in the SER that they are planning to

1 publish in the mechanical piping area. It seems to me
2 that we ought to get all of this information out before
3 the board and the parties, before we have any more rulings.

4 MR. ROISMAN: Mr. Chairman, it seems to me that
5 what is on the table are several separate matters. One of
6 them is when the parties will have a status conference to
7 discuss the final resolution of all the matters in the
8 hearings.

9 I think the CASE position on that is that that
10 conference needn't be held in the immediate future. It
11 could be held as early as a week or two weeks from now.
12 That, on the other hand, that there is CASE, ready in that
13 time frame to have a status conference, that any further
14 postponement of it would be at the request of some other
15 party.

16 Separate from that is that we filed a motion. The
17 motion is subject to the usual rules of the Commission.
18 Mr. Wooldridge has properly said he will file an answer or
19 he will file a request for an extension of time to file an
20 answer. The Staff, on the other hand, has made, in effect,
21 a motion. The motion that they have made this morning is
22 that they not have to file an answer until some time after
23 the SSERs are all filed. The Staff has made, in effect,
24 that motion at least twice before in this proceeding, when
25 they have said, once I think it was in December, another

1 time in January, that they didn't want to move ahead on
2 anything until they had completed their work.

3 The board, both times, rejected the Staff position.

4 That is the law of the case. I don't believe the board
5 should now, on the basis of an oral presentation of the
6 Staff position, take a ruling on that. I believe that if
7 the Staff's position is that it is entitled to a
8 reconsideration of the board's basic position, which is
9 that this proceeding moves ahead irrespective of the Staff
10 and if they use it as an excuse to not answer our motion,
11 that they should file a written request for an extension
12 of time and give us an opportunity to file a written
13 response; that that request should be filed immediately so
14 that the filing of the request does not become a de facto
15 extension of time.

16 We would note that the Staff position today is
17 inconsistent with the position they took when they
18 presented the EG&G report to the board as evidence, which
19 was a consultant's report to the TRT before the TRT itself
20 had even reached any preliminary findings on anything.
21 The Staff eagerly files motions in support of the
22 Applicants' position on a whole variety of issues without
23 waiting for the SSER to come forward, and that Mr. Treby's
24 position today should be understood to be exactly what it
25 is: the Staff is looking for the time to politicize the

1 TRT findings.

2 I would ask the board to look at what is filed with our
3 motion. The draft of the January 8, 1985 letter from
4 Mr. Eisenhut would, significantly, in the final version
5 delete the statement that "the Applicant shall rectify the
6 present plant quality uncertainties." That was left off
7 of the final. The only thing that happened in between was
8 politics. There was no science applied to that, no
9 technical expertise, and the letter itself had attached to
10 it the findings called "enclosure one, summary of TRT
11 findings in the quality assurance area." Mr. Treby, in a
12 manner that I must submit in all deference to him is
13 nothing less than disingenuous, tries to tell you that
14 their preliminary, that they are partial. That, I submit,
15 is not correct. That represents, again, Mr. Treby's
16 attempt to let the political process alter the substance
17 of what is going on here.

18 I wanted a chance to respond to a Staff request based
19 on the premise that it should not have to deal with the
20 motion that CASE filed until after all its SSERs are in.
21 I would note that region 4, in a letter, dated on the 18th
22 of January, has already ordered the Applicant to do some
23 kind of a reinspection program.

24 I don't think the Staff has stated this on the record,
25 and I would like a filing so that we can find out who is

1 on first. I don't know who is in charge anymore over
2 there. Does the TRT filing represent a final position by
3 those TRT people? Does region 4 position represent a
4 final position by the agency? Does Mr. Treby represent
5 the position of the Staff? Or of somebody else? I
6 believe that the way to get at that is to go through the
7 normal regularized process. Our view is, if you want to
8 postpone the hearing on what the status of the hearings
9 are, fine. But right now the rule should be, we follow
10 the filing requirements, respond to the CASE motion filed
11 yesterday; they should be filed on time or extensions
12 requested. That is our position.

13 JUDGE BLOCH: Thank you.

14 I know that there are parties who would like to respond.
15 I am not sure a response is needed. We will take a very
16 brief off the record session right now.

17 (Discussion off the record.)

18 JUDGE BLOCH: The board is prepared to rule,
19 Judge Jordan and Judge McCollom have not been in
20 conference with the Chairman. If they have any comments
21 or objections at the end of the ruling they will have an
22 opportunity to state them.

23 MR. TREBY: The Staff does want to make a
24 comment at this point.

25 JUDGE BLOCH: I don't think it will be necessary.

1 If you have to after the ruling, you may.

2 MR. TREBY: All right.

3 JUDGE BLOCH: Procedural rulings in cases of
4 this kind require an understanding of the overall context
5 of the case. The board believes it has some understanding
6 of what that context is at this time. The Staff findings
7 in the SER and in the other matters that have reached the
8 board indicate that there are some concerns of seriousness
9 related to the quality of the Comanche Peak nuclear plant.
10 The Applicants are obviously taking the Staff findings
11 quite seriously and intend to respond in depth. They have
12 reorganized the legal team in an effort to do that and
13 obviously are responding quite seriously to the Staff
14 findings.

15 In the opinion of the board, this is not a time to rush
16 forward. We understand why Mr. Roisman would seek to do
17 that. If Mr. Roisman is correct, on the need for an
18 independent construction review, it seems to me that the
19 board will be better prepared to know that after the Staff
20 has had an opportunity to consider it and the Applicants
21 have had a chance to respond.

22 For all we know at this time, the Staff or the
23 Applicants may voluntarily adopt something that is quite
24 acceptable, as Mr. Roisman's plan or might be identical to
25 Mr. Roisman's plan. But whatever the ultimate outcome

1 from the standpoint of the Staff and the Applicants, it
2 seems to me that the case is at such a point that rushing
3 is not productive.

4 As a result of that, we would grant, without further
5 argument by CASE, the Staff's request for an extension of
6 time to respond and that extension of time will be until
7 February 25, 1985, with respect to the motion that CASE
8 filed this morning. Applicants are not requesting and
9 Applicants have not requested an extension and will not be
10 granted it at this time, although we understand that after
11 they review the filing they may request a similar
12 extension. We would at this point set as the prehearing
13 conference date March 5 at 10:00 a.m. and that, of course,
14 would be subject to change.

15 One moment.

16 (Discussion off the record.)

17 JUDGE BLOCH: We would clarify that the February
18 25 response date is subject to further extension of time
19 if the Staff finds it needs it.

20 Also that the issues pending before the board include
21 not just the hardware issues addressed by case. They do
22 involve conclusions that the Staff may -- that the board
23 may have to make about management responsibility for the
24 QA program and what the management implications are for
25 the operation stage.

1 In addition, there are possible issues related to the
2 need for repeated litigation of matters that CASE has
3 raised and whether there is any way to mitigate the due
4 process concerns that the board expressed in early 1984
5 about litigation and relitigation of issues by the same
6 party.

7 Are there any necessary comments by the parties about
8 the ruling that the board has just made?

9 MR. ROISMAN: Only one. I would ask that the
10 board reconsider the characterization of the Applicants'
11 response as having found some serious problems. I believe
12 the board used the phrase, "The Applicant is obviously
13 responding in a serious manner." I believe that
14 represents at least a much too early prejudgment of an
15 issue that is in the hearing. I am concerned that it is
16 in what is, in effect, a board order; that is, it will be
17 utilized as a basis for arguing that the board has
18 concluded that the Applicant did respond seriously. In
19 fact, we have nothing on the record, not even in our hands
20 do we have anything, that would suggest that the Applicant
21 has responded at all.

22 JUDGE BLOCH: We are not commenting on the
23 response that they will ultimately file. When we see that
24 we will form a conclusion. I was only talking about the
25 nature of the changes the Applicants have made in the

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1 legal staff and the amount of effort that they appear
2 ready to put in responding to the Staff concerns.

3 MR. ROISMAN: All I was saying is, I am not
4 aware of either of those ever being put on the record. I
5 I know there was an ex parte communication between
6 Mr. Wooldridge and yourself. We were not parties to that.
7 What was said at that has never been memorialized on the
8 record.

9 JUDGE BLOCH: We received a memorialization of
10 it yesterday. It should be in your hands today or
11 tomorrow. It was filed.

12 MR. ROISMAN: Is that -- is it that conversation
13 that forms the basis for that statement?

14 JUDGE BLOCH: No. It is in addition to that
15 there were some of the Staff conferences of which we are
16 aware. In particular the Staff conference of Thursday,
17 January 17, 1985.

18 MR. ROISMAN: All right.

19 MR. GALLO: This is Joe Gallo.

20 JUDGE BLOCH: Yes, sir.

21 MR. GALLO: I understand the board's ruling to
22 essentially also cover the appearance of the Cannon
23 witnesses as well, in terms of the scheduling you talked
24 about; the handling of the case subsumes and deals with
25 the Cannon witnesses in the same way?

1 JUDGE BLOCH: Correct. There is no schedule at
2 this time and we in fact do not know at this time whether
3 further testimony of those witnesses will be required.

4 MR. GALLO: Thank you.

5 JUDGE BLOCH: Or not required. I can't
6 guarantee you anything for your clients.

7 MR. GALLO: I understand.

8 MS. ELLIS: I understood you to say that this
9 would be a prehearing conference. You did mean a
10 prehearing conference call.

11 JUDGE BLOCH: That is correct. Although it is
12 possible, depending on the issues and how complex they
13 look at that time, that we would decide it would be better
14 to do it face to face. But right now we are contemplating
15 a conference call on March 1 -- March 5 at 10:00 a.m.

16 There are there other necessary comments.

17 MR. TREBY: Yes. I have two comments I would
18 like to make.

19 Number one, we recognize that the board has given us
20 until February 25 and has also indicated that if necessary
21 the Staff can file additional motions for extension of
22 time. I would like to make it very clear, though, on this
23 record that the Staff's view is that in order for the
24 Staff to submit a meaningful response to the motion filed
25 by the Intervenors, the Staff needs to know what what the

1 final position is on this plant. That position cannot be
2 determined until the Staff has completed the issuance of
3 its TRT documents and gotten the benefit of the
4 conclusions of the various task forces. I am not making
5 any motions for reconsideration, I just wanted it to be
6 clear on the record what the Staff's view is. If
7 necessary, the Staff will file appropriate written motions.

8 The second comment I wanted to make is with regard to
9 the gross misrepresentation that the Staff believes
10 Mr. Roisman has been making as to the process in which it
11 has been going about indicating its requests for
12 information or putting out information with regard to the
13 findings of the TRT. All that is necessary is to look at
14 the January 8 letter, particularly the second paragraph,
15 in which it very clearly states that on the various dates
16 stated in there, the NRC has met with Texas utilities or
17 provided them documents requesting information. And with
18 regard to what it is about to say on the QA/QC allegations,
19 says, "The TRT review of construction QA/QC allegations
20 and technical issues have progressed to the point where we
21 can now provide you with the status of our efforts in the
22 construction QA/QC area," and they request for a program
23 plan, specifically addressing our concerns.

24 To me, that is not a report on the matter but clearly a
25 request for additional information -- namely, a program

1 plan.

2 JUDGE BLOCH: Frankly, I don't know why we are
3 bothering to discuss that right now. I understand that
4 there was a loose end. There is other language in the
5 letter that is subject to other interpretation. I don't
6 know why we should bother to interpret that letter right
7 now.

8 MR. TREBY: I just don't want the record to
9 indicate by any silence on the Staff's part that we agree
10 in any way with the characterizations that Mr. Roisman has
11 been making.

12 JUDGE BLOCH: Other necessary comments?

13 JUDGE JORDAN: I have a question. I have heard
14 reference today to a reinspection program and I have not
15 seen any filing with respect to that.

16 JUDGE BLOCH: Dr. Jordan, that was filed this
17 morning and it was hand-delivered. There would have been
18 no opportunity for you to receive it. It is a CASE filing
19 requesting a reinspection program.

20 JUDGE JORDAN: I thought there was a, CASE made
21 a reference to division 4 requiring a reinspection.

22 JUDGE BLOCH: Is that correct?

23 MR. ROISMAN: Yes, that is correct. Ms. Garde
24 is on the line. Was it right, it is the January 18 letter?

25 MS. GARDE: It is the January 18 letter from

1 region 4 to Mr. Spence which attaches the walk-on
2 inspection of the auxiliary and safeguard building
3 inspection.

4 JUDGE BLOCH: Is that referenced in the motion
5 that I have in my hand?

6 MR. ROISMAN: Yes.

7 JUDGE BLOCH: Where?

8 MS. GARDE: I don't know.

9 JUDGE BLOCH: Okay. I guess it is footnote 6
10 on Exhibit 3. All right.

11 Are there any other necessary comments? There being
12 none, the conference is adjourned.

13 (Whereupon, at 10:55 a.m., the conference was
14 adjourned.)

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CERTIFICATE OF OFFICIAL REPORTER

This is to certify that the attached proceedings before the UNITED STATES NUCLEAR REGULATORY COMMISSION in the matter of:

NAME OF PROCEEDING: TEXAS UTILITIES GENERATING COMPANY, et al.
(Comanche Peak Steam Electric Station,
Units 1 and 2)

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

PLACE: WASHINGTON, D. C.

DATE: TUESDAY, FEBRUARY 5, 1985

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission.

(sig) Rebecca E. Eyster
(TYPED)

REBECCA E. EYSTER

Official Reporter

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