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February 6, 1985

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

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OFFICE OF SECRETARY  
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In the Matter of )  
TEXAS UTILITIES ELECTRIC )  
COMPANY, et al. )  
(Comanche Peak Steam Electric )  
Station, Units 1 and 2 )

Docket Nos. 50-445 OL  
50-446 OL

NRC STAFF REPLY TO CASE'S MOTION FOR  
RECONSIDERATION OF LICENSING BOARD'S  
MEMORANDUM (CONCERNING WELDING ISSUES)

I. INTRODUCTION

On January 7, 1985, Intervenor Citizens Association for Sound Energy (CASE) filed a Motion for Reconsideration of the decision and order issued by the Licensing Board in its December 18, 1984 Memorandum (Concerning Welding Issues), LBP-84-54, 20 NRC \_\_\_\_ ("Welding Decision"). In its motion CASE requests the Board to reconsider certain of the findings in the Welding Decision which, according to CASE, "are erroneous and not supported by the record in some instances and which have unnecessarily and irrevocably damaged" CASE's witnesses and the integrity of the Commission's regulatory process. CASE Motion at 5. The Staff's response to CASE's motion is set forth below. <sup>1/</sup>

<sup>1/</sup> On January 25, 1985, the Staff requested an extension of time until February 6, 1985 to file its reply to CASE's Motion. This request was granted by Judge Bloch on January 28, 1985.

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## II. BACKGROUND

In its Welding Decision, the Board addressed certain allegations raised by CASE witnesses Henry Stiner and his wife, Darlene Stiner, concerning improper welding practices at Comanche Peak Steam Electric Station ("CPSES"). In rejecting the Stiner's allegation that there existed at CPSES a widespread practice of weave welding, downhill welding, lax weld rod control, unauthorized repair welding, and noncompliance with preheat requirements, the Board found neither of the Stiners a credible witness. <sup>2/</sup> Welding Decision at 1. By contrast, the Board found credible the witnesses presented by Applicants. Id. at 9, 31, 42.

In its motion for reconsideration, CASE requests the Board to modify several statements in the Welding Decision relating to the credibility of Henry and Darlene Stiner, Applicants' witnesses, and Staff Inspection Report 81-12. In addition, CASE requests the Board to vacate its finding concerning the reason for Henry Stiner's termination of employment at CPSES. Finally, CASE requests the Board to clarify its Welding Decision to make clear that C. Thomas Brandt does not possess a degree in engineering. <sup>3/</sup> The Staff will respond to each of CASE's requests.

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<sup>2/</sup> Although the Board concluded that there did not exist at CPSES a widespread practice of unauthorized repair welds or noncompliance with preheat requirements, it reserved final judgment on the safety significance of these items pending further information from the Staff. See Welding Decision at 78.

<sup>3/</sup> In its motion CASE also requests the Board to reconsider certain findings relating to Henry Stiner's background. The Board already has granted this request. See Memorandum (Clarification of Welding Issues Order of December 18, 1984, LBP-85-\_\_\_\_, 20 NRC \_\_\_\_ (January 16, 1985).

### III. DISCUSSION

#### A. Standards Governing Motions for Reconsideration

Licensing boards have inherent authority to entertain motions for reconsideration. See Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-235, 8 AEC 646 (1974). This does not mean, however, that a licensing board should entertain a motion for reconsideration as a matter of course. The Commission has indicated that a motion for reconsideration which merely repeats or restates arguments previously considered should be denied. See Nuclear Engineering Co. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-80-1, 11 NRC 1, 5-6 (1980); see Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Unit 2), ALAB-30, 4 AEC 685 (1971); Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 2), 4 AEC 678 (1971). Similarly, a motion for reconsideration should be denied if it is based on arguments not previously advanced. See Central Electric Power Cooperative, Inc. (Virgil C. Summer Nuclear Station, Unit No. 1), CLI-80-26, 14 NRC 787, 790 (1981); Tennessee Valley Authority (Hartsville Nuclear Power Plant, Units 1A, 2A, 1B & 2B), ALAB-418, 6 NRC 1, 2 (1977). According to the Commission, a motion for reconsideration is proper only if it is confined to "an elaboration upon, or refinement of, arguments previously advanced." Virgil C. Summer, supra, 14 NRC at 790. Very little of CASE's motion elaborates upon, or refines arguments previously presented in its proposed welding findings of fact. Instead, CASE's motion for reconsideration is primarily a vehicle

for the presentation of new arguments <sup>4/</sup> or the restatement of arguments previously considered. <sup>5/</sup> Although this fact is in itself sufficient reason for the Board not to entertain CASE's motion, the Staff has examined each of the findings of which CASE seeks reconsideration. The Staff's comments are set forth below.

B. Credibility of Intervenor's and Applicants' Witnesses

CASE requests the Board to reconsider its finding that Applicants' witnesses were more credible than CASE witnesses Henry and Darlene Stiner, or either of them. The Staff believes that the Board's finding on this issue is supported by reliable, probative, and substantial evidence in the record and should not be disturbed.

In reaching the conclusion that the Stiners were less credible than Applicants' witnesses, the Board considered: (i) the consistency and plausibility of each witness's testimony; (ii) the Stiner's hazy recollection on several significant matters; and (iii) evidence relevant to veracity. In assessing a witness's credibility, a fact finder properly may consider the consistency of a witness's testimony, the witness's ability to recollect and recount events accurately, and evidence relevant to his reputation for truth and veracity. As the Board's Welding Decision indicates, there is ample evidence in the record to support the Board's reluctance to accept

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<sup>4/</sup> See CASE Motion at 23 (reconsideration of finding that C. T. Brandt is employed as QA Staff Engineer); id. at 61 (credibility of Staff Inspection Report 81-12).

<sup>5/</sup> Compare, e.g., CASE Motion at 31-61, with, CASE Proposed Findings of Fact on Welding Issues at 4-7 (credibility of witnesses).

the Stiner's version of events disputed by Applicants. By contrast, the testimony of Applicants' and Staff's witnesses was not marked by patent inconsistencies and did not suffer from vague recollections of seemingly important events; nor was the reputation for truth and veracity of any of these witnesses impeached. Thus, on the basis of the record before it, the Board acted reasonably in concluding that, on balance, the Stiner's testimony (as opposed to either of the Stiners personally) was less believable than that of Applicants' witnesses. CASE should note that in finding the testimony of Applicants' witness more credible than that of the Stiners, the Board was not implying that the Stiners' testimony was not truthful or that either of the Stiners is not worthy of belief. It simply means that based on the totality of circumstances and the factors noted above, the Board had more confidence in Applicants' version of the disputed events. Since the Board's finding is supported by reliable, probative, and substantial evidence, it should not be disturbed.

C. Darlene Stiner's Reliance on Henry Stiner's Testimony

CASE requests the Board to reconsider its finding that "with regard to her testimony, [Darlene] Stiner apparently relied heavily on what her husband told her." Welding Decision at 15. The Staff agrees with CASE that the quoted statement overstates the evidence. Mrs. Stiner's testimony concerning weave welding, plug welding, and weld rod practices at CPSES was based on her personal knowledge and experience. See, e.g., CASE Ex. 919; CASE Ex. 667. The only instance in which Mrs. Stiner could be said to have relied entirely upon information provided her by Mr. Stiner involves her testimony regarding the effect of excessive

heat input. Accordingly, the Staff supports CASE's request that the Board modify its finding to conform to the evidence.

D. Credibility of Staff Inspection Report 81-12

CASE suggests that the Board placed undue reliance upon Staff Inspection Report 81-12 in considering the Stiner's repair welding allegations. According to CASE, the Board could not rely upon that document for the proposition that welders at CPSES complied with the procedures governing repair welds because subsequent Staff investigations revealed that this was not the case. Accordingly, CASE requests the Board to modify its finding to make explicit that Inspection Report 81-12 should be accorded no weight. The Staff opposes CASE's request.

The flaw in CASE's position is that it overlooks the fact that the Board did not find that unauthorized repair welds were not made at CPSES. On the contrary, the Board found that "Mrs. Stiner was directed to perform unauthorized repair welds on at least three hangers on the turbine building fab tables." Welding Decision at 68. Thus, assuming arguendo that Inspection Report 81-12 was offered to prove that no unauthorized repair welds were made at CPSES, it is plain from the portion of the Welding Decision quoted above that the Board found Inspection Report 81-12 unpersuasive. Consequently, there is no merit in CASE's contention that the Board placed undue reliance on Inspection Report 81-12.

E. Reason for Henry Stiner's Termination

In its Welding Decision, the Board found that Henry Stiner was discharged from CPSES "because of his absenteeism, not because he gave information to a OC inspector about a gouge in a pipe ..." Id. at 1. <sup>6/</sup> The Staff agrees with CASE that this finding should be vacated because the reason for Mr. Stiner's termination was not a matter in controversy in the welding aspect of this proceeding. As the Staff stated in its Response to Applicants' and CASE's Proposed Findings of Fact on Weld Fabrication:

CASE devotes a significant portion of its proposed findings on downhill welding to a discussion of the circumstances surrounding the alleged unlawful termination of Henry Stiner. CASE Finding of Fact, Part II at 1. The Staff notes, however, that while the circumstances of Mr. Stiner's termination may be considered in the "intimidation" portion of this proceeding, this matter is not at issue in this portion of the proceeding and thus evidence relating to that matter is irrelevant in this portion of the proceeding.

Id. at 6 (emphasis added.)

F. C. Thomas Brandt's Professional Qualifications

CASE requests the Board to modify its Welding Decision to make clear that Mr. Brandt is not an engineer by virtue of educational attainment. The Staff agrees with Applicants that the relief requested by CASE

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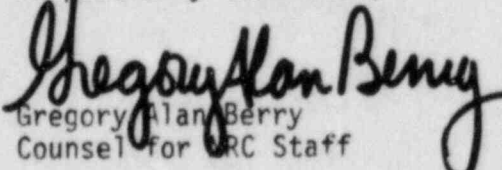
<sup>6/</sup> The Board's decision does not contain any record citations supporting this finding. In this respect, the Welding Decision falls short of the obligation to furnish "record references that demonstrates its fact findings have evidentiary support." Virginia Electric and Power Co. (North Anna Power Station, Units 1, 2, 3 and 4), ALAB-256, 1 NRC 10, 14 n.8, quoting State of Louisiana v. Federal Power Comm., 503 F.2d 844, 871 (5th Cir. 1974).

is unnecessary. Mr. Brandt's educational background and professional qualifications are already a matter of record. See Applicants' Ex. 141. Moreover, Mr. Brandt has indicated on numerous occasions in this proceeding that he does not possess an engineering degree. See e.g., Tr. 21210 (November 28, 1984). Finally, the Staff notes that in its Welding Decision, the Board indicated that Mr. Brandt was offered by Applicants and recognized by the Board as an "expert in quality control," Welding Decision at 7, not in civil engineering. Consequently, the Staff is confident there is little danger that "subsequent reviewers of the record of these proceedings . . . might well be misled and give more weight to Mr. Brandt's testimony than is warranted." CASE Motion at 23.

#### IV. CONCLUSION

The Board should grant CASE's request to modify the finding in its Welding Decision relating to Darlene Stiner's reliance upon information provided her by Henry Stiner and vacate its finding concerning the reasons underlying Henry Stiner's termination from employment at CPSES. In all other respects, however, CASE's Motion for Reconsideration should be denied.

Respectfully submitted,

  
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Dated at Bethesda, Maryland  
this 6th day of February, 1985





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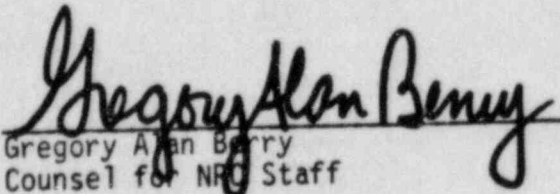
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