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Filed: March 1, 1985

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
before the
ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
TEXAS UTILITIES GENERATING)	Docket Nos. 50-445-2
COMPANY et al.)	50-446-2
)	
(Comanche Peak Steam Electric)	
Station, Units 1 and 2))	

APPLICANTS' OBJECTION TO "CASE'S
REQUESTS FOR ADMISSIONS AND
MOTION FOR A PROTECTIVE ORDER"

In response to "Case's Requests for Admissions" served February 5, 1985,¹ the Applicants object to those Requests and move that the Board enter a protective order relieving the Applicants of any obligation to respond to them or deferring a response, as is set forth herein.

¹10 C.F.R. § 2.742 provides that responses to requests for admission are due "within a time designated by the presiding officer or the Commission" No designation has been made in this case, but the Applicants have chosen to reply at this time so that its position will be clear to CASE at an early time.

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Introduction

The Requests consist of 126 numbered paragraphs. Each of the paragraphs consists of material essentially quoted (though without quotation marks and with some changes in wording or typographical errors) from three Staff documents presented to the Applicants. In the form in which the Requests are drafted, it is not clear whether CASE wants an admission that the document exists and says what it says or an admission that the matters asserted in the document are true and are a fair, accurate and complete description of the state of the matters addressed.

The documents that CASE has thus transmuted consist of three interim reports by the Technical Review Team, a group of Staff technical reviewers and inspectors reviewing technical issues at Comanche Peak, including allegations. Each of the documents was transmitted by a letter of the Director of the Division of Licensing establishing the purport of the documents.

The documents transmitted by the first two letters are each entitled "Request for Additional Information." The first two transmittal letters contain this language:

"You are requested to submit additional information to the NRC, in writing, including a program and schedule for completing a detailed and thorough assessment of the issues identified. . . ."

Letter of Darrell G. Eisenhut to M. D. Spence dated September 18, 1984 and letter of Darrell G. Eisenhut to M. D. Spence dated November 29, 1984. The document submitted with the third letter is entitled "Findings;" once again, however, the transmittal letter requests "that you evaluate the TRT findings and consider the implications of these findings on construction quality at Comanche Peak." Letter of Darrell G. Eisenhut dated January 8, 1985.

As we believe the Board is aware, the Applicants are presently engaged in a program that, inter alia, is precisely the evaluation of the TRT "findings" that has been requested. That effort (which is being done by a group composed mostly of non-Texas Utilities Electric Company experts and is known as the "Comanche Peak Response Team" or "CPRT" effort) is still ongoing. When the effort is completed, the CPRT's evaluations of the TRT "findings" will be published to the Board and to CASE.

In view of this effort, the Board has previously deferred hearings and limited certain other CASE discovery efforts. Moreover, the Board has also previously noted the appropriateness of "avoid[ing] burdening Applicants with unnecessary duplication of effort." Order of 2/15/85 (granting in part a prior motion for a protective order).

Objections

1. If the Requests are viewed as requiring the Applicants simply to admit that a document contains particular words, and nothing more, then we submit that this is an abuse of the discovery process. Indeed, the proper approach for a pure "documents" admission is set out verbatim in 10 C.F.R. § 2.742(a), and CASE has not followed it. A response to the requests as they are presently framed will not constitute an admission that the facts asserted in the various paragraphs of the underlying documents are true and are a fair, accurate and complete description of the state of the matters addressed, or that the author(s) of particular paragraphs would be competent to testify to them if called to the stand, or that the document itself is admissible as evidence in support of the truth of the

matters asserted therein. What is material is that a fact exists (or doesn't); that is established by the proffer of admissible evidence (or an admission of a fact.) That something is written in a piece of paper, without more, unless and until the author of the paper is offered as a witness at hearing, is meaningless.

If the Board so interprets the Requests, the Applicants object to them and request a protective order relieving them of any obligation to respond.

2. If the Requests are, on the other hand, intended to evoke an admission or denial of the facts asserted in the various paragraphs of the Staff documents reproduced in the Requests, then the Applicants respectfully request that the work that is now ongoing and described above be deemed, when published, responses to these Requests, and that no further response is required. That work is, as the Board is aware, precisely the attempt to assess the TRT "findings" that any response to these Requests (so interpreted) would require. There seems little point in restating the response.

3. If the Requests are intended to call for an admission or denial of the facts asserted in the

various paragraphs of the Staff documents reproduced in the Requests, and the Board disapproves our suggested procedure described in paragraph 2 and desires a formal response to the Requests as such, then the Applicants suggest that no such response is possible until the work described above has been completed and move for a protective order relieving them of any obligation to respond until that time.

Respectfully submitted,

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Dated: March 1, 1985

CERTIFICATE OF SERVICE

I, R. K. Gad III, one of the attorneys for the Applicants herein, hereby certify that on March 1, 1985, I made service of the within Applicants' Objection to "Case's Requests for Admissions and Motion for a Protective Order" by mailing copies thereof, postage prepaid, to:

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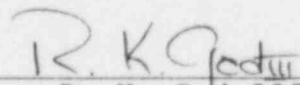
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