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October 30, 1984

RELATED CORRESPONDENCE

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'84 OCT 31 P12:02

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

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Docket Nos. 50-445/2
50-446/2

NRC STAFF RESPONSE TO O. B. CANNON AND J. J. NORRIS
MOTION TO STRIKE

I. INTRODUCTION

On October 23, 1984, Oliver B. Cannon and Son, Inc. (O. B. Cannon) and John J. Norris (Norris) moved to strike the testimony given by Mr. Norris to the Licensing Board in this proceeding on October 1 and 2, 1984, which appears in the hearing transcript at pages 18,670 through 18,903 and pages 19,034 through 19,139. The basis for the Motion to Strike is that, during Mr. Norris' testimony, he was without counsel and therefore was personally prejudiced, and that the confusion in Mr. Norris' testimony outweighs its probative value, and thus is within the principle of Rule 403 of the Federal Rules of Evidence. The Staff agrees that Mr. Norris' testimony should be stricken as evidence in the record of this proceeding, subject to the condition that the testimony be treated as a discovery deposition.

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II. DISCUSSION

The transcript, as cited by O. B. Cannon and Mr. Norris in their Motion to Strike, is clear that, at the time of his testimony, Mr. Norris was not represented by independent counsel. It is also clear Mr. Norris was essentially unprepared to answer specific questions propounded by the Board and counsel for the parties. See e.g., Tr. at 18,675-76, 18,780-83, 18,873, 19,117-19 and 19,129-30. It is the Staff's view that, if Mr. Norris had had independent counsel, said counsel would have ensured that Mr. Norris had reviewed the available documentation in order to refresh his recollection of the complicated facts concerning the interactions between O. B. Cannon and the Applicants beginning in mid-July 1983, so as to be able to respond to specific questions concerning those interactions. See Tr. at 19,134-35. This view appears to be shared by the Board in its Memorandum (Testimony of O. B. Cannon Witnesses), issued October 4, 1984. These reasons persuade the Staff to support the Motion to Strike.

However, while the Staff supports the motion that Mr. Norris' previous testimony be stricken, the Staff urges that the Board impose the following condition if the motion is granted. Specifically, Mr. Norris' testimony should be treated as a discovery deposition, able to be used by the Board and parties for all purposes which such depositions are traditionally used, e.g., prior inconsistent and/or consistent statements going to the credibility of the witness, admissions, and any other statements which can be used for impeachment purposes.

In reaching its position, the Staff considered another approach to the Motion to Strike which would be to have Mr. Norris review his

testimony and make corrections based on his subsequent review of documents within the files of O. B. Cannon. The Staff rejected this approach as not being the most efficient method of proceeding.

First of all, assuming that Mr. Norris' prefiled testimony, due November 5, 1984, fully addresses the areas of concern raised by the questioning of October 1 and 2, 1984, a corrected version of Mr. Norris' previous testimony would be duplicative. Even if Mr. Norris' prefiled testimony does not fully respond to the prior questioning, he will be available for further examination, and the relevant documents will be available to the Board and parties. Motion to Strike at 5; See Tr. at 19,135-36. Secondly, it appears that corrections to the prior testimony could be so extensive and voluminous, when based on the number of backup documents apparently required to be referred to, that the record would be unduly complicated and not aided thereby.

Therefore, the Staff does not believe the approach of correcting the transcript of Mr. Norris' previous testimony is the most efficient means of proceeding, and rejected that approach in favor of striking the prior testimony (treating it as a discovery deposition) and beginning afresh with O. B. Cannon's prefiled testimony.

III. CONCLUSION

For the reasons stated above, the Staff supports the motion that the testimony of Mr. Norris be stricken, but urges that the condition proposed by the Staff be imposed by the Board.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "R. G. Bachmann", followed by a long horizontal line extending to the right.

Richard G. Bachmann
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 30th day of October, 1984

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TEXAS UTILITIES ELECTRIC)
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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO O. B. CANNON AND J. J. NORRIS MOTION TO STRIKE" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 30th day of October, 1984:

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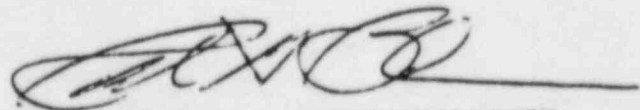
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