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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
TEXAS UTILITIES ELECTRIC)	Docket Nos. 50-445 and
COMPANY, ET AL.)	50-446
(Comanche Peak Steam Electric)	(Application for
Station, Units 1 and 2))	Operating Licenses)

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

I. INTRODUCTION

On December 18, 1984, the Atomic Safety and Licensing Board ("Licensing Board") issued Memorandum (Concerning Welding Issues), LBP-84-54, 20 NRC ____ ("Welding Decision") in the captioned proceeding. On January 7, 1985, Citizens Association for Sound Energy ("CASE") filed a Motion for Reconsideration of the Board's 12/18/84 Memorandum (Concerning Welding Issues) ("CASE's Motion"). Applicants' Reply to CASE's Motion is set forth below.¹

¹ CASE elected not to serve Applicants directly with the entire motion on January 7, 1985. Rather, CASE requested that Applicants obtain from the Licensing Board a section of the Motion regarding Mr. Stiner. Applicants received that section on January 9, 1985. Accordingly, Applicants' response is not due until January 22, 1985 (the first working day ten days after January 9, 1985).

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II. DISCUSSION

CASE's motion raises questions concerning (1) Mr. Stiner's background, (2) Mr. Stiner's discharge, (3) qualifications of Applicants' witness C. T. Brandt, (4) the number of misdrilled holes welded by Mr. Stiner, (5) Mr. Stiner's alleged technique for repairing misdrilled holes, (6) credibility of Applicants' witnesses, (7) Mrs. Stiner's reliance on Mr. Stiner, (8) guilt of Mrs. Stiner by association, (9) reliability of I&E Inspection Report 81-12, and (10) holding open the record. Applicants address each concern seriatum.

A. Issues Regarding Mr. Stiner's Background

CASE alleges that the Licensing Board should not have addressed certain aspects of Mr. Stiner's background. Accordingly, CASE requests that such language be stricken from the Welding Decision and that the Board consider disciplinary measures against Applicants' attorneys. CASE's Motion at 7-19. In view of CASE's request that pleadings regarding this subject be handled confidentially (in camera), Applicants' response (pages 3-9 of this pleading) is contained at Attachment 1 which has been forwarded under separate cover.

B. Mr. Stiner's Discharge

CASE alleges that the Licensing Board erred in finding that Mr. Stiner was discharged because of a longstanding absentee problem and not because he gave information to a QC inspector regarding a gouge in a pipe. Accordingly, CASE moves that this finding be stricken and the Board exclude its findings regarding Mr. Stiner's credibility from consideration concerning the issue of his termination. CASE's Motion at 20-21.

Applicants maintain that the unrefuted evidence currently in the record and briefed by Applicants and CASE provides substantial evidence to support the Licensing Board's finding regarding Mr. Stiner's termination. See, e.g., Applicants' Proposed Findings at 3 and CASE's Proposed Findings on Welding Issues at 6-7 (September 9, 1984). For this reason the motion for reconsideration should be denied.

C. Qualifications of C.T. Brandt

CASE alleges that by stating Mr. Brandt's title as "QA Staff Engineer," the Licensing Board erroneously implies that Mr. C.T. Brandt is an engineer, and moves that the Welding Decision be modified to correct this implication. CASE's Motion at 22-23.

Applicants note that Mr. Brandt was only offered as an expert in quality control and welding, not as an expert "engineer." Welding Decision at 7. Accordingly, CASE's concern is irrelevant and is nothing more than minute and unjustified criticism of the Board's choice of words - hardly a subject for Board reconsideration. (With regard to CASE's question related

to the differences in Mr. Brandt's title, CASE assumed correctly that Mr. Brandt changed positions, resulting in the title change. CASE's Motion at 22-23.)

D. The Number of Misdrilled Holes
Welded by Mr. Stiner

CASE alleges that Applicants deliberately misrepresented the record to the Board by stating that Mr. Stiner's testimony regarding the number of misdrilled holes he welded expanded as the proceeding progressed. CASE's Motion at 24-30. Accordingly, CASE moves that the Board finding regarding this issue (Welding Decisions at 10) be stricken. CASE's Motion at 30.

Applicants would point out that CASE had its opportunity to object to Applicants' Proposed Findings and to brief the facts as it saw them. CASE cannot now be permitted to complain of matters as to which it has already had an opportunity to be heard.

In any event, the record reflects that Mr. Stiner had initially testified that he welded several misdrilled holes, then at least 20-30 misdrilled holes, then hundreds throughout the plant, and finally, 20-30 in a single day. Applicants' Proposed Findings at 10; Welding Decision at 10. While CASE agrees that Mr. Stiner had testified that he welded several misdrilled holes, then hundreds throughout the plant and 20-30 in one day, CASE challenges the interpretation of the record regarding the following testimony of Mr. Stiner:

I don't remember if I made clear that these plug welds were made in the cable spreading room; I made 20 or 30 at least I also made plug welds in other safety-related areas in the plant. [CASE Exhibit 919 at 22.]

This testimony supports the position that Mr. Stiner testified that he made "at least 20 or 30" welds on misdrilled holes, implying that this was more than several and less than hundreds throughout the plant. See Welding Decisions at 10 and Applicants' Proposed Findings at 10. In this testimony, Mr. Stiner was quantifying the number of such welds that he made. If the predominant number had been hundreds, Mr. Stiner would have so stated. He did not. Rather, the figure he presented as the apparent governing figure was "20 or 30 at least," and this is precisely what the Board reported. In short, the Board's view of the record on this point is a fair reading. It stated precisely what was in the record and then provided the appropriate citation.

In any event, Mr. Stiner's expansion in testimony from several misdrilled holes to hundreds throughout the plant (as noted above) establishes the Board's point regarding this testimony. CASE's attempt to argue that Mr. Stiner did not know the meaning of "several" and was really equating "several" to at least 20-30 or hundreds throughout the plant is unpersuasive.

Applicants would also note that in testimony quoted by CASE (CASE's Motion at 28), Mr. Stiner states that he made 25-30 repair welds on misdrilled holes in the cable spreading room. However, in other testimony he states that he made 20-30 such

repair welds in the cable spreading room in 1-1/2 hours (Tr. 10699-700) and a cursory reading of Tr. 10990-11009 leaves little doubt that Mr. Stiner later testified that he made many more such repair welds on misdrilled holes in the cable spreading. This again supports the Board's point of expansion of testimony.

In sum, CASE's position regarding this issue is without merit, the Board's findings are supported by substantial evidence, and CASE's motion should be denied.

E. Mr. Stiner's Testimony Regarding
the Procedure for Making Repair
Welds of Misdrilled Holes

CASE alleges that the Board was incorrect in finding unreliable Mr. Stiner's testimony that he completed repair welds of misdrilled holes which were 1-1/4 inches in diameter in 2-inch thick steel in two minutes using only two weld rods. CASE's Motion at 31-39. The Board's ruling was based on testimony from both Applicants and Staff that based on a simple volumetric calculation it would take at least 20-25 rods to perform such a weld. Welding Decision at 13.

CASE now makes the patently incredible argument that Mr. Stiner's testimony should be viewed as stating that he performed the weld repair by capping both sides of the hole and leaving the middle void. CASE's Motion at 31-39. This argument is incredible for several very basic reasons. First, if this had been Mr. Stiner's testimony, his overriding concern would have not been entrapped slag (Tr. 10,684-5, 10,689-94, and 10,695-99; CASE's Motion at 33), but the fact that over 90% of the welded

misdrilled hole was air. Mr. Stiner never even mentioned or remotely implied that this was a concern. Surely if this had been the case, Mr. Stiner would have raised this as an issue in at least showing that Applicants' test of improperly welded misdrilled holes was not representative. See Applicants' Exhibit 177 at 43-44. Although Mr. Stiner stated his concerns regarding the test, he did not raise this as an issue. See, e.g., Tr. 10,683-5; Welding Decision at 66, note 24.

In addition, the technique that Mr. Stiner describes simply does not support the position that in making weld repairs of misdrilled holes he simply capped both sides. In discussing his technique, Mr. Stiner testifies as follows (Tr. 10,697-99):

JUDGE BLOCH: Okay. As I understand it, when you are making this repair weld it is lying flat on a surface.

THE WITNESS [MR. STINER]: Correct, and you are actually making a fillet weld around the inside of that hole until you get it filled in and it connects in the middle [emphasis supplied].

Mr. Stiner testifies that when welding, the hole is lying flat. In this configuration, it would be virtually impossible to hurriedly weld caps over air without the weld material running down into the hole. Accordingly, the technique cited by Mr. Stiner does not support CASE's new position.

Further, unrefuted testimony demonstrates that it would require at least 20 standard 1/8-inch diameter weld rods to weld a 1-1/4-inch hole in a 2-inch plate without cleaning the slag between passes. Welding Decision at 61. Accordingly, it should

take over one such weld rod to complete a 1/8-inch thick cap over one face of the hole and over two weld rods to complete such caps on both faces. (If one weld rod could complete a 1/8-inch thick cap over one face, it would take only 16 weld rods to complete the total weld in the two-inch thick material.) However, as CASE points out in its motion, Mr. Stiner testified that he could complete the weld with clearly less than two rods and almost with only one rod. CASE's Motion at 35. This would imply that Mr. Stiner was completing each face with a pass that was on the order of 1/16 inch in thickness, before grinding and blending. There is absolutely no evidence in this record to support this novel theory that CASE would have the Board adopt.

From the foregoing, Applicants submit that CASE's position is totally without merit and calls into question the credibility of CASE itself. Accordingly, CASE's motion must be denied.

F. Credibility of Applicants' Witnesses

CASE alleges that the Staff's identification of weld repairs of misdrilled holes on three supports in the cable spreading room for which documentation was not readily identified, and Applicants' and Staff's testimony that QC had caught Mrs. Stiner making weld repairs on holes in three hangers which were discarded, somehow casts doubt on Applicants' witnesses. CASE's Motion at 40-41. In raising this issue, CASE seeks to rehash the same evidence that was before the Board when it issued its Welding Decision. But nothing that CASE says should cause the Board to reconsider its findings. On its face, CASE's position

that the facts noted above somehow call into question the credibility of Applicants' witnesses is totally without merit and should be rejected.

G. Mrs. Stiner's Reliance on Mr. Stiner

CASE requests that the Board's statement that "[w]ith regard to her testimony, Mrs. Stiner apparently relied heavily on what her husband told her" be replaced with the more narrowly worded sentence "[o]n one occasion [regarding Attachment B to the jointly-filed testimony of Mr. and Mrs. Stiner], Mrs. Stiner relied on what her husband told her regarding the contents of Attachment B." CASE's Motion at 42-58, quoting the Welding Decision at 15. Applicants do not believe that such a change is significant or has any merit, but rather that CASE is again quibbling with the Board's choice of words. For this reason the motion should be denied. Further, to the extent that CASE seeks deletion of the Board's finding regarding this issue (as opposed to replacing the first sentence as noted above), Applicants submit that CASE's Motion provides no support for such a change, and indeed, the testimony quoted in the Motion clearly supports the Board's finding as written.

H. Guilt of Mrs. Stiner by Association

CASE objects to the Board's statement that "[o]n this record, Mr. Stiner is shown to be a convicted felon; further, the record demonstrates that Mr. and Mrs. Stiner" CASE's

Motion at 59, quoting the Welding Decision at 18.³ The bases for CASE's objection are (1) the reference to Mr. Stiner's background is inappropriate and (2) the statement is an attempt to discredit the testimony of Mrs. Stiner through "guilt by association."

CASE's Motion at 59. Accordingly, CASE moves that the portion of this sentence related to Mr. Stiner's background be stricken.

Id.

The Licensing Board's January 16, 1985 Memorandum (Clarification of Welding Issues Order of December 18, 1984) has already provided the relief requested. However, Applicants submit that the Welding Decision was not inaccurate or prejudicial as previously written. More substantial discussions of Mr. Stiner's background regarding this issue are set forth in the two previous welding decisions. 18 NRC at 137-38 and 18 NRC at 689. In any event, Applicants do not object to the Board's actions which moot CASE's motion.

I. Reliability of I&E Inspection Report 81-12 (Staff Exhibit 178)

In its Welding Decision at 62, the Board states that "the Staff further testified that an Inspection Report 81-12 (Staff Exhibit 178) determined that 'plug welds' were being utilized by

³ In that this section addresses Mr. Stiner's background (the subject of which CASE had requested be treated confidentially), Applicants were inclined to include this section with similar discussions in Attachment 1. However, because CASE did not elect to treat this section in confidence (and Applicants have stated no more here about Mr. Stiner's background than was in CASE's Motion), Applicants did not take such protective actions. Applicants note, however, CASE's actions in this regard appear inconsistent.

welders in accordance with Brown & Root welding procedures (NRC Staff Testimony at 26, 30)." CASE alleges that there are "numerous inconsistencies regarding many issues discussed in the Inspection Report [81-12, Staff Exhibit 178] such that the Board should not rely upon any of the conclusions in the Report." CASE's Motion at 60.

In support of its position that the Report is fraught with inconsistencies, however, CASE raises only Mr. Stiner's claim that the report did not properly characterize his conversation regarding "plug welds." Specifically, the Report stated that Mr. Stiner had complained that "based on comments made by various supervisors . . . plug welding was not an accepted practice." CASE's Motion at 26, quoting Tr. 4219. Mr. Stiner stated that he told the NRC Inspector that (1) if caught making a plug weld, QC would write you up and (2) he had made several such welds himself and some were located in the north cable spreading room. CASE's Motion at 26, referencing Tr. 4219. CASE maintains that omission of these points from the NRC Inspection Reports reflects an inconsistency. CASE's Motion at 60.

CASE states that because of the above "inconsistency," coupled with (1) subsequent Staff discovery of three supports containing repaired misdrilled holes for which documentation could not be readily located and (2) three supports containing misdrilled holes welded without documentation by Mrs. Stiner

discovered contemporaneously by QC, the Licensing Board should find that the Staff's Inspection Report dealing with "plug welding" is not credible or accurate. (CASE's Motion at 60-61.)

Applicants first take issue with CASE's characterization of the "inconsistency" in the Inspection Report. The Report properly raised Mr. Stiner's concern and, because of the concern, the Staff conducted an inspection/investigation (including interviews with others) which concluded that Applicants' welders were following procedures. It was not the intent of the Report to "quote" Mr. Stiner, but to state his concern and the results of the associated investigation. In short, Applicants maintain that CASE's characterization is inaccurate; this does not reflect an inconsistency.

CASE also argues that, because the investigation noted in the I&E Report did not uncover the several incidents noted above, it should not be relied on by the Board. The Board was correct in relying on the Report for the purpose of knowing that the Staff conducted an investigation and the results reflected that Applicants were correctly implementing procedures. This is pertinent for the Board to know and consider. Subsequent testimony regarding this issue, however, as pointed out by CASE, has also been considered by the Board in reaching its ultimate conclusion on this issue.

In sum, the Board correctly considered all testimony and there is substantial evidence to support its findings. CASE's motion should be denied.

J. Holding Open the Record

CASE states that because of the "various positions of this pleading . . . which call into doubt the credibility of the testimony of Applicants' witnesses" coupled with the "erroneous statements and misrepresent[atations of] the record" by Applicants, the Board should:

- (1) hold open the record to allow CASE to conduct discovery on the "credibility of Applicants' testimony and representations regarding welding issues during the period set aside by the Board for discovery regarding credibility issues" (citing the Board's December 18, 1984 Memorandum (Reopening Discovery; Misleading Statements); ⁴ and
- (2) refrain from making its ruling on these issues until CASE has had an opportunity to supplement its pleading after the discovery noted above. (CASE's Motion at 62-64.)

At the outset, contrary to its statement, CASE has not raised in this pleading, or otherwise, anything that calls into question the credibility of Applicants' witnesses. Further, CASE has not shown in this pleading, or otherwise, that the Board's reading of the record is arbitrary or capricious, or that Applicants misrepresented or distorted the record. Indeed,

⁴ CASE cannot rely on the Board's Memorandum (Reopening Discovery; Misleading Statements) to support the position that it is already authorized to conduct discovery on issues associated with the Stiners' allegations (which have been the subject of two rounds of hearings complete with sequestration of witnesses to promote credibility). The Board's Memorandum cannot be viewed as reopening discovery on all issues irrespective of their status in the proceeding. Such a ruling would have the effect of reopening the entire case and be contrary to fundamental precepts of fairness and administrative due process. Beyond that, Applicant's Motion for Reconsideration of the Board's Memorandum, raising the fairness of the Board's reopening of discovery, is now pending before the Board.

CASE's Motion raises nothing that casts doubt on the accuracy or reasonableness of the findings made by the Licensing Board in the Welding Decision. In short, CASE has provided no supporting basis for its motion to allow it to conduct additional discovery and for the Board to stay its hand on these issues and hold open the record to allow CASE to supplement its Motion. Accordingly, Applicants maintain that CASE's motions must be denied.

It should be noted that CASE has had well over 2-1/2 years to litigate the issues related to the Stiners' allegations. Hearings on these issues were initially conducted in September 1982; seven days of additional hearings on a narrowed set of defaulted and abandoned issues were conducted in March and April of 1984. During this period, CASE has had countless opportunities to conduct discovery. In short, CASE cannot be heard to complain that it did not have ample time for discovery on these issues.

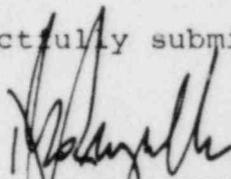
Subsequent to the close of hearings, CASE had over 4-1/2 months to file proposed findings. (Hearings involving CASE's and Applicants' witnesses were completed over 5-1/2 months before proposed findings were due.) After Applicants' Proposed Findings were filed, over three months elapsed before the Welding Decision was issued and an additional nineteen days before CASE filed the instant motion. Given this extraordinarily long period of time, CASE cannot be heard to say that it had insufficient time to examine the record, put its case before the Board, and, as appropriate, counter Applicants' view of the record.

In sum, CASE has no valid due process arguments regarding litigation of the defaulted and abandoned allegations raised by the Stiners and disposed of in this segment of the proceeding.

III. CONCLUSION

From the foregoing, Applicants maintain that CASE's Motion raises nothing that calls into question the conclusions and findings reached in the Licensing Board's Welding Decision. Accordingly, the Licensing Board should deny CASE's motions set forth in its January 7, 1985 Motion for Reconsideration, except as noted herein.

Respectfully submitted,



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January 22, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Reply to CASE's Motion for Reconsideration of the Board's Memorandum (Concerning Welding Issues" in the captioned matter were served upon the following persons by deposit in the United States mail, first class, postage prepaid, this 22nd day of January, 1985.

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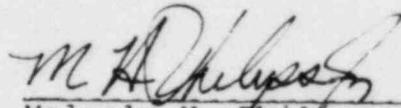
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NOTE: Attachment 1 to this filing contains material of a confidential nature pertaining to in camera material and has been distributed in a sealed envelope only to those individuals so indicated.

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* Individuals receiving Attachment 1.