

781.  
RELATED CORRESPONDENCE

APR 26 1985  
DOCKETED  
USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'85 APR 30 11:00

before the

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )

TEXAS UTILITIES GENERATING )  
COMPANY et al. )

(Comanche Peak Steam )  
Electric Station, )  
Units 1 and 2) )

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

APPLICANTS' PROPOSED CASE  
MANAGEMENT PLAN

A. Statement of Principles

Set forth in this proposed case management plan are the Applicants' suggestions for facilitating the determination as to what issues remain for contested resolution in the two Comanche Peak dockets. The principles that underlie the suggestions herein are two in number. First, there is, we presume, no desire on anyone's part to expend time, effort or expense conducting further adjudicatory proceedings with respect to issues which have been mooted by the passage of time or intervening events. Second, the Board has

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sufficient authority to adopt the procedures suggested herein, manage this litigation, and assure its timely resolution. 10 CFR § 2.718.

#### B. Background

The Comanche Peak operating license proceeding has been ongoing for some time. Certain exigencies have resulted in the case being split into two dockets with an identity of parties but not of counsel, judges, or issues. A number of issues have arisen in each docket that are of a complex nature and that, as of this writing, remain unresolved.

Of perhaps more importance at this juncture, a number of intervening events have occurred since January 1, 1985 that, we believe, have great significance in any analysis of the future management of this proceeding. These include numerous changes in the management of the lead applicant, issuance of reports by various Staff teams and groups with respect to numerous subjects and, following numerous meetings with the Staff, CASE, Cygna, the NRC Contention 5 Panel and the Applicants, the undertaking by various independent experts employed by the Applicants of extensive projects designed to determine the existence, clarify the extent, and assess the safety significance, if any, of deviations from design or specifications in the construction of the plant, and defining any corrective action deemed

necessary.<sup>1</sup> We refer in particular to the ongoing efforts of the Comanche Peak Response Team ("CPRT") to deal with the questions raised and concerns expressed by the Staff's Technical Review Team (TRT) as well as design adequacy issues raised by Messrs. Walsh and Doyle, Cygna and NRC technical experts and consultants.

The effect of these intervening changes, studies, and undertakings has been, or will be, effectively to render unnecessary (or at least have an effect upon) further consideration of a number of admitted issues. In light of this, the Applicants propose the following procedures for winnowing the issues to be resolved.

#### C. The Plan

##### 1. Procedures in Docket No. 2

a. No later than fifteen (15) days after the issuance of the Staff's QA/QC SSER, (presently anticipated within the next three (3) weeks) the Applicants will file a statement giving their view as to whether intervening or contemplated events have rendered, or will render, further consideration of one or all of the issues in this docket unnecessary and, if so, an exposition of the reasons for the positions taken.

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<sup>1</sup> Applicants have already directed the modification, replacement or removal of over 100 pipe supports. See Letter Beck to Noonan, April 15, 1985.

b. Fifteen (15) days later CASE will respond to the Applicants' statement specifically stating whether or not it agrees with the Applicants' characterization of the present status of the issues and the grounds and basis for disagreement, if any.

c. Ten (10) days later the Staff shall file a statement as to its agreement or disagreement with the various positions taken by Applicants and CASE.

d. Thereafter the Board shall dismiss as moot all matters the parties have agreed have become moot and rule on the suggestion of mootness made by the Applicants to the extent it is contested by either CASE or Staff.

## 2. Procedures in the Main Docket

a. No later than fifteen (15) days after issuance of the Staff QA/QC SSER the Applicants will file a list of the concerns extant in the docket and raised by the TRT and the SSERs on file together with the plan formulated by the Applicants for dealing with each such concern.

b. Fifteen (15) days later CASE shall file a statement specifically setting forth with respect to each concern listed whether or not CASE agrees that the proposed plan will, if carried out as described, resolve the concern. If CASE believes any plan is deficient, it shall state (a) what the deficiency is and (b) a statement of the basis for

CASE's assertion that the alleged deficiency will, in CASE's judgment preclude resolution of the concern.

c. Ten (10) days later the Staff shall file a statement as to its agreement or disagreement with the positions set forth by Applicants and CASE pursuant to Paragraphs 2.a. and 2.b. above.

d. Thereafter the Board will enter an order (a) precluding from the proceeding further consideration of any issue of whether the proposed plan will, if carried out, resolve those concerns as to which the parties are agreed the plan is sufficient and (b) resolving the dispute as to the sufficiency of any plan as to which the parties are in disagreement as to sufficiency assuming the taking of further evidence is not necessary to resolve the dispute.

D. Conclusion and Suggestions for Consideration

The above plan, if followed, should result in the posture of the case being one of a proceeding with specific well-defined issues of disputed fact being set for evidentiary resolution (either by hearing or motion for summary disposition) under the rules of practice. At that time the Board can set a new schedule for any remaining matters as to which there are disagreements, if any.

We respectfully request that CASE be given ten (10) days to respond to the foregoing suggestions and that the Staff be required to respond five (5) days thereafter. In the

event there is disagreement as to the use of these procedures, the Board may then resolve those disputes by issuance of a prehearing order adopting these procedures or otherwise responding to these suggestions.

Respectfully submitted,

*15/ Robert A. Wooldridge*

Robert A. Wooldridge  
Worsham, Forsythe, Sampels  
& Wooldridge  
Suite 2500  
2001 Bryan Tower  
Dallas, Texas 75201  
(214) 748-9365

*15/ Nicholas S. Reynolds*

Nicholas S. Reynolds  
Bishop, Liberman, Cook, Purcell  
and Reynolds  
Suite 700  
1200 Seventeenth Street, N.W.  
Washington, D.C. 20036  
(202) 857-9800

*15/ Thomas G. Dignan, Jr.*

Thomas G. Dignan, Jr.  
Ropes & Gray  
225 Franklin Street  
Boston, Massachusetts 02110  
(617) 423-6100

Attorneys for Applicants



RELATED CORRESPONDENCE

CERTIFICATE OF SERVICE

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I, Thomas G. Dignan, Jr., one of the attorneys for the Applicants herein, hereby certify that on April 26, 1985, I made service of the within "Applicants' Proposed Case Management Plan" by mailing copies thereof, postage prepaid, to:

Peter B. Bloch, Esquire  
Chairman  
Administrative Judge  
Atomic Safety and Licensing  
Board  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Dr. Walter H. Jordan  
Administrative Judge  
881 W. Outer Drive  
Oak Ridge, Tennessee 37830

Chairman  
Atomic Safety and Licensing  
Appeal Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Stuart A. Treby, Esquire  
Office of the Executive  
Legal Director  
U.S. Nuclear Regulatory  
Commission  
7735 Old Georgetown Road  
Room 10117  
Bethesda, Maryland 20814

Herbert Grossman  
Alternate Chairman  
Administrative Judge  
Atomic Safety and Licensing  
Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Mr. John Collins  
Regional Administrator, Region IV  
U.S. Nuclear Regulatory Commission  
611 Ryan Plaza Drive, Suite 1000  
Arlington, Texas 76011

Mr. William L. Clements  
Docketing & Services Branch  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Chairman  
Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

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OFFICE OF SECRETARY  
DOCKETING & SERVICES  
BRANCH

Renea Hicks, Esquire  
Assistant Attorney General  
Environmental Protection Division  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711

Mrs. Juanita Ellis  
President, CASE  
1426 S. Polk Street  
Dallas, Texas 75224

Anthony Roisman, Esquire  
Executive Director  
Trial Lawyers for Public Justice  
2000 P Street, N.W., Suite 611  
Washington, D.C. 20036

Ellen Ginsberg, Esquire  
Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dr. Kenneth A. McCollom  
Administrative Judge  
Dean, Division of Engineering,  
Architecture and Technology  
Oklahoma State University  
Stillwater, Oklahoma 74078

Joseph Gallo, Esquire  
Isham, Lincoln & Beale  
1120 Connecticut Avenue, N.W.  
Suite 840  
Washington, D.C. 20036

Ms. Billie Pirner Garde  
Citizens Clinic Director  
Government Accountability Project  
1901 Que Street, N.W.  
Washington, D.C. 20009

Mr. Lanny A. Sinkin  
3022 Porter Street, N.W., #304  
Washington, D.C. 20008

Elizabeth B. Johnson  
Administrative Judge  
Oak Ridge National Laboratory  
P.O. Box X, Building 3500  
Oak Ridge, Tennessee 37830

Mr. Robert D. Martin  
Regional Administrator,  
Region IV  
U.S. Nuclear Regulatory  
Commission  
611 Ryan Ryan Plaza Dr., Suite 1000  
Arlington, Texas 76011

Geary S. Mizuno, Esquire  
Office of Executive Legal Director  
U.S. Nuclear Regulatory Commission  
Maryland National Bank Bldg.  
Room 10105  
7735 Old Georgetown Road  
Bethesda, Maryland 20814

*15/Thomas G. Dignan, Jr.*  
Thomas G. Dignan, Jr.