

ORIGINAL

UNITED STATES NUCLEAR REGULATORY COMMISSION

In the Matter of:

TEXAS UTILITIES ELECTRIC COMPANY, et al.)	Case No. 50-445-OL
)	
(Comanche Peak Steam Electric Station,)	50-445-OL
Units 1 and 2)	
)	50-445-CPA
)	
)	
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY AGENCY

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of: : Case No. 50-445-OL
TEXAS UTILITIES ELECTRIC : No. 50-446-OL
COMPANY, et al. : No. 50-445-CPA
(Comanche Peak Steam Electric :
Station, Units 1 and 2) :

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800 Skyway Tower
Southland Building
400 North Olive
Dallas, Texas
Wednesday, July 13, 1988

The above-entitled matter came on for a prehearing
conference, pursuant to Notice, at 9:10 a.m.

BEFORE:

PETER B. BLOCH, Administrative Judge
DR. WALTER H. JORDAN, Board Member
DR. KENNETH A. McCOLLOM, Board Member

1 APPEARANCES:

2 On behalf of the Applicants:

3 GEORGE EDGAR, Attorney at Law

4 MAURICE AXELRAD, Attorney at Law

5 Newman & Holtzinger, P.C.

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8 and

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10 Worsham, Forsythe, Samples & Wooldridge

11 Suite 2500, 2001 Bryan Tower

12 Dallas, Texas 75201

13 On behalf of the NRC Staff:

14 JANICE E. MOORE, Attorney at Law

15 Office of Internal Counsel

16 U.S. Nuclear Regulatory Commission

17 Washington, D. C. 20555

18 ON behalf of CASE:

19 JUANITA ELLIS, President

20 BILLIE GARDE, Attorney at Law

21 Citizens Association for Sound Energy

22 1426 South Polk

23 Dallas, Texas 75224

24 and

25

1 APPEARANCES: [Continued]

2 On behalf of CASE:

3 ANTHONY Z. ROISMAN, Attorney at Law
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7 and

8 JACK DOYLE
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P R O C E E D I N G S

1
2 JUDGE BLOCH: Good morning. I am Peter
3 Bloch, Chairman of the Atomic Safety and Licensing
4 Board for Comanche Peak Nuclear Power Plant. There are
5 two dockets with which we are concerned.

6 With deep respect for everyone here, I
7 respectfully and wholeheartedly welcome you to these
8 proceedings.

9 The dockets involved include an operating
10 license application and a construction permit amendment
11 proceeding. The formal numbers of those dockets are
12 50-445-OL, 50-446-OL and 50-445-CPA.

13 The Atomic Safety and Licensing Board
14 consists of three members. On my left, Dr. Kenneth
15 McCollom who is a member of the Board; and my right,
16 Dr. Walter Jordan.

17 I'd appreciate it if the parties would
18 identify themselves for the record, please, starting at
19 my left.

20 MS. MOORE: Your Honor, my name is Janice E.
21 Moore, counsel for NRC Staff. To my right is Mr.
22 Michael Harrison, a paralegal from the NRC Office of
23 General Counsel.

24 JUDGE BLOCH: Please use the microphones when
25 you talk.

1 MR. EDGAR: I'm George Edgar. I'm a partner
2 in the Washington law firm of Newman & Holtzinger. I
3 represent Texas Utilities.

4 Seated to my immediate left is Robert A.
5 Wooldridge, a partner in the law firm of Worsham,
6 Forsythe, Samples & Wooldridge, Dallas, Texas.

7 And to his left, Mr. Maurice Axelrad, one of
8 my partners.

9 MR. ROISMAN: My name is Anthony Z. Roisman.
10 I'm one of the counsel for the Intervenor CASE.

11 Seated to my immediate left is Ms. Billie
12 Garde, another counsel for the Intervenor CASE.

13 To her left, Juanita Ellis, the president and
14 representative in this proceeding of the Intervenor
15 CASE.

16 And to Ms. Ellis' left is Jack Doyle, one of
17 the technical experts that CASE has presented in this
18 proceeding.

19 JUDGE BLOCH: I have received this morning a
20 petition filed by an attorney named Mr. Richard Lee
21 Griffin. Would he come forward and identify himself
22 for the record, please.

23 There's a microphone up here, Mr. Griffin.

24 MR. GRIFFIN: I am Richard Lee Griffin. I
25 appear today on behalf of Citizens for Fair Utility

1 Regulation, known as CFUR, and for the Greater Fort
2 Worth Group of the Lone Star Chapter of the Sierra
3 Club.

4 JUDGE BLOCH: Thank you, Mr. Griffin.

5 I have before me -- Mr. Griffin, you may want
6 to hear this; maybe you can sit up front if you could.
7 It might help you in getting back and forth. If you
8 don't mind, it's possible the Staff wouldn't mind you
9 sitting at their table.

10 MS. MOORE: That's fine, Your Honor.

11 JUDGE BLOCH: I have before me a proposed
12 agenda which is jointly proposed by the admitted
13 parties. Mr. Griffin, have you had a chance to see it?

14 MR. GRIFFIN: No, sir, I have not.

15 JUDGE BLOCH: Let me familiarize you with it.
16 What I'm going to propose is that we slightly alter the
17 agenda to include an oral presentation by Mr. Griffin,
18 and then an opportunity for the parties either to
19 respond immediately or to explain that they need more
20 time to respond.

21 The remainder of the agenda, after we speak
22 to Mr. Griffin, is special appearance statements which
23 we have discussed with some of the members of the
24 public who are interested in speaking to us this
25 morning.

1 We understand that the statements are
2 primarily opposed to the agreement that is already
3 approved by this Board and also may be opposed to the
4 licensing of the plant.

5 The combined statements should take less than
6 one-half hour. They are to be limited to about five
7 minutes each.

8 Following the limited appearance statements,
9 there will be responses by the different parties.

10 Then there are a group of motions that have
11 been filed before us whose status is uncertain. These
12 were filed by counsel for certain people or
13 organizations who would like to intervene in this
14 proceeding. The status of those motions is itself
15 uncertain because counsel for them has withdrawn.

16 But we'll discuss the status of those motions
17 and see if action is appropriate at that time.

18 Then the Utility proposes to present the
19 terms of the settlement agreement and to present
20 certain exhibits for receipt into evidence and to offer
21 and obtain a ruling on the admissibility of a certain
22 letter from Mr. Council to Ms. Ellis.

23 Then there will be opportunity for closing
24 comments by TU Electric, CASE and the NRC Staff, after
25 which there will be a submission of an agreed form of

1 dismissal and a request for us to enter an order.

2 At that point we will decide what to do and
3 will announce what we will do.

4 Should we approve the settlement terms and
5 dismiss the case, then there is a condition subsequent
6 to the effectiveness of the settlement, and that is, an
7 agreed letter which will be delivered from Mr. Council
8 to Ms. Ellis.

9 The Board would like to announce that it has
10 reviewed this morning two documents from Texas
11 Utilities. One is a summary of the settlement
12 agreement, and the other is the complete settlement
13 agreement, so that we will have a chance to read and
14 consider what the terms of the settlement agreement are
15 before we decide to act on it.

16 Are there any objections to that order of
17 proceeding?

18 [No response.]

19 JUDGE BLOCH: Then if you would, Mr. Griffin,
20 I would request you to make your presentation either
21 from there or from up here. That's up to you.

22 I'd like to say that I have noticed that --
23 I would like you to feel as relaxed as possible with
24 us. I know you've been working all night.

25 We are going to have to do our job about what

1 you're presenting, but I'd like you to feel as
2 comfortable here as you possibly can. So if you would
3 make your statement, we would welcome that.

4 MR. GRIFFIN: Thank you, Judge Bloch.

5 I have filed on behalf of CFUR and the Fort
6 Worth Area Group of the Sierra Club a request that the
7 proceedings be continued and not be dismissed, and a
8 request that CFUR and this group of the Sierra Club be
9 allowed to intervene in the case.

10 The propriety of CFUR, and probably also of
11 the Sierra Club, to act as intervenors in the case is
12 not open to serious question. CFUR was an intervenor
13 in the case as early as 1979.

14 At that time there were three intervenors:
15 ACORN, CFUR and CASE. ACORN and CFUR withdrew and
16 allowed CASE to continue to represent the intervenors.

17 JUDGE BLOCH: I'm sorry, but I don't
18 understand that. What do you mean, they allowed CASE
19 to represent the intervenors?

20 MR. GRIFFIN: No, they allowed CASE to
21 proceed as the only intervenor.

22 JUDGE BLOCH: Thank you.

23 MR. GRIFFIN: And from that time until just
24 recently, there has been a close working relationship
25 between CASE and between CFUR.

1 CFUR and the Sierra Club do not seek to
2 expand the contentions or increase the number of
3 contentions. We seek to adopt only Contentions No. 2
4 and No. 5 as they existed before the stipulation.

5 I would like to briefly address what I think
6 may be the most important questions, which are the
7 factors that the regulations set out as governing late
8 filed petitions.

9 Before I embark on that, I'd like to ask the
10 Board to keep in mind that CFUR is actually refileing.
11 They have been before the Board before.

12 The first one I would like to address is the
13 good cause, if any, for failure to file on time.
14 CFUR has good cause for filing this petition late, as
15 does Sierra Club.

16 The proposed joint stipulation would
17 basically bring an end to the proceedings. The Board
18 would not exist to review the proceedings any more, and
19 there would not be a public licensing procedure in
20 effect.

21 It would remove the decisions from the public
22 scrutiny that this forum provides and allows, and I
23 think was created for.

24 It is only recently that the people I
25 represent have learned that there is, in connection

1 with the joint stipulation and the agreed dismissal, an
2 agreement which has not and cannot be disclosed to the
3 public or to CFUR or Sierra Club.

4 We believe that the secret terms of the
5 agreement relate to the payment of monies to CASE for
6 its expenses. And also we believe that it's connected
7 with the settlement of lawsuits or other claims that
8 have been brought by whistle blowers and witnesses, so
9 that those are also resolved as part of this
10 settlement.

11 It has also come to our attention that there
12 is at least an appearance of the possibility of a
13 conflict of interest between CASE's duty to represent
14 the intervenors -- to be the intervenor and represent a
15 certain interest and a desire to represent perhaps the
16 interest of the whistle blowers.

17 JUDGE BLOCH: I don't understand the
18 relevance of that to this proceeding, because they're
19 not representing the whistle blowers in this
20 proceeding.

21 MR. GRIFFIN: No, they're not. But --

22 JUDGE BLOCH: In addition to which, they
23 intend to be out of the proceeding, so any conflict of
24 interest will be taken care of.

25 MR. GRIFFIN: Right, after the fact. But

1 should the conflict of interest throw some negative
2 light on the process that led to the agreement in the
3 first place -- In other words --

4 JUDGE BLOCH: Are you proposing that we would
5 require them to stay in the case?

6 MR. GRIFFIN: Or let us intervene. That's
7 what I'm proposing, to let us intervene in their place.

8 JUDGE BLOCH: Okay. I would suggest that
9 that may be possible under the rules if you meet the
10 criteria, but that it's entirely irrelevant as to why
11 CASE is withdrawing, because we can't require them to
12 stay.

13 And if we did, I don't think you'd be
14 satisfied any way.

15 MR. GRIFFIN: No, I'm asking you not to
16 dismiss these proceedings. I'm not asking you to
17 refuse to let CASE out of the action.

18 JUDGE BLOCH: So their conflict of interest
19 really is not a complaint of yours. It's relevant to
20 the petition for admission as a party. If you have the
21 grounds for -- Well, the fact that you have just
22 learned of this stipulation may help to form good cause
23 for late filing.

24 MR. GRIFFIN: Right.

25 JUDGE BLOCH: But the fact that there's a

1 conflict of interest, I suggest, has nothing to do with
2 the criteria for late filing.

3 MR. GRIFFIN: Well, all right. I've
4 presented it as far as a good cause for late filing.
5 That's the place in my petition which I --

6 JUDGE BLOCH: The conflict of interest has
7 nothing to do with the good cause as to withdrawal from
8 the case? I'm surprised about that.

9 MR. GRIFFIN: We are surprised about that.

10 JUDGE BLOCH: Am I correct, though, that the
11 conflict of interest has nothing to do with your
12 grounds for substituting yourself as a party or
13 becoming a fresh party, which is really what the rules
14 make possible?

15 MR. GRIFFIN: We don't know. We don't know
16 what's in the agreement. It is possible that in the
17 agreement it is -- I can't know until I see the
18 agreement.

19 JUDGE BLOCH: Well, assume they have been
20 bribed, which I don't believe at the present time, but
21 assume that was true. Why would it be relevant to your
22 becoming a party?

23 MR. GRIFFIN: It depends on the terms of the
24 agreement with the witnesses who are settling lawsuits
25 probably and receiving money in exchange therefor.

1 If there's any suggestion that the witnesses
2 out of that agreement will not appear or will not give
3 testimony, then that's quite significant to the
4 settlement.

5 JUDGE BLOCH: They obviously are not going to
6 present further testimony in this case if they
7 withdraw.

8 MR. GRIFFIN: We would like for them to be
9 called, if we need them, as witnesses, and if the
10 agreement that dismisses --

11 JUDGE BLOCH: Okay. I can see that as a
12 subsequent matter if you are admitted as a party. You
13 might have other motions to make before us. I just
14 don't see its relevance to your admission as a party.

15 MR. GRIFFIN: I would like to then focus --
16 I will skip over other factors which are addressed in
17 my petition and focus on what I consider the most
18 important, which is the contribution that we can make
19 to the record.

20 There are two witnesses who have significant
21 knowledge that should be presented to this Board.

22 JUDGE BLOCH: Before you continue, I'd like
23 to say, this is the portion of the petition that
24 concerns me the most. I'd like to say why. The reason
25 it concerns me the most is because there have been

1 extensive studies done by Stone & Webster and by the
2 entire CPRT program of the Applicants, and there are
3 extensive get-well programs underway.

4 When I say "extensive," I mean they're so
5 heavy that no one chose to carry them to the hearing.
6 My concern is that in order to make a contribution to
7 this hearing that it would be necessary for any new
8 intervenor to know how allegations that are being
9 brought now relate to all of that work.

10 My initial impression is that there's no
11 understanding here at all of how these contentions
12 relate to the extensive work that's underway or why
13 that work is insufficient to remedy these concerns.

14 In addition, the technical concerns are not
15 described well enough so that I can even tell what they
16 are.

17 The concern that there's something wrong with
18 a hydro test is interesting, but apparently the Staff
19 knows there's something wrong with the hydro test, and
20 I can't tell anything from the statement about the
21 hydro test about whether I'm concerned.

22 I'd like to say that there's a history in
23 this case that when there is something to be concerned
24 about, the Board looks into it very closely. But I
25 just can't tell from this what the technical concern

1 really is.

2 I'd also like to disclose for the record that
3 Mr. James Sutton called me last night. He obviously is
4 emotionally concerned and cares about what's happening
5 here.

6 But I do have to know what the technical
7 concern is. My inclination at the present time would
8 be to permit you to withdraw the filing without
9 prejudice and to allow you to file something that would
10 demonstrate that you have enough mastery of what has
11 gone on in this case so that the Commission might hear
12 your petition and decide whether or not you have
13 grounds, meritorious grounds, for contributing as a
14 party.

15 That would have to show somehow that you
16 understand the programs that are underway and that this
17 is not enough for addressing these concerns.

18 It also would have to show enough of a
19 mastery of the technical matters to show that what's
20 being done is not adequate.

21 Now, that's an extensive statement from me,
22 but I'd like to have you have a chance to think about
23 it before you respond.

24 If you want to respond immediately, you may.
25 But if you'd like to think about it for a little while

1 too, you could do that.

2 MR. GRIFFIN: Well, I would prefer to respond
3 right away.

4 JUDGE BLOCH: Okay, sure.

5 MR. GRIFFIN: Allowing us to file a petition
6 later before this Board --

7 JUDGE BLOCH: No, if we dissolve the
8 proceeding, which we surely will do if you're not a
9 party because you wouldn't have standing to file any
10 other motions -- if we do that, you can file a petition
11 to become an intervenor under the rules of the Nuclear
12 Regulatory Commission, meeting the same standards that
13 you have here.

14 It would be filed before the Commission. The
15 Commission would then either act itself or, as is most
16 likely, they would appoint a board to consider the
17 contentions.

18 The greatest likelihood would be that the
19 three judges sitting here would be that board, although
20 there would be no assurance of that. I would be
21 unwilling to assume, if it was not this board, that the
22 other board would be less capable because we are
23 creatures of the Commission.

24 It would be likely it would be ours, but it
25 might not be.

1 The point is that your rights to intervene
2 would be exactly the same, whether they're considered
3 now or later.

4 MR. GRIFFIN: We would like for you to
5 consider them now, and we would like to point out --

6 JUDGE BLOCH: Then you must address our
7 concerns about --

8 MR. GRIFFIN: We have only learned of Mr.
9 Sutton as of July 12, 1988.

10 JUDGE BLOCH: That's why I want to have you
11 have more time to show that you can contribute to the
12 proceeding. If you can show it now, you should
13 continue now. If you can't, you might as well withdraw
14 the motion.

15 MR. GRIFFIN: Well, I am not prepared to
16 present Mr. Sutton's testimony today. That's why we
17 want to continue the proceedings.

18 We can flesh out definitely his testimony and
19 present it to this Board. This Board is the board that
20 has been working with this case for a long time. We
21 don't want to lose the expertise and experience of this
22 Board, and that's another reason that I think it is
23 appropriate for us to intervene because CFUR has been
24 working on the case since 1979.

25 The members of CFUR have a much greater grasp

1 of the technical questions than I do, quite frankly.
2 They have been reviewing documents for over ten years.
3 They have been consulting with engineers --

4 JUDGE BLOCH: Would you like to consult with
5 your client to see how this relates to the CPRT
6 program, if she is so informed about what's going on
7 with the case?

8 MR. GRIFFIN: Yes, I would like to consult my
9 client about that.

10 JUDGE BLOCH: Why don't you take a few
11 moments to do that now, to see if you can address the
12 Board's concern about the relationship between these
13 arguments and what is already being done about these
14 arguments.

15 MR. GRIFFIN: Okay. We'd like a short time
16 to do that.

17 JUDGE BLOCH: We'll take a five-minute
18 recess. If you need more time, please tell us.

19 [Short recess.]

20 JUDGE BLOCH: The hearing will please come
21 to order.

22 MR. GRIFFIN: Judge Bloch, on behalf of CFUR
23 and the Greater Fort Worth Area Group of the Sierra
24 Club, I would ask the Board to allow us to withdraw our
25 petition without prejudice.

1 I would ask the Board to rule that we have 60
2 or 90 days within which to file a petition, and that
3 that will be deemed a timely filing.

4 JUDGE BLOCH: Okay. The Board doesn't have
5 that latter power. The question is -- I have no
6 problem with allowing you to withdraw without
7 prejudice, unless the parties object and wish to make
8 motions about that. That doesn't concern me at all.

9 The only question about whether you file now
10 or within 60 days will be the same question of due
11 cause for late filing, reasonable cause -- well,
12 whatever the words are in the regulations.

13 MR. GRIFFIN: Right. So, in other words, we
14 would still be in the position of having to justify a
15 late filing?

16 JUDGE BLOCH: That's right. And you'd only
17 have however many more days are involved to justify it.

18 Not having jurisdiction over what you're
19 filing then until it's given to me, I can't rule on
20 what you're going to do then.

21 But I would be willing to permit you to
22 withdraw without prejudice. Does that change your
23 mind?

24 MR. GRIFFIN: I don't want you to adjourn,
25 but can I speak with my clients for just a minute?

1 JUDGE BLOCH: If you'd like a small moment to
2 confer with your clients again, we can permit that
3 right now.

4 [Discussion off the record.]

5 MR. GRIFFIN: Judge Bloch, we would like
6 permission to withdraw our petition from your
7 consideration without prejudice, but we would like
8 also, if you possibly can, to deem it filed as of today
9 for future proceedings.

10 JUDGE BLOCH: Well, of course, what you can
11 do is reference in your filing that you have presented
12 it today. I also cannot make a ruling about what to
13 deem something in a proceeding that I'm not presiding
14 over.

15 I would urge that you file as quickly as
16 possible, as soon as you can show what I suggested
17 today, which is that you have a grasp of the
18 relationship between your concerns and the overall
19 programs that are in effect at the plant.

20 I think that would be crucial to showing that
21 you can contribute to the proceeding. There has to be
22 both the technical concerns described in enough detail
23 so that people will know what you're worried about and
24 enough understanding of what's being done to know why
25 you're concerned that the existing process is

1 inadequate.

2 No, I can't deem anything about someone
3 else's jurisdiction.

4 MR. GRIFFIN: In that case we would just
5 request your permission to withdraw the petition
6 without prejudice.

7 JUDGE BLOCH: Thank you. And thank you for
8 your appearance before us today.

9 Are there any comments by the parties on what
10 has just transpired?

11 MR. EDGAR: Nothing, Your Honor.

12 MR. ROISMAN: No comment, Mr. Chairman.

13 MS. MOORE: The Staff has no comment, Your
14 Honor.

15 JUDGE BLOCH: Just to clarify the record, it
16 is ordered that the motion may be withdrawn without
17 prejudice.

18 The next portion of our announced agenda is
19 to hear limited appearances.

20 Now, I'd like to explain what's involved here
21 because I don't want anyone coming forward to think
22 that a limited appearance statement under these
23 circumstances has more value than it actually has.

24 People coming forward to speak to this Board
25 and to this audience may speak about the settlement or

1 about the safety of the plant. The Staff is here to
2 listen, and it could happen that someone would say
3 something of such importance that the Board would ask
4 the Staff to look into it further.

5 It's unlikely that the Board would act on
6 anything being said unless there were enough evidence
7 and proof presented to us so that we knew that an
8 important safety matter that's not being addressed was
9 being raised.

10 Since we have been keeping up with what's
11 going on in that case, it's unlikely that that can be
12 done this morning, but we're open to that possibility.

13 Arguments about our not approving the
14 settlement are unlikely to affect us because no one at
15 this time has standing as a party to make those
16 arguments.

17 And also because a showing that we should
18 stay the agreement that's before us would have to meet
19 the requirements for a stay, which include irreparable
20 injury.

21 And given that the procedure for becoming a
22 party will still exist whether or not this agreement is
23 approved, it would be very difficult to show
24 irreparable injury.

25 I would also point out that on Monday of this

1 week, we've already approved in an order the general
2 terms of this agreement, subject to the exchanges of
3 paper to take place today.

4 As I'll explain later, I also would like to
5 say that there are reasons that just spring from the
6 nature of this proceeding why it would be difficult to
7 persuade us at this time.

8 It has to do with the fact that we have
9 learned to know and to respect each of the parties in
10 this proceeding over an extended period of time in
11 which at least part of the time there was great
12 antagonism present in this proceeding, and in which we
13 were not always satisfied with the performance of the
14 parties.

15 Respect for the parties has grown as they
16 have learned more about what's going on and have
17 learned to trust one another more. I would also like
18 to say that the extent of the agreement grew well
19 before the settlement agreement was proposed to the
20 point where the intervenors in this case made a public
21 statement that they approved of the way that the plant
22 was being designed, without any consideration flowing
23 to them at all.

24 So I would like to invite limited appearance
25 statements, but to completely make it clear that we're

1 not trying to masquerade as a completely open forum at
2 this point that hasn't seen what has been going on in
3 this case.

4 We will listen with open ears and will attend
5 to anything that's worth listening to. We will
6 certainly respect the people who come before us to make
7 these statements.

8 We know that there's a lot of emotion about
9 what's going on. There's a broad spectrum of views
10 about nuclear power in this country and in this area.

11 We do want to hear from the people so that we
12 can appreciate what their concerns are.

13 I understand, Mr. Anthony, that you've
14 arranged for a limited number of speakers. Could you
15 tell us how many there are -- I'm sorry. Mr.
16 Griffin.

17 MR. GRIFFIN: No, Judge, I have not arranged
18 to have anybody except CFUR and the Sierra Club. Did
19 you intend for me to?

20 JUDGE BLOCH: No, I'd like to know if CFUR
21 and the Sierra Club could tell me how many people want
22 to make limited appearance statements in that case?

23 MS. BRINK: Just one moment.

24 Four.

25 JUDGE BLOCH: There are four people. And are

1 you sure that those four people are the only ones in
2 the audience who wish to speak?

3 Could the four people who wish to speak this
4 morning please stand.

5 Are there any other people in the audience
6 wishing to make limited appearance statements that are
7 opposed to the settlement or the plan?

8 [No response.]

9 JUDGE BLOCH: Thank you. What we'd like to
10 do is limit each of the people to five minutes.
11 Whatever order, Ms. Brink, that you'd like to arrange
12 is acceptable to us.

13 When you begin, if you'd like to submit a
14 statement for the record, you may do that. Please
15 announce your name, and if there is an affiliation, the
16 affiliation for the record. You're not required to
17 state any affiliation at all.

18 STATEMENT OF TOM SMITH

19 MR. SMITH: Good morning. My name is Tom
20 Smith. I'm Director of Public Citizen of Texas. We're
21 a membership-based consumer group with approximately
22 3000 members in Texas.

23 I'm not an attorney, and I'd like to make
24 that clear from the outset.

25 What we are here today to do, though, is ask

1 that the Board consider staying its order, I believe,
2 of the 5th of July for a period of approximately 60
3 days to allow people throughout Texas and the nation to
4 comment on the settlement agreement reached between the
5 parties.

6 We think there are a number of important
7 reasons why this ought to happen, among them, that it
8 would allow people the opportunity to adequately
9 prepare petitions for intervention if they feel that
10 there are not appropriate resolutions to their
11 complaints.

12 I appreciate the work that GAP and CASE have
13 done over the years, and I want at the outset to
14 comment on the fact that we believe that they have done
15 a very adequate job in this case and that we believe
16 fully in their integrity and thank them also for
17 keeping us informed up until recently of the processes
18 and what they've been going through in their
19 intervention at Comanche Peak.

20 However, right after the settlement was
21 announced, calls began coming into our office from all
22 across Texas, especially from this part of Texas where
23 approximately a third of our members live, concerned
24 about the agreement and their lack of understanding
25 about what was contained in this agreement.

1 It is clear from talking to people today that
2 they still don't fully understand what this agreement
3 does. Today's proceeding I think will help a great
4 deal in explaining that.

5 But, unfortunately, people are not going to
6 have enough time to adequately prepare comments on the
7 agreement and whether it ought to be accepted who are
8 not here in this audience today.

9 That's why we'd like to request a stay.

10 JUDGE BLOCH: Mr. Smith, as I said, we're not
11 going to entertain this as a motion. Are you really
12 suggesting that we could require CASE to stay in this
13 proceeding?

14 MR. SMITH: I would like to ask that you
15 consider the possibility of staying your order, not
16 necessarily requesting that CASE stay in this
17 proceeding.

18 But if I may, I'd like to finish and explain
19 why I think that some of the provisions of this are
20 fairly disturbing and that as a board there are some
21 things that I think you can do to help clarify the
22 agreement.

23 I think that may end up resolving some of the
24 concerns that people have, and in addition give the
25 Board an opportunity to entertain additional motions.

1 What I think is most disturbing about this is
2 that the agreement essentially has negotiated away the
3 right that CASE has had to a full adjudicatory hearing
4 before this Board in return for a number of rights that
5 may well be real important.

6 It puts Ms. Ellis in a position of where she
7 is sitting on a committee, one of nine people on that
8 committee, and then gives her certain rights if issues
9 come up later on, to appeal decisions that Texas
10 Utilities and she did not agree to, to personnel within
11 the Nuclear Regulatory Commission.

12 But what has essentially happened in doing so
13 is that she has stepped beyond the pale of what is
14 known, a system of hearings and adjudication where
15 there are manuals, where there are precedents, where
16 there are rules of procedure to guide what happens when
17 there are not -- when the parties are not able to
18 resolve things among themselves, and has put CASE and
19 the people of Texas who have relied upon them to
20 represent their interest here into an area of
21 uncertainty, where there is no methodology for
22 resolving the complaints.

23 It puts them in a situation where they're
24 having to rely on the good faith of Texas Utilities and
25 the NRC within this region and within this Special

1 Projects Office -- if I've got the right phraseology --
2 to resolve issues and to resolve them in a fair way.

3 But, unfortunately, that has not always been
4 the case that this has worked out to be a fair system,
5 and that Texas Utilities has dealt with good faith in
6 resolving the issues in Comanche Peak.

7 Just last April two headlines came across the
8 wires. Texas Utilities was in some manner rather
9 involved in the intimidation of people who worked for
10 Cygna.

11 Two more whistle blowers surfaced on April
12 16th, I believe the date was, alleging that as
13 inspectors they were asked to falsify inspection
14 reports.

15 These kinds of things continue to surface
16 just a month and a half ago.

17 Ms. Ellis in her letter to the Board this
18 morning says -- basically in the second paragraph -- as
19 CASE has told the Board, we're ready to state that if
20 the Applicants do what they say they're going to do and
21 the way they say they're going to do it, their plan is
22 acceptable to CASE.

23 One of the most damning parts of this
24 agreement is that it rides on those if's, that it says
25 if TU is going to follow its promises, everything will

1 be okay.

2 I wish that had been the case over the last
3 14 years, and that's what concerns me and concerns the
4 people that we represent here today, is that it puts a
5 tremendous amount of reliance on the good faith of
6 Texas Utilities and on the quality of the people within
7 this region of the NRC.

8 I wish that that faith had been placed in
9 those people and had been relied upon and could have
10 been relied upon over the last 14 years, but it has
11 not.

12 That's why we're asking that the Board
13 consider on its own staying for 60 days its order to
14 implement this agreement and accepting this agreement.

15 We believe that there is irreparable harm
16 because what is going to end up happening is we're
17 going to find ourselves in an area where there is not
18 charted procedure to allow the resolution of the
19 complaints that might come up at a later time, as they
20 have been coming up over the last 14 years, and that
21 without that process -- that procedure -- there is no
22 methodology save filing an entirely new procedure with
23 the NRC that's going to take years to resolve perhaps.

24 That doesn't make a whole lot of sense.
25 We've made a lot of progress, but now is not the time

1 to stop the progress we've make, to stop the kind of
2 impetus that having this Board sitting in judgment and
3 making decisions on issues as they come up has given
4 the parties.

5 That's our biggest concern, and I think where
6 the irreparable harm comes in, is without the pressure
7 this Board gives it, without that process, we don't
8 have an ability to resolve questions as they come up.

9 And as a result, people in this part of the
10 world who are living close to Comanche Peak are going
11 to be in a position where they're never going to know
12 if the plant is safe.

13 They'll never have the assurance that the
14 Board has looked at everything, that it has made all of
15 the decisions and has resolved all of the complaints,
16 and that there is a body to resolve additional and
17 future complaints as they come up and as they will come
18 up, as they have been coming up for the last 14 years.

19 So that's why we're asking that you consider
20 this stay, and it would have to be something that I
21 think you folks would have to do on your own because I
22 don't have the status to do that or to make that
23 motion.

24 Thank you very much for your time.

25 [A true and correct copy of written statement

1 submitted by Tom Smith follows:

2 "Texas Public Citizen ('Petitioner')
3 petitions for an emergency 60-day stay of the
4 effectiveness of the Joint Stipulation and the July 5,
5 1938, Memorandum and Order (Terminating Proceedings
6 Subject to Condition) until those who may be endangered
7 by operation of the Comanche Peak nuclear plant,
8 including members of Texas Public Citizen, have an
9 opportunity to review and comment on the stipulation
10 and dismissal order, and have an opportunity to file
11 petitions to intervene in the above-captioned case.

12 "Petitioner is a consumer-advocacy
13 organization based in Texas. Among its 3,000 members
14 are numerous individuals who reside within the 50 mile
15 radius of the Comanche Peak nuclear plant. Petitioner,
16 while devoting significant time and resources to issues
17 concerning the South Texas nuclear plants, has relied
18 on CASE to represent fully its members' interests in
19 licensing proceedings examining the Comanche Peak
20 plant. Petitioner joins a number of other Texas
21 organizations in asking that the Board allow a 60-day
22 review period before dismissing any aspect of this case
23 on the basis of the Joint Stipulation agreement.

24 "Petitioner recently learned that
25 confidential negotiations were occurring for some time

1 between CASE, Texas Utilities ('Applicant') and the NRC
2 Staff. Petitioner understands that there are still
3 aspects of this negotiation process and settlement
4 agreements which remain confidential. The Joint
5 Stipulation apparently represents a partial result of
6 these negotiations. The parties to the Joint
7 Stipulation failed to notify the public of the
8 negotiations or of the agreement and failed to provide
9 the community any opportunity to rebut the arguments of
10 the agreement's proponents before it was signed.
11 Petitioner and the community still do not fully
12 understand the impact of this settlement agreement.

13 "The public interest has not been served in
14 this case by close-door negotiations. The Joint
15 Stipulation reveals that CASE negotiated away its
16 statutorily-granted hearing right in exchange for
17 limited access to the plant and input into certain
18 plant operation decision-making processes for a period
19 of five years. As the Atomic Energy Act's hearing
20 right is the only right granted expressly to the public
21 under the Atomic Energy Act, Petitioner believes that
22 any agreement between adverse parties of unequal
23 resources, in which such a critical right is negotiated
24 away, is of vital precedent-setting importance and must
25 be carefully reviewed by the Board. Never before has a

1 licensing proceeding with such public importance been
2 entirely terminated with a complex, precedent-setting
3 agreement negotiated in secret.

4 Moreover, the commitments by the Applicant in
5 this case represent informal license conditions which,
6 at the very least, deserve careful examination by this
7 Board, after full opportunity for public comment. In
8 addition, there are federal preemption issues raised by
9 this agreement which suggest the possibility that the
10 agreement could not withstand legal challenge. For
11 example, if the Applicant or the NRC later determined
12 that CASE's access to the site interferes with the
13 NEC's exclusive, statutorily-mandated responsibility to
14 regulate the plant, a court may be obligated to void
15 the agreement in the face of an agency or utility
16 challenge.

17 "Finally, Petitioner understands that certain
18 parties have filed petitions to intervene in the above-
19 captioned case. Among these parties is an organization
20 called CFUR, which had formerly intervened. Seven
21 years ago CFUR agreed to turn over to CASE its
22 contentions regarding quality assurance and quality
23 control at Comanche Peak with the understanding that
24 CASE would pursue these issues in licensing hearings.
25 CFUR believes these issues have not been resolved by

1 the Joint Stipulation and now seeks to reestablish its
2 participation in the licensing hearings to resolve
3 them.

4 "Petitioner understands that operating
5 license hearings are always discretionary to the extent
6 there must be an intervening party with admissible
7 contentions before a hearing may proceed. Petitioner
8 also understands that an intervenor may withdraw from a
9 hearing at any time. However, in this case, withdrawal
10 from the hearing represents the end of the licensing
11 process which could have serious health and safety
12 repercussions for the community, unless the Board
13 grants new petitioners with admissible contentions the
14 right to intervene.

15 "Former intervenors and members of the
16 community relied on CASE to pursue the licensing issues
17 before a public hearing board. The basis of this trust
18 was an understanding by these parties that CASE was
19 eager to represent the community as the intervening
20 party in the licensing proceedings set up to examine
21 the Comanche Peak construction permit and operating
22 license applications. Petitioner further believed that
23 CASE intended the licensing issues in this case to be
24 resolved by the Board following the on-the-record
25 process it originally established. Petitioner and the

1 community were informed less than two weeks ago that
2 CASE intended to change radically the procedure in
3 which the case would be resolved. It did so in the
4 midst of the adjudicatory process. CASE's definitive
5 steps to stop the hearings represents a clear departure
6 from the community's earlier understanding of how it
7 intended to pursue the serious safety issues involved
8 in constructing and operating Comanche Peak.

9 "Evidence developed over the course of this
10 hearing process to date demonstrates that Comanche Peak
11 is a troubled plant. As a result of the Joint
12 Stipulation, the hearings will end without an
13 underpinning Licensing Board decision to resolve
14 critical safety issues and without development of a full
15 adjudicatory record. Indeed, it is unclear how any of
16 these serious issues now will be resolved.

17 "As the recent outpouring of opposition to
18 this agreement illustrates, the community will suffer a
19 serious loss of public confidence and psychological
20 harm if the plant is permitted to operate without a
21 satisfactory Licensing Board decision. The community
22 demands that any agency decision permitting operation
23 of this inherently dangerous technology, potentially
24 life-threatening to the individuals that live and work
25 around the plant, be explained clearly and supported by

1 substantial record evidence. So far, the record cannot
2 sustain such a decision. At the very least, it is
3 crucial that the Board explain the reason for not
4 waiting for completion of the adjudicatory record
5 before allowing the Applicant to operate Comanche Peak
6 and address the concerns raised by the community.

7 "In evaluating the Joint Stipulation, the
8 Board must consider the following questions:

9 "1. Are there important issues of law which
10 merit Board evaluation and comment? For example, what
11 is the preemptive effect of the Atomic Energy Act on
12 the Joint Stipulation?

13 "2. Are there important public rights which
14 are eroded by this agreement?

15 "3. Does the seriousness of the issues
16 raised in this case argue for a decision based on an
17 on-the-record adjudication?

18 "4. Will this agreement ensure the future
19 protection of the community, particularly since CASE's
20 rights to participate in decision-making processes and
21 have access to the plant terminate in five years, well
22 short of the average life-span of a nuclear plant?

23 "Petitioner recognizes that CASE and this
24 Board have succeeded, after vigorous efforts, in
25 forcing the Applicant to take certain steps to increase

1 the plant's safety. However, the potential that
2 serious safety issues are still unresolved remains of
3 prime concern for this community.

4 "Members and others living in the area
5 immediately surrounding the reactors may be irreparably
6 injured by operation of this plant in the face of the
7 Board's failure to resolve outstanding safety issues.

8 "Given the extreme gravity of the matter at
9 hand -- the risk of an accident -- a 60 day stay of the
10 effectiveness of the Joint Stipulation and Memorandum
11 and Order is a modest request, particularly since, on
12 balance, the parties to the agreement will not be
13 harmed. The plant will not be ready to operate until at
14 least 1990, according to the Applicant's current
15 estimates.

16 "Petitioner requests that its members and the
17 surrounding community be granted 60 days to review the
18 agreement, to determine whether it operates to
19 denigrate the public's rights, and to inform the Board
20 of their views. Petitioner requests that petitions of
21 parties who had relied on CASE's assurances to pursue
22 their interests in this proceeding and who may now wish
23 to intervene be considered by the Board so as to ensure
24 a careful resolution of all safety issues prior to the
25 start up of the plant. For after having solicited the

1 community's proxy and trust, CASE must realize that
2 from its own best interest, the workability of the
3 settlement agreement requires a level of public
4 confidence that is now non-existent due to this
5 secretive 'no comment' process."]

6 STATEMENT OF CLIFF RUSHING

7 My name is Cliff Rushing. I'm a member of
8 the Citizen Audit. I signed the petition asking for
9 disclosure of the secret agreement between CASE and TU.

10 The Citizen Audit is an affiliation of senior
11 citizens, church groups and civic organizations --

12 JUDGE BLOCH: Do you know that that's about
13 to occur? The entire agreement is going to be
14 disclosed this morning.

15 MR. RUSHING: The entire agreement?

16 JUDGE BLOCH: The entire agreement will be
17 disclosed this morning.

18 MR. RUSHING: I understood there were three
19 parts and the last part, the money paid to the
20 individual people, would not be disclosed.

21 JUDGE BLOCH: The agreement appears not to
22 contain the amount to be paid to individual people. My
23 understanding is that's not complete, but that's an
24 undertaking in good faith.

25 I believe there is no statement on the money

1 to individuals.

2 MR. EDGAR: That's correct.

3 JUDGE BLOCH: You are correct in that, but my
4 understanding is that's in part because that's not
5 completed.

6 MR. RUSHING: That's what I'm concerned with.

7 JUDGE BLOCH: Please address that.

8 MR. RUSHING: Let me repeat. The Citizens
9 Audit is an affiliation of senior citizens, church
10 groups and civic organizations. We are concerned with
11 the financial impact of Comanche Peak on the community.

12 We filed this petition because of our
13 concerns about the secrecy of this agreement, and
14 especially the financial impact to the ratepayers,
15 Specifically how this agreement affects the long-term
16 costs of the plant and financial impact of unresolved
17 safety matters.

18 Will additional costs be involved in re-work
19 of safety items because of this agreement? Will
20 unresolved safety items have to be resolved at a later
21 time at increased expense? Will the plant open and
22 close repeatedly because of the safety problems,
23 further increasing plant costs? Is the compensation
24 for whistle blowers and plant opponents going to be
25 passed on to the ratepayers?

1 This plant was started at an estimated cost
2 of \$779 million, and the cost has now increased to \$9.1
3 billion. At first glance we thought this agreement
4 would put an end to the endless cost increases, but so
5 many issues are cloudy and cloaked in secrecy. Please
6 do not approve this secret agreement.

7 Thank you for listening to our concerns.

8 JUDGE BLOCH: Thank you.

9 Did you submit a copy for the record? I
10 would like to direct that the copies that are submitted
11 be bound in in the record at the point that they are
12 submitted.

13 [A true and correct copy of written statement
14 submitted by Mr. Cliff Rushing follows:

15 "My name is Cliff Rushing 527 Tish Apt. 903
16 Arlington, TX. 76006. I am a member of the Citizen
17 Audit. I signed the petition asking for disclosure of
18 the secret agreement between CASE and TU.

19 "The Citizen Audit is an affiliation of
20 Senior Citizens, Church Groups, and Civic
21 organizations. We are concerned with the financial
22 impact of Comanche Peak on the community.

23 "We filed this petition because of our
24 concerns about the secrecy of this agreement, and
25 especially the financial impact to the rate payers.

1 Specifically how this agreement affects the long term
2 costs of the plant, and the financial impact of
3 unresolved safety matters.

4 "Will additional costs be involved in re-work
5 of safety items because of this agreement. Will
6 unresolved safety items have to be resolved at a later
7 time at increased expense. Will the plant open and
8 close repeatedly because of safety problems further
9 increasing plant costs. Is the compensation for
10 whistle blowers and plant opponents going to be passed
11 on to rate payers.

12 "This plant was started at an estimated cost
13 of \$779 million and the cost has now increased to \$9.1
14 billion. At first glance we thought this agreement
15 would put an end to the endless cost increases, but so
16 many issues are cloudy and cloaked in secrecy. Please
17 do not approve this secret agreement. Thank you for
18 listening to our concerns."]

19 STATEMENT OF LON BURNAM

20 MR. BURNAM: My name is Lon Burnam, and I'm
21 here representing the Greater Fort Worth Group of the
22 Sierra Club and the Lone Star Chapter.

23 We, too, in light of our withdrawing our
24 petition asking for a 60-day stay.

25 Much like the Sierra Club has for almost a

1 hundred years in this country held a public trust to
2 guard the environmental concerns of our nation, CASE
3 has enjoyed a public trust with many people throughout
4 this region to safeguard us with regards to the
5 licensing process of this plant.

6 We feel like this public trust has been
7 violated and that we at this point have no means other
8 than through this board, who has been constituted these
9 many years, to approach the board; and if you disband
10 yourself this time the issues that are of concern to us
11 regarding the safety cannot be resolved.

12 There are many questions about the process
13 that may or may not be relevant to the safety issues.
14 But the issue at hand is -- we have two whistle blowers
15 that want to make certain that they have the
16 opportunity to participate in this process.

17 One of them alleges what many of us have
18 suspected for a long time: perjury on the part of
19 Texas Utilities.

20 JUDGE BLOCH: I've heard that said several
21 times, and I've seen no proof of it. It offends me
22 that people will make statements about perjury without
23 submitting proof. It just really bothers me.

24 MR. BURNAM: I appreciate that, Mr. Bloch.
25 The process here offends me because it's constraining

1 the exercise of citizens concerned about the safety and
2 welfare that this plant threatens in our home life.

3 JUDGE BLOCH: That doesn't excuse to me
4 stating that a person or a group of people may have
5 committed perjury. That doesn't show respect for
6 other individuals.

7 I do want this proceeding to be respectful.

8 MR. BURNAM: I appreciate that, Mr. Bloch,
9 and individuals that I know with the Utility, as well
10 as individuals at CASE, I respect individually. I
11 can't say that I respect the process or the product of
12 Texas Utilities over the last 15 years.

13 JUDGE BLOCH: That I'm willing to hear you
14 say. But when I hear someone alleging a crime, I
15 shudder unless they have proof. It just doesn't seem
16 fair.

17 MR. BURNAM: I'm not the one that's making
18 the allegation. I'm only --

19 JUDGE BLOCH: Well, you just said it. When
20 you say it, I want you to know that I am upset, when
21 you don't have your own personal proof so that you know
22 it's true.

23 MR. BURNAM: I appreciate your being upset.
24 I don't have my personal proof; I have my suspicions.

25 JUDGE BLOCH: You continue to say it. But I

1 want you to know I hadn't even heard it.

2 MR. BURNAM: Yes, sir.

3 That's really all I wanted to say. We would
4 like a 60-day stay because we feel that the public
5 trust has been violated and we have no way of assuring
6 our safety.

7 Thank you.

8 STATEMENT OF BETTY BRINK

9 My name is Betty Brink, 7600 Anglin Drive,
10 Fort Worth, Texas.

11 I am going to read this, knowing full well
12 that our motion has been denied without prejudice. So
13 some of the things that are already in here, I
14 recognize the Board is not going to accept and rule on.

15 I am a lifetime resident of Fort Worth and am
16 now living in the home in which I grew up, about 45
17 miles from Glen Rose and Somervell County, the site of
18 the Comanche Peak Nuclear Power Plant.

19 From my back door, I can see the power lines
20 that may some day connect my home to that plant.

21 As a mother of five grown children and a
22 grandmother of 11, I not only have a desire, but I have
23 an obligation to make sure that their home is a secure
24 place where they will have a future.

25 For the past several years, while the

1 licensing hearings have been suspended, I have been
2 actively opposing the plant on economic, as well as
3 safety issues, in an effort to protect the ratepayer
4 and the citizens of this area.

5 I have appeared before the Fort Worth City
6 Council on a regular basis, am currently serving on a
7 Fort Worth City Council ad hoc committee on Comanche
8 Peak, have written articles, held seminars, organized
9 with seniors and low income groups and spoken before
10 various forums.

11 This has all been with the knowledge and
12 support of CASE, Intervenor CASE, in this proceeding.
13 We have discussed our separate but equal goals
14 frequently with Juanita and Billie Garde, and we have
15 received advice from both of them.

16 We saw our work as complementary and believed
17 that they both encouraged us because they believed the
18 plant was too unsafe to ever operate without fear of an
19 accident.

20 I became an intervenor in these licensing
21 proceedings as a member of Citizens for Fair Utility
22 Regulation in June of 1979, because I felt then that
23 the Comanche Peak plant was not being constructed
24 safely.

25 I still feel that way today. And while I

1 have requested a 60-day stay and full disclosure, I
2 recognize that our motion has been denied without
3 prejudice. So anything I say referencing that, please
4 bear with me.

5 JUDGE BLOCH: Ms. Brink, I want to be
6 completely fair. There's no way that we can deny the
7 stay motion without prejudice.

8 MS. BRINK: Okay. I'm sorry. I'm not a
9 lawyer.

10 We believe there are still outstanding safety
11 issues. Mrs. Ellis and Mrs. Garde both have so stated
12 to me last month after CASE reached an agreement with
13 Texas Utilities on the design portion of the pipe
14 hangers and supports.

15 Both said, "The hearings will continue.
16 There are still many, many safety issues to litigate
17 under the QA/QC contention (that is, Contention 5)."

18 We have recently been contacted by two people
19 who seem to have allegations that will fall under the
20 QA/QC contention, and I recognize that we are going to
21 have to raise that in another forum.

22 But if these hearings are shut down and this
23 Board dissolved, the likelihood of these allegations
24 being heard and a determination of their validity being
25 made is small indeed.

1 When this Board ruled in December 1983 that
2 "The record before us casts doubt on the design quality
3 of the Comanche Peak Steam Electric Station," it said
4 further in that order that "... when it comes to
5 considering the safety of a nuclear plant, we think it
6 important to consider any argument that may be made.
7 If the safety of the applicant's plant is not assured,
8 even from arguments not previously thought of by the
9 intervenor, then the safety of the public is not
10 assured. There is no reason to think that potential
11 accidents have all been described in arguments
12 previously made."

13 While I recognize that this statement is made
14 in reference to intervenors already admitted, CASE, the
15 same argument can be made to assure that this board
16 hears all allegations of unsafe conditions regarding
17 this plant.

18 The basic premise has not changed simply
19 because the intervenor is attempting to withdraw; that
20 is, the consideration of the safety of a nuclear power
21 plant.

22 Too much has already been before this Board
23 for this Board to not have an obligation to continue to
24 hear evidence or investigate allegations.

25 The licensing of an unsafe nuclear power

1 plant has the potential for devastation and death on a
2 massive scale. There is really no other reason for
3 such close scrutiny or such stringent regulatory
4 requirements, requirements not required for any other
5 type of energy resource.

6 In its past writings this Board has
7 recognized the awesome responsibility it holds. I
8 would further argue that the redesign and rework now in
9 progress at the plant, rework and redesign necessary to
10 correct a litany of past mistakes, violates Appendix B
11 to 10 CFR Part 50 which requires that "the process for
12 correcting errors be reasonably prompt" (from the
13 Board's Memorandum and Order of December 1983).

14 In that order you refer to Appendix B as a
15 "sensible, integrated regulatory system for requiring
16 that both the design and construction of a nuclear
17 plant must be scrutinized to assure that all conditions
18 adverse to quality, including design deficiencies, must
19 be promptly identified and corrected."

20 The issues addressed by the December 1983
21 order were the design deficiencies brought up by
22 engineers Walsh and Doyle in 1982. These are now being
23 corrected, we understand, from the CPRT and the CAP and
24 are part of the reason CASE has agreed to withdraw.

25 We feel that six years between the time a

1 condition adverse to quality is identified and
2 corrected can never, in any stretch of the imagination,
3 be considered to meet the spirit or the letter of
4 Appendix B. There is no "reasonable" promptness going
5 on here.

6 It is reasonable also to assume that this is
7 the case in all the corrective work going on now at
8 Comanche Peak. It is simply too late to go back 10,
9 11, 12 or 14 years, the lifetime of the construction of
10 this plant, correct the mistakes made either in
11 construction or design and still meet the "reasonably
12 prompt" requirements of Appendix B.

13 In closing I wish to state without
14 reservations that I would have had no quarrel with a
15 straightforward decision by CASE to withdraw from these
16 proceedings.

17 I can personally state, because of my long
18 association with and support of Mrs. Ellis, CASE and
19 other CASE members, that this intervenor's
20 extraordinary and heroic involvement in these
21 proceedings on behalf of CASE members and the general
22 public is unparalleled.

23 Mrs. Ellis is a gifted, dedicated woman and
24 her contributions to society will be felt for years to
25 come, her contributions to a safer society.

1 My reservations, if you will, are with the
2 agreements themselves, some of them that we feel or
3 have heard were secret, which not only takes CASE out
4 of the proceedings and closes the hearings, but may
5 effectively block new intervenors from being admitted
6 to continue the process in a timely and reasonable
7 manner.

8 JUDGE BLOCH: That's not true.

9 MS. BRINK: All right. Well, it's going to
10 be difficult. We recognize the difficulty of it.

11 JUDGE BLOCH: I just want you to know that
12 the agreement doesn't do that.

13 MS. BRINK: Okay. Such a secret agreement
14 surrounding the licensing of a nuclear power plant
15 cannot serve the public's interest in any way, nor the
16 future interest of the public.

17 Neither should the licensing of a nuclear
18 power plant be intertwined in any way with the
19 legitimate financial claims of whistle blowers who have
20 testified about unsafe and defective workmanship at
21 that same plant.

22 In the past days I have spoken with at least
23 four members of CASE or other parties to this
24 agreement, including one of the whistle blowers. Each
25 person admits, after a direct question, that the plant

1 is not safe. One member said, "I don't think it can
2 ever be made safe."

3 I respectfully submit this for the record,
4 and thank you very much.

5 JUDGE BLOCH: Thank you.

6 [A true and correct copy of written statement
7 submitted by Ms. Betty Brink follows:

8 "My name is Betty Brink, 7600 Anglin Drive,
9 Fort Worth, Texas 76119. I am a lifetime resident of
10 Fort Worth, and am now living in the home in which I
11 grew up, about 45 miles from Glen Rose and Somervell
12 County, the site of the Comanche Peak Nuclear Power
13 Plant. From my back door I can see the power lines
14 that may someday connect my home to that plant. As a
15 mother of five grown children and a grandmother of 11
16 youngsters, I not only have a desire, but I have an
17 obligation to make this, their home, a secure place
18 where they will have a future.

19 "For the past several years -- while the
20 licensing hearings have been suspended, I have been
21 actively opposing the plant, on economic as well as
22 safety grounds in an effort to protect the ratepayer.
23 I have appeared before the Fort Worth City Council on a
24 regular basis, am currently serving on a Fort Worth
25 City Council Ad Hoc Committee on Comanche Peak, have

1 written articles, held seminars, organized with seniors
2 and low income groups and spoken before various forums.
3 This has been with the knowledge and support of CASE,
4 discussing our separate but equal goals frequently with
5 Juanita and Billie Garde and receiving advice from
6 them. We saw our work as complementary and believed
7 that they both encouraged us because they believed the
8 plant was too unsafe to ever operate without fear of an
9 accident. Juanita has been sending me documents
10 relating to this plant on a regular basis.

11 "I became an intervenor in these licensing
12 proceedings as a member of Citizens for Fair Utility
13 Regulation in June of 1979 because I felt then that the
14 Comanche Peak plant was not being constructed safely.
15 I still feel that way today and request that this board
16 grant a 60 day delay and require full disclosure of the
17 agreements between intervenor CASE and Texas Utilities
18 and any other parties to the agreements, so that those
19 of us who have an interest in whether this plant
20 receives an operating license can truly determine if
21 this agreement will secure for all of us a safe plant.
22 If doubts still exist after reading the agreements,
23 then we need to be able to have a reasonable time to
24 determine if we can reintervene and carry forward these
25 same hearings on the safety issues still outstanding.

1 "Otherwise this agreement will effectively
2 dissolve this board and silence these issues forever.

3 "There are still outstanding safety issues.
4 Mrs. Ellis and Ms. Garde both have so stated to me last
5 month after CASE reached an agreement with TU on the
6 design portion of the pipe hangers and supports. Both
7 said, 'The hearings will continue; there are still
8 many, many safety issues to litigate under the QA/QC
9 contention," that is Contention 5. And Mrs. Ellis
10 further assured me that the redesign of the pipe
11 hangers was all that CASE had agreed to accept as
12 satisfactory under the redesign and rework now ongoing
13 at the plant.

14 "Further, we have recently been contacted by
15 two people who seem to have allegations that will fall
16 under the QA/QC contention. If these hearings are shut
17 down and this board dissolved, the likelihood of these
18 allegations being heard and a determination of their
19 validity being made is small indeed. When this board
20 ruled in December 1983 that 'The record before us casts
21 doubt on the design quality of the Comanche Peak Steam
22 Electric Station,' it said further in that order that
23 '... when it comes to considering the safety of a
24 nuclear plant, we think it important to consider any
25 argument that may be made. If the safety of the

1 applicant's plant is not assured, even from arguments
2 not previously thought of by the intervenor, then the
3 safety of the public is not assured. There is no
4 reason to think that potential accidents have all been
5 described in arguments previously made.'

6 "While I recognize that this statement is
7 made in reference to intervenors already admitted, the
8 same argument can be made to assure that this board
9 hears all allegations of unsafe conditions regarding
10 this plant. The basic premise has not changed simply
11 because the intervenor is attempting to withdraw; that
12 is, the consideration of the 'safety of a nuclear power
13 plant.' Too much has already been before this board
14 for this board to not have an obligation to continue to
15 hear evidence or investigate allegations. The
16 licensing of an unsafe nuclear power plant has the
17 potential for devastation and death on a massive scale.
18 There is really no other reason for such close scrutiny
19 or such stringent regulatory requirements, requirements
20 not required for any other type of energy resource.

21 "In its past writings this board has
22 recognized the awesome responsibility it holds. I
23 would further argue that the redesign and rework now in
24 progress at the plant, rework and redesign necessary to
25 correct a whole litany of past mistakes, mistakes made

1 years ago in many cases, violates Appendix B to 10 CFR
2 Part 50 which requires that 'the process for correcting
3 errors be reasonably prompt.' (From the board's
4 memorandum and order of December, 1983).

5 "In that order, you refer to Appendix B as a
6 'sensible, integrated regulatory system for requiring
7 that both the design and construction of a nuclear
8 plant must be scrutinized to assure that all conditions
9 adverse to quality, including design deficiencies, must
10 be promptly identified and corrected.' (My emphasis)

11 "The issues addressed by the December, 1983
12 order were the design deficiencies brought up by
13 Engineers Walsh and Doyle in 1982. Those are now being
14 corrected, we understand from CASE and the NRC, and are
15 part of the reason CASE has agreed to withdraw.

16 "We feel that six years between the time a
17 'condition adverse to quality' is identified and
18 corrected can never, in any stretch of the imagination,
19 be considered to meet the spirit or the letter of
20 Appendix B. There is no 'reasonable' promptness going
21 on here.

22 "It is reasonable to assume that this is the
23 case in all the corrective work going on now at
24 Comanche Peak. It is simply too late to go back 10,
25 11, 12 or 14 years, the lifetime of the construction of

1 this plant, correct the mistakes made, either in
2 construction or design and still meet the 'reasonably
3 prompt' requirements of Appendix B.

4 "In closing. I wish to state without
5 reservations that I would have had no quarrel with a
6 straightforward decision by CASE to withdraw from these
7 proceedings. I can personally state -- because of my
8 long association with and support of -- Mrs. Juanita
9 Ellis, CASE and other CASE members, that this
10 intervenor's extraordinary and heroic involvement in
11 these proceedings on behalf of CASE members and the
12 general public, is unparalleled. Mrs. Ellis is a
13 gifted, dedicated woman and her contributions to
14 society will be felt for years to come -- her
15 contributions to a safer society.

16 "My quarrel -- or reservations if you will --
17 is with the agreements themselves, the secret
18 agreements which not only take CASE out of the
19 proceedings and close the hearings, but may effectively
20 block new intervenors from being admitted to continue
21 the process in a timely and reasonable manner. Such
22 secret agreements surrounding the licensing of a
23 nuclear power plant cannot serve the public's interest
24 in any way, nor the future interests of the public.
25 Neither should the licensing of a nuclear power plant

1 be intertwined with the legitimate financial claims of
2 whistle blowers who have testified about unsafe and
3 defective workmanship at that same plant.

4 "In the past days, I have spoken with at
5 least four members of CASE or other parties to this
6 agreement, including one of the whistle blowers. Each
7 person admits after a direct question that the plant is
8 not 'safe.' One member said, 'I don't think it can
9 ever be made safe.'

10 "I respectfully request that this board grant
11 our request for a 60 day delay and full disclosure."]

12 JUDGE BLOCH: I would like to urge that the
13 responses of the parties also be respectful, and in
14 that vein does Texas Utilities wish to respond at this
15 time?

16 MR. EDGAR: I'm sorry, Your Honor. I wasn't
17 paying attention.

18 JUDGE BLOCH: That's very unusual. Would
19 Texas Utilities like to respond to the limited
20 appearance statements?

21 MR. EDGAR: Very briefly.

22 The first point I'd like to make involves a
23 mixture of legal and a practical point. The comment
24 was made that the agreement negotiated away CASE's
25 rights. There are two phrases and words in that

1 statement that one needs to focus on.

2 The first is "CASE's rights." They were not
3 the rights of someone other than CASE. And the second
4 is that they weren't negotiated away, but they were
5 rather replaced with a rational process for dispute
6 resolution.

7 The argument that one must maintain the
8 hearing process here says too much about the hearing
9 process. It says that one could never reach an
10 alternative method of dispute resolution. One could
11 not settle a case; litigation would be endless.

12 The real question here is basically set forth
13 in the Board's order terminating the proceeding. There
14 are no matters in controversy between the parties.
15 There are no sua sponte issues.

16 And as a matter of law, dismissal is
17 appropriate.

18 The second point is one that I hesitate to
19 raise, but I don't want to raise it in any kind of a
20 pejorative way. It's simply the accusation that CASE
21 has violated the public trust. That is simply not the
22 case.

23 Anybody that knows CASE and its counsel,
24 whatever their view, would have to regard them as
25 having the highest possible integrity.

1 The next point is one that I wish I did not
2 have to address before this Board. I wish I were not
3 placed in this position, but there has been an
4 accusation of perjury.

5 It has been made in pleadings before this
6 board; it has been made in open letters to the
7 Commission and it has been made today.

8 That's unfortunate. I don't wish to
9 complicate these proceedings, and I certainly don't
10 like the situation that creates disrespect for the
11 Board and the process and the parties.

12 But we have, as stated on the record today, a
13 suspicion of perjury. We know of no such evidence. We
14 strongly deny any such circumstances, and we will ask
15 for accountability outside the confines of these
16 proceedings.

17 As a final note -- and I think it's the most
18 important point to bring to this Board -- with due
19 respect for today's expressions of concern, without
20 raising a question of whether one agrees or disagrees
21 with the point of view, there haven't been any safety
22 issues brought forward to this Board today that are new
23 and are significant.

24 If there are real technical issues, there is
25 a process for allowing those to be presented to the

1 Commission. And if there are real safety issues,
2 speaking on behalf of TU, we'd like to see them so that
3 we can address them.

4 We note in CASE's July --

5 JUDGE BLOCH: I'd like to say that there is a
6 new avenue also under the agreement, which is that
7 people with safety concerns can also go to Ms. Ellis
8 who can pursue them for them within the new process.

9 MR. EDGAR: Exactly. We should understand
10 that CASE's participation in these proceedings has been
11 a lengthy one; it has been a probing one.

12 We have not reached agreement on the merits.
13 We have reached agreement on a process for resolution
14 of issues. We expect CASE's participation to remain a
15 probing participation.

16 If people have real safety issues, we'd like
17 to see them.

18 With that, I have no further comment to make.

19 Thank you.

20 JUDGE BLOCH: CASE.

21 MR. ROISMAN: Mr. Chairman and Members of the
22 Board, my name is Anthony Roisman; and I am one of the
23 counsel for CASE that have been asked to present a
24 brief response by CASE to the limited appearance
25 statements.

1 JUDGE BLOCH: Before you proceed, Mr.
2 Roisman, you handed a statement to the reporter --

3 MR. ROISMAN: And I was just going to ask the
4 Board's permission to have it included within the
5 record. It is a letter which CASE submitted to the
6 Board this morning, which sets out in far greater
7 detail the points that I will be making here.

8 I would ask that it be bound in with the
9 record so that it will be a part of this record today.

10 JUDGE BLOCH: I can do that, but I have some
11 concern because there's language in it that is
12 emotional language about the role of the intervenors.
13 It seems to me somewhat unfair to bind that into the
14 record without giving them a chance to respond.

15 If you were able to summarize the substance
16 of that, without putting the charges in the way they
17 are, I would prefer that.

18 MR. ROISMAN: Okay. We can do that, Mr.
19 Chairman. It may take me a couple of minutes longer.

20 First of all, I think it's important to
21 understand -- because Mrs. Ellis' name has become
22 almost synonymous with CASE -- that this is a
23 proceeding which has been pursued by CASE, and Mrs.
24 Ellis, like Billie Garde and myself, have spoken on
25 behalf of CASE, an organization with a membership and a

1 board of directors, all of whom have participated
2 actively, not only in the litigation process, but also
3 in the negotiation process.

4 I think it's important to get a better
5 understanding of what the agreement is that has been
6 reached between CASE and Texas Utilities. This is not
7 an agreement, as Mr. Edgar has said for Texas
8 Utilities, to resolve any substantive issue.

9 Every issue that CASE believed was of concern
10 a month ago, it still believes is a concern today.
11 Every conviction that it had a month ago to see to it
12 that those concerns were adequately addressed before
13 CASE would be satisfied, if it would be satisfied about
14 the safety of this plant, remains today.

15 What CASE has done is to exchange a process
16 that it was using to pursue those for a far better and
17 more effective process.

18 All of you who today came here to present
19 your views to this Board have seen in a small microcosm
20 what's wrong with the legal system for resolving these
21 issues.

22 Each of you have in one way or another been
23 frustrated by the legalisms of the Nuclear Regulatory
24 Commission licensing process, the rules, the
25 regulations, the decisions of the Commission and its

1 licensing boards which have bound this Board and bound
2 all of us as parties.

3 We have spent today and in preparation for
4 today hours, and you many hours, doing nothing but
5 dealing with legalisms. What CASE has decided is that
6 at this moment in time, what is needed is less time
7 with lawyers arguing with lawyers about the law and
8 more time with technical experts talking to technical
9 experts about substantive issues of safety and concern.

10 We have reached a plateau from which CASE
11 believes that it cannot progress adequately in the
12 legal process. It has done what virtually every other
13 person in the world does all the time. We don't resort
14 to litigation as our first resort for dealing with
15 problems.

16 Ten years of beating up on, of contesting, of
17 challenging, of confronting the Texas Utility Company
18 has brought them to a position in which CASE is
19 convinced that we can make more progress, do more for
20 public health and safety, assure a better quality
21 plant, or if it cannot meet the quality required,
22 assure that it will not be licensed, through a process
23 other than the legalisms which all of you ran into
24 today.

25 Never again will CASE have to worry about 10

1 CFR, which those of you who have had the misfortune to
2 study, will realize is not a model for rational
3 decision-making.

4 It is a process; it is a legal process. It's
5 a process that applauds lawyers like myself, but not
6 technical experts like Jack Doyle, not technical
7 experts like Chuck Atchison, not technical experts of
8 the kind who the intervenors would like to have present
9 their views to this Board.

10 No one knows that better than the two
11 technical members who sit on this Board and must see
12 the conflict. So CASE has made a very studied and
13 careful decision.

14 A second thing that CASE has done is it has
15 bargained for and obtained a substantial yearly
16 resource from Texas Utilities to allow it to hire the
17 consultants to present its views to Texas Utilities; in
18 effect, to be a pure and true independent ombudsman of
19 the corporation.

20 Now, no one knows better than Betty Brink and
21 CPUR what those resources mean because they withdrew
22 from this hearing seven years ago because they didn't
23 have the resources to proceed.

24 Resources and expertise is what this is all
25 about. That's the issue, and that's what CASE has

1 bargained for.

2 In recent months Jack Doyle and Juanita Ellis
3 had a chance to test the effectiveness of the meet-
4 with-Texas Utilities-and-try-to resolve-the-substantive
5 issues.

6 And in literally days and weeks of meetings
7 and preparation, they managed to persuade Texas
8 Utilities to do in the design of piping and pipe
9 support what Jack Doyle and Mark Walsh had been urging
10 this corporation to do for years.

11 And they reached an agreement. In that same
12 time frame, as one of the earlier speakers pointed out,
13 in the same time frame this licensing board was unable
14 to prevent the alleged harassment of Cygna
15 investigators hired by the company at the urging of the
16 Board, or to prevent the existence of whistle blowers
17 who felt that their concerns were not being adequately
18 addressed within the plant.

19 CASE's response to that is: Let's get away
20 from this board that sits on a platform and get down
21 into the inside of Texas Utilities where the decisions
22 are being made, where you can really have an impact the
23 way Juanita and Jack Doyle did on the piping and pipe
24 support question.

25 Now, that exchange -- the exchange of this

1 abstract and remote licensing process for the day-to-
2 day processes which puts Juanita in a position and CASE
3 in a position to really influence day-to-day decisions,
4 not to deal with history but to deal with current
5 events. That's what CASE has bargained for.

6 Secondly, CASE has retained the avenues to
7 pursue the problems to the extent that it and the
8 company don't come to agreement. It pursues all of its
9 rights in front of the NRC Staff. It pursues the
10 rights hidden in that 10 CFR known as 2.206, the right
11 to petition the agency to take action, including the
12 right to shut down construction at the plant, the right
13 to seek any kind of order that would restrict what the
14 company can do at the plant. Those rights are
15 preserved.

16 The right to talk to the press, to get these
17 cameras out at any time, for Juanita to walk out of a
18 meeting of the operations review committee and hold a
19 press conference and say, "Let me tell you what
20 happened in that meeting, and what they didn't agree to
21 and why I think they were wrong."

22 All those rights are preserved, every single
23 one of them. Plus the rights of any other person who
24 thinks that this licensing process is the better way to
25 go, to come to the Commission and ask the Commission,

1 "Start one for us."

2 And as this Board has already ruled today, as
3 everyone has agreed, there is no difference in the
4 rights of a party who filed a petition yesterday and
5 one who files one tomorrow. The rights are exactly the
6 same.

7 They face the same hurdles. They must go
8 through the same legalisms. They stand in the same
9 shoes.

10 And if they are able to prevail and they have
11 an opportunity to be in front of the licensing board,
12 maybe ten years down the road, they, too, will learn
13 what CASE has learned; that is, that there can be and
14 is a better way.

15 The parties who spoke out today, CASE is
16 delighted at this show of public concern about nuclear
17 safety and this plant. It is sorry that it wasn't
18 there earlier. It is sorry that it wasn't there to
19 help the process as much. It hopes that this is
20 indicative of the fact that this will not be one woman
21 and her board and her members pursuing this issue on
22 behalf of all of the State of Texas or the nation, as
23 one speaker indicated, but rather that this is the
24 beginning of an outpouring of interest sufficient to
25 work with the most effective citizen intervenor group

1 in the nation, to see to it that Texas Utilities builds
2 a plant that is safe.

3 Let me say something on this. There is not a
4 single person at Texas Utilities who I have ever met,
5 and many who I have cross-examined, who has ever
6 indicated to me or demonstrated to me that this company
7 has an interest in building an unsafe plant.

8 There's a genuine disagreement as to what
9 that safety requires. There's nobody there, they have
10 nothing to gain, and if you thought they did, take a
11 look at what has happened to general public utilities
12 who built and operated an unsafe plant and have
13 essentially gone into bankruptcy as a result of it.
14 That's the Three Mile Island plant, of course.

15 There's no interest, there's no self-serving
16 interest in this company building that plant. What
17 CASE has done for ten years is to say, by banging on
18 the door, "We have something to offer you that will
19 help you make this plant safe."

20 And what Texas Utilities has said in this
21 agreement, "You know what? You do, and we want to open
22 our door and bring you in so that we can hear you
23 better without the noise factor of the litigation
24 process."

25 Now, Juanita, Billie Garde and myself have

1 spent literally hours each day, and every day since
2 this agreement was made public on July 1, talking to
3 citizen groups, many of whose spokespersons were up
4 here today, to explain to them not only the Joint
5 Stipulation, but the broad outline of the settlement
6 agreement, to assure them beyond any doubt, as everyone
7 here will know in a few minutes if the Board approves
8 this dismissal, and the settlement agreement is
9 released, that no one -- no one -- is prohibited from
10 speaking out.

11 No worker is prohibited from raising his
12 concerns in any form that he seeks. The only thing the
13 workers are being asked to release is their liability
14 claims against the company for their allegation that
15 they were wrongfully discharged.

16 We've read the relevant portion of the
17 proposal that has gone to each of those workers to
18 anybody who would listen to it. And it says it in
19 crystal clear language.

20 All the concerns that were raised this
21 morning, that allegedly the great secrets that were not
22 released, Juanita, Billie and myself have explained at
23 great length -- at great length -- to allay the fears
24 of the public and any person that there is no silence
25 associated with this agreement and that there is no gag

1 order placed on anyone.

2 Nor would anyone have been willing to sign
3 such an agreement.

4 What Juanita Ellis has done -- and I must say
5 to me it's a stunner -- ten years of fighting this
6 plant has produced what we have heard in some forums --
7 not here today -- the suggestion that she's selling out
8 by agreeing to spend five more years being involved
9 with this plant.

10 Even for a woman as young as Juanita, 15
11 years of her life devoted to a single project is a
12 substantial piece of time.

13 There has been in the press and some innuendo
14 in the pleadings before this Board that silence and
15 money were being exchanged. Not only is that a gross
16 misrepresentation of what is clear in the document
17 itself, clear in the statements that Juanita and Billie
18 and I have made, clear in what anybody -- I mean those
19 of you who know some of these whistle blowers who have
20 ever seen Chuck Atchison or Dobie Hatley or any of the
21 people who are involved as whistle blowers at this
22 plant, silence is the last thing on their mind, is the
23 last thing that they would ever bargain for.

24 These are the most articulate people you will
25 ever meet. They are not silent.

1 Why did that idea come up? Because two young
2 inexperienced lawyers who have now withdrawn their
3 representations stirred it up.

4 JUDGE BLOCH: I'd rather not have this have to do
5 with personalities.

6 MR. ROISMAN: It's not. That's why I'm not
7 mentioning their names, Judge.

8 [Laughter.]

9 JUDGE BLOCH: Well, maybe you could stay away from
10 anything about that.

11 MR. ROISMAN: Okay, nothing more about the Dough
12 Brothers.

13 [Laughter.]

14 JUDGE BLOCH: It's the adjectives I'd prefer you
15 to avoid, not the names.

16 MR. ROISMAN: All right.

17 Lastly, I want to talk about the question of
18 trust. The team of people that have been involved with CASE
19 in this licensing proceeding is (and I will say somewhat
20 immodestly and include myself in the group) the absolute
21 best in this country on interventions and representation of
22 citizen groups.

23 Juanita Ellis -- and I've worked with them all;
24 I've worked with virtually every citizen group that's
25 involved in nuclear plants. I've never in my life seen a

1 person as effective in the legal process, in the
2 administrative process, in what she writes and how she does
3 it and as dedicated as Juanita Ellis or CASE as an
4 intervenor. None. None with that staying power. None with
5 that capability.

6 There is no lawyer in this country that even is in
7 the same page of the book as Billie Garde as a person who
8 works with whistle blowers, who understands their concerns,
9 who helps them present those concerns effectively.

10 While I will not say that I am the number one
11 intervenor lawyer, I can at least say I've been around
12 longer than any of the other intervenor lawyers, and I've
13 been in a lot of these cases.

14 MR. EDGAR: You're in the top ten.

15 MR. ROISMAN: George and I have met before in
16 these proceedings.

17 All of you know of the quality of this Licensing
18 Board.

19 Trust means taking the word of those who know.
20 This Board has already said that this agreement is good and
21 appropriate and should be approved.

22 Billie, Juanita and I don't really think it's
23 good. We're enthusiastic. We're jumping up and down.
24 We're ecstatic. We know that this is the best possible way
25 for CASE to proceed to pursue the issues that it wants to

1 pursue.

2 Mark Twain said something once that I think is
3 important to reiterate here. He said, "The truth hasn't got
4 its boots on by the time a lie is halfway around the world."

5 We're today trying to tell you the truth about
6 what this is all about, and we do not accept the premise
7 that because we suddenly come to a point in the process
8 where we believe we can work better inside than outside,
9 that there's a basis to believe that that is an unfair
10 settlement.

11 Remember the role of the whistle blowers in all
12 these cases. They start on the inside, and when they come
13 out it's to get the right to go back inside again, because
14 they know better than all the rest of us that the decisions
15 are made on the inside, not here by the Licensing Board,
16 certainly not by the lawyers.

17 This settlement agreement is enthusiastically
18 supported by all but perhaps one of these whistle blowers,
19 because they know better than any of the rest of us that
20 what has been bargained for and obtained is the right to
21 make a difference.

22 I, for one, am not willing to accept the premise
23 that a corporation is unable to see the light, and that's
24 the premise of this whole discussion.

25 I think Texas Utilities as a company has come a

1 long way and I think that CASE is prepared to recognize that
2 movement and say, "Let's work together. If this plant can
3 be made safe, we will work together to see that that
4 happens."

5 Trust is a two-way street and what CASE has been
6 saying in every way that it could and in every forum
7 available to it is, "You have every reason to trust the
8 judgment of the people who know this licensing process
9 better than anybody else; that this settlement and this
10 agreement are not only in the public interest but
11 substantially advance the public interest.

12 Thank you, Mr. Chairman.

13 JUDGE BLOCH: Mr. Roisman, could you take back the
14 document that's not being bound in?

15 MR. ROISMAN: With reluctance, Mr. Chairman. More
16 legalism.

17 JUDGE BLOCH: Staff.

18 MS. MOORE: After the two previous gentlemen have
19 spoken, I have little to add, but I do want to add the
20 Staff's perspective, if I can on this agreement, and I do
21 want to address the concern that I thought I heard from the
22 people who spoke today.

23 That concern was that somehow if these proceedings
24 are dismissed, the safety issues involved with Comanche Peak
25 will somehow die.

1 That's a concern that is really not justified.
2 The Staff of the Nuclear Regulatory Commission has a
3 dedicated group of people who are working to evaluate the
4 activities at Comanche Peak and inspect those activities to
5 make sure that there is a basis for resolving design and
6 construction issues, to make sure that that facility
7 complies with the NRC requirements and the license
8 application and to make a determination that there's
9 reasonable assurance that this plant when and if it operates
10 will operate so as to not endanger the public health and
11 safety.

12 That's the duty that each Staff member involved
13 with Comanche Peak faces and they take it very seriously and
14 they work very hard to perform that duty.

15 Their duty doesn't end with this proceeding. They
16 don't have to appear at a hearing; that may be true, but the
17 Staff still has the obligation to review the activities of
18 Texas Utilities, to review the license application and to
19 make a determination as to whether or not the issuance of an
20 operating license should be recommended to the Commission.

21 That duty is being pursued and will continue to be
22 pursued, regardless of whether this proceeding is dismissed
23 or not.

24 The Staff will continue its vigilance at the
25 Comanche Peak site. They will continue to have a Staff on

1 site at Comanche Peak which inspects the licensing
2 activities for TU Electric.

3 The Staff at headquarters will continue to review
4 the submissions of Texas Utilities. They'll continue to
5 review the corrective action efforts.

6 All of these processes are ongoing. If at any
7 time there is a concern that a person has, whether or not
8 they've been involved in this proceeding, they are free to
9 bring it to the NRC and the NRC Staff will investigate it.

10 That is the staff's charge and it does not change.
11 So therefore the concern that the disputes that arise
12 between Intervenors -- or CASE, I should say, if this
13 proceeding is dismissed, and the Applicants will not be
14 resolved should not be a concern. It's true there will not
15 be a Board to resolve them, but there is a mechanism in the
16 agreement for the Staff involvement.

17 And the Staff takes that charge very seriously.
18 They will be involved in dispute resolutions if the disputes
19 are brought to them. In addition, they will raise their own
20 issues and have consistently raised issues with the
21 Applicants, as you can discern from the Staff's numerous
22 inspection reports on the Comanche Peak site.

23 At some point in the future, of course, the Staff
24 would expect that no special regulatory oversight would any
25 longer be necessary for Comanche Peak, but that time would

1 not come until the licensing basis for Comanche Peak is
2 clearly established and Texas Utilities can demonstrate the
3 capability to conduct safe operations at the Comanche Peak
4 site.

5 The Staff is now and will continue to be deeply
6 involved in Comanche Peak and we do not believe that this
7 agreement in any way endangers either the public's right to
8 pursue their concerns, as Mr. Roisman said, either through
9 2.206 petitions or to come to the NRC with allegations.

10 We do not believe this agreement endangers in an,
11 way the ability of the Staff to pursue its own review and
12 evaluation of all the activities surrounding the licensing
13 and operation of Comanche Peak.

14 Thank you.

15 JUDGE BLOCH: We'll have a brief recess.

16 [Short recess.]

17 JUDGE BLOCH: Please come to order.

18 I'd like to briefly rule on the motions that have
19 been submitted to us but which are in doubt because Counsel
20 who submitted the motions has withdrawn his appearance. For
21 the sake of the motions I will treat them as still being
22 submitted to us. They have been made by non-parties and,
23 therefore, there's no standing to make those motions.

24 I'd also like to state that insofar as they
25 requested a stay in today's proceedings, they fail to meet

1 the stay criteria in two ways, both through showing of
2 irreparable injury, which was not shown because the same
3 procedure for becoming a party will be available afterwards,
4 and also because there was no showing of a likelihood of
5 success on the merits.

6 The next item on the agenda is for Mr. Edgar on
7 behalf of Texas Utilities to present the terms of the
8 settlement agreement.

9 MR. EDGAR: Your Honor, I will briefly summarize
10 the terms of the agreement. The statement that I will
11 present to the Board for the record is a statement that
12 enjoys the support of all parties.

13 As previously reported to this Board, the Joint
14 Stipulation and Joint Dismissal Motion filed by the parties
15 on July 1, 1988, were part of an overall settlement
16 agreement reached by TU Electric and CASE on June 29, 1988.

17 I'm pleased to summarize here for the Board's
18 information the principal substantive provisions of that
19 settlement agreement.

20 Upon the Board's issuance of an order dismissing
21 these proceedings, if that should be the Board's course of
22 action, CASE and TU Electric will release the settlement
23 agreement.

24 Let me begin, then, with a brief summary.

25 The first major provision is as follows: The

1 settlement agreement provides that TU Electric and CASE will
2 execute and file the Joint Stipulation and Joint Motion for
3 Dismissal and diligently prosecute them before the NRC.

4 Second, it provides that the means established
5 under the Joint Stipulation for resolving technical issues
6 without resort to the litigation process will be used with
7 respect to any concern related to the issuance of any
8 operating license or any amendments to construction permits
9 for Comanche Peak Units 1 and 2, including the issuance of
10 any associated licenses and permits.

11 This obligation does not apply to any proceedings
12 before the Texas Public Utilities Commission nor to any
13 amendments to the full power Comanche Peak operating
14 licenses.

15 Third, in addition to committing to comply with
16 the Joint Stipulation, TU Electric agrees to provide an
17 appropriate primary point of contact for CASE for the period
18 that a representative of CASE serves on the Operations
19 Review Committee, the ORC.

20 That point of contact will be Mr. William G.
21 Council, the Executive Vice President, Nuclear Engineering
22 and Operations, or if Mr. Council ceases to be employed by
23 TU Electric, any then current TU Electric nuclear officer
24 selected by CASE.

25 Fourth, in recognition of CASE's concerns about

1 workers formerly employed in connection with the
2 construction of Comanche Peak who may have employment
3 discrimination claims against TU Electric or a contractor,
4 TU Electric agreed to enter into good-faith settlement
5 negotiations to resolve such disputes when the Joint
6 Stipulation becomes effective.

7 Although any former worker who agrees to settle
8 his claim will be required to execute a general release, the
9 release does not preclude him from bringing any safety or
10 technical matter to the attention of the NRC.

11 JUDGE BLOCH: That's the point Mr. Roisman was
12 addressing before. There is no restriction at all on anyone
13 coming to the NRC with safety concerns.

14 MR. EDGAR: Right, and might I add another point
15 just for the record, that many of the provisions that I'm
16 summarizing here are repetitive or redundant to those in the
17 Joint Stipulation and in that regard the Joint Stipulation
18 indicates clearly that nothing in that stipulation would in
19 any way limit the right of any individual or CASE to go to
20 the NRC.

21 Now, continuing and referring again to settlement
22 of claims. These negotiations, referring to negotiations
23 concerning settlement of claims, include five legal
24 proceedings involving eleven plaintiffs, including some
25 presently pending cases before the Department of Labor, and

1 also provides for payment to other workers who, although
2 they have no pending cases, have assisted CASE in the NRC
3 licensing process.

4 TU Electric is willing to settle these claims for
5 a total amount not to exceed \$5.5 million.

6 Fifth, TU Electric agrees now and in the future to
7 make a good-faith effort to resolve issues brought to CASE
8 by Comanche Peak workers or others.

9 Sixth, upon the Joint Stipulation becoming
10 effective and these proceedings being dismissed, TU Electric
11 agrees to issue a public statement recognizing CASE's
12 contribution and TU Electric's responsibility and to file a
13 statement with the NRC with the request that it be made part
14 of the evidentiary record.

15 Seventh, TU Electric agrees that while Mrs. Ellis
16 or her alternate serves on the ORC, she may retain one or
17 more technical consultants and that TU Electric will
18 reimburse CASE for their fees and expenses at an amount up
19 to \$150,000 annually.

20 TU Electric will also reimburse Mrs. Ellis or her
21 alternate for any other reasonable costs and expenses
22 incurred in furtherance of duties as a member of ORC.

23 Eighth, in recognition of CASE's significant
24 contribution and the tremendous costs and expense incurred
25 by CASE from 1979 through 1988 in these proceedings, TU

1 Electric agrees to reimburse CASE the amount of \$4.5 million
2 for all costs, expenses, attorneys' fees, consultant fees,
3 court costs, salaries and debt incurred by CASE in the past
4 and for such costs and expenses which CASE will incur in
5 closing out its participation in these proceedings and
6 establishing its oversight role.

7 Finally, in addition to resolving these
8 substantive matters, each party has also agreed to release
9 the other from any claims or causes of actions it might have
10 arising out of the construction or operation of Comanche
11 Peak.

12 Any disputes under the agreement will be resolved
13 through binding arbitration.

14 Your Honor, that concludes the summary and I am
15 prepared at this time to make several offers of documents
16 into evidence.

17 JUDGE BLOCH: Thank you. We are prepared to
18 proceed.

19 MR. EDGAR: The Joint Stipulation which has
20 previously been filed with this Board includes 14 numbered
21 exhibits which are identified explicitly in the Index to
22 Exhibits to that document.

23 All of those documents have been previously served
24 on the admitted parties to the proceeding. The stipulation
25 itself on behalf of all parties jointly requests admission

1 of those exhibits into the evidentiary record.

2 With the concurrence of all parties, I now request
3 that those documents be received into the evidentiary record
4 and request a ruling to that effect.

5 JUDGE BLOCH: Those documents of which our copy
6 resides in Washington, D. C., are formally admitted into the
7 record, and it should be so noted.

8 MR. EDGAR: There is a letter dated June 28, 1988,
9 which I referred to in my summary of the terms of the
10 settlement agreement. It is a letter signed by William G.
11 Council, Executive Vice President of TU Electric, and
12 addressed to Mrs. Juanita Ellis, President of CASE.

13 This statement which is addressed as an integral
14 part of the settlement agreement is now and with the consent
15 of all parties offered into admission into the evidentiary
16 record. We request a ruling to that effect at this time.

17 I will deliver a copy of this letter to the Board
18 at such time as any order may issue dismissing the
19 proceedings.

20 JUDGE BLOCH: Mr. Edgar, we have seen the letter
21 and it is received into evidence to be supplied after the
22 order is issued.

23 MR. EDGAR: At this time, Your Honor, we are
24 prepared, as are all parties, with some very brief closing
25 remarks, and I would request permission to proceed, followed

1 by CASE and then the NRC Staff.

2 JUDGE BLOCH: Please proceed.

3 MR. EDGAR: Let me say on behalf of TU Electric
4 that we are most gratified to reach this point in these
5 difficult, complex and lengthy proceedings. We believe that
6 the agreement is logical and constructive as a device for
7 resolution of any safety concerns that may arise.

8 We believe and we are convinced that the parties
9 are committed to carry out this agreement in accordance with
10 its terms.

11 TU management is foursquare behind it. I have no
12 doubt that the Intervenors will continue their probing
13 review and as the Staff has said today, they will continue
14 with their review and maintain the high quality of that
15 review that has been evidenced in recent times.

16 We submit to the Board that sound regulatory
17 policy favors dismissal of these proceedings. Commission
18 policy statements and case law clearly support dismissal.

19 The case cited by the Board in its termination
20 motion and the Commission policy statements are directly on
21 point.

22 Going beyond that, though, there is a significant
23 practical consideration, in our view. We think that this
24 settlement agreement provides a unique opportunity to
25 establish and run a demonstration for the future that there

1 are alternative dispute resolution mechanisms that can and
2 will work. We think there's a very significant contribution
3 to be made there.

4 Now, as a final note, TU wishes to thank and
5 commend the Board for its patience and professionalism
6 throughout this difficult proceeding. On a personal note,
7 I'd like to reiterate that. For the relatively short time
8 I've been here, although my contribution to this result,
9 such as it is, dims in comparison to that of my colleagues
10 and the Board, I'd like to simply say that it's been my
11 privilege to appear with these parties and before this
12 Board.

13 Thank you very much.

14 JUDGE BLOCH: Thank you, Mr. Edgar.

15 CASE.

16 MS. GARDE: This is Billie Garde. I'm going to be
17 making a few statements at the request of Mrs. Ellis, but
18 first of all, I'd like to give Mr. Doyle an opportunity to
19 make a brief statement.

20 JUDGE BLOCH: I welcome him to make that
21 statement.

22 I'd like to introduce him first. Jack Doyle is an
23 engineer who once worked for this plant who felt that there
24 were things that were being done about the design of the
25 plant that required him to resign and work elsewhere.

1 He also was sufficiently motivated by his concerns
2 to stand up and speak for them before the NRC and before
3 this Board after hundreds of hours, maybe more than that, of
4 diligent effort.

5 Although Mr. Doyle is not a degreed engineer, he
6 knew the truth about this plant when people hired for
7 millions of dollars either didn't know the truth or refused
8 to see it.

9 We are deeply indebted to Mr. Doyle for having
10 given testimony in this proceeding that has resulted in
11 substantial improvements in the quality of the design of
12 this nuclear power plant. I want to thank you personally,
13 Mr. Doyle.

14 MR. DOYLE: Thank you, Mr. Chairman.

15 I have a question before I proceed. I'm still
16 under oath, ain't I?

17 JUDGE BLOCH: At this time you're not under oath
18 because you are not giving a -- this is just a statement
19 from you to the Board and to the public.

20 MR. DOYLE: I didn't think I'd been --

21 JUDGE BLOCH: I can't imagine that you'd ever lie
22 to us.

23 MR. DOYLE: I'm sort of celebrating an anniversary
24 at this point because it will be in two weeks that I have
25 been involved in these -- not the direct procedures, but

1 became involved in the process, which I filed my deposition
2 in August a few weeks later.

3 In the first approximately two years of the
4 hearings, the utility and myself were at loggerheads. We
5 fought bitterly and very tough. However, at no time did Mr.
6 Spence or any of the other members of TU carry this outside
7 of the arena. We saved all of our barbs and accusations and
8 everything for the hearing process itself and maintained at
9 a minimum a cordial relationship.

10 Along about sometime prior to August 1984, I
11 believe -- I'm losing track of time. -- the NRC began
12 discovering that the answer to the questions wasn't quite as
13 simple as everybody had believed and started rooting through
14 the mountains of paper involved in the construction, the
15 engineering and construction of the plant, and came up with
16 serious questions.

17 The utility then brought in Stone & Webster who
18 did an extensive study of the plant and came up with a vast
19 number of questions of their own.

20 The elements of the hearing in which I was
21 involved were basically associated with welding, metallurgy,
22 pipe supports, things of that nature.

23 Once the utility found out they had indeed serious
24 problems in that area, with no prodding from us -- in the
25 first place, we weren't in a position to prod -- they

1 started looking into all areas of the plant. They went into
2 areas that I wouldn't have anticipated.

3 At a point a little further down the line they
4 dedicated enormous expenditures to correcting all of the
5 problems, including those that they were beginning to dig up
6 on their own.

7 They brought in an entire new staff of officers
8 and these were executive vice presidents (I won't mention
9 any names) and vice presidents --

10 JUDGE BLOCH: I think you could mention them if
11 you want to.

12 MR. DOYLE: -- who are unique in my 40-some years
13 of employment in that these are working executives. They
14 get down in the trenches.

15 What is further unusual is that the personnel that
16 they brought in in their consulting basis, for example,
17 Stone & Webster or Intel, Ebasco, their executives also are
18 right out there in the trenches with everyone else.

19 I was invited out on a number of occasions to go
20 through the plant and see how the progress was coming. One
21 thing I noticed is an environment that is unique, and not
22 only in this industry but in the United States, and that is
23 that when we first started the hearings, we were having
24 trouble getting Texas Utilities to admit that the plant was
25 located in the State of Texas.

1 We were then confronted with a new problem. There
2 just weren't enough hours in the day to look at the things
3 their people wanted us to see.

4 Additionally, I walked off on my own and would
5 search out areas which I had recalled from six years earlier
6 that I thought perhaps they forgot something here, and
7 unfortunately I found nothing, or fortunately.

8 As far as these agreements are concerned, I have
9 no -- everything I know, I know right now, because I refused
10 to participate. In the first place, I was busy with a 600-
11 page calculation; you gentlemen are all aware of the upper
12 lateral restraint. I finished it and brought it in this
13 morning.

14 JUDGE BLOCH: That's a portion of this nuclear
15 power plant.

16 MR. DOYLE: Anyone who believes that the
17 confrontation is over is not using good sense, because I was
18 working as recently as this morning on just such a question.

19 JUDGE BLOCH: As I hear it, though, it's a
20 continued vigilance on your part, but it doesn't feel like
21 it's still a confrontation, because it is being welcomed.

22 MR. DOYLE: Well, not only that, but the
23 cooperation is unbelievable. I worked, like I say, for over
24 40 years. I worked in a number of industries, as you
25 gentlemen are aware, including aircraft industry, nuclear

1 submarines, et cetera, besides structural. I'm still in the
2 engineering business, and I have never ever in my life seen
3 the attitude from the middle management.

4 At first I thought I was being conned. I had to
5 be conned. However, I found that this wasn't the case.
6 From the lowest to the highest elements were exerting every
7 effort beyond what is required.

8 Mr. Nace is out there. Mr. Siskin. It's
9 unbelievable. I don't even know the vice president of my
10 own company right now and it's only a 400-man company;
11 whereas, here, Mr. Nace and Mr. Council and Mr. Siskin are
12 well known by all the personnel on site.

13 This is the thing that gives you confidence. It's
14 not so much what they tell me, because words can be
15 manipulated and design words to convey your position. I'm
16 more interested in the attitude of the personnel who are in
17 the trenches doing the physical work, and they actually
18 formed clubs to see who could find the most things.

19 The reason I mention this is this is something you
20 only find in Japan. You don't find it in the United States.
21 You don't find executive vice presidents, vice president,
22 consultants' vice presidents telling their people, "I will
23 reward you if you can come up with the most this month. Get
24 me the most."

25 So the enthusiasm is the thing that's contagious

1 and you can note it.

2 As far as the design of the plant, it was about a
3 year ago that I publicly in a hearing, with the newspapers
4 and everybody present, stated that I had accepted the design
5 approach and the procedures as established by Stone &
6 Webster, Intel and Ebasco.

7 So I had nothing for sale. I had already approved
8 long ago what is going on at Comanche Peak.

9 I would like to make another remark as far as
10 selling out, and I'll put it into terms that people can
11 understand, rather than getting into something as complex as
12 the machine that they have down there at Glen Rose.

13 If I were in Egypt and I noted that they were
14 building the pyramid in an inverted position and on
15 informing them, regardless of the amount of argument
16 involved, if they would correct the problem, I have achieved
17 my end. If I continue to battle against having that pyramid
18 put in place after it is satisfactory to me, the sell out
19 would be to myself.

20 I believe Mr. Nace and Mr. Council, Mr. Spence, I
21 know Juanita and I believe everybody knows, I don't sell out
22 to nobody. As I say, I'm as shocked by what's come out -- I
23 can understand why people would think I'd sell out, but
24 there was never ever anything other than cooperation between
25 Texas Utilities and at least myself.

1 I had agreed that the plant was fine. The
2 newspapers came there expecting a shootout at the OK Corral
3 and the attitude of cooperation and agreement was such that
4 they walked away and didn't even come to the next meetings.
5 They were too boring. Things were going to smoothly.

6 But the plant itself, I believe, could be a model
7 for the remainder of the nuclear industry and definitely
8 whatever Mr. Council has put in place that has achieved such
9 cooperation between diverse organizations and among his
10 people is to be complimented.

11 I believe that's really all I've got to say on the
12 subject, except that I'm delighted that I'm not going to try
13 for a seventh year.

14 JUDGE BLOCH: Thank you, Mr. Doyle.

15 MS. ELLIS: I would like to make one comment
16 today. I said I probably wouldn't, but I would like to make
17 one.

18 That is to express CASE's appreciation and my
19 personal appreciation to Jack Doyle, Mark Walsh and all the
20 other people who have assisted in this effort.

21 So many times it does seem like I'm portrayed as a
22 wonder woman. I certainly am not and certainly we could not
23 have achieved these results without the help of people like
24 them. We want to thank them very much.

25 In addition --

1 JUDGE BLOCH: Could it be that you couldn't have
2 achieved the results without them and that you also are a
3 wonder woman?

4 MS. ELLIS: I don't think so.

5 I would also like to go ahead and though I had
6 asked Billie to say this, I would like to go ahead and take
7 this opportunity to thank the Licensing Board for its
8 patience with us when at times we were faltering and did not
9 know the proper legal procedures and for its sincere concern
10 and recognition that there were perhaps problems at the
11 plant and your efforts to find the truth about what Comanche
12 Peak was all about.

13 Without having that kind of insight and allowing
14 us the latitude to be able to get into areas that brought
15 out all these facts, the plant would be a far different one
16 today.

17 Also, finally, I know you didn't accept the letter
18 into evidence today, but there is one comment that I want to
19 be sure and make. That is that you sure expect a lot from
20 an intervenor.

21 Thank you.

22 JUDGE BLOCH: Mrs. Ellis, before we continue, I'd
23 like to say that there may have been times in the early part
24 of this case when we had to be solicitous of the
25 Intervenor's legal skills. If I had the ability to bestow a

1 legal degree on you, I would do it.

2 I don't think I've ever seen legal work that's any
3 better than what you've been doing lately. It's a pleasure
4 to receive papers from you.

5 MS. ELLIS: Thank you.

6 MS. GARDE: Your Honor, I'm glad that Mrs. Ellis
7 made the statements that she had asked me to make, and I
8 would simply like to make the statement to the Board that I
9 also would like to thank the Board for its reception and
10 diligence and its insistence on the truth and its refusal to
11 accept anything less than the truth from any of the parties
12 to this proceeding, which has forced all of us to face each
13 other on the grounds of reality and deal with the issues at
14 hand.

15 I'm personally convinced, as I think that everyone
16 is, that we never would be at the position that we are at
17 today and the plant would never have been in the position
18 that we could move into this new area had the Board not been
19 so insistent on asking and formulating exactly the right
20 questions to ask, which forced both the utility to look at
21 its own weaknesses and us to pursue those areas that needed
22 to be pursued.

23 As you know, my principal position in this case
24 started representing whistle blowers who came to GAP at the
25 request of Juanita, who just couldn't handle them all. I

1 started this procedure as a law student. I now have been
2 practicing for two years and I have had a tremendous
3 opportunity to learn in this proceeding.

4 There has been much said about the proposition
5 that this settlement represents some type of hush money or
6 money for silence. On behalf of all of my clients, present
7 and in the past, I would like to say that none of them would
8 ever accept hush money. Their integrity is high enough that
9 they risked everything that they had to tell the truth and
10 they would never accept hush money in exchange for silence.

11 Thank you.

12 JUDGE BLOCH: Thank you.

13 Ms. Moore for the Staff.

14 MS. MOORE: In light of the comments that I have
15 made previously, the Staff has only one brief statement to
16 make, and that is that the Staff agrees that the
17 Commission's policy and rules would favor dismissal of this
18 proceeding in light of the agreement that the parties have
19 reached.

20 I would also just reiterate once more that the
21 Staff will continue in its efforts, in its high quality
22 efforts, to evaluate and review the Comanche Peak license
23 efforts.

24 Thank you.

25 JUDGE BLOCH: Thank you, Ms. Moore.

1 What the Board is doing now is it is about to sign
2 a summary order dismissing the case. We expect to issue a
3 somewhat fuller order that will attach some of the
4 documentation to it for publication so that there will be a
5 public record that can be consulted for the purpose of
6 precedent. But we're going to sign the order now.

7 [Board members sign document]

8 JUDGE BLOCH: The case is dismissed, pursuant to
9 the memorandum and order that we have just signed.

10 There are some details that we want to wrap up and
11 the Board members want to make a few statements, too.

12 This is a momentous occasion for this community,
13 for the Nuclear Regulatory Commission and certainly for
14 myself and the Board members personally.

15 I see what's happened here as a refutation of the
16 common belief that the world is black and white. I feel
17 that it is purple and that it's in seeing all the colors
18 that we find the truth.

19 In the black and white view, an intervenor
20 organization, depending on whether you are for or against
21 intervenors, either never knows the truth or always know the
22 truth.

23 In the black and white view, a utility either is
24 always evil or always good.

25 And the Staff of the Commission is always

1 delinquent in fulfilling its responsibilities or always
2 diligent.

3 And the same can be said for the Licensing Board
4 that's before you.

5 I don't think people are that simple, and we've
6 learned that in glowing colors in this case.

7 I'd like to acknowledge the courage of the people
8 who work for CASE, all of them. To undertake opposing
9 institutions that had resources that were far more vast than
10 the resources that they could muster.

11 It was because of their commitment to the truth
12 that they did that and they stuck with it when it was very,
13 very difficult and when they had no idea about whether their
14 point of view would prevail.

15 They did it with integrity, saying from the
16 beginning that they were for a safer nuclear power plant and
17 not against nuclear power. They've proved by their deeds
18 that that was indeed what they meant.

19 They have been concerned with every detail that's
20 happened to this plant and they have never taken a position
21 just because it was against something.

22 I remember vividly Jack Doyle, hearing the
23 testimony of Cygna Corporation, which was auditing the
24 plant, and after hearing it, withdrawing one-third of the
25 arguments that he had made to us, because he saw there was

1 technical expertise that answered his concerns.

2 That has been the spirit of CASE's representation
3 in this proceeding.

4 The Applicants, Texas Utilities, has also done
5 something really remarkable, because the common view would
6 be that utilities don't learn, and there's been a dramatic
7 change in the way they've approached the design of this
8 plant, costing hundreds and hundreds of millions of dollars
9 to see that the safety of the plant was corrected.

10 I would like to especially congratulate Mr.
11 Council and other members of the new management team and the
12 lawyers who've represented the utility through all this time
13 for their flexibility and their willingness to listen and to
14 see the truth, even when it came from an intervenor.

15 And I'd like to thank the Staff, because the level
16 of Staff effort also altered dramatically in this case.
17 Prior to 1983 I'm not proud of the efforts that the Staff of
18 the Nuclear Regulatory Commission managed. It was at that
19 time that the Staff agreed with the Applicants and opposed
20 the testimony of Jack Doyle about the safety of this plant
21 and claimed that it was safe.

22 There was a dramatic shift in the way the Staff
23 approached this case, beginning with the CAP team and the
24 technical review team, and it's because of the integrity of
25 the recent Staff efforts that I have great confidence that

1 this agreement will be overseen by a vigorous staff.

2 It's also a confidence that Texas Utility will
3 continue with a high level of technical concern and my
4 conviction that CASE will continue with its high level of
5 technical concern and diligence that I'm convinced that we
6 have a procedure here that is far more effective than the
7 continuation of these proceedings could ever be to assure of
8 the safety of this plant, which is the bottom line under the
9 law.

10 It's the bottom line of our responsibility for the
11 Nuclear Regulatory Commission.

12 I would also like to thank my fellow panel
13 members, whom I've grown to love during the course of this
14 proceeding. We've always worked closely together.

15 I think it speaks highly for the Atomic Energy Act
16 that there is a Board on which technical experts and lawyers
17 work together to oversee a matter of this size. The
18 partnership has been a truly rewarding one for me.

19 I would like to say in passing, Mr. Roisman, I am
20 really pleased that we have a better procedure than the
21 Atomic Safety and Licensing Board now, but there was a time
22 in this case where that was not true. It required the
23 cauldron of dispute, the bitterness that was reflected in
24 the hearings and the disagreements before the parties were
25 able to reach the situation that we've reached now.

1 I would like to see this kind of cooperation so
2 that there could be increased assurance for the safety of
3 plants. I think it is a model. It's a possible way that in
4 future times the country might choose to go if other forces
5 permit further nuclear power to be begun.

6 I would like to also acknowledge the people in
7 this room who just oppose nuclear power. I know that they
8 have a very strong point of view and it comes out of fear
9 and knowledge and concern.

10 There's no way that I can sit up here and say I
11 think they're wrong. What I do know is that the law
12 requires that plants be licensed when they are built
13 according to the regulations, and I feel comfortable working
14 within that law. It's a point of view that I personally
15 support.

16 I don't want to say to anyone in this audience
17 that they are wrong to be concerned about this agreement or
18 about this plant. It's their point of view and I respect
19 it.

20 It's a pleasure to have had the obligation and
21 responsibility to serve on this Board and to work with the
22 many wonderful people that we have come to work with.

23 I do want to mention Cygna, which is not
24 represented right now. It seems to me that they were
25 important at an important turning point in this case. They

1 came in as an independent auditor and they went through some
2 hearings before this Board and I think they were helpful in
3 allowing everyone to see the truth in some of the technical
4 allegations that were being presented by Mr. Doyle and CASE.

5 So I would also like to applaud Cygna for its
6 important role and its integrity in helping to bring us to
7 the situation that we're at now.

8 For the NRC and for myself I want to thank
9 everyone and express my appreciation for this opportunity to
10 serve.

11 JUDGE McCOLLOM: I have had the longest tenure of
12 any of the members on this Board, having started on the
13 Board in December of 1981. There has been a significant
14 change and approach across the nuclear industry, I feel,
15 about how intervenors work and identify potential problems,
16 if not actual problems, and the utilities' response.

17 It may be that this is the ultimate in terms of
18 having reached that position.

19 I remember before my two other Board members here
20 were on the Board, we were sitting in the Hilton Hotel over
21 in Fort Worth and a reporter came up. The other two Board
22 members were with me. I remember a statement I made, which,
23 by the way, was put in the newspaper.

24 I said, "There's no way that Texas Utilities will
25 get an automatic license," because at that time that was a

1 concern that was held. And I hope that it's obvious now,
2 six years later, that it wasn't an automatic license.

3 I've been on Boards now since 1972 and in that
4 time I've seen it go from no intervenors to only
5 confrontational intervenors to constructive intervenors.
6 Believe me, the latter is a very welcome phase for somebody
7 who is sitting trying to support the legal responsibilities
8 that they have as visualized and written in the Atomic
9 Energy Act and the followup amendments to it, because that's
10 what our responsibility is. It's important that we all try
11 to contribute towards that goal when we are in a situation
12 like this.

13 I do commend the parties for having been able to
14 attain this kind of cooperation. I know we're all going to
15 watch with great interest the outcome as you proceed towards
16 a full power operation.

17 Thank you.

18 JUDGE JORDAN: Any statement that I could make
19 now after the few eloquent statements by Jack Doyle, Tony
20 Roisman, Mr. Edgar, Ms. Moore, my own Chairman, would be
21 anti-climactic.

22 I agree with what they say and have said. I've
23 seen the turn-around in the attitude of the Texas Utilities
24 and the Intervenor and certainly there has been change, and
25 a very welcome change in the Staff. I feel that the Staff

1 now does have a real honest, good team and that this, more
2 than anything else, confirms my belief that the plant --
3 that the proposed changes will indeed be carried out,
4 because I have confidence that the Staff will insist that it
5 be done.

6 So it's been an interesting experience and in a
7 way I'm going to miss coming to Dallas occasionally.

8 I just had an eightieth birthday and whether I
9 will undertake another case or not is questionable, but
10 certainly not one that lasts as long as this one.

11 JUDGE BLOCH: We have one more step to take today.
12 Mr. Edgar.

13 MR. EDGAR: Your Honor, I would like to deliver to
14 the Board three copies of the June 28th letter from Mr.
15 Council to Mrs. Ellis, the one that the Board previously
16 ruled as admissible.

17 JUDGE BLOCH: Thank you. Mr. Edgar, I have the
18 feeling that despite the fact of some embarrassment to the
19 utility, I also feel like it's a high point that the utility
20 is willing to make the statements in the letter.

21 I feel it ought to be read; if not by you, by me.

22 MR. EDGAR: Let me make a comment on that. It is
23 not a matter of embarrassment to the utility. We accept the
24 agreement we've entered into with considerable pride.

25 Furthermore, this statement is not something that

1 was extracted from Texas Utilities. It is something that we
2 feel is appropriate to make. We volunteered this as part of
3 our agreement.

4 JUDGE BLOCH: I'd like to apologize for the words,
5 because I feel really it is something to be proud of and
6 that learning from experience is an awfully important thing.

7 MR. EDGAR: Absolutely. All I'm suggesting is
8 that this is something that the company volunteered up front
9 and feels is appropriate. It is a cornerstone of our
10 agreement.

11 I'd be glad to read it into the record, with the
12 Board's permission.

13 MS. ELLIS: Excuse me just a second. I'd like to
14 make just one brief comment about that.

15 I'd like to say that this document is the primary
16 reason that CASE was first willing to sit down with the
17 utility and talk about this agreement.

18 JUDGE BLOCH: Mr. Edgar, did you also give one to
19 the reporter? If you're going to read it verbatim, she
20 won't need it.

21 MR. EDGAR: I'm going to give one to the reporter,
22 but I'd like to make a request of the Board, also. The man
23 behind this letter is Bill Council and with the Board's
24 permission, I would like Bill to read that. I may live to
25 regret that request.

1 I'm also going to give a copy to the reporter.

2 JUDGE BLOCH: Before Mr. Council reads the letter,
3 I would like to express my personal appreciation for what he
4 has done, his part in making this agreement occur, in making
5 the efforts of Texas Utilities diligent in recent months.

6 MR. COUNCIL: If the Board permit, I'll skip the
7 salutation on the letter and the first paragraph and go
8 right to the meat of it.

9 "TU Electric recognizes that the Citizens
10 Association for Sound Energy (CASE) and its President, Mrs.
11 Juanita Ellis, have made a substantial, personal and
12 unselfish contribution to the regulatory process which
13 assures that Comanche Peak Steam Electric Station (Comanche
14 Peak) will be a safer plant. Through the untiring efforts
15 of CASE representatives, deficiencies which existed in the
16 early 1980's have been revealed in the design of substantial
17 portions of the plant which no one else, including TU
18 Electric, the Nuclear Regulatory Commission or other third-
19 party experts had fully recognized or discovered. As a
20 result, Comanche Peak is a better, safer plant than before
21 and, through the reinspection and Corrective Action Program,
22 has a greater assurance of safety and reliable generation.
23 We commend CASE, together with its technical advisors, Jack
24 Doyle and Mark Walsh, and other workers, public interest
25 organizations and supporters for their courage and devotion

1 to CASE's goals of finding the facts and informing the
2 public. Because of these activities, CASE's President, Mrs.
3 Ellis, has been appointed to the Operations Review Committee
4 at Comanche Peak, an unpaid but important position which
5 will provide CASE with the opportunity to continue to play
6 an active part in assuring itself that Comanche Peak is as
7 safe a nuclear facility as possible.

8 "The ORC is required by the Comanche Peak
9 technical specifications and functions as an independent
10 body assigned the responsibility of review of various safety
11 related matters including nuclear power plant operations,
12 nuclear engineering, radiological safety and quality
13 assurance practices among others. Among its duties, the ORC
14 will be responsible for independent review of proposed
15 modifications to the Comanche Peak facilities or procedures,
16 changes to the Technical Specifications and license
17 amendments, any violations or deviations which are required
18 to be reported to NRC and other safety related matters
19 deemed appropriate by the ORC members. The ORC meets
20 periodically to review and discuss various issues bearing on
21 the safe operation of Comanche Peak and reports its findings
22 and recommendations directly to the Executive Vice
23 President, Nuclear Engineering and Operations.

24 "TU Electric also recognizes its own shortcomings
25 in assuring the NRC that they fulfilled NRC Regulations. We

1 acknowledge that nuclear expertise did not exist to meet
2 those demands and that its nuclear management did not have
3 full sensitivity to the regulatory environment. CASE, Mrs.
4 Ellis and her colleagues played a substantial part in
5 achieving our current level of awareness.

6 "Sincerely, W. G. Council, Executive Vice
7 President."

8 JUDGE BLOCH: Thank you, Mr. Council.

9 MR. COUNCIL: You're welcome.

10 JUDGE BLOCH: On behalf of the Licensing Board,
11 I'd like to reiterate that Docket Nos. 50-445-OL(2), 50-446-
12 OL(2) and 50-445-CPA are all dismissed.

13 Therefore, we now adjourn without a date. Thank
14 you.

15 [Whereupon, at 11:57 a.m., the hearing was
16 adjourned.]

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C E R T I F I C A T E

I hereby certify that the foregoing is a true
and correct transcription of the above-entitled proceedings.

Gay E. Denton
Gay E. Denton, Reporter

Exhibit
Glean Case
SECTION

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