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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
OFFICE OF THE SECRETARY  
OF PUBLIC SAFETY SERVICE  
BRANCH

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	}}	
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TEXAS UTILITIES ELECTRIC	}}	Docket Nos. 50-445-OL
COMPANY, <u>et al.</u>	}}	and 50-446-OL
(Comanche Peak Steam Electric	}}	
Station, Units 1 and 2)	}}	(Application for an
	}}	Operating License)
	}}	

CASE'S IDENTIFICATION OF PIPING/PIPE SUPPORT ISSUES

Pursuant to the Board's 11/18/87 Memorandum and Order (Litigation Schedule), CASE hereby files its specification of piping/pipe support issues which it is interested in litigating and the basis for its interest /1/.

/1/ CASE requested an extension of time until today to mail this pleading, without objection from the Board, the NRC Staff, or the Applicants (see Applicants' 4/12/88 letter to CASE). CASE has advised both Applicants and NRC Staff of most, if not all, of the basic information contained herein. CASE is still in the process of reviewing documents which have been made available on discovery (including, for instance, those referenced in Applicants' 3/30/88 letter to NRC Staff and CASE, Applicants' 3/31/88 and 4/8/88 letters to Board advising of documents referenced in SSER 14, among others).

Although many of the issues discussed herein have applicability both to the Construction Permit Amendment (CPA) proceedings and the Operating License (OL) proceedings, CASE is not specifically addressing the CPA proceedings since at the present time the OL and CPA proceedings are still separate. The motions for summary disposition filed by CASE in 1984 are not included in this pleading, since CASE now believes that they have applicability only to the CPA proceedings.

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PRELIMINARY DISCUSSION

CASE has experienced a lot of difficulty in preparing this pleading and believes that it is premature. One of CASE's primary difficulties in writing this pleading is that much of the information which CASE believes is essential to reach a decision is not yet complete and is simply unavailable at this time. In addition, in our view it is not necessary that this be written at this time because of the slippage in the schedule. Applicants' schedule has changed considerably since the Board's 11/18/87 schedule was issued: During the 11/3/87 Special Prehearing Conference, Applicants were projecting a fuel load date of March 1, 1988 (they were expecting to be able to make up some slippage which had occurred at that time which indicated a fuel load date of early August 1988) (see Tr. 25154); Applicants now expect commercial operation of Unit 1 "at the end of 1989" and construction on Unit 2 has been temporarily suspended for approximately one year (see excerpts from Form 10-K filed with the SEC, attached to Applicants' 3/24/88 letter to Board). It appears obvious from reviewing documents such as the Applicants' reports of potentially reportable items under 10CFR50.55(e) (Significant Deficiency Analysis Reports, SDAR's) that this is due to the identification of additional problems and because it is taking longer to correct some of the problems than Applicants had initially anticipated. Therefore, in many ways, this pleading is premature and it is premature to attempt to identify the issues. However, if CASE were forced to identify the issues at this point in time, they would be as discussed herein. It was CASE's decision to go ahead and file this pleading now, rather than asking for further extensions at this time, although we think such extensions would be warranted, because we believe it will be helpful to all parties and the

Board to have this information before us in writing as we discuss the future course of the case.

There are several aspects of the piping/pipe support issues which CASE believes need to be addressed. CASE categorized the issues in three areas: 1. Applicants' Plan; 2. Implementation of Applicants' Plan; and 3. Analysis of the Results from the Reinspection Corrective Action Work (including the conclusion and the implications of what Applicants found).

1. Applicants' Plan

With regard to Applicants' plan for the piping/pipe support issues (i.e., Applicants' promise of what they are going to do and how they are going to do it), CASE has been favorably impressed by Applicants' commitments, especially those of Stone & Webster and its identification and proposed corrective action regarding the Walsh/Doyle issues. Applicants and their consultant have paid special attention to those issues, and it shows. Based on what we know at this time, we do not anticipate that it will be necessary to litigate Applicants' plan regarding those issues. We plan to engage in negotiations with Applicants and NRC Staff; however, as discussed in more detail below, should additional concerns arise that would indicate that the plan was not actually what was followed, we would at that time want to reconsider litigation of the plan.

It is also important to note that CASE considers the piping/pipe support plan to be a special case, and we believe (and would expect) that very special attention has been paid by Applicants to these long-raised, much-litigated and hard-fought issues. In addition, the handling of the piping/pipe support issues by Stone & Webster puts these issues in a special

category. Stone & Webster is not handling all of the other issues. CASE's increased confidence in this portion of Applicants' plan is in part due to the Stone & Webster work.

Although it is still not clear exactly what documents Applicants plan to rely upon regarding the piping/pipe support issues, CASE believes that it may well be possible to arrive at stipulations with Applicants and the NRC Staff regarding the plan itself. This would depend upon consensus that we are satisfied with the documents Applicants agree to submit into evidence in the record. We believe that this is a possibility worth exploring, which could save everyone much time, trouble, money, and effort regarding these particular aspects of the piping/pipe support issues.

## 2. Implementation of Applicants' Plan

One aspect of the plan itself which is clearly deficient, in CASE's view, is that Applicants have not adequately dealt with the root cause/generic implication issues. (This is discussed in more detail under 3. Analysis of the Results from the Reinspection Corrective Action Work; however, CASE considers it to also be a deficiency in the plan itself.)

The question of implementation of the plan is in dispute. There are a number of issues under implementation which CASE intends to litigate; however, CASE is unable to identify with specificity those documents on which it intends to rely on the implementation dispute. Part of CASE's problem at the moment is the fact that it is not at all clear at this point in time when, if ever (and in what form) Applicants or the NRC Staff will be addressing the implementation of Applicants' plan, and whether or not the NRC Staff will issue an SSER regarding implementation similar to the one they have issued on the plan itself, or plan to review completion of

implementation through their regular inspection report program. As stated in the Staff's 3/9/88 letter to Applicants: "The NRC Staff concludes that the corrective action efforts establish an acceptable program for resolving the technical concerns associated with the design of large and small bore piping and pipe supports and their implementation should ensure compliance with the applicable requirements of 10 CFR Part 50." (Emphases added.)

In this regard it is important to note the limitation of the NRC Staff's SSER 14, which (necessarily) addresses implementation of the Applicants' plan only to a limited extent. For the most part, SSER 14 addresses the adequacy of the plan itself. CASE believes it is appropriate and necessary for the Applicants and NRC Staff to clarify this for the Board and parties. CASE does not believe that piping/pipe support issues will be ready for litigation until such time as implementation is completed /2/.

CASE is not, and never has been, concerned only with Applicants' plan. We did not, for instance, challenge the Applicants' initial plan, which was their FSAR; our concerns were that Applicants were not in fact doing what they had promised in their plan. Although CASE believes that Applicants' plan for addressing the piping/pipe support issues, for the most part, has the capability for adequately addressing and eventually resolving the technical engineering-type issues, CASE is not ready to simply accept the

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/2/ CASE notes that the NRC Staff's inspection reports have raised troublesome questions regarding both the Applicants' plan and its implementation. Even so, we note that, when the proper time comes, we believe that it may well be possible to also arrive at stipulations which might (in a manner similar to what we hope will develop regarding the piping/pipe support plan itself) dispose of many, if not all, aspects of implementation regarding piping/pipe support issues (especially if Applicants continue their cooperation regarding supplying of documents, informal meetings, and if Messrs. Doyle and Walsh are allowed to make a final walkdown). We believe this would be beneficial to everyone regarding these aspects of the piping/pipe support issues.

word of Applicants and/or Stone & Webster that the plan will be implemented properly. We believe that we must await further completion and review of such implementation before we are ready to sign off on these hard-fought and vitally important issues. CASE's level of confidence would also be greatly increased if Messrs. Doyle and Walsh were allowed to make a final walkdown when implementation is completed and closed out.

Additionally CASE may wish to litigate part or all of the Cygna report(s) when it is issued. It is CASE's understanding that Cygna plans to issue report(s) regarding various aspects of their review of Comanche Peak. CASE is not certain at this time, since we obviously have not yet seen the final Cygna report(s) on piping/pipe supports, whether or not we will want to litigate all or any part of such report(s). However, this is a possibility to which we would want to give consideration, regarding which we cannot decide until after we have received and had time to review such report(s) /3/. CASE considers the Cygna report(s) an important part of both the Applicants' Plan and its implementation, and we do not believe that piping/pipe support issues will be ripe for consideration until such report(s) are available, CASE has had the opportunity to engage in discovery regarding them, analyze the results, formulate opinions, etc.

CASE may also want to litigate some or all aspects of the technical issues associated with the pressure on Cygna to do or not do certain things

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/3/ We want to emphasize that we do not want to rush Cygna with its report(s) and believe it would be inappropriate for anyone else to do so; CASE believes that the Board and all parties will be far better served by Cygna's thoughtful, complete, and detailed analyses. However, if Cygna does have an estimate of when it anticipates it will have its report(s) regarding piping/pipe supports completed and supplied to the Board and parties, that would be very helpful; it would also be helpful to know whether Cygna anticipates filing one report covering all issues, disciplines, etc., or several reports covering different issues, disciplines, etc.

in their review (see Applicants' 3/30/88 letter to Board and attachments). Additionally, CASE is still reviewing the recently-released documents which Cygna and the Applicants have made available. At this point in time, we are not certain whether or not there are technical issues in addition to the "harassment and intimidation" issues which we may want to litigate.

Of particular concern is the harassment and intimidation, use of a quota system, etc. (see discussion on Transcript pages 4 through 11 of the Applicants/NRC Staff Meeting of 12/18/85), coupled with the recently-filed Department of Labor (DOL) case by the individual who apparently brought the particular matter which was discussed at the 12/18/85 meeting to management's attention, and DOL cases of other individuals (see, for example, attachments to CASE's 4/15/88 letter to the Board).

These recent events raise questions and strong concerns regarding the areas of Applicants' program other than piping/pipe supports -- not only regarding possible technical engineering-type concerns, but also regarding what appears to be a persisting important flaw in implementation of Applicants' plan and QA/QC program: an apparent continuing inability to put into place a program to adequately and promptly deal with harassment/intimidation and concerns raised by employees. Applicants still seem to suffer from what the Board termed (regarding Messrs. Walsh and Doyle) a procedural deafness to concerns raised by employees (see Board's 12/28/83 Memorandum and Order (Quality Assurance for Design), page 24). Furthermore, it appears that -- despite the SAFETEAM program and despite what CASE believes are sincere (but apparently unsuccessful) efforts by some individuals to change things -- a climate of harassment and intimidation still exists and flourishes in at least some areas of Comanche Peak. This

is a concern which cuts across the Applicants' Plan, the Implementation of Applicants' Plan, and the Analysis of the Results from the Reinspection Corrective Action Work.

3. Analysis of the Results from the Reinspection Corrective Action Work

CASE is particularly concerned regarding, and is not in agreement with, the root cause/generic implications reports which Applicants have provided to date. Further, CASE cannot believe that what Applicants have provided thus far adequately responds to what the Board and the NRC Staff have requested and what CASE anticipated; if it does satisfy the Staff, CASE will then have questions in this regard concerning the adequacy of the Staff's review. Certainly CASE does not believe it is complete and adequate. In particular, Applicants' root cause analysis presented thus far (see attachments to Applicants' letters to Board dated March 29, 1988, and April 21, 1988) does not include adequate consideration of the following:

- harassment and intimidation of Quality Control Inspectors, ANI Inspectors, craftsmen, engineers, auditors, etc.;
- specific details and results of the ombudsmen, QAI, or SAFETEAM investigations regarding piping/pipe support issues and/or harassment/intimidation regarding individuals involved in the piping/pipe support areas;
- incompetent and/or inadequate engineering personnel;
- an analysis of why the Applicants' QA/QC program (including their audit program) did not catch the problems;
- the willful refusal for years of Applicants to admit that problems even existed;
- management's role in allowing all of this to happen;

- (for additional specific details, see CASE's 6/6/87 Response to Applicants' Interrogatories to "Consolidated Intervenors" (Set No. 1987-1) and CASE's 7/6/87 Supplementary Response to Applicants' Interrogatories to "Consolidated Intervenors" (Set No. 1987-1), which provides specific citations to the OL record)

One aspect which is troubling regarding this matter is that Applicants still have shown no indication that they are willing to accept a basic premise which the Board stated when it set the current schedule (quoted from Judge Bloch's comments at 11/3/87 Special Prehearing Conference, Tr. 25142; similar wording was contained in the Board's 11/18/87 Memorandum and Order (Litigation Schedule) at page 1):

For the purpose of that schedule, we expect to assume, unless shown otherwise in the course of the hearing, that there has been a historical QA design and QA construction breakdown.

To the contrary, Applicants have specifically stated that they "obviously do not accept such assumptions as proven facts" (Applicants' 11/24/87 Preservation of Objection to Prehearing Conference Order, at page 1).

This is important in several ways. First, it continues the Applicants' past position of refusal to squarely face facts and accept what everyone now knows is true -- that there has, indeed, been a historical QA design and QA construction breakdown. This means that CASE must be prepared to prove it all over again if Applicants persist in that position.

This attitude is perhaps even more important regarding other areas of the plant which have not been under as intense scrutiny as piping/pipe supports. CASE has been and continues to be concerned about how much Applicants have learned from the failure of their QA/QC program for

piping/pipe supports and the extent to which such lessons learned have or have not been applied to other areas.

#### CONCLUSION

CASE does not believe that Applicants can accurately reach a proper root cause/generic implication conclusion on the basis of the plan when even they don't have the results from implementation and cannot foretell the future. Further, what they have provided so far regarding root cause/generic implications is inadequate, even on its face, because of what is already reflected in the past record of these proceedings. Finally, incomplete information, from sources such as the SAFETEAM, of which Applicants are aware but which has not yet been revealed to CASE or the NRC, obviously impacts on the adequacy of implementation and the overall reliability of the corrective action program.

It is unclear, other than to push the hearing forward, why this root cause report has been issued. It is clear, for example, that the root cause report did not deal with the allegations of Messrs. Radelich and Goese, and apparently others who have gone to SAFETEAM with allegations of implementation improprieties.

In summary, CASE will definitely want to litigate implementation of the plan including some harassment and intimidation issues. These include (but are not limited to) the harassment and intimidation of Cygna (see Applicants' 3/30/88 letter to Board and attachments).

There are also definitely some issues which we want to litigate regarding piping/pipe supports and the effects of an atmosphere of harassment and intimidation of individuals who were involved with them (such as Messrs. Polizzi and Hasan). In CASE's view, the harassment/intimidation

issues both raise the management issues again, and call into question the credibility of the implementation of the technical program. In addition, recent events have raised questions regarding the adequacy of the NRC Staff's work.

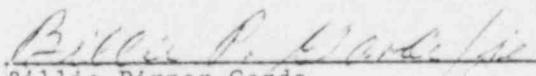
At this point in time, we are not certain whether or not there are technical issues in addition to the harassment and intimidation issues which we may want to litigate. It is very disturbing and distressing to CASE that the information regarding the intimidation of Cygna did not come to light until it was brought out in the TU Electric/minority owners lawsuit. This in itself raises numerous questions to which we want answers, such as who knew what when and why didn't they inform the Board and parties, at least at the time the changeover was made from Mr. Wade to Mr. Redding -- not only regarding the Applicants, but also Cygna. Why didn't Cygna inform the Board? Where was this in Cygna's communications reports? And where was the NRC Staff while all this was going on? Did they know about it? If so, why didn't they inform the Board and parties? If not, how could they have missed it? How long had this harassment and intimidation been going on? Has it now changed, and if so, when did it change? What effect did it have on Cygna and Cygna's work product? What is the current situation? etc.

Finally, CASE intends to litigate the inadequacy of the collective significance report, collective evaluation report, root cause evaluation reports, and Results Report VII.c, in regards to the piping/pipe support issues.

CASE does not necessarily believe that all of the issues with which we are concerned would be most efficiently litigated in connection with the piping/pipe support PSR's. We are currently in the process of re-evaluating the schedule in light of the most recent information available, to attempt

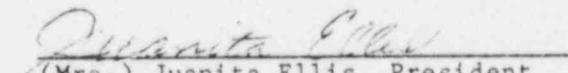
to ascertain whether or not there are ways in which the case might be reorganized to be more efficient and at the same time address CASE's concerns. We expect to address this further at the upcoming procedural conference currently tentatively scheduled for May 11, 1988.

Respectfully submitted,



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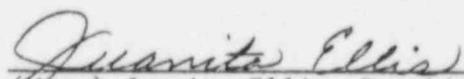
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