

ORIGINAL

# UNITED STATES NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

In the Matter of: )

TEXAS UTILITIES ELECTRIC COMPANY, )  
et al. )

) Docket Nos. 50-445-OL  
) 50-446-OL  
) 50-445-CPA

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

Pages: 25157 through 25186

Place: Dallas, Texas

Date: June 1, 1988

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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: :  
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: TEXAS UTILITIES ELECTRIC COMPANY, :Case No. 50-445-OL  
: et al. : No. 50-446-OL  
: : No. 50-445-CPA  
: (Comanche Peak Steam Electric Station, :  
: Units 1 and 2) :  
: :  
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Gallery Ballroom  
Sheraton Hotel  
400 North Olive  
Dallas, Texas

Wednesday,  
June 1, 1988

The above-entitled matter came on for a pre-hearing  
conference, pursuant to Notice, at 9:00 a.m.

BEFORE:

Peter B. Bloch, Chairman  
Dr. Walter Jordan, Member  
Dr. Kenneth McCollom, Member

## 1 APPEARANCES:

## 2 On behalf of the Applicants:

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8 and

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## 13 On behalf of the NRC Staff:

14 JANICE E. MOORE, Attorney at Law  
15 BERNARD M. BORDENICK, Attorney at Law  
16 Office of Internal Counsel  
17 U.S. Nuclear Regulatory Commission  
18 Washington, D.C. 20555

## 19 On behalf of CASE:

20 JUANITA ELLIS, President  
21 JERRY LEE ELLIS  
22 BILLIE GARDE, Attorney at Law  
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24 1426 South Polk  
25 Dallas, Texas 75224

P R O C E E D I N G S

1  
2 JUDGE BLOCH: With deep respect, I welcome you  
3 all to this hearing on the Licensing Board for Comanche  
4 Peak Steam Electric Station, Units 1 and 2. Today's pre-  
5 hearing conference is with respect both to the operating  
6 license case and to the CPA case.

7 The principle subjects for this morning are  
8 whatever we can learn about detailed scheduling of these  
9 two cases. That's the first matter. The possible  
10 consolidation of the cases is another matter, and the  
11 Applicant's motion concerning there being no issues on  
12 piping and pipe support, supported by staff's motion. So  
13 there are three matters.

14 The logical order for me seems to be first the  
15 scheduling. What the matters are, particularly the CASE  
16 plans to litigate and what they can tell us about the order  
17 in which they wish to litigate those issues. The second  
18 matter would seem to be whether or not CASE does intend to  
19 litigate anything with respect to piping and pipe support  
20 and what they can tell us about that. And third would be  
21 further argument on consolidation.

22 I'd like the parties to introduce themselves  
23 for the record, and then if people want they can comment on  
24 the proposed order. First I would like to introduce Dr.  
25 Kenneth McCollom on my left, and Dr. Walter Jordan on my

1 right.

2 The parties may introduce themselves, starting  
3 at my left.

4 MS. MOORE: My name is Janice E. Moore, counsel  
5 for NRC Staff. With me today is Bernard M. Bordenick, also  
6 counsel for NRC Staff.

7 MR. EDGAR: I'm George Edgar. I'm a partner in  
8 the Washington law firm of Newman & Holtzinger,  
9 representing T. U. Electric. Seated to my immediate left  
10 is Mr. Robert A. Wooldridge, and to his immediate left is  
11 Mr. Maurice Axelrod.

12 MS. GARDE: My name is Billie Garde. I'm the  
13 attorney for CASE. Mr. Wiseman will not be here today  
14 because of a deposition that he could not reschedule. On  
15 my immediate left is Ms. Juanita Ellis. She is the  
16 president of CASE and co-representative in this proceeding.  
17 And Mr. Jerry Ellis is also at the table.

18 JUDGE BLOCH: Thank you. Are there comments on  
19 the proposed order of the discussion this morning?

20 MR. EDGAR: Yes. I think I can speak, or I've  
21 been authorized to speak for the parties. We have had some  
22 discussions, and I'd like to give a report on those  
23 discussions.

24 JUDGE BLOCH: We welcome that. Anything the  
25 parties can do together is of great interest to us.

1 MR. EDGAR: It in effect pre-empts two of the  
2 three possible issues, leaving the third open, but let  
3 explain in some detail. The Board asked us to each scratch  
4 our heads and determine what the best way to put this case  
5 on was, and we have gotten together and we have had  
6 discussions on that subject.

7 We can report some areas of agreement, and we  
8 can report some areas for further discussion. We think our  
9 discussions have been rather pointed, and they have been  
10 rather constructive. They will continue, and continue for  
11 a time certain.

12 Let me start with our areas of agreement. We  
13 believe that the present hearing schedule as embodied in  
14 the Board's order which is now effective should remain in  
15 effect. There are some adjustments, one adjustment in  
16 particular, that we have identified now that needs to be  
17 made, and we are going to work on that, and that will be my  
18 last item in my list of five, and I will discuss what we  
19 intend to do with that one.

20 The second basic area of agreement is that the  
21 area or time in the hearings when the hearing schedule  
22 triggers the milestones to bring us to hearing on the CSR  
23 and the CER is the logical point to put on some of the more  
24 subjective issues, the root cause, the harassment. And a  
25 third set of issues that involve the question of

1 implementation of the technical issues. In particular, in  
2 the piping area we have an agreement, but we don't have  
3 closure on certain implementation issues, and I'll describe  
4 what we mean by that.

5 In addition, at that phase, the CSR/CER, we're  
6 in a position today to tell you the outline of what we  
7 intend as an affirmative case. We don't propose that as a  
8 matter of argument. We propose that as a matter of  
9 information.

10 We presented it the intervenors and the NRC  
11 Staff yesterday, and we think it helped put the discussion  
12 in perspective, and we think it helped foster some  
13 understanding of where we were headed and why consolidation  
14 is at least an issue worth further discussion. Now, coming  
15 to that, we don't have agreement on consolidation. We,  
16 though, are both -- all parties are committed to discussing  
17 that further.

18 The idea would be, if we consolidated to have  
19 one hearing to gather all the evidence on both contentions  
20 five and two, and if the Board is interested after I get  
21 through this recap, I can give you ten minutes on what our  
22 affirmative case looks like for information, and that may  
23 give you more insight as to where we're headed in our  
24 further discussions amongst the parties.

25 The other subsidiary, but nevertheless

1 important point related to consolidation is, assuming they  
2 are consolidated, assuming we reach an agreement there,  
3 what would be the right schedule for filing up. I mean, do  
4 you file two sets at the same time? Do you file them  
5 serially, et cetera. And we need further discussion on  
6 that.

7           Coming to the pipes and pipe support: We think  
8 the pipe and pipe support issues are closed, with the  
9 exception of implementation.

10           JUDGE BLOCH: Are you still speaking for  
11 everybody?

12           MR. EDGAR: Yes. Now, we're going to embody  
13 this all in a written stipulation so that nobody, you know  
14 -- everybody will understand exactly what we've agreed on.  
15 And one of the reasons that we hope to -- or one of the  
16 things we hope to do on our discussion is to get some of  
17 these things in writing so that we can converge our  
18 thoughts a little better. That's going to be necessary for  
19 us to come to grips with the consolidation issue. So, we  
20 would try to embody this all in a written stipulation.

21           Now, the part of pipes that is enclosed is what  
22 we've labeled implementation, and by that we mean, in  
23 simple language, there are no issues with respect to what  
24 the licensee or applicant has done to implement these  
25 program on pipes. The question will be did you do what you

1 said you were going to do. And we think as to that there  
2 is one more feature that we need to add into the hearing  
3 schedule, and I've essentially --

4 JUDGE BLOCH: Is that issue with respect to  
5 construction following design, or design --

6 MR. EDGAR: It would be the latter. It would  
7 be the PCHVP basically, Post Construction Hardware  
8 Verification Program.

9 JUDGE BLOCH: So the parties don't still think  
10 that there is a design implementation problem?

11 MR. EDGAR: That's correct.

12 JUDGE BLOCH: It's just construction?

13 MR. EDGAR: That's correct. Do you follow up?  
14 Do you do the things you were going to do -- said you were  
15 going to do.

16 Now, we need to come up with a set of criteria  
17 for closure and implementation. By that, I mean when you  
18 set out the hearing schedule, you need the thing that says  
19 here is the date or milestone by which you must identify  
20 all of your implementation issues, and that can be a  
21 combination. Several boundaries could apply there: Time,  
22 percentage, completion, et cetera. We need to work that  
23 out amongst ourselves. We need to get that reduced to  
24 writing and put that in the stipulation so that everybody  
25 understands just when the time is for closure on

1 identification of implementation issues, and we'll get  
2 that.

3 JUDGE JORDAN: Has it been agreed upon what is  
4 meant by implementation, what's included in that?

5 MR. EDGAR: Yes, sir. As a matter of fact, I  
6 think we have agreement. If you look our motion and the  
7 Staff's motions on pipe, the last page of our motion has a  
8 prayer for relief, and says what's closed, and the Staff  
9 has one more increment on that which is the process or  
10 procedures in PCHVP that we didn't put in, but we agree  
11 with the Staff, and if you'll add all those things up  
12 that's closed. But what isn't closed is like the PCHVP  
13 field work.

14 So, I think we understand it. We need to put  
15 very precise words around that so that there won't be any  
16 misunderstanding. But I think we have an agreement on  
17 principle on that.

18 Now, what we would propose to do would be  
19 continue our discussions and reduce our thoughts to  
20 writing, and report back to the Board in two weeks, and we  
21 will deliver one of two products to you in two weeks.  
22 Either a stipulation that resolves all these things in  
23 whole or in part. That's a contradiction in terms. We'll  
24 deliver you a stipulation. We may also deliver you a  
25 request for a ruling on what remains, but we will be able

1 to tell you where our areas of disagreement are and where  
2 we need a ruling.

3 We think several elements of this agreement and  
4 agreements on areas for further discussion need just a  
5 brief comment. We think the agreement we've reached on  
6 pipes takes this discussion off the critical path of the  
7 hearings, so that's good. We're not idling here, and we're  
8 using what time we have.

9 The second thing is we think it's constructive  
10 and logical to do it this way, if we can do it and we, I  
11 think, do not share agreement yet, but we share some hope  
12 that we can get there. Our request to the Board would be  
13 that the Board defer ruling on motions that are now pending  
14 before the Board, and that you put the onus on us to come  
15 back to you within two weeks and we'll either have a  
16 completed product or a request for a ruling, and that's  
17 where we are. So, that's the summary.

18 I'm prepared to go over this affirmative case  
19 as a matter of information, and we are all three of us  
20 prepared to answer any questions.

21 JUDGE BLOCH: That sounds pretty heartening to  
22 me that the parties would get together and reach that kind  
23 of agreement on how it's best to go further, and to agree  
24 that there will be further agreement within two weeks. Do  
25 any of the other parties --

1 JUDGE JORDAN: I just want to also join in with  
2 the Chairman in saying that I commend all parties in  
3 achieving what you have done.

4 JUDGE McCOLLOM: Me, too.

5 JUDGE JORDAN: Keep up the good work.

6 JUDGE BLOCH: Do any of the other parties wish  
7 to comment on what Mr. Edgar has said?

8 MS. ELLIS: Yes. Just a couple. I think it  
9 was really sort of implicit in what he said, but just to be  
10 real clear, included in that would be a postponement of the  
11 time, if it becomes necessary, for us to answer the  
12 pleadings that the Board is treating in the Motion for  
13 Summary Disposition.

14 JUDGE BLOCH: As I understand it, that's in  
15 keeping with the agreement, so therefore, that is correct.

16 MS. ELLIS: Right. And also the piping and  
17 pipe support issues which we are talking about. I think  
18 it's appropriate to mention that, as the Board is aware I'm  
19 sure, Mr. Doyle has made some trips down here, and Mr.  
20 Walsh has also primarily on cable tray supports in his  
21 case. But on the pipe and pipe support issues, Mr. Doyle  
22 has been really well pleased for the most part with  
23 everything that he has seen so far. I think that there is  
24 the possibility, a very good possibility that in the future  
25 he may be ready to say that the implementation is all

1 right, too. If they continue as they have on the  
2 implementation that he has seen so far, I think that's a  
3 good possibility. So things do look hopeful in that  
4 regard.

5 It's just a matter of we're just not ready to  
6 let go of them right now until we see a little bit more.  
7 But the plan itself, I think for sure he is very well  
8 pleased with that.

9 JUDGE BLOCH: I would to especially comment  
10 that CASE has been courageous in following what it believes  
11 to be correct, whether it's in the interest of defeating  
12 this plan or whether it's in the interest of supporting  
13 something that's happened, and that is something that's  
14 very commendable also.

15 MS. ELLIS: One additional thing that we  
16 discussed yesterday was the status of discovery, and I  
17 think that the Board should be aware that through the  
18 informal process, there is a number of requests that CASE  
19 has made informally which they're permitted to respond to.  
20 We assume that the response will be adequate. If it isn't,  
21 it would then graduate to the level of formal discovery.

22 We also have a letter from the Applicants --

23 JUDGE BLOCH: Just stop for a second. I take  
24 it that that informal procedure is acceptable with the  
25 Applicant also?

1 MR. EDGAR: Yes. We've been exchanging views  
2 on that. I think we have one item in particular where we  
3 had a discussion yesterday. We're going to provide a  
4 response. I think we'll be able to work that out and not  
5 resort to the formal discovery process, much less bother  
6 the Board.

7 JUDGE BLOCH: That's excellent. Not that we  
8 might be bothered, but that you're working out information.  
9 As a matter of fact, it's kind of annoying to be a judge  
10 and have so little to do.

11 JUDGE JORDAN: Are you referring to discovery  
12 in both proceedings?

13 MS. GARDE: Yes. The other item of discussion  
14 yesterday which I wanted to make the Board aware of is what  
15 I call the feedback phase of getting the information that  
16 has been coming out of the Staff and the Applicant back to  
17 the workers who originally raised the concerns. We've been  
18 doing that, and it's been somewhat easier of late with the  
19 charts that have been provided by the staff and the  
20 Applicant to track allegations and what was done with each  
21 allegation, and we're in the process of discussing ways to  
22 increase that -- the efficiency of that process a little  
23 bit better. But if we envision that when and if we go  
24 through this schedule and we're identifying those issues  
25 for hearing, we will have recontacted with the allegers

1 that originally raised the issues, and that will, in  
2 essence, be a part of the case if they had a dispute, but  
3 we will have already brought that back to the Staff and the  
4 Applicant before we identify this as an issue for hearing.  
5 So we spent about an hour on discussing that.

6 MS. ELLIS: There is one other thing I probably  
7 need to mention, just to be very clear on it. The piping  
8 and pipes that were issues which we were talking about in  
9 the motion were limited to the operating license proceeding  
10 rather than CPA.

11 MS. GARDE: No further comment.

12 MR. BLOCH: Thank you very much.

13 MS. MOORE: The Staff has only one comment, and  
14 that is with respect to -- and I believe it was clear from  
15 what Mr. Edgar said, but I would like to reiterate it.  
16 This process we were working on concerning implementation  
17 issues will deal with all disciplines. It's not only the  
18 piping and pipe supports but all disciplines.

19 MR. EDGAR: I wasn't clear when I said it.  
20 That's the second time she's had to correct me.

21 JUDGE BLOCH: Well, I sense we're working  
22 together in the sense. That doesn't often happen in these  
23 proceedings. If I understand correctly, the business  
24 that's left for now is to hear Applicant's outline of what  
25 it expects to present as proof.

1 I guess my only surprise is that it's possible  
2 the issues will be so narrow you will need to present as  
3 proof. But why don't we proceed with that.

4 (Conference among Judges.)

5 JUDGE BLOCH: There's a possible lack of  
6 understanding. Did you offer to say more about the  
7 discussions among the parties, or just about Applicant's  
8 case?

9 MR. EDGAR: I may have let two concepts run  
10 together. What I said was I'll be happy to present the  
11 outline, rough outline of how we would put our affirmative  
12 case on under present assumptions and present known  
13 conditions. That presentation that I would give the Board  
14 we exchanged yesterday. That helped the discussions, we  
15 thought, the parties thought in trying to come to grips  
16 with the wisdom or lack of wisdom of consolidation.

17 If you see what we have for the core part of  
18 the case, then you can see -- you know, it may follow,  
19 then, consolidation is logical or beneficial. So, we think  
20 it's a matter of keeping the Board informed. We're happy  
21 to do it, and that's the context of it.

22 I'm not presenting argument. I'm presenting it  
23 for what it's worth.

24 JUDGE BLOCH: We would like to be a part of  
25 that. It's just that the parties in their discussions

1 would also assist us, and we want to be sure on it. Thank  
2 you.

3 MR. EDGAR: To look at this outline, it helps  
4 to establish a few premises. One of those premises is that  
5 we don't have the piping technical issues now. We're  
6 taking that off the board.

7 The Staff's current schedule for issuance of  
8 SSER's, which are the trigger documents in the hearing  
9 schedules Janice can provide. But essentially, I'm going  
10 to over simplify it a little bit, but essentially the tray,  
11 cable tray, SSER and the mechanical civil structure, the  
12 discipline SERs and the CSR/CER will be coming out at about  
13 the same time. And so, for all practical -- there may be  
14 some mismanage, and it may be that some of the technical  
15 PSRs will be later in time in a CER status.

16 JUDGE BLOCK: You're actually talking about the  
17 SSERs on the PSRs, right?

18 MR. EDGAR: Correct. Okay. And I'm  
19 simplifying a little bit, but what I'm going to talk about  
20 is how we move our case along if we have the CSR/CER as the  
21 trigger document, and we may have an issue or two on the  
22 cable tray. We may have an issue or two on HVAC or EQ or  
23 something, but I could explain how that could get tucked  
24 in. We'll deal with that.

25 What we're going to do is, given the present

1 state of knowledge and what we think the issues are to be,  
2 and what we have to anticipate, here's how we would put on  
3 our case. And we do it in basically a three-tier approach  
4 where -- and we can read back into this the CPA issues, and  
5 I'll explain that last where they come back.

6 The first tier is basically your corporate  
7 policy in management level, with senior management  
8 explaining the company's policies, what went into the  
9 decisions implemented, the CAP and CPRT Programs. That is  
10 a rather broad presentation.

11 The next level down from that, the second level  
12 is your nuclear management and policies. That has a number  
13 of constituent elements, but the two principal elements  
14 there would be a presentation on the organizational  
15 enhancements that have been made, the restructuring of  
16 personnel, additions and the like, and then what I call,  
17 for want of another word, systemic enhancements: How you  
18 do business better, design control and instruction  
19 methodology, all sorts of systemic improvements.

20 The next level down from that is your basic  
21 core presentation on the CAP, Corrective Action  
22 Program/CPRT Program. And that, of course, would have in  
23 it first a program description, and then a presentation of  
24 results of design validation, and a presentation of results  
25 of PCHVP, which is the hardware validation, and integrating

1 those two together would be conciliation.

2           It is in that context that what we are calling  
3 implementation would come up. We would present  
4 affirmatively our results of implementation, and if there  
5 were issues the intervencor had identified, they would  
6 either come after that, depending upon how we set these  
7 criteria, or in that context. But we would cite the  
8 affirmative context there first or whatever our view would  
9 happen to be.

10           Then, of course, supporting that and actually  
11 setting a tone for the whole thing is the discussion of the  
12 CPRT investigations in design construction in QA and  
13 testing. Then, having completed that, we then drop down to  
14 a set of additional items which blend in, the root cause,  
15 the harassment issues, if there are any open at that point,  
16 and any residual technical issues. I can't predict what  
17 that might be, but let's suppose that there is an open  
18 technical issue on cable tray, or an open technical issue  
19 that gets identified on EQ. Then we would have those  
20 picked up by the right witness panels that are presenting  
21 the material in the CAP/CPRT results.

22           The final thing is how you blend in the CPA  
23 evidence. We have, as I've said, the three levels here.  
24 We have corporate, nuclear, and the CAP/CPRT level  
25 presentation. We break the CPA logically into two

1 elements.

2 We have what we call prong 1, which is the  
3 question of disregard or violation of NRC requirements, a  
4 conscious disregard. Then we have prong 2, which we call  
5 repudiation.

6 Now, we believe that everything we've said  
7 above, particularly the organizational enhancements and the  
8 systemic enhancements and the CAP/CPRT are directly  
9 responsive to prong 2. As a matter of logic, they  
10 encompass that. That leaves us with prong 1, and what you  
11 have to do there is put the prong 1 evidence into each of  
12 the three tiers that I've previously mentioned.

13 You have the policy level of prong 1, which  
14 fits in that corporate policy and nuclear management part.  
15 You have another thing which is kind of unique to the CPA  
16 which is the set of specifics. We don't know what they are  
17 yet. We have a set of basics out there, but they'll have  
18 to be narrowed during discovery. But, an example might be  
19 something like you have thus and such a report, or thus and  
20 such in an audit finding. What would you do about it?  
21 It's an allegation that we must respond to. So we would  
22 have to leave in the specifics of that with our nuclear  
23 management, or perhaps we have -- that may be an area we  
24 have to put on additional evidence. It doesn't quite fit  
25 in this coherent structure.

1  
2 And then the final part of it is the inferences  
3 that one can draw from the CAP/CPRT results. You have  
4 certain objective evidence and data, and one can examine  
5 those data and ask the question: Do they reflect or do  
6 they allow an inference of any intentional violation of  
7 regulations. And so that would be blended in with the  
8 CPRT/CAP. So, I think all of the pieces fit, and that's  
9 how we would proceed and attempt to proceed.

10 It's not something we're negotiating. It's  
11 just something we're willing to tell people, and it may  
12 help our further discussion.

13 JUDGE BLOCH: Just an off the cuff remark. If  
14 it appears that you try the case that way, whether we  
15 consolidate or not, that would be an argument.

16 MR. EDGAR: Yes. We discussed that yesterday.  
17 The logic that we were going through, and we still need to  
18 do more discussion among the parties. The logic that we  
19 have gone through is that the intervenors have to weigh the  
20 prongs 1 and 2 of Contention Two. We can win Contention  
21 Five or prong 2 of Contention Two, and we win. Or we can  
22 win prong 1, Contention Two, and we've lost. We  
23 neutralize.

24 JUDGE BLOCH: I don't understand that.

25 MR. EDGAR: Okay. Well, we have to put on our  
-- let me put it another way. We have to put on our OL

1 case.

2 JUDGE BLOCH: I don't understand how you can  
3 win on Convention 5 and not block.

4 MR. EDGAR: Oh, we always block when we went on  
5 Contention 5. W. necessarily --

6 JUDGE BLOCH: That's why I don't understand why  
7 anyone is interested in whether or not we consolidate. If  
8 that's true and we try the OL first, why does it matter  
9 whether we consolidate?

10 MR. EDGAR: It's a matter of form in my mind  
11 rather than substance. You put your finger on it when you  
12 said that the real issue is the order in which you present  
13 the evidence, and that's why we said this is how we're  
14 going to do it, because we think if we prevail on 5, and  
15 this is a 5 case with just using CPA as a checklist and  
16 come back and make sure you're logically covered. If we  
17 win on 5, we win on prong 2, and that's it. There is  
18 nothing left. But that's our view of the matter. We  
19 amongst the parties need to discuss that some more.

20 JUDGE BLOCH: I could imagine the possibility  
21 that that's not true, but I don't see it's very likely.

22 MR. EDGAR: I agree with you.

23 JUDGE JORDAN: My problem is how do you know  
24 you've won on 5 if you're planning to continue with all of  
25 the items that you've mentioned? Are you going to stop,

1 assuming now that there is consolidation, and that's the  
2 case that bothers me. Where do you stop?

3 MR. EDGAR: That again is a matter of  
4 discussion amongst the parties. But our view of that is  
5 you file your findings both ways. Remember, the real  
6 distinction here is the hearing is the vehicle for putting  
7 the evidence on. The structure that we propose gets all of  
8 the right pieces in. It's all a matter of logic.

9 The next question is the inferences you draw  
10 from that same evidence. You can brief that. That can be  
11 a finding. Two sets -- you can put different cover pages  
12 on findings if you want, but two sets of findings should go  
13 in simultaneously. Then, it's incumbent on the Board to  
14 ask itself the question: Does it even have to answer prong  
15 1.

16 I'm presupposing that the evidence is such, and  
17 I'm an optimist, so I'm presupposing that the evidence is  
18 such that we would convince you on prong 5.

19 JUDGE BLOCH: I had assumed that our job was to  
20 decide the case.

21 MR. EDGAR: Exactly.

22 JUDGE BLOCH: Therefore, if Contention 5 was  
23 decided, it necessarily decides prong 2. I don't see that  
24 as a Licensing Board we have any business looking at prong  
25 1.

1 MR. EDGAR: I agree with you.

2 JUDGE BLOCH: Because our job is whether or not  
3 to license the plant, not to lock into intellectual issues.  
4 It would be fun for us. I don't think it would be fun for  
5 everybody.

6 JUDGE McCOLLOM: I understand you put in your  
7 two findings. One would be on Contention 2.

8 MR. EDGAR: That's correct. Now that's -- the  
9 parties haven't agreed to that, but that's our view of the  
10 matter. That's all I'm saying.

11 JUDGE BLOCH: I would like to clarify one  
12 thing. I assume, given the level of communication going on  
13 among the parties now, that all of the serious concerns  
14 that CASE has are a matter for serious inquiry both by the  
15 Applicants and for the Staff. Am I correct in that?

16 MS. GARDE: I don't understand.

17 JUDGE BLOCH: You have raised certain issues  
18 in --

19 MS. GARDE: You mean the procedural questions  
20 that we raised about consolidation?

21 JUDGE BLOCH: No. Not just the procedural  
22 ones. The substantive issues you've raised I assume are  
23 being seriously looked at by both the Staff and by the  
24 Applicant.

25 MR. EDGAR: Well, let me speak for us.

1 Everything we know about, and we have to apply our own  
2 judgment for that, but everything we know about that's  
3 serious we're working on. We either have an answer -- you  
4 may not think it's good enough, but we have one or we're  
5 working harder on it. The three residual areas that we  
6 talked about extending out at the pipe motion root cause,  
7 harassment and implementation are three that we're  
8 definitely working on and have done something with, and  
9 will continue to do more with.

10 JUDGE BLOCH: I assume the staff also is  
11 looking into those issues?

12 MS. MOORE: Yes. The Staff is looking at those  
13 issues.

14 JUDGE BLOCH: Ms. Garde?

15 MS. GARDE: I just want to comment that we're  
16 not holding any issues. When something comes to our  
17 attention that is of concern to us, we are bringing it to  
18 the attention of the Applicants and the Staff. We have no  
19 intention of holding any issues. But we are not agreeing  
20 with -- we agree with how they are addressing those issues.  
21 They're aware of what our concerns are and have to make  
22 some kind of decision.

23 MS. ELLIS: In addition, there are some things  
24 that are still being looked at. For instance, in the  
25 technical areas, say on the HVAC, for instance. There may

1 be some technical concerns even with the plant itself that  
2 we may want to look into before we release that. So these  
3 things are still in process at this point. As soon as we  
4 have them finalized at some point, as soon as I can get  
5 around to typing most of them, we will get them to the  
6 Applicant and Staff and let them be looking at them. So  
7 we're not holding them back, but it's just a matter of  
8 being able to do it.

9 MR. EDGAR: We think there's an information  
10 exchange that's developed here, and if, for example, Ms.  
11 Ellis mentioned the HVAC. She has a person looking at  
12 that. It may be, and we can't predict the unknown, but  
13 there's a way for us to take those issues and get them and  
14 get the technical people together and resolve them. Now,  
15 that's obviously in everybody's interest.

16 The exchange process that was developed on the  
17 bigger piping issues seem to be a worthy effort. It may be  
18 that we need to do smaller efforts of similar kind. But  
19 certainly the company is open to that approach and  
20 recognizes its value, and we think the intervenors are  
21 being directed at it and are giving us the information  
22 that's on their minds.

23 JUDGE JORDAN: I believe that root cause is one  
24 of the issues that you still are thinking about. But this  
25 you say will be considered with the CSR comes up; is that

1 right?

2 MR. EDGAR: Yes. That would be our view of the  
3 matter, because we don't think the root cause issue such as  
4 it is is discipline specific necessarily, and that it fits  
5 better in that broader context.

6 MS. GARDE: May I comment? I think the  
7 information or exchange such as was going on with Mr. Walsh  
8 on pipe issues did work very well. It's not practical to  
9 bring 80 whistle blowers back from all over the country to  
10 explain to them exactly what was done. So we are doing  
11 that, for the most part, through the mail.

12 The Applicant will know -- theoretically the  
13 Applicant will know before we have to file our motion  
14 identification issues what those issues are, and they won't  
15 be surprised. But in both motions there may be certain  
16 areas of dispute, because those won't have been resolved.  
17 The only problem that we foresee, and we discussed that  
18 with them, is that if the staff puts all those SSERs on the  
19 street at the same time, we're going to get into a time  
20 crunch. I don't think it's a significant time crunch, but  
21 it's difficult to contact and deal with that many people  
22 who are, for the most part, serving as the expert review of  
23 their original concern.

24 So I think that all of that is in the process,  
25 and I think what your concern is that when they get the

1 motions that identify the issues, there aren't 17 new  
2 workers raising 25 new issues on that area of interest, and  
3 that is not what we anticipate would happen. If there is a  
4 new worker, whether or not he has brought forward a  
5 Department of Labor complaint -- but if he has technical  
6 issues brought to our attention, we will be bringing those  
7 or have brought those to the Utility.

8 JUDGE BLOCH: I think this time crunch issue is  
9 one the Applicants know about, and it's one of the things  
10 that's still under discussion.

11 MS. GARDE: Well, it's still under discussion,  
12 but I don't think there needs to be very much discussion  
13 because the schedule that you've put in place, and the way  
14 that we've been implementing it provides for us to be able  
15 to ask for extra days if we need them, and so far it hasn't  
16 been a problem if it's ten days here or fifteen days there.  
17 Now, if we get ten SSERs in one day, it's going to be  
18 impossible for us to process in the timely manner  
19 envisioned. And if it's not worked out, we can't reach an  
20 agreement that's acceptable, then we may have to come back  
21 to the Board. But it's pretty much depending on whether  
22 the Staff actually releases the SSERs, how far along we are  
23 with distribution of information at that point. Does that  
24 answer your question?

25 JUDGE BLOCH: Yes, thank you. Does Staff have

1 any comment?

2 MS. MOORE: I would just mention what Ms. Garde  
3 was referring to with respect to the workers. We are  
4 endeavoring to provide such information by sending letters  
5 back to the allegers we know about who have made specific  
6 allegations with the closeout of their issue so that at  
7 least our position on their issues is being provided to  
8 them, and also I believe where the allegers are related to  
9 CAP in some way or to CASE, that they are receiving a copy  
10 of that letter so they are given the Staff's position, and  
11 then it's a matter of having other information that they  
12 might -- that those workers might need to answer or to  
13 judge the accuracy of the resolution of the issues.

14 JUDGE BLOCH: I take it that they're usually  
15 given that before the Staff reaches its final conclusion?

16 MS. MOORE: I don't think I understand what you  
17 mean the final conclusion. I believe they're being given  
18 that information when the resolution has been finalized.

19 JUDGE BLOCH: At an earlier phase of the case,  
20 we had asked the people who had made allegations be told of  
21 the resolution, and they be given an opportunity to comment  
22 before the Staff concluded that they had satisfactorily  
23 concluded to resolve the issue.

24 MS. MOORE: In the letter they are being given  
25 an opportunity that if the resolution is not satisfactory

1 to them, that they can raise the issue with us. They tell  
2 us the source of their dissatisfaction.

3 JUDGE BLOCH: Does the Staff consider that it  
4 has reached a conclusion before or after it gets that back?

5 MS. MOORE: We are trying to send out those  
6 letters before the completion of the Staff SERs on the  
7 particular discipline that concerns that issue. I wouldn't  
8 be able to say at this point that that's always going to  
9 happen. But we will always consider if we have a response  
10 back, that we have not satisfactorily resolved that issue,  
11 and we'll make sure we take that response into account, and  
12 if need be we would issue a correction or a supplement in  
13 that regard.

14 JUDGE BLOCH: Thank you. That's very helpful.  
15 The Board is very pleased about we seem to have reached a  
16 new phrase in this proceeding. It's a phase in which the  
17 parties are cooperating more actively and accomplishing  
18 things that it's not possible for the Board to accomplish  
19 in that lengthy litigation. It's a very constructive  
20 development for this case. It means that we will do more  
21 by doing less, and we are pleased to be able to cooperate  
22 by doing less.

23 I want to ask my colleagues if they have any  
24 comments before we conclude this morning's session.

25 JUDGE JORDAN: Only to second the Chairman's

1 opinion.

2 JUDGE BLOCH: The pre-hearing conference is in  
3 recess. Adjourned.

4 (Whereupon, at 9:41 a.m., the hearing was  
5 adjourned.)

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This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:  
Name: Texas Utilities Electric Company, et al.

Docket Number: 50-445-OL; 50-446-OL; 50-445-CPA

Place: Dallas, Texas

Date: June 1, 1988

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken stenographically by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.

/s/ Gay E. Denton

(Signature typed): Gay E. Denton

Official Reporter

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