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BEFORE THE
UNITED STATES
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of

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| TEXAS UTILITIES GENERATING COMPANY, et al. | ) | Dkt. Nos. 50-445-OL |
| | ) | 50-446-OL |
| (Comanche Peak Steam Electric Station, Units 1 and 2 | ) | |

CASE RESPONSE TO APPLICANTS' MOTION FOR ESTABLISHMENT OF SCHEDULE

On March 21, 1986, the Applicant filed a Motion for Establishment of Schedule ("Motion"), in which they propose a self-executing schedule which would automatically go into effect upon the day any result report is made available to the parties and the documentation in support of the results report is made available for review. (Motion at 2.)

For the reasons discussed below, CASE opposes the Motion as premature, impractical and inefficient, and inherently flawed.

1. Applicants' Motion Is Premature.

The premise of the proposed schedule is that the only issue that remains in the operating license hearing is the adequacy of the Applicants' Results Reports related to Unit 1 of CPSES. That premise is erroneous.

In January 1985, the ongoing hearings were suspended, at



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Applicants' request.[1] Those hearings were probing the existence, extent, and causes of the breakdown of the QA/QC program for construction at both Units of CPSES. When hearings resume, the first order of business must be completion of that phase of the hearings and a determination of those questions about the adequacy of the implementation of the QA/QC program. The relevance of the work of the Comanche Peak Response Team (CPRT) and all underlying documents, like the work of the Staff's Technical Review Team (TRT), is to provide partial documentation of the extent of the breakdown and insights into the cause.

Since there has been a virtual blackout on access to the information generated by the review and reinspection process of the CPRT, the second order of business is to complete discovery, including the release of the documentation that has been generated in the CPRT process (see discussion of discovery, pp. 8-10, infra). Similarly, the staff has not yet completed production of all documents related to TRT findings and none of the documents related to the second EG&G Report or the Harassment and Intimidation Panel. Only after CASE has been given all of these documents and has had adequate time to analyze them will it be ready to begin the process of depositions, requests for admissions, motions for summary disposition, preliminary proposed findings of fact, prefiled testimony, and hearings on the issue of the existence and extent of the breakdown of QA/QC at both CPSES units. Applicants' present motion is premature and totally

[1] See letter from Robert Wooldridge to Judge Peter Bloch, January 30, 1985; and statement of Michael D. Spence, President of TUEC, at public meeting January 17, 1985.

ignores this phase of the hearings.

Second, in December 1983 this Board reached the preliminary conclusion with respect to design issues at both CPSES units that (LBP-83-81, Slip Op., p. 1 (12/28/83)):

> The record before us casts doubt on the design quality of the Comanche Peak Steam Electric Station (Comanche Peak), both because the Texas Utilities Generating Company, et al. (applicant) has not demonstrated the existence of a system that promptly corrects design deficiencies and because our record is devoid of a satisfactory explanation for several design questions raised by the Citizens Association for Sound Energy (CASE). We suggest that there is a need for an independent design review and we require applicant to file a plan that may help to resolve our doubts.

The Board's doubt about design deficiencies was reiterated in an October 2, 1985, Memorandum and Order on Applicants Motion for Reconsideration. Since early 1984, TUEC has had its design program under the review of CYGNA in an effort to identify and ultimately correct these deficiencies. For almost a year the parties have been awaiting the final outcome of the CYGNA analysis into generic implications and root causes of the widespread design deficiencies that they confirmed. In addition, in an amorphous manner not at all clear to CASE, the CPRT and other third parties are taking on some of the same issues addressed by CYGNA.[2]

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[2] There is no documentation at this time that Applicants' CPRT Plan (including the Stone & Webster efforts) will specifically address the Walsh/Doyle allegations. Based on previous experience, there is no reason to believe that Stone & Webster has been provided with sufficient and complete data regarding the Walsh/Doyle allegations to enable them to identify the allegations, much less adequately address them. CASE's concern

Prior to any hearings on the adequacy of the CPRT DSAPs and Results Reports on design issues, it will be necessary to have Applicants, their consultants, and CYGNA release all the data in their possession related to the extent and causes of the design deficiencies and the breakdown of QA/QC for design for both units at CPSES. Hearings on that issue, preceded by many of the previously identified pre-hearing processes, must then be completed before addressing the issues presented by Applicants' motion.

For these reasons alone, the motion should be tabled as premature, to be resurrected after completion of the hearings, which will lay the predicate for the subject on which Applicants now seek a hearing schedule.[3] As CASE has indicated previously,

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is not without a historical basis. The NRC Staff went to hearings in September 1982 without having completed their review of the Walsh/Doyle allegations, and Applicants did not provide CYGNA with copies of relevant documents until 1985, after CYGNA's Phase 1, 2, and 3 Reports had already been issued.

[3] The Applicants' motion does not provide a forum for challenging the overall adequacy of the CPRT program. It is not clear whether Applicants intend each results report hearing to focus on the same issues of CPRT failure, e.g.:

1. CPRT is not sufficiently independent from TUEC since all judgments on the safety significance of deficiencies and disposition of NCRs, design changes, and reconstruction are made by TUEC personnel, many of whom, like Messrs. Tolson, Brandt, Purdy, and Finneran (all now employed at CPSES), made the original judgments that allowed the deficient conditions to exist.

2. CPRT reinspections are being conducted without complying with Appendix B, thus making trending, documentation, and any verification of the work performed impossible.

3. The CPRT program has not been approved by the Staff but has been modified at least three times, apparently without going back to redo reinspections, redesigns, and reconstruction

it is not possible to determine conclusively whether the process used by Applicants and the results produced by that process are adequate to establish what Applicants seek to establish -- i.e., that CPSES has been built in compliance with 10 CRR Part 50, Appendix B, and the construction permit -- unless and until we know the extent of the QA/QC breakdown for design and construction (generic implications) and the causes for that breakdown (root causes).[4] (See CASE's Responses to Case Management Plan and Management Views.)

2. Applicants' Motion Is Neither Practical Nor Efficient.

There is a second and equally compelling reason to table the Applicants' motion. Unless and until the documents that are in

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conducted under the rejected plans.

4. The CPRT implementation has violated CPRT standards for reinspections, including the use of production quotas for inspectors and harassment and intimidation of inspectors.

It is also not clear whether these matters are to be addressed in one omnibus hearing. CASE believes that once we reach the CPRT stage of the hearings the first hearing should focus on the generic question of the adequacy of the CPRT as revealed by the results reports and underlying documentation. Following that hearing, hearings on individual results reports would be conducted.
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Much of the evidence produced in these hearings and the findings of the Board on these issues will substantially influence the course and conduct of the hearings for which Applicants now seek a schedule. Findings on the extent and causes of the breakdown can be contrasted to the CPRT results reports and the CPRT process. If, as we believe will be evident, the extent and causes of the breakdown will be substantially broader and more serious than the NRC has conceded, then concluding the results reports and the CPRT process are inadequate will be a relatively brief and straightforward procedure. Summary disposition may be best suited for this task.

the possession of the Applicants, such as the result reports, the underlying documentation, the checklists, etc., are produced, there is no way for CASE or the Board to adequately assess the wisdom of the underlying premise of the proposed schedule -- i.e., hold hearings on the results reports in the order in which they are released by the Applicants. It is our belief that the last results reports, which will relate to QA/QC, generic implications, and root causes, must be available with their underlying documentation in order to properly assess the earlier results reports.

For example, one of the first completed results reports will be ISAP III.d., "Pre-operational Testing." This issue, initially raised by a CASE witness, involves the potentially significant problem arising from System Test Engineers (STEs) not being on controlled distribution for design changes applicable to systems which they were assigned to test. The TRT's concerns were that there was no way to assure that STEs had utilized the proper design documents, and that, even if they used what they believed to be the correct design document, the problems in the document control system prevented the STE from finding reasonable assurance regarding testing activities (SSER #7, p. J-13-14). The methodology for the action plan, Revision 4, sets out the process to evaluate the two issues, but includes assumptions on the adequacy of the document control process, which is also a generic problem to be considered in another ISAP on document control and quality control concerns.

In short, attempting to fairly set a schedule to hold hearings about the adequacy of a type of report which has never

been produced and which was prepared using checklists and criteria seen by only the Applicants, Staff, and other consultants, but not CASE, is impossible.

3. The process is inherently flawed.

Finally, it is apparent from looking at the proposed schedule that it contains at least one other serious inherent flaw. The Applicants have complete control over how much and what kind of data will be produced in conjunction with any results reports and, therefore, complete control over the order in which issues will be heard. Since only Applicants (and perhaps the Staff) know the whole picture, this puts CASE at an unnecessary strategic disadvantage. Applicants can release findings, conclusions, and underlying documentation related to individual results reports, and the major final result report on QA/QC whenever it will inhibit CASE's ability to properly probe the results report. Applicants will first release results reports whose full implications or potential flaws cannot be apparent until later results reports are released. Both of these tactics would force CASE to use the cumbersome and difficult procedures for reopening the record to later challenge results reports that were the subject of previous hearings.

Another unacceptable aspect of this applicant-controlled hearing process is that Applicants can use the strategic timing of the release of results reports and the automatic commencement of the time clock for discovery on a new results report to disrupt CASE's attempt to allocate its very limited resources to address previously issued results reports. The process proposed

by Applicants would allow Applicants, already equipped with four law firms and apparently well over a score of lawyers, to introduce new results reports for CASE to respond to just when its limited resources (one lawyer, one law student, one lay representative) were at the breaking point. Since all ISAPs are not equal, the automatic time clock, coupled with Applicants' control of the document release process, magnify the resource inequities unbearably.

It was to avoid just such "ganging up" that CASE has consistently urged the release of data as the CPRT and CYGNA processes proceeded so we could digest the data over a longer period of time. While it may have served Applicants' strategic purposes to forbid CASE to have open and unrestricted access to the documentation as it was produced -- access which they have given to the Staff on a regular basis -- it would be manifestly unfair and violative of due process to allow Applicants to benefit from this obdurate behavior now.

The following examples demonstrate this behavior. CASE has sought informal discovery since the spring of 1985. Since then the Applicant has engaged in a continuous series of delays, oppositions, interlocutory appeals, and other delay tactics. For example:

September 4, 1985, Request 1(g) was first informally asked May 28, 1985; when no response was received, the request was formalized July 3, 1985. Since Applicants would not provide the information, CASE was required to file a motion to compel in late July. On August 16, 1985, the Board ruled that the discovery was

in order. On September 4, 1985, CASE asked the same questions in a formal document request. On October 9, 1985, the 30th day, Applicants objected to production of the documents on a variety of grounds. On December 23, 1985, the Board ordered the specific documents produced. The Applicants continued to refuse production until CASE signed an additional, unnecessary protective order, which we agreed to only in order to settle the issue. Finally, last week, the document file was produced. However, it contains only a fraction of the information requested.

September 4, 1985, Request 1(e) follows virtually the same pattern as described above, except that after production was ordered in December Applicants finally produced the list but will not guarantee that it is current or that they will keep it current.

Another example is the SAFETEAM documents. On December 23, 1985, the Board ordered that "CASE shall have access to all SAFETEAM documents" (emphasis added), but last month after two Washington-based CASE representatives arrived at the site to review over 600 SAFETEAM files and documents they were told that only a small portion were being made available to them. CASE now apparently has to file a motion to compel access to documents which the Board has already ruled are available to us and then expend additional time and resources to return to the site and complete the review process.

Another example is Request 13, for follow-up information on the T-shirt incident. After all the months of objections, replies, and arguments, Applicants have now taken the position

that there are no relevant documents. But CASE found documents highly relevant to Request 13 in the SAFETEAM files made available, which now raises the question of the adequacy of the search for responsive materials. In response to another question, the Applicant will not even tell us how many four-drawer file cabinets of deficiency paper exist or how it is organized so that CASE can manage its limited expenses and resources in the most productive manner. The only figure we have been given is that it is somewhere between 150 and 1500 file cabinets.

Equally frustrating is the issue of the attribute checklists, which cannot be produced to CASE because of the incredible "in process" argument that all work comes to a halt if CASE has access to the documents. We draw the Board's attention to the available Region IV inspection reports, in particular IER 85-17, 85-14, which contains 15 pages of NRC comments on the DSAP checklists, and all of the Region IV CPRT reviews which rely on and utilize the attribute checklists.[5]

The discovery difficulties magnify another fundamental problem with the proposed schedule; that is that the time limits proposed are totally inconsistent with the principles articulated by CASE and recognized by this Board at the pre-hearing conference on discovery held in Dallas on November 12, 1985. At that conference, CASE made clear its view that if Applicants were allowed to postpone production of in-process documents until all

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[5] CASE does not seek a remedy through this motion but provides this view of Applicants' discovery blockade techniques to underscore the inequity in this Applicant-controlled process.

results reports were completed then CASE should be entitled to a day for day extension of time, starting with the day they are produced and measured by the time elapsed between the day the documents came into existence and the day they were finally produced. Unless this extension is allowed, Applicants will have had the benefit of the "convenience" of postponing responses to legitimate discovery which, if timely answered, would have allowed CASE months to read and analyze the documents while denying CASE the "convenience" of recapturing this time for study and analysis after the documents are produced. This is totally contrary to the oft-stated promises of the Board Chairman that CASE would not have to suffer because Applicants have been allowed to delay their responses to CASE's discovery requests. Not even a compelling need for expedition (none has been offered here) could justify such manifest unfairness.

The only fair procedure to follow here is the traditional procedure, sanctioned by hearing boards for years. Under that procedure, when Applicants submit their rebuttal case they would identify and produce all of the documents on which they intend to rely to prove their case with respect to an admitted contention. Based on that revealed data, the Board and the parties develop a schedule. As we understand it, it is Applicants' view that its rebuttal to Contention 5 and CASE's evidence on a QA/QC breakdown will be to produce the results of the CPRT. Once hearings are completed on the extent and causes of the breakdown, it will be time for Applicants to produce their rebuttal.

It is our view that the entire scheduling motion should be tabled until discovery and hearings on the existence, extent, and

causes of the QA/QC breakdown have been completed. Attempting to hold hearings on how Applicants have "solved" the QA/QC breakdown problem before completion of the hearings on the extent and causes of the QA/QC breakdown is illogical and will be a waste of resources for everyone.[6] Moreover, the ad hoc and self-serving division of the QA/QC contention into small and not necessarily logical components serves no legitimate purpose.

We also believe that if the Board reaches the merits of the proposed schedule then it should deny the motion because it proposes a process which rewards Applicants for refusing to allow relevant discovery in a timely manner and severely prejudices CASE.[7]

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[6] We realize that Applicants and CASE have a markedly different view of the issues in this proceeding. While we read the Board Order of August 29, 1985 (Memorandum (Proposal for Governance of This Case)), as rejecting Applicants' view, it is not clear that the Board has adopted CASE's view. What is clear is that since Contention 5 is CASE's contention it is CASE's prerogative, absent summary disposition, to decide how to prove its contention. CASE has chosen to prove its contention by proving the extent of and root causes for the QA/QC breakdown in design and construction as well as design deficiencies themselves. That proof will include, in part, the deficiencies identified by the CPRT and CYGNA. It is not likely that the results reports will be part of that proof unless Applicants' candor about their problems has improved dramatically. Nonetheless, results reports may well lead to relevant and admissible evidence and their production during discovery is essential. Although Applicants would like to skip the problems and go directly to the solutions, this is unacceptable to CASE. As noted in earlier pleadings, the adequacy of the solutions is directly dependent on the extent and causes of the problem.

[7] We do not address here, because Applicants do not raise it, the schedule for discovery and hearings related to the implementation of the redesign and reconstruction warranted by the reinspection effort, or Applicants' unsolicited and unacceptable designation of which of CASE's representatives will be served.

Respectfully submitted,

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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| In the Matter of | ) | |
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| (Comanche Peak Steam Electric Station, Units 1 and 2) | ) | |

CERTIFICATE OF SERVICE

By my signature below, I hereby certify that true and correct copies of CASE's RESPONSE TO APPLICANTS' MOTION FOR ESTABLISHMENT OF SCHEDULE have been sent to the names listed below this 7th day of April 1986 by: Express mail where indicated by *; Hand-delivery where indicated by **; and First Class Mail unless otherwise indicated.

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