

5783

DOCKETED
USNRC

'88 MAR -8 13:56 filed: March 8, 1988

OFFICE OF SECRETARY
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
before the
ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	Docket Nos. 50-445-OL
)	50-446-OL
TEXAS UTILITIES ELECTRIC)	
COMPANY et al.)	(Application for an
)	Operating License)
)	
(Comanche Peak Steam Electric)	and
Station, Units 1 and 2))	
<hr/>)	Docket No. 50-445-CPA

APPLICANTS' MOTION TO
CONSOLIDATE PROCEEDINGS

TEXAS UTILITIES ELECTRIC COMPANY
For The Owners of CPSES

Jack R. Newman
George L. Edgar
Newman & Holtzinger, P.C.
Suite 1000
1615 L Street, N.W.
Washington, D.C. 20036
(202) 955-6600

Attorneys for Texas Utilities
Electric Company

8803110021 880308
PDR ADOCK 05000445
G PDR

D503

TABLE OF CONTENTS

	<u>PAGE</u>
Table of Authorities	ii
I. Consolidation of the CPA and OL Proceedings Is Necessary to Avoid Costly and Time Consuming Duplication of Effort	2
A. The CPA and OL Dockets Share Common Issues of Law and Fact	5
B. In Resolving the OL and CPA Proceedings the Board Will Necessarily Address the Same Technical Data, Analyses and Expert Witness Testimony	10
C. Consolidation Will Promote Efficiency and Will Not Prejudice the Rights of any Party	13
1. The Board's OL Litigation Schedule Can Readily Accommodate the CPA Issues	14
(a) Discovery	15
(b) Issue Identification, Summary Proceedings and Preparation of Testimony	18
II. Conclusion.....	19

TABLE OF AUTHORITIES

	<u>PAGE</u>
<u>Court Cases:</u>	
<u>Johnson v. Manhattan Ry.</u> , 289 U.S. 479 (1933)	3, 9
<u>Kraft, Inc. V. Local Union 327</u> , 683 F.2d 131 (6th Cir. 1982)	9
<u>Rohm & Haas Co. v. Mobil Oil Corp.</u> , 525 F. Supp. 1298 (D. Del. 1981)	3, 4
<u>Administrative Cases:</u>	
<u>Alabama Power Co.</u> ((Alan R. Barton Nuclear Plant, Units 1 & 2) and (Joseph M. Farley Nuclear Plant, Units 1 & 2)), CLI-75-12, 2 N.R.C. 373 (1975)	4
<u>Armed Forces Radiobiology Research Institute</u> , (Cobalt-60 Storage Facility), ALAB-682, 16 N.R.C. 150 (1982)	4
<u>Dairyland Power Cooperative</u> (La Crosse BWR), LBP-81-31, 14 N.R.C. 375 (1981)	3, 4
<u>Edlow International Co.</u> (SNM Export), CLI-77-16, 5 N.R.C. 1327 (1977)	2, 3
<u>Midwest Community Council, Inc. v. Chicago Park District</u> , 98 F.R.D. 491 (N.D. Ill. 1983)	3
<u>Texas Utilities Electric Co.</u> (Comanche Peak Steam Electric Station, Units 1 & 2), LBP-83-81, 16 N.R.C. 1410 (1986)	8
<u>Texas Utilities Electric Co.</u> (Comanche Peak Steam Electric Station, Unit 1), CLI-86-15, 24 N.R.C. 397 (1986)	5
<u>Texas Utilities Electric Co.</u> , (Comanche Peak Steam Electric Station, Units 1 & 2), LBP-86-36A, 24 N.R.C. 575 (1986).....	5, 7, 8, 9

	<u>PAGE</u>
<u>Texas Utilities Electric Co., (Comanche Peak Steam Electric Station, Unit 1), ALAB-868, 25 N.R.C. 912 (1987)</u>	5
<u>Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 & 2), LBP-87-20, 25 N.R.C. 953 (1987)</u>	5
<u>Thayer v. Shearson, Loeb, Rhoades, Inc., 99 F.R.D. 522 (W.D.N.Y. 1983)</u>	3, 4
<u>Virginia Electric and Power Co. (North Anna Power Station, Units 1 & 2), LBP-74-49, 7 A.E.C. 1183 (1974)</u>	4
 <u>Rules and Regulations:</u>	
10 C.F.R. § 2.716 (1987)	1, 2
43 Fed. Reg. 17,798 (Apr. 26, 1978), <u>reprinted in</u> , 1985 NRC Rules & Regs., Statements of Consideration (10 C.F.R. Part 2, Sept. 1, 1982)	2, 13
Federal Rules of Civil Procedure (1987) Rule 42 (a)	2

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
before the
ATOMIC SAFETY AND LICENSING BOARD

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

APPLICANTS' MOTION TO
CONSOLIDATE PROCEEDINGS

Pursuant to 10 C.F.R. § 2.716 (1987), Applicants hereby move the Atomic Safety and Licensing Board ("Board") to consolidate the proceedings on Applicants' application for an operating license ("OL") for the Comanche Peak Steam Electric Station ("CPSES"), Docket Nos. 50-445-OL and 50-446-OL, with the construction permit amendment ("CPA") proceeding, Docket No. 50-445-CPA. Because these dockets raise common issues of law and fact, consolidation will necessarily avoid the costly, time consuming and inefficient duplicative presentation of evidence in both dockets and thus will benefit Applicants, Intervenor and the NRC Staff. At the same time the Board's authority to structure appropriate relief in either docket will not be altered by consolidation and the rights of the parties will not be adversely affected.

Accordingly, for the reasons which follow, Applicants respectfully request that the Board consolidate the two proceedings, conduct one set of hearings and issue a single decision resolving all matters at issue. 1/

DISCUSSION

I. Consolidation of the CPA and OL Proceedings Is Necessary to Avoid Costly and Time Consuming Duplication of Effort

The Commission's regulations authorize presiding officers to consolidate two or more proceedings if such consolidation will be "conducive to the proper dispatch of [their] business and to the ends of justice." 10 C.F.R. § 2.716 (1987). Licensing Boards were granted this authority in order "to avoid costly and time consuming duplication of effort." 43 Fed. Reg. 17,798 (Apr. 26, 1978), reprinted in, 1985 NRC Rules & Regs. Vol. I, Statements of Consideration at 2-SC-28 (10 C.F.R. Part 2, Sept. 1, 1982).

This rule mirrors Rule 42(a) of the Federal Rules of Civil Procedure which provides that, if actions involve common questions of law or fact, Federal courts may consolidate such actions to avoid unnecessary costs or delay. 2/ See Edlow

1/ Citizen's Action for Sound Energy ("CASE") has previously taken the position that it is not "inherently opposed" to consolidation provided "expedition is achieved and the CPA is not delayed. . . ." See Consolidated Intervenors' Opposition to Appeal of Consolidated Opponents, Docket No. 50-445-CPA, at 21 (Dec. 12, 1986). As we will show, consolidation will expedite the resolution of both proceedings.

2/ Rule 42(a) of the Federal Rules of Civil Procedure states:
(footnote continued)

International Co. (SNM Export), CLI-77-16, 5 N.R.C. 1327, 1328 (1977); see also Dairyland Power Cooperative (La Crosse BWR), LBP-81-31, 14 NRC 375, 377 (1981). The fundamental purpose of consolidation is to promote convenience and judicial economy. See Johnson v. Manhattan Ry., 289 U.S. 479, 496-97 (1933); Midwest Community Council, Inc. v. Chicago Park District, 98 F.R.D. 491, 499 (N.D. Ill. 1983). Consolidation is appropriate when there exist issues of law or fact common to both proceedings. Complete identity of legal and factual questions, however, is not required. See, e.g., Thayer v. Shearson, Loeb, Rhoades, Inc., 99 F.R.D. 522, 523 (W.D.N.Y. 1983). The fact that both proceedings require the trier of fact to consider a large portion of the same technical data, analyses, expert witness testimony and other evidence is sufficient to warrant consolidation of the two proceedings. ^{3/}

(footnote continued from previous page)

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

^{3/} See Dairyland Power Cooperative (La Crosse BWR), LBP-81-31, 14 NRC 375, 377 (1981); Rohm & Haas Co. v. Mobil Oil Corp., 525 F. Supp. 1298, 1310 (D. Del. 1981) (court ordered consolidation of declaratory judgment action and patent infringement action because both suits would involve some common legal issues and a large number of the same witnesses and documentary evidence).

When there is an overlap of significant issues dependant on the same body of evidence for resolution, consolidation is routinely ordered in the interests of judicial efficiency unless such consolidation would cause unreasonable delay or otherwise prejudice the rights of any party. See, e.g., Thayer v. Shearson, Loeb, Rhoades, Inc., 99 F.R.D. at 523; Rohm and Haas Co. v. Mobil Oil Corp., 525 F. Supp. 1298, 1309-10 (1981); Alabama Power Co. ((Alan R. Barton Nuclear Plant, Units 1, 2 & 3) and (Joseph M. Farley Nuclear Plant, Units 1 & 2)), CLI-75-12, 2 N.R.C. 373, 374 (1975). Additionally, the substantial identity of the parties in both proceedings ^{4/} and the identical composition of the Boards presiding over both dockets weighs in favor of consolidation. See Armed Forces Radiobiology Research Institute (Cobalt-60 Storage Facility), ALAB-682, 16 N.R.C. 150, 155 (1982); Dairyland Power Cooperative (La Crosse BWR), 14 N.R.C. at 377; Virginia Electric and Power Co. (North Anna Power Station, Units 1 & 2), LBP-74-49, 7 A.E.C. 1183, 1185 (1974).

In this case all of the factors favoring consolidation are present. First, the two proceedings share common issues of law and fact and in addressing those issues the Board will be required to consider technical data, analyses and expert witness testimony, much of which is identical. Second, consolidation will not cause any delay and the consolidated proceeding can readily be conducted under the Board's present litigation schedule in the OL

^{4/} Although the State of Texas is an interested State in the OL docket but not in the CPA docket, consolidation would not affect its interests.

docket. Finally, no party will be adversely affected by consolidation; instead substantial benefits will necessarily accrue to all of the parties if consolidation is ordered.

A. The CPA and OL Dockets Share Common Issues of Law and Fact

There can be little, if any, disagreement that the matters at issue in the CPA docket and those at issue in the OL docket are substantially the same. ^{5/} Intervenor's amended Contention 2, the sole contention admitted in the CPA proceeding, provides as follows:

The delay on construction of Unit 1 was caused by Applicants' intentional conduct, which had no valid purpose and was the result of corporate policies which have not been discarded or repudiated by Applicants.

Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 1), LBP-86-36A, 24 N.R.C. 575, 580 (1986).

As required by the Commission's decision in Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 1), CLI-86-15, 24 N.R.C. 397 (1986), Contention 2, consists of two

^{5/} Indeed, the Licensing Board on at least two occasions has noted the similarity of issues in the two dockets as has one member of the Appeal Board. Texas Utilities Electric Co., (Comanche Peak Steam Electric Station, Units 1 & 2), LBP-86-36A, 24 N.R.C. 575, 582 (1986); Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 & 2), LBP-87-20, 25 N.R.C. 953, 956 (1987); Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 1), ALAB-868, 25 N.R.C. 912, 943-44 (1987). We would also note that Intervenor's have similarly recognized that the two contentions have factual and legal issues in common. In discussing possible consolidation, Intervenor's stated: "A separate issue is presented by the fact that much of the evidence and even some of the subsidiary issues in the CPA and OL are the same." Consolidated Intervenor's Opposition, supra at 21.

prongs, each of which must be established in order to sustain the Contention. The first prong of Contention 2 focuses on Applicants' past activities and alleges that the delay in construction of Unit 1 was due to a corporate policy of intentionally violating NRC licensing requirements in order to hasten construction of Unit 1. As explained by Intervenor's statement of bases, the first prong of Contention 2 is primarily directed at three issues: first, whether the historical quality assurance/quality control ("QA/QC") program was developed and implemented in good faith; second, whether the design of the plant was undertaken in accordance with "fundamental engineering principles" and in accordance with NRC requirements; and third, whether Applicants "ignored criticisms of the historical QA/QC program" and criticisms of the design.

The second prong of Contention 2 alleges that the corporate policies which led to the original delays in construction of Unit 1 have never been discarded or repudiated by the Applicants. In support of the second prong, Intervenor's statement of bases again raises three issues: first, whether there has been a significant change in management responsible for the design and construction of Unit 1; second, whether the Comanche Peak Response Team ("CPRT") is sufficiently independent of management and capable of performing the reinspections and analyses necessary to assure that the plant is capable of operating safely; and third, whether the methodologies employed by CPRT and the implementation of those methodologies are technically correct, rigorous, and in

accordance with NRC requirements. Thus, a critical aspect of the issues which must be addressed under the second prong of Contention 2 is almost entirely technical in nature, i.e., whether the reinspections and analyses undertaken by the CPRT are technically valid and in accordance with NRC licensing requirements. 6/

Precisely the same issues are encompassed within the scope of Contention 5 in the OL proceeding. That Contention alleges the following:

The Applicants' failure to adhere to the quality assurance/quality control provisions required by the construction permits for Comanche Peak, Units 1 and 2, and the requirements of Appendix B to 10 C.F.R. Part 50, and the construction practices employed, specifically in regard to concrete work, mortar blocks, steel, fracture toughness testing, expansion joints, placement of the reactor vessel for Unit 2, welding, inspection and testing, materials used, craft labor qualifications and working conditions (as they may affect QA/QC) and training and organization of QA/QC personnel, have raised substantial questions as to the adequacy of the construction of the facility. As a result, the Commission cannot make the findings required by 10 C.F.R. 50.57(a) necessary for issuance of an operating license for Comanche Peak.

Contention 5, like Contention 2, challenges the adequacy of the QA/QC program developed and implemented by Applicants at CPSES including the adequacy of the historical QA/QC program.

6/ Underscoring the technical nature of the second prong of Contention 2 is the Board's holding that Applicants may demonstrate through the technical adequacy and thoroughness of the various reinspection and corrective action programs undertaken at Unit 1 that they have discarded or repudiated whatever policies or practices led to past delays. Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 & 2), LBP-86-36A, 24 N.R.C. 575, 580 (1986).

Moreover, the Board has indicated its view that Contention 5, like Contention 2, includes within its ambit "quality assurance for design of Comanche Peak and also . . . particular design deficiencies alleged not to have been caught by the design control program." ^{7/} Therefore, Contention 5, like Contention 2, by its nature, challenges the CPRT Program including the adequacy of the CPRT methodology as well as CPRT's implementation of that methodology.

Applicants are, of course, aware that the parties and the Board have, in the past, disagreed over the scope of Contention 5 in the OL proceeding. In particular, Applicants have never accepted the proposition that Contention 5, however it might be interpreted, permits an examination of past management practices. Rather, Applicants have taken the position that the only significant difference between Contention 5 in the OL docket and Contention 2 in the CPA docket is the issue of past management oversight of CPSES. We would also note, however, that CASE and the Board have taken a contrary position. And it was, in part at least, based on the parties' and the Board's disagreement over the scope of Amended Contention 2, that the Board admitted the contention in the CPA docket. ^{8/} In any event, CASE, in litigating Contention 5, presumably would not accede to Applicants' position regarding the scope of Contention 5 in presenting its evidence.

^{7/} Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 & 2), LBP-83-81, 18 N.R.C. 1410, 1416 (1983). Applicants, of course, do not agree that design issues are raised by Contention 5. That contention, by its terms, questions only the construction of CPSES.

^{8/} Texas Utilities Electric Co., LBP-86-36A, 24 NRC at 582.

We also assume that, in light of the Board's past statements regarding Contention 5, the Board would permit the introduction of evidence on the issue of past management of CPSES. Thus, even as to the management issue which is raised in Contention 2, in all likelihood that issue would have been addressed in the OL docket in considering Contention 5. Consolidation, therefore, will have the additional benefit of clarifying the issues to be litigated and will largely eliminate unnecessary disputes over the scope of the two contentions or the relevancy of evidence.

Finally, Applicants are mindful of the Board's concern regarding its ability to provide a suitable remedy in the CPA docket -- a remedy it would not be able to provide in the OL docket. ^{9/} Consolidation of the two dockets would permit the efficient resolution of all issues in a single set of hearings while at the same time perserving the rights of the parties as well as the Board's authority to provide appropriate relief in either docket. See Johnson v. Manhattan Ry. Co., 289 U.S. 479, 496-97 (1933); Kraft, Inc. v. Local Union 327, 683 F.2d 131, 133 (6th Cir. 1982).

^{9/} Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 & 2), LBP 86-36A, 24 N.R.C. 575, 582 (1986).

B. In Resolving the OL and CPA Proceedings the Board Will Necessarily Address the Same Technical Data, Analyses and Expert Witness Testimony

Given the substantial similarity of issues it necessarily follows that much of the same evidence would be presented to the Board in both proceedings. The foundation of Applicants' case in both the CPA and OL dockets will be the results of the various reinspection and corrective action programs undertaken by the Applicants, including efforts implemented by the CPRT and the Corrective Action Program ("CAP") contractors, which are documented in a series of reports, including the Project Status Reports, the Collective Evaluation Report, the Collective Significance Report and ISAP Results Reports (hereinafter "milestone reports or documents"). Based on those reports, Applicants' direct case in both the OL and CPA dockets will include:

1. Descriptions of the CPSES QA program, including the investigations of the historic QA program and its implementation, the resolution of identified external source issues, the assessment of root causes in regard to the historic QA/QC implementation, and the current QA program and QA organization, as they apply to CPSES activities of Applicants and their contractors.

2. Descriptions of the CPRT program, including the role of the Senior Review Team, the use of third party contractors, the QA program implemented by CPRT, the documentation of CPRT results, CPRT analyses of root causes, CPRT identification and resolution of external source issues (including the investi-

gation and resolution of issues that were previously identified in the hearing record), the systems for resolution of other issues identified by CPRT, and corrective actions recommended by CPRT.

3. Descriptions of the CAP program, including the respective roles of the principal contractors, Stone & Webster Engineering Corporation, Ebasco Services Incorporated, and Impell Corporation, the QA programs implemented for CAP activities, the methodology and results of the design validation activities, and methodology of the post-construction hardware validation program, the evaluation of the root causes identified by CAP design validation activities, and the implementation of corrective and preventive actions.

4. Testimony concerning the management organization, staffing and program for design, construction and testing of CPSES in accordance with NRC requirements and Applicants' licensing commitments; and the management of the CPRT and CAP programs, their respective roles in validating the CPSES design and construction, their organization, staffing and programs, and the relationship between these two programs in identifying and resolving issues.

5. Descriptions of the various programs including CYGNA, the Engineering Functional Evaluation, and the Technical Audit Program, that provide additional assurance that CAP activities are properly implemented.

That the evidence described above is essential to the resolution of the issues in both the OL and CPA proceedings seems beyond dispute. For example, Applicants' testimony and documentary evidence regarding the adequacy of the historic QA/QC program relating to construction of the CPSES is plainly necessary to the resolution of Contention 5 as well as the first prong of Contention 2 which broadly challenges the historical QA/QC program. 10/ The investigations performed by CPRT assessing the extent to which the construction of the CPSES complies with NRC requirements are plainly relevant to issues raised by Contention 5 and also provide a basis for judging whether there was a policy of not complying with NRC requirements as alleged by the first prong of Contention 2.

The second prong of Contention 2 -- whether Applicants have discarded or repudiated any improper corporate policies -- and Contention 5 raise the identical issue of the adequacy of the various reinspection and corrective action programs implemented by Applicants. Indeed, Intervenor, in their statement of bases for Contention 2 in the CPA proceeding acknowledge that a properly implemented "redesign, reinspection and reconstruction program" would establish that Applicants had discarded or repudiated any improper corporate policy. 11/ Thus, virtually all of the

10/ The CPRT has recently issued its Collective Evaluation Report ("CER") which addresses, among other things, the current and historical QA program as it relates to the construction of CPSES.

11/ Consolidated Intervenor's Amended Contentions 1 and 2, Docket No. 50-445-CPA at 5 (September 30, 1986).

evidence which Applicants will present in addressing Contention 5 is essential to the resolution of the second prong of Contention 2. That evidence, as noted earlier, will include a detailed description of the CPRT and CAP programs, the methodologies used, the analyses and reinspections undertaken and the corrective and preventive measures implemented by Applicants. This evidence, which would be duplicated in its entirety in the event consolidation were not ordered, is essential to the resolution of both Contention 5 and the second prong of Contention 2.

Under these circumstances, no purpose would be served by requiring the Applicants to present the same voluminous technical data, information and analyses in two separate proceedings. Consolidation of the two proceedings will necessarily "avoid costly and time consuming duplication of effort." 43 Fed. Reg. 17,798 (Apr. 26, 1978), supra.

C. Consolidation Will Promote Efficiency and Will Not Prejudice the Rights of any Party

In requesting consolidation of the CPA and OL dockets, Applicants believe that the resolution of the matters raised in those two dockets can readily be accommodated within the framework of the litigation schedule set out in the Board's Memorandum and Order (Litigation Schedule) of November 18, 1987. That schedule, which is predicated on the issuance of certain milestone documents (i.e., the PSRs and CSR, including the underlying CER), provides sufficient flexibility to permit the efficient resolution of both the CPA and OL contentions in one consolidated proceeding in a

manner fair to all parties. In addition, by consolidating the two proceedings, the effort required by the parties and the Board will be lessened and the ultimate resolution of the matters at issue substantially expedited. Consolidation will necessarily avoid overlapping discovery, will eliminate the necessity of preparing and filing largely repetitive testimony, will eliminate disputes as to the scope of the two contentions and will result in one set of hearings. Equally important, the Board will be able to address both contentions in one decision thus expediting the decisional process.

1. The Board's OL Litigation Schedule Can Readily Accommodate the CPA Issues

The Board's OL litigation schedule is predicated upon the issuance of certain milestone reports by the Applicants which form the technical bases of Applicants' position that there is reasonable assurance CPSES was properly designed and constructed and will be operated safely and thus that Contention 5 is without merit. At the same time, as discussed earlier in Section I.B, these same milestone reports would also serve as the foundation for Applicants' position that Intervenor's amended Contention 2 in the CPA docket is without merit.

Based on the issuance of Applicants' milestone documents, the litigation schedule logically divides the prehearing procedures into three phases: (1) the initiation and completion of discovery; (2) the specification of issues and the resolution of issues by summary proceedings; and (3) the preparation and

filing of testimony. Because of the substantial identity of issues in the CPA and OL dockets, there should be little or no incremental effort required by any of the parties in preparing for hearing on all of the matters required to be resolved in both dockets. Moreover, to the extent any additional effort is required, the time periods established in the schedule are sufficient to accommodate that additional effort without causing any delay. Accordingly Applicants believe that the consolidated proceeding can and should be conducted within the time frame set out in the Board's litigation schedule. Specifically, the filing of discovery, the identification of issues, the filing of summary disposition motions, and the filing of testimony for both the CPA issues and the OL issues should be conducted in accordance with the litigation schedule.

(a) Discovery

Before addressing discovery in the context of the litigation schedule, it should be emphasized that CASE has engaged in massive discovery since it first was permitted to intervene in these proceedings. In the OL docket for example, CASE has submitted and received responses to over three thousand interrogatories, including subparts, many of which have been supplemented. In addition, Applicants have made available to CASE hundreds of thousands of documents, including many of the documents underlying the milestone reports. The discovery produced to CASE to date provides CASE with a more than ample foundation upon which to

determine the issues CASE contends should be litigated in both the OL and CPA dockets as well as the evidentiary basis, if any, for its contentions. Moreover, at the present time, discovery is successfully being conducted voluntarily and informally by CASE and Applicants. Applicants have committed on numerous occasions to provide CASE with information and documents without requiring the filing of formal discovery requests and often within time periods substantially less than that provided in NRC's Rules of Practice. In addition, Applicants have held a number of technical meetings with representatives of CASE in order to apprise CASE of the status of the ongoing technical activities being conducted by Applicants and to respond to any questions CASE might have. During these meetings, Applicants have made available to CASE engineers and technical staff from the various contractor organizations in an effort to resolve CASE's concerns regarding the CPSES. This informal process will continue in the future and should expedite the prehearing process in the event consolidation is ordered by the Board.

Under the litigation schedule, discovery is commenced upon the issuance of a notice of availability of a Project Status Report or the Collective Significance Report including the underlying CER. Because of the comprehensive nature of these milestone documents, any discovery by CASE on a particular milestone document will necessarily encompass matters which are of concern to CASE in both the OL and CPA dockets. Indeed, given the substantial overlap of issues in the two proceedings, it is difficult

to conceive of any substantial discovery which would be significantly different in the CPA proceeding than that which might be undertaken by CASE in the OL proceeding. To the extent that the CPA docket might involve any additional issues, discovery on those issues can readily be accomplished within the time limits set forth in the litigation schedule. Pursuant to that schedule, discovery may be conducted by CASE against the Applicants until thirty days after the issuance of the NRC Staff's Safety Evaluation Report ("SER") on the CSR. Thus, discovery on any additional issues that the Intervenors might believe are encompassed within the CPA contention, and are not addressed in the milestone documents, can be conducted at any time until the close of discovery after issuance of the last NRC Staff SER. At a minimum, CASE will have a number of months beyond the extensive discovery period to date, to seek and obtain any CPA related discovery on issues not encompassed by the various reports issued by Applicants. Any such issues we believe will necessarily be very limited in light of the scope of Applicants' reports and the scope of Contention 2.

In summary, Applicants believe that there will be little if any impact on the discovery process in the event the CPA and OL dockets are consolidated.

(b) Issue Identification, Summary Proceedings
and Preparation of Testimony

Under the litigation schedule, CASE is required to specify the issues in "which it is interested" and the evidentiary bases for its interest within ten days after receipt of all discovery responses. All parties are then provided the opportunity to file motions for summary disposition twenty days thereafter. Because of the substantial identity of issues in the CPA and OL dockets, the extensive discovery undertaken by CASE to date, and the additional discovery afforded by the litigation schedule, consolidation should have little or no effect on CASE's ability to identify the issues it wishes to litigate. Indeed, in light of the information provided to CASE through formal and informal discovery over the past seven years, CASE presently has a substantial factual foundation for determining the issues it believes require further hearings. Thus, CASE should be required to identify the issues it wishes to litigate in both the CPA and OL dockets in accordance with the litigation schedule. ^{12/}

As to the filing of any dispositive motions, the litigation schedule is merely permissive and does not require any party to move for summary disposition or file motions to strike. And, in any event, under the NRC's Rules of Practice, CASE, as well as

^{12/} As a practical matter, CASE would not be required to identify the issues in which it is interested in the CPA docket until the issuance of the CSR except to the extent a particular PSR addresses matters relevant to Contention 2. Given the substantial similarity of issues raised by the two dockets, Applicants would expect that CASE's identification of OL issues would also encompass CPA issues.

the other parties, are free to file for summary disposition at any time. In short, if consolidation is ordered, the present litigation schedule provides CASE ample time to identify CPA and OL issues and move for summary disposition on those issues if it so chooses, within the time frame established by the litigation schedule.

The final phase of the litigation schedule requires all parties to prepare and file direct testimony within forty-five days after the resolution of any dispositive motions. Because CASE's contentions in both the CPA and OL dockets are largely directed at what CASE perceives to be the shortcomings in the historical QA/QC program and the current reinspection and corrective action programs undertaken by Applicants, there should be little if any incremental effort in preparing testimony in the event consolidation is ordered. In fact, by requiring the preparation of testimony on all issues encompassed within the two proceedings within the framework of the present litigation schedule, the effort demanded of the parties should be substantially less than that which would be required if the dockets were not consolidated.

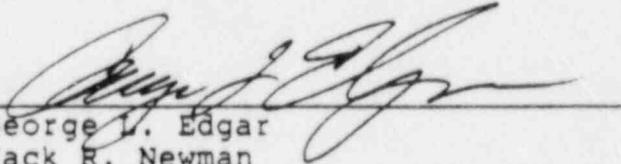
CONCLUSION

In moving for consolidation, Applicants are seeking to avoid the unnecessary, costly, and time consuming duplication of effort which inevitably would occur if the CPA and OL dockets remain separate proceedings. In Applicants view, the law, the

facts, and the interest of judicial efficiency dictate that the Board exercise its discretion and issue an order consolidating the two proceedings.

Respectfully submitted,

TEXAS UTILITIES ELECTRIC COMPANY
For The Owners of CPSES



George L. Edgar
Jack R. Newman
George L. Edgar
Newman & Holtzinger, P.C.
Suite 1000
1615 L Street, N.W.
Washington, D.C. 20036
(202) 955-6600

Attorneys for Texas Utilities
Electric Company

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

before the

'88 MAR -8 P3:56

ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)
) Docket Nos. 50-445-OL
) 50-446-OL
TEXAS UTILITIES GENERATING)
COMPANY et al.) (Application for an
) Operating License)
)
(Comanche Peak Steam Electric) and
Station, Units 1 and 2)
)
) Docket No. 50-445-CPA

CERTIFICATE OF SERVICE

I, George L. Edgar, hereby certify that the foregoing Applicants' Motion To Consolidate Proceedings was served this 8th day of March 1988, by mailing copies thereof (unless otherwise indicated), first class mail, postage prepaid to:

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

*B. Paul Cotter, Jr., Esq.
Chairman
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

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

Assistant Director for
Inspection Programs
Comanche Peak Project Division
U.S. Nuclear Regulatory
Commission
P.O. Box 1029
Granbury, TX 76048

*/ Asterisk indicates service by hand or overnight courier.

*Juanita Ellis
President, CASE
1426 South Polk Street
Dallas, TX 75224

William R. Burchette, Esquire
Heron, Burchette, Ruckert,
& Rothwell
Suite 700
1025 Thomas Jefferson St., N.W.
Washington, D.C. 20007

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

*Billie Pirner Garde
Government Accountability
Project
Midwest Office
104 E. Wisconsin Avenue - B
Appleton, WI 54911-4897

Susan M. Theisen
Assistant Attorney General
Attorney General of Texas
Environmental Protection
Division
P.O. Box 12548
Austin, Texas 78711-1548

Robert A. Jablon, Esquire
Spiegel & McDiarmid
1350 New York Avenue, N.W.
Washington, D.C. 20005-4798

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

*Dr. Walter H. Jordan
881 West Outer Drive
Oak Ridge, Tennessee 37830

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

*Dr. Kenneth A. McCollom
Administrative Judge
1107 West Knapp
Stillwater, Oklahoma 74075

Joseph Gallo, Esquire
Hopkins & Sutter
Suite 1250
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036

*Janice E. Moore, Esquire
Office of the General Counsel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

*Anthony Roisman, Esquire
1401 New York Avenue, N.W.
Suite 600
Washington, D.C. 20005

Lanny A. Sinkin
Christic Institute
1324 North Capitol Street
Washington, D.C. 20002

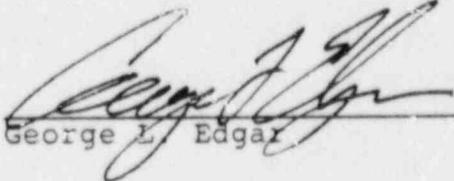
Nancy Williams
CYGNA Energy Services, Inc.
2121 N. California Blvd.
Suite 390
Walnut Creek, CA 94596

David R. Pigott
Orrick, Herrington & Sutcliffe
600 Montgomery Street
San Francisco, CA 94111

*Robert A. Wooldridge, Esquire
Worsnam, Forsythe, Sampels
& Wooldridge
2001 Bryan Tower, Suite 3200
Dallas, Texas 75201

V. G. Council
Executive Vice President
Texas Utilities Electric -
Generating Division
400 N. Olive, L.B. 81
Dallas, Texas 75201

Jim Bailey, Esquire
Texas Municipal Power Agency
P.O. Box 7000
Bryan, Texas 77805


George L. Edgar

Dated: March 8, 1998