

Similarly, this Board has never ruled that these issues are to be injected into this proceeding. To the contrary, as recently as 11 months ago, this Board considered the issue in the focussed context of a motion for modification of one of its orders. While the Board expressed its "preliminary and non-binding" opinion that "the way in which management exercised its responsibility for the construction of Comanche Peak is relevant to the compiling of an adequate record about plant quality," it went on to communicate its hope that Applicants, through the CPRT, or the Staff, through its regulatory authority, would address management

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that Applicants were violating 10 CFR Part 50 -- were substantially similar to CASE's broad factual allegations in support of Contention 5. CASE v. NRC, No. 86-1169, (D.C. Cir.) Brief of Intervenor Texas Utilities Electric Co., et al., at 7 (June 24, 1986). We did not suggest that the legal issues arising in these different proceedings from those factual allegations were similar, nor that either proceeding contemplated an issue regarding management competence or character. Instead, we appropriately advised the Court of Appeals that CASE's "allegations of design and construction deficiencies . . . are more appropriately litigated in the operating license proceeding . . . or in appropriate cases in an enforcement proceeding". Id. at 55. This was a correct statement of the situation and in no way suggested that the legal issue in the CPA proceeding ("good cause for delay") was the equivalent of that in this OL case ("adequacy of construction") or that discovery arguably proper where the former was at issue was equally permissible where only the latter had been admitted.