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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of ( )  
 )  
 HOUSTON LIGHTING AND ( Docket Nos. 50-498 DL  
 POWER COMPANY, ET AL. ) 50-499 DL  
 )  
 (South Texas Project, )  
 Units 1 and 2) (

SUPPLEMENT TO CITIZENS CONCERNED ABOUT NUCLEAR POWER (CCANP) PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issue E in this proceeding is:

Is there reasonable assurance that the structures now in place at the STNP (referred to in Sections V.A. (2) and (3) of the Order to Show Cause) are in conformity with the construction permits and the provisions of the Commission regulations? If not, has HL&P taken steps to assure that such structures are repaired or replaced as necessary to meet such requirements.

In its Findings of Fact and Conclusions of Law, CCANP argued that the level of intimidation and harassment experienced by the inspectors at STNP, the consequential high turnover rate among inspectors, the questionable record of inspections, and the inability of the NRC to locate more than 10 of the 69 inspectors who once worked on the project created an inference of undetected and undetectable flaws which made the condition of the plant indeterminate. See CCANP FOF 13.1-13.9 at 130-133; See also FOF 2.50 at 40, 6.8-6.28 at 82-94, 8.6.2-8.6.3 at 115-117, 8.7.6 at 122-124.

A recent memorandum and order issued by an Atomic Safety and Licensing Board in another proceeding offers support for CCANP's position on this issue. See Exhibit 1 attached hereto at 5-6. In particular, CCANP directs the Board's attention to the ASLB

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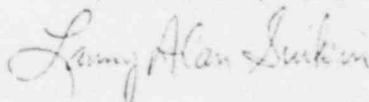
position that:

To the extent that intimidation of inspectors may be isolated events, the inspecting of plant quality may be sufficient to assure us of plant safety. If, however, the intimidation may be shown to be sufficiently serious, then it may reflect on the quality of plant management. Furthermore, serious intimidation could result in hidden plant conditions that are not readily inspected on walkdowns. Either of these possible conclusions concerning intimidation allegations would have serious adverse implications for licensing. Exhibit 1 at 5.

The Memorandum and Order of the Comanche Peak ASLB is equally relevant to the issue of character. For an applicant to permit a level of intimidation and harassment of inspectors which calls into the question the overall quality of the plant does "reflect on the quality of plant management" and is certainly a basis for concluding applicants lack the character to receive an operating license.

To assist the Board in the formulation of its opinion in Phase I of this proceeding, CCANP submits this supplement to its Proposed Findings of Fact and Conclusions of Law.

Respectfully submitted,



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Counsel for Intervenor  
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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

Before Administrative Judges: '84 JAN -4 AIO:10

Peter B. Bloch, Chairman  
Dr. Kenneth A. McCollom  
Dr. Walter H. Jordan

Docket Nos. 50-445  
50-446

In the Matter of

TEXAS UTILITIES GENERATING COMPANY, et al.

(Application for  
Operating License)

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

MEMORANDUM AND ORDER  
(Additional Scheduling Order)

SERVED JAN 4 1984

The principal purpose of this memorandum is to respond to the scheduling concerns expressed by the parties in recent filings.<sup>1</sup> A subsidiary purpose is to clarify the effect of our Order of October 25, 1983, "Procedure Concerning Quality Assurance."

I. Method of Resolving Issues

Issues that have already been decided, such as the reason for firing Mr. Robert Hamilton and allegations of problems with liquid

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<sup>1</sup> Applicants' Identification of Issues and Proposal to Establish Hearing Schedule, December 3, 1983 (Applicant's Proposal); CASE's [Citizens Association for Sound Energy's] Response to Applicants' Identification of Issues and Proposal to Establish Hearing Schedule, December 23, 1983 (CASE's Response); and NRC Staff Response to Applicants' Identification of Issues and Proposal to Establish Hearing Schedule, December 23, 1983 (Staff Response).

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penetrant testing, are not subject to relitigation, either by Applicants or by CASE without a prior decision of this Board.<sup>2</sup> The only subject left to be resolved with respect to the Hamilton and Atchison matters is the extent to which these questions reflect on the overall quality assurance program of Texas Utilities Generating Company, et al. (Applicants). This question of overall significance shall not be resolved until after the Office of Investigation concludes its pending investigations, or a substantial portion of them.

Generally, open matters should be resolved by hearing. The exception is that motions for summary disposition are in order. We note, however, that it is appropriate to answer a motion for summary disposition by indicating why discovery should be allowed prior to acting on the motion. See Memorandum and Order (Scheduling Matters), December 28, 1983 at 7.

## II. CAT Findings, Walkdowns, the CYGNA Report

We will not order separate findings on the CAT matters. The CAT Team's work dealt with an inspection of one phase of construction. Proper interpretation of those matters requires consideration of subsequent inspection walkdowns, including the Fuel Building and the next two Staff walkdowns, which are essential to our gaining an understanding of

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<sup>2</sup> See V., below, for a procedure by which some issues may be reopened.

the quality of construction at Comanche Peak. Parties should, of course, begin assembling CAT Findings, so that they may diminish their burden of filing required Findings of Fact (in the form of a Proposed Initial Decision) at the conclusion of all the construction quality assurance hearings. Similarly, parties should begin preparing Findings on all completed hearing matters.

The CYGNA Report will be a subject of hearings because of its relevance to matters discussed in our recent Walsh/Doyle decision.

### III. Specification of Issues

Applicants and Staff have suggested that we assist the parties by specifying issues. This we decline to do. When the parties file their final findings of fact, they may specify any findings reached by this Board as binding. It is the burden of the parties to provide reasoned explanations for matters found in the hearing record.

### IV. Harassment of Mrs. Darlene Stiner

Applicants and Staff request our assistance in ascertaining the status of the allegation that Mrs. Stiner was harassed. To address this question we reviewed LBP 83-43, 18 NRC 122 (1983) at 137-145. This decision left open the question of whether Mr. Stiner was fired for engaging in a protected activity and whether Mrs. Stiner was harassed. We note that none of the parties suggest that we subsequently modified these conclusions. Although Applicants subsequently have filed an

affidavit about the Darlene Stiner matter,<sup>3</sup> this occurred in a limited context and without the discipline of cross-examination.

We consider these to be open, litigable matters, that have not been adequately discussed in any prior decision. CASE may request subpoenas that would be helpful to it in trying this matter and other matters concerning the intimidation of employees. Subpoenas should be requested pursuant to the applicable regulations at least 10 days prior to a hearing, unless accompanied by good cause for later filing.<sup>4</sup>

#### V. Welding on Chicago Bridge and Iron Pipe Whip Restraints

CASE has presented the Board with a series of tardy requests to reconsider our decision closing the record on CB & I Restraints<sup>5</sup> and other matters.<sup>6</sup> Although we are reluctant to reopen closed issues in what already appears to be an open-ended proceeding, we note that Applicants are being given liberal opportunities to makeup for substantial deficiencies in proof and that some of CASE's allegations appear to raise important safety matters. Although these motions are untimely, in

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<sup>3</sup> Applicants' Answer to CASE's Motion for Protective Order, August 30, 1982.

<sup>4</sup> See CASE's Reply at 13.

<sup>5</sup> CASE's Response at 18 and 19.

<sup>6</sup> E.G., id. at 16 (traceability of materials, Stan Miles' testimony), id. at 17 (derating polar crane, Mr. Miles' testimony), id. at 17 (qualifications of supervisory personnel, an issue that may still be open without motion), id. at 20 (NPSI pipe whip restraints).

view of their apparent importance and of the liberal privilege to submit new evidence enjoyed by Applicants, we will consider whether or not to reopen these issues, which fall within the ambit of the contention we are continuing to consider. Applicant and Staff are invited to file comments on the substantive facts involved, together with affidavits they may consider necessary, within 25 days.

#### VI. Procedure Concerning Quality Assurance

In our memorandum of October 25, 1983, we established an "alternate route" for considering the consequences for Comanche Peak if certain allegations of intimidation of quality assurance inspectors were found to be true. The alternate route was to consider the present state of the plant on the assumption that the quality assurance allegations were correct.

We believe our use of the word "alternate" may have misled both the Applicants and the Staff into believing that this would be the only route we would progress along. This we never intended, as can be gleaned by reading the preceding paragraph in the October 25 memorandum. In that paragraph we laid forth a method of assisting the Board in determining the seriousness of the pending charges of intimidation; and that avenue of consideration has been open.

After considering the filings of the parties (and the in camera, ex parte, representations made to us by the Office of Investigations pursuant to agreement by the parties) on the seriousness of the pending charges, we have concluded that some of the charges will require

hearings. To the extent that intimidation of inspectors may be isolated events, the inspection of plant quality may be sufficient to assure us of plant safety. If, however, the intimidation may be shown to be sufficiently serious, then it may reflect on the quality of plant management. Furthermore, serious intimidation could result in hidden plant conditions that are not readily inspected on walkdowns. Either of these possible conclusions concerning intimidation allegations would have serious adverse implications for licensing.

Nevertheless, the two track procedure we have adopted should help us to focus hearings on the scope of intimidation and on whether or not hidden conditions may reasonably be expected to exist. We urge Applicants to enter into stipulations that may assist the Board in narrowing the scope of that portion of our proceedings.

#### VII. A500 Steel and Welding

The Board sees a possible relationship between our Walsh/Doyle decision and the A500 Steel question. In view of the apparent interrelationship between the use of A500 Steel and other design questions discussed in our Walsh/Doyle decision, we do not consider it profitable to receive evidence on this subject independent of some additional procedure such as the independent design review we have suggested.

We also see a relationship between CASE's continuing concerns about welding and our Walsh/Doyle decision. In particular, we have reviewed the affidavit of Henry and Darlene Stiner, July 25, 1983 and sections of



the transcript dealing with weave welding, downhill welding, preheat requirements and cap welding. We find from our review that the applicable criteria have not been clearly specified so that the legal context in which to view the testimony also is not clear. The question is far from simple. It involves the relationship between the ASME Code, the welding qualification tests performed at Comanche Peak, the AWS Code and plant procedures. Our record does not permit us to consider these questions in the proper legal context. It is our hope that Applicants and Staff will not go forward on these issues until they can lay these legal issues open in a clear fashion for us.

#### VIII. Inspection Reports

Based on CASE's filing, it becomes obvious that there are relevant inspection reports that are not part of our record and that have apparently not even been served on the Board as Board notifications. The Board expects to consider all relevant inspection reports in its final determination and gives official notice to that effect. CASE's proposed exhibit numbers are accepted. Parties are invited to submit additional reports, numbered as exhibits, for the record. The first filed exhibit numbers shall be adopted automatically.

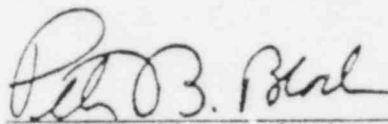
#### O R D E R

For all the foregoing reasons and based on consideration of the entire record in this matter, it is this 3rd day of January 1984

ORDERED:

That the procedural matters covered in the Memorandum shall be resolved in the fashion indicated. Motions for reconsideration of this Order and of our December 28, 1983 scheduling order may be submitted within ten days of issuance of this Order.

FOR THE  
ATOMIC SAFETY AND LICENSING BOARD



Peter B. Bloch, Chairman  
ADMINISTRATIVE JUDGE

Bethesda, Maryland

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

CERTIFICATE OF SERVICE

'84 JAN 17 A10:08

In the Matter of (
)
HOUSTON LIGHTING AND (
POWER COMPANY, ET AL. )
(South Texas Project, )
Units 1 and 2) (

Docket Nos. 50-496 OL-1104
50-499 OL

CERTIFICATE OF SERVICE

I hereby certify that copies of SUPPLEMENT TO CITIZENS CONCERNED ABOUT NUCLEAR POWER (CCANP) PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW were served by deposit in the U.S. Mail, first class postage paid to the following individuals and entities on the 14th day of January 1984.

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