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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY  
PLANNING & SERVICE  
BRANCH

before the

ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of	:	
	:	
TEXAS UTILITIES ELECTRIC	:	Docket Nos. 50-445-OL + OL-2
COMPANY et al.	:	50-446-OL + OL-2
	:	
(Comanche Peak Steam Electric	:	
Station, Units 1 and 2)	:	

APPLICANTS' MEMORANDUM IN  
RESPONSE TO APPEAL BOARD  
ORDER OF NOVEMBER 8, 1985

On November 4, 1985, the Applicants filed a petition for directed certification of an order issued on October 31, 1985 by the two Licensing Boards in the above-entitled proceeding. Therein, the Applicants raised the fundamental question of the scope of the respective jurisdictions of the two separate Licensing Boards sitting in the two dockets in this matter. Applicants contended that the Licensing Boards' order at issue in effect does away with any and all limitations or distinctions as to the scope of the individual jurisdiction of the two boards, as evidenced by three rulings contained in the order:

- 1) A ruling that swept into the scope of the jurisdiction of the Docket 2 Board an extensive record created before the Docket 2 Board existed.
- 2) A ruling that all discovery filed in either docket would be deemed filed in the other docket and therefore no objections as to discovery would be entertained which could be obviated by simply refiling in the other docket.

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- 3) A ruling that parties wishing to incorporate evidence in one docket from the other would be allowed to do so as late as when they filed their proposed findings.

Thereafter the Licensing Boards issued a Memorandum entitled "Fair Warning of Citations to Other Docket," ASLBP No. 79-430-06 0L, wherein the Licensing Boards responded in part to the arguments urged by the Applicants on the basis of the third above-listed ruling. The Licensing Boards stated:

"(W)e now intend to require the parties to place each other on notice by providing a timely citation of relevant material that is already in the other docket. Similarly, when relevant technical information is expected to be filed in the other docket, an affected party should be informed of the expected relevance."

By an Order dated November 8, 1985, this Appeal Board directed Applicants to supply a memorandum on the question of "whether, and if so, to what extent, the November 6 memorandum affects the second directed certification petition and the relief sought therein."

The November 6 memorandum affects the petition only insofar as it is based on the third above-listed ruling. It indicated an intention on the part of the Boards no longer to adhere to the position that a party may wait until the filing of proposed findings of fact to inform the opponent of what evidence from the other docket the party is relying on. Now "timely citation" will be required. However, "timely" is not defined; the right to respond, if any, is unarticulated; and the timing of a ruling as to admissibility is left to the indefinite future, although the Licensing Boards indicated at a prehearing conference on November 12, 1985 that at some future time the procedures for such matters will be clarified. Even assuming, however, that at some future date the necessary panoply of ad hoc procedures and rights is to be articulated, the essential fact is that the order does nothing to address the fundamental jurisdictional question raised by the petition, nor does it

serve, in any meaningful way, to obviate the problems that Applicants believe will lead to an unnecessarily confused and complex trial and appellate record.

CONCLUSION

In light of the foregoing, the Applicants continue to urge the granting of the petition and relief requested.


Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Memorandum in Response to Appeal Board Order of November 8, 1985" in the above captioned matter were delivered either by Federal Express (\*), Express Mail (\*\*), or hand delivered (\*\*\*) upon the following persons on the 14<sup>th</sup> day of November, 1985.

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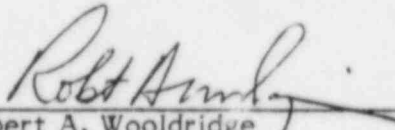
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