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NRCUNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION '93 FEB 19 P2:21BEFORE THE COMMISSION

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

CITIZENS FOR FAIR UTILITY REGULATION'S REQUEST FOR
HEARING AND LEAVE TO INTERVENE

On August 11, 1988, Citizens for Fair Utility Regulation, hereinafter referred to as CFUR, a Fort Worth, Texas-based consumer organization since 1976, filed a request for hearing and leave to intervene in the above captioned docket with the Atomic Safety and Licensing Board Panel following the monetary settlement between Intervenor Citizens Associated for Sound Energy (CASE) and Texas Utilities Electric Company. (TU Electric), builder, owner, and operator of the Comanche Peak Steam Electric Station (CPSES). CPSES is located about 40 miles southwest of Fort Worth, in Somervell County, Texas. Prior to that filing, on July 13, 1988, the Licensing Board dismissed both the OL and CPA proceedings concerning Comanche Peak.

It is well known to this Commission that CFUR pursued its request for hearing and leave to intervene through the Nuclear Regulatory Commission's administrative process and the United States Federal Courts, ultimately losing its

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request when the U.S. Supreme Court refused to hear the case.

Because of the numbers of filings CFUR has made in this docket, it respectfully requests the Commission to incorporate by reference CFUR's previous filings establishing its background and standing, as well as the affidavits of CFUR members who live and work and play in the vicinity of the Comanche Peak plant and whose livelihoods and health and safety could be adversely affected by the operation of and/or any accident at or inadvertent release of radiation from the nuclear power plant. Both the Commission and the NRC staff in previous orders and responses have recognized and established in fact that CFUR has standing through its members to intervene in this docket, if it can show cause for late filing.

On January 13, 1993, CFUR again filed a request before the Commission for Action, specifically requesting that the Commission under its discretionary authority cause to be published in the Federal Register a Notice of Proposed Action concerning the request for license and low power testing of Unit 2 by TU Electric thereby allowing interested parties to petition for hearing and leave to intervene. On January 29, the Commission denied CFUR's request (Memorandum and Order, CLI-93-01). However, in the order denying the request by CFUR, the Commission stated that the order did not preclude CFUR from filing a petition for late intervention.

CFUR now files such a petition and requests the

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following contention be accepted for litigation:

1. An electrical fire barrier material known by its trade name, Thermolag, manufactured by Thermal Sciences, Inc. of St. Louis, Mo., and used extensively throughout the Comanche Peak plant in both Units 1 and 2, has consistently failed in numerous tests, conducted by both TU Electric's and the NRC's independent testing facilities, to meet the requirements of 10 CFR Part 50.49 for both safety-related and non-safety related protection of electrical equipment, and fails to meet the Quality Assurance requirements of 10 CFR Part 50 App.B., which is identified as "all those planned and systematic actions necessary to provide adequate confidence that a structure, system, or component will perform satisfactorily in service. Quality Assurance includes quality control, which comprises those quality assurance actions related to the physical characteristics of a material, structure, component, or system which provide a means to control the quality of the material, structure, component or system to predetermined requirements." (App. B, Introduction.) Thermolag fails in all tests to meet the NRC's own regulatory requirements for fire barrier protection and fails to assure either the safe operation of, or the safe shutdown of the Comanche Peak plant in case of a fire or accident or any other unforeseen circumstance affecting the health and safety of the public or the environment, and for that reason Comanche Peak shall not

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be issued a license to operate Unit 2 until Thermolag is removed and replaced by a fire barrier material which meets the NRC's regulations fulfilling the requirements of the Atomic Energy Act.

* * *

In past orders from the Commission, CFUR has been shown to meet two requirements for late filing: standing and the extent to which Petitioner's interests are represented by another party. (The Staff and the Commission agreed, following CFUR's August, 1982 filing, that there is no other party to represent CFUR's interest.)

CFUR would assert that in this filing Good Cause for filing late can be established by the fact that the issue of safety regarding the installation of Thermolag in Unit 2 has become a licensing issue for the NRC since the closing of the hearings in July of 1982 and that since that time the full extent of the Thermolag failures at Comanche Peak have only recently become known to this petitioner. This petitioner has been in regular communication with the staff of Region IV regarding Thermolag and fails to believe that the staff has adequately addressed the consequences of the installation of this material in Unit 2. Given what is now known about Thermolag test failures, its known deficiencies since the early 1980's and its consistent failures up to the low-power testing now being conducted at Unit 2, it is incredible to this petitioner that the NRC has allowed fuel load and low

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power testing to begin at Unit 2 with Thermolag installed. As recently as late 1992, the NRC staff was warning TU Electric that it continued to install Thermolag "at its own risk."

The most telling new development is the recent subpoena to TU Electric from a Federal Grand Jury asking for all documentation and records relating to Thermolag since the material was first used at Comanche Peak in the early 1980s. The grand jury's request is part of an ongoing investigation by the NRC's own Office of Inspector General into Thermolag and its manufacturer, Thermal Sciences, Inc., and whether Thermolag's capabilities were misrepresented to the utilities by either Thermal Sciences, Inc., or the NRC, and whether utilities such as TU Electric knew of the material's inability to meet test criteria before installation.

Regardless of who knew what when, it is known and proven today that the material is deficient. The NRC is requiring all utilities, including TU Electric, to increase fire protection in all areas where Thermolag has been installed. CFUR believes that this is a poor "fix" and will not mitigate the consequences of an accident caused by fire. CFUR further believes that, from the NRC's own documentation, that Thermolag itself can be the cause of fire under certain conditions. In any event, adding more Thermolag material, which is what is being allowed currently at CPSES Unit 2, can

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only increase concerns about ampacity as well as accelerated aging of electrical components. Fire patrols are inadequate for two reasons, the most obvious being the fact that patrols are not in the areas of concern around the clock, but only during hourly patrols; the second is the fact that at Comanche Peak, TU Electric has already been fined because its fire patrols were found to be falsifying documents, stating that they had patrolled certain areas of the plant when in fact they had not. Human error cannot be underestimated.

Further, this fix of "fire patrols" makes a mockery of the regulations, both in spirit and in fact. Obviously fire barrier materials are supposed to be designed to meet certain established NRC criteria, that is to protect certain safety components from fires which may have occurred elsewhere until the plant can be brought to safe shutdown, or to prevent a fire occurring in certain electrical systems from spreading until the fire can be brought under control or the plant can be safely shut down. Neither fire patrols nor the addition of known deficient material to already installed deficient material meets the requirement of the law.

CFUR will rely on the NRC's own documents and those of TU as well as documentation developed independently by outside groups such as the Nuclear Information and Resource Service, and CFUR's own experts, to develop this contention for litigation if the Commission approves our request.

The courts have recognized that contentions can be

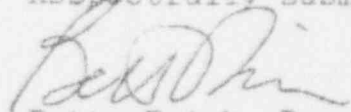
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admitted which rely on "particular documents or studies [which are] sufficiently specific for the purposes of admission." [862.F2.d 222 (9th Cir.1988) Sierra Club v U.S. Nuclear Regulatory Com'n.]

Further, CFUR would remind the Commission and Staff that a congressional subcommittee has requested certain information from the NRC Commissioners regarding Thermolag in all nuclear plants. This subcommittee, it seems, is investigating the same issues that the grand jury is investigating. The Commission must not allow a material under so many clouds to be installed unchallenged at Comanche Peak.

The public's right to know about the safety concerns of Thermolag cannot be ignored. Only a public hearing with intervenors and the right of discovery and cross examination can allay the public's fears and/or cause the Commission to order the removal of Thermolag and order its replacement with material which will meet the requirements of the law. Until such hearings ensue, no license to operate at full power should be issued to TU Electric for Comanche Peak.

Respectfully submitted,



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