



Further, petitioners cannot be required to exhaust administrative proceedings that can have no effect on the action they challenge, i.e., respondents order granting, without notice and the opportunity for a hearing, an "immediate[ly] effective" amendment of intervenor's construction permit. . . .", which is apparant, on its face that the court intended that, at least with regard to the construction permit amendment, that public hearings be had, and, therefore, until such time as those hearings are held, there can be no furtherance in the licensing process. The court's ruling, at least until it is finalized into mandate, serves as an estoppel to any further proceedings, either by the initiation of the applicant, or the Commission itself.

SETTLEMENT AGREEMENT STILL IMPORTANT

Although the petitioners were erroneous in their assertions about the settlement agreement they chose to call "secret", they raised several valid points which need to be more closely explained herein.

The agreement reached between the applicant and the public group known as C.A.S.E. which resulted in the transfer of a large sum of money has been at the root of a long-standing and bitter controversy. The amount of the financial transfer is immaterial for the purposes of this pleading; the fact that the Commission approved the agreement is also immaterial for the purposes of this pleading. What is important is what was the ultimate effect of this agreement, what was its actual purpose, and did that act have a deciding effect upon the issuing of the operation license for Unit 1, and was this a legitimate act of good faith. The  
RESPONSE TO PETITIONERS' MOTION TO STAY -2-

answer to these and other similar questions is emphatically NO.

The direct and proximate result of the signing of that agreement, immediately before several of the original whistleblowers were to testify before the ASLB, was the immediate withdrawal of contentions by C.A.S.E., which had the direct effect of leaving nothing further for the ASLB to inquire into, which meant the only business left on the table was the granting of the license, and absent any voice to the contrary, that is exactly what was done.

Although the ASLB, and the Commission knew of the contentions, they failed, completely, to inquire and/or investigate the true purpose for the withdrawal of those contentions, and contented themselves, in the contrary to ascertaining the legality of the language of the agreement itself.

Further, there is no relevance in what these whistleblowers were told about still retaining the right to address their concerns directly to the NRC, after the fact, with the releases being signed and money having changed hands.

What is relevant, and of the highest import, is the condition of the minds of these whistleblowers, who believed, and some still do, that they had lost, forever, the opportunity to make any allegations, and that, in fact, if they ever tried to do so in the future, they would be sued for the monies paid to them by virtue of the agreement, which is clearly indicated by the affidavit of Ron Jones, and, as Ron Jones is represented by the author of this pleading, we will further state that he will

RESPONSE TO PETITIONERS' MOTION FOR STAY -3-

testify to the same, under oath, before the Commission proper.

What is important to note is that the contentions of Ron Jones were never placed on the record before the ASLb, and because of their withdrawal they have never been addressed, investigated, and, most important of all, corrected. The bulk of Mr. Jones' contentions have to do with wiring separation problems in the control room, and as such have direct bearing on not only Unit 1, but Unit 2, and, ultimately, the safety of the plant as a whole. Therefore, he must be given an opportunity to testify.

A further point, worthy of note, are the over 1,000 violation reports contained in the papers of Charles Atchison. Mr. Atchison was also present during the settlement "days"; but, unlike any of the others effected by that agreement, Mr. Atchison passed away before the significance of that agreement became known.

All of the "Atchison papers" are available, including the original handwritten notebooks carried by the deceased Atchison, none of which has ever been introduced into the record, investigated or corrected, and include, not only information about Unit 1, but Unit 2, and the plant as a whole.

The same is true for the other seven whistleblowers, whose testimony was precluded, primarily by the condition of their mind, but precluded none the less. It is still viable, still available, still unaddressed, uninvestigated, and most important of all, unrepaired and uncorrected. To fail to hear, record, and investigate these contentions is to fail to act in the best interest of the public, and will, ultimately, cause a major and

RESPONSE TO PETITIONERS' MOTION FOR STAY -4-

irreparable injury to these parties, and the public as a whole.

DOW APPEAL SERVES AS ESTOPPEL

In addition to the above and foregoing, there still exists an open appellate process with regard to petitioner R. Micky Dow and the organization known as the Disposable Workers of Comanche Peak Steam Electric Station.

On or about January 14, 1993, the appeal was granted regarding the issue of intervention by R. Micky Dow. It has already been established that R. Micky Dow was arrested on that particular day and confined in the Tarrant County Jail, in Fort Worth, Texas for an extended period of time, preventing his response to that notice, and, in fact, preventing his discovery of the notice itself until on or about the 16th day of February, 1993. Arguendo assumed, and it is not, that the Kohn petition on behalf of the Orr's was denied without appellate recourse, it remains that the Dow appeal is still valid, and, as such the ASLB cannot be dissolved, nor the hearings process on the construction permit extension ruled as moot. To do so would be for the ASLB to usurp the authority of the Commission itself, which it does not have the right or the authority to do; and, therefore, until the Commission rules on the Dow appeal, all proceedings must remain status quo, and any issuance of a full-power license is estopped, thereby.

NO ADEQUATE REMEDY AVAILABLE AT LAW

By virtue of the Code of Federal Regulations, the only method by which the license to operate under full power may be attacked, by anyone seeking to do so, is by virtue of Section  
RESPONSE TO PETITIONERS' MOTION FOR STAY -5-

2.206 of Title 10 of the Code of Federal Regulations, in petition form. Under the provisions of that section, there is granted a "reasonable time", with no further enumeration, in which to respond, and by virtue of various court rulings, a petitioner may not deem a petition to be denied, for the purposes of seeking judicial review, until after a six-month period of no response. By very regulation alone, the intervenor is denied an adequate immediate remedy at law. Further, by regulation, the review of such a petition is denied, and any subsequent filings are precluded, leaving, again, an individual with no adequate remedy at law. Therefore, all interventions, and/or placement of contentions, must be done so before the fact, as there is no availability to do so after the fact.

#### CHARACTER AND COMPETENCE

The basic, and most important, prerequisite for licensing to operate a nuclear power plant, is the character and competence of the applicant to do so. There now exists clear evidence that this applicant has conspired with the Tarrant County District Attorney, and others, to confine R. Micky Dow in jail, and to bring him there from wherever he might be, in order to deny, preclude, interfere, and/or stop his appearance, and/or the filing of any manner of pleading which might have a direct or indirect impact on the licensing of Unit 2.

There has been litigation filed (CA-3-93-CV0517-G, U.S. District Court for the Northern District of Texas, Dallas Division) which will, in point of fact, ascertain whether the conduct of the applicant is, or is not criminal in its nature.

RESPONSE TO PETITIONERS' MOTION FOR STAY -6-

Whether or not the criminality of the conduct is ascertained, the fact still remains that the only connection R. Micky Dow has ever had with this applicant is to have the status of one who attempts to stop the licensing of CPSES, and no other. R. Micky Dow has never been an employee thereof, nor has any member of his immediate family, he has no connection with this facility save that which is outlined hereinabove, and, therefore, to openly and actively conspire against the aforesaid can only be viewed as the desire, and the capability to conspire against anyone who opposes the licensing of this facility. If this be true, and it is, the applicant, certainly, does not have the requisite character and competence to have a license or to operated under the privilege which the license allows. Therefore, until such time as the district court can adequately and equitably adjudicate the matter of this applicant's conspiracy, that open case serves as an estoppel to any manner of further proceeding with regard to the full-power license, and a stay must issue. That the aforesaid R. Micky Dow will prevail in his litigation against the applicant on a charge of conspiracy to preclude his activities against the applicant, is self-certain in regard to the existance of a note, from the handwriting of the Tarrant County District Attorney's office which supports and corroborates those allegations, a copy of the affidavit from the attorney who discovered the note is and has been in the possession of Region IV for a period in excess of thirty days, and they have refused to address the matter. The foregoing notwithstanding, the district court is certain to rule for R.

RESPONSE TO PETITIONERS' MOTION FOR STAY -7-



Micky Dow based upon the physical evidence alone, and having done so will then be prima facie evidence that this applicant does not have the requisite character to have a license.

#### CONCLUSIONS

What has been shown, hereinabove, is that viable and critical safety and construction violations dealing with both Units 1 and 2, has been precluded, not only from the record, but from investigation and correction, by virtue of a set of suspect circumstances, which can, however, be readily corrected by allowing those who made the original contentions an opportunity to testify to the same.

We have further seen estoppel by virtue of open and pending court matters which will have a direct and destructive effect upon whether or not license should issue.

We have also seen that there is an open and operational appellate process in place which must be finalized before any further action may take place in this matter, serving as a further estoppel to the granting of a license for full-power.

Finally there has surfaced a real, viable, and corroborative challenge to the character and competence of this applicant to have and to hold a license for operation of any kind; one that must be allowed to go to final adjudication to ascertain any possible criminal liability on the part of the applicant herein.

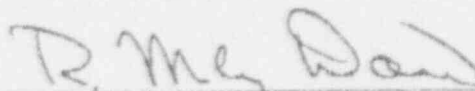
What is most important, still, are the actual, existing, and degenerative construction and safety violations that are still present in both Units 1 and Unit 2. There is no "good guy" or  
RESPONSE IN SUPPORT OF PETITIONERS' MOTION TO STAY -8-



"bad guy", but there is a definite negligence, one which will ultimately lead to an accident, which, in all probability, will result in a "melt-down". That negligence, for whatever reason, occurred when the contentions, at the first licensing hearing, were withdrawn, and not investigated, nor corrected. This is the clear and definite liability to both the applicant, for failing to address what they had clear knowledge was defective, and the NRC, who was also aware, and chose to issue the license rather than spend more time in ferreting out these conditions, addressing them, and causing their correction. This particular party, herein, has shown direct conflict between unaddressed construction violations, in Unit 1, and current accidents and/or "trips", which are a direct result, thereof; as well as at least three allegation reports, with regard to Unit 2 that either have not, yet, been investigated, or were investigated so poorly or incompletely, that a second allegation, with regard to the poor investigation techniques, had to be filed.

WHEREFORE, PREMISES CONSIDERED, it is imperative that a stay of the issuing of the full-power license for Unit 2 at CPSES be put into effect immediately, until all matters pending are addressed and/or adjudicated. Failure to do so is not only in the best interests of the general public, but, the interests of justice, as well.

Respectfully submitted,

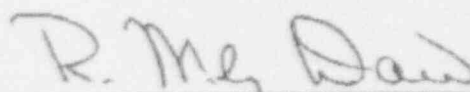


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RESPONSE IN SUPPORT OF PETITIONERS' MOTION TO STAY -9-

## CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the <sup>03 MAR 26 A8:26</sup> foregoing was, this 25th day of March, 1993, telefaxed to the Office of the General Counsel for the NRC, and, to the offices of George L. Edgar, attorney for applicant, with a true and correct copy being mailed, by regular First Class mail, to the parties listed below.

  
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