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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE COMMISSION

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In the Matter of )

TEXAS UTILITIES ELECTRIC )  
COMPANY )(Comanche Peak Steam Electric )  
Station, Unit 2) )Docket Nos. 50-446-OL  
50-446-CPA

TEXAS UTILITIES ELECTRIC COMPANY'S  
ANSWER TO PETITION  
FOR LEAVE TO INTERVENE

On March 22, 1993, R. Micky Dow filed a "Petition For Leave To Intervene By R. Micky Dow, And On Behalf Of Ron Jones, And Yvonne Wilkinson" (Petition) in the Comanche Peak Steam Electric Station (CPSES) Unit 2 operating license and construction permit extension proceedings. Texas Utilities Electric Company (TU Electric) hereby files its response in opposition to this untimely petition to intervene and requests that it be denied.

As discussed below, the Petition is patently deficient. It repeats arguments previously rejected by the Nuclear Regulatory Commission (Commission or NRC), it does not address or satisfy the Commission's requirements governing untimely petitions, it does not comply with the Commission's requirements governing contentions, it does not address or satisfy the Commission's requirements governing motions to reopen the record,

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and it contains numerous other flaws that compel denial. For all of these reasons, the Petition must be denied.

#### BACKGROUND

On February 5, 1979, the NRC published a Federal Register notice on TU Electric's request for an operating license for both CPSES Units 1 and 2. See 44 Fed. Reg. 6995 (1979). On June 27, 1979, the Licensing Board issued an order granting several petitions to intervene in the proceeding. See Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-79-18, 9 NRC 728 (1979). After years of hearings on the license application, the parties reached a settlement agreement dismissing the Unit 1 and Unit 2 operating license proceedings. See Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-88-18A, 28 NRC 101 (1988); LBP-88-18B, 28 NRC 103 (1988). In April, 1990, the NRC issued a full power operating license for CPSES Unit 1.

After issuance of the Unit 1 operating license, Mr. Dow twice requested the Commission to hold hearings in the CPSES operating license proceedings. On each occasion, the Commission denied his untimely request.<sup>1/</sup> Each of these decisions was upheld by the U.S. Court of Appeals.<sup>2/</sup>

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<sup>1/</sup> Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-92-12, 36 NRC 62 (1992); Texas Utilities Electric Co. (Comanche peak Steam Electric Station, Units 1 and 2), CLI-92-01, 35 NRC 1 (1992).

<sup>2/</sup> Dow v. NRC, No. 92-1376 (D.C. Cir. Mar. 4, 1993); Dow v. NRC, No. 92-1069 (D.C. Cir. Aug. 18, 1992).

On February 3, 1992, TU Electric requested an extension of the CPSES Unit 2 construction permit, which was issued on July 28, 1992.<sup>3/</sup> On July 30, 1992, Mr. Dow submitted a petition to intervene and request for hearing regarding TU Electric's construction permit extension application. Both TU Electric and the NRC Staff opposed the petition. The Licensing Board subsequently issued a Memorandum and Order (LBP-92-37) on December 15, 1992, which denied his intervention request and terminated the CPSES Unit 2 construction permit extension proceeding.<sup>4/</sup> Mr. Dow filed a notice of appeal, but never filed an appeal brief despite being given two opportunities to do so by the Commission.<sup>5/</sup>

On March 23, 1993, Mr. Dow again sought to intervene in both the operating license proceeding and construction permit extension proceeding for CPSES Unit 2. With respect to the operating license proceeding, the Petition is thirteen years late and was filed on the eve of issuance of a full power operating license for Unit 2. With respect to the construction permit extension proceeding, the Petition was filed more than six months late.

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3/ Letter dated July 28, 1992, from Suzanne C. Black (NRC) to William J. Cahill, Jr.

4/ Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 NRC \_\_\_\_ (Dec. 15, 1992).

5/ See Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 2), Order (January 19, 1993).

### DISCUSSION

#### I. The Petition Repeats Arguments That Have Previously Been Rejected By The Commission

Many of the allegations in the Petition were raised by Mr. Dow in previous untimely petitions to intervene and motions to reopen the record that were denied last year by the Commission. For example:<sup>6/</sup>

- ° The allegations related to Yvonne Wilkinson (Petition at 4) were also raised by Mr. Dow in his "Motion to Reopen the Record" (Feb. 21, 1992) at 4, which was denied by the Commission in CLI-92-12.
- ° The allegations related to Charles Atchison (Petition at 5) were also raised by Mr. Dow in his "Motion to Reopen the Record" (Feb. 21, 1992) at 4, which was denied by the Commission in CLI-92-12.
- ° The allegations related to Ron Jones (Petition at 5) were also raised by Mr. Dow in his "Motion to Reopen the Record" (Feb. 21, 1992) at 3, and

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<sup>6/</sup> The allegation concerning conspiracy to incarcerate Mr. Dow to prevent him access to the courts and administrative agencies (Petition at 4) was also raised by Mr. Dow in his "Motion for Extension of Time To File Brief by Sandra Long Dow dba Disposable Workers of Comanche Peak Steam Electric Station and R. Micky Dow" (Oct. 5, 1992) at 2-3. The Licensing Board found that this allegation "lacks credibility" and is "contrary to reason." (Memorandum and Order (Oct. 19, 1992) at 5); see also, LBP-92-37, slip op. at 48-50.

"Petition for Leave to Intervene Out of Time"  
(Feb. 20, 1992) at 3, which were denied by the  
Commission in CLI-92-12.

- ° The allegation related to labelling (Petition at 5) was previously raised by Mr. Dow in his "Motion to Reopen the Record" (Feb. 21, 1992) at 7, which was denied by the Commission in CLI-92-12.
- ° The allegations related to Dobie Hatley (Petition at 5) were also raised by Mr. Dow in his "Motion to Reopen the Record" (Feb. 21, 1992) at 3, and "Petition for Leave to Intervene Out of Time" (Feb. 20, 1992) at 3, which were denied by the Commission in CLI-92-12.

Therefore, to the extent that Mr. Dow has previously raised these allegations and they were rejected by the NRC as a basis for an untimely request for hearing, the rejection constitutes res judicata and collateral estoppel, and he is foreclosed from raising these issues again as a basis for an untimely request for hearing. See Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-78-1, 7 NRC 1, 27 (1978).<sup>7/</sup>

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<sup>7/</sup> The Petition states that Yvonne Wilkinson and Ron Jones are members of the Board of Directors of Disposable Workers of Comanche Peak Steam Electric Station. (Petition at 2). Because they are in privity with this group, and because this group was a party to the petitions to intervene and motions to reopen discussed above, they are also bound by the Commission's decisions on these petitions to intervene and motions to reopen.

## II. The Petition Fails To Address The Requirements For Late Intervention

As discussed above, the Petition is thirteen years late in the operating license proceeding and more than six months late on the construction permit extension proceeding.

Pursuant to 10 C.F.R. § 2.714(a)(1) (1992), an untimely petition to intervene may be granted only upon a balancing of the following factors:

- (i) Good cause, if any, for failure to file on time.
- (ii) The availability of other means whereby the petitioner's interest will be protected.
- (iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (iv) The extent to which the petitioner's interest will be represented by existing parties.
- (v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

In moving to intervene out of time, the burden of persuasion on these factors is clearly upon the petitioner and the factors must be addressed in the petition itself. Boston Edison Co. (Pilgrim Nuclear Power Station), ALAB-816, 22 NRC 461, 466 (1985).

Although all of the factors must be considered, a failure to demonstrate good cause for failure to file on time requires a compelling showing on the remaining four factors. Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273, 274-75 (1975); Philadelphia Electric Co. (Limerick Generating Station, Unit 1), LBP-86-9, 23 NRC 273, 279 (1986).



The Petition does not attempt to address any of these factors. Therefore, the Petition should be denied for this reason alone. Moreover, as discussed below, the Petition should not be granted based upon a balancing of the five factors in 10 C.F.R. § 2.714(a)(1).

1. The Petitioners Have Not And Cannot Show Good Cause

In this case, the Petitioners fail to meet their burden of showing good cause under 10 C.F.R. § 2.714(a)(1)(i). The Petitioners filed their Petition 13 years after the notice of application for the operating licenses was issued (44 Fed. Reg. 6995 (1979)), and more than six months after issuance of the construction permit extension (July 28, 1992).

The Petitioners make no attempt to excuse their untimely filing or to demonstrate why they could not have submitted their allegations to the Commission earlier. In fact, as discussed above, Petitioners' allegations related to the safety of construction (Petition at 4-5) were previously raised (and rejected) as a basis for an untimely request to intervene filed last year by Mr. Dow.

Petitioners also make a number of allegations that TU Electric does not have the requisite character and competence and has engaged in criminal activities. These allegations are unsupported, scurrilous and sanctionable, and as such should not

be considered by the Commission. See 10 C.F.R. §§ 2.713(a) and 2.713(c) (1992).<sup>8/</sup>

In any event, these allegations do not constitute good cause for the Petitioners' untimely filing. For example, with respect to Petitioners' allegations related to the minority owner settlement agreements (Petition at 3), these agreements have been a matter of public record for four to five years.<sup>9/</sup> Similarly, the alleged incident involving the security guard (Petition at 2) occurred in October 1992.<sup>10/</sup> Finally, as discussed in Section I above, the allegations related to Mr. Dow's incarceration (Petition at 4) and Yvonne Wilkinson (Petition at 4) were raised

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<sup>8/</sup> Such allegations constitute part of a pattern of contemptuous conduct by Mr. Dow. See TU Electric's Answer to the Petition to Intervene and Motion and Supplemental Motion to Reopen by Micky Dow and Sandra Long Dow and TU Electric's Request for Admonition of the Dows, dated March 16, 1992. The Commission has never ruled on TU Electric's Request for Admonition, and TU Electric recommends that the Commission grant this Request to prevent further abuse by Mr. Dow.

<sup>9/</sup> See TXX-88285, Letter to NRC from W.G. Council (TU Electric) dated Mar. 4, 1988 (re: transfer of Texas Municipal Power Authority's ownership interest in CPSES); TXX-88578, Letter to NRC from W.G. Council (TU Electric) dated July 22, 1988 (re: transfer of Brazos Electric Power Cooperative's ownership interest in CPSES); TXX-89189, Letter to NRC from W.J. Cahill, Jr. (TU Electric) dated May 4, 1989 (re: transfer of Tex-La Electric Cooperative's ownership interest in CPSES).

<sup>10/</sup> NRC Inspection Report 50-445/92-50, 50-446/92-50 (Jan. 20, 1993).



months ago by Mr. Dow in pleadings denied by the Commission and Licensing Board.<sup>11/</sup>

The NRC has consistently held that good cause for an untimely petition to intervene cannot be established based on previously available public information. See, e.g., Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-828, 23 NRC 13, 2 (1986). As the Commission stated in CLI-92-12 with respect to a previous untimely petition to intervene by Mr. Dow in the CPSES operating license proceedings:

The test for "good cause" is not simply when the Petitioners became aware of the material they seek to introduce into evidence. Instead, the test is when the information became available and when Petitioners reasonably should have become aware of that information. In essence, not only must the Petitioner have acted promptly after learning of the new information, but the information itself must be new information, not information already in the public domain.

CLI-92-12, 36 NRC at 70 (emphasis in original); see also Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-707, 16 NRC 1760, 1764-65 (1982) (the discovery of information publicly available six months prior to the date of the petition held insufficient to establish "good cause" for late intervention).

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<sup>11/</sup> The Petition makes a number of other allegations of criminal or unlawful conduct (Petition at 3-4). The Petition does not identify when these alleged events were to have occurred, and the Petition is so lacking in specificity that TU Electric is unsure of what events the Petition is referencing.

Moreover, as a matter of policy, allowing late intervention to a petitioner who discovers information already publicly available simply "provides an incentive for remaining uninformed and creates the prospect of collateral factual contests aimed at ascertaining the state of mind of the prospective intervenor." ALAB-707, 16 NRC at 1764-65; see also Easton Utils. Comm'n v. AEC, 424 F.2d 847, 851 (D.C. Cir. 1970) ("a person should not be entitled to sit back and wait until all interested persons who do so act have been heard, and then complain that he has not been properly treated. To permit such a person to stand aside and speculate on the outcome . . . and then permit the whole matter to be reopened in his behalf, would create an impossible situation." (quotation and citation omitted)). As the Appeal Board further stated:

[w]e would not allow a party to the proceeding to press a newly recognized contention . . . unless the party could satisfy an objective test of good cause. Among other things, . . . the party seeking to reopen must show that the issue it now seeks to raise could not have been raised earlier. . . . We see no reason to employ a different and more lenient good cause standard for the late petitioner for intervention than for a party who is already in the proceeding and seeks to raise new issues.

ALAB-707, 16 NRC at 1765 (emphasis in original) (citation and footnote omitted).

The Petitioners' tactics are also at odds with the concepts of fair and orderly conduct of administrative proceedings. As the Court of Appeals for the District of

Columbia has stated in a case affirming a Commission order denying a late intervention:

[A] person should not be entitled to sit back and wait until all interested persons who do so act have been heard, and then complain that he has not been properly treated. To permit such a person to stand aside and speculate on the outcome . . . and then permit the whole matter to be reopened in his behalf, would create an impossible situation.

Easton, 424 F.2d at, 851 (quoting Red River Broadcasting Co. v. FCC, 98 F.2d 282, 286-87, cert. denied, 305 U.S. 625 (1938)).

The court further stated:

We do not find in statute or case law any ground for accepting the premise that proceedings before administrative agencies are to be constituted as endurance contests modeled after relay races in which the baton of proceeding is passed on successively from one legally exhausted contestant to a newly arriving legal stranger.

424 F.2d at 852.

These principles are clearly applicable to the Petition, which should accordingly be rejected. The Petitioners should not be allowed to intervene into this proceeding at such a late date. To allow the Petitioners to intervene in these proceedings after nine years of litigation, a settlement between the parties, and two years of operation of CPSES Unit 1 would make a mockery of the administrative process and would encourage potential intervenors to sit back and wait until a plant is operating to intervene. If for no other reason, the Petition should be denied in order to preserve the integrity of the adjudicatory process.

## 2. The Remaining Four Factors

Although all of the five factors in Section 2.714(a)(1) must be considered, a failure to demonstrate good cause for failure to file on time requires a compelling showing on the remaining four factors. Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273, 274-75 (1975); Philadelphia Electric Co. (Limerick Generating Station, Unit 1), LBP-86-9, 23 NRC 273, 279 (1986). Of the remaining factors, the third and fifth are the most important.<sup>12/</sup> The Petitioners have failed to even to attempt to satisfy the remaining four factors, let alone make a "compelling" showing.

Under the third factor, the Petitioners must show that their participation may reasonably be expected to assist in developing a sound record. 10 C.F.R. § 2.714(a)(1)(i) (1992). Further, the Petitioners must "set out with as much particularity as possible the precise issues it plans to cover, identify its prospective witnesses, and summarize their proposed testimony." Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982); see also Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-743, 18 NRC 387, 399 (1983). Vague assertions regarding

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<sup>12/</sup> The factors set forth in 10 C.F.R. § 2.714(a)(1)(ii) and (iv), the availability of other means to protect the petitioner's interests and the extent to which the petitioner's interests are protected by other parties, are of "relatively minor importance." Kansas Gas & Electric Co. (Wolf Creek Generating Station, Unit No. 1), LBP-84-17, 19 NRC 878, 887 (1984); Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-707, 16 NRC 1760, 1767 (1982).

petitioner's ability or resources are insufficient. ALAB-704, 16 NRC at 1730. The ability of the petitioner to contribute to the development of a sound record becomes a more important factor in cases where the grant or denial of the petition also decides whether there will be any adjudicatory hearing. Washington Public Power Supply System (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167, 1180 (1983). There is no reason to grant an inexcusably late intervention petition and trigger a hearing unless there is cause to believe the petitioner not only proposes a "substantial safety or environmental issue" but is also well "equipped to make a worthwhile contribution on it." Id. at 1181. Indeed, the Commission has held that in order to prevail on this factor, the moving party must "demonstrate that it has special expertise on the subjects which it seeks to raise." Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), CLI-86-8, 23 NRC 241, 246 (1986) (citation omitted).

In this case, the Petitioners make no serious attempt to explain the matters they propose to raise, or to summarize the evidence their witnesses might give. The Petitioners refer to individuals who allegedly know of design and construction issues related to the 1984 time frame. (Petition at 4-5). However, the Petitioners never even refer to TU Electric's subsequent Corrective Action Program ("CAP"), which included a comprehensive validation of design and construction at CPSES. Moreover, the Petitioners fail to indicate why any of these matters raise a serious safety or environmental concern. Based on the

Petitioners' vague pleading, and their lack of appreciation of the corrective action programs at CPSES, it is clear that they would not contribute to the development of a record on the matters that they seek to raise. See, e.g., South Carolina Electric & Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 891-94 (1981), aff'd sub nom. Fairfield United Action v. NRC, 679 F.2d 261 (D.C. Cir. 1982). As the Commission itself has stated with respect to a previous untimely request for hearings by Mr. Dow:

Petitioners have completely failed to address how their concerns -- many of which date from the 1984 time frame -- would have been affected by the extensive corrective programs undertaken at the plant since that time. See, e.g., CLI-88-12, 28 NRC at 611. In sum, we find that the third factor weighs heavily granting petitioners' request for late intervention.

CLI-92-12, 36 NRC at 74-75.

Furthermore, Mr. Dow has a pattern of filing frivolous, scurrilous, and materially deficient pleadings.<sup>13/</sup> The Commission itself has stated that Mr. Dow has not demonstrated any familiarity with the factual background of the CPSES proceedings from 1979-1988, and has not demonstrated any familiarity with NRC rules and procedures. CLI-92-12, 36 NRC at 75. Therefore, not only would he not contribute to the proceedings, any participation by him would likely be disruptive.

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<sup>13/</sup> See TU Electric's Answer to the Petition to Intervene and Motion and Supplemental Motion to Reopen by Micky Dow and Sandra Long Dow and TU Electric's Request for Admonition of the Dows, dated March 16, 1992.



The fifth factor -- the possibility of delay in the proceeding and expansion of the issues -- also weighs heavily against granting the Petition. When ruling on a late filed petition to intervene, the Commission must consider "[t]he extent to which the petitioner's participation will broaden the issues or delay the proceeding." 10 C.F.R. § 2.714(a)(1)(v) (1992). Although this factor is not conclusive, it is a particularly significant one in striking the balance under 10 C.F.R. § 2.714(a). Project Management Corp. (Clinch River Breeder Reactor Plant), ALAB-354, 4 NRC 383, 394-95 (1976); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-743, 18 NRC 387, 402 (1983). In considering the issue of delay, the relevant inquiry is "whether the proceeding -- not license issuance or plant operation -- will be delayed." Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-828, 23 NRC 13, 23 (1986); Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-707, 16 NRC 1760, 1766 (1982). Moreover, in the case of a very late petition, there is a substantial likelihood that the grant of the petition will lead to delay. Detroit Edison Co. (Greenwood Energy Center, Units 2 and 3), ALAB-476, 7 NRC 759, 762 (1978).

In this case, it can hardly be doubted that permitting the Petitioners to intervene thirteen years out of time in the operating license proceeding and after the Licensing Board dismissed the construction permit extension proceeding would result in substantial delay and a broadening of the issues.

In Puget Sound Power & Light Co. (Skagit Nuclear Power Project, Units 1 and 2), ALAB-559, 10 NRC 162 (1979), vacated on other grounds, CLI-80-34, 12 NRC 407 (1980), the Appeal Board rejected a petition to intervene filed three and a half years after the deadline for intervention petitions were due. After noting the "high potential for delay which would attend upon a grant of intervention at this very late stage of an already protracted proceeding," the Appeal Board made the following statement which is particularly applicable here:

In this regard, we once again must record our belief that the promiscuous grant of intervention petitions inexcusably filed long after the prescribed deadline would pose a clear and unacceptable threat to the integrity of the entire adjudicatory process. See ALAB-552, supra, 10 NRC at 6-7, quoting from Duke Power Company (Cherokee Nuclear Station, Units 1, 2, and 3), ALAB-440, 6 NRC 642, 644 (1977). More specifically, persons potentially affected by the licensing action under scrutiny would be encouraged simply to sit back and observe the course of the proceeding from the sidelines unless and until they became persuaded that their interest was not being adequately represented by the existing parties and thus that their own active (if belated) involvement was required. No judicial tribunal would or could sanction such an approach and it is equally plain to us that it is wholly foreign to the contemplation of the hearing provisions of both the Atomic Energy Act and the Commission's regulations.

10 NRC at 172-73 (footnote omitted).

Similarly here, the grant of the Petitioners' inexcusably late Petition will inevitably delay the proceedings. On the eve of the issuance of the full power operating license,

Petitioners have filed a request to intervene raising no significant safety or other issue and with no credible excuse for their extremely late filed petition. Under these circumstances, the grant of Petitioners' request can only result in unnecessary delay and threaten the "integrity of the entire adjudicatory process." It should, therefore, be denied.

**III. Petitioners Have Not Satisfied The Requirements In 10 C.F.R. § 2.714(b) For An Admissible Contention**

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Petitioners completely ignore the requirements set forth in 10 C.F.R. § 2.714(b) for an admissible contention. Section 2.714(b)(2) establishes a high threshold for the admissibility of a contention. In particular, "[e]ach contention must consist of a specific statement of the issue of law or fact to be raised." 10 C.F.R. § 2.714(b)(2) (1992). Moreover, with respect to each contention, the petitioner must provide:

- (i) A brief explanation of the bases of the contention.
- (ii) A concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely. . . . together with references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion.
- (iii) Sufficient information . . . to show that a genuine dispute exists . . . . This showing must include references to the specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the

supporting reasons for each dispute  
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10 C.F.R. § 2.714(b)(2) (1992). If any one of these factors is not met, a contention must be rejected. Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149 (1991).

In the present case, Petitioners fail to meet these requirements. First, there is no explanation of the bases for the contention. Second, Petitioners do not provide a concise statement of the alleged facts or expert opinion it intends to rely on, nor does it refer to the "specific sources and documents" on which it will rely. In summary, Petitioners' contention lacks the specificity and bases required by Section 2.714(b)(2) and should be rejected. See Georgia Power Co. (Vogtle Electric Generating Plant, Units 1 and 2), LBP-91-21, 33 NRC 419, 422-24 (1991).

#### IV. Petitioners Have Not Filed A Motion to Reopen the Record

In a case such as this, a petitioner must submit both a petition to intervene and motion to reopen. See, e.g., Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-93-04, 37 NRC \_\_\_, slip op. at 5-7 (March 9, 1993). The Petition did not include a motion to reopen the record. Consequently, the Commission should reject Petitioners' request on this ground alone.

In any event, the Petitioners have utterly failed to meet the requirements of 10 C.F.R. § 2.734. In order to meet the

requirements of Section 2.734(a), the moving party shoulders a heavy burden to demonstrate that its motion: (1) is timely; (2) involves a significant safety issue; and (3) offers evidence that would lead to a materially different result. Kansas Gas & Electric Co. (Wolf Creek Generating Station, Unit No. 1), ALAB-462, 7 NRC 320, 338 (1978); Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), CLI-86-1, 23 NRC 1 (1986). The Petitioners cannot, nor do they even attempt to, meet any of these requirements.

First, as discussed in Section II.A supra, the issues Petitioners seek to raise and its supporting information are not new and thus their Petition is not timely.

Second, Petitioners' allegations related to the safety of construction (Petition at 4-5) do not raise a significant safety issue related to CPSES Unit 2. In general, the allegation(s) appear to relate mostly, if not entirely, to construction of Unit 1. Additionally, these allegations largely relate to construction conditions that existed in the 1984 time frame. The Petition makes no attempt to account for the extensive hardware validation programs that were subsequently implemented at CPSES in order to correct the hardware problems. In any event, Petitioners make no attempt to demonstrate that

such alleged conditions could affect the safety of operation.<sup>14/</sup>

The Petition also alleges that TU Electric has engaged in criminal or unlawful conduct. (Petition at 3-4). As discussed above, these unsubstantiated and scurrilous accusations are unsupported and sanctionable, and therefore should not be considered by the Commission. In any event, a number of these allegations do not appear to relate to any conduct by TU Electric employees (e.g., Allegations 1.b and 1.c), others do not appear to relate to activities involving safety (e.g., Allegations 1.c, 1.d, 2.a, and 2.b), and others (e.g., Allegations 1.a, 1.c, 2.b, and 2.c) have been investigated by the NRC, which did not find evidence of criminal or unlawful actions by TU Electric.<sup>15/</sup>

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<sup>14/</sup> With regard to the statement by Ron Jones attached to the Petition, TU Electric has previously demonstrated that this statement does not raise any safety concern related to operation of Unit 2. See Texas Utilities Electric Company's Response to Petitioners' Motion to Stay Issuance of Full Power License (March 19, 1993) at 15-17.

<sup>15/</sup> For example, contrary to Petitioners' allegations, the minority owners settlement agreements (Allegation 1.a) were found by the NRC not to be contrary to the Commission's regulations or statutory requirements (see Letter to W.J. Cahill, Jr. (TU Electric) from T.E. Murley (NRC) dated Jan. 12, 1993); the allegation (Allegation 2.b) that there was a conspiracy to prevent Mr. Dow's access to the courts and NRC has been determined by the Licensing Board to lack credibility (Memorandum and Order (Oct. 19, 1992) at 5), and the event involving the security guard (Allegations 1.c and 2.c) was determined by the NRC not to involve collaboration by another individual or individuals. (NRC Inspection Report 50-445/92-50, 50-446/92-50 (Jan. 20, 1993)).



Finally, any motion to reopen "must be accompanied by one or more affidavits which set forth the factual and/or technical basis for the movant's claim that the [reopening] criteria have been satisfied." 10 C.F.R. § 2.734(b) (1992). Petitioners present no such affidavits.<sup>16/</sup> Accordingly, this defect alone requires rejection of the request. See Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-89-01, 29 NRC 89, 93-94 (1989).

#### IV. Other Deficiencies in the Petition

The Petition purports to be a request to intervene in both the construction permit extension proceeding and the operating license proceeding for CPSES Unit 2. However, nothing in the Petition addresses the issue involved in the construction permit extension proceeding; i.e., whether there is good cause for the extension. Therefore, with respect to the construction permit extension proceeding, the Petition is facially deficient and should be rejected for that reason alone.

Second, one of the Petitioners (Mr. Dow) is apparently seeking to act in a representative capacity for the other Petitioners (Yvonne Wilkinson and Ron Jones). Such representation is not authorized under the Commission's rules. Under 10 C.F.R. § 2.713(b), a person must either "appear in an adjudication on his or her own behalf or by an attorney-at-law."

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<sup>16/</sup> The Petition only provides an unnotarized statement by Ron Jones, which only addressed one of the numerous allegations raised by the Petitioners.

See Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit No. 2), ALAB-470, 7 NRC 473, 474-75 n. 1 (1978). Therefore, to the extent the petition is being filed on behalf of Ms. Wilkinson and Mr. Jones, it should be denied because neither person is appearing on his or her own behalf, and because Mr. Dow is not an attorney-at-law.<sup>17/</sup>

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<sup>17/</sup> In any event, Mr. Dow's demeanor is such that he should not be permitted to act as a representative. Mr. Dow has repeatedly demonstrated that he is unfit to act in a representative capacity pursuant to 10 C.F.R. § 2.713. Mr. Dow has repeatedly violated the standards of conduct imposed on those who would appear before the Commission. He has consistently, and without excuse, violated the Commission's Rules of Procedure and inundated the Commission with frivolous motions, petitions, and briefs. As an Administrative Law Judge for the U.S. Department of Labor concluded in disqualifying Mr. Dow from acting as a lay representative of Ms. Wilkinson,

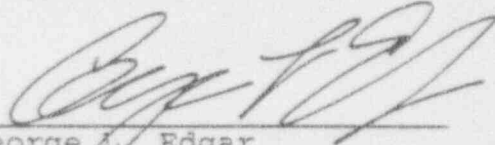
Mr. Dow has repeatedly demonstrated his deficient qualifications in the representation of Complainant, Mrs. Yvonne Wilkinson. . . . As such, the Court finds that Mr. Dow is unqualified to represent Complainant . . . .

Wilkinson v. Texas Utilities, 92-ERA-16, slip op. at 1 (DOL Aug. 19, 1992).

CONCLUSION

For the reasons expressed above, the Petition must be denied for failure to satisfy any number of the Commission's regulations.

Respectfully submitted,



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Attorneys for TU Electric

March 29, 1993

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE COMMISSION

93 MAR 29 P1:49

In the Matter of )  
)  
)

TEXAS UTILITIES ELECTRIC )  
COMPANY )  
)

(Comanche Peak Steam Electric )  
Station, Unit 2) )  
)  
)

Docket Nos. 50-446-OL  
50-446-CPA

CERTIFICATE OF SERVICE

I hereby certify that copies of "TEXAS UTILITIES  
ELECTRIC COMPANY'S ANSWER TO PETITION FOR LEAVE TO INTERVENE"  
were served on March 29, 1993, by hand, unless otherwise  
indicated below, on each of the following:

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Administrative Judge  
Morton B. Margulies, Chairman  
Atomic Safety and Licensing  
Board  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Office of the Secretary  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555  
Attention: Chief, Docketing  
and Service Section  
(Original Plus Two Copies)

Administrative Judge  
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Atomic Safety and Licensing  
Board  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Administrative Judge  
James H. Carpenter  
Atomic Safety and Licensing  
Board  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

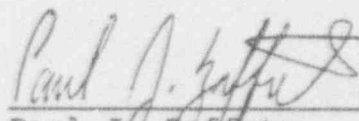
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