UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	}{	
	}{	Docket No. 50-446-CPA
TEXAS UTILITIES ELECTRIC COMPANY, et al.	}{	ASLBP No. 92-668-01-CPA
	}{	(Construction Permit Amendment)
	}{	
(Comanche Peak Steam Electric Station, Unit 2)	}{	

CASE'S RESPONSE TO PORTIONS OF PETITIONERS' MOTION TO STAY ISSUANCE OF FULL POWER LICENSE

I. INTRODUCTION

On March 15, 1993, Michael D. Kohn and David K. Colapinto, of Kohn, Kohn and Colapinto, P. C.[1], on behalf of Petitioners B. Irene Orr and D. I. Orr, filed "Petitioners' Motion to Stay Issuance of Full Power License" ("Petitioners' Motion") in the Construction Permit Amendment proceedings for the Comanche Peak Steam Electric Station (CPSES), Unit 2, Docket No. 50-446-CPA. CASE has received a copy of Petitioners' Motion.

[1] CASE notes for the record that the firm of Kohn, Kohn and Colapinto, P. C., is composed of individuals who were formerly employed by the Government Accountability Project (GAP). CASE was one of GAP's clients and GAP was one of CASE's representatives during portions of the CPSES operating license proceedings. CASE was an Intervenor in the CPSES licensing and Unit 1 CPA proceedings for almost ten years. CASE's responding to portions of Petitioners' Motion in this forum should not be construed as giving up any rights which CASE might have to take further action, under 10 CFR 2.713 or in any other forum which CASE believes is appropriate.

Petitioners' Motion implies that the CASE/TU Electric Settlement Agreement ("Agreement") and the CASE/TU Electric/NRC Staff Joint Stipulation ("Stipulation") constituted "hush money" for "buying silence." Read in conjunction with the accompanying handwritten statement of Ronald Jones, the Motion appears to charge CASE with complicity in covering up allegations in return for money. These false charges against CASE have been raised and refuted before, and CASE again categorically denies these allegations. These false statements, if relied upon by the NRC in the CPA proceeding, could be misleading. Therefore, CASE must in good conscience respond[2].

For the record, CASE would again note that its entire history and track record is completely inconsistent with Petitioners' apparent allegations[3]. As the Commission knows, CASE has been actively involved in monitoring the safety of CPSES since 1974, before the Texas Public Utility Commission, the

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[2] If CASE is reading more into this Motion than was intended by Petitioners, CASE expressly requests that Petitioners state for the record that they are not accusing CASE or CASE's primary representative (CASE President Juanita Ellis) of wrongdoing.

[3] It is still difficult for me (both personally and as President of CASE) to understand the criticism, by some individuals and organizations, of CASE and its almost ten years of efforts in the licensing proceedings followed by its almost five years of efforts under the monitoring process of the Agreement and Stipulation. Such criticism has often come from those who have demonstrated little or no commitment and have done even less actual work than CASE to help assure that CPSES operates safely or not at all.

NRC Atomic Safety and Licensing Boards ("ASLB") (for almost ten years)[4], the NRC Staff, and in other public informational forums (such as public speaking), and most recently monitoring the plant under the Agreement and Stipulation and as a member of the CPSES Operations Review Committee ("ORC").

On June 28, 1988, CASE and TU Electric ("TU") signed an Agreement which included as one of its provisions the dismissal of the licensing hearings, and on June 30, 1988, CASE, TU, and the NRC Staff signed a Stipulation, which allowed CASE to continue our work, but in a different forum than the licensing hearings process.

For the almost five years since the ASLB approved the Agreement and the Stipulation and dismissed the licensing hearings on July 13, 1988, CASE has been actively and aggressively pursuing its rights under the Agreement and the Stipulation in a variety of ways and matters[5]. As CASE advised the Commission and the public on April 16, 1990, at the time of full power licensing of Unit 1, CASE's basic role has not changed. CASE and its

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[4] It is important to note that the licensing proceedings were initiated in accordance with 10 CFR at the request of CASE (and two other organizations which had withdrawn from the proceedings by early 1982), and that there would have been no public hearings at all otherwise. In addition, although the role of allegers or "whistleblowers" has been important in helping assure the safety of CPSES, at the time the hearings were initiated, CASE had no such individuals who were willing and available to testify as witnesses for CASE.

[5] For the record, CASE notes that Petitioners' description of CASE as a "former citizen intervenor group" (Motion at 6) is inaccurate and misleading. To paraphrase Mark Twain, "the rumors of CASE's demise are greatly exaggerated." CASE has continued to work actively and aggressively in the public interest and, although CASE's rights under the terms and timetable of the Agreement and Stipulation have diminished, we still continue to do so.

consultants have continued to monitor, within their limited capabilities, many issues of critical concern to the public health and safety.

In many cases, both before and after the licensing hearings, these issues of public concern were brought to CASE's attention by concerned workers. The Agreement and the Stipulation were designed with that reality in mind, and as the NRC is aware, the Agreement in combination with the Stipulation was an exchange of one process (the operating license proceedings) for another process (the monitoring of safety issues at CPSES under the Agreement and the Stipulation). Under the Agreement and Stipulation, CASE has continued to work with workers and former workers of CPSES in an attempt to assure that safety issues are identified, investigated, and corrected.

II. CASE HAS ALWAYS WORKED IN THE PUBLIC INTEREST AND CONTINUES TO DO SO

At its request, CASE was allowed to speak to the NRC Commissioners at the Commission Briefing on Tuesday, March 16, 1993, on granting of Full-Power Operating License for CPSES Unit 2 (Docket No. 50-446). Owen L. Thero, CASE Consultant and President of Quality Technology Company, addressed the NRC Commissioners on behalf of CASE. Included in his comments were the following:

> "The Scaling Calculation Dispute between CASE and TU Electric was active at the time of Unit 1's licensing (now closed), the subject of which originally arose in November 1987 and was not resolved for over three years. In CASE's assessment, TU Electric's failure to establish a comprehensive scaling calculation and documentation review program resulted in incorrect top-level engineering governing design basis documents which had impacted the field calibration status of various instrumentation and control system devices that could have resulted in

> the improper operation of the plant; both the NRC Staff and TU Electric disagreed with CASE's assessment of the importance of this issue. In any event, however, problems with an inadequate documentation review program continued to plague TU Electric.
>
> "A more positive development, however (as was the case with the cold hydro test issue) is that TU Electric exhibited the ability to learn and improve. In the specific area of TU Electric's scaling calculation program, the NRC Staff configuration management inspection team in late 1991 recognized TU Electric's scaling calculation program as a strength following TU's implementation of corrective actions after the Scaling Calculation Dispute."

The scaling calculation issue is important in regard to the current allegations before the Commission. Although it is but one of many examples that could be cited, it demonstrates, far better than mere words could, that CASE's commitment to continuing to work with concerned individuals regarding safety concerns did not end with the July 13, 1988, dismissal of the licensing proceedings.

In this particular instance, the individual who had raised concerns regarding the scaling calculation program had a Department of Labor ("DOL") suit pending at the time the Agreement and the Stipulation became effective. His DOL complaint was settled, but his concerns continued.

Because of the highly technical and detailed nature of his concerns and their perceived importance, CASE (and to its credit, TU) committed major time, money, effort, and personnel to investigating, analyzing, documenting, and resolving his concerns. CASE hired Owen Thero, President of Quality Technology Company, as a Consultant, to work specifically with the concerned individual (among others).

Through CASE's efforts, TU set up a special audit (the only such special audit of this type of which CASE is aware) regarding scaling

calculations in which both the concerned individual and CASE's consultant were allowed to participate.

CASE, in conjunction with the concerned individual, prepared a detailed report and analysis of his concerns and the results of the audit. This four-volume report was a mammoth effort (445 pages with 1742 pages of attachments)[6] requiring over a year of investigation, interfaces, resolution of some matters, and actual preparation of the report itself. The NRC Staff has also recognized the year-plus efforts of CASE in regard to the CASE dispute filed regarding scaling calculations[7], as well as some of our more recent work.

In addition to the individual concerned with the scaling calculation program, CASE has continued to work with other concerned individuals to help assure that their concerns have been identified, investigated, documented, and resolved. CASE has assisted through a variety of methods, from advising the NRC's Allegation Coordinator of concerns of individuals who feared disclosing their identities to the NRC but were concerned enough to want

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[6] See CASE's July 9, 1990, letter to Mr. Christopher I. Grimes, Director, Project Directorate IV-2, NRC Headquarters, Subject: Dispute and Documented Request for Action, Scaling Calculations Effort at Comanche Peak Steam Electric Station Docket Nos. 50-445 and 50-44[illegible], "SCALING CALCULATION ENGINEERING DESIGN DEFINITION AND DOCUMENTATION REVIEW, COMANCHE PEAK STEAM ELECTRIC STATION, QUALITY ASSURANCE PROGRAM BREAKDOWN" Report, with 4-Volume Report attached.

[7] See February 26, 1991, letter from Samuel J. Collins, Director, NRC Division of Reactor Projects, to W. J. Cahill, Jr., TU Electric Executive Vice President, Nuclear, Inspection Report 50-445/90-47; 50-446/90-47 (see also February 27, 1991, letter from Christopher I. Grimes, Acting Assistant Director for Regions IV and V Reactors, Division of Reactor Projects - III/IV/V, NRC Office of Nuclear Reactor Regulation, to CASE President Juanita Ellis).

their concerns identified, addressed, and hopefully resolved, to intense, thorough, detailed analytical reports requiring many months of CASE's time, money, and manpower to prepare, document, and attempt to resolve. These individuals have included not only many individuals who have come to CASE for assistance since the licensing proceedings were dismissed, but also other individuals who had DOL suits pending at the time the Agreement and the Stipulation became effective, whose DOL complaints were settled, but who had some residual concerns remaining.

III. PETITIONERS' ALLEGATIONS AGAINST CASE ARE FALSE

Petitioners allege at pages 5 through 8 of their Motion that "hush money" was paid to Mr. Ronald J. Jones which "resulted in the secreting of this information [300 non-conformance reports that were not reported to the NRC by TUEC] from the Commission." In the attached statement from Mr. Jones, the alleged link to CASE is set forth when he states that Billie Garde promised to turn his allegations over to CASE which would in turn bring them before the ASLB (Jones statement at 2). CASE cannot speak for Ms. Garde in this matter, but can and will state unequivocally that CASE has always endeavored to make certain that every legitimate concern that has been brought to CASE's attention was brought to the attention of the proper regulatory authorities. It is also CASE's understanding, both from our past experience in the NRC licensing proceedings and our more recent observations during the monitoring of the plant, that the NRC Staff, although it does not review each and every nonconformance report, has access to them all and that

the NRC inspectors do review the NCR logs, and select and check NCR's on a random basis. In addition, CASE is aware that the NRC performs inspections which in effect audit the nonconformance control program, including NCR's.

Further, as the Commission well knows and as is documented in the record of the licensing proceedings, CASE was never shy about introducing documents into the record, including probably hundreds of nonconformance reports. Indeed, at one point, due to the large number of NCR's which CASE sought to place into the record, CASE was required by the ASLB to cut down the number of nonconformance reports submitted because the ASLB would not accept them all into the record.

In addition, CASE has no knowledge of any restriction at any time which would have precluded Mr. Jones from contacting CASE directly with his concerns and asking CASE to accompany him to the NRC -- just as CASE has done with numerous other concerned individuals.

Further (although CASE was not privy to any discussions between Mr. Jones and any attorney representing him in the Atchison or any other lawsuit), there was never any restriction of which CASE is aware which prevented Mr. Jones from providing such information directly to the NRC. Certainly, if anyone attempted to restrict Mr. Jones in this fashion, CASE had no knowledge of it and would never have participated in, or condoned, any such language -- and did not do so.

IV. THE NRC INVESTIGATED AND FOUND NO MERIT

The NRC has already conducted an investigation regarding this specific matter. The NRC completed its investigation into allegations raised by Citizens for Fair Utility Regulation (CFUR) regarding the Agreement and other matters, and issued its report on January 30, 1990[8].

The NRC looked specifically at the settlement of what the NRC terms "the Atchison Plaintiffs" (of whom, it is CASE's understanding, Mr. Jones is one), as well as the CASE/TU Electric Settlement Agreement.

As stated in the report regarding the Atchison Plaintiffs' settlement (pages 11 and 12):

> ". . . representatives of the Comanche Peak Project Division and the Office of General Counsel reviewed all of the releases signed by the Atchison plaintiffs [of which it is CASE's understanding Mr. Jones was one] in settlement of their lawsuit, and all of the settlement agreements and releases signed in settlement of the Department of Labor Complaints pending at the time of the Comanche Peak settlement. The staff's review indicated that none of these settlement agreements and releases involve restrictive clauses of the type which were found in previous settlement agreements. . . . The releases signed by the Atchison plaintiffs did not have any specific language concerning the right of the individual to bring safety concerns to the NRC. However, there were no restrictive clauses which precluded the individuals from doing so. In addition, the Atchison plaintiffs were informed by their counsel of their continuing ability to bring their safety concerns to the NRC. . . .
>
> "The Atchison plaintiffs were mainly people who had already appeared before the Licensing Board as witnesses during the Harassment and Intimidation hearings. There has been no indication that these individuals have any safety concerns which were not already brought to the attention of the [NRC] staff. . . ."

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[8] See January 30, 1990, letter from James E. Lyons, Chairman, NRC Allegation Review Committee, to Mrs. Betty Brink, Board Member, Citizens for Fair Utility Regulation (CFUR), Subject: Allegation OSP 89-A-0089, pages 10-13 of which are attached as Attachment A.

The NRC also stated (pages 12 and 13), in part, regarding the Agreement and Stipulation:

> "With respect to the general settlement agreement between the parties to the proceeding, as required by the agreement, CASE has been given and has taken an active part in monitoring the activities at the Comanche Peak site. CASE has made both TU Electric and the NRC aware of issues which are of concern to CASE. Therefore, the [CASE/TU Electric] settlement has, in fact, resulted in the continuing resolution of safety issues presented by CASE, and CFUR's allegation in this area is without merit. . ." (Emphasis added.)

Further, it appears that the actions of Mr. Jones are inconsistent with the alleged importance of the allegations. It is inconceivable to CASE that he would not have been calling the CASE President constantly, demanding to know why his concerns had not yet been turned over to the NRC. It is also inconceivable to CASE that, had Mr. Jones had information of such magnitude and importance that he truly believed it could and should keep the plant from operating, he could not have found some way to get it into the hands of the proper authorities for almost five years since the Agreement and Stipulation. (If nothing else, it could have been sent anonymously in a plain brown wrapper; CASE has received documents from time to time in this manner, and has brought such matters to the NRC and, when appropriate, to public attention when they raised legitimate concerns.) If Mr. Jones truly believed that he had vitally important safety information about CPSES, he had an absolute duty to exhaust every conceivable avenue to assure that his concerns were heard and addressed. In addition to going directly to the NRC, he could and should have involved the media and Congress to make certain that his concerns were addressed. CASE has certainly utilized these avenues of communication as needed over the years.

V. CONGRESS HAS INVESTIGATED AND FOUND NO MERIT

Indeed, because of slanderous and false allegations that there was "hush money" or "money for silence" paid as part of the Agreement, CASE was required to file testimony before a Senate Sub-Committee for hearings which were held on May 4, 1989[8]. The Senate Sub-Committee Chairman ultimately found no wrongdoing with the CASE/TU Electric Settlement Agreement[10].

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[9] Representatives of the NRC and TU Electric also testified at the May 4, 1989, Breaux Senate Sub-Committee hearings.

[10] For the record, Senator Breaux, Chairman of that Senate Sub-Committee, finally stated regarding the CASE/TU Electric Settlement Agreement:

> SENATOR BREAUX:
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> "Because the [Atomic Safety &] Licensing Board examined this [CASE/TU Electric settlement] agreement, and we've had the same opportunity through publicly available documents, my concerns about this part of the agreement have been satisfied. . . ."
>
> SENATOR BREAUX: [Addressing counsel for TU Electric, after some discussion]:
>
> "Well, I think that helps immensely. I think that you're to be commended that in all of your settlement agreements with all of these litigants and the CASE organization, and employees, that at no time did you try and restrict their ability to participate or testify, or give information to any of the Federal agencies or did not go into that area at all.
>
> ". . . I really commend you for the type of settlement agreement you negotiated. I think you did the right thing. You didn't get involved in restricting voluntary testimony or resisting other types of testimony, and I thank you very much. Good luck at the plant."

See Transcript of the May 4, 1989, Hearings Before the Committee on Environment and Public Works, Subcommittee on Nuclear Regulation, United States Senate, Hearing on Rancho Seco and Secret Settlements at Comanche Peak, pages 6 and 7, 182, and 189.

Nevertheless, the unfounded and totally erroneous allegations had already severely damaged the reputation and future fundraising ability of CASE and continue to do so.

The primary concern expressed prior to, and throughout, the May 4, 1989, Senate Sub-Committee hearing was that there might have been "hush money" or money paid by the utility or its contractors to former workers at the Comanche Peak nuclear power plant in return for their not bringing their safety concerns forward to the U. S. Nuclear Regulatory Commission.

The Senate Sub-Committee referred the settlement agreements with which it was concerned to the Department of Justice ("DOJ"). The DOJ declined prosecution (not only of CASE, but also of others more directly involved in the Macktal[11] Department of Labor settlement which was the primary focus of the hearing) because of insufficient evidence, but stated:

> "However, if the NRC [Nuclear Regulatory Commission] investigation of this matter uncovers any additional information, we will reconsider this conclusion."

As discussed previously herein (pages 9 and 10), the NRC Staff investigated and came to its decision refuting allegations regarding the Agreement and the Stipulation.

VI. OI INVESTIGATED AND FOUND NO MERIT

More recently, the NRC's Office of Investigations (OI) also completed "an investigation into allegations made in 1988 that 'hush money' had been

[11] Mr. Macktal was represented at the May 4, 1989, Senate Sub-Committee hearing by Kohn, Kohn & Colapinto.

paid to prevent individuals from presenting safety information to an NRC licensing board . . ."[12] Again, the allegations were not substantiated.

The Synopsis of this OI investigation stated, in part:

"On April 3, 1990, the Executive Director for Operations, Nuclear Regulatory Commission (NRC), requested that an investigation be initiated after an alleger filed a pleading with the NRC on July 6, 1988, claiming that his former legal counsel and the Government Accountability Project (GAP) had entered into a secret settlement that would have required the alleger to forego his rights to raise concerns and/or appear as a witness in the Comanche Peak Steam Electric (CPSES) Atomic Safety Licensing (ASLB) hearings. . . .

"The alleger filed a discrimination complaint with the Department of Labor (DOL), and it was determined he was not discriminated against by Texas Utilities (TU). An appeal was made to the Administrative Law Judge (ALJ) and subsequently to the Secretary of Labor with a final ruling against the alleger.

"The Office of Investigations (OI) made numerous attempts to interview the alleger without success. Counsel for the alleger had presented all of his concerns and speaking with him would be a 'rehash' of previously identified information. Based on a review of available documentation and the NRC staff's determination that the alleger's stated concerns had been previously resolved by the NRC, this investigation failed to substantiate allegations that the TU settlement constituted 'hush money' and prevented the alleger from presenting safety information to the ASLB, . . . "[13] (Emphases and Footnote added.)

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12 See February 18, 1993, letter from James L. Milhoan, Regional Administrator, NRC Region IV, to W. J. Cahill, Jr., Group Vice President, Nuclear Engineering and Operations, TU Electric, Subject: OI Investigation 4-90-007, Attachment B hereto.

13 The identity of the alleger is well known to the NRC Staff, TU Electric, CASE, and anyone who has an awareness of what has transpired regarding the CPSES proceedings since 1985. It is also well known that the alleger's counsel at that time were the same individuals who now constitute Kohn, Kohn and Colapinto, and who were also the counsel of the individual whose allegations about "hush money" were the primary impetus for the May 4, 1989, Senate Sub-Committee hearing.

VII. FALSE ALLEGATIONS AGAINST CASE IMPAIR THE PUBLIC INTEREST

The Agreement and Stipulation have now been examined by a Sub-Committee of the U. S. Senate, the U. S. Department of Justice, and at least two branches of the U. S. Nuclear Regulatory Commission. None of these agencies has found any improprieties.

The Stipulation was precedent-setting not only for CASE, but for the utility and the NRC as well, because it provided CASE with unprecedented rights of access and involvement and concomitant obligations as a member of the ORC. The unwarranted and unfounded attacks made on CASE placed severe additional burdens on CASE in trying to carry out its unprecedented rights and obligations under the Agreement and Stipulation. Inevitably, these burdens carry a potential adverse impact on the process and ultimately on public health and safety.

CASE in fact has in many ways been able to accomplish much more under the Agreement and Stipulation than had been anticipated, and overall, CASE believes that the monitoring process under which it has been working since mid-July 1988 has been successful in helping to assure that CPSES is much safer than it otherwise would have been.

Although CASE's efforts in helping assure that CPSES is as safe as possible and that the public health and safety and the environment/ecosystem are protected still continue to this day (to the extent possible), CASE's ability to take full advantage of the sweeping rights afforded and to carry

out its obligations fully under the Stipulation unquestionably has been hampered and somewhat diminished by the continuing unwarranted attacks to which it has been subjected for the past four-and-a-half years. CASE sincerely regrets the fact that these attacks inevitably distracted CASE from devoting its full and undivided attention to maximizing its potential under the Agreement and Stipulation to make CPSES as safe as possible. It is CASE's fervent hope that these distractions do not translate into an undiscovered issue which might otherwise have been discovered by CASE, which is perhaps not fully recognized or adequately dealt with, which might adversely affect the safety of CPSES.

At this time, CASE's monitoring ability has already been reduced (in accordance with the Stipulation), for the most part to those issues which pertain to CASE's participation on the ORC. TU Electric and CASE are also committed to continuing to attempt to resolve some issues, such as radiological work control, which are still open. It is anticipated, however, that there will be some issues remaining open when CASE completes its participation in monitoring the plant under the Stipulation (which expires July 13, 1993), although it is expected that the major concerns will already have been addressed and resolved to the extent possible by that time. CASE will make certain that both TU Electric and the NRC Staff fully understand what these concerns are, so that efforts can continue to investigate and resolve them.

VIII. IN CONCLUSION

False allegations have been made, and continue to be made, about CASE since the Agreement and Stipulation were accepted by the ASLB and the CPSES licensing and Unit 1 construction permit amendment proceedings were dismissed on July 13, 1988.

The NRC Staff is well aware of the record in the CPSES dockets. This includes the fact that the allegedly "secret" Settlement Agreement between CASE and TU Electric was approved by the ASLB in the CPSES proceedings. Further, the entire June 28, 1988, CASE/TU Electric Settlement Agreement and the June 30, 1988, CASE/TU Electric/NRC Staff Joint Stipulation became effective July 13, 1988; and both the Agreement and the Stipulation have been in the public record since that time, attached to the July 13, 1988, Atomic Safety and Licensing Board Memorandum and Order (Dismissing Proceedings). There is nothing "secret" about either of these documents.

For almost twenty years, CASE has attempted to do as much as possible to attempt to make the Comanche Peak nuclear power plant as safe as possible (or if it could not be made safe, to stop the plant from receiving an operating license), consistent with the resources and personnel available at the time. CASE has long recognized that we could simply not look at everything at CPSES, and that at best (either in or out of the hearings process) we would only be able to evaluate samples of the plant's systems, components, documents, and processes. One advantage of the monitoring process over the hearings process has been that it afforded CASE the opportunity to look at some issues (such as the scaling calculation program

concerns) in greater depth and detail than would have been possible in the licensing proceedings (although obviously CASE could not expend that amount of time, money, and personnel on every concern).

CASE's efforts in helping assure that CPSES is as safe as possible and that the public health and safety and the environment/ecosystem are protected still continue to this day, despite the distraction and expense of having to respond to false allegations such as those presented by Petitioners.

Almost from the moment the CASE/TU Electric Settlement Agreement was announced in 1988, false and slanderous allegations began to be made about "hush money" and "money for silence."[14] As more and more information has

[14] CASE has previously responded, in part, to these same allegations in other dockets of NRC proceedings. See CASE's 12/26/91 Response to Portions of Motion of R. Micky and Sandra Dow to Reopen the Record, filed in Docket Nos. 50-445-OL, 50-446-OL, and 50-445-CPA.

CASE further notes that R. Micky Dow has also filed a 3/15/93 Petition for Temporary Restraining Order and for En Banc Consideration in the U. S. Court of Appeals for the Fifth Circuit. In that pleading, similar false allegations are made regarding the CASE/TU Electric settlement, and the same handwritten statement by Mr. Jones which is attached to Petitioners' Motion in these proceedings is also attached to the Fifth Circuit pleading.

Mr. Dow's 3/15/93 pleading is at odds with his 3/8/93 "Appellants' Motion to Dismiss Appeal" filed in the U. S. Court of Appeals for the Third Circuit (attached hereto as Attachment C). In that pleading, Mr. Dow states, in part:

> "Since the filing, and the request to reinstate this appeal, new evidence has come to appellants which casts serious doubts in the

(continued on next page)

come to light through the almost five years since that time, it has become apparent that the primary underlying source of these allegations has been, and continues to be, certain individuals who at that time worked for a public interest law firm (GAP) which represented CASE and others in the licensing proceedings. These individuals disagreed with CASE's decision to make the Settlement and Stipulation, for their own personal reasons (including the fact that CASE made its decision independently, based upon CASE's assessment of the licensing proceedings as they existed at that time, CASE's financial condition, and other appropriate reasons, but without prior approval by those particular individuals).

The constant slander and false allegations against CASE and its President personally have continued virtually unabated for almost five years, and have been repeated and channeled into a variety of forums (e.g., NRC, DOL, Congress), and have been spread through a variety of organizations and individuals who were all too eager and willing to latch on to anything which they perceived supported their position.

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14 (continued from preceding page)

> minds of the appellants, as to whether or not defendants Juanaita [sic] Ellis/C.A.S.E.; C.F.U.R.; Billie Pirner Garde, and G. P. Hardy were properly named as defendants, with the filing of the original complaint, in the Western District Of Pennsylvania. The evidence mentioned hereinabove tends to support the theory that these parties did not bear any manner of guilt, or fault, nor was there any manner of liability on their part, with regard to any and all allegations contained in that original complaint, and therefore, these parties must definately [sic] be dismissed as unneeded."

Contrary to these false allegations, CASE proved its commitment again and again in the licensing hearings process, bringing forth witnesses, documentary evidence, and legal and lay arguments which were placed in the public record, which ultimately resulted in the NRC's requiring TU Electric to either prove that their plant was safe or face the very real and serious threat that they might have their license actually denied; this resulted in a massive reanalysis/reinspection/redesign process which took TU Electric almost nineteen months to complete even after the licensing hearings were dismissed in 1988.

CASE has again proved this commitment over the past almost five years during which it has continued to monitor the plant under the Agreement and Stipulation. It would have been very easy (and at times the idea was tremendously appealing) to have diverted CASE's resources of time, money, and personnel into lawsuits in court for slander, libel, interference with CASE's ability to fulfill agreements, etc. But because of the particular time frame during which these events were taking place and the unusual time constraints under which CASE was working, engaging in such court battles at that time would have even more severely damaged CASE's ability to fulfill the tasks it had taken on and its obligations under its charter as an organization. The fact is that the clock was ticking. CASE had a finite amount of time -- five years, perhaps slightly more -- to ferret out potential safety problems at CPSES and attempt to make sure that they were

identified and corrected -- hopefully before fuel was loaded in Unit 1 and before what might have been or become a serious, perhaps deadly, accident at CPSES. Time and time again, the decision was made by CASE to stay on course, to take it on the chin (at least for the time being), and to do its best to fulfill the major long-term commitment which was made in 1988 and, more importantly, the commitment which was made when CASE was first organized in 1974.

To the extent that any individuals or organizations may have legitimate safety concerns regarding CPSES, it has always been one of CASE's primary goals that the truth (whatever that truth might be) about CPSES be brought out. And to that extent, those individuals and organizations who have any such legitimate safety concerns are perfectly free to pursue their rights to a hearing under 10 CFR; they are perfectly free to jump through the same legal hoops which CASE had to jump through in order to attain status as a party in NRC licensing proceedings. If their concerns and evidence about safety issues at CPSES are compelling, they should be able to stand on their own merits. What they should not be free to do is to ride on CASE's coat tails or to base their efforts upon the false and misleading premise that CASE or Juanita Ellis personally sold out, took money for silence, or that "hush money" was any part of the Settlement and Stipulation.

CASE appreciates the opportunity afforded by the Commission to assist in clarifying and correcting the record of the NRC proceedings in which CASE participated for almost ten years. Please let us know if the Commission would like additional information or if we can be of further assistance.

Respectfully submitted,

Juanita Ellis

(Mrs.) Juanita Ellis, President
CASE (Citizens Association for Sound Energy)
1426 S. Polk
Dallas, Texas 75224
214/946-9446

Dated at Dallas, Texas
this 22nd day of March, 1993

ATTACHMENTS:

ATTACHMENT A -- January 30, 1990, letter from James E. Lyons, Chairman, NRC Allegation Review Committee, to Mrs. Betty Brink, Board Member, Citizens for Fair Utility Regulation (CFUR), Subject: Allegation OSP 89-A-0089, pages 10-13 and cover pages.

ATTACHMENT B -- February 18, 1993, letter from James L. Milhoan, Regional Administrator, NRC Region IV, to W. J. Cahill, Jr., Group Vice President, Nuclear Engineering and Operations, TU Electric, Subject: OI Investigation 4-90-007.

ATTACHMENT C -- March 8, 1993, "Appellants' Motion to Dismiss Appeal" filed in the U. S. Court of Appeals for the Third Circuit.

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NUCLEAR REGULATORY COMMISSION

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	){	Docket No. 50-446-CPA
TEXAS UTILITIES ELECTRIC	){	ASLBP No. 92-668-01-CPA
COMPANY, et al.	){	(Construction Permit Amendment)
	){	
(Comanche Peak Steam Electric	){	
Station, Unit 2)	){	

CERTIFICATE OF SERVICE

I hereby certify that copies of "CASE'S MOTION FOR LEAVE TO FILE RESPONSE TO PORTIONS OF PETITIONERS' MOTION TO STAY ISSUANCE OF FULL POWER LICENSE," "LIMITED NOTICE OF APPEARANCE OF JUANITA ELLIS," and "CASE'S RESPONSE TO PORTIONS OF PETITIONERS' MOTION TO STAY ISSUANCE OF FULL POWER LICENSE," in the above-captioned proceeding has been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk (*) by Facsimile, this 22nd day of March 1993:

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

Office of the Secretary, *
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555
Attn: Docketing and Service Section
(original and two copies)

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Atomic Safety and Licensing Board
Panel (1)
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Juanita Ellis
(Mrs.) Juanita Ellis, President
CASE (Citizens Association for Sound Energy)
1426 S. Polk
Dallas, Texas 75224
214/946-9446

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

January 30, 1990

Docket Nos. 50-445
and 50-446

Mrs. Betty Brink, Board Member
Citizens for Fair Utility Regulation
7600 Anglin Drive
Fort Worth, Texas 76140

Dear Mrs. Brink:

SUBJECT: ALLEGATION OSP 89-A-0089

This is in response to the concerns raised by the Citizens for Fair Utility Regulation (CFUR) in the Request for Stay, dated October 16, 1989, your letter of November 8, 1989 and our meeting of December 7, 1989. Although the Commiss Order of October 19, 1989 only addresses the technical concerns and settlement agreement issues raised in the Request for Stay, the NRC staff has endeavored to evaluate all of CFUR's concerns. The purpose of this letter is to describe the basis for the NRC staff's resolution of those concerns.

The enclosure to this letter presents the NRC staff's conclusions regarding the fundamental technical issues. CFUR has not raised any issues not already considered by the staff. However, we recognize your desire for a further explanation of the resolution of those issues. In addition to the specific issues addressed in the enclosure, CFUR has also raised several philosophical issues which we should explain so as to provide a context for our conclusions regarding the more specific technical issues.

First, several CFUR representatives have suggested that we should consider your concerns with respect to the viability of light-water reactor technology The NRC's responsibilities and authority are predicated on the Atomic Energy Act and the Energy Reorganization Act which, in conjunction with applicable case law, establish the fundamental premise that light-water reactor technolo can be used as an energy source so long as an applicant for a license satisfi the applicable Federal regulations for that technology. The Final Environmen Statement for Comanche Peak (NUREG-0775, September 1981) addresses alternativ energy sources in accordance with the National Environmental Policy Act and concluded that the addition of the two units to TU Electric's system is expec to result in significant savings in system production costs, decreased depend on fuel supplies of uncertain availability and increased system reliability. None of the issues raised by CFUR adversely affect the viability of light wat reactors.

Second, CFUR has suggested that all of the issues associated with Comanche Peak should be considered collectively as representing a trend or pattern of unacceptable behavior by TU Electric. As a result, you have concluded that the TU Electric organization is incapable of operating Comanche Peak safely. Similarly, you asked whether there is a threshold number of violations or errors which would cause the NRC to deny a license. The applicable Federal regulations, NRC enforcement policy and underlying quality assurance principles are intended to preclude mistakes, but all recognize that mistakes will be made, particularly for a venture as massive and complex as the construction of a nuclear power plant, and there are means to correct those mistakes. Further, even when mistakes are repetitive, the NRC's enforcement policy provides for civil penalties to emphasize the importance of effective corrective actions. Our enforcement policy also provides the means to suspend, modify, or revoke a license when we are concerned that repetitive mistakes might jeopardize public safety. NRC inspection and preoperational testing of plants are intended to identify construction related problems. Rarely are construction related problems so great that they cannot be corrected. Even programmatic breakdowns during construction have been corrected. Consequently, the NRC does not have a "threshold" of violations which would cause the denial of a license.

Nevertheless, we have attempted to evaluate the collective significance of CFUR's concerns and their relationship to past construction errors. In this evaluation, we have relied on the results of our review of the independent Comanche Peak Response Team (CPRT) findings, as is described in Supplement 20 to the Safety Evaluation Report for Comanche Peak (NUREG-0797) which was issued in November 1988. Such an evaluation of collective significance involves a long period of time, a large number of people, a wide variety of construction activities, and a judgment of the significance of the construction deficiencies that were identified by both the NRC and TU Electric. Based on (1) the relative significance of the enforcement history for Comanche Peak, (2) the wide variety in the construction deficiencies and TU Electric's efforts to correct these deficiencies, and (3) the nature and evolution of the accepted industry practices for the design and construction of nuclear power plants over the time that Comanche Peak has been under construction, we conclude that, while TU Electric could have done some things better as is reflected in the CPRT findings, Comanche Peak deficiencies have been corrected and there is now no discernable trend or pattern that would raise a serious safety concern or provide a basis for denial of an operating license.

Although the NRC has taken a number of enforcement actions and continues to identify violations related to TU Electric's activities, these actions are not unusual nor, in our view, are they so significant as to raise a concern about the ability of TU Electric's organization to safely operate the plant. Moreover, enforcement action may be necessary in the future to ensure TU Electric's continued vigilance so that weaknesses are corrected.

In a related matter, CFUR has also expressed concern about the significance of the Augmented Inspection Team (AIT) findings (50-445/446-89-30/30) following the check valve failures during hot functional testing. The staff's concerns regarding those findings are described in the subsequent enforcement action

(EA-89-219) which was issued on January 25, 1990. However, we consider these findings to be related to TU Electric's transition from construction activities to an operational environment. In that regard, we will rely on the staff's ongoing inspection program as well as the NRC's Operational Readiness Assessment Team to assess whether TU Electric's corrective actions, in response to the AIT findings, have been effective.

Third, CFUR has expressed a broad concern about TU Electric's management, primarily with respect to attitudes and implied policies. CFUR has characterized TU Electric's management as "arrogant" and alleged that they have misled the NRC and the public. The NRC staff has determined that TU Electric's management has appropriate commercial nuclear experience and written policies related to nuclear safety. Based on the NRC staff's dealings with TU Electric management and the results of several investigations, including an NRC panel review of intimidation and harassment issues in 1985, we conclude that TU Electric has not demonstrated a pervasive behavior that would be detrimental to safe operation of the plant. Moreover, while the NRC panel concluded in 1985 that a number of TU Electric's past management practices may have generated mistrust and suspicion so as to contribute to a lack of management credibility, more recent experience has demonstrated that TU Electric's performance has substantially improved in this regard, particularly as evidenced by the low number and significance of employee concerns over time.

Finally, CFUR has alleged that concerns expressed by a former NRC inspector at Comanche Peak and a group of "Anonymous NRC Inspectors" constitute an attempt by the NRC to "whitewash" Comanche Peak issues. On the contrary, the NRC established a process for differing professional opinions to encourage its employees to express their individual views so that potential safety issues would not be overlooked. The existence of differing professional opinions and individuals' concerns does not, in and of itself, constitute a safety issue. NRC management still has an obligation and responsibility to make decisions based on staff opinions. In this case, a Differing Professional Opinion panel was directed to review the concerns of the anonymous inspectors. The panel has completed its review and the resulting recommendations are currently being reviewed by senior NRC management. After action is taken on those recommendations, the results of the panel's review and related records will be made publically available. Similarly, the former NRC inspector's concerns, along with the results of the investigation that stemmed from those concerns, will be released to the public when the final reports are complete. It should also be noted that these staff opinions were considered in the staff's planning for the inspections related to operational readiness.

We recognize that CFUR's members are concerned about the safety of the Comanche Peak Steam Electric Station. While it is apparent that we do not agree on the significance or resolution of some issues, we have attempted to further

explain the basis for our resolution of your concerns in the hope that, with that knowledge, you will understand how the NRC has discharged its responsibility to protect the public health and safety.

Sincerely,

J. E. Lyons

James E. Lyons, Chairman
Allegation Review Committee
Comanche Peak Project Division

Enclosure:
CFUR Issues

cc w/enclosure:
See next page

Reactor Regulation. The panel has completed their review of the SALP process at Comanche Peak including the CFUR concerns. The panel thoroughly reviewed the development of the SALP report, and conducted interviews with selected SALP Board members. As a separate initiative, the staff members involved with the Comanche Peak inspection program were requested to provide any comments they might have on the SALP report and were told that their comments could be provided anonymously. The results of the survey were also reviewed by the panel. The panel has completed its review and the resulting recommendations are currently being reviewed by senior NRC management. After action is taken on those recommendations, the results of the panel's review and related records will be made publicly available.

A decision on the issuance of an operating license is separate from the SALP process and will not be made until the necessary Special Projects licensing and inspection efforts are completed, and the ORAT inspection previously discussed is completed. Although the insights derived from the SALP report provide a subjective adjunct to the formal findings submitted to NRC management with a licensing recommendation, the formal findings provide a much stronger and more accurate basis for the licensing decision. The SALP process is retrospective and, therefore, the performance summary provided to the utility in the SALP report is to a large extent historical in nature.

The anonymous memorandum also asserted that NRC inspection reports and other documents had been edited to create an inaccurate characterization of the utility's performance. This assertion could imply inappropriate action on the part of NRC supervisors and managers, so this concern was referred to the Office of Inspector General for any action they deem necessary.

7. Issue

CASE settled with TU Electric because of the significant economic interest in settling the whistleblower claims and the settlement of these claims was contingent on CASE withdrawing. The individual settlement agreements have not been reviewed by the NRC or made public. The settlement was not based on the resolution of safety issues.

Evaluation

The settlement of the Comanche Peak proceedings was based on a Joint Stipulation signed by Case, TU Electric Company, and the NRC staff. The parties submitted the Joint Stipulation to the Licensing Board for its approval. The Licensing Board reviewed this Joint Stipulation before dismissing the proceedings. In addition, the settlement involved a separate agreement between Case and TU Electric Company. As part of its consideration of whether to dismiss the proceedings, the Licensing Board also reviewed the Case-TU agreement. Both of these agreements are attached to the Licensing Board's order of July 13, 1988. (28 NRC 103) These agreements are public documents.

As part of the Case and TU Electric agreement, TU Electric agreed to continue in good faith to negotiate settlements of outstanding employment discrimination claims against TU Electric and its contractors at the time of signing the agreement. TU Electric also agreed to negotiate in good faith settlements with persons identified by CASE, who had assisted CASE in the CPSES licensing process. A sample of the release which was to be signed if these negotiations were successful was attached as an exhibit to the Licensing Board's order.

As a result of these negotiations, TU reached agreements with three groups of individuals. First, TU reached an agreement settling a lawsuit involving a number of former employees, known as the Atchison plaintiffs. This was a suit pending at the time in the Texas state courts. Second, TU negotiated settlement agreements resolving three of four pending Department of Labor complaints. These agreements are not, to the staff's knowledge, public documents. CFUR's concerns, as clarified below, appear to relate to these agreements. Third, pursuant to the settlement agreement with CASE, TU reached agreement with most of those persons designated by CASE as having assisted it during the licensing process.

In its stay request, CFUR alleged that (1) TU Electric conditioned the settlement of individual claims on the dismissal of the hearings and the withdrawal of CASE, (2) the settlement agreements have not been reviewed by the staff and have not been made public, and (3) that the settlement was not based on the resolution of safety issues. During the meeting which took place on December 7, 1989, CFUR clarified its concerns. CFUR stated its main concern was with the individual Department of Labor agreements. CFUR believes that these individual agreements should be reviewed by the staff to determine if the agreements contain restrictive clauses similar to those found in two settlements of Department of Labor complaints involving two former employees at the Comanche Peak site, Mr. Polizzi and Mr. Mackt:l. Neither of those agreements were in any way related to the settlement of the proceeding in 1988. CFUR believes that the CASE agreements should also be reviewed to determine whether the language of the agreements could be construed as adversely affecting the willingness of the signers to bring safety concerns to the NRC.

To address CFUR's concerns as clarified in the December 7 meeting, the staff took several steps. First, the staff reviewed the responses of TU Electric and its contractors to a generic letter issued to all licensees, applicants, and principal vendors on April 27, 1989. This letter requested that licensees and their contractors identify settlement agreements they executed which contained clauses precluding the signer from bringing safety concerns to the NRC. The staff determined that in response to that letter, TU Electric had not identified any of the agreements which were executed around the time of the Comanche Peak settlement as having restrictive clauses.

In addition, representatives of the Comanche Peak Project Division and the Office of the General Counsel reviewed all of the releases signed by the Atchison plaintiffs in settlement of their lawsuit, and all of the

settlement agreements and releases signed in settlement of the Department of Labor Complaints pending at the time of the Comanche Peak settlement. The staff's review indicated that none of these settlement agreements and releases involve restrictive clauses of the type which were found in previous settlement agreements. In fact, the agreements settling the Department of Labor complaints, contained explicit language which informed the former employee that he/she was free to take any safety concerns to the NRC. The releases signed by the Atchison plaintiffs did not have any specific language concerning the right of the individual to bring safety concerns to the NRC. However, there were no restrictive clauses which precluded the individuals from doing so. In addition, the Atchison plaintiffs were informed by their counsel of their continuing ability to bring their safety concerns to the NRC. The staff also reviewed a sample of the release signed by those receiving compensation for their assistance to CASE. These releases do not contain any restrictive clauses and it was TU Electric's practice that when the individuals presented the signed releases, they were informed of their continuing ability to bring their safety concerns to the NRC. In addition, it is the staff's understanding that CASE did not designate these individuals until mid-1989 and that accordingly, these releases were not executed until long after the settlement of the Comanche Peak proceedings.

The Atchison plaintiffs were mainly people who had already appeared before the Licensing Board as witnesses during the Harassment and Intimidation hearings. There has been no indication that these individuals have any safety concerns which were not already brought to the attention of the staff. As far as the Department of Labor Complainants are concerned, as discussed above, there is specific language in the settlement agreements which they signed that informs them of their right to continue to bring safety concerns to the NRC. In fact, one of these individuals has engaged in a continuing dialogue with the staff since he signed the agreement. Thus, there is no evidence that CFUR's concerns raise any safety issues with respect to the settlements with individuals entered into around the time of the settlement of the Comanche Peak proceeding. The staff has not found any evidence of an intent, either express or implied, to keep those who signed individual agreements from presenting their safety concerns to the NRC. Therefore, the mere fact of a link between the negotiation of individual settlements and the general settlement of the Comanche Peak proceedings did not result in stopping the flow of safety information to the NRC and, thus, does not raise a safety issue.

With respect to the general settlement agreement between the parties to the proceeding, as required by the agreement, CASE has been given and has taken an active part in monitoring the activities at the Comanche Peak site. CASE has made both TU Electric and the NRC aware of issues which are of concern to CASE. Therefore, the settlement has, in fact, resulted in the continuing resolution of safety issues presented by CASE, and CFUR's allegation in this area is without merit.

The NRC has issued a proposed rule to make it clear that any restrictive clauses in settlement agreements, even language that might be perceived as restrictive, is not permitted. A final rule which considered public comments is before the Commission. All of the agreements associated with the CASE settlement are consistent with the proposed rule.

In summary, the staff finds that the agreements are not restrictive, and events which have taken place since the signing of those individual agreements indicate that the individuals who signed the agreements do not consider themselves precluded from bringing safety concerns to the NRC. Therefore, the staff has determined in response to the Commission's Order of October 19, 1989, that there are no safety issues raised by CFUR's allegations with respect to the settlement of the Comanche Peak proceedings.

8. Issue

Kapton wiring. Although TU spokesmen have repeatedly denied Kapton problems in any safety related installations, and have stated that all Kapton has been properly installed, on 9/28/89, a flashover occurred which destroyed several wires as a result of Kapton insulation. A March 1989 inspection report states that certain allegations regarding Kapton "will remain open."

CFUR wants to know where Kapton is used, and why it is acceptable.

Evaluation

Kapton is a trade name for aromatic polyimide, poly p, p', diphenyloxide, - pyromellitimide, manufactured by the DuPont Company. As documented in NRC Inspection Report 50-445/89-04; 50-446/89-04 (Attachment 13) Kapton is utilized in Class 1E applications in the following equipment at Comanche Peak:

- Electrical Conductor Seal Assemblies
- Containment Electrical Penetrations
- Gammametric Neuton Flux Monitoring System Cables
- Borg Warner Feedwater Isolation Valve Solenoids
- Electric Hydrogen Recombiner
- Incore Thermocouples

The acceptability of Kapton insulated conductors is based primarily on the component environmental qualification packages. These documents, which are maintained by the applicant at the plant site, typically refer to both the type of testing which was used to simulate accident conditions and the applicability of unique plant component configurations which incorporate Kapton, to the design basis accident conditions. Additionally, the reliability of Kapton-insulated conductors in commercial nuclear power applications has been established based on extensive operational experience under normal and transient plant conditions.

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-8064

FEB 18 1993

Dockets 50-445; 50-446
Licenses NPF-87; NPF-88

TU Electric
ATTN: W. J. Cahill, Jr., Group Vice President
Nuclear Engineering and Operations
Skyway Tower
400 North Olive Street, L.B. 81
Dallas, Texas 75201

SUBJECT: OI INVESTIGATION 4-90-007

This is to inform you that the NRC's Office of Investigations (OI) completed an investigation into allegations made in 1988 that "hush money" had been paid to prevent individuals from presenting safety information to an NRC licensing board and that TU Electric officials made material false statements to the licensing board to conceal significant safety flaws in pipe support designs.

The investigation did not produce sufficient evidence to substantiate the allegations. The synopsis from the investigation report is attached. The NRC has completed its review of this matter and plans no further action.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its attachment will be placed in the NRC's Public Document Room.

Sincerely,

James L. Milhoan
Regional Administrator

Attachment: Synopsis (OI4-90-007)

cc w/attachment:

TU Electric
ATTN: Roger D. Walker, Manager of
Regulatory Affairs for Nuclear
Engineering Organization
Skyway Tower
400 North Olive Street, L.B. 81
Dallas, Texas 75201

SYNOPSIS

On April 3, 1990, the Executive Director for Operations, Nuclear Regulatory Commission (NRC), requested that an investigation be initiated after an alleger filed a pleading with the NRC on July 6, 1988, claiming that his former legal counsel and the Government Accountability Project (GAP) had entered into a secret settlement that would have required the alleger to forego his rights to raise concerns and/or appear as a witness in the Comanche Peak Steam Electric (CPSES) Atomic Safety Licensing Board (ASLB) hearings. On July 10, 1988, this same individual sent a letter to the NRC alleging that "certain managers and engineers still employed on site by Texas Utilities" had presented "perjured testimony" or had made deliberate misstatements to the NRC and the ASLB. Similar concerns were related in a 10 CFR 2.206 petition filed on July 30, 1991, by the alleger's attorneys.

The alleger filed a discrimination complaint with the Department of Labor (DOL), and it was determined he was not discriminated against by Texas Utilities (TU). An appeal was made to the Administrative Law Judge (ALJ) and subsequently to the Secretary of Labor with a final ruling against the alleger.

The Office of Investigations (OI) made numerous attempts to interview the alleger without success. Counsel for the alleger told OI that the alleger had presented all of his concerns and speaking with him would be a "rehash" of previously identified information. Based on a review of available documentation and the NRC staff's determination that the alleger's stated concerns had been previously resolved by the NRC, this investigation failed to substantiate allegations that the TU settlement constituted "hush money" and prevented the alleger from presenting safety information to the ASLB, and that TU officials made material false statements to the ASLB in order to conceal significant safety flaws in the design of the CPSES pipe support system.

Juanita Ellis
President - CASE
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Honorable Dale McPherson
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UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 92-3411

Sandra Dow, etc., et al., Appellants

v.

Texas Utilities Company, et al.
(WD of PA (Pittsburgh) D.C. Civil 91-01238)

APPELLANTS' MOTION TO DISMISS APPEAL

TO THE HONORABLE JUSTICES OF THIS COURT:

Comes now, R. Micky Dow, himself, and on behalf of Disposable Workers of Comanche Peak Steam Electric Station, of which he is an officer, hereinafter appellants, and files this, their Motion To Dismiss Appeal, and for cause would show:

1. Appellants Unable to Support Appeal.

The original cause of action, and this appeal, were filed on affidavits of inability, and, although the granting of appellants' motion for leave to proceed in forma pauperis was granted, this only saved them the necessity of prepaying filing fees and service costs; and in no way saved them any of the litigation costs (e.g. deposition costs, etc.) that would normally follow. Appellants have discovered that these relative costs are byond their capability to pay, and, rather than drag this matter endlessly through the court, and place all parties at a decided disadvantage, appellants have decided, in the interest of justice, to all, to move for dismissal of this appeal

2. New Evidence, Inability to Corroborate Existing Evidence Deciding Fact.

Since the filing, and the request to reinstate this appeal, new evidence has come to appellants which casts serious doubts in the minds of the appellants, as to whether or not defendants Juanaita Ellis/C.A.S.E.;

C.F U R.; Billie Pirner Garde, and G.P Hardy were properly named as defendants, with the filing of the original complaint, in the Western District Of Pennsylvania. The evidence mentioned hereinabove tends to support the theory that these parties did not bear any manner of guilt, or fault, nor was there any manner of liability on their part, with regard to any and all allegations contained in that original complaint, and therefore, these parties must definately be dismissed as unneeded.

In addition, appellants' obivous indegency precludes their obtaining the corroborative material, and evidence, necessary to support any and all claims raised against the other defendants to this action, and therefore appellants would aver to the court that they are unable to adequately or equitably prosecute this matter any further, and all other parties need, also, be released from any further liability, and this case, in its entirety needs be dismissed at the first opportunity by the court.

WHEREFORE, premises considered, appellants' pray the U.S. Court of Appeals for the Third Circuit dismiss this appeal, at its first opportunity to do so.

Respectfully submitted,

R. Micky Dow

R. MICKY DOW, pro se
506 Mountain View Estates
Granbury, Texas 76048
(817) 573-0923
PLAINTIFF

CERTIFICATE OF CONFERENCE

This is to certify that on the 8th day of March, 1993, conference was had, by telephone, with all parties, or their attorneys, by telephone to discuss this motion, and none opposed the same.

R. Micky Dow