UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:
Ivan Selin, Chairman
Kenneth C. Rogers
James R. Curtiss
Forrest J. Remick
E. Gail de Planque

'93 MAR 31 P1:49

In the Matter of:
TEXAS UTILITES ELECTRIC
COMPANY, et al.

(Comanche Peak Steam
Electric Station, Unit 2)

Docket Nos. 50-446, 50-446-CPA

RESPONSE TO COMMISSION ORDER
OF MARCH 26, 1993
BY R. MICKY DOW, AN INTERESTED PARTY

Comes now R. Micky Dow, an interested party, and files this, his response to the Commission order of March 26, 1993, wherein the Commission required certification, from the license holder, that the language contained in the settlement agreements between TUEC and the minority shareholders contained no language that could be construed as prohibitive to reporting safety and/or contstruction violations to the NRC.

This issue arose because of a letter submitted by the National Whistleblower Center to the Commission which was a response by the attorneys for Tex-La Cooperative to this party, and, therefore, this party is the one most able to file, not only a response to those pleadings filed by TUEC, but to clearly state, for the record, the impression he was left with by that letter from William Burchette, attorney for Tex-La.

1. COMMISSION ORDER NOT SPECIFIC ENOUGH TO CLARIFY ISSUE.

Neither the National Whistleblower Center, nor, especially, this interested party, have ever been employees at CPSES, nor in any other manner business associates thereof; yet, both, and others have continued an active, persistant, and vocal interest in the safety, particularly of the construction of both Units 1 and 2, thereof.

It has never been documented, nor did the Commission inquire, if these agreements, and the language they contained, were ever made available to employees, their families, or the sub-contractors, and, therefore, none could have been aware of any manner of these issues. What is clear, what has caused the concern, first by this party, second by the National Whistleblower Center, and third, apparently, by the Staff itself, was the language in the response to party Dow, from attorney Burchette, which quoted restrictive langeauge with regard to Section 9.2(d) of those agreements, which stated, in specifics, that Tex-La will "encourage and solicit its attorneys . . . not to oppose, or assist ANY THIRD PARTY (emphasis added) in opposing, TU Electric in connection with ANY MATTERS (emphasis added) relating to [CPSES].", which is clearly indicative that the language is preclusive and restrictive, by its failure to exempt employees, relatives, and/or sub-contractors, or mention them in any manner of specifics. The mere use of the words Third Party is all-inclusive.

Further, TUEC was extremely careful, in its inquiries to

to the minority owners, to limit their language to reporting safety concerns to the NRC, by employees; which, at best is mere quasi adherence to the order, and a careful sidestepping of the issue itself. It demands closer, and more specific inquiry by the Commission.

2. The Core Issue Is Still Unit 1.

The settlement agreements with the minority shareholders came immediately on the heels of the questionable agreement which ended the Unit 1 licensing proceedings. It is imperative to stress that those proceedings were not dismissed because all of the contentions/violations/problems had been IDENTIFIED, LOCATED, and CORRECTED, but because, by virtue of the settlement, they were WITHDRAWN. Of course the license was then issued, as a matter of course, there was nothing left on the table to cause further inquiry into the propriety of that issuance.

Simply because the Commission, and the Congress found nothing out of order with the language of the 1988 agreement is totally immaterial, it is the impact that agreement had on licensing that has merit. It is because of the successful preclusion of those contentions from examination that the settlement agreements, the subject of this order, were written in the same manner. It worked once, why not again?

The issue, here, is Unit 1. It was, obivously, because of the timing of the agrements, and the litigation which prompted them, that Unit 1 was the problem. It was because of this that the Burchettte law firm was contacted, which prompted the

questions by this party, the National Whistleblower Center, and the Staff.

It is of no merit how wonderful things HAVE become at CPSES, or what wonderful programs the utility has instituted as a result of simply "being caught" during the Unit 1 process. It does not matter if Unit 2 is perfect in every regard, especially when there is still major doubt about Unit 1. What does matter is the continued evasion of looking at things that WERE NOT ADDRESSED during that period, and the apparent continued worry that they ultimately would be, which is clearly evidenced by these cleverly worded settlement agreements. What is important to remember is that if Unit 2 is licensed, and begins operating at full-power, and, then, something does occur with Unit 1, the result will be TWICE as tragic with two units on line, and twice the potential.

3. Condition of the Mind, the Original Whistleblowers the Key.

What the Commission needs to look at, again, is the condition of the mind of anyone who reads, or has knowledge of these agreements. What does a reasonable man surmise from that language, and, the answer is self-evident. It means silence.

The whistleblower story is old and tired, but it has not changed. The current problems with Gulf States, and Comanche Peak are proof. Whistleblowers are still harassed, in spite of Section 211. People are still murdered, in spite of the death penalty. This party had no problem in identifying the true meaning of the language of the minority settlement agreements, or the letter from Burchette. The National Whistleblower Center had

none. and, neither, seemingly did the Staff themselves. The records of the NRC will clearly show who truly are responsible for allegations that turn out to be valid. and the bulk of which at least result in either proposed civil penalties, and/or major reprimand. It is groups like Disposable Workers, and the National Whistleblower Center, who cannot be threatened with their jobs and livelihood who are responsible. The only one who has anything to the contrary to offer is the utility, who says on the one hand "there's nothing wrong at Unit 1, because it has a license, and there's nothing wrong with Unit 2 because of the programs we've initiated after we got caught on Unit 1, but if anyone dares to bring the subject up, we'll take our settlement monies back, or we will spend untold amounts of money and time to make sure they can't find a forum to present these issues.

What about the people who DO HAVE testimony, allegations, and proof to offer, who have filed repeated affidavits with this Commission attesting so, and saying clearly that they were told they had lost that opportunity forever, and if they tried to do anything else, or assist anyone else in doing so, they would lose what they had received, or worse? If this Commission is to honestly accept the fact that this utility did nothing to force parties to keep their silence, then let them ask the parties themselves, and not take the repeated word of one who has been caught in the very act of covering up safety and construction violations, and would have gotten away with it had they not paid the people bringing the contentions to withdraw them. But, they

continue to spend thousands of dollars, hundreds of hours of the public and this Commissions time with tactics and pleadings designed for the sole purpose of denying a forum whereby these issues can be settled once and for all.

The foregoing notwithstanding, the Commission is respectfully asked, what about the contentions of Charles Atchison that could not be reintroduced, as the utility says all the other whistleblowers had the opportunity to do? Charles Atchison passed away before he had the opportunity to do so. This party, however, represents his widow, has those papers and contentions, and is willing to place them on the record. They consist, not of vague allegations, as the utility would have the Commission believe, but, rather, unexamined NCR's, log sheets which were altered, and design plans and drawings, also altered, coupled with the testimony of Ron Jones who was privy to this data with Mr. Atchison.

WHEREFORE, PREMISES CONSIDERED, the only viable and equitible decision this Commission can possible reach, in the interest of the public safety, and in course of their administrative responsibility thereto, is to ask, under oath, in open tribunal, both the minority shareholders, and the prior and present whistleblowers, what their condition of mind was during and after the signing of those agreements. To do less is a grave travesty, and serious injustice.

This party joins with the National Whistleblower Center, and urges this Commission stay the licensing of Unit 2 at CPSES until and if all answers are gotten to these, and other, questions.

Respectfully submitted,

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

CERTIFICATE OF SERVICE

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

R. MICKY DOW, Affiant

Emile Julian
Docketing Section
U.S. Nuclear Regulatory Comm.
11555 Rock Pike
Rockville, Maryland 20852

Charles A. Mullins, Esquire
Office of the General Counsel
U.S. Nuclear Regulatory Comm.
11555 Rock Pike
Rockville, Maryland 20852

George L. Edgar
Newman & Holtzinger
1615 L. Street, N.W.
Washington, D.C. 20036

Mike Kohn
Kohn, Kohn & Calapinto
517 Florida, N.W.
Washington, D.C. 20001

Juanita Ellis
Citizens Association for
Sound Energy
1426 S. Polk
Dallas, Texas 75224

Robert A. Wooldridge
Worsham, Forsythe, Sampels
& Wooldridge
2001 Bryan Tower, Suite 3200
Dallas, Texas 75201