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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE
ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKET NO. 92-668-01-CPA

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

TU ELECTRIC'S ANSWER TO THE SUPPLEMENTAL
PETITION TO INTERVENE AND REQUEST
FOR HEARING OF B. IRENE ORR, D.I. ORR,
JOSEPH J. MACKTAL, JR. AND S.M.A. HASAN

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On July 27, 1992, B. Irene and D.I. Orr, Joseph J. Macktal, Jr. and S.M.A. Hasan ("Petitioners") filed a Petition to Intervene and Request for Hearing. On August 6, 1992, TU Electric answered the petition and opposed the request for leave to intervene on two grounds: first, that neither Joseph Macktal nor S.M.A. Hasan had established their standing to intervene in this proceeding; and second, that Petitioners failed to identify specifically the aspects of the subject matter of this proceeding as to which Petitioners wish to intervene.

On September 11, 1992, the Atomic Safety and Licensing Board ("Licensing Board" or "ASLB") issued a Memorandum and Order affording the Petitioners the opportunity to cure their defective Petition by filing a supplement. On October 5, 1992, the

Petitioners filed such a supplement. 1/ Although the Supplement purports to identify the aspects of the proceeding as to which Petitioners seek intervention as well as set forth a contention, it fails entirely to address the standing of Mr. Macktal and Mr. Hasan. Accordingly, the intervention petitions of Mr. Macktal and Mr. Hasan should be dismissed for the reasons set forth in TU Electric's previous answer. In addition, the Supplement fails to provide any supportable basis for the proposed contention and thus the Petitioners request for a hearing should be denied. 2/

INTRODUCTION

Petitioners' Supplement fails to establish any legally cognizable basis for their intervention or request for a hearing. While the Supplement sets forth a single contention, Petitioners fail to provide any supporting basis as required by 10 C.F.R. § 2.714. Instead, the Supplement consists of little more than vague and conclusory allegations, rambling and at times incomprehensible discussions of events occurring ten or more

1/ Supplement To Petition To Intervene And Request For Hearing Of B. Irene Orr, D.I. Orr, Joseph J. Macktal, Jr., and S.M.A. Hasan (Oct. 5, 1992) ("Petitioners' Supplement").

2/ TU Electric's Answer was to be filed 10 days after service of Petitioners' Supplement. Because Petitioners' Supplement was served by mail, TU Electric's Answer is due on October 20, 1992. See 10 CFR § 2.710 (1992).

years ago and irresponsible and unsubstantiated charges of fraud and other improper conduct.

As we will show, Petitioners' contention 3/ should be rejected for a number of reasons. Petitioners' contention alleges that the delay in construction of Unit 2 was due to TU Electric's intentional conduct which resulted from a corporate policy of violating NRC regulations. That contention is directly contrary to previous findings of the NRC made on a number of occasions. On November 18, 1988, for example, the NRC granted TU Electric a construction permit extension for Unit 2, finding that the delay in the completion of Unit 2 was necessitated, not by intentional and improper conduct in the construction of Unit 1, but by the review and reinspection programs undertaken to ensure the safe design and construction of Units 1 and 2. 4/ In addition, on April 17, 1990, the Commission granted TU Electric an operating license for Unit 1 specifically finding that Unit 1 had been constructed in conformity with the provisions of the

3/ Petitioners' contention states:

The delay of construction of Unit 2 was caused by Applicant's intentional conduct, which had no valid purpose and was the result of corporate policies which have not been discarded or repudiated by Applicant.

Petitioners' Supplement at 7

4/ See 53 Fed. Reg. 47,888-89 (Nov. 28, 1988).

Atomic Energy Act and the Commission's regulations. 5/

Petitioners' conclusory assertions, that TU Electric adopted a corporate policy of violating NRC requirements and that it has not repudiated that policy, are directly contrary to the NRC's prior findings. Those findings are final and conclusive and cannot be challenged in this proceeding. Petitioners' contention should be rejected on that basis alone.

Second, Petitioners' Supplement fails to allege even a single fact in support of their contention that Unit 2 was delayed due to improper and intentional conduct on the part of TU Electric. Instead, Petitioners simply point to the record compiled in a previous and long-concluded proceeding involving Unit 1 and allege that the record in that proceeding "taken as a whole" somehow demonstrates that a factual dispute exists as to whether Unit 2 was delayed due to improper conduct during the construction of Unit 1. 6/

Finally, the bulk of Petitioners' Supplement consists of nothing more than a confused and often disingenuous discussion of disparate events occurring over the last ten years having utterly nothing to do with TU Electric's construction permit extension request. In virtually every instance, the "facts"

5/ Texas Utilities Electric Co., Docket No. 50-445, Comanche Peak Steam Electric Station, Unit No. 1, Facility Operating License No. NFP-87 (Attached to Letter to W.G. Council (TU Electric) from C.I. Grimes (NRC) dated April 17, 1990); 55 Fed. Reg. 17,329 (Apr. 24, 1992).

6/ Petitioners' Supplement at 3.

asserted by Petitioners were previously brought to the attention of the Commission and satisfactorily resolved prior to the issuance of the Unit 1 operating license. Most importantly, contrary to the requirements embodied in the NRC's well settled case law, none of these "facts" demonstrates intentional misconduct leading to the delay of Unit 2, a corporate policy of violating NRC regulatory requirements, or a failure to repudiate any improper corporate policy, and consequently, the Petitioners' contention cannot be admitted.

In summary, Petitioners' Supplement fails to provide any basis for their contention much less establish, as required by 10 C.F.R. § 2.714, that a dispute exists as to a material issue of fact. Accordingly, for the reasons which follow, Petitioners' request to intervene should be denied.

I. BACKGROUND

TU Electric is providing this background in order to place in perspective the unsupported allegations contained in Petitioners' Supplement. Petitioners contend that the current delay in Unit 2 is traceable to unspecified conduct occurring during the construction of Unit 1. They therefore seek to litigate the question of whether Unit 1 (which currently is in operation) was itself delayed due to intentional misconduct by TU management thereby leading to the current delay in Unit 2. As support for this assertion, Petitioners do no more than point to

the record in a prior construction amendment proceeding involving a 1986 request by TU Electric to extend the latest date of construction completion for Unit 1. 7/ As the following discussion will show, the very issue which Petitioners seek to raise in this proceeding has previously been fully and conclusively resolved by the NRC.

C. December 19, 1974, the Atomic Energy Commission issued Permit No. CPPR-126 for the Comanche Peak Steam Electric Station ("CPSES") Unit 1 with an expiration date of August 1, 1981. 8/ The expiration date for Unit 1 construction was subsequently extended to August 1, 1985. 9/ On January 28, 1986, during a routine document review, the NRC discovered that the permit had expired without TU Electric having first sought an extension.

By letter dated January 29, 1986 as supplemented on February 4, 1986, TU requested an extension until August 1, 1986, stating that its failure to file a timely extension request was an administrative oversight. 10/ TU Electric also stated that good cause supported the request because the delay was attributable to major efforts to reinspect and reanalyze various structures, systems, and components [that] have been ongoing

7/ See Petitioners' Supplement at 3-4 and n.2.

8/ 39 Fed. Reg. 44,796, 44,797 (Dec. 27, 1974).

9/ 47 Fed. Reg. 19,835 (May 7, 1982).

10/ 51 Fed. Reg. 5,622 (Feb. 14, 1986).

since the fall of 1984 in order to respond to questions raised by the NRC Staff's Technical Review Team [and other sources]." 11/ The request also noted that TU Electric had formed the Comanche Peak Response Team and submitted a Program Plan to respond to questions raised by the NRC Staff. On February 10, 1986, the NRC granted the extension concluding that TU Electric had demonstrated good cause. 12/

On January 31, 1986, Citizens Association for Sound Energy ("CASE"), an intervenor in the ongoing operating license proceeding, filed a motion with the Commission requesting, among other things, a hearing regarding TU Electric's construction permit extension request. After a series of proceedings before the Commission, CASE's request for a hearing was referred to the Licensing Board. On October 30, 1986, the Licensing Board admitted CASE's Amended Contention 2 which provided as follows: 13/

The delay of construction of Unit 1 was caused by Applicants' intentional conduct, which had no valid purpose and was the result

11/ TXX-4680, Letter to H.R. Denton (NRC) from W.G. Counsil (TU Electric) at 1 dated Jan. 29, 1986; Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 1), CLI-86-4, 23 NRC 113, 115 (1986), aff'd, Citizens Association for Sound Energy v. NRC, 821 F.2d 725 (D.C. Cir. 1987).

12/ Letter to W.G. Counsil (TU Electric) from V.S. Noonan (NRC) dated Feb. 10, 1986; 51 Fed. Reg. at 5622.

13/ Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 1), LBP-86-36A, 24 NRC 575, 580 (1985), aff'd, ALAB-868, 27 NRC 912 (1987).

of corporate policies which have not been discarded or repudiated by Applicants.

Based on a settlement between TU Electric, CASE and the NRC Staff, on July 13, 1988, the Licensing Board dismissed both the operating license proceeding and the construction permit extension proceeding. 14/

Subsequently, on November 18, 1988, in response to TU Electric's requests, the NRC again issued orders extending the latest construction completion dates for both Units 1 and 2. In finding that good cause supported the extension for Unit 1, the NRC found that the delay was due to the intensive program of review and reinspection of the design and construction of Unit 1 and Unit 2 undertaken by TU Electric. 15/ Noting that the program had been considerably expanded during the prior two years, the NRC concluded: 16/

This expansion has resulted in a complex program of design and hardware validation, design-hardware reconciliation, QA/QC activities, and third-party review. The Staff believes the Applicants have been assiduous in their efforts to detect and correct actual and potential violation of NRC regulations and complete construction of the

14/ Texas Utilities Electric Co., (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-88-18B, 28 NRC 103 (1988).

15/ 53 Fed. Reg. 47,888-89 (Nov. 28, 1988).

16/ Evaluation of the Request for Extension of latest Construction Permit Completion Date, Comanche Peak Steam Electric Station, Unit No. 1, Texas Utilities Electric Co., Docket No. 50-445 (Nov. 18, 1988) (Attached to Letter to W.G. Council (TU Electric) from C.I. Grimes (NRC) dated Nov. 10, 1988).

plant. The Staff, therefore, concludes that the Applicants have demonstrated that there is good cause for the delay which warrants an extension of the construction permit for Unit No. 1.

Similarly, in regard to Unit 2, the NRC found good cause for the extension. 17/ The NRC's evaluation for Unit 2, like its Unit 1 evaluation, specifically noted the expanded remedial programs undertaken by TU Electric. The NRC found that: 18/

the temporary direction of resources since mid-1985 to activities under the remedial program to Unit No. 1 rather than to Unit No. 2, as well as the temporary suspension of Unit No. 2 construction for about one year beginning in April 1988 (which will allow the Applicants time to make a more complete determination of any modifications that may be required for Unit No. 2 based upon the knowledge they gain from the reinspection and corrective action program applied to Unit No. 1) have caused delays which have contributed to the need for extending the latest construction completion date for Unit No. 2.

In granting the extension the NRC concluded that these factors demonstrated good cause for the delay and warranted an extension of the construction permit for Unit 2. 19/

17/ 53 Fed. Reg. 47,888 (Nov. 28, 1988).

18/ Evaluation of Request for Extension of the Latest Construction Permit Completion date, Comanche Peak Steam Electric Station, Unit No. 2, Texas Utilities Electric Co. (Nov. 18, 1988) (Attached to Letter to W.G. Council (TU Electric) from C.I. Grimes (NRC) dated Nov. 18, 1988).

19/ Id. at 2; 53 Fed. Reg. at 47,888.

Construction of Unit 1 was successfully completed and a low power operating license issued in February 8, 1990. 20/ On April 16, 1990, the Commission approved the issuance of a full power license which was subsequently issued on April 17, 1990. 21/ In doing so, the NRC made the following findings: 22/

- B. Construction of the Comanche Peak Steam Electric Station, Unit No. 1 (the facility) has been substantially completed in conformity with Construction Permit No. CPPR-126 and the application, as amended, the provisions of the [Atomic Energy] Act and the regulations of the Commission;

* * *

- D. There is reasonable assurance: (i) that the activities authorized by this operating license can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations set forth in 10 CFR Chapter I. . . .

* * *

- G. The issuance of the license will not be inimical to the

20/ 55 Fed. Reg. 5525 (Feb. 15, 1990).

21/ 55 Fed. Reg. 17,329 (Apr. 24, 1990).

22/ Texas Utilities Electric Co., Docket No. 50-445, Comanche Peak Steam Electric Station, Unit No. 1, Facility Operating License No. NPF-87 (Apr. 17, 1990) (Attached to Letter to W.G. Counsil (TU Electric) from C.I. Grimes (NRC) dated Apr. 17, 1990).

common defense and security or
to the health and safety of the
public.

On February 3, 1992, TU Electric requested an extension of the Unit 2 construction permit. In its request, TU Electric explained that the NRC had previously granted an extension of the Unit 2 construction permit predicated, in part, upon an estimated one year suspension in significant construction activities allowing TU Electric to concentrate its resources on completion of Unit 1. Because the completion of construction and start-up of Unit 1 took longer than originally estimated, the suspension of significant construction activities for Unit 2 also lasted longer than originally estimated. TU Electric noted that the NRC previously found good cause for the previous extension necessitated in part by the suspension of significant construction activities for Unit 2 and urged the NRC to find that the additional suspension period constituted good cause for the current request. 23/

On July 28, 1992, the NRC Staff found that TU Electric had demonstrated good cause and granted the requested extension. 24/

23/ TXX-92041, Letter to NRC from W.J. Cahill, Jr. (TU Electric) dated Feb. 3, 1992.

24/ See 57 Fed. Reg. 34,323 (Aug. 4, 1992).

II. PETITIONERS HAVE FAILED TO MEET THE
REQUIREMENTS OF 10 C.F.R. § 2.714

The Commission has established strict pleading requirements for the admission of contentions. Section 2.714(b) of the Commission's rules provides, in pertinent part, as follows: 25/

- (2) Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide the following information with respect to each contention:
 - (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 in proving the contention at the hearing, 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 the experts opinion.
 - (iii) Sufficient information . . . to show that a genuine dispute exists with the applicant on a material issue of law or fact. The showing must include references to the specific portions of the application . . . that the petitioner disputes and the supporting reasons for each dispute

25/ 10 C.F.R. § 2.714 was modified effective September 10, 1989 in order to "ensure that the resources of all parties are focused on real rather than imaginary issues." 51 Fed. Reg. at 24,365, 24,366 (July 3, 1986); 54 Fed. Reg. 33,168, 33,179 (Aug. 11, 1989).

In meeting the requirements of 10 C.F.R. § 2.714(b), a petitioner must do far more than simply make vague, indefinite or conclusory allegations. See Louisiana Energy Services, L.P., (Claiborne Enrichment Center), LBP-91-41, 34 NRC 332, 335, 357, 359 (1991). Rather, the petitioner has the burden of presenting well-supported bases having a clear nexus to the contention sought to be admitted. See 10 C.F.R. § 2.714(b)(2)(ii) (1992). The information presented must be "sufficient to indicate that a genuine issue of material fact or law exists." Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-91-35, 34 NRC 163, 168 (1991); 10 CFR § 2.714(b)(2)(iii) (1992).

Underscoring the importance of adequately supported contentions, the Commission held that a Licensing Board is not permitted to infer the basis for a contention. See Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), CLI-91-12, 34 NRC 149, 155-56 (1991). Nor are they required to review documents or other information in an effort to find some basis for a contention not offered by the petitioner. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 240-41 (1989). In short, if the basis for a contention is not presented to the Board with sufficient clarity and specificity, the contention must be rejected. Arizona Public Service Co., 34 NRC at 155-56.

Finally, the contention and its supporting bases must be within the scope of issues established by the Commission.

Arizona Public Service Co. (Palo Verde Nuclear Generating Station Units 1, 2 and 3), LBP-91-19, 33 NRC 397, 400 (1991) rev'd in part, CLI-91-12, 34 NRC 149 (1991). In the context of a construction permit extension proceeding, "a contention having nothing whatsoever to do with the causes of delay or the permit holder's justifications for an extension cannot be litigated" Washington Public Power Supply System (WPPSS Nuclear Project Nos. 1 and 2), CLI-82-29, 16 NRC 1,221, 1,227, 1230 (1982). Thus, in order to be admissible, a contention must directly challenge "the permit holder's asserted reasons that show 'good cause' justification for the delay." Public Service Co. of New Hampshire (Seabrook Station, Unit 2), CLI-84-6, 19 NRC 975, 978 (1984). Moreover, in those unique cases where the applicant claims good cause for delay due to the need to take corrective actions, a contention must allege (and be supported by adequate bases) that the corrective actions and thus the delay were due to a corporate policy of violating NRC requirements which has not been discarded or repudiated. It should be emphasized that for such a contention to be admitted, Petitioners must allege and establish a basis for a casual relationship between the delay and some identified corporate policy of violating NRC requirements which has not been discarded or repudiated. Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 1), CLI-86-15, 24 NRC 397, 401-403 (1986)).

As we will show, the Petitioners' Supplement fails to set forth an admissible contention for two reasons. First, the proposed contention itself has nothing to do with the causes of the delay in completing construction of Unit 2 and thus is outside the scope of this proceeding. Indeed, the NRC has already conclusively resolved the issues raised by Petitioners' contention in TU Electric's favor. And second, even if Petitioners' contention is found to be otherwise proper, the Petitioners' Supplement falls far short of meeting any of the requirements of 10 C.F.R. § 2.714(b). Accordingly, the contention must be rejected and Petitioners' Request to Intervene denied.

A. Petitioners' Contention Fails To Present A Litigable Issue.

Petitioners' single contention alleges that:

The delay of construction of Unit 2 was caused by Applicant's intentional misconduct, which had no valid purpose and was the result of corporate policies which have not been discarded or repudiated by Applicant.

Petitioners' Supplement at 1. This contention is derived from the Commission's decision in Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 1), CLI-86-15, 24 NRC 397, 401-403 (1986). There, the Commission considered the scope of a construction permit extension proceeding in which TU Electric sought to justify a delay in construction on the basis of corrective actions taken to rectify deficiencies in

construction. In an effort to strike an appropriate balance between the need to encourage corrective actions while at the same time not rewarding non-compliance, the Commission held that a valid contention in such a case must allege that the delay was due to intentional conduct resulting from a corporate policy to speed construction by violating NRC requirements and that the policy was neither discarded nor repudiated. In short, a contention like that proposed by Petitioners here is proper only in those unique circumstances where the delay was caused by the need to take corrective actions to remedy safety deficiencies. As discussed below, the circumstances here are markedly different.

As a result of a number of factors, TU Electric decided to conduct extensive design and construction validation programs. Since those programs were not accounted for in the original schedule for CPSES, TU Electric needed to apply for a construction permit extension for CPSES Unit 1 in 1988 and a construction permit extension for CPSES Unit 2 in 1987. Because one asserted cause of delay involved corrective actions to remedy safety deficiencies, the contention proposed by Petitioners might have been admissible in those proceedings assuming the requirements of 10 C.F.R. § 2.714 were met.

On November 18, 1988 the NRC granted extensions of the construction permits for Units 1 and 2 finding that the delay in completing construction was justified in order to enable TU

Electric to complete the validation programs. The NRC thus concluded that these programs constituted good cause for delay thus warranting the extension. In reaching that conclusion, the NRC necessarily rejected the notion that the delay in construction was due to any intentional misconduct or corporate policy which had not been repudiated.

In contrast to the previous extensions for CPSES Units 1 and 2, the current extension for CPSES Unit 2 was not necessitated by the decision to conduct the validation program for Unit 2, because the previous extension for Unit 2 accounted for the need to conduct these programs. Instead, as discussed in TU Electric's application dated February 3, 1992 and the NRC's Safety Evaluation dated July 28, 1992, the current extension is needed because TU Electric suspended significant design and construction activities for CPSES Unit 2 to allow TU Electric to concentrate its resources on completion of construction and start-up activities and the validation programs for CPSES Unit 1.

As demonstrated by Petitioners' Supplement, the proposed contention does not challenge TU Electric's "asserted reasons that show (good cause) justification for the delay" as required by Public Service Co. of New Hampshire, CLI-84-6, 19 NRC at 978. In fact, nowhere in their Supplement do Petitioners even address the facts stated in TU Electric's request. Rather, as Petitioners concede in their Supplement, their contention is directed not at TU Electric's construction activities subsequent

to the previous extensions granted by the Commission but at the actions taken by TU Electric "prior to the settlement of the CPA-1 proceeding" in July 1988 and prior to the 1988 construction permit extensions. 26/ Properly understood, Petitioners' contention is nothing more than a direct challenge to the NRC's previous determinations of good cause and an attempt to reopen previously concluded construction permit extension proceedings. Therefore, Petitioners' proposed contention should be rejected.

There is, however, an even more fundamental reason for rejecting the alleged factual basis for Petitioners' contention and denying their intervention request. As demonstrated by their reliance on the CPA-1 record, the gravamen of Petitioners' contention is that the delay in construction of Unit 2 is due to previous delays in the construction of Unit 1 resulting from an improper corporate policy aimed at violating NRC regulations to speed construction. That claim is directly and unequivocally contrary to findings made by the NRC in granting TU Electric an operating license for Unit 1.

On April 17, 1990, the NRC issued a full power operating license for the Comanche Peak Steam Electric Station, Unit 1 and made the following finding: 27/

26/ Petitioners' Supplement at 3.

27/ Texas Utilities Electric Co., Docket No. 50-445, Comanche Peak Steam Electric Station, Unit No. 1, Facility Operating License No. NPF-87 (Apr. 12, 1990) (Attached to Letter to W.G. Council (TU Electric) from C.I. Graves (NRC) dated (continued...)

- B. Construction of Comanche Peak Steam Electric Station, Unit No. 1 (the facility), has been substantially completed in conformity with the Construction Permit No. CPPR-126 and the application, as amended, the provisions of the [Atomic Energy] Act and the regulations of the Commission;

Petitioners' contention which alleges that delays in construction of Unit 1 were the result of intentional misconduct in furtherance of a corporate policy of violating NRC requirements cannot be squared with the NRC's contrary finding that construction of Unit 1 was completed in conformity with "the provisions of the [Atomic Energy] Act and the regulations of the Commission." Petitioners' contention is an impermissible challenge to the NRC's prior final and conclusive findings and must therefore be rejected on that basis as well.

- B. Petitioners Failed To Allege Any Facts Supporting Their Contention That The Delay In Constructing Unit 2 Was The Result Of Intentional Conduct.

Under 10 C.F.R. § 2.714(b)(2)(ii), Petitioners must provide a "concise statement of the alleged facts or expert opinion which support the contention. . . ." Petitioners' entire factual basis for their contention that the current delay in

construction of Unit 2 was due to intentional and improper conduct is the following: 28/

An extensive record was created during the course of the CPA-1 proceeding. Petitioners incorporate by reference this record, and allege that, taken as a whole, the CPA-1 record demonstrates that prior to the settlement of the CPA-1 proceeding by the parties, TUEC had not repudiated or discarded corporate policy which resulted in delays in construction of the CPSES.

Plainly, Petitioners' obligation to provide the specific facts supporting their contention cannot be met by the mere reference to an entire administrative record compiled in a previously concluded adjudicatory proceeding. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 240-41 (1989).

The mandatory requirements of 10 C.F.R. § 2.714 are intended to provide the applicant sufficient notice of the facts supporting the contention in order to allow the preparation of a response and more importantly to allow the Licensing Board to make a reasoned judgment as to whether a dispute of material fact exists. General Public Utilities Nuclear Corp. (Three Mile Island Nuclear Station, Unit 1), LBP-86-10, 23 NRC 283, 285 (1986). Neither of these goals are served by the vague reference to a prior administrative record and the bare assertion that

28/ Petitioners' Supplement at 3.

somewhere in that record are facts supporting a contention. 29/

C. Petitioners' Supplement Fails to Satisfy the Commission's Requirements for Admission of a Contention in a Construction Permit Extension Proceeding.

In Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 1), CLI-86-15, 24 NRC 397 (1986), the Commission established a three pronged test for judging the admissibility of contentions in cases such as this:

- 1) There must be a delay in construction caused by correction of past safety problems.
- 2) The past safety problems must have been caused by a "deliberate corporate policy" of violating NRC requirements.
- 3) This corporate policy must not have been discarded or repudiated and must be ongoing.

A proposed contention must satisfy all three prongs to be admissible. Id. at 401-403.

The vast majority of Petitioners' Supplement (pages 4 - 30) makes an attempt to satisfy this three-pronged test by discussing a number of different events and alleging that they demonstrate a corporate policy of violating NRC requirements.

29/ To be sure, Petitioners also point to two pleadings filed in the CPA-1 docket comparing some 193 pages of material in which they also "incorporate by reference." Petitioners do not, however, specify any "facts" contained in these pleadings which support their contention. Petitioners' Supplement at 3.

For a number of reasons, these allegations are not sufficient to satisfy the requirements for admission of a contention as specified by the Commission in CLI-86-15.

First, Petitioners do not allege that any delay in construction of CPSES was caused by these events or by the corrective action for these events. In particular, Petitioners do not allege that these events have any nexus to the delay in construction of Unit 2 between November 18, 1988 (the date of the previous order extending the construction permit for CPSES Unit 2) and August 1, 1992 (the previous expiration date of the construction permit for Unit 2). ^{30/} Therefore, the Petitioners' allegations regarding these events do not satisfy the first prong of the Commission's test, and Petitioners' contention should be rejected for this reason alone.

Second, the Petitioners have not provided any basis for an allegation that the events reflect a "deliberate corporate policy" of violating NRC requirements. At best, the Petitioners

^{30/} Petitioners claim that Unit 2 was delayed because of a delay in completion of Unit 1. Petitioners' Supplement at 4 n. 2. However, most of the events discussed by the Petitioners occurred prior to November 18, 1988, which is the date of the last extension of the construction permit for Unit 1 and the date of a previous extension of the construction permit for Unit 2. Any delay occurring prior to November 18, 1988, is not relevant in this proceeding. In granting the extension, the NRC found that there was good cause for the delay prior to that date. Petitioners do not claim, and provide no basis for a claim, that any of the events they cite resulted in a delay in completion of construction of Unit 1 after November 18, 1988. Therefore, Petitioners have not identified any nexus between these events and the instant delay in completion of Unit 2.

point to isolated violations, but provide no basis for believing that these violations evidence or resulted from a "deliberate corporate policy" of violating NRC requirements. Therefore, Petitioners have not satisfied the second prong of the Commission's test.

Finally, with one exception involving some more-recent violations, the events discussed by the Petitioners occurred more than three years ago, and in some cases more than ten years ago. Obviously, such events do not provide any basis for an allegation that TU Electric currently has an ongoing corporate policy of violating NRC requirements. Additionally, TU Electric has long since taken corrective and preventive actions for any problems or violations related to those events. Similarly, the Petitioners have not disputed that TU Electric has taken adequate corrective and preventive actions for the more recent violations they identify. Thus, the Petitioners have not satisfied the third prong of the Commission's test, because they have not provided any basis for believing that TU Electric has an ongoing policy violating NRC requirements or that TU Electric has not repudiated (i.e., corrected) the causes of past violations.

Further discussion of the defects in the Petitioners' Supplement is provided below with respect to the specific events identified by the Petitioners.

1. Settlement Agreements Between TU
Electric and Former Minority
Owners.

Petitioners claim that TU Electric entered into "restrictive" settlement agreements with the former minority owners (Brazos Electric Power Cooperative, Tex-La Electric Cooperative, and Texas Municipal Power Authority) in order to "secret information from the NRC and Petitioners." 31/ For a number of reasons, this claim does not form a sufficient basis to support admission of Petitioners' contention.

First, Petitioners do not allege, or provide a basis for an allegation, that these settlement agreements led to any delay in completion of construction of either CPSES Unit 1 or 2. Therefore, these agreements have no nexus to the construction permit extension for CPSES Unit 2.

Second, Petitioners do not identify anything in these settlement agreements which violates an NRC requirement, let alone which evidences a "deliberate corporate policy" of violating NRC requirements. In fact, Petitioners' complaints pertain to a covenant not to sue, which is a standard provision in settlement agreements between commercial entities. 32/ NRC

31/ Petitioners' Supplement at 5-8 and 11-13.

32/ Petitioners also point to an interrogatory answer filed by Brazos in the CPA-1 proceeding. Petitioners' Supplement at 14. As discussed above, that proceeding was settled in 1988, and the settlement was approved by the Licensing Board. Therefore, the interrogatory answer provides no basis for any claim in this proceeding.

has long been aware of these settlement agreements, and approved the transfer of ownership that was the subject of these agreements. 33/

Third, these settlement agreements do not relate to TU Electric's current corporate policy or to whether TU Electric has repudiated past policies. Each of the agreements is more than three years old.

Finally, each of these settlement agreements was attached to an application for an amendment to the construction permits CPSES. 34/ These applications were duly noticed in the Federal Register, 35/ and interested persons had an opportunity to request a hearing. If the Petitioners have a complaint regarding these settlement agreements, the time to have

33/ In this regard, Petitioners previously filed a petition under 10 CFR § 2.206 seeking enforcement action against TU Electric based upon allegations that the Tex-La settlement agreement violated Section 210 of the Energy Reorganization Act and 10 CFR § 50.7(f). TU Electric responded to this petition on August 6, 1992, demonstrating that the Petitioners had misread the settlement agreement and had misapplied Section 210 and 10 CFR § 50.7(f). TXX-92374, Letter to NRC from W.J. Cahill, Jr. (TU Electric) dated Aug. 6, 1992 (Attachment B).

34/ 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 Brazes 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).

35/ 53 Fed. Reg. 31778 (Aug. 19, 1988); 53 Fed. Reg. 50,610 (Dec. 16, 1988); 54 Fed. Reg. 37,063 (Sep. 6, 1989).

raised the complaint was in response to those notices. Petitioners should not be able to circumvent those amendment proceedings by raising an issue regarding the settlement agreements in this proceeding.

In summary, Petitioners' arguments related to the settlement agreements with the CPSES minority owners do not satisfy any of the three prongs of the Commission's test. Therefore, they do not provide a sufficient basis for admission of a contention in this proceeding.

2. Settlement Agreements with Macktal and Polizzi.

Petitioners state that settlement agreements were executed between Joseph Macktal and the constructor of CPSES (Brown and Root) and between Lorenzo Polizzi and the architect-engineer for CPSES (Gibbs and Hill) prior to settlement of the first construction permit extension proceeding for CPSES Unit 1 (CPA-1) and the CPSES operating license (OL) proceeding in 1988. Petitioners allege that these settlement agreements demonstrate a "practice of concealing evidence directly baring [sic] on the issues litigated in the CPA-1 proceedings." ^{36/} For several reasons, these allegations are an insufficient basis for admission of Petitioners' contention.

First, Petitioners do not allege, or provide a basis for an allegation, that these settlement agreements led to any

^{36/} Petitioners' Supplement at 8-9, 11-13, and 28.

delay in completion of construction of either CPSES Unit 1 or 2. Therefore, these agreements have no nexus to the construction permit extension for CPSES Unit 2.

Second, Petitioners do not identify anything in these settlement agreements which, at the time, violated an NRC requirement or evidenced a "deliberate corporate policy" of violating NRC requirements. These agreements were executed prior to the promulgation of 10 CFR § 50.7(f) in 1990, which prohibited settlement agreements with the type of clause that is of concern to Petitioners. Thus, at the time these settlement agreements were executed, the clause in question did not violate any NRC requirement. Furthermore, in 1988, the Commission concluded that the Macktal settlement agreement only restricted his right to appear as a witness or party and not his right to bring safety concerns to the NRC, and that "[a]s long as the individual's right to bring matters to the NRC in a reasonably convenient manner is not curtailed, we do not see a violation of federal law or regulation." Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-88-12, 28 NRC 605, 612-13 (1988). Although the Commission later withdrew this statement as being unnecessary to its decision (see CLI-89-6, 29 NRC 348, 355 (1989)), the statement nevertheless indicates that

the Macktal and Polizzi settlement agreements, at the time they were executed, did not violate NRC requirements. 37/

Third, these settlement agreements do not relate to TU Electric's current corporate policy or to whether TU Electric has repudiated past policies. Each of the agreements is more than four years old, and TU Electric was not a party to either agreement. Furthermore, it is undisputed that corrective action was taken, in that Mr. Macktal and Mr. Polizzi were informed that the restrictive clauses would not be enforced. 38/

Finally, as the Petitioners themselves acknowledge, these settlement agreements were executed while the CPA-1 and OL proceedings were still pending. If the Petitioners have ever had any cognizable complaint regarding these settlement agreements, the time to have raised the complaint was in those proceedings. In fact, the Macktal settlement agreement was subject to extensive litigation in the CPA-1 and OL proceedings and in subsequent appeals to the courts. 39/ Petitioners should not

37/ The Secretary of Labor subsequently held that the restrictive clauses were void as contrary to public policy (but made no finding that the clauses violated NRC requirements). See e.g., Polizzi v. Gibbs & Hill, Inc., Case No. 87-ERA-38 (July 18, 1989); Macktal v. Secretary of Labor, 923 F.2d 1150 (5th Cir. 1991).

38/ TXX-89525, Letter to NRC from W.J. Cahill, Jr. (TU Electric) at 2 dated July 31, 1989.

39/ See Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-88-12, 28 NRC 605 (1988) and CLI-89-06, 29 NRC 348 (1989), aff'd Citizens for Fair Utility Regulation v. NRC, 898 F.2d 51, 53 n.3 (5th (continued...))

be able to circumvent the CPA-1 and OL proceedings by raising an issue regarding the settlement agreements in this proceeding.

In summary, Petitioners' arguments related to the settlement agreements with Macktal and Polizzi do not satisfy any of the three prongs of the Commission's test. Therefore, they do not provide a sufficient basis for admission of a contention in this proceeding.

3. The Notices of Violation.

Pointing to six Notices of Violation (NOVs) issued by the NRC from 1990 to 1992, Petitioners contend, without more, that these NOVs demonstrate that "TUEC has not repudiated its past corporate policy which resulted in the delay of construction of the CPSES." ^{40/} For a number of reasons, these NOVs do not provide a sufficient basis for admission of Petitioners' contention.

First, some of these six NOVs pertain to operation of Unit 1. Thus, these NOVs obviously do not relate to any delay in construction of either Unit 1 or Unit 2. Furthermore,

^{39/} (...continued)

Cir.), cert. denied, 111 S. Ct. 246 (1990). See also Macktal v. NRC, Docket No. 89-1034 (D.C. Cir. June 11, 1990).

^{40/} Petitioners' Supplement at 9-10. Petitioners also attach what they claim is a computer printout of NOVs issued by the NRC "after the disillusionment [sic] of the CPA-1 ASLB." Id. at 10. However, the Petitioners do not explain how any of these NOVs pertain to the issues in this proceeding.

Petitioners do not allege that the remaining NOV's resulted in any delay in construction of either Unit 1 or Unit 2.

Second, in any project even remotely approaching the magnitude and complexity of constructing and operating a nuclear plant, deficiencies and violations are inevitable. See, e.g., Union Electric Co. (Callaway Plant, Unit 1), ALAB-740, 18 NRC 343, 346 (1983). Thus, the mere existence of violations does not necessarily evidence a "deliberate corporate policy" of violating NRC requirements. Petitioners have provided no basis for their argument that the six NOV's reflect or are a result of a deliberate corporate policy of violating NRC requirements.

Finally, Petitioners have not disputed that TU Electric has taken adequate corrective and preventive actions for these NOV's. In particular, the most significant of the six NOV's (i.e., those which were the subject of a civil penalty or were considered for a civil penalty) contained complimentary statements regarding TU Electric's corrective actions. For example:

- ° The Petitioners cite an NOV dated May 17, 1990, related to an event involving receipt inspection that occurred prior to issuance of the Unit 1 operating license. This NOV stated: 41/

The NRC staff recognizes that appropriate corrective actions were subsequently taken

41/ Letter to W.J. Cahill, Jr. (TU Electric) from D.M. Crutchfield (NRC) at 2 dated May 17, 1990.

within the full scope of the problem was recognized. These actions included a management change in the QC Receiving organization, management meetings with the affected inspectors, and dissemination of TU Electric's policy on the importance of properly identifying deficient conditions. These actions, along with the relatively isolated nature of this incident, constituted the basis upon which the NRC staff concluded that this issue had been adequately resolved for the purpose of issuing the low power license.

- ° The Petitioners cite an NOV dated February 21, 1991 [the actual date is February 26, 1991] related to an event involving scaling calculation activities performed prior to the issuance of the Unit 1 operating license. This NOV stated: 42/

Because the corrective actions you have now completed have resulted in acceptable scaling-related documentation, a written response to the Notice of Violation is not required.

Furthermore, in a letter to CASE dated February 27, 1991, the NRC stated that this NOV "did not lead us to conclude that there was a fundamental or pervasive breakdown in the quality assurance program."

- ° The Petitioners cite an NOV dated March 27, 1991, related to an event involving fire watches in Unit 1. This NOV stated: 43/

42/ NRC Inspection Report 50-445/90-47, 50-446/90-47, Cover letter at 2 (Feb. 26, 1991).

43/ Letter to W.J. Cahill, Jr. (TU Electric) from P.D. Martin (NRC) at 2 dated Mar. 27, 1991.

NRC recognizes that TU Electric, through its pursuit of an identified concern, discovered this situation, promptly informed NRC, thoroughly investigated the matter and took prompt and extensive corrective actions. These actions included, but were not limited to, disciplinary action against the responsible individuals, management changes, increased TU Electric involvement in this aspect of the CPSES fire protection program, enhancements in the training and procedural guidance provided to fire watch personnel and an evaluation to assess the potential weaknesses in related programs and similar contractual arrangements.

Additionally, as discussed in Attachment A, TU Electric has taken corrective and preventative actions for the violations associated with each of these six NOVs and the NRC has closed all but the most recent violation. Thus, there is no dispute of material fact that TU Electric has taken appropriate corrective and preventive actions for the violations. Therefore, these violations do not provide any basis for a contention that there is a current or ongoing corporate policy of violating NRC regulations.

In summary, Petitioners' arguments related to the NOVs do not satisfy any of the three prongs of the Commission's test. Therefore, they do not provide a sufficient basis for admission of a contention in this proceeding.

4. "Hush Money" Settlement Agreements.

Petitioners argue that TU Electric "arranged to have whistleblowers paid hush money in exchange for agreeing not to bring safety concerns to the ASLB," because TU Electric allegedly "conditioned the payment of \$5.5 million in whistleblower settlements to the disillusionment [sic] of the OL and CPA-1 proceedings." 44/ For several reasons, these allegations are an insufficient basis for admission of Petitioners' contention.

First, Petitioners do not allege, or provide a basis for an allegation, that these settlement agreements led to any delay in completion of construction of either CPSES Unit 1 or 2. Therefore, these agreements have no nexus to the construction permit extension for CPSES Unit 2.

Second, Petitioners do not identify anything in these settlement agreements which violates an NRC requirement or evidences a "deliberate corporate policy" of violating NRC requirements. The provision in question merely conditioned the agreement upon the dismissal of the CPSES CPA-1 and OL proceedings. As Petitioners apparently concede, the agreements did not restrict the ability of the whistleblowers to inform the NRC of safety concerns or otherwise to participate in protected activity. In fact, these agreements were reviewed by the NRC, which found "that the agreements are not restrictive, and events which have taken place since the signing of those individual

44/ Petitioners' Supplement at 11-13.

agreements indicate that the individuals who signed the agreements do not consider themselves precluded from bringing safety concerns to the NRC." 45/

Third, these settlement agreements do not relate to TU Electric's current corporate policy or to whether TU Electric has repudiated past policies. The agreements are more than four years old.

Finally, as the Petitioners themselves acknowledge, these settlement agreements were executed while the CPA-1 and OL proceedings were still pending. If the Petitioners have a complaint regarding these settlement agreements, the time to have raised the complaint was in those proceedings. Petitioners should not be able to circumvent those proceedings by raising an issue regarding the settlement agreements in this proceeding.

In summary, Petitioners' arguments related to the settlement agreements with the whistleblowers do not satisfy any of the three prongs of the Commission's test. Therefore, they do not provide a sufficient basis for admission of a contention in this proceeding.

45/ See letter to Betty Brink (CFUR) dated Jan. 30, 1990 from James E. Lyons (NRC) Enclosure at 10-13); see also Hearings on Comanche Peak and Rancho Seco Nuclear Power Plants Before The Subcomm. on Nuclear Regulation of the Senate Comm. on Environment and Public Works, 101st Cong., 1st Sess. at 85-94, 139-158 (May 4, 1969).

5. Pipe Support Stiffness Values.

Petitioners allege that incorrect stiffness values were used to certify CPSES pipe supports, and that the Licensing Board in the CPA-1 and operating license proceedings was not informed of this matter. ^{46/} For several reasons, these allegations provide an insufficient basis for admission of Petitioners' contention.

First, Petitioners do not allege, or provide a basis for an allegation, that the issues related to pipe support stiffness values resulted in the instant delay in completion of construction of CPSES Unit 2. Furthermore, Petitioners do not allege that issues related to pipe support stiffness values resulted in any delay in completion of construction of CPSES Unit 1 after November 18, 1988, which is the date of the previous construction permit extension for CPSES Units 1 and 2. Therefore, these agreements have no nexus to the instant construction permit extension for CPSES Unit 2.

Second, Petitioners do not provide any basis for a claim that issues related to pipe support stiffness values indicate a "deliberate corporate policy" of violating NRC requirements, or that information regarding this matter was withheld from the NRC. The undisputed facts are as follows.

In the mid-1980s, Mr. Hasan submitted numerous allegations to the NRC, including allegations regarding pipe

^{46/} Petitioners' Supplement at 14-17.

support stiffness values. On May 28, 1987, the NRC requested that TU Electric investigate Mr. Hasan's allegations. 47/ TU Electric responded to the NRC on July 2, 1987, stating that the class 1 stress problems (and associated pipe supports) were requalified using revised pipe support stiffness values. 48/ On January 6, 1988, the NRC provided Mr. Hasan with TU Electric's response and the NRC's evaluation which concluded that his concern had been adequately resolved. 49/ The Licensing Board was fully aware of these facts prior to settlement and dismissal of the CPA-1 and OL proceedings, because CASE provided the Board with copies of Mr. Hasan's allegations, TU Electric's response, and the NRC's disposition of these allegations. 50/ Furthermore, resolution of issues related to pipe support stiffness values were also addressed in TU Electric's Project Status Report (PSRs) and the NRC Staff's Supplemental Safety Evaluation 51/, both of which were submitted to the Licensing

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- 47/ Letter to W.G. Council (TU Electric) from C.I. Grimes (NRC) dated May 28, 1987, Attachment at 4 (Item No. 26).
- 48/ TXX-6563 Letter to NRC from W.G. Council (TU Electric) dated July 2, 1987, Attachment at 11 (Resolution of Concern 26).
- 49/ Letter to S.M.A. Hasan from F. McKee (NRC) dated Jan. 6, 1988, Enclosure 1 at 1-2.
- 50/ Letters to the Licensing Board from J. Ellis (CASE) dated July 8, 1987 and May 17, 1988.
- 51/ TU Electric, Project Status Report ("PSR") on Large Bore Piping and Pipe Supports (Feb. 26, 1988), Subappendix A5; TU Electric, PSR on Small Bore Piping and Pipe Supports (Feb. 26, 1988), Subappendix A5; NUREG-0797; Safety Evaluation (continued...)

Board by TU Electric. 52/ In short, TU Electric did resolve Mr. Hasan's concerns related to pipe support stiffness values, and the Licensing Board was aware of these concerns and TU Electric's resolution when the CPA-1 and OL proceedings were dismissed.

Third, Petitioners' allegations related to pipe support stiffness values do not relate to TU Electric's current corporate policy or to whether TU Electric has repudiated past policies. These issues are more than four years old. Additionally, as discussed above, it is undisputed that TU Electric took appropriate corrective action for these issues.

Finally, as Petitioners themselves acknowledge, these issues were outstanding (and eventually resolved) while the CPA-1 and OL proceedings were still pending. If the Petitioners have a complaint regarding these issues, the time to have raised the complaint was in those proceedings. Petitioners should not be able to circumvent the CPA-1 and OL proceedings by raising an issue regarding pipe support stiffness values in this proceeding.

In summary, Petitioners' arguments related to pipe support stiffness values do not satisfy any of the three prongs of the Commission's test. Therefore, they do not provide a

51/ (...continued)

Report related to the operation of Comanche Peak Steam Electric Station, Units 1 and 2, Docket Nos. 50-445 and 50-446 Supplement No. 14 ("SSER 14") (Mar. 1988), Appendix A at 20-21.

52/ See LBP-88-18B, 28 NRC at 120 (Exhibits 9 and 10).

sufficient basis for admission of a contention in this proceeding.

6. Pipe Support Certification.

Petitioners allege that TU Electric misled the Licensing Board in the CPSES operating license proceeding regarding certification of pipe supports at CPSES. 53/ For several reasons, these allegations are an insufficient basis for admission of Petitioners' contention.

First, Petitioners do not allege, or provide a basis for an allegation, that the issues related to pipe support certification resulted in the instant delay in completion of construction of CPSES Unit 2. Furthermore, Petitioners do not allege that issues related to pipe support certification resulted in any delay in completion of construction of CPSES Unit 1 after November 18, 1988, which is the date of the previous construction permit extension for CPSES Units 1 and 2. Therefore, these allegations have no nexus to the instant construction permit extension for CPSES Unit 2.

Second, Petitioners do not provide any basis for a claim that the technical issues related to pipe support certification indicate a "deliberate corporate policy" of violating NRC requirements, or that information regarding this

53/ Petitioners' Supplement at 17-27.

matter was withheld from the NRC. The undisputed facts are as follows.

In the mid-1980s, Mr. Hasan submitted numerous allegations to the NRC, including allegations regarding pipe support certification. On May 28, 1987, the NRC requested that TU Electric investigate Mr. Hasan's allegations. 54/ TU Electric responded to the NRC on July 2, 1987, stated that the safety related pipe supports were being validated to a single set of criteria. 55/ On January 6, 1988, the NRC provided Mr. Hasan with TU Electric's response and the NRC's evaluation which concluded that his concern had been adequately resolved. 56/ The Licensing Board was fully aware of these facts prior to settlement and dismissal of the CPA-1 and OL proceedings, because CASE provided the Board with copies of Mr. Hasan's allegations, TU Electric's response, and the NRC's disposition of these allegations. 57/ In short, TU Electric did resolve Mr. Hasan's concerns related to pipe support certification, and the Licensing Board was aware of these concerns and TU Electric's resolution when the CPA-1 and OL proceedings were dismissed.

54/ Letter to W.G. Council (TU Electric) from C.I. Grimes (NRC) dated May 28, 1987, Attachment at 3 (Item No. 23).

55/ TXX-6563 Letter to NRC from W.G. Council (TU Electric) dated July 2, 1987, Attachment at 10 (Resolution of Concern 23).

56/ Letter to S.M.A. Hasan from F. McKee (NRC) dated Jan. 6, 1988, Enclosure 1 at 2.

57/ Letters to the Licensing Board from dated J. Ellis (CASE) July 8, 1987 and May 17, 1988.

The Petitioners also allege that TU Electric personnel made "material false statements" and committed a "fraud" on the Licensing Board regarding pipe support certification. Petitioners previously made similar allegations in a § 2.206 petition submitted to the NRC. For the reasons stated elsewhere, this allegation is not a sufficient basis for admission of Petitioners' contention. However, TU Electric cannot allow such scurrilous allegations to go unanswered. Attachment C, TU Electric's July 2, 1992 response to the § 2.206 petition, demonstrates that Petitioners' charges are false.

Third, Petitioners' allegations related to pipe support certification do not relate to TU Electric's current corporate policy or to whether TU Electric has repudiated past policies. These issues are more than four years old, and in some cases ten years old. Additionally, as discussed above, it is undisputed that TU Electric took appropriate corrective action for these issues.

Finally, as Petitioners themselves acknowledge, these issues were outstanding (and eventually resolved) while the CPA-1 and OL proceedings were still pending. If the Petitioners have a complaint regarding these issues, the time to have raised the complaint was in those proceedings. Petitioners should not be able to circumvent the CPA-1 and OL proceedings by raising an issue regarding pipe support certification in this proceeding.

In summary, Petitioners' arguments related to pipe support certification do not satisfy any of the three prongs of the Commission's test. Therefore, they do not provide a sufficient basis for admission of a contention in this proceeding.

7. Allegations of Intimidation and Harassment.

Petitioners allege that CASE had concerns about TU Electric's employee concern program prior to the settlement of the CPA-1 and OL proceedings in 1988. Petitioners also allege that there have been whistleblowers at CPSES, and that many whistleblowers believe that TU Electric has not properly addressed their concerns. ^{58/} For several reasons, these allegations are an insufficient basis for admission of Petitioners' contention.

First, Petitioners' allegations regarding intimidation and harassment are vague and unsupported. Petitioners provide a list of individuals and refer to other unidentified individuals, but with a few exceptions provide no information regarding these individuals or their concerns. Such allegations do not satisfy the requirements for specificity and bases in 10 CFR § 2.714. ^{59/}

^{58/} Petitioners Supplement at 27-30.

^{59/} In a footnote, Petitioners "advise" the Board that they "need to conduct discovery to fully document evidence"
(continued...)

Second, Petitioners do not allege, or provide a basis for an allegation, that issues related to intimidation and harassment or employee concerns resulted in the instant delay in completion of construction of CPSES Unit 2. Furthermore, Petitioners do not allege that such issues resulted in any delay in completion of construction of CPSES Unit 1 after November 18, 1988, which is the date of the previous construction permit extensions for CPSES Units 1 and 2. Therefore, these allegations have no nexus to the instant construction permit extension for CPSES Unit 2.

Third, Petitioners do not provide any basis for a claim that TU Electric has a "deliberate corporate policy" of violating NRC requirements. The undisputed facts are as follows. In the mid-1980s, NRC established a special team to investigate claims of intimidation and harassment at CPSES. This team concluded that, while there were some incidents of intimidation and

59/ (...continued)

supporting their factual assertions. Petitioners' Supplement at 28 n. 18. Petitioners' request should be rejected out of hand. As the Appeal Board stated in Duke Power Co. (Catawba Nuclear Stations, Units 1 and 2), ALAB-687, 16 NRC 460, 468 (1982), rev'd in part on other grounds, CLI-83-19, 17 NRC 1041 (1983), "Neither Section 189a of the Atomic Energy Act nor section 2.714 of the Rules of Practice permits the filing of a vague, unparticularized contention, followed by an endeavor to flush it out through discovery against the applicant or Staff." Similarly, the Appeal Board has held that there is no right to discovery in order to formulate contentions. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188, 192 (1973).

harassment, there was no "climate of intimidation" at CPSES. 60/ Similarly, NRC has inspected the CPSES employee concern program and stated that it was "generally impressed" with the program.61/

Fourth, Petitioners' allegations regarding intimidation and harassment and the employee concerns program do not relate to TU Electric's current corporate policy or to whether TU Electric has repudiated past policies. These issues are more than four years old.

Finally, as Petitioners themselves acknowledge, these issues were outstanding while the CPA-1 and OL proceedings were still pending. If the Petitioners have a complaint regarding these issues, the time to have raised the complaint was in those proceedings. Petitioners should not be able to circumvent the CPA-1 and OL proceedings by raising such issues in this proceeding.

In summary, Petitioners' arguments related to intimidation and harassment and the employee concerns program do not satisfy any of the three prongs of the Commission's test. Therefore, they do not provide a sufficient basis for admission of a contention in this proceeding.

60/ NRC Memorandum to Vincent S. Noonan (NRC) from James E. Gagliardo (Chairman, Comanche Peak Intimidation Panel) at 1 dated Oct. 18, 1985 (enclosing Report of Comanche Peak Intimidation Panel).

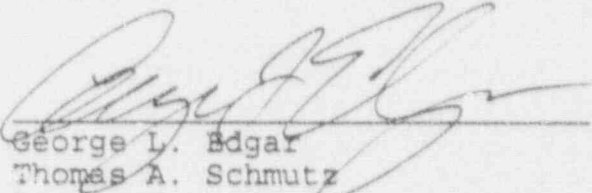
61/ NRC Inspection Report 50-445/88-23 and 50-446/88-20 (May 9, 1988).

III. CONCLUSION

For the reasons stated above, as well as those contained in TU Electric's earlier Answer of August 6, 1992, the Petition to Intervene and Request for a Hearing should be denied. Petitioners Hasan and Macktal have failed to demonstrate their standing to intervene and their request should be denied on that basis alone. In addition, as to all Petitioners, the Petition and Supplement taken together fail to provide any supporting basis for their contention. Accordingly, their request must be denied.

Respectfully submitted,

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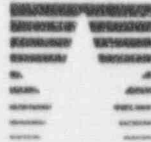
October 20, 1992

Attachment A

1. Enforcement action regarding QC receipt inspection of Thermo Tag.
 - A. The violation was issued in NRC Inspection Report 50-445/90-05, 50-446/90-05 at 6-11 (Jan. 31, 1990); see also letter to W.J. Cahill, Jr. (TU Electric) from D.M. Crutchfield (NRC) dated May 17, 1990 (EA 90-20).
 - B. TXX-90204, letter to J. Lieberman (NRC) from W.J. Cahill, Jr. dated June 1, 1990 describes TU Electric's corrective and preventive actions for this violation.
 - C. The violations were closed by the NRC in NRC Inspection Report 50-445/91-41, 50-446/91-41 at 4-7 (Oct. 10, 1991).
2. Violation related to the identification of a deficiency on an AFW check valve
 - A. The violations were identified in NRC Inspection Report 50-445/90-22, 50-446/90-22 at 10-11, 14-15 (Aug. 3, 1990).
 - B. TXX-90315, letter to NRC from W.J. Cahill, Jr. (TU Electric) dated Sept. 4, 1990 describes TU Electric's corrective and preventive actions for these violations.
 - C. The violations were closed by the NRC in NRC Inspection Report 50-445/90-40, 50-446/90-40 at 17 (Nov. 14, 1990) and NRC Inspection Report 50-445/90-42, 50-446/90-42 at 14 (Dec. 18, 1990).
3. Violation related to scaling calculations
 - A. The violation was identified in NRC Inspection Report No. 50-445/90-47, 50-446/90-47 (Feb. 26, 1991); see also NRC letter to J. Ellis (CASE) from C.I. Grimes (NRC) dated Feb. 27, 1991. No response to the violation was required. The NRC indicated that "the corrective actions completed by the licensee have now resulted in acceptable scaling related documentation for CPSES Unit 1 and Common." NRC Inspection Report 50-445/90-47, 50-446/90-47 at 4 (Feb. 26, 1991).
 - B. TXX-91106, Letter to NRC from W.J. Cahill, Jr. (TU Electric) dated Apr. 26, 1991 describes scaling activities for Unit 2.

4. Enforcement action regarding roving fire watches
 - A. The violation was identified in NRC Inspection Report 50-445/91-03, 50-446/91-03 (Feb. 1, 1991); see also letter to W.J. Cahill, Jr. (TU Electric) from R.D. Martin (NRC) dated Mar. 27, 1991 (EA 91-015).
 - B. TXX-91166, letter to J. Lieberman (NRC) from W.J. Cahill, Jr. (TU Electric) dated Apr. 24, 1991 describes TU Electric's corrective and preventive actions for this violation.
 - C. This violation was closed out in NRC Inspection Report 50-445-91-28, 50-446/91-28 at 4 (July 11, 1991).
5. Violation related to root cause evaluations and corrective actions for TUE forms
 - A. The violation was identified in NRC Inspection Report 50-445/91-07, 50-446/91-07 at 11-13 (Apr. 1, 1991).
 - B. TXX-91161, letter to NRC from W.J. Cahill, Jr. (TU Electric) dated Apr. 29, 1991 describes TU Electric's corrective and preventive actions for this violation.
 - C. This violation was closed out by the NRC in NRC Inspection Report 50-445/91-38 and 50-446/91-38 at 6 (Sept. 6, 1991).
6. Violations related to design control
 - A. The violations were identified in NRC Inspection Report 50-445/91-201, 50-446/91-202 (Jan. 27, 1992); see also NRC letter to W.J. Cahill, Jr. (TU Electric) from A.B. Beach (NRC) dated Mar. 31, 1992.
 - B. TXX-92143, Letter to NRC from W.J. Cahill, Jr. (TU Electric) dated Mar. 27, 1992; TXX-92202, letter to NRC from W.J. Cahill, Jr. (TU Electric) dated Apr. 30, 1992; and TXX-92275, Letter to NRC from W.J. Cahill, Jr. (TU Electric) dated July 10, 1992 describe TU Electric's corrective and preventive actions for these violations.
 - C. Certain of these violations were closed out in NRC Inspection Reports 50-445/92-26, 50-446/92-26 at 3-4 (Aug. 20, 1992) and NRC Inspection Report 50-445/92-34, 50-446/92-34 at 18-19 Oct. 5, 1992).

Attachment B



Log # TXX-92374
File # 10004

TU ELECTRIC

August 6, 1992

William J. Cahill, Jr.
Group Vice President

Dr. Thomas E. Murley, Director
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

SUBJECT: COMANCHE PEAK STEAM ELECTRIC STATION (CPSES)
DOCKET NOS. 50-445 AND 50-446
RESPONSE TO KOHN 2.206 PETITION REGARDING
TEX-LA

REF: Letter from National Whistleblower Center to
Chairman Ivan Selin dated June 11, 1992,
Subject: "New Evidence of Illegal Settlements
at Comanche Peak"

Dear Dr. Murley:

In the letter referenced above, the National Whistleblower Center (NWC) states that it is bringing to the NRC's attention the existence of a "hush money" Agreement between Texas Utilities Electric Company (TU Electric) and Tex-La Electric Cooperative (Tex-La). The Agreement in question provided for the sale of Tex-La's ownership interest in CPSES to TU Electric and the settlement of pending litigation between TU Electric and Tex-La. NWC alleges that the Agreement violates 10 CFR § 50.7 of the Commission's regulations and Section 210 of the Energy Reorganization Act of 1974 because it allegedly "prohibits all Tex-La employees, attorneys, and consultants from 'assisting or cooperating' with any third party in all 'proceedings' related to 'the licensing of Comanche Peak.'" Based upon these allegations, NWC has requested the NRC to suspend the operating license for CPSES Unit 1, to suspend the construction permit for CPSES Unit 2, and to take certain other actions.

TU Electric understands that the NRC is treating the NWC letter as a request for action under 10 CFR § 2.206; therefore, we are hereby responding to NWC's request. As is demonstrated below, the Agreement between TU Electric and Tex-La does not present new information, nothing in the Agreement is inconsistent with 10 CFR § 50.7 or Section 210 of the Energy Reorganization Act, and the provisions in the Agreement are consistent with the public interest. Accordingly, NWC's request for action should be denied.

1. The NWC Letter Does Not Identify Any New Information

NWC implies that it is bringing new information to the attention of the NRC. However, the NRC has long been aware of the existence and content of the Agreement between Tex-La and TU Electric.

The original version of the Agreement was dated March 23, 1989. On May 4, 1989, TU Electric submitted to the NRC an application to amend the CPSES construction permits to reflect the change in ownership. This application enclosed the March 23, 1989 Agreement between TU Electric and Tex-La. Thus, the Agreement has been a matter of public record for years.

Subsequent amendments to the original Agreement were made on December 21, 1989 and January 30, 1990. However, the December 21, 1989 amendment merely extended the automatic termination date of the Agreement, and the January 30, 1990 amendment was made in order to facilitate the closing of the sale of Tex-La's ownership interest in CPSES. Neither amendment made any substantive changes in the Agreement in general or the particular article (Article IX) which appears to be of concern to NWC. ^{1/}

Because NWC has not identified any new information of which the NRC was not previously aware, its request for action should be denied.

^{1/} As is stated in Recital G of the January 30, 1990, amendment, the amended Agreement "does not change the substantive result or effect of the Original Agreement, but merely revises certain methodology in connection therewith." In particular, the provisions in Article IX in the original and amended Agreements are identical, except (1) the language italicized below was deleted from Section 9.7 of the amended Agreement:

"To the extent that Tex-LA can, and not be in violation of Section 210 of the Energy Reorganization Act, 42 USC Section 5851 (1983), upon the execution of this Agreement, Tex-La, for itself and on behalf of any person or entity, private or governmental, claiming by, through or under Tex-La, including without limitation" (emphasis added).

and (2) Tex-La's promise "to immediately abate" pending actions was changed to a promise "to continue to abate." The language which was deleted and changed is not relevant to NWC's allegations.

2. The Agreement Does Not Violate 10 CFR § 50.7

Section 50.7(f) states as follows:

No agreement affecting the compensation, terms, conditions and privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 210 of the Energy Reorganization Act of 1974, may contain any provision which would prohibit, restrict, or otherwise discourage, an employee from participating in protected activity as defined in paragraph (a)(1) of this section, including, but not limited to, providing information to the NRC on potential violations or other matters with NRC's regulatory responsibilities.

For a number of reasons, the Agreement does not violate Section 50.7(f).

First, the Agreement between TU Electric and Tex-La is not an agreement "affecting the compensation, terms, conditions, and privileges of employment," and is not a settlement of a Section 210 complaint. Instead, the Agreement is a sales contract and settles a business dispute between two utilities. Thus, the Agreement is not subject to the provisions of Section 50.7(f).

Second, the Agreement does not contain any provision that would "prohibit, restrict, or otherwise discourage, an employee from participating in protected activity" under Section 210 of the Energy Reorganization Act. Instead, Article IX of the Agreement (which appears to be the Article of interest to NWC) only contains provisions in which Tex-La promises that it (and those acting on its behalf) will not sue or initiate action adverse to TU Electric related to CPSES. Nothing in the Agreement prevents a Tex-La employee, acting on his own behalf, 2/ from engaging

2/ Neither the Agreement in general nor Article IX in particular discusses the rights of Tex-La employees. Although various restrictive provisions in Article IX do refer to Tex-La's employees, such references occur in the
(continued...)

in protected activity, such as providing information to the NRC, requesting the NRC to take action, or appearing as a witness in an NRC proceeding. In fact, Section 9.7 of the Agreement states that Tex-La has an obligation not to bring actions adverse to TU Electric, but only "[t]o the extent that Tex-La can [fulfill the obligation] and not be in violation of Section 210 of the Energy Reorganization Act." Thus, the provisions of the Agreement explicitly accommodate Section 210, and the Agreement does not address the types of activities that are the subject of Section 50.7(f).

Finally, NWC claims that the Agreement violates Section 50.7 because it prohibits Tex-La's attorneys and consultants from assisting third persons who oppose TU Electric in matters related to CPSES. NWC claims are misplaced. First, Section 9.2 of the Agreement explicitly recognizes that "Tex-La can only encourage and solicit its consultants to take or refrain from taking certain actions and does not have the right to prevent or cause such actions on their part." In any case, even a prohibition on assisting third persons would not violate Section 50.7. In promulgating Section 50.7, the Commission explicitly considered a proposal that would have prohibited agreements that restrict a party from communicating with third persons. The Commission explicitly rejected this proposal. (55 Fed. Reg. 10397, 10402 (March 21, 1990)). Thus, contrary to NWC's claims, 10 CFR § 50.7 does not prohibit agreements in which parties agree to refrain from assisting third persons who oppose a nuclear plant. 3/

2/ (...continued)
following context:

Tex-La, for itself and on behalf of
any person or entity, private or
governmental, claiming by, through,
or under Tex-La, including . . .
insurers, agents, servants,
employees, officers, directors,
consultants, attorneys, and
representatives. . .

Such language clearly indicates that the Agreement applies to employees who act on behalf of Tex-La, not employees who act on their own behalf.

3/ NWC argues that Section 210 provides it with "the right to gain assistance from employees of the CPSES minority owners." Section 210 contains no such provision. As
(continued...)

In summary, the Agreement is not within the scope of Section 50.7(f), and the provisions of the Agreement are not otherwise in conflict with the requirements in Section 50.7(f). Thus, NWC's request for action should be denied because it does not identify any violation of NRC requirements or Section 210 of the Energy Reorganization Act.

3. The Agreement Is Consistent With The Public Interest

The public interest favors parties who settle their disputes rather than resort to litigation. For example, in NRC proceedings, the Commission has stated that settlements are encouraged. Statement of Policy of Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 456 (1981).

It is standard practice for settlement agreements to include covenants not to sue or bring action on the same or related matters that are the subject of the settlement agreement. Such covenants are necessary to effectuate the purpose of the settlement. If a party were free to settle and then later to bring a suit or an action on the same or related matters, the other party would have little or no inducement to settle. Settlement without a covenant not to sue is, as a practical matter, impossible.

NRC itself has accepted settlement agreements that contain covenants not to sue, including covenants not to contest NRC licensing actions. For example, the Settlement Agreement between TU Electric and Citizens Associations for Sound Energy (CASE) contained such a provision. See Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-88-18B, 28 NRC 103, 127 (1988). In hearings before the Senate Subcommittee on Nuclear Regulation, the Chairman of the Subcommittee, Senator John Breaux, "commended" this settlement agreement. In contrast, Senator Breaux was highly critical of other settlement agreements that restricted the rights of individuals to

3/(...continued)

discussed above, 10 CFR § 50.7(f) does not ban settlement agreements that prohibit employees from assisting NWC or other persons. Furthermore, even absent such a prohibition, employees would not be compelled to provide NWC or other third persons with assistance, and Tex-La employees, attorneys, and consultants may voluntarily refuse to provide such assistance or otherwise respond to any questions or inquiries by NWC or other third persons.

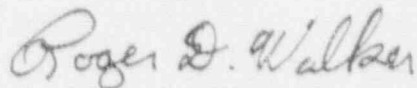
testify or provide information to the NRC. See Hearing Before the Senate Subcommittee on Nuclear Regulation (May 4, 1989), pp. 90-94.

NWC's complaints regarding the Agreement between Tex-La and TU Electric appear to pertain entirely to the covenants not to sue in Sections 9.2 and 9.7 of the Agreement. The provisions in these covenants are typical of those contained in settlement agreements in general, including settlement agreements accepted by the NRC. Furthermore, these covenants do not prohibit Tex-La (or its employees, consultants, or attorneys) from informing NRC of safety concerns or appearing as a witness in NRC proceedings. Thus, the covenants not to sue in the Agreement are consistent with the public interest.

4. Conclusions

NWC's request for action contains no new information, does not identify any violation of 10 CFR § 50.7(f) or Section 210 of the Energy Reorganization Act, and does not identify anything inconsistent with the public interest. Accordingly, the request should be denied.

Sincerely,

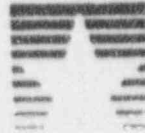


Roger D. Walker
Manager of Regulatory
Affairs for NEO

RSB/grp

c - National Whistleblower Center

Attachment C



Log # TXX-92305
File # 10076
Ref. # 10 CFR 2.206

TU ELECTRIC July 2, 1991

U. S. Nuclear Regulatory Commission
Attn: Document Control Desk
Washington, DC 20555

SUBJECT: COMANCHE PEAK STEAM ELECTRIC STATION (CPSES)
DOCKET NOS. 50-445 AND 50-446
10 CFR 2.206 PETITION SUBMITTED BY
KOHN, KOHN & COLAPINTO REGARDING
COMANCHE PEAK STEAM ELECTRIC STATION

Gentlemen:

On July 30, 1991, the law firm of Kohn, Kohn & Colapinto, P.C. (Petitioners) submitted a request under 10 CFR 2.206 alleging that Texas Utilities Electric Company (TU Electric) made material false statements regarding the design of pipe supports in the operating license proceeding for Comanche Peak Steam Electric Station (CPSES). The NRC published a notice of this petition in the Federal Register on September 5, 1991 (56 Federal Register 43946).

As requested by a member of your staff, TU Electric is submitting the enclosed copy of an internal evaluation of the Petitioners' allegations which the NRC reviewed during its investigations of the Petitioner's allegations. This evaluation is supported by an extensive number of references, most of which are already on the CPSES docket. The remaining references which have not been previously docketed, are identified in Attachment 1, and are also enclosed with this letter.

Sincerely,

Roger D. Walker

Roger D. Walker
Manager of Regulatory Affairs for NEO

RDW/ds
Attachment with Enclosures (6)
Enclosure

c - Mr. R. D. Martin, Region IV
Dr. Thomas Murley, NRR
Resident inspectors, CPSES (2)
Mr. T. A. Bergman, NRR
Ms. Virginia VanCleave, OI
Kohn, Kohn & Colapinto

9207070399 920702
PDR ADOCK 03000445
PDR

400 N. Olive - Dallas, Tex. 75201

4/EC3 1

LIST OF REFERENCES NOT PREVIOUSLY DOCUMENTED

<u>Enclosure</u>	<u>Document Description</u>
1.	<u>Hasan v. Nuclear Power Services, Inc.</u> , Case No. 86-ERA-24, "Recommended Decision and Order" (Oct. 21, 1987) and "Final Decision and Order" (June 26, 1987)
2.	Excerpt of DOL Proceeding Oral Deposition of David M. Rencher (May 29, 1987), pp. 120-121, 124-125, 260, 264, 270
3.	Comanche Peak Quality Assurance Plan, Section 3.0.2, 3.0.3
4.	Procedure CP-EP-4.6, "Field Design Change Control," Rev. 8, Section 3.1.1
5.	Procedure CP-EI-4.5-4, "Technical Services Engineering Instruction for Pipe Hanger Design Review and Certification," Rev. 4, Section 3.1.1
6.	Excerpt of DOL Proceeding Oral Deposition of George M. Chamberlin (June 2, 3, 1987), pp. 182-183

Enclosure to TXX-92305

Facts Related to the Kohn, Kohn &
Calapinto 2,206 Petition

FACTS RELATED TO THE KOHN, KOHN &
CALAPINTO 2.206 PETITION

On July 30, 1991, the law firm of Kohn, Kohn & Calapinto, P.C. (Petitioners) filed a petition under 10 CFR § 2.206 on behalf of the National Whistleblower Center and "certain confidential allegeders." The Petition alleges that TU Electric made material false statements before the Atomic Safety and Licensing Board (ASLB) in the operating licensing (OL) proceeding for the Comanche Peak Steam Electric Station (CPSES) Units 1 and 2. In particular, the Petitioners allege that "the testimony TUEC had repeatedly presented to the ASLB that pipe supports [1] were not being transferred between the various pipe support groups and [2] were not being certified using multiple sets of design criteria constitute material false statements." 1. Based upon these allegations, the Petitioners request that the NRC hold licensing hearings to determine whether TU Electric has the requisite character and competence to operate a nuclear plant, that TU Electric be fined, and that the TU Electric managers in question be banned from licensed nuclear facilities.

The remainder of this paper is divided into the following three sections:

- * Section 1 provides a summary of the Petitioners' allegations and TU Electric's position regarding these allegations.

1. Petition, p. 9

- Section 2 provides Background information related to the Petitioners' allegations, including a discussion of the evolution of the responsibility for the design of pipe supports at CPSES, and a discussion of the disposition of past allegations that were similar to those now being raised by the Petitioners.

- Section 3 provides information related to the specific allegations raised by the Petitioners, including the safety significance of the allegations and a discussion of the testimony and affidavits presented to the ASLB in the CPSES CL proceeding.

Pertinent backup documentation will be maintained at the site for review.

1. SUMMARY

Petitioners allege that TU Electric submitted material false statements to the ASLB from 1982 to 1984, because 1) different or multiple sets of design criteria were used to certify individual pipe supports subject to field changes, and 2) the responsibility for the design of field changes for pipe supports was transferred from one pipe support design group to another group.

The NRC Staff previously investigated similar allegations, including allegations by clients of the Petitioners. The Staff concluded that the allegations had no safety significance because the design of the CPSES pipe supports was being validated as part of the Corrective Action Program (CAP). The ASLB was aware of these allegations and the results of the Staff's investigations when it decided to approve the settlement of the CPSES CL proceeding.

Initially, there was only a single pipe support design group at CPSES. In order to maintain schedule, TU Electric decided to utilize two additional pipe support design groups and to divide the design responsibility for pipe supports among the groups. As a result, during the early 1980's, there were three separate pipe support design groups at CPSES. Each group was responsible for certifying the design of particular supports. Additionally, the pipe support design group that performed the original design would, in general, review and certify field changes to its designs. In a relatively few cases, design responsibility for a pipe support was transferred from one design group to another group, which then became responsible for performing the calculations for and certifying the design of the entire support. However, at any particular time (including final certification), only one group had responsibility for certifying the design of any individual support (including the review of its field changes).

Contrary to the Petitioners' first allegation, different or multiple sets of design criteria were not used to certify an individual pipe support. Each group was required to comply with the governing provisions of the American Society of Mechanical Engineers (ASME) Code and Project Specification MS-46A, but was permitted to achieve compliance with these provisions by using its own methodology (which some witnesses called "design criteria," and still other witnesses and the ASLB called "design approaches"). Therefore, even though the design methodologies differed from group to group, only the methodology of the responsible design group was used in certifying an individual support. The ASLB in the CPSES OL proceeding acknowledged this situation and found it to be acceptable, and there is nothing in the quotations cited by the Petitioners which is inconsistent with the ASLB's findings.

Petitioners' second allegation, related to the transfer of design responsibility, is similarly misplaced. Such transfers were explicitly authorized by 10 CFR Part 50, Appendix B, Criterion III and ANSI N45.2.11. In particular, Appendix B states that "[d]esign changes, including field changes, shall be subject to design control measures commensurate with those applied to the original design and be approved by the organization that performed the original design unless the applicant designates another responsible organization." (Emphasis added).

Some passages in TU Electric's testimony and affidavits stated that the review and certification of field changes would be performed by the "original design organization;" other passages stated that the review and certification would be performed by the "responsible design organization." Petitioners argue that the use of the term "original design organization" is inconsistent with the fact that design responsibility for the entire support was on occasion transferred from one design group to another. However, the subject and purpose of the testimony was to clarify that field design changes were always approved by the design organization responsible for the entire design. There was no statement or indication that design responsibility had not been or was forever prohibited from being transferred from one design group to another. Thus, the Petitioners clearly take testimony out of context and improperly claim that TU Electric witnesses were addressing subjects that were not even at issue at the time the statements were made.

The issues before the ASLB primarily involved the adequacy of the iterative design process for pipe supports. In this particular instance, the ASLB was concerned with whether changes authorized by field engineering (which was not a design organization) were subject to review and certification by a responsible pipe support design group to ensure that any deficiencies introduced by the field changes would be identified and corrected. To address this issue, TU Electric presented testimony and affidavits which stated that field changes would be

reviewed and approved by the responsible design group. It was in this context that TU Electric witnesses stated that changes authorized by field engineers were subject to review and certification by the original design organization. These statements paraphrased the language in Appendix B, ANSI N45.2.11, and the CPSES design control procedures, and they accurately reflected that design groups (and not field engineers) were being used for certification of pipe supports at CPSES. Furthermore, TU Electric witnesses were never asked to discuss matters related to the transfer of design responsibility of individual supports, and never claimed that transfers of design responsibility had not occurred. Thus, there was no reason to discuss particular instances of such transfers since the ASLB was aware that the general scope of responsibility of the three design groups had changed over time.

Therefore, TU Electric's statements were entirely appropriate and directed to the issue in question before the ASLB. The transfer of design responsibility from one design group to another design group was not the issue, or material to the issue, being decided by the ASLB. Thus, Petitioners' allegations that TU Electric submitted "material false statements" are clearly in error.

2. BACKGROUND

This section is divided into the following two subsections: Section 2.1 discusses the evolution of design

responsibility for CPSES pipe supports, and Section 2.2 discusses previous allegations regarding design responsibility for CPSES pipe supports.

2.1 EVOLUTION OF DESIGN RESPONSIBILITY FOR CPSES PIPE SUPPORTS

The responsibility for the design of pipe supports at CPSES has evolved over time.

Initially, Gibbs & Hill was the architect-engineer for CPSES and Westinghouse was the Nuclear Steam Supply System vendor. Gibbs & Hill was responsible for the design of CPSES piping (design responsibility for piping designated as Class 1 under the ASME Code was eventually assigned to Westinghouse).

TU Electric decided to contract out the responsibility for the design of CPSES pipe supports to a company who was in the business of designing and fabricating pipe supports components. TU Electric selected ITT-Grinnell to perform this task, who initially had total responsibility for the design of CPSES pipe supports. In designing the CPSES pipe supports, ITT-Grinnell was required to comply with the ASME Code and Gibbs & Hill Project Design Specification MS-46A. ITT-Grinnell was responsible for developing a methodology for ensuring compliance with these requirements.

After several years, it became apparent that ITT-Grinnell was not able to maintain the schedule for the design of the CPSES pipe supports. As a result, TU Electric contracted

with an additional company, Nuclear Power Services, Inc. (NPSI), and divided the responsibility for the design of large bore pipe supports between ITT-Grinnell and NPSI. Additionally, TU Electric established the Pipe Support Engineering (PSE) organization and assigned it responsibility for the design of CPSES small bore pipe supports and some large bore pipe supports. NPSI and PSE were required to comply with the ASME Code and Gibbs & Hill Project Specification MS-46A, and each was required to develop a methodology for ensuring compliance with these requirements. 2/

As a result of these changes, there were three pipe support design groups for CPSES during the early 1980s. Each group was assigned responsibility for the design of specifically-designated pipe supports, and at any particular time only one group was responsible for the design of a specific pipe support. A computerized list (Hanger Installation Tracking System (HITS)) was maintained that identified which group was responsible for which pipe support. Regardless of which group was responsible for a particular support, the group was required to comply with the ASME Code and Gibbs & Hill Project Specification MS-46A in

2/ This evolution in design responsibility is discussed in NRC Staff Exhibit 207 (NRC Inspection Report 50-445/82-26, 50-446/82-14), pp. 12-13; Affidavit of D.N. Chapman, J.C. Finneran, Jr., D.E. Powers, R.P. Deubler, R.E. Ballard, Jr., and A.T. Parker Regarding Quality Assurance Program for Design of Piping and Pipe Support for Comanche Peak Steam Electric Station (July 3, 1984), pp. 11-13; CPSES OL Proceeding Tr. 5277-78.

designing and certifying the support. However, each group would utilize its own methodology for achieving such compliance.

When pipe support designs were issued to the field for construction, field engineering would often authorize field changes in the pipe supports, subject to later review and approval by the group responsible for design of the pipe support. In many cases, the field changes were implemented prior to review and approval by the responsible design group. Such a change was subject to being scrapped or reworked if the change was not approved by the responsible design group. The entire process of issuance of a design, field changes to the design, and subsequent design review of the field changes is standard industry practice, and it forms one part of an overall process known as the "iterative design process."

Sometimes, a field design change for a pipe support would be transmitted to the responsible design group for review and approval, and that group would not approve of the change. In most of these cases, the as-built support would be subject to rework by the constructor and subsequent review and approval by the responsible design group. In a small fraction of the cases, the responsible design group did not have an established methodology for analyzing the acceptability of the field change, and responsibility for the design of the entire support in question was transferred to another design group which did have an applicable methodology. Similarly, in a few cases, the field change was not acceptable using the methodology of the

responsible design group but was acceptable using the more refined methodology of another design group, and responsibility for the design of the entire support in question was transferred to the other design group. Following such transfers, the new design group was responsible for evaluating the acceptability of the design of the entire support. Thus, at any particular time (including final certification), only one group had responsibility for certifying the design of any individual support.

In the latter half of the 1980s, TU Electric decided to validate the design of all safety-related and Seismic Category II pipe supports at CPSES. This validation effort was performed by Stone & Webster Engineering Corporation (SWEC) and later became part of the CPSES Corrective Action Program. As a result, the three pipe support design groups were released, and SWEC became the responsible organization for design of the pipe supports at CPSES. 2/

2.2

PREVIOUS ALLEGATIONS REGARDING DESIGN
RESPONSIBILITY FOR CPSES PIPE SUPPORTS

Allegations similar to those raised by the Petitioners have been submitted to the NRC in various contexts during the past eight years by clients of the Petitioners and other

3/ CAP was performed for CPSES Unit 1 and Common areas, and TU Electric eventually assumed some of the responsibility for validation of the pipe support designs. Similar validation efforts are being performed by other engineering contractors for CPSES Unit 2.

individuals. As discussed below, in each case, the NRC concluded that the allegation did not indicate any deficiency in the design of CPSES, or the allegation was withdrawn.

On February 27, 1978, TU Electric filed with the NRC an application for an operating license for Comanche Peak. Three organizations, including Citizens Association for Sound Energy (CASE), requested a hearing and were admitted as intervenors in the CPSES OL proceeding. Eventually, only one intervenor, CASE, and one contention, contesting the adequacy of quality assurance (QA) and quality control (QC) for CPSES, remained in the proceeding.

Extensive hearings were held on the QA/QC contention. CASE presented testimony by Mark Walsh and Jack Doyle, who raised many issues regarding the adequacy of the design and quality assurance for CPSES piping and pipe supports. Many of their issues related to the "iterative design process." Additionally, one of their issues pertained to the adequacy of the organizational and design interfaces among the three groups that then had responsibility for the design of CPSES pipe supports. Among other things, Messrs. Walsh and Doyle were concerned that the three pipe support design groups were using different design approaches, and therefore were violating NRC and industry quality requirements for design.

In December of 1983, the ASLB in the Comanche Peak OL proceeding issued a partial initial decision, which questioned the adequacy of design quality for CPSES, including the design

quality of CPSES piping and pipe supports. In particular, the ASLB concluded that the "iterative design process" did not satisfy the requirements in 10 CFR Part 50 Appendix B for prompt identification and correction of design deficiencies. However, the ASLB also concluded that the organizational and design interfaces for CPSES pipe supports were adequate. In particular, the ASLB concluded that the three pipe support design groups were each using the ASME Code and Specification MS-46A, that differences occurred in the design approaches of the groups, and that it was possible to use different approaches to satisfy the ASME Code and Specification MS-46A. The ASLB also concluded that the use of different approaches by the different groups did not present a safety concern or violate NRC requirements because each group had its own scope of responsibility for a specific group of pipe supports and there was no need for cross communication between the groups since they did not share common in-line design responsibility. 4/

As part of TU Electric's plan to address the concerns raised by the ASLB regarding design quality, TU Electric filed a number of motions for summary disposition and accompanying affidavits in 1984. The ASLB ruled on only one of those motions

4/ Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-83-81, 18 NRC 1410, 1428-29, 1450-52 (1983). As the ASLB found, "Since neither the [s]pecification . . . nor the ASME Code dictate in detail the means by which an engineer is to satisfy the design criteria, differences in engineering approaches occurred between the three parallel pipe support groups." LBP-83-81 18 NRC 1451.

(related to welding issues). 5/ In June 1985, TU Electric told the ASLB that it planned to resolve all remaining issues before the ASLB through the Comanche Peak Response Team (CPRT) and to withdraw the motions for summary disposition. 6/ In addition to the CPRT review, TU Electric conducted a far-ranging and unprecedented Corrective Action Program (CAP) at Comanche Peak. The CAP included a comprehensive design and hardware validation to ensure that Comanche Peak satisfied all regulatory requirements and would be operated safely. Under the CAP program, SWEC performed a revalidation of pipe supports.

In early 1986, S.M.A. Hasan brought a number of concerns to the NRC, with CASE's assistance. Mr. Hasan was a former employee of NPSI and had been laid-off by NPSI after SWEC assumed responsibility for the design of CPSES pipe supports. Mr. Hasan was represented by the Government Accountability Project (GAP), which was also the representative of CASE. Some of the individuals who currently comprise the Petitioners were then employed by GAP and were counsel to Mr. Hasan. In general, Mr. Hasan's technical concerns were similar to the pipe support design (Walsh/Doyle) issues raised by CASE in the operating license proceeding. In particular, Mr. Hasan alleged that pipe support design packages were being transferred from one pipe

5/ Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-84-25, 19 NRC 1589 (1984).

6/ "Applicants' Current Management Views and Management Plan for Resolution of All Issues" (June 28, 1985).

support design group to another group, which would utilize design criteria that were different from the criteria used by the first group. On May 28, 1987, the NRC requested that TU Electric review these allegations. 1/ TU Electric responded on July 2, 1987. 2/ On January 6, 1988, the NRC provided to Mr. Hasan not only TU Electric's response but also the Staff's evaluation of Mr. Hasan's pipe support allegations. The NRC Staff found that "the allegations, both individually and collectively, have been adequately addressed." 3/ In regard to Mr. Hasan's concerns that inconsistent design criteria were being used in the certification of pipe support design, the NRC Staff found:

When the SWEC piping and pipe support requalification program (in the CAP program) was initiated, the design of pipe supports became the responsibility of a single design organization (SWEC). Only one design criteria document (CPPP-7) is being used for the requalification of all ASME code Class 1, 2, and 3 pipe supports at CPSES. Any identified deficiencies which might have resulted from the use of inconsistent design criteria will be corrected. Thus, the staff finds that the collective allegation associated with the use of inconsistent pipe support design criteria by the previous

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- 1/ Letter from C.I. Grimes (NRC Office of Special Projects) to W.G. Counsil (TU Electric) (May 28, 1987).
- 2/ Letter from W.G. Counsil (TU Electric) to U. S. Nuclear Regulatory Commission (July 2, 1987) (No. TXX-6535).
- 3/ Letter from Phillip F. McKee (NRC Office of Special Projects) to Mr. S.M.A. Hasan (Jan. 6, 1988).

design groups has been adequately resolved. 10/

In various letters in 1987 and 1988, CASE provided the ASLB with copies of Mr. Hasan's allegations, TU Electric's response to the allegations, and the NRC's disposition of the allegations. 11/ Therefore, the ASLB was fully aware of Mr. Hasan's allegations and their resolutions when, as discussed below, it decided to approve the settlement of the CPSES OL proceeding.

In early 1986, Mr. Hasan also filed a complaint with the Department of Labor (DOL) under the whistleblower provisions of Section 210 of the Energy Reorganization Act. Mr. Hasan, alleged that he was laid-off and blacklisted because of the allegations he had made, including allegations regarding use of inconsistent design criteria by different pipe support design groups at CPSES. In October 1987, the Administrative Law Judge in the DOL proceeding issued a recommended decision and order dismissing the proceeding, finding that Mr. Hasan's "version of events is simply not believable." 12/ Mr. Hasan was

10/ Letter from Phillip F. McKee (NRC Office of Special Projects) to Mr. S.M.A. Hasan, Enclosure 1, p. 3 (Jan. 6, 1988).

11/ CASE letters to the ASLB dated July 8, 1987, and May 17, 1988.

12/ Hasan v. Nuclear Power Services, Inc., Case. No. 86-ERA-24, "Recommended Decision and Order" (Oct. 21, 1987), p. 3. This order was affirmed by the Secretary of Labor in a "Final Decision and Order" (June 26, 1991). The Secretary's decision has been appealed to the U.S. Court of Appeals.

represented in the DOL proceeding by GAP, and in particular by some of the members who currently comprise the Petitioners.

In late June of 1988, CASE, TU Electric, and the NRC Staff agreed to a settlement of the CPSES OL proceeding. Subsequently, on July 13, 1988, the ASLB issued an order approving the settlement and dismissing the OL proceeding. ^{13/}

At the time the ASLB approved of the settlement, a number of individuals and groups attempted to overturn the settlement. For example, one of the Petitioners' "confidential" clients, an individual designated as "John Doe", submitted a letter to the Chairman of the Commission on July 10, 1988, with copies to the ASLB. He alleged that the NRC had not properly investigated the concerns he had submitted several years earlier, and that TU Electric had committed perjury. Similarly, Lon Burnam made a limited appearance statement before the ASLB also claiming that TU Electric had committed perjury. ^{14/} Neither of these allegations contained any basis, and neither affected the ASLB's decision to accept the settlement agreement in the CPSES OL proceeding. Additionally, in July 1989, Mr. Burnam submitted a motion to reopen the record in the CPSES OL proceeding, alleging, among other things, that TU Electric had

^{13/} Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-88-18B, 28 NRC 103 (1988).

^{14/} Tr. 25230-32. Mr. Burnam was a member of the Greater Fort Worth Sierra Club. The Petitioners filed a motion for leave to intervene in the CPSES OL proceeding on behalf of the Greater Fort Worth Sierra Club on July 11, 1988.

committed perjury in testifying that the pipe design groups had separate responsibilities for designing pipe supports. However, Mr. Burnam withdrew his motion before the NRC could rule on it.

3. INFORMATION RELATED TO THE SPECIFIC ALLEGATIONS RAISED BY THE PETITIONERS

The Petitioners allege that "senior managers" for TU Electric submitted material false statements before the ASLB from 1982 to 1984 regarding the three organizations which were, at that time, involved with the design of pipe supports for Comanche Peak. ^{15/} Specifically, the Petitioners claim that TU Electric personnel made material false statements in a September 15, 1982 hearing before the ASLB and in two affidavits submitted with summary disposition motions in June and July of 1984. ^{16/} Petitioners refer to testimony and affidavits presented by TU Electric, which indicated that each of the three pipe support design organizations had "separate and distinct" design responsibilities and that design changes necessary to reconcile field modifications would be reviewed and certified by the "original design organization." Based on testimony presented in a proceeding initiated by a Mr. Hasan before the DOL, the Petitioners argue that, because "pipe supports were routinely transferred between the various pipe support groups and were routinely certified using more than one set of design criteria,"

^{15/} Petition, p. 4.

^{16/} Petition, pp. 4, 6-7.

the "interfaces between the various pipe support groups were not separate and distinct ..." as stated by TU Electric. ^{17/}

3.1 SAFETY SIGNIFICANCE OF PETITIONERS' ALLEGATIONS

The Petitioners' allegations regarding the interface between the three design organizations is essentially identical to the allegations which Mr. Hasan submitted to the NRC in 1986. These allegations have no safety significance with respect to the current design of CPSES pipe supports. In 1988, the NRC found that the requalification of pipe supports by SWEC would ensure the adequacy of the pipe support designs. Therefore, the NRC concluded that "the collective allegation associated with the use of inconsistent pipe support design criteria by the previous design groups has been resolved." ^{18/}

3.2 VALIDITY OF PETITIONERS' ALLEGATIONS

The Petitioners' allegation essentially has two parts. First, Petitioners allege that different or multiple design criteria were utilized to certify a pipe support. Second, Petitioners allege that responsibility for the design of pipe supports was transferred from one group to another, contrary to TU Electric testimony that the original design organization would

^{17/} Petition, p. 10.

^{18/} Letter from Phillip K. McKee (NRC Office of Special Projects) to Mr. S.M.A. Hasan (Jan. 6, 1988), Enclosure 1, p. 3.

review and certify design changes to pipe supports. Each of these parts is discussed separately below.

3.2.1 PETITIONERS' ALLEGATIONS RELATED TO USE OF
DIFFERENT OR MULTIPLE DESIGN CRITERIA TO CERTIFY A
PIPE SUPPORT DESIGN

The Petitioners allege that "different" or "multiple sets" of design criteria were used to certify the design of a pipe support, and that TU Electric's testimony to the contrary constitutes a material false statement. 19/

This allegation is erroneous. Different or multiple sets of design criteria were not used to certify an individual pipe support. As explained in the CPSES OL Proceeding, each pipe support group was required to comply with the governing provisions of the American Society of Mechanical Engineers (ASME) Code and Project Specification MS-46A. 20/ However, each group was permitted to achieve compliance with these provisions by using its own methodology (which some witnesses called "design criteria," and still other witnesses and the ASLB called "design approaches"). 21/ Although the design methodologies differed

19/ Petition, pp. 9, 11.

20/ Applicants' Exhibit 142, p. 9; Staff Exhibit 207, pp. 12-13; Tr. 5014, 5279.

21/ There is no universally-accepted definition of the term "design criteria." Witnesses in both the ASLB proceeding and the DOL proceeding sometimes used the term "design criteria" interchangeably with the term "design approaches." For example, TU Electric testified in the CPSES OL proceeding that each pipe
(continued...)

from group to group, only the methodology of the responsible design group was used in certifying an individual support. 22/ The ASLB in the CPSES OL proceeding acknowledged this situation and found it to be acceptable 23/, and there is nothing in the quotations cited by the Petitioners 24/ which is inconsistent with the ASLB's findings.

21/ (...continued)

support group utilized the same "project specifications and ASME Code requirements" to design pipe supports, and that each group employed "design criteria which comply with those specifications." Applicants' Exhibit 142, p. 9. Similarly, the NRC Staff submitted an NRC inspection report into evidence before the ASLB which stated that each of the three pipe support design groups utilized the ASME Code and Specification MS-46A (which the inspection report refers to as "design criteria"), and that "differences in engineering approaches occurred between the three parallel pipe support groups." Staff Exhibit 207, pp. 12-13. Citing both TU Electric's and the NRC Staff's exhibits, the ASLB concluded that the ASME Code and Specification MS-46A provided the "design criteria" for the three pipe support design groups and that differences occurred in the design approaches utilized by the groups to satisfy these design criteria. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-83-81, 18 NRC 1410, 1440-51 (1983). Thus, although the terminology before the ASLB (and the DOL) was not consistent, the substance of the testimony was consistent.

22/ Applicants' Exhibit 142, p. 9; Staff Exhibit 207, pp. 12-13. Similar statements appear in the Oral Deposition of David M. Rencher (May 29, 1987) pp. 260, 264, 270, in the DOL Proceeding.

23/ Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-83-81, 18 NRC 1410, 1428-29 (1983).

24/ Petition, pp. 9-11.

As a basis for their allegation that individual pipe supports were sometimes certified using multiple sets of "design criteria" (or "design approaches" in the lexicon of the ASLB), Petitioners refer to statements made in Mr. Hasan's DOL proceeding by TU Electric employees. These individuals stated that pipe support design packages were sometimes "rejected" from one design group to another group, which would then certify the pipe support designs using different criteria than the first group. ^{25/}

The testimony in the DOL proceeding cited by Petitioners does not indicate that "multiple" or "different" design criteria or approaches were utilized in the certification of a design of a single pipe support. Instead, this testimony stated that the responsibility for the design of a pipe support was transferred from one design group to another group, which then certified the design package for the support using its methodology rather than the methodology of the first group. For example, the Petitioners cite the deposition of George Chamberlain in the DOL proceeding. ^{26/} In pages 182-183 of his deposition, Mr. Chamberlain testified as follows:

Q. (BY MR. KOHN) Do you remember site engineering groups changing the scope of the work on Richmond inserts?

^{25/} Petition, pp. 9-11.

^{26/} Petition, p. 11 fn. 9.

A. Yes. As * stated yesterday, ITT Grinnell did not have design criteria for Richmond inserts used in conjunction with tube steel; and, therefore, any supports that had been redesigned in using that type of connection by the field engineering group in the course of construction had to be transferred over to the site group because they did have criteria for it, addressing it.

* * *

Q. (BY MR. KOHN) If anyone worked in two different groups, would that be common knowledge?

* * *

A. Since most of the engineers also probably did some assistance in field problems, I would say that generally most of them were aware of the different organizations' design criteria, because they would want to make sure that any design changes that they were initiating would in the end meet that particular organization's design guidelines. Each organization had to certify their own hangers to their own guidelines.

The Petitioners also cite pages 120-121 of the testimony of David Rencher in the DOL proceeding 27/ for the proposition that pipe supports were being transferred from one design group to another. However, immediately following this testimony, at pages 124-125 of the transcript, Mr. Rencher testified as follows:

BY MR. WOLKOFF:

Q. During the time period that Mr. Hasan worked under your supervision at Comanche Peak, how many different sets of design criteria were in place?

A. There were three.

Q. What were they?

A. ITT Grenelle [s.c], NPSI, and the PSE design guidelines.

27/ Petition, pp. 11-12.

Q. And did they differ one to another in certain respects?

A. Yes, they did.

Q. But I take it each pipe that was qualified had to be qualified under one of the three different sets of criteria. Right?

A. That is correct.

Thus, the testimony and deposition in the DOL proceeding cited by the Petitioners clearly states that, even though transfers of responsibility of the design of pipe supports did occur, only one set of design criteria or approaches would be used to certify any particular pipe support.

In summary, each of the three pipe support design groups utilized the ASME Code and Specification MS-46A (which the ASLB referred to as "design criteria") in certifying the design of pipe supports. Thus, even after design responsibility for a pipe support was transferred from one group to another, the support was still required to comply with the ASME Code and Specification MS-46A. The transfer of design responsibility from one group to another did result in the application of a methodology (which the ASLB referred to as "design approaches" and various other individuals referred to as "design criteria") by the second group that was not the same as would have been applied by the first group. However, the second group had the responsibility for certifying the design of the entire support, and only its "design approaches" or "design criteria" (and not those of the first group) were utilized in performing the

certification. Thus, "different" or "multiple" criteria or approaches were not utilized in certifying an individual support.

3.2.3 PETITIONERS' ALLEGATIONS RELATED TO THE TRANSFER OF DESIGN RESPONSIBILITY FROM ONE GROUP TO ANOTHER GROUP

The Petitioners cite three statements by a TU Electric manager which they claim are false. 2B/ In particular, the Petitioners allege that each of the following statements constitute material false statements:

- 1) "... The changes made [to the pipe support designs] will go to the original design organization and they will review it and make their own calculations for that change . . . I might point out that after the final review of these drawings, they are stamped and signed by an engineer with the original design organization . . . After all the field changes are incorporated in the drawing and the drawing goes through final review from the as-built loading, the drawing will be stamped and signed certified by the original design organization . . . [E]ach organization that designs supports will be responsible for certifying that the support is good for the as-built loads . . . [These organizations] would be ITT Grinnell, NPSI . . . and my organization, Pipe Support Engineering." ASLB Tr. 4971, 4985-4986, 5013 (emphasis added [by the Petitioners]).

2B/ The Petitioners also quote two statements by the ASLB, and they argue that these statements are additional examples of material false statements by TU Electric. Petition, pp. 4-5, 5-6. Obviously, TU Electric cannot be held responsible for statements made by the ASLB. In any event, as is clear from reading the entire passage (the Petitioners have excised many relevant passages), the first statement quoted by the Petitioners on pages 4-5 of their petition was based upon statements made by the NRC Staff in the Special Inspection Team (SIT) Inspection Report, not upon statements made by TU Electric. Similarly, the second statement quoted by the Petitioners on pages 5-6 of their petition was also based largely on the SIT Inspection Report; it also referenced TU Electric prepared testimony for the proposition that each pipe support design group had its own scope of responsibility (which clearly was correct).

- 2) "As I previously testified . . . design changes are subject to review by the responsible design organizations. (Tr. 4970-71)." See Affidavit of John C. Finneran, Jr. regarding Stability of Pipe Supports and Piping Systems, dated June 17, 1984 at p. 14 (emphasis added [by the Petitioners]).
- 3) . . . three organizations (NPSI, ITT-Grinnell, and PSE) had "separate and distinct responsibilities for the design of pipe supports" and all design changes are "returned to the original designer for correction and rechecking . . ." See Affidavit of D.N. Chapman, J.C. Finneran, Jr., D.E. Powers, R.P. Deubler, Jr., and A.T. Parker regarding Quality Assurance Program for Design of Piping and Pipe Supports for Comanche Peak Steam Electric Station, stated [sic] July 3, 1984, at pp. 13, 36.

The Petitioners allege that these statements are false because pipe support design packages were transferred from one design group to another group for certification. 29/

Petitioners' allegation is misplaced. The transfer of design packages was explicitly authorized by 10 CFR Part 50, Appendix B, Criterion III and ANSI N45.2.11-1974. In particular, Appendix B states that:

[d]esign changes, including field changes, shall be subject to design control measures commensurate with those applied to the original design and be approved by the organization that performed the original design unless the applicant designates another responsible organization. [Emphasis Added]

Similarly, ANSI N45.2.11-1974 30/ states that:

[w]here an organization which originally was responsible for approving a particular design document

29/ Petition, p. 9.

30/ For construction, TU Electric has been committed to Draft 2, Rev. 2 of ANSI N45.2.11 (May 1973), which contains an identical statement.

is no longer responsible, the plant owner shall designate the new responsible organization

In addition, the statements cited by Petitioners track very closely the language that is contained in the design control procedures then in existence. For example:

- o The CPSES Quality Assurance Plan, Section 3.0.2, stated that "[c]hanges to design specifications or documents are reviewed and approved by the same individual or group responsible for original review and approval."
- o The CPSES Quality Assurance Plan, Section 3.0.3, stated that "[c]hanges to the design are documented, reviewed, and approved by the original designers commensurate with the controls applied to the original design."
- o Procedure CP-EP-4.6, "Field Design Change Control," Rev. 8, Section 3.2.2, stated that "[f]ield originated design changes/deviations shall be approved by the original designer's designated site representative"
- o Procedure CP-EI-4.5-4, "Technical Services Engineering Instruction for Pipe Hanger Design Review and Certification," Rev. 4, Section 3.1.1, stated that "[s]ite generated design changes to vendor supplied pipe supports shall be reviewed for structural acceptability and compliance with applicable code requirements . . . by representatives of the original design organizations in accordance with their respective engineering programs."

Thus, the language quoted by Petitioners is consistent with Appendix B, ANSI N45.2.11 and the design control procedures used at CPSES.

Petitioners have selectively quoted from the transcript and affidavits. For example, the first statement quoted by Petitioners employs ellipses to omit 42 pages of transcript, and the third statement quoted by Petitioners omits 23 pages of the cited affidavit. More importantly, the Petitioners have

selectively excised statements from their quotations which are inconsistent with their argument. For example, with respect to their third statement quoted above, the Petitioners imply that TU Electric did not inform the ASLB that design responsibility for pipe supports was transferred from one group to another. However, TU Electric did discuss in general how responsibilities for pipe supports had evolved over time. That discussion occurred on the very page cited by the Petitioners (i.e., page 13 of the affidavit in question). Furthermore, during the hearings, TU Electric explicitly stated that "[t]here were changes in scope, in some of the work." Tr. 5048. 31/

Petitioners have also lifted TU Electric's statements out of their context. The Petitioners cite passages in TU Electric's testimony and affidavits which stated that the review and certification of field changes would be performed by the "original design organization." Petitioners argue that the use of the term "original design organization" is inconsistent with the fact that design responsibility for the entire support was on occasion transferred from one design group to another. However, the subject and purpose of the testimony was to clarify that field design changes were always approved by the design

31/ The Petitioners also assert that page 36 of the affidavit in question states that "All design changes are 'returned to the original designer for correction and rechecking. . .'" In actuality, this portion of the affidavit was not referring to review of field design changes. Instead, as is clearly stated on pages 35 and 36 of the affidavit, the statements in question pertained to design verification of "initial support design."

organization responsible for the entire design. There was no statement or indication that design responsibility had not been or was forever prohibited from being transferred from one design group to another. In fact, other passages in TU Electric's testimony before the ASLB stated that the review and certification would be performed by the "responsible design organization." 12/ For example, at pages 4957 to 4958 of the transcript of the CPSES OL proceeding, the TU Electric witness testified as follows:

JUDGE McCOLLOM: Did the field engineers decide what the change was going to be?

WITNESS FINNERAN: Yes, they do.

JUDGE MILLER: They did. We're talking about a specific area now.

WITNESS FINNERAN: Yeah.

JUDGE MILLER: Okay.

JUDGE McCOLLOM: All right, and yet they are not responsible for determining whether it's stable or not?

WITNESS FINNERAN: No. They just document what they have done, and that documentation will go on to the responsible design organization for the support,

12/ Applicants' Exhibit 142, pp. 34-35; Tr. 4954, 4957-58; Affidavit of John C. Finneran, Jr., Regarding Stability of Pipe Supports and Piping Systems (June 17, 1984) pp. 14, 23; Affidavit of D.N. Chapman, J.C. Finneran, Jr., D.E. Powers, R. Deubler, R.E. Ballard, Jr., and A.T. Parker Regarding Quality Assurance Program for Design of Piping and Pipe Supports for Comanche Peak Steam Electric Station (July 3, 1984), p. 51. Additionally, in other cases, TU Electric stated that the review of field changes would be performed by the "proper design organization." Tr. 5184, 5185-86.

and they will review what the field engineers have done.

JUDGE McCOLLOM: The responsible design organization is the one that designed the original one?

WITNESS FINNERAN: Yes. In the particular case of the support I'm alluding to in March, I think the original design organization was ITT.

I think there's some confusion as to how the field group operates. They have no design responsibility.

All they do is interface with the craft and make changes, document those changes; and that change will then be reviewed by the responsible design organization.

If the responsible design organization decides that the change that the field made is not appropriate, then we will modify the support in accordance with their request.

The subject raised by the Petitioners (transfer of design responsibility) was not even at issue at the time the statements were made.

The quotations cited by the Petitioners were made in response to questions related to the "iterative design process." The iterative design process was a major factor associated with the Walsh/Doyle issues in the CPSES OL proceeding. One of the concerns involving the iterative design process dealt with whether changes authorized by field engineering (which did not have design responsibility) were subject to review and certification by a responsible design organization to ensure that any deficiencies introduced by the field changes would be identified and corrected.

The NRC established a Special Inspection Team (SIT) to investigate the Walsh/Doyle issues, including the issues related to the iterative design process. The SIT concluded that each of

the alleged design deficiencies identified by Walsh/Doyle pertained to designs that had not yet completed the iterative design process. The SIT also concluded that TU Electric had appropriate procedures governing the iterative design process, and that these procedures would ensure correction of the identified deficiencies. In particular, the NRC Staff found that field changes authorized by field engineers were subject to review by the "responsible pipe support design group" to ensure that the stresses on the supports would be acceptable. ^{11/} The NRC Staff offered the SIT inspection report into evidence in the CPSES OL proceeding to address this issue before the ASLB. Similarly, TU Electric presented testimony and affidavits on this issue in the CPSES OL proceeding. Each of the quotations cited by Petitioners was made in the context of a discussion of the iterative design process. In particular, the quotations addressed whether field changes authorized by field engineering would be subject to review and approval by a responsible pipe support design group.

It was in this context that TU Electric witnesses sometimes stated that changes authorized by field engineers were subject to review and certification by the original design organization. These statements paraphrased the language in Appendix B, ANSI N45.2.11, and the CPSES design control procedures. Additionally, these statements accurately reflected

^{11/} NRC Staff Exhibit 207, pp. 13-16.

that design groups (and not field engineers) were utilized for certification of pipe supports at CPSES. TU Electric witnesses were never asked to discuss matters related to the transfer of design responsibility of individual supports, and never claimed that transfers of design responsibility had not occurred. Furthermore, transfer of responsibility for individual pipe supports was not at issue before the ASLB, and there was no reason to discuss particular instances of such transfers since the ASLB was admittedly aware that the scope of responsibility of the three design groups had changed over time.

Therefore, TU Electric's statements were entirely appropriate and directed to the issue in question before the ASLB. The transfer of design responsibility from one group to another was not the issue, or material to the issue, being decided by the ASLB. Thus, allegations that TU Electric made "material false statements" are clearly in error.

4. CONCLUSIONS

During the last eight years, the Petitioners, their clients (including Mr. Hasan), and others have raised allegations regarding the transfer of pipe support design packages among design organizations and the use of different design criteria or approaches. These allegations have repeatedly been determined to have no safety significance.

Having failed to prevail on behalf of Mr. Hasan in other forums, the Petitioners now appear to be taking a new

tactic by raising allegations that TU Electric has committed material false statements. These allegations are nothing more than a rehash of old allegations in a new form. The TU Electric statements cited by the Petitioners accurately reflected that field changes were reviewed by design groups. Furthermore, the Petitioners have misinterpreted and mischaracterized these statements, have selectively quoted from the testimony and affidavits of TU Electric, and have taken statements out of context. In short, the statements do not say what the Petitioners purport that they state.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED
USNRC

'92 OCT 20 P4:13

In the Matter of)

TEXAS UTILITIES ELECTRIC)
COMPANY)

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

Docket No. 50-446-CPA
ASLSP No. 92-668-01-CPA

(Construction Permit
Amendment)

OFFICE OF SECRETARY
DOCKETING & SERVICE
SP-ANCP

CERTIFICATE OF SERVICE

I hereby certify that copies of TU ELECTRIC'S ANSWER TO THE SUPPLEMENTAL PETITION TO INTERVENE AND REQUEST FOR HEARING OF IRENE ORR, D.I. ORR, JOSEPH J. MACKTAL, JR. AND S.H.A. HASAN were served upon the following persons by deposit in the United States Mail (except as indicated below), postage prepaid and properly addressed, on the date shown below:

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board
Adjudicatory File
Washington, D.C. 20555
(Two Copies)

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

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Administrative Judge*
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Dated this 20th day of October, 1992.



David W. Jenkins