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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

ATOMIC SAFETY AND LICENSING BOARD

'92 NOV 19 AM 127

Before Administrative Judges:

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
REAR

Morton B. Margulies, Chairman  
Dr. James H. Carpenter  
Dr. Peter S. Lam

In the Matter of	:	Docket No. 50-446-CPA
	:	
Texas Utilities Electric	:	ASLB No. 92-668-01-CPA
Company	:	
	:	(Construction Permit
	:	Amendment)
	:	
(Comanche Peak Steam Electric	:	
Station, Unit 2)	:	November 19, 1992

TU ELECTRIC'S OPPOSITION TO  
MOTION FOR REHEARING BY R. MICKY DOW

Introduction

On November 10, 1992, R. Micky Dow filed a Motion For Rehearing ("Motion"), requesting that this Board reconsider its October 19, 1992, Memorandum and Order denying a Motion For Extension Of Time To File Brief filed by Sandra Long Dow dba Disposable Workers of Comanche Peak Steam Electric Station and R. Micky Dow ("the Dows") on October 5, 1992. 1/ Because NRC

1/ Memorandum and Order (Ruling on Dow Motion For Extension Of Time and Setting A Further Schedule) (October 19, 1992), (hereinafter "Order").

"Motion for Extension of Time to File Brief by Sandra Long Dow dba Disposable Workers of Comanche Peak Steam Electric Station and R. Micky Dow" (October 5, 1992), (hereinafter "Mot. for Extension of Time").

regulations do not provide for rehearing of ASLB procedural orders, and Mr. Dow fails to provide any new information which would alter this Board's finding that good cause for the extension did not exist. Texas Utilities Electric Company hereby requests that this Board deny Mr. Dow's Motion for Rehearing.

### Background

On July 28, 1992, the Dows filed a motion to intervene and request for a hearing claiming that the Comanche Peak Steam Electric Station construction permit extension sought by TU Electric should not be granted. Because the Dows' motion was patently defective, this Board issued an order according the Dows the opportunity to cure the motion's defects by filing an amendment on or before October 5, 1992. 2/

On October 5, 1992, the Dows filed a motion requesting that this Board grant them an extension of time to file the required amendment on the basis that "R. Micky Dow was, in some manner precluded from timely filing through circumstances of which he had no control." (Mot. for Extension of Time at 2.) As support, the Dows alleged that Mr. Dow was arrested and jailed in Colorado on September 3, 1992 and that various materials in his possession which were needed to prepare the amendment, were

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2/ See Memorandum and Order (Setting Pleading Schedule) (September 11, 1992).

"seized, illegally, ... and removed to the State of Kansas ... and secreted there ...." (Mot. for Extension of Time at 2.) 3/

On October 19, 1992, this Board issued a Memorandum and Order denying the Dows' Motion for Extension of Time. In its Order, this Board found that the information contained in the Motion lacked credibility, was not supported by probative evidence, and failed to establish good cause for granting the extension. The Board, therefore, concluded the Dows failed to meet their burden pursuant to 10 C.F.R. § 2.711(a). (Order at 4.)

#### Discussion

As a threshold matter, NRC regulations do not provide for rehearing of Licensing Board procedural orders, and hence, on this basis alone, Mr. Dow's Motion for Rehearing should be denied. Mr. Dow's Motion for Rehearing should also be denied because it provides no new information which would alter this Board's prior ruling that good cause for granting an extension had not been demonstrated. Information provided in an effort to demonstrate good cause pursuant to 10 C.F.R. § 2.711(a) must overcome the NRC's long-standing policy of favoring the

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3/ The Dows further alleged that those responsible for depriving Mr. Dow of his materials were "the utility and agencies of the United States Government." Id.

observance of established time limits. 4/ Here, Mr. Dow's most recent motion merely repeats and expands upon information contained in the Dows' prior Motion for Extension of Time -- information which this Board previously held insufficient to establish good cause. In its Order denying the Dows' Motion for Extension of Time, this Board concluded that allegations addressing Mr. Dow's arrest and incarceration, "lack[ed] credibility ... [were] not supported by probative evidence, ... and [did] not establish good cause." (Order at 5.)

Notwithstanding the Board's statements, Mr. Dow's Motion for Rehearing merely provides additional unsubstantiated details related to precisely the same events discussed in the initial motion. 5/ Because these events failed to demonstrate good

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4/ In Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1) ALAB-743, 18 NRC 387, 396 n.36 (1983), the Appeal Board stated:

[T]he exclusion from a proceeding of persons or organizations who have slept on their rights does not offend any public policy favoring broad citizen involvement in nuclear licensing adjudications. [Such a policy] ... must be viewed in conjunction with the equally important policy favoring the observance of established time limits.

5/ Mr. Dow's present motion continues his pattern of making patently absurd and, for obvious reasons, unsubstantiated assertions. Thus, this Board is asked to believe that during his thirty days in prison, law enforcement officials in Colorado engaged in a bizarre conspiracy to deny Mr. Dow communication with anyone, including his wife. Perhaps the best example of the kind of incredible assertions for which Mr. Dow is by now well-known, is the following:

(continued...)

cause for the Dows' initial Motion for Extension of Time, further unsubstantiated explanations of these same events can have no effect upon this Board's prior holding, and therefore, do not support Mr. Dow's Motion for Rehearing. Accordingly, for the reasons set forth above, Mr. Dow's Motion for Rehearing should be denied.

Respectfully submitted,



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November 19, 1992

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5/ (...continued)

I have only touched the high-risks of this matter. It goes much deeper, and is far more complicated, even to include my being a witness to using the former Secretary of State as a tool for revenge.

Motion, attach., "Statement of Richard E. Dow, Jr. aka Micky Dow", p. 9, (October 19, 1992).

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

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USNRC

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In the Matter of

TEXAS UTILITIES ELECTRIC  
COMPANY

(Comanche Peak Steam Electric  
Station, Unit 2)

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

(Construction Permit  
Amendment)

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

CERTIFICATE OF SERVICE

I hereby certify that copies of TU ELECTRIC'S  
OPPOSITION TO MOTION FOR REHEARING BY R. MICKY DOW 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:

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Atomic Safety and Licensing Board  
Adjudicatory File  
Washington, D.C. 20555  
(Two Copies)

Office of the Secretary\*  
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Attention: Chief, Docketing  
and Service Section  
(Original Plus Two Copies)

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Washington, D.C. 20555

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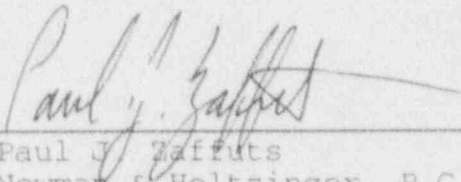
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Dated this 19th day of November, 1992.

  
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