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LBP-92-37

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

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

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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) December 15, 1992

MEMORANDUM AND ORDER
(Ruling On Intervention Petitions and Terminating Proceeding)

I. INTRODUCTION

We have before us for consideration two joint petitions for leave to intervene and to hold a hearing in the matter of the February 3, 1992 request by Texas Utilities Electric Company (Texas Utilities) to amend Construction Permit CPPR-127 for the Comanche Peak Steam Electric Station, Unit 2, by extending the construction completion date from August 1, 1992 to August 1, 1995. In this Memorandum and Order we decide to deny the petitions and terminate the proceeding.

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The petitions were filed in response to a June 23, 1992 NRC Staff (Staff) "Environmental Assessment and Finding of No Significant Impact" for the requested extension, which was published in the *Federal Register* on June 29, 1992. 57 Fed. Reg. 28,885. The Commission, on July 28, 1992, granted the amendment on a finding by Staff that good cause has been shown for the delay and that the amendment involves no significant hazards consideration. 57 Fed. Reg. 34,323 (Aug. 4, 1992). In accordance with Commission practice, if a hearing is ordered a final decision on the extension will await the outcome of the hearing.

The first joint petition for intervention and hearing, dated July 27, 1992, was filed by B. Irene Orr, D.I. Orr, Joseph J. Macktal, Jr. and S.M.A. Hasan. They filed a supplement to the petition on October 5, 1992 containing a contention. Texas Utilities and Staff filed responses seeking denial of the petition and contending that the Petitioners have failed to provide any supporting basis for the contention. Petitioners filed additional pleadings dated November 15 and 17, 1992 which Texas Utilities and Staff oppose. We rule on those pleadings in this Memorandum and Order.

The other joint petition, dated July 28, 1992, was filed in behalf of Sandra Dow Long, R. Micky Dow and

Disposable Workers of Comanche Peak Steam Electric Station. The request for intervention and hearing was opposed by Texas Utilities and Staff in responses dated August 14 and August 18, 1992, respectively.

In response to our order setting October 5, 1992 as the date for filing amended or supplemental petitions, the Dows filed a motion for an extension of time and for a further filing schedule. By Memorandum and Order, dated October 9, 1992, (unpublished) we denied the request for lack of a credible reason and good cause. R. Micky Dow filed a motion for rehearing, dated November 10, 1992, which is opposed by Texas Utilities and Staff. In this Memorandum and Order we rule on the motion.

II. THE APPLICATION

By letter dated February 3, 1992, as supplemented on March 16, 1992, Texas Utilities requests, pursuant to 10 C.F.R. § 50.55(b), the extension of the construction completion date of CPPR-127 from August 1, 1992 to August 1, 1995. As good cause justification Texas Utilities states it was anticipated that there would be a one year suspension in construction beginning in April 1988. The purpose was to allow the permit holder to concentrate its resources on completion of Unit 1. However, Unit 1 was not licensed

until February 1990 and Texas Utilities did not resume significant design activities for Unit 2 until June 1990. The delay was needed to complete construction and startup of Unit 1.

Texas Utilities also relied on the NRC's previous finding of good cause for the suspension of construction of Unit 2 based on allowing concentration of resources for the completion of Unit 1. Staff found good cause for the extension of the construction permit completion date to August 1, 1992 premised on Texas Utilities' justification that suspension of Unit 2 for one year, beginning in April 1988, would allow it time to make modifications that may be required for Unit 2, based upon knowledge gained from the reinspection and corrective action program applied to Unit 1. 53 Fed. Reg. 47,888.

III. PETITIONS FOR INTERVENTION

A. The Orr Petition To Intervene

1. Requisite Interest for Standing.

The Commission's Rules of Practice provide that any person whose interest may be affected by a proceeding and who desires to participate as a party shall file a written

petition for leave to intervene. 10 C.F.R. § 2.714(a)(1). Section 2.714(a)(2) requires that the petition set fourth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding, including the reasons it should be permitted to intervene.

B. Irene Orr, D.I. Orr, Joseph J. Macktal, Jr. and S.M.A. Hasan each claim the requisite interest for standing to intervene in the proceeding under the provisions of 10 C.F.R. § 2.714.

The Orrs state that they reside at separate locations, within a 50-mile radius of Unit 2, that they eat food produced in an area that would be adversely affected by normal and accidental releases of radioactive materials from the construction of Unit 2 and that they came within Texas Utilities' rate base.

Joseph J. Macktal, Jr. states that he is a former employee of the Comanche Peak Steam Electric Station (CPSES) and is currently seeking reinstatement of his job. He asserts that he has been personally harmed due to management misconduct which has also contributed to the delay in the construction of Unit 2. Petitioner claims he was to be a direct fact witness in a construction permit amendment

proceeding to extend the completion date for Unit 1. The proceeding, Docket No. 50-445-CPA (CPA-1) was settled and dismissed in July 1988. He asserts that he has information which is relevant to the determination of Texas Utilities' request to extend the Unit 2 completion date.

S.M.A. Hasan, a former engineer employed at the CPSES, states he was to be a fact witness in CPA-1, but because of the payment of hush money by counsel for the utility to the intervenor he was precluded from testifying. He claims an interest in exposing the alleged management misconduct at CPSES which he says resulted in his removal from the CPSES site and directly contributed to the delay in constructing Units 1 and 2. He asserts a financial interest in the granting of the amendment request.

All Petitioners, without further explanation, claim to be similarly situated as the petitioners who were permitted to intervene in CPA-1 and request intervenor status on that basis.

Neither Texas Utilities nor Staff contest the Orrs' claim of having the requisite interest for standing. It is clear that their claim of residing within 50 miles of Unit 2 provides them with the status required for standing.

The same principles apply to establishing standing for a requested extension of an existing construction permit completion date as do to an application for a new construction permit or operating license. *Northern Indiana Public Service Co.* (Bailly Generating Station, Nuclear 1), ALAB-619, 12 NRC 558, 563-565 (1980).

In the foregoing type of case a petitioner may base standing on a claim that he or she resides within the geographic zone that might be affected by an accidental release of fission products. *Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 443 (1979). Close proximity under those circumstances has been deemed to establish the requisite interest for intervention. In such a case, the petitioner need not show that the concerns are well founded in fact. Distances of as much as 50 miles have been held to fall within the zone. *Virginia Electric and Power Co.* (North Anna Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1979).

The Orrs' claim that they are part of Texas Utilities' rate base does not provide them with an additional ground for standing. Economic concerns of this kind are best directed to the state regulatory body that has charge of rate setting and similar matters. *Public Service Co. of New*

Hampshire (Seabrook Station, Unit 2), CLI-84-6, 19 NRC 975, 978 (1984).

Texas Utilities and Staff argue that Macktal and Hasan do not have the requisite interest for standing on the basis of their assertions that they are former employees who have suffered personal harm caused by management misconduct. They assert that Petitioners fail to meet the two pronged test used by the Commission to establish standing to intervene in NRC proceedings. The test requires a petitioner to show that (1) the action proposed will cause some injury-in-fact to the person seeking to establish standing and (2) that such injury is within the zone of interest protected by the statutes governing the proceeding. *Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613 (1976); *Metropolitan Edison Company, et al.* (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 (1983). They also claim that Petitioners failed to show that the injury-in-fact is concrete and particularized, actual or imminent and is likely to be redressed by a favorable decision in the proceeding, citing *Lujan v. Defenders of Wildlife*, __ U.S. ___, 112 S.Ct 2130, 2136 (1992).

We agree that Macktal and Hasan have not demonstrated that they have the requisite interest for standing. Not

having shown that they reside or work within close proximity to the plant they cannot claim, as the Orrs have successfully done, that they are presumed to have the requisite interest for standing. Under these circumstances a licensing board will apply judicial concepts of standing. *Pebble Springs, supra*. A petitioner should allege in an NRC proceeding an injury-in-fact that is within the zone of interest protected by the Atomic Energy Act of 1956, as amended (AEA), or the National Environmental Policy Act of 1969, as amended (NEPA). This, Petitioners have failed to do.

The claim of personal injury that allegedly resulted from mismanagement was not shown to result from the proposed extension of the construction permit completion date. Neither was it established that the alleged injury was protected against under the AEA or NEPA. Petitioners' grievances are in the area of employment rights and would not be redressed by a decision favorable to them on the issue of the extension of the construction date. A desire to expose the alleged mismanagement is not an injury-in-fact and does not enhance their position for standing.

Similarly, Petitioners' claim that they were denied the right to appear as witnesses in another proceeding to extend the construction completion date of Unit 1 does nothing to

provide the requisite interest for standing in this proceeding. Were Petitioners to prevail in the subject proceeding, it would not redress any alleged harm that was said to result from denying the Petitioners' right to testify in the Unit 1 proceeding. *Lujan v. Defenders of Wildlife, supra; Dellums v. NRC*, 863 F.2d 968, 971 (D.C. Cir. 1988).

Hasan's claim of a financial interest in the application proceeding does not confer standing under the aegis of the AEA and in the absence of an environmental connection, as here, under NEPA. *Houston Lighting & Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-582, 11 NRC 239, 242 (1980).

No factual or legal justification was provided to grant Petitioners' standing request on the unsupported claim that they were si…ilarly situated as the petitioners who were permitted to intervene in the Unit 1 extension proceeding.

We find that Macktal and Hasan have not demonstrated that they have the requisite interest for standing, as provided in 10 C.F.R. § 2.714, and that their petition for intervention and to hold a hearing should be denied.

2. Aspects.

The NRC's Rules of Practice provide that a petition for leave to intervene should set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene. 10 C.F.R. § 2.714(a)(2). Texas Utilities and Staff in their responses to the Orr petition asserted that Petitioners were not entitled to a hearing because they had not addressed the aspect requirements of the regulations.

The issue has been rendered moot by the filing by the Orrs of a supplement to the petition to intervene which contains a contention they propose to litigate. The contention sets forth with particularity aspects of the subject matter of the proceeding as to which Petitioners seek to intervene. Their pleadings are not now deficient in that respect. The Orrs have met the aspect requirement of 10 C.F.R. § 2.714(a)(2).

3. The Orrs' Contention.

a. Standards For Contentions In Construction Permit Extension Proceedings.

All contentions must meet the requirements of 10 C.F.R. § 2.714(b)(2), amended August 11, 1989, which provides:

> (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 expert opinion.
>
> (iii) Sufficient information . . . to show that a genuine dispute exists with the applicant on a material issue of law or fact. This showing must include references to the specific portions of the application . . . that the petitioner disputes and the supporting reasons for each dispute. . .

Further, 10 C.F.R. § 2.714(d) provides that contentions shall not be admitted (i) if the contention and supporting material fail to meet the requirements of section 2.714(b), or (ii) should the contention be proven it would be of no consequence in the proceeding because it would not entitle petitioner to relief.

In its comments on the amendments to section 2.714 the Commission explained that 2.714(b)(2) does not call upon the petitioner to make its case at this stage of the proceeding. The petitioner is required to read the pertinent portion of the license application and to state the applicant's position and its opposing view. 54 Fed. Reg. 33,170 (1989). The Commission cited with approval *Connecticut Bankers Ass'n v. Board of Governors,* 627 F.2d, 245, 251 (1980), wherein the court stated that "a protestant does not become entitled to an evidentiary hearing merely on request or on a bald or conclusory allegation that such a dispute exists. The protestant must make a minimal showing that facts are in dispute thereby demonstrating that an 'inquiry in depth' is appropriate."

The Commission looks to petitioners to specifically fulfill the requirements of 10 C.F.R. 2.714(b)(2). A licensing board cannot infer a basis for a contention. *Arizona Public Service Co., et al.* (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), CLI-91-12, 34 NRC 149, 155 (1991).

The scope of a construction permit extension proceeding is limited to direct challenges to the permit holder's asserted reasons that show good cause justification for the delay. *Texas Utilities Co., et al.* (Comanche Peak Steam

Electric Station, Unit 1), ALAB-868, 25 NRC 912, 935 (1987). A petitioner may challenge a request for a permit extension by seeking to prove, on balance, delay was caused by circumstances that do not constitute good cause. *Washington Public Power Support System* (WPPSS Nuclear Project, Nos. 1 and 2), CLI-82-29, 16 NRC 1221, 1229 (1982).

The need to evaluate and correct safety deficiencies can be good cause for delay in construction completion even when those deficiencies resulted from deliberate corporate wrongdoing. If there was a corporate policy of violating NRC requirements and that policy was discarded and repudiated by the permit holder, any delays from the need to take corrective action would be delays for good cause. *Texas Utilities Electric Co., et al.* (Comanche Peak Steam Electric Station, Unit 1), CLI-86-15, 24 NRC 397, 402-403 (1986).

b. The Contention

Petitioners submitted the following contention:

> 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.

As bases for the contention, Petitioners contend that a significant safety hazard exists where an applicant has employed and continues to employ corporate policies aimed at constructing a nuclear power plant in violation of NRC requirements and, as a result of these corporate policies, significant and substantial construction delays occurred and continue to occur. They further contend that the applicant has not repudiated or disregarded the corporate policies responsible for this delay. As a result they allege Texas Utilities is unable to demonstrate good cause for the delay and the amendment must be denied.

In support of the contention Petitioners allege that the facts contained in CPA-1, the 1988 proceeding in which Texas Utilities sought to extend the construction completion date for Unit 1 to August 1, 1988, demonstrate that a factual dispute exists as to whether Texas Utilities had a corporate policy to violate NRC requirements that had no valid purpose and resulted in a delay in the construction of Unit 2. They further allege that CPA-1 demonstrates a factual dispute as to whether the corporate policy had not been discarded or repudiated.

Petitioners contend that Texas Utilities misled the licensing board in CPA-1 about critical facts in an effort to conceal its ongoing corporate policy of construction in

violation of NRC requirements. These were said to include the use of restrictive settlement agreements, the payment of hush money, the use of incorrect construction standards and improper design certification methods.

Petitioners further contend that Texas Utilities continues to receive Notices of Violation and civil fines which demonstrate it employs the same corporate policies which originally resulted in construction delays.

In response Texas Utilities asserts that Petitioners have failed to allege even a single fact in support of their contention that Unit 2 was delayed due to improper and intentional conduct. It claims that Petitioners' supplement consists of nothing more than a discussion of disparate events occurring over the past ten years that have nothing to do with Texas Utilities' construction permit extension request. Texas Utilities states that the matters raised by Petitioners were previously brought to the attention of the Commission and satisfactorily resolved prior to the issuance of the operating license for Unit 1. Also, the construction permit completion date for Unit 2 was already extended by the NRC in November 1988 to August 1, 1992 on good cause justification for the delay that resulted from reinspection and corrective action programs at Unit 1, which were to be applied to Unit 2. It requests that Petitioners' petition

to intervene should be denied because they failed to establish a basis for a contention as required by 10 C.F.R. § 2.714.

Staff contends that the contention is not admissible because it does not address the issue in the proceeding, i.e., whether it was appropriate for Texas Utilities to have delayed significant construction activities at Unit 2 from 1988 to January 1991, when it resumed significant construction activities. It states that Petitioners fail to explain how the alleged corporate policies, which may or may not have caused the delay in the construction of Unit 1 in 1986, caused Texas Utilities to inappropriately defer the resumption of significant construction activities at Unit 2 for more than two years from 1988 until 1991. Staff asserts that the contention is not relevant to any matter in the proceeding.

Staff further contends that in support of their contention Petitioners chiefly rely on legal pleadings filed in either the operating license proceeding for Units 1 and 2 or CPA-1 without explaining how any of these pleadings, even if true, caused Texas Utilities to inappropriately delay significant construction activities at Unit 2. Staff claims that the events Petitioner alleges to have occurred since the CPA-1 proceeding was terminated are unsupported. It

concludes that Petitioners have failed to demonstrate that a genuine dispute of material facts exists making Petitioners' contention inadmissible.

Petitioners rely on the record in CPA-1, a proceeding to hear Texas Utilities' request of January 29, 1986 to extend the construction completion date of CPPR-126 for Unit 1 to August 1, 1988. Intervenor in that proceeding submitted a contention upon which the subject contention was modeled. The proceeding was considered along with the operating license applications for Unit 1 and its companion Unit 2. Docket No. 50-445-OL and Docket No. 50-446-OL.

The applications for operating licenses for Units 1 and 2 were filed in 1976. By 1983, the only contention remaining for litigation in the operating license proceeding challenged the quality assurance and quality control associated with the construction of the Units 1 and 2. During the course of the proceeding the licensing board found that the applicant had not demonstrated the existence of a system that promptly corrects design deficiencies and had not explained several design questions raised by the intervenor It suggested the need for an independent design review and required the applicants to file a plan that might help to resolve the Board's doubts. *Texas Utilities Generating Company, et al.* (Comanche Peak Steam Electric

Station, Units 1 and 2), LBP-83-81, 18 NRC 1410 (1983). Applicants took various actions to address the concerns that had been raised. Subsequently, Applicants, Staff and the intervenor entered into an agreement in June 1988 to settle and dismiss the operating license proceeding and the application proceeding to extend the construction completion date for Unit 1. The licensing board concluded that as a result of the settlement it knew of no matters in controversy. LBP-88-18A, 28 NRC 101 (1988). It then dismissed the proceeding on July 13, 1988. LBP-88-18B, 28 NRC 103 (1988).

Petitioners would incorporate by reference into this proceeding the record from the operating license applications and construction permit extension proceedings. The record runs into many thousands of pages. They also reference two pleadings containing more than 200 pages. Based on that record Petitioners would have us find that Texas Utilities had not repudiated, prior to the time the proceedings were settled, its corporate policy of violating NRC regulations which resulted in delays in the construction of CPSES.

This we cannot do. Commission practice is clear that a petitioner may not simply incorporate massive documents by reference as the basis for its contention. Petitioners are

expected to clearly identify the matters on which they intend to rely with reference to a specific point. To do otherwise does not serve the purposes of a pleading. *Public Service Company of New Hampshire, et al.* (Seabrook Station, Units 1 and 2) 29 NRC 234, 240, 241 (1989). This requirement is incorporated in 10 C.F.R. 2.714(b)(2)(ii) which Petitioners fail to meet with their request.

Petitioners also allege that the following raise an issue as to whether Texas Utility maintains a corporate policy of violating NRC regulations that caused the delay in the construction of Unit 2.

(1) Restrictive settlement agreements.

Petitioners assert that Texas Utilities has not repudiated its policy of entering into restrictive settlement agreements with former minority owners of CPSES in order to keep relevant information from the licensing board in CPA-1 and the NRC. Brazos Electric Power Cooperative, Inc. (Brazos), a minority owner in CPSES, had contended in an August 14, 1987 pleading in CPA-1 that Texas Utilities was responsible for failing to disclose material information and making misrepresentations to Brazos that may have delayed construction of Unit 1. Brazos asserted it was a continuing practice of the permit holder. Petitioners

assert that subsequently Texas Utilities and minority owners Brazos, Texas Municipal Power Agency and Tex-La Electric Cooperative of Texas entered into settlement agreements whereby Texas Utilities purchased the interest of the minority owners who in turn agreed to drop their litigation and not to assist or cooperate with third parties in all proceedings related to the licensing of Comanche Peak or permit their employees, attorneys and consultants from doing so. The agreements were signed in July 1988, February 1988 and March 1989, respectively.

We cannot discern from Petitioners' presentation how the entry of Texas Utilities into nondisclosure agreements resulted in delay in the construction of CPSES. The allegation was made but it is unsupported.

Moreover, even if Petitioners had alleged facts indicating intentional violations of NRC requirements as the root cause of the deficiencies requiring correction, it would not be sufficient to defeat the extension if the policy was discarded and repudiated by the permit holder and the delays occurred because of the need to correct the safety problems. *Texas Utilities Electric Co. et al.* (Comanche Peak Steam Electric Station, Unit 1), CLI-86-15, 24 NRC 397, 401-404 (1986). For a petitioner to plead an admissible contention in a construction permit extension

proceeding it is necessary to directly challenge the permit holder's asserted reasons that show good cause justification for the delay. *Texas Utilities Electric Co., et al.* (Comanche Peak Steam Electric Station, Unit 1), ALAB-868, 25 NRC 912, 935 (1987).

Petitioners at no time directly challenge Texas Utilities good cause justification for the delay in constructing Unit 2, i.e., applying safety modifications to Unit 2 based upon the reinspection and corrective action program applied to Unit 1. They do not present any supporting material to show that on balance the restrictive agreements were the cause of the delay at Unit 2 and not the reasons given by Texas Utilities in the application. Not only is this inconsistent with the law on contention requirements in a construction permit extension proceeding it is contrary to the requirements of 10 C.F.R. 2.714(b)(2)(iii). It requires petitioners to include references to the specific portions of the application that they dispute and the supporting reason for each dispute.

Petitioners allege that restrictive settlement agreements entered into with alleged whistleblowers established a practice of concealing evidence directly bearing on the issues to be litigated in the operating license and CPA-1 proceedings.

They claim the agreements demonstrate that Texas Utilities has not repudiated its corporate policy which resulted in construction delay. Agreements were entered into between Joseph J. Macktal, Jr. and the contractor of CPSES (Brown and Root, Inc.) in January 1987 and between Lorenzo Polizzi and the architectural engineer for CPSES (Gibbs and Hill, Inc.) in June 1988.

The individuals in settling employment claims with the contractors agreed not to voluntarily testify or otherwise participate in any proceeding or investigation involving CPSES. The Polizzi agreement permitted him to inform the NRC of safety concerns relating to CPSES. Texas Utilities argues that it was not a party to either agreement and that the individuals were informed in 1989 that the restrictive clauses would not be enforced.

The pleading is similarly deficient as that relating to the nondisclosure agreements entered into with minority owners. The claim that the settlement agreements resulted in construction delay is unsupported. Contrary to the requirements of 2.714(b)(2)(iii) Petitioners ignored and failed to challenge the reasons given by Texas Utilities for the delay of construction at Unit 2, which is critical for a contention opposing a construction permit extension.

(2) Pattern of continuing violations.

Petitioners allege that the operating license and CPA-1 proceedings demonstrated a corporate policy of Texas Utilities that resulted in a breakdown in the quality assurance (QA) and quality control (QC) programs employed by CPSES which delayed construction. They contend that Texas Utilities continues to receive numerous Notices of Violation and civil penalties which shows it continues to employ the same corporate policies which originally resulted in the delay of construction. In support Petitioners presented a printout of the Notices of Violation and penalties received since the settlement of the former proceedings.

Petitioners specifically called our attention to the six notices that are said to have occurred related to QA and QC breakdowns. They were identified as occurring on May 17, 1990; August 3, 1990; February 21, 1991; March 29, 1991; April 1, 1991 and March 31, 1992. Petitioners assert that the Notices of Violation demonstrate that Texas Utilities has not abandoned its post corporate policy which resulted in delay.

Texas Utilities states that it has taken corrective and preventative actions for each of the six violations and the NRC has closed all but the most recent violation. It

disclaims that the violations provide a basis for a contention that there is a current or ongoing corporate policy of violating NRC regulations.

We do not believe that which Petitioners have presented supports a claim of a pattern of violations that demonstrate a policy to violate NRC regulations. Inevitably, there will be some construction defects tied to quality assurance lapses in any project approaching in magnitude and complexity, the erection of a nuclear power plant. *Union Electric Company* (Callaway Plant, Unit 1), ALAB-740, 18 NRC 343, 346 (1982). No information was provided to show that anything more was involved here. Furthermore, Petitioners have not shown how the violations were the cause of the delay at Unit 2 rather than as justified by Texas Utilities.

(3) Alleged misleading of licensing board in operating license and CPA-1 proceedings to conceal corporate policy of violating NRC regulations.

Petitioners allege that Texas Utilities misled the licensing board in July 1988 about the root causes of design efects incorporated in the design of CPSES, which required a complete redesign of the CPSES pipe support system, thereby delaying construction.

(i) "Hush money" settlement agreements.

Petitioners allege that Texas Utilities arranged to have whistleblowers paid money in exchange for agreeing not to bring safety concerns to the NRC and denied such activity at the prehearing conference on July 13, 1988, which resulted in the termination of the proceedings. Specific mention is made of the Polizzi agreement. Petitioners claim the failure of Texas Utilities to repudiate the agreements demonstrates that the practice will continue.

Texas Utilities denies that the agreements restrict whistleblowers from informing the NRC of safety concerns and that the NRC has so found. It asserts that the agreements are more than four years old and do not relate to the permit holder's current corporate policy.

The Board notes that the Polizzi agreement of June 23, 1988 provides that the agreement shall not "be interpreted to prevent Polizzi from informing the Nuclear Regulatory Commission of any and all safety concerns he may have relating to the Comanche Peak Steam Electric Station."

Even if we are to assume that "hush money" was paid, it does not *ipso facto* show that delay at Unit 1 was caused by the entering into the agreements or that the agreements, on

balance, caused the delay at Unit 2 rather than the reasons given by Texas Utilities. Petitioners have not provided a valid basis in support of the contention.

(ii) Incorrect stiffness valves were used to certify the CPSES pipe support system.

Petitioners allege that beginning in 1983 S.M.A. Hasan, an engineer at CPSES, had informed Texas Utilities management that incorrect stiffness valves had been used to certify the CPSES pipe support system. The project pipe support engineer was advised of this in August 1985. Petitioners state that the licensing board was not apprised of this situation as Texas Utilities was obligated to do. A minority owner advised the licensing board in January 1987 that Texas Utilities, that month, acknowledged using incorrect values in Unit 1. Petitioners further allege that the project pipe support engineer who oversaw the design of all piping support work at CPSES is believed to be currently employed as Texas Utilities' Manager of Civil Engineering. Petitioners claim this demonstrates that Texas Utilities has not repudiated its policy of construction in violation of NRC requirements including the concealment of significant safety deficiencies.

Texas Utilities asserts that in the mid-1980 Hasan made allegations to the NRC regarding the pipe support certifications. It states it advised the NRC that in July 1987 the pipe supports were being correctly validated and the NRC concluded Hasan's concern had been adequately resolved. Texas Utilities further asserts that the matters were made known to the licensing board prior to the dismissal of the proceeding on July 13, 1988. It claims that Petitioners' allegations related to pipe support certification are more than four years old and do not relate to Texas Utilities' current corporate policies or as to whether it had repudiated past policies.

Petitioners' claim that Texas Utilities maintains its policy of construction in violation of NRC requirements, including the concealment of significant safety deficiencies, is unsupported as prescribed in § 2.714(b)(2)(ii). Lacking is a showing that the alleged improper certifications and their concealments extended beyond 1988. The only connection made of the prior activities of Texas Utilities and its current practices is that it continues to employ the same manager as to whom the initial complaints were made. There is no showing that he presently allows improper certifications or conceals them. An additional defect in the pleading is that it does not

directly challenge the asserted reasons of Texas Utilities in justification for the delay.

(iii) Harassment and intimidation of whistleblowers.

Petitioners contend that Texas Utilities has harassed and intimidated whistleblowers at CPSES. They assert that numerous whistleblowers continue to file complaints against Texas Utilities and their contractors. Petitioners claim that Texas Utilities has not repudiated its corporate policy of constructing in violation of NRC regulations which has resulted in the delay of construction of Unit 2.

Petitioners rely on an April 28, 1988 statement of the intervenor in the operating license and CPA-1 proceedings in which the intervenor questions whether Texas Utilities has adequately identified the root cause of the harassment and intimidation of QC inspectors, managements' role in it and the alleged withholding of information regarding the intimidation of a contractor that was to conduct an independent assessment program. They also allege that Texas Utilities has not properly reviewed the concerns of whistleblowers and that harassment and intimidation still exists at CPSES. Petitioners seek discovery in order to

document evidence which they state supports these and other assertions.

In response Texas Utilities contends that the allegations of harassment and intimidation are unsupported. It further alleges that Petitioners did not provide a basis for the allegations that the intimidation and harassment or employee concerns resulted in the subject delay in the completion of CPSES Unit 2. Texas Utilities advises that in the mid-1980's an NRC special investigation team found that there were some incidents of intimidation and harassment, but there was no "climate of intimidation" at CPSES. Texas Utilities denies any deliberate corporate policy of violating NRC requirements.

Petitioners' assertion that an atmosphere of harassment and intimidation exists at CPSES is not supported as is prescribed in § 2.714(b)(2)(ii). The information supplied by Petitioners goes back to 1988 and before. No specifics were provided on who the whistleblowers are that continue to file complaints and what are their complaints. No nexus was provided between the alleged misconduct in the mid-1980's and Texas Utilities' alleged justification for the delay in the construction of Unit 2. Without such a connection the information provided is insufficient to support a litigable contention in a construction permit extension application.

Although Petitioners would like to further develop support for the contention through discovery, we cannot give them that right. Discovery is only available to a party following the admission of a contention. *Wisconsin Electric Power Co.* (Point Beach Nuclear Plant, Unit 1), ALAB-696, 16 NRC 1245, 1263; 10 C.F.R. § 2.740(b)(1).

The contention fails because it does not directly challenge Texas Utilities' good cause justification for the delay in construction of Unit 2, the time being needed to reinspect and to take corrective action at Unit 1 and to allow it time to make modifications at Unit 2 based on the knowledge gained. Petitioners' allegations of corporate wrongdoing do not show a genuine dispute exists with the applicant on its justification for the delay.

The contention also fails to comply with 10 C.F.R. § 2.714(b)(2)(iii) which requires that each contention contain sufficient information to show that as 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.

The contention is therefore inadmissible. 10 C.F.R. § 2.714(d)(1). The failure to submit a single admissible

contention results in Petitioners not being permitted to participate in the proceeding as a party. 10 C.F.R. § 2.714(b)(1). The Orrs' petition for leave to intervene and to hold a hearing shall be denied.

c. Additional Pleadings.

On November 17, 1992 Petitioners filed a document entitled "Notification Of Additional Evidence Supporting Petitions To Intervene Filed By B. Orr, D. Orr, J. Macktal, and S. Hansan" (Notification). Petitioners submit for consideration by the Board evidence they allege was not available to them on October 5, 1992, the date set for filing contentions.

The evidence consists of excerpts of settlement agreements entered into between Texas Utilities and minority owners Texas Municipal Power Agency (TMPA) and Brazos. The agreements are dated February 12, 1988 and July 5, 1988, respectively. They cover the purchase by Texas Utilities of the minority interests. The former minority owners agreed that they and their attorneys, employees and consultants would not assist or cooperate with third parties in proceedings relating to Comanche Peak.

Petitioners allege that they were first notified by letter of October 13, 1992 that the agreements were available for inspection in the NRC's Public Document Room which made it too late for their inclusion in the contention filed October 5, 1992.

They claim that through these restrictive settlement agreements Texas Utilities was able to secrete from the then convened licensing board, the NRC, and the public information calling into question aspects of the design and construction of CPSES and the ability of Texas Utilities to construct and operate the plants. Petitioners further claim that the agreements demonstrate a past corporate policy that has not been repudiated, which caused the delay in the construction of Unit 2. They also allege that the agreements show the payment of money for silence and that they violate the Energy Reorganization Act and important public policies.

Texas Utilities asserts in a response dated November 25, 1992, that Petitioners' Notification is procedurally improper and substantively irrelevant. It claims that the two documents were provided to the NRC years ago and were available to Petitioners long before October 13, 1992. It stated that at a minimum Petitioners should have addressed the five factors that must be

considered before a nontimely filing may be entertained, as provided for in 10 C.F.R. § 2.714(a)(1), and that their failure to do so should result in the rejection of the document.

Texas Utilities further argues that Petitioners make no effort to explain how the agreements have anything to do with the current extension request. It claims that the agreements predate the previous extension of the construction completion date and are irrelevant. The agreements are said to fail to satisfy the Commission's requirements for admission of a contention in a construction permit extension proceeding as contained in *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 1), CLI-86-15, 24 NRC 397 (1986).

Staff in a December 3, 1992 response argues that Petitioners have failed to establish good cause for the late filing of the Notification and that the information and legal arguments contained in it should not be considered by the Board. Staff also argues that the Notification fails to demonstrate that the contention has any discernable relationship to the issue in the proceeding. It asserts that the settlement agreements were last entered into in July 1988 which is prior to the relevant time frame in the proceeding which is November 18, 1992 when the previous

construction permit construction completion date was extended. Staff claims that Texas Utilities' defense of the agreements in no way demonstrates that the permit holder had a corporate policy that was responsible for the delay in the construction of Unit 2.

We find that the two settlement agreements cannot be considered as newly obtained evidence because they were publicly available prior to the October 5, 1992 filing date. The agreements were submitted to the NRC, in 1988, in support of two applications to amend the construction permits for CPSES to reflect the changes in ownership. The issuance of the amendments was noticed in the *Federal Register* along with the information that the application documents were available in the NRC's Public Document Room. 53 Fed. Reg. 31,778 (August 19, 1988); 53 Fed. Reg. 50610 (Dec. 16, 1988).

Furthermore, Petitioners were generally aware of the contents of the agreements when they filed their contention on October 5, 1992 and could have made in that filing all of the points they offer in the Notification. In the October 5, 1992 filing Petitioners submitted excerpts of a similar settlement agreement Texas Utilities entered into with Tex-La Electric Cooperative of Texas and argued that the agreement and those with Brazos and TMPA supported their

contention. Petitioners stated that they were unable to get copies of the Brazos and TMPA settlement agreements but argued on the basis of all three because they were all similar. The submission of excerpts of the two agreements in the Notification were but a formality in that their relevant contents had already been used in a basis in support of the contention.

Petitioners used the excerpts of the Brazos and TMPA settlement agreements as a vehicle to expand on the previous matters presented in support of the contention and to introduce new arguments such as the claim the settlement agreements reflected the payment of money for silence and that they violate the Emergency Reorganization Act and public policies.

Not only can the Brazos and TMPA settlement agreements not be considered new evidence because of their previous availability but their contents had already been used to support the contention. What Petitioners have proffered in their Notification is a late-filed amendment to the bases of their contention. It was offered without good cause and without addressing the five factors required to be considered by the Board prior to determining whether the nontimely filing should be entertained. 10 C.F.R. § 2.714(a)(1). We therefore reject the Notification.

Petitioners B. Irene Orr, D.I. Orr, Joseph J. Macktal, Jr. and S.M.A. Hasan filed a motion entitled "Motion To Compel Disclosure Of Information Secreted By Restrictive Agreements," dated November 15, 1992. Petitioners request the Board to declare null and void the provisions of the settlement agreements between Texas Utilities and the three minority owners, which prohibit the minority owners and those associated with them from disclosing any potential safety related information to Petitioners, the NRC and the general public. They also request that the Board require that the parties to the settlement agreements, and those affected by the agreements, submit to discovery by Petitioners. The purpose of the discovery is to permit Petitioners to file additional contentions and additional information in support of the previously filed contention.

Texas Utilities in a response dated November 25, 1992 requests that the motion be denied. It asserts that the request to declare the agreements null and void is beyond the scope of the Board's jurisdiction and that the request for discovery to frame contentions is for relief that a petitioner seeking to intervene is not entitled.

Staff, in its response dated December 3, 1992, agrees with Texas Utilities in opposing the motion. It also contends that the agreements neither violate the Energy

Reorganization Act or the Commission's regulations. However, to the extent the agreements are within the proceeding and they preclude the affected corporate entities from bringing information to the NRC they are without force and effect insofar as they relate to communications with the NRC.

We deny the motion because Petitioners seek relief that is not available to a petitioner for leave to intervene. The motion in effect is one for discovery. The request to declare parts of the settlement agreements null and void is but an integral part and in furtherance of the discovery request. Discovery is only available to a party to the proceeding that has already filed an admissible contention. *Wisconsin Electric Power Co.* (Point Beach Nuclear Plant, Unit 1), ALAB-696, 16 NRC 1245, 1263; 10 C.F.R. § 2.740(b)(1). Petitioners have not achieved that status and cannot be granted that relief. We do not rule at this time on whether the relief could be granted as requested had petitioners achieved party status.

B. The Dow Petition To Intervene

1. Requisite Interest For Standing.

R. Micky Dow, his spouse Sandra Long Dow and Disposable Workers of Comanche Peak Steam Electric Station (Workers), each petitions for leave to intervene in the proceeding, pursuant to 10 C.F.R. § 2.714.

R. Micky Dow alleges that he owns property within a 50-mile radius of CPSES and could be harmed by an accident at the plant. He claims to have already been adversely affected because of telephone threats by an officer of Texas Utilities which caused him to flee from his home and Texas.

Sandra Long Dow claims that in the normal course of events she would reside with her husband within a 50-mile radius of CPSES but has been precluded from doing so because of threats to him and harassment to her from those under the control of Texas Utilities.

Workers is stated to be an organization composed chiefly of persons who own property or reside within a 50-mile radius of the facility. Affidavits attesting to this are claimed by Petitioners to be already on file with the NRC. It was not identified where. The board of

directors of Workers is reported to be made up of former whistleblowers who were prevented from testifying before the Commission because of an allegedly illegal settlement agreement. Workers claims to have had standing in "past issues" and wants to reclaim it here. The "past issues" were not identified.

Petitioners claim all of those interested in the proceeding do, or will live, work, recreate, travel and raise families within a radius of 50 miles of CPSES. Much of the food and all of the water used in the area was said to be subject to radioactive or toxic material releases from the facilities. They assert that there is good reason to deny the request for an extension but do not further identify it.

Petitioners request the suspension of the subject proceeding based on vague arguments relating to other proceedings that they are engaged in before the NRC and the Federal Courts. They argue mootness and due process as a basis for suspending this proceeding.

Texas Utilities argues that the joint petition should not be accepted for filing. It asserts that it is one or more than a dozen actions involving CPSES that the Dows have initiated. Texas Utilities claims that the Dows have

engaged in a pattern of not complying with the Commission's requirements, of making frivolous and scurrilous claims, of omitting material facts and of harassing it and the NRC. Texas Utilities had requested the Commission to grant a similar motion in *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-92-12, 36 NRC ___ (1992), but in denying the Dows' petition for late intervention and to reopen the record, the Commission did not address the Texas Utilities' motion.

Texas Utilities asserts that the Dows have not established standing for themselves on the basis of the proximity of their residence or their property to CPSES. It claims that the probable reason that Dows have not chosen to remain in Texas is that he is a convicted felon and that there are felony arrest and misdemeanor warrants outstanding against him in Texas. Texas Utilities' position is that Dows' inability to establish standing is due to his own misconduct. It further argues that the Dows have not asserted any other injury-in-fact which falls within the zone of interest protected by the AEA and that organizational standing was not established on behalf of Workers. It would deny the Dow petition for lack of standing of the Petitioners.

Staff is of the same position as Texas Utilities that the Dow petition does not establish standing as provided in 10 C.F.R. § 2.714. It views Petitioners' request to suspend the proceeding on the basis of mootness and due process claims as irrelevant considering that they have not established standing.

The Dows individually cannot be presumed to be adversely affected by either plant operations or a credible accident at the plant where their base of normal, everyday activities is not within close proximity (50 miles) of the facility. *Gulf States Utilities Co.* (River Bend Station, Units 1 and 2), ALAB-183, 7 AEC 222, 226 (1974).

The Dows fault Texas Utilities for not being able to reside within 50 miles from the plant and Texas Utilities blames the Dows for the situation. Irrespective of who is responsible, the Dows do not meet the conditions for invoking the presumption.

To establish standing they are therefore relegated to do so by alleging an injury-in-fact that is within the zone of interest protected by the AEA or NEPA. The injury should likely be remedied by a favorable decision granting the relief sought. *Dellums v. NRC, supra.*

The Dows individually have not met the foregoing requirements. They have not satisfactorily explained how they, who do not reside in Texas, would have their health and safety jeopardized or suffer environmental harm because of the construction of Unit 2. The property alleged to be owned near the plant was never identified.

The alleged threats and harassment that were said to result in the Dows fleeing Texas is not an injury protected under the AEA or NEPA. A favorable decision for the Dows in the subject proceeding would not remedy the alleged injury. The forum for resolving that dispute is not here. They do not have requisite interest for standing.

We find that the Workers has not been shown to have the necessary interest for organizational or representative standing.

For an organization to have standing, it must show injury-in-fact to its organizational interests or to the interest of members who have authorized it to act for them. If the organization is depending upon injury to the interests of its members to establish standing, the organization must provide with its petition identification of at least one member who will be injured, a description of the nature of that injury, and an authorization for the

organization to represent that individual in the proceeding. *Philadelphia Electric Co.* (Limerick Generating Stations, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1437 (1982).

Workers does not state its organizational purpose nor does it claim any injury to its organizational interest. Its assertions that it had standing in the past in some unidentified matter does nothing to enhance its claim to standing in this proceeding. It is incumbent on Workers to establish standing on this record and it cannot rely on something elsewhere of which we know nothing.

Similarly it has not established representational standing. It relies on unsupplied affidavits that are said to attest to Workers' members owning property or residing within 50 miles of CPSES. The contents of the affidavits and the proceeding in which they were filed are unknown.

There is nothing in this record, as is required for representational standing, that identifies at least one member who will be injured, a description of the nature of that injury to the member and an authorization for the Workers to represent that individual in this proceeding. Sandra Long Dow does not fulfill the role of being the injured member for the reasons we stated previously as to why she has not established individual standing.

Not having established the interest for standing the request by the Dow petitioners to suspend this proceeding on claims of mootness and due process cannot be considered by us.

We will not decide on Texas Utilities' request that we not accept the filing of the Dow petition. There is insufficient evidence in this record to make that ruling. It would serve no useful purpose to further pursue the matter and thereby delay the disposition of this proceeding which can be disposed of on the existing record.

The petition for leave to intervene and to hold a hearing shall be denied on the grounds that Petitioners failed to establish the requisite interest for standing under 10 C.F.R. § 2.714.

2. Aspects.

Texas Utilities and Staff claim that the Dow petition for leave to intervene fails to set forth the specific aspect or aspects of the subject matter of the proceeding as to which Petitioners seek to intervene, contrary to 10 C.F.R. § 2.714(a)(2).

We agree that this constitutes another defect in the Dow petition which is inadequate for establishing standing under 10 C.F.R. § 2.714.

3. The Request To File Contentions.

In a Memorandum and Order of September 11, 1992, we set October 5, 1992 as the date to file amended petitions and supplemental petitions containing contentions for litigation. On October 5 the Dow petitioners filed a motion for an extension of 30 days to make the filing. The request was based on a claim that movants were precluded from making a timely filing through circumstances over which they had no control. We denied the request on the grounds that their reason lacked credibility, was unsupported by probative evidence and failed to show good cause.

R. Micky Dow asserted that on September 3, 1992, he was apprehended, confined and held incommunicado for 30 days and his case materials were confiscated in order to disrupt his participation in the proceeding and to keep from timely making the October 5 filing date. Underscoring the lack of credibility of the story was that he said he was imprisoned on September 3, 1992 to keep him from making the October filing date, although it was not until September 11, 1992

that the Board issued its memorandum and set the date for filing.

In response to our Memorandum and Order of October 19, 1992 denying the motion, R. Micky Dow filed a motion for rehearing dated November 10, 1992. He now argues that he had no knowledge of the scheduling order and therefore could not timely respond. He asserts that granting an extension would not prejudice any of the parties and if the Board found his motion to be lacking in truth it would have been more appropriate to issue an order to show cause.

Texas Utilities opposes the motion because it provides no new information which would alter the Board's prior ruling that good cause for granting an extension had not been demonstrated. It contends the motion merely provides additional unsubstantiated details related to precisely the same events discussed in the initial motion.

Staff also opposes the motion. It argues that the motion fails to demonstrate that the October 19, 1992 order was erroneous or arbitrary. Staff considers the motion for rehearing as a motion for reconsideration and states the motion does not meet the standards for reconsideration. The Commission has held that motions to reconsider should be associated with requests for re-evaluation of an order in

light of an elaboration upon or refinement of arguments previously advanced and they are not the occasion for an entirely new thesis. *Central Electric Power Cooperative, Inc.* (Virgil C. Summer Nuclear Station, Unit 1,) CLI-81-26, 14 NRC 787 (1981).

Staff alleges that the claim of a lack of knowledge of the filing date is new and improper to raise in the motion for rehearing. Additionally, it states that the movant reiterates the same argument without further elaboration, that he was separated from his evidentiary material and was unable to contact anyone, which is also improper pleading. It also alleges movant fails to understand his burden of proof in a motion for an extension of time and that the motion for rehearing was untimely.

The Dow motion for rehearing, along with the attached unverified statement of Mr. Dow only confirms our October 19, 1992 finding that the original motion lacked credibility, was unsupported by probative evidence and failed to provide good cause for the requested extension.

The heart of the original motion was the Dow claim that he had a rough draft of the pleading to be filed, that he was incarcerated on September 3 for more than 30 days and had his papers stolen so that he would not be able to timely

file. Having had the Board point out that it first ordered the pleading filed on September 11, 1992 he now states he never knew of the September 11 order and therefore could not meet it. This change merely conflicts with the original version and does nothing to enhance credibility.

Dow in his original motion claimed he was held incommunicado for more than 30 days and could not contact anyone regarding the possible extension of the filing date. In his current statement he advises of three telephone conversations with one attorney, a visit by another and of telephone calls he made but not with the frequency he wanted. He now undermines his claim that he could not contact anyone regarding the filing.

In his original motion of October 5, 1992, Dow stated that "the public record and court transcription in existence now will completely substantiate" his version of what occurred. The motion for rehearing remains unsupported by any probative evidence. All that was submitted was an unverified statement that conflicts with the original story.

Under 10 C.F.R. §§ 2.711(a) and 2.732 the Dows had the burden of showing good cause for the requested extension. They did not meet this burden provided for in the NRC's Rules of Practice and their motion for an extension failed.

We found no basis to employ a show cause procedure before deciding the motion. It was not required nor warranted by the circumstances.

The Dows contend that granting the extension will not prejudice anyone. To the contrary, to grant a motion that legally should be denied results in a denial of due process. Parties would be injured if this was permitted to occur and the administrative process would also suffer.

We will not deny the November 10, 1992 motion for rehearing on the grounds of untimeliness because there is no prescribed time for filing such a motion. We shall deny the motion on the basis that it failed to show that there was error in our denial of the motion for an extension of time to file contentions.

ORDER

Based upon all of the foregoing, it is hereby Ordered:

1. The November 15, 1992 "Motion To Compel Disclosure Of Information Secreted By Restrictive Agreements" filed by B. Irene Orr, D.I. Orr, Joseph J. Macktal, Jr. and S.M.A. Hasan is denied.

2. The November 17, 1992 "Notification Of Additional Evidence Supporting Petition To Intervene Filed By B. Orr, D. Orr, J. Macktal, And S. Hasan" is rejected.

3. The July 27, 1992 "Petition To Intervene And Request For Hearing Of B. Irene, D.I. Orr, Joseph J. Macktal, Jr. And S.M.A. Hasan," as supplemented on October 5, 1992, is denied.

4. The November 10, 1992 "Motion For Rehearing By R. Micky Dow, Petitioner" is denied.

5. The July 28, 1992 "Petition Of Sandra Long Dow dba Disposable Workers Of Comanche Peak Steam Electric Station, and R. Micky Dow For Intervention And Request For Hearings" is denied.

5. The proceeding is terminated.

This Order is subject to appeal to the Commission pursuant to the terms of 10 C.F.R. § 2.714a, and specifically 10 C.F.R. § 2.714a(b). Any such appeal must be filed within ten days after service of this Order and must include a notice of appeal and accompanying supporting brief. Any other party may file a brief in support of or in

opposition to the appeal within ten days after service of the appeal.

THE ATOMIC SAFETY AND
LICENSING BOARD

Morton B. Margulies

Morton B. Margulies, Chairman
CHIEF ADMINISTRATIVE LAW JUDGE

James H. Carpenter

Dr. James H. Carpenter
ADMINISTRATIVE JUDGE

Peter S. Lam

Dr. Peter S. Lam
ADMINISTRATIVE JUDGE

Bethesda, Maryland

December 15, 1992

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

TEXAS UTILITIES ELECTRIC COMPANY

(Comanche Peak Steam Electric Station, Unit No. 2)

Docket No.(s) 50-446-CPA

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O (LBP-92-37)..TERMINAT'G have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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Docket No.(s)50-446-CPA
LB M&O (LBP-92-37)..TERMINAT'G

Dated at Rockville, Md. this
16 day of December 1992

Office of the Secretary of the Commission