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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

92 DEC -4 P12:13

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF RESPONSE TO MOTION TO COMPEL DISCLOSURE OF  
INFORMATION SECRETED BY RESTRICTIVE AGREEMENTS AND  
NOTIFICATION OF ADDITIONAL EVIDENCE SUPPORTING PETITION  
TO INTERVENE FILED BY B. ORR, D. ORR, J. MACKTAL, AND S. HASAN

INTRODUCTION

On November 19, 1992, Petitioners B. Orr, D. Orr, J. Macktal, and S. Hasan filed two documents with the Atomic Safety and Licensing Board (Board) designated to preside in the above captioned proceeding. These documents were entitled "Notification of Additional Evidence Supporting Petition to Intervene Filed by B. Orr, D. Orr, J. Macktal, and S. Hasan" (Notification) and "Motion to Compel Disclosure of Information Secreted by Restrictive Agreements" (Motion). For the reasons set forth below, Petitioners' Motion, including their request that the Board declare null and void any and all provisions in the settlement agreements entered into between Texas Utilities Electric Company (TU or Licensee) and former minority owners of Comanche Peak Steam Electric Station (CPSES), should be denied. Furthermore, for the reasons set forth below, the new information submitted by Petitioners in their Notification is untimely and

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does not support the admissibility of their proposed contention, filed on October 5, 1992. Accordingly, their contention should not be admitted.

### BACKGROUND

On July 27, 1992, the Petitioners filed "Petition to Intervene and Request for Hearing of B. Irene Orr, D.I. Orr, Joseph J. Macktal, Jr., and S.M.A. Hasan" (Petition). On September 11, 1992, the Board issued a "Memorandum and Order (Setting Pleading Schedule)" (Order). In the Order, the Board ruled that each Petitioner must file, no later than October 5, 1992, an amended petition and supplement to his or her petition containing contentions which the Petitioner seeks to have litigated in a hearing. Order at 7. The Board deferred ruling on the Petitions until the final round of pleadings had been filed. *Id.* at 4. Petitioners filed their "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," (Supplement) on October 5, 1992. In the Supplement, Petitioners proposed one contention to be litigated in this proceeding.

On November 19, 1992, Petitioners filed the instant Motion and Notification. In their Motion, Petitioners request that the Board permit Petitioners to conduct discovery against TU and the former minority owners of CPSES. Petitioners also request that the Board declare null and void certain provisions of three settlement agreements entered into by TU and the former minority owners of CPSES. In their Notification, Petitioners submit allegedly newly obtained information, as well as new legal arguments relating to this information, in support of their contention. The Staff assumes that Petitioners'

Notification is intended to be a supplement to the Supplement filed on October 5, 1992 and, accordingly, the Staff is responding both to Petitioners' Motion and Notification.<sup>1</sup>

### DISCUSSION

A. The Atomic Safety and Licensing Board in This Proceeding Has No Jurisdiction To Consider the Settlement Agreements Between TU and the Former Minority Owners of CPSES

Petitioners request that this Board declare null and void any and all provisions of the settlement agreements between TU and the former minority owners of CPSES, Brazos Electric Power Corporation (Brazos), Texas Municipal Power Agency (TMPA), and Tex-La Electric Cooperative of Texas (Tex-La). Motion at 1. Petitioners' request is beyond the scope of this construction permit (CP) extension proceeding and, accordingly, is beyond the Board's jurisdiction to consider.

The Commission has the authority to define the scope of a proceeding. *Bellotti v. NRC*, 725 F.2d 1380, 1381 (D.C. Cir. 1983). As a delegate of the Commission's authority, an Atomic Safety and Licensing Board's (ASLB) authority is limited by the scope of the proceeding for which it has been designated. *Northern Indiana Public Service Co.*, (Bailly Generating Station, Nuclear 1), ALAB-249, 8 AEC 980, 987 (1974). An ASLB may not either enlarge or narrow the scope of its authority. *Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-235, 8 AEC 645, 647 (1974). The scope of a proceeding relating to the extension of a construction permit has been narrowly defined

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<sup>1</sup> Furthermore, Petitioners claim that the grounds supporting their Motion are contained in their Notification. See, Motion at 3.

by the Commission. *See, Washington Public Power Supply System* (WPPSS Nuclear Projects Nos. 1 and 2), CLI-82-29, 16 NRC 1221, 1229 (1982). Any issue addressed by a CP extension proceeding must be related to whether the applicant has shown "good cause" for the delay in completion of the facility. *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 1), CLI-86-4, 23 NRC 113, 121 (1986). Accordingly, an ASLB designated in a CP extension proceeding only has the authority to consider petitions which seek to challenge the reasons for the delay or to show that other reasons, not constituting good cause, are the principal bases for the delay. *See, WPPSS*, CLI-82-29, 16 NRC at 1229-1230. The only issue in this proceeding is whether TU's delay of significant construction activities at Unit 2 from November 1, 1988 (the date of the last CP extension for Unit 2) until 1991 constitutes good cause so as to warrant the CP extension requested. *See, "NRC Staff Response to Supplement to Petition to Intervene and Request for Hearing of B. Irene Orr, D.I. Orr, Joseph J. Macktal, Jr., And S.M.A. Hacan"* (Staff Response) at 6-7.

Here, Petitioners have moved the Board to declare as null and void any or all provisions of the settlement agreements as violating public policy, section 210 (c) of the Energy Reorganization Act (ERA), as amended<sup>2</sup>, 42 U.S.C. § 5801-5891, and section 50.7 of the Commission's regulations. Motion at 1; Notification at 14. The only issue in this proceeding is whether TU asserted good cause for the delay in the construction

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<sup>2</sup> The Energy Reorganization Act was amended by the Energy Policy Act of 1992. Pub. L. No. 486, 106 Stat. 2776, § 2902. The Energy Policy Act, *inter alia*, renumbered section 210 of the Energy Reorganization Act to section 211.

of CPSES, Unit 2. Whether or not these settlement agreements, which were executed in a Texas state court proceeding and not as a result of any proceeding before the Nuclear Regulatory Commission, are a violation of either the ERA, the Commission's regulations, or public policy is beyond the scope of this proceeding. Accordingly, the Board does not have the authority to grant Petitioners' Motion.

B. Merits of Petitioners' Motion

In their Motion, Petitioners request that

this Board declare null and void any and all provisions in the settlement agreements between the former minority owners of Comanche Peak Steam Electric Station (CPSES) which prohibit those minority owners, and their . . . employees, officers, directors. . . from disclosing any potential safety related information. . . to Petitioners, the NRC and/or the general public. Petitioners likewise move that this Board also nullify those parts of the settlement agreements which prevent persons from filing safety related charges with the NRC.

Motion at 1. Petitioners fail to state with any specificity in their Motion which provisions of these settlement agreements they claim the Board should nullify. Petitioners do reference, in their Notification, certain provisions of the agreements, specifically section 9.2 of both the agreement between TU and TMPA (TMPA Agreement) and the agreement between TU and Brazos (Brazos Agreement). that they claim violate section 211 of the ERA, section 50.7 of the Commission's regulations, and public policy. Notification at 9, 14-19. *See also*, Notification at 7, 8, 10, 12. Assuming the Board designated in this proceeding determines that it has the jurisdiction to consider the validity of these settlement agreements, none of the provisions of these agreements violate the ERA or the Commission's regulations. Certain provisions of these agreements, however,

are inconsistent with the Commission's policy regarding the free flow of information to the agency.

These settlement agreements are not within the scope of either section 211 of the ERA or section 50.7 of the Commission's regulations. Section 211 of the ERA provides protection for employees who bring information of regulatory concern to the NRC.<sup>3</sup> Section 50.7 of the Commission's regulations also protects employees from discrimination as a result of bringing safety concerns to the Agency. See, 47 Fed. Reg. 30452 (July 14,

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<sup>3</sup> Section 211(a) of the ERA specifically provides:

(1) No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee) --

(A) notified his employer of an alleged violation of this Act or the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*);

(B) refused to engage in any practice made unlawful by this Act of the Atomic Energy Act of 1954, if the employee has identified the alleged illegality to the employer;

(C) testified before Congress or any Federal or State proceeding regarding any provision (or proposed provision) of this Act or the Atomic Energy Act of 1954;

(D) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this Act or the Atomic Energy Act of 1954, as amended, or a proceeding for the administration or enforcement of any requirement imposed under this Act or the Atomic Energy Act of 1954, as amended;

(E) testified or is about to testify in any such proceeding or;

(F) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other manner in such a proceeding or in any other action to carry out the purposes of this Act or the Atomic Energy Act of 1954, as amended.

1982); 55 Fed. Reg. 10397 (March 21, 1990). Section 50.7 of the Commission's regulations specifically provides that:

No agreement affecting the *compensation, terms, conditions and privileges of employment*. . . may contain any provision which would prohibit, restrict, or otherwise discourage, an employee from participating in protected activity. . . including, but not limited to, providing information to the NRC on potential violations or other matters within NRC's regulatory responsibilities.

10 C.F.R. § 50.7(f)(emphasis added). The settlement agreements which Petitioners challenge are not agreements "affecting the compensation, terms, conditions and privileges of employment." They are, in essence, agreements between corporate entities to buy and sell shares of CPSES. These agreements, therefore, do not come within the scope of section 50.7 of the Commission's regulations.

Furthermore, the settlement agreements do not come within the scope of either section 211 of the ERA or section 50.7 of the Commission's regulations because these agreements do not preclude employees, acting on their own behalf, from bringing safety concerns to the NRC. Section 9.2, "Covenant Not to Sue," of the agreement between TU and TMPA specifically states that "TMPA, for itself and on behalf of any person or entity, private or governmental, *claiming by, through or under TMPA*" will never sue or look for satisfaction to TU in any matter relating to, *inter alia*, CPSES. Agreement Between Texas Municipal Power Agency, TMPA and Texas Utilities Electric Company, TU Electric, dated February 14, 1988 at 37 (emphasis added), Petitioners' Enclosure 4. The agreements between TU and Brazos and between TU and Tex-La contain similar language. See, Agreement Between Brazos Electric Power Cooperative, Inc. Brazos, and Texas Utilities Electric Company, TU Electric, dated as of July 5, 1988 at 36-37,



Petitioners' Enclosure 5 and Agreement Between Tex-La Cooperative of Texas, Inc., Tex-La and Texas Utilities Electric Company, TU, dated as of March 23, 1989 at 46, attached to Petitioners' Supplement, Exhibit 4. These agreements only apply to the corporate entities and not individual employees acting on their own behalf<sup>4</sup>. Because these agreements are not within the scope of either section 211 of the ERA or section 50.7 of the Commission's regulations, as a matter of law, they do not violate either the statute or the regulation.<sup>4</sup> Accordingly, Petitioners' claims regarding the violation of federal statute or Commission regulations are without merit.

Nonetheless, the Commission has expressed a policy which looks unfavorably upon any restrictions on the free flow of information to the Commission. See *Preserving the Free Flow of Information to the Commission*, 55 Fed. Reg. 10397. Although these agreements do not fall within the scope of either section 211 of the ERA or section 50.7 of the Commission's regulations, the Commission has explicitly stated that, in regards to settlement agreements, "no restrictions on bringing information to the Commission should be allowed." *Id.* at 10402. Furthermore, this view was expressed by Chairman

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<sup>4</sup> Apparently Licensee also recognizes the right of employees of TMPA, Brazos, and Tex-La acting as individuals to come to the NRC with safety concerns. In response to a petition filed pursuant to 10 C.F.R. § 2.206 of the Commission's regulations by some of the same Petitioners here in which the same concerns were raised regarding the Tex-La agreement (*see*, 57 Fed. Reg. 40731 (September 2, 1992)), Licensee stated that the agreement between itself and Tex-La does not apply to employees of Tex-La acting on their own behalf. Letter to Dr. Thomas E. Murley from William J. Cahill, Jr., dated August 6, 1992 at 3 n.2. Furthermore, the Staff, in response to that petition, is in the process of preparing letters to TU, Brazos, TMPA, and Tex-La requesting that they inform the NRC of what actions they have taken or are taking in order to ensure that individual employees, because of the terms of the agreements, do not believe that they are precluded from coming to the NRC with safety concerns.



Zech before the Subcommittee on Nuclear Regulation, Committee on Environment and Public Works, United States Senate on May 4, 1989. Chairman Zech, in his submitted statement, while acknowledging that the Commission favors settlement of disputes, stated that "an agreement whereby any person--not just an employee or former employee with pending claims under Section 210 of the Energy Reorganization Act, but any person--contracts to withhold safety-significant information from the Nuclear Regulatory Commission is not acceptable." *The Secret Settlement Agreements Restricting Testimony at Comanche Peak Nuclear Powerplant and Economic Incentives Affecting the Operation of Rancho Seco Nuclear Powerplant: Hearing Before the Subcommittee on Nuclear Regulation of the Committee on Environment and Public Works United States Senate, 101st Cong., 1st Sess. 109-108; 112 (1989).*

The Commission also recognized the need to ensure the free flow of information to it when it issued a policy statement regarding the confidentiality of informants. In *Statement of Policy On Confidentiality*, (50 Fed. Reg. 48506 (November 25, 1985)), the Commission stated that:

The Commission's inspection and investigatory programs rely in part on individuals voluntarily coming forward with information. Some individuals will come forward only if they believe their identities will be protected from public disclosure, *i.e.*, only if they are given confidentiality. Safeguarding the identities of confidential sources is therefore a significant factor in ensuring the future voluntary flow of such information.

*Id.* See also, *Statement of Policy: Handling of Late Allegations*, 50 Fed. Reg. 11030 (March 19, 1985)("[A]ny person is free to bring [safety] concerns directly to the NRC. . . . Those submitting allegations in good faith should be aware that appropriate

protection against retaliatory action by an applicant or licensee is afforded by Section 210 of the Energy Reorganization Act of 1974, 42 U.S.C. 5851.\*).

To the extent that any of the provisions cited by Petitioners precludes the affected corporate entity from bringing information of regulatory concern to the NRC, those provisions are inconsistent with the above stated policy. Of the provisions discussed by Petitioners in their Notification, the only provisions which appear to contain language inconsistent with this policy are sections 9.2 and 9.6 and the referenced exhibits of the TMPA Agreement, and sections 9.2 and 9.7 and the referenced exhibits of the Brazos Agreement. Petitioners do not discuss any specific provisions of the Tex-La Agreement, although the agreement contains similar provisions. See, sections 9.2 and 9.7 at 44, 59.

The Staff believes that the portions of these provisions which preclude the affected corporate entities from bringing information to the NRC are, accordingly, without force and effect, at least insofar as they relate to communications with the NRC. If the Board determines that these agreements are within the scope of this proceeding and that these agreements contain provisions which are inconsistent with the above policy, the Board may take any action it deems necessary and appropriate to ensure the free flow of information to the NRC.

C. Discovery Is Not Available to Petitioners Who Have Not Been Admitted As A Party to A Proceeding

Petitioners, in their Motion, also request that the Board permit extensive discovery. Specifically, Petitioners request that the Board require TU and the former minority owners of CPSES to meet with Petitioners, disclose any safety related information they

may have, and to provide Petitioners with any documentation relating to that information. Motion at 2. Petitioners further request to be allowed to depose any witnesses who have knowledge of any safety significant information and then to be given thirty days in which to file additional contentions. *Id.* Since Petitioners have not been admitted as parties in this proceeding, Petitioners' Motion should be denied.

Section 2.740 of the Commission's regulations provides for discovery in Commission proceedings. Only parties to a proceeding are entitled to discovery. Section 2.740 specifically states that "[p]arties may obtain discovery." 10 C.F.R. § 2.740(a)(emphasis added). Furthermore, petitioners are specifically precluded from conducting discovery in order to flesh out a "vague, unparticularized contention." *Duke Power Co. (Catawba Nuclear Station, Units 1 and 2)*, ALAB-687, 16 NRC 460, 468 (1982) *vacated in part on other grounds*, CLI-83-19, 17 NRC 1041 (1983). See also, *Wisconsin Electric Power Co., Wisconsin Power and Light Co., Wisconsin Public Service Corp. and Madison Gas and Elec. Co. (Koshkonong Nuclear Plant, Units 1 and 2)*, CLI-74-45, 8 AEC 928, 929 (1974). The Commission specifically adopted this view when it recently revised its rules of practice for licensing proceedings. See *"Rules of Practice for Domestic Licensing Proceedings -- Procedural Changes in the Hearing Process"* 54 Fed. Reg. 33168, 33170 (August 11, 1989). Because Petitioners are not parties to this proceeding and because it is not permissible for Petitioners to use discovery to flesh out either their proposed contention or to formulate new ones, Petitioners' discovery request should be denied.

D. Petitioners' Notification Submitting New Information Is Untimely and Has No Discernable Relationship to this Proceeding

In the Notification, Petitioners seek to submit additional information, 44 days after the time set by the Board for supplementing their Petition. Since this submission is untimely, Petitioners must establish good cause for filing their Notification late. See 10 C.F.R. § 2.714(a)(1) and (2)(iii).<sup>5</sup> As will be demonstrated below, Petitioners fail to establish good cause for their late filing. Accordingly, the information, as well as the legal arguments associated with it, should not be considered by the Board in determining whether Petitioners should be granted party status in this proceeding.

Petitioners claim that they have good cause for their untimely filing because the information they are seeking to submit was not available to them by the deadline for filing supplemental pleadings set by the Board. Notification at 1-2. The information Petitioners seek to have considered by the Board consists of two settlement agreements, the Brazos Agreement and the TMPA Agreement. These settlement agreements, however, were available to Petitioners before the October 5, 1992 deadline set by the Board. These agreements were submitted to the NRC in support of two separate applications to amend the construction permits for CPSES submitted by TU. The Brazos

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<sup>5</sup> Section 2.714(a) of the Commission's regulations provides that untimely filings will not be considered unless the balancing of the five enumerated factors supports their consideration. The first, and most important factor, is the establishment of good cause for the late filing. See, *The Detroit Edison Co.* (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-707, 16 NRC 1760, 1765 (1982). As discussed above, Petitioners have failed to establish good cause and further, they fail to even address the other four factors.

agreement was submitted on July 22, 1988, and the TMPA agreement was submitted on March 4, 1988. See, Letters from William G. Counsil, Executive Vice President, TU Electric to NRC, dated March 4, 1988 and July 22, 1988, copies attached hereto as Exhibit 1. In accordance with NRC practice, the issuance of these amendments based on the applications was noticed in the *Federal Register* and the applications, along with the agreements were placed in the NRC's Public Document Room. See 53 Fed. Reg. 31778 (August 19, 1988); 53 Fed. Reg. 50608 (December 16, 1988).

Petitioners have a duty to examine the publicly available documentary material in order to uncover any information that could serve as a foundation for a contention. *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1048 (1983). Failure to uncover information in time to allow the timely filing of a contention does not establish good cause for the filing of the contention late, if the information was available early enough to allow timely filing. *Id.* Because the information Petitioners are seeking to submit was available early enough to allow them to submit the information in a timely fashion, they have failed to establish good cause for their untimely filing. Accordingly, these settlement agreements, together with the legal arguments regarding these settlement agreements, should not be considered by the Board in determining whether Petitioners have proposed a contention which is appropriate for litigation in this proceeding.

Even if their submission were timely, the Petitioners' information does not demonstrate that Petitioners' contention has any discernable relationship to this proceeding. As previously discussed in the Staff Response, the scope of a CP extension

proceeding is limited to challenges to TU's asserted good cause for the delay in the construction of CPSES Unit 2. *See*, Staff Response at 4-5. The only issue in this proceeding is whether it was appropriate for TU to have delayed significant construction activities at Unit 2 from November 18, 1988 (the date of the last CP extension for Unit 2) until 1991. *See, id.* at 6-7. The Staff argued that Petitioners' contention has no discernable relationship to the issue in this proceeding, and thus, it should not be admitted. *See, id.* In the instant Notification, the information which Petitioners seek to have considered by the Board does not relate to the relevant time period for this CP extension proceeding and, therefore, Petitioners' information does not support the admission of Petitioners' submitted contention.

Petitioners claim, in their Notification, that the two settlement agreements demonstrate that TU had a past corporate policy, which has not been repudiated, which caused the delay in the construction of CPSES Unit 2. Notification at 12. Petitioners allege that TU, through the execution of these two settlement agreements, concealed important information from the ASLB in the CPA-1 proceeding. *Id.* at 13. Petitioners assert that these agreements were executed in direct violation of its obligation to notify the ASLB of all relevant information "while the CPA-1 proceedings were ongoing." *Id.* at 12-13. According to Petitioners, TU's execution of these settlement agreements demonstrates a corporate policy to secrete information from the NRC and that TU has not repudiated these corporate policies. *Id.* at 13-14. Petitioners assert that this information further supports the admission of their contention. *Id.* at 15, 24.

Petitioners' information has no relevance to this proceeding and, therefore, cannot support the admission of their contention. TU's conduct during the course of the CPA-1 proceeding, which was concluded in July of 1988, has no relevance to the issue in this CP extension proceeding, *i.e.* whether it was appropriate for TU to have delayed construction on Unit 2. Moreover, the settlement agreements upon which Petitioners rely date from March and July 1988. Since the relevant time period to this proceeding dates from November 18, 1988, approximately four months after the most recent of the referenced settlement agreements was signed, these agreements do not support Petitioners' contention.

Petitioners also make several new arguments to further support their contention and attempt to link the issue of the Brazos and TMPA agreements to the issue in this proceeding. Petitioners claim that these settlement agreements prevent the full disclosure of information of relevance to this proceeding. *Id.* at 2. However, since both Brazos and TMPA ceased to be involved with CPSES as a result of these agreements, executed in March and July of 1988, there is no reason to believe that any information they may have had or still possess would have any relevance to this proceeding.

Petitioners further argue that "TUEC's continued defense of its secreting information from the NRC demonstrates that TUEC has not repudiated the corporate policy responsible for the delays in construction (e.g., the policy of secreting information from the NRC)." *Id.* at 14; *see also, id.* at 24. Petitioners fail to demonstrate that TU had, in fact, a corporate policy to either hide information from the NRC, that TU did hide information from the ASLB in the CPA-1 proceeding, or that TU entered into the

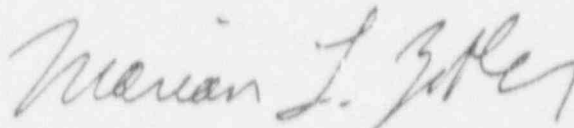


settlement agreements for that explicit purpose. Accordingly, TU's defense of these agreements in no way demonstrates that TU had a corporate policy, repudiated or not, that was responsible for the delay in the construction of CPSES, Unit 2. Finally, Petitioners assert that TU's conduct during the CPA-1 proceeding is "*prima facie*" evidence that it does not have the requisite character, competence or integrity to continue constructing CPSES, Unit 2. *Id.* at 12, 20. Petitioners, as noted above, have not drawn any discernable relationship between TU's conduct during the CPA-1 proceeding and the scope of this proceeding. Petitioners' new assertions have no relevance to this proceeding and do not support their contention.

#### CONCLUSION

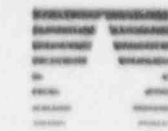
For the reasons set forth above, Petitioners' Motion should be denied. Additionally, nothing in Petitioners' Notification demonstrates that Petitioners' contention has any discernable relationship to the issue in this proceeding. Accordingly, their contention, filed on October 5, 1992, should not be admitted in this proceeding.

Respectfully submitted,

A handwritten signature in cursive script, reading "Marian L. Zobler".

Marian L. Zobler  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 3rd day of December, 1992



TU ELECTRIC

Log # 1xx-88285  
 File # 231, 234  
 843, 10047  
 10101, 10102  
 Ref. # 10CFR50.30  
 10CFR50.90

William G. Council  
 Executive Vice President

March 4, 1988

U. S. Nuclear Regulatory Commission  
 Attention: Document Control Desk  
 Washington, D.C. 20555

SUBJECT: COMANCHE PEAK STEAM ELECTRIC STATION (CPSES)  
 DOCKET NOS. 50-445 AND 50-446  
 REQUEST FOR AMENDMENT TO CONSTRUCTION PERMIT  
 NOS. CPPR-126 AND CPPR-127 AND APPLICATION  
 FOR OPERATING LICENSES FOR CPSES UNITS 1 AND 2

Gentlemen:

Pursuant to 10CFR50.30 and 50.90, Texas Utilities Electric Company (TU Electric), licensee under the referenced NRC Construction Permits for the Comanche Peak Steam Electric Station (CPSES), acting for itself and the other licensees named in referenced Construction Permits, hereby requests amendment of the said Permits and hereby amends its Application for Operating Licenses to reflect revised ownership interests as described below. In support hereof, the following information is submitted.

#### A. Proposed Amendment of Construction Permit

Applicants propose the amendments to reflect a reallocation of ownership interests in CPSES as follows:

The transfer by the Texas Municipal Power Agency (TMPA) of its 6.2% ownership interest in CPSES to TU Electric which already holds an 87-5/6% interest therein, thereby bringing the aggregate interest of TU Electric to 93-1/30%.\*

The transfer is memorialized in the Agreement between TMPA and TU Electric dated February 12, 1988, which is discussed below. Under the terms of the Agreement, the foregoing transfer is subject to certain conditions precedent and regulatory approvals including the Commission's approval. Applicants request that these amendments be approved at this time and be made effective as of the date of completion of the transfers of the ownership interest as set forth in the Agreement.

\* The respective interests of the other owners, Brazos Electric Power Cooperative, Inc. (3-4/5%) and Texas Electric Cooperative of Texas, Inc. (2-1/6%) remain unchanged.

#### B. Supporting Material

In support of this request, there is submitted for the Commission's convenience a copy of the Agreement.

TU Electric has the financial qualification and ability to complete construction of the additional 6.2% share of CPSES which it proposes to purchase under the Agreement. To that end, we furnish TU Electric's most recent SEC Form 10-K dated December 31, 1986 and TU Electric's Form 8-K dated November 18, 1987. The Form 10-K for 1987 should be available later this month and will be furnished at that time.

In addition, the most recent Annual Report of Texas Utilities Company is also enclosed.

#### C. General

This request is being submitted, pursuant to 10CFR50.30 and 50.90. The Amendments herein requested are administrative in nature and involve only the transfer of an ownership interest from one entity to another entity which is already an owner and licensee. This transfer will in no way affect the provisions of the Joint Ownership Agreement with respect to responsibility for the operation and control of CPSES nor in any way affect the design or construction of the facility. Accordingly, the proposed transfer does not involve any increase in the probability or consequences of accidents previously considered, does not create the possibility of an accident of a type different from any evaluated previously, does not involve any decrease in a safety margin, and therefore does not involve a significant hazards consideration. Finally, the proposed transfer will not have a significant impact on the environment.

Pursuant to 10CFR170.17(c), this application for amendments to the referenced permits and license is accompanied by a check for \$150 to cover the application fee. Further, in accordance with 10CFR50.30, one (1) signed original and thirty seven (37) copies of this request are enclosed.

In view of the fact that the transfer proposed by this Amendment does not raise any complex issue, and that the proposed transfer is also subject to the jurisdiction of other regulatory agencies whose approval is a condition

precedent to the transfer, IU Electric respectfully requests an expedited processing of this Amendment so that the transfer can be consummated at the earliest possible date.

Very truly yours,

W. G. Council

By: John W. Beck  
John W. Beck  
Vice President,  
Nuclear Engineering

RSB/clk

Enclosures

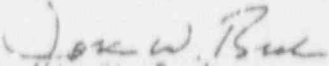
c-Ms. Melinda Malloy, OSP-HRC  
Mr. R. D. Martin, Region IV  
Resident Inspectors, CPSES (3)

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
TEXAS UTILITIES ELECTRIC COMPANY	)	Docket Nos. 50-445
	)	50-446
(Comanche Peak Steam Electric	)	
Station, Units 1 & 2)	)	

AFFIDAVIT

John W. Beck, being duly sworn, hereby deposes and says that he is Vice President, Nuclear Engineering of the Generating Division of Texas Utilities Electric Company, the Applicant herein; that he is duly authorized to sign and file with the Nuclear Regulatory Commission this request to amend the Construction permits (CPR-126 and CPR-127) for the captioned facilities; that he is familiar with the content thereof; and that the matters set forth therein are true and correct to the best of his knowledge, information, and belief.

  
John W. Beck  
Vice President,  
Nuclear Engineering

STATE OF TEXAS     )  
                          )  
COUNTY OF DALLAS    )

Subscribed and sworn to before me, a Notary Public in and for Dallas County on this 4<sup>th</sup> day of March, 1988.

  
Notary Public

My commission expires: 11-15-88



Log # TXX-88578  
File # 231, 234  
843,10047  
10101,10102  
Ref # 10CFR50.30  
10CFR50.90

William G. Council  
Executive Vice President

July 22, 1988

U. S. Nuclear Regulatory Commission  
Attention: Document Control Desk  
Washington, D.C. 20555

SUBJECT: COMANCHE PEAK STEAM ELECTRIC STATION (CPSES)  
DOCKET NOS. 50-445 AND 50-446  
REQUEST FOR AMENDMENT TO CONSTRUCTION PERMIT  
NOS. CPPR-126 AND CPPR-127 AND APPLICATION  
FOR OPERATING LICENSES FOR CPSES UNITS 1 AND 2

Gentlemen:

Pursuant to 10CFR50.30 and 50.90, Texas Utilities Electric Company (TU Electric), licensee under the referenced NRC Construction Permits for the Comanche Peak Steam Electric Station (CPSES), acting for itself and the other licensees named in the referenced Construction Permits, hereby requests amendment of the said Permits and hereby amends its Application for Operating Licenses to reflect revised ownership interests as described below. In support thereof, the following information is submitted.

A. Proposed Amendments of Construction Permits

Applicants propose the amendments to reflect a re-allocation of ownership interests in CPSES as follows:

The transfer by the Brazos Electric Power Cooperative, Inc. (Brazos) of its 3.8% ownership interest in CPSES to TU Electric, which presently holds an 87-5/6% interest therein. By letter dated March 4, 1988 (TXX-88285), TU Electric, acting for itself and the other licensees named in the referenced Construction Permits, requested amendment of the said Permits to reflect a re-allocation of ownership interests in CPSES occasioned by an Agreement between TU Electric and Texas Municipal Power Agency (TMPA)

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dated February 12, 1988. That letter requested amendments to reflect the transfer of TMPA's 6.2% ownership interest in CPSES to TU Electric, thereby bringing the aggregate interest of TU Electric to 94-1/30%. Approval of the amendments requested on March 4, 1988, together with the amendments requested in the instant letter will bring TU Electric's aggregate interest in CPSES to 97-5/6%. \*\_/

The transfer of the Brazos interest is memorialized in the Agreement between Brazos and TU Electric dated as of July 5, 1988 (the Agreement), which is discussed below. Under the terms of the Agreement, the foregoing transfer is subject to certain conditions precedent and regulatory approvals including the Commission's approval. Applicants request that the amendments involving the Brazos ownership interest be approved at this time and be made effective as of the date of completion of the transfer of the Brazos ownership interest as set forth in the Agreement.

#### B. Supporting Material

In support of this request, there is submitted for the Commission's convenience a copy of the Agreement.

TU Electric has the financial qualification and ability to complete construction of the 3.8% share of CPSES which it proposes to purchase under the Agreement. To support that conclusion, we furnish TU Electric's most recent SEC Form 10-K dated December 31, 1987, TU Electric's Form 8-K dated July 5, 1988, and the 1987 Annual Report of Texas Utilities Company.

#### C. General

This request is being submitted pursuant to 10CFR 50.30 and 50.90. The amendments herein requested are administrative in nature and involve only the transfer of an ownership interest from one entity to another entity which is already an owner and licensee. This transfer will in no way affect the provisions of the Joint Ownership Agreement with respect to responsibility for the operation and control of CPSES nor in any way affect the design or construction of the facility. Accordingly, the proposed transfer does not involve any increase in the probability or consequences of accidents previously considered, does not create the possibility of an accident of a type different from any evaluated previously, does not involve any decrease in a safety margin, and therefore does not involve a significant hazards consideration. Finally, the proposed transfer will not have a significant impact on the environment.

\*\_/ The interest of the remaining other owner, Tex-La Electric Cooperative of Texas, Inc., (2-1/6%) remains unchanged.

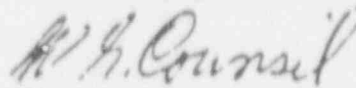


TXX-88578  
July 22, 1988  
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In view of the fact that the transfer proposed by these amendments does not raise any complex issue, and that the proposed transfer is also subject to the jurisdiction of other regulatory agencies whose approval is a condition precedent to the transfer, TU Electric respectfully requests an expedited processing of those amendments so that the transfer can be consummated at the earliest possible date.

Pursuant to 10CFR170.12(c), this application for amendments to the referenced permits is accompanied by a check for \$150 to cover the application fee. Further, in accordance with 10CFR50.4(b)(2)(ii), one (1) signed original and thirty seven (37) copies of this request are enclosed.

Very truly yours,



W. G. Council

RSB:tgw  
Enclosures  
cc: J. H. Wilson, OSP-NRC  
Mr. R. D. Martin, Region IV  
Resident Inspectors, CPSES (3)

STATE OF TEXAS     :

COUNTY OF DALLAS   :

There personally appeared before me W. G. Council, who being duly sworn did state that he is Executive Vice President, Nuclear Engineering and Operations, of TU Electric; that he is duly authorized to sign and file with the Nuclear Regulatory Commission this amendment request for amendment of Construction Permit Nos. CPPR-126 and CPPR-127, this amendment to the Application for Operating Licenses for Comanche Peak Steam Electric Station, Units 1 and 2, and the supplemental information regarding the foregoing; that he is familiar with the content thereof; and that the matters of fact set forth therein are true and correct to the best of his knowledge, information, and belief.



Notary Public

My commission expires: 3/12/90

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DUCKETED  
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

'92 DEC -4 P12:13

OFFICE OF REGISTRY  
DUCKETING & SERVICE  
BRANCH

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO MOTION TO COMPEL DISCLOSURE OF INFORMATION SECRETED BY RESTRICTIVE AGREEMENTS AND NOTIFICATION OF ADDITIONAL EVIDENCE SUPPORTING PETITION TO INTERVENE FILED BY B. ORR, D. ORR, J. MACKAL, AND S. HASAN" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system, this 3rd day of December 1992:

Morton B. Margulies, Chairman\*  
Administrative Law Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Peter S. Lam\*  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

James H. Carpenter\*  
Administrative Judge  
Atomic Safety and Licensing Board  
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R. Micky Dow  
Sandra Long Dow dba Disposable  
Workers of Comanche Peak Steam  
Electric Station  
322 Mall Blvd. #147  
Monroeville, PA 15146

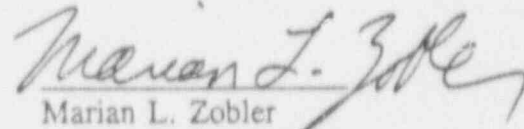
Michael D. Kohn  
Stephen M. Kohn  
Kohn, Kohn and Colapinto, P.C.  
517 Florida Ave., N.W.  
Washington, D.C. 20001

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

Office of Commission Appellate  
Adjudication (1)\*  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Adjudicatory File (2)\*  
U.S. Nuclear Regulatory  
Commission Washington, D.C. 20555  
Attn: Docketing and Service Section

Office of the Secretary (2)\*  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555  
Attn: Docketing and Service Section

  
Marian L. Zobler  
Counsel for NRC Staff