

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
TEXAS UTILITIES GENERATING) Docket Nos. 50-445/2 and
COMPANY, et al.) 50-446/2
)
(Comanche Peak Steam Electric)
Station, Units 1 and 2))

DOCKETE
USNRC

'85 JUN -4

REQUEST FOR IMMEDIATE ORDER
DIRECTING STAFF TO PRESERVE DOCUMENTS

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On May 16, 1985 a Freedom of Information Act request was filed with the Nuclear Regulatory Commission by Billie Garde of the Government Accountability Project seeking, inter alia, memoranda generated and received by Mr. Victor Stello, Assistant to the Director of Operations, relevant to Comanche Peak steam Electric Station. (A copy of the request is attachment A of this memo.)

On May 29, 1985 Ms. Garde was advised by a representative of the FOIA office that the documents responsive to the request had been discarded or destroyed by Mr. Stello. This was confirmed by a second call on May 30, 1985. No indication was provided whether this destruction occurred before or after the FOIA request or whether it represented Mr. Stello's standard procedures with documents generated or received by him in the normal course of his employment. (Attachment B is Ms. Garde's affidavit.)

Mr. Stello's involvement in the Comanche Peak decision making process is unclear, but also undeniable. In recent weeks Mr. Stello has travelled to the Comanche Peak plant for a tour

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and participated in a public press briefing on the status of the plant. It is our understanding that he has also been directly involved in communications with the contention 5 panel. It would appear that Mr. Stello has been playing a role in the development of the staff position in this case and as such memoranda generated or received by him are relevant, or at least likely to lead to information which is relevant, to the issues in this case.

As early as March 29, 1985 we advised the staff of our intent to probe the underlying bases for the positions developed by the staff (letter to Stuart Treby from Anthony Z. Roisman, March 29, 1985). It is now apparent that Mr. Stello is a part of that process. This Board in its March 12, 1985 memorandum (Case Motion For Evidentiary Standard) recognized that the parties may want to challenge staff documents by "cross-examination or contrary proof". Id. slip op p.2. Identifying Mr Stello's influence or attempted influence on the staff position, and the rational or basis for his position is vital to such cross-examination.

No one in the staff should find it surprising that to the extent Mr. Stello influenced or sought to influence the positions taken by the staff, documents prepared or received by him would be relevant and would be sought in this proceedings. What is surprising is that neither Mr. Stello on his own or as a result of the advice of counsel took care to preserve documents which could have a bearing on the issues in this contested proceedings. We are assuming that the document destruction was not done

intentionally to avoid discovery.*/_

As staff documents surface Case will begin the discovery process (we attempted to do that with our March 29 letter but Mr. Treby has never responded) and will learn in fact the extent to which Mr. Stello was involved in Comanche Peak. At that time appropriate document production requests will be filed. But this request will be futile if Mr. Stello--and perhaps other staff employees--are allowed to destroy any documents potentially related to Comanche Peak. For this reason we request that the Board issue an order to the NRC staff directing that no documents received or generated by any staff employee which are potentially related to Comanche Peak be destroyed including all drafts, notes, tapes, discs and the like. Only by such an order can the integrity of the record for this case be preserved.

Inasmuch as the staff apparently assumes that document destruction is not objectionable and in light of the possibility that this Motion may itself encourage a wave of document destruction either by Mr. Stello or others, including other members of the Executive Director's staff we urge this Board to

*/_ The NRC rules make document construction the principal source of discovery from the staff since the staff is allowed sub-standard (but not unfettered) control over the production of witnesses for depositions. This destruction of documents relevant to a licensing proceeding is particularly damaging to the search for the truth.

issue an order immediately in the nature of a temporary restraining order directing the staff to preserve documents. The immediate order would be re-evaluated upon the receipt of responsive papers from the parties.

Sincerely,

Anthony Z. Roisman by *NW*

Anthony Z. Roisman
Executive Director

GOVERNMENT ACCOUNTABILITY PROJECT

1555 Connecticut Avenue, N.W., Suite 202
Washington, D.C. 20036

(202) 232-8550

May 13, 1985

**FREEDOM OF INFORMATION
ACT REQUEST**FREEDOM OF INFORMATION ACT REQUEST

FOIA-85-351

rec'd 5/16/85

Director
Office of Administration
Nuclear Regulatory Commission
Washington, D.C. 20555

To Whom It May Concern:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. §552, the Government Accountability Project ("GAP") requests copies of any and all agency records and information, including but not limited to notes, letters, memoranda, drafts, minutes, diaries, logs, calendars, tapes, transcripts, summaries, interview reports, procedures, instructions, engineering analyses, drawings, files, graphs, charts, maps, photographs, agreements, handwritten notes, studies, data sheets, notebooks, books, telephone messages, computations, voice recordings, computer runoffs, any other data compilations, interim and/or final reports, status reports, and any and all other records relevant to and/or generated in connection with all communications generated or received by Victor Stello regarding the Comanche Peak nuclear power plant, including internal correspondence.

This request includes all agency records as defined in 10 C.F.R. §9.3a(b) and the NRC Manual, Appendix 0211, Parts 1.A.2 and A.3 (approved October 8, 1980) whether they currently exist in the NRC official, "working", investigative or other files, or at any other location, including private residences.

If any records as defined in 10 C.F.R. §9.3a(b) and the NRC Manual, supra, and covered by this request have been destroyed and/or removed after this request, please provide all surrounding records, including but not limited to a list of all records which have been or are destroyed and/or removed, a description of the action(s) taken relevant to, generated in connection with, and/or issued in order to implement the action(s).


GAP requests that fees be waived, because "finding the information can be considered as primarily benefitting the general public," 5 U.S.C. §552(a)(4)(a). GAP is a non-profit, non-partisan public interest organization concerned with honest and open government. Through public outreach, the Project promotes whistleblowers as agents of government accountability. Through its Citizens Clinic, GAP offers assistance to local public interest and citizens groups seeking to ensure the health and safety of their communities. The Citizens Clinic is currently assisting several citizens groups, local governments and intervenors in the central Texas area concerning the construction of the Comanche Peak nuclear power plant.

We are requesting the above information as part of an ongoing monitoring project on the adequacy of the NRC's efforts to protect public safety and health at nuclear power plants.

For any documents or portions that you deny due to a specific FOIA exemption, please provide an index itemizing and describing the documents or portions of documents withheld. The index should provide a detailed justification of your grounds for claiming each exemption, explaining why each exemption is relevant to the document or portion of the document withheld. This index is required under Vaughn v. Rosen (I), 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974).

We look forward to your response to this request within ten days.

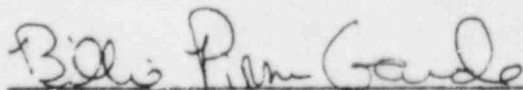
Sincerely,



Billie Pirner Garde
Director, Citizens Clinic

AFFIDAVIT

I, Billie Pirner Garde, do hereby swear and depose that on May 29 I was informed by a member of the Freedom of Information Office Staff that Mr. Victor Stello had informed the FOIA staff in response to my May 16, 1985 request that he now had no documents responsive to my request and that he had discarded or destroyed all the documents that may have been responsive to my request because he was not in the decision making chain of command on Comanche Peak. I was told that the only documents in Mr. Stello's possession which may be responsive were some telephone logs which would be reviewed to determine if they were in fact responsive. That information was confirmed to me on May 30, 1985.


Billie Pirner Garde

Subscribed and sworn to me this

31st day of May, 1985.

in Washington, D.C.

My Commission expires on

My Commission expires June 14, 1985

