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C O U N S E L O R S A T L A W

Daryl Shapiro
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January 23, 2001

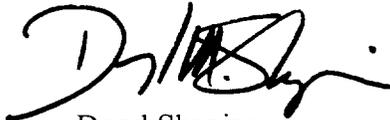
VIA HAND DELIVERY

Mr. Charles E. Mullins
Office of the General Counsel
Nuclear Regulatory Commission
One White Flint North
11545 Rockville Pike
Rockville, Maryland 20852-2738

Dear Mr. Mullins:

As we discussed, I have enclosed some background materials regarding the Cooper case. We will supply additional information with our forthcoming *Touhy* request.

Sincerely,



Daryl Shapiro

DS/emh
cc: Brad Fagg
Enclosures

1-WA:1547389.1

Philadelphia Washington New York Los Angeles Miami Harrisburg Pittsburgh Princeton
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EX-130000

Template
CAC 002

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

CITY OF LINCOLN, NEBRASKA,)
a municipal corporation,)
d/b/a LINCOLN ELECTRIC SYSTEM)
SYSTEM,)
)
Plaintiff,)
)
v.)
)
NEBRASKA PUBLIC POWER DISTRICT,)
)
Defendant.)

Docket 528 Page 69

This is a COPY
Original filed with
CLERK DISTRICT COURT
of Lancaster
on 10/5/95

AMENDED PETITION

Plaintiff, City of Lincoln, Nebraska, d/b/a Lincoln Electric System, for its causes of action against the Defendant, Nebraska Public Power District, alleges as follows:

1. The plaintiff, City of Lincoln, Nebraska, d/b/a Lincoln Electric System ("LES"), is a municipal corporation created by and organized under the laws of the State of Nebraska and operating as an electric generation and distribution system pursuant to its Home Rule Charter and Municipal Code.

2. The defendant, Nebraska Public Power District ("NPPD") is a public power district, organized under Chapter 70, article 6 of the Revised Statutes of Nebraska. NPPD does business in Lancaster County, maintains an office in Lincoln, Lancaster County, and maintains a generating station in Lancaster County.

3. NPPD is specifically empowered by Neb. Rev. Stat. § 70-627.02 to construct, own and operate facilities employing radioactive material and to sell, lease, furnish or make available under contract or otherwise such radioactive material or the energy therefrom.

4. This Court has jurisdiction and venue is proper pursuant to Neb. Rev. Stat. §§ 25-536 and 403.01 (Reissue 1989), respectively.

5. As the successor to Consumers Public Power District, NPPD owns and operates the Cooper Nuclear Power Station ("Cooper"), a 2381 megawatt thermal nuclear electric generating station located on the Missouri River, south of Brownville, Nebraska, that commenced commercial operation in July of 1974.

6. On or about May 21, 1968, Consumers Public Power District entered into a Power Sales Contract ("Contract") with LES in Lincoln, Lancaster County, Nebraska, for the sale of 12.5 percent of the net power and energy from Cooper until September 22, 2003. A copy of the Contract, as amended, is attached as Exhibit A and made a part of this Petition as though set forth verbatim.

7. By virtue of Section 21 of the Contract, and in addition to the Contract, NPPD's operation of Cooper is also governed by an operating license issued by the U.S. Atomic Energy Commission, the predecessor to the Nuclear Regulatory Commission ("NRC") on January 18, 1974. As the sole NRC licensed operator, NPPD is responsible for the safe operation of the plant.

8. As the NRC licensed operator of Cooper, and pursuant to the terms of the Contract, NPPD has duties to the public and to LES to comply with the statutes and regulations promulgated to protect human life and property against the risk of exposure to nuclear radiation.

9. Section 21 of the Contract also requires compliance by NPPD with the provisions of the Nuclear Facility Revenue Bond Resolution, adopted August 22, 1968 ("the Bond Resolution"). Section 711 of the Bond Resolution, captioned "Construction of Nuclear Facility and its Operation and Maintenance states in relevant part:

The District shall at all times operate or cause to be operated the Nuclear Facility properly and in an efficient and economical manner, consistent with good business and utility operating practices, and shall maintain, preserve, reconstruct and keep the same or cause the same to be so maintained, preserved, reconstructed and kept, with the appurtenances and every part and parcel thereof, in good repair, working order and condition, and shall from time to time make, or cause to be made, all necessary and proper repairs, replacements and renewals so that at all times the operation of the Nuclear Facility may be properly and advantageously conducted.

10. During the last two years, the NRC issued numerous notices of violations to NPPD-- 27 in 1993 alone--for violations of the NRC's regulations and the Cooper license and imposed penalties upon NPPD in 1993 and 1994 that total \$700,000.

11. As a direct and proximate result of these violations and other safety issues identified by both the NRC and NPPD, including but not limited to, improper maintenance of plant equipment, inadequate corrective action programs, and mismanagement, Cooper has experienced unplanned outages and planned outages have been unduly extended.

12. In June of 1993, the NRC issued its Systematic Assessment of Licensee Performance ("SALP") report for Cooper for the period from January 19, 1992 through April 24, 1993. That report indicated a marked deterioration in NPPD performance in several areas. Key issues that the NRC identified included the failure of NPPD to aggressively pursue root causes of potentially significant equipment problems, a weak corrective action program, and a lack of sensitivity to potentially degraded plant conditions.

13. Because of the violations identified during inspections conducted in 1993 and the poor SALP results, the NRC conducted an Operational Safety Team Inspection ("OSTI") in November 1993. The OSTI team concluded that there was no evidence of improvement in Cooper performance

21. On May 25, 1994, NPPD shut down operations at Cooper when both standby diesel generators were declared inoperable.

22. On May 27, 1994, the NRC sent NPPD a Confirmatory Action Letter ("CAL") identifying several specific matters that would have to be addressed satisfactorily before Cooper could restart. A copy of which is attached as Exhibit C and made a part of this Petition as though set forth verbatim.

23. The NRC amended the CAL twice, adding additional specific matters that would have to be addressed prior to restart and directing NPPD management to demonstrate to the NRC the basis for NPPD's judgment that Cooper is capable of resuming safe operation, and to explain why prior NPPD reviews had missed significant information. A copy of the amendments are attached as Exhibits D and E and made a part of this Petition as though set forth verbatim.

24. The NRC issued another CAL on August 2, 1994. The Commission stated with respect to certain equipment failures that "It appears that the failure of [NPPD's] staff to implement appropriate actions based on [NPPD's] own experience, industry experience, and NRC information is a contributing factor to the failure of the equipment." A copy of the CAL is attached as Exhibit F and made a part of this Petition as though set forth verbatim.

25. NPPD was continually unwilling or unable to recognize the extent of the improvements and actions needed to address the problems at Cooper that the NRC required to be accomplished prior to restart.

26. In June of 1994, the NRC decided to conduct a diagnostic evaluation of Cooper. The NRC formalized its plans to conduct a diagnostic evaluation of Cooper on July 29, 1994, and

assembled an evaluation team which conducted interviews and inspections at the plant during August and September of 1994.

27. In connection with this NRC evaluation, NPPD decided to conduct its own diagnostic self assessment of Cooper, which was intended to be similar in scope and approach to an NRC diagnostic evaluation. The stated objectives of the NPPD diagnostic self assessment were "to identify areas requiring improvement and to determine the root causes of the station's declining performance." A 16-member Diagnostic Self Assessment Team ("DSAT"), drawn from nine nuclear utilities, the Institute for Nuclear Power Operations and nuclear field consultants was assembled.

28. The NPPD-appointed DSAT conducted its evaluation during the period July 25 through August 19, 1994 and issued a report on September 1, 1994.

29. The findings and conclusions of the DSAT and the SET indicated that there were three root causes of the performance problems at CNS. "First, executive and senior management of the Nebraska Public Power District responsible for the Cooper Nuclear Station failed to provide the policy, leadership and direction necessary to maintain appropriate corporate wide standards of performance. NPG managers had not effectively implemented appropriate standards and expectations for corporate and station personnel or provided appropriate direction and supervision. This resulted in the lack of a questioning attitude and a willingness to live with problems."

30. "Second, performance of CNS had been characterized by major programs and processes which were poorly defined and lacked the comprehensive guidance necessary to assure consistent and effective implementation. This resulted in degraded equipment and poor assurance of the ability of safety-related components to meet their design basis requirements."

31. "Third, with the exception of the DSA, NPPD's self assessment and independent oversight activities had been ineffective in promptly identifying significant deficiencies which were subsequently identified by regulatory or third party assessments and failed to assure that lessons learned from industry operating experience were appropriately applied at CNS. The Corrective Action Program did not effectively support the recognition and resolution of plant problems."

32. The NPPD Board of Directors knew or should have known as a result of its Safety Review and Analysis Board reports, of these management failures and failed to take corrective action.

33. On December 12, 1994, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalties in the amount of \$300,000.

34. On January 18, 1995, Defendant acknowledged and paid the \$300,000 in civil penalties to the NRC.

35. On February 1, 1995, the NRC again determined that Cooper should appear on the list of plants whose safety performance was trending downward, indicating that additional time was required to see if corrective actions were effective.

36. Pursuant to the Contract, Defendant agreed to operate and maintain Cooper in an efficient and economical manner, consistent with good business utility operating practice.

37. Pursuant to the Contract, Defendant agreed to operate Cooper and make power available to LES in accordance with the Contract at all times during the term of the Contract except as interrupted by uncontrollable forces.

38. Defendant breached sections 3(a), 7 as amended, 9, 15, and 21 of the Contract in that corporate and station management failed to establish or encourage the necessary standards for

personnel and unit performance resulting in the station's inability to keep pace with nuclear industry standards.

39. Defendant breached sections 3(a), 7 as amended, 9, 15, and 21 of the Contract by failing to adequately establish long-range planning and scheduling and not implementing long-range improvements.

40. Defendant breached sections 3(a), 7 as amended, 9, 15, and 21 of the Contract by failing to provide adequate oversight of operations.

41. Defendant breached sections 3(a), 7 as amended, 9, 15, and 21 of the Contract by failing to meet the requisite margin of safety in important plant systems.

42. Defendant breached sections 3(a), 7 as amended, 9, 15, and 21 of the Contract in that Defendant's senior management failed to effectively establish the necessary elements of a nuclear corporate culture which led to Cooper's inability to keep pace with nuclear industry standards.

43. Defendant breached sections 3(a), 7 as amended, 9, 15, and 21 of the Contract in that Defendant's senior management failed to establish adequate direction and performance standards to improve station performance.

44. Defendant breached sections 3(a), 7 as amended, 9, 15, and 21 of the Contract by its failure to establish a strong work control program.

45. Defendant breached sections 3(a), 7 as amended, 9, 15, and 21 of the Contract by its failure to implement appropriate industrial safety practices.

46. Defendant breached sections 3(a), 7 as amended, 9, 15, and 21 of the Contract by its failure to establish effective independent oversight and quality assurance programs.

47. Defendant breached sections 3(a) as amended, 4(c), 4(h), 7 as amended, 9, 15 and 21 of the Contract by its failure to meet regulatory requirements.

48. Defendant breached sections 3(a), 7 as amended, 9, 15, and 21 of the Contract by its failure to keep pace with industry practice and by providing ineffective engineering support.

49. Defendant breached sections 3(a), 7 as amended, 9, 15, and 21 of the Contract with respect to nuclear engineering because of insufficient management direction.

50. Defendant breached sections 3(a), 7 as amended, 9, 15, and 21 of the Contract by failing to implement improvement plans appropriately because of lack of accountability.

51. Defendant breached sections 3(a), 7 as amended, 9, 15, and 21 of the Contract by failure to implement an effective management monitoring and self assessments of station performance.

52. Defendant breached sections 3(a), 7 as amended, 9, 15, and 21 of the Contract by a lack of self-critical review and weaknesses in the assessment of station and industry experiences.

53. Defendant breached sections 3(a), 7 as amended, 9, 15, and 21 of the Contract by failing to recognize longstanding equipment problems and excessive rework, which contributed to increased system and equipment unavailability.

54. Defendant breached sections 3(a), 7 as amended, 9, 15, and 21 of the Contract by inadequate planning and quality of maintenance.

55. Defendant breached sections 3(a), 7 as amended, 9, 15, and 21 of the Contract by failing to develop and implement an effective management development program.

56. Defendant breached sections 3(a), 7 as amended, 9, 15, and 21 of the Contract by failing to maintain the primary containment system operable in accordance with the requirements of the plant technical specifications.

57. Defendant breached sections 3(a), 7 as amended, 9, 15, and 21 of the Contract by failing to correct a breakdown in its design control program, dating back to initial construction.

58. Defendant breached sections 3(a) as amended, 4(c), 4(h), 7 as amended, 9, 15, and 21 of the Contract by failing to maintain the integrity of the Cooper control room environment pursuant to acceptable NRC standards.

59. Defendant breached sections 3(a) as amended, 4(c), 4(h), 7 as amended, 9, 15, and 21 of the Contract by failing to keep the emergency diesel generators operable.

60. Defendant breached sections 3(a), 7 as amended, 9, 15, and 21 of the Contract by failing to establish adequate procedures for verification that certain trip breakers were operable and the pre-conditioning of certain system and components prior to testing in order to ensure that the best results would be acceptable.

61. Defendant breached sections 3(a), 7 as amended, 9, 15, and 21 of the Contract by failing to operate the plant safely.

62. Defendant breached sections 3(a), 7 as amended, 9, 15, and 21 of the Contract by failing to provide the leadership and direction necessary to maintain standards of performance.

63. Defendant breached sections 3(a), 7 as amended, 9, 15, and 21 of the Contract by accepting below industry standards.

64. Defendant breached sections 3(a), 7 as amended, 9, 15, and 21 of the Contract by failing to take corrective actions when problems in the management of Cooper were identified.

65. Defendant breached sections 3(a), 7 as amended, 9, 15, and 21 of the Contract by failing to operate Cooper in an efficient and economical manner consistent with good business and utility operating practices.

66. Defendant breached sections 3(a), 7 as amended, 9, 15, and 21 of the Contract by failing to operate Cooper subject to the terms and provisions of the NRC permit, License and the Bond Resolutions.

67. Defendant breached sections 3(a), 7 as amended, 9, 15, and 21 of the contract by failing to operate Cooper and make power and energy from Cooper available at all times during the term of the Contract.

68. Defendant breached sections 4(c) and 4(h) of the contract by overstating the Monthly Power Costs charged to LES.

69. LES is required to have electric generating capacity available for its peak usage. When LES consumers' energy consumption is below that capacity excess energy is available to be marketed to other utilities.

70. LES relied upon Cooper to provide energy, during periods when it was not needed to meet LES system loads, to be sold "off system" at a profit, and has sold such energy for profit in the past.

71. As a direct and proximate result of NPPD's breach, LES has lost sales of power and energy and profits from those sales in the amount of \$3,432,682.21.

72. As a direct and proximate result of NPPD's breach of the Contract, LES has been damaged in the amount of \$8,664,622.73, including lost profits in the amount of \$3,432,682.21, the increased cost for replacing energy to serve its system load in the amount of \$3,231,940.52,

increased costs, including additional operating and maintenance costs and other costs due to the shutdown of Cooper in the amount of \$2,000,000.00.

73. LES has duly performed all the conditions of the Power Sales Contract on its part.

WHEREFORE, LES respectfully prays for judgment against the Defendant, Nebraska Public Power District, in the amount of \$8,664,622.73, plus the costs of this action and any other relief the Court deems appropriate.

CITY OF LINCOLN, NEBRASKA, a municipal corporation, d/b/a LINCOLN ELECTRIC SYSTEM, Plaintiff

By: 

Douglas L. Curry, #10874
David C. Mussman, #19347
ERICKSON & SEDERSTROM, P.C.
301 S. 13th St., Suite 400
Lincoln, NE 68508
(402) 476-1000
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a copy of the foregoing Amended Petition to be served upon the defendant by placing a copy of the same in the U.S. mail, first class, postage prepaid, on the 5th day of October, 1995, addressed as follows:

William M. Lamson, Jr.
David J. Schmitt
KENNEDY, HOLLAND, DELACY & SVOBODA
10306 Regency Parkway Drive
Omaha, NE 68114

Lawrence V. Senn, Jr.
Patricia A. Griffin
MUDGE, ROSE, GUTHRIE, ALEXANDER & FERDON
180 Maiden Lane
New York, NY 10038-4996

John R. McPhail
NEBRASKA PUBLIC POWER DISTRICT
P. O. Box 499
Columbus, NE 68601

A handwritten signature in black ink, appearing to read "John R. McPhail", is written over a horizontal line. The signature is stylized with large loops and a cursive script.

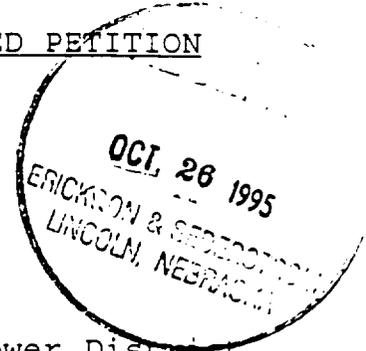
IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

CITY OF LINCOLN, NEBRASKA,)
A municipal corporation,)
d/b/a LINCOLN ELECTRIC)
SYSTEM,)
)
Plaintiffs,)
)
v.)
)
NEBRASKA PUBLIC POWER)
DISTRICT,)
)
Defendant.)

DOCKET 528

NUMBER 69

DEFENDANT'S
ANSWER TO AMENDED PETITION



COMES NOW the Defendant, Nebraska Public Power District ("NPPD"), and for its answer to the Amended Petition of Plaintiff, City of Lincoln, Nebraska, d/b/a Lincoln Electric Systems ("LES"), states as follows:

1. Admits the allegations contained in Paragraph 1.
2. Admits the allegations contained in Paragraph 2.
3. Admits the allegations contained in Paragraph 3.
4. Admits the allegations contained in Paragraph 4.
5. Admits the allegations contained in Paragraph 5.
6. Admits the allegations contained in Paragraph 6.
7. Admits NPPD is the licensed operator of Cooper Nuclear Station ("Cooper") pursuant to an Operating License, dated January 18, 1974 ("Operating License"), issued by the U.S. Atomic Energy Commission, the predecessor to the Nuclear Regulatory Commission ("NRC"). NPPD refers to the Contract and

the Operating License for the contents thereof, and denies the remaining allegations of Paragraph 7 of Plaintiff's Amended Petition.

8. Denies the allegations contained in Paragraph 8 and refers to the Contract and Operating License for the contents thereof.

9. Admits that Section 711 of the Nuclear Facility Revenue Bond Resolution, entitled "Construction of Nuclear Facility and its Operation and Maintenance," contains the language quoted in Paragraph 9. NPPD refers to said document for the entire contents thereof, and denies the remaining allegations of Paragraph 9 of Plaintiff's Amended Petition.

10. Admits that the NRC imposed civil penalties upon NPPD in 1993 and 1994 in the total amount of \$700,000, and denies the remaining allegations of Paragraph 10 of Plaintiff's Amended Petition.

11. Denies the allegations contained in Paragraph 11.

12. Admits that in June of 1993, the NRC issued its initial Systematic Assessment of Licensee Performance ("SALP") report for Cooper for the period January 19, 1992 through April 24, 1993 and refers to said report for the contents thereof, and denies the remaining allegations of Paragraph 12 of Plaintiff's Amended Petition.

13. Admits that the NRC conducted an Operational Safety Team Inspection ("OSTI") and refers to NRC Inspection Report 50-298/93-202 for the details of said inspection, and denies the remaining allegations of Paragraph 13 of Plaintiff's Amended Petition.

14. Admits the allegations contained in Paragraph 14, and refers to the January 25, 1994 NRC letter for the contents thereof.

15. Denies the allegations contained in Paragraph 15.

16. Admits that NPPD developed a program called Cooper Nuclear Station Near Term Integrated Enhancement Program ("Enhancement Program") which is described in a document, entitled Cooper Nuclear Station Near Term Integrated Enhancement Program, dated March 31, 1994, and denies the remaining allegations of Paragraph 16 of Plaintiff's Amended Petition.

17. Admits that the language quoted in Paragraph 17 is contained in the document referred to in Paragraph 16. NPPD refers to said document for the entire contents thereof, and alleges that the quote contained in Paragraph 17 of Plaintiff's Amended Petition is taken out of context.

18. Admits that the language quoted in Paragraph 18 is contained in the document referred to in Paragraph 16. NPPD

refers to said document for the entire contents thereof, but denies that said statement is an admission and alleges that the statement is taken out of context.

19. Admits that NPPD received a letter from the NRC, dated June 21, 1994, and refers to said letter for the contents thereof, and denies the remaining allegations of Paragraph 19 of Plaintiff's Amended Petition.

20. Admits the allegations contained in Paragraph 20.

21. Admits that NPPD shut down Cooper on May 25, 1994, and denies the remaining allegations of Paragraph 21 of Plaintiff's Amended Petition.

22. Admits that on May 25, 1994, the NRC issued a Confirmatory Action Letter ("CAL") relating to Cooper. NPPD refers to said document for the content thereof, and denies the remaining allegations of Paragraph 22 of Plaintiff's Amended Petition.

23. Admits that the NRC amended the May 25, 1994 CAL on June 16, 1994 and again on July 1, 1994. NPPD refers to said documents for the contents thereof, and denies the remaining allegations of Paragraph 23 of Plaintiff's Amended Petition.

24. Admits that the NRC issued a CAL on August 2, 1994 and that this CAL contains the language quoted in Paragraph 24. NPPD refers to said document for the entire content thereof,

and denies the remaining allegations of Paragraph 24 of Plaintiff's Amended Petition.

25. Denies the allegations contained in Paragraph 25.

26. Admits that NRC employees conducted interviews and inspections at Cooper during August and September of 1994, and denies the remaining allegations of Paragraph 26 of Plaintiff's Amended Petition.

27. Admits that NPPD assembled a Diagnostic Self-Assessment Team and conducted an assessment of Cooper. NPPD refers to the document entitled Diagnostic Self-Assessment July - August 1994 ("DSAT" report) for a full description of the DSAT, and denies the remaining allegations of Paragraph 27 of Plaintiff's Amended Petition.

28. Denies the allegations contained in Paragraph 28 and repeats herein its responses to the allegations contained in Paragraph 27.

29. Admits that a Special Evaluation Team ("SET") Report, issued by the NRC on November 29, 1994, contains the language quoted in Paragraph 29. NPPD refers to said document for the contents thereof, and denies the remaining allegations of Paragraph 29 of Plaintiff's Amended Petition.

30. Admits that the SET Report contains the language quoted in Paragraph 30. NPPD refers to said document for the

contents thereof, and denies the remaining allegations of Paragraph 30 of Plaintiff's Amended Petition.

31. Admits that the SET Report contains the language quoted in Paragraph 31. NPPD refers to said document for the contents thereof, and denies the remaining allegations of Paragraph 31 of Plaintiff's Amended Petition.

32. Denies the allegations contained in Paragraph 32.

33. Admits the allegations contained in Paragraph 33.

34. Admits the allegations contained in Paragraph 34.

35. Admits that the NRC issued a letter to NPPD, dated February 1, 1995. NPPD refers to said letter for the contents thereof, and denies the remaining allegations of Paragraph 35 of Plaintiff's Amended Petition.

36. Admits that the Power Sales Contract contains language similar to that set forth in Paragraph 36. NPPD refers to the Contract for the contents thereof, and denies the remaining allegations of Paragraph 36 of Plaintiff's Amended Petition.

37. Admits that the Power Sales Contract contains language similar to that set forth in Paragraph 37. NPPD refers to the Contract for the contents thereof, and denies the remaining allegations of Paragraph 37 of Plaintiff's Amended Petition.

38.-73. Denies the allegations contained in Paragraphs 38 through 73.

FIRST AFFIRMATIVE DEFENSE

74. LES has failed to state facts sufficient to constitute a cause of action.

SECOND AFFIRMATIVE DEFENSE

75. The claims herein are barred by the terms of the Power Sales Contract.

THIRD AFFIRMATIVE DEFENSE

76. The damages sought by LES from NPPD are barred by the terms of the Power Sales Contract.

FOURTH AFFIRMATIVE DEFENSE

77. The claims herein are barred by the doctrines of estoppel, waiver and laches.

FIFTH AFFIRMATIVE DEFENSE

78. The claims herein are barred due to the failure of LES to comply with contractual conditions precedent.

SIXTH AFFIRMATIVE DEFENSE

79. Any alleged damages are subject to setoff and recoupment.

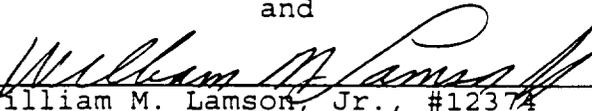
WHEREFORE, having fully answered Plaintiff's Amended Petition, this Defendant prays that Plaintiff's Amended Petition be dismissed with prejudice to any future action, and that this Defendant be awarded its costs herein expended in addition to any applicable setoff and recoupment.

DATED this 25th day of October, 1995.

NEBRASKA PUBLIC POWER DISTRICT, A
Political Subdivision of the State
of Nebraska, Defendant,

BY 
Laurence V. Senn, Jr.
Patricia A. Griffin
King & Spalding
120 West 45th Street
New York, NY 10036-4003
(212) 556-2100

and

BY 
William M. Lamson, Jr., #12374
David J. Schmitt, #19123
of KENNEDY, HOLLAND, DeLACY & SVOBODA
10306 Regency Parkway Drive
Omaha, NE 68114
(402) 397-0203

and

John R. McPhail
NEBRASKA PUBLIC POWER DISTRICT
P.O. Box 499
Columbus, NE 68601
(402) 563-5568

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy
of the foregoing document was served upon the attorneys designated
below:

Douglas L. Curry
David C. Mussman
301 South 13th Street, Suite 400
Lincoln, NE 68508

via:

_____	U.S. Mail	_____	Facsimile
_____	Hand-Delivery	_____	UPS
<u>X</u> _____	Federal Express	_____	Other

this 25 day of October, 1995.


William M. Lamson, Jr.

The subject matter, facts and opinions, and a summary of the grounds for the opinions rendered by Mr. Painter, are set forth in his report dated January 16, 1998, Bill Lamson's letter to counsel for LES dated March 30, 1998, Mr. Painter's previous deposition testimony dated February 20, 1998, and in his previous trial testimony dated April 17 and 20, 1998. Mr. Painter has begun the process of reviewing his prior work and, if during the course of his preparation, the subject matter, substance of facts or opinions, or grounds for those opinions change, this answer will be supplemented.

6. William S. May
Utility Systems Associates, Inc.
4675 Ponte Vedra Drive, Suite 100
Marietta, GA 30067-4659

The subject matter, facts and opinions, and a summary of the grounds for the opinions rendered by Mr. May, are set forth in his report dated January 16, 1998, Bill Lamson's letters to counsel for Plaintiff dated March 30 and April 14, 1998, Mr. May's previous deposition testimony dated February 11, 1998, and in his previous trial testimony dated April 20, 1998. Mr. May has begun the process of reviewing his prior work and, if during the course of his preparation, the subject matter, substance of facts or opinions, or grounds for those opinions change, this answer will be supplemented.

In addition, on January 3, 2001, Mr. May obtained a copy of PROMOD III Version 31.66, which is the version of PROMOD used by LES' Expert Kenneth Slater in his analysis. Mr. May is using the program to continue his analysis of the work previously performed by Mr. Slater. The results of Mr. May's analysis will be furnished to the Plaintiff when it is complete.

7. John Montgomery
RR 4, Box 87AA
Crockett, TX 75835
936-544-4614

The subject matter, facts and opinions, and a summary of the grounds for the opinions rendered by Mr. Montgomery, to date, are set forth below. Mr. Montgomery is continuing his analysis and if during the course of his work, the subject matter, substance of facts or opinions, or grounds for these opinions change, this answer will be supplemented.

1. The lack of mismanagement by NPPD during the period leading up to and during the 1993 and 1994/1995 outages.

2. That NPPD operated Cooper at all times relevant to the instant case efficiently and economically consistent with good business and utility operating practice.
3. To the extent the management of Cooper erred, they were not outside the acceptable range for the nuclear utility industry.
4. The response of NPPD management during the 1994/1995 outage was prompt, decisive and effective in getting the plant back on line in a minimum amount of time.
5. The NRC regulatory environment from the late 1980's to the mid 1990's underwent a change from compliance-based to performance-based regulation, resulting in the industry as a whole having a difficult time predicting what would satisfy the regulator given the regulator's lack of communication of this intent.
6. It was not uncommon for nuclear power plants to be scrutinized by the NRC resulting in a number of plants being placed on the Watch or Problem Plant lists.
7. Poor communication of the bases for NRC positions and complex interpretations contributed to an unpredictable regulatory environment with different basic interpretations by the regulator and industry. An earlier recognition of this difference and the application of probabilistic risk methodology by the regulator would have resulted in no civil fines.
8. Beginning in 1992 with the change in resident inspectors at Cooper and with the earlier change in Region IV managers, a difference of opinion existed between headquarters and the region in regard to Cooper, resulting in Cooper receiving "mixed messages" regarding its performance. Once the NRC gave Cooper a clear message about their performance as evidenced by the trending letters of 1994, Cooper management effectively managed the problem and because of their actions, including the DSAT, Cooper was never placed on the Problem Plant or Watch lists.
9. Given the complexity and difficulty inherent in the operation of a nuclear power plant, coupled with a changing political environment, the appropriate standard for management adequacy is to look at the overall record of a plant over a significant period of time. The occurrence of issues or events is not in and of itself mismanagement; in judging management, one should examine the issue or event and how management responded.

- 10. The commercial nuclear power industry has developed a self-critical culture that is unique and, most uniquely, it is shared publically without thought of adverse actions. Tough self criticism is viewed as a positive indicator of management by the industry, the NRC and INPO. The self assessment measures against the highest possible standard. The DSAT in his opinion, while criticizing specific functions does not mean other functions were not consistent with the performance of a large segment of the industry. As examples, both the SRAB and the Operating Experience Review Programs were criticized in the DSAT, but in Mr. Montgomery's opinion, were not mismanaged.
- 11. With the broader use of probabilistic risk assessment and in today's reformed regulatory environment, Cooper would not have received the fines or CAL's it experienced in the mid-1990's time frame. That method of regulation has been updated by the NRC and is no longer in use.

DATED this 12th day of January, 2001.

NEBRASKA PUBLIC POWER DISTRICT,
Defendant,

By: 
 William M. Lamson, Jr. #12374
 David J. Schmitt, #19123
 LAMSON, DUGAN & MURRAY, LLP
 10306 Regency Parkway Drive
 Omaha, NE 68114-3743
 (402) 397-7300

and

Laurence V. Senn, Jr.
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