

Robinson,
Robinson, Peterson, Berk,
Rudolph, Cross & Garde

Mary Lou Robinson
Nila Jean Robinson
John C. Peterson
Avram D. Berk
Michael Rudolph
Dan Cross
Billie Pirner Garde

Attorneys at Law
108 East College Avenue
Appleton, Wisconsin 54911
(414) 781-1817
Green Bay 404-9600
Fax 780-8841

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James E. Lyons, Chairman
Allegation Review Committee
Comanche Peak Project Division
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

RE: Allegation OSP-89-A-0089
In the matter of Comanche Peak
Steam Electric Station
Docket No.: 50-445, 50-446

Dear Mr. Lyons,

On October 27, 1989, you wrote to Ms. Betty Brink of the Citizens for Fair Utility Regulation (CFUR) regarding a variety of charges made by CFUR to the Commission in an October 16, 1989, filing entitled Request for Stay. Your letter sets forth the position of the NRC Staff in regards to the Commission's October 19, 1989 Order denying CFUR's request for a stay, but directing the Staff to "address CFUR's safety concerns prior to issuing the low power license."

The Commission did not direct or even suggest to the Staff that they hold an evidentiary hearing on CFUR's allegations, but rather directed the Staff determine if the allegations by CFUR regarding the settlement agreement between TU Electric and Citizens Association for Sound Energy (CASE) present any safety concerns about the Comanche Peak Steam Electric Station (CPSSES) "that the Staff has not previously considered." Order, at 3. Additionally, the Staff was directed to determine if CFUR's assertions regarding certain specific technical issues present possible safety hazards associated with the low power operation of Comanche Peak. Order, at 2.

As to the technical issues raised by CFUR, the Commission directed that the matters be handled in accordance with NRC Chapter Manual 0517 for processing allegations. No specific guidance was provided to the Staff on the procedure they should

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follow for determining whether the assertions about the settlement pose potential safety concerns.

The Commission's Order presents a particularly troublesome procedural issue which CASE believes is at odds with the agency's past practices and procedures; and CASE respectfully requests that the Staff consider the comments in this letter in regards to their review of various charges raised by CFUR.

As a preliminary matter CASE believes that the pleading, although entitled a Request for Stay, is properly considered as a request for action pursuant to 10 C.F.R. 2.206 to the extent that it raises new issues for Staff consideration. This section of the Federal Regulations provides the NRC's Executive Director of Operations with the authority to take any action, up to and including modifying, withdrawing or withholding a license, on the basis of a request by any member of the public. Additionally, this procedure has regularly been followed when citizens' groups without standing in licensing hearings or admitted intervenors without admitted contentions on certain safety-related allegations raise those issues to the Staff, (i.e., Zimmer, Midland, Diablo Canyon, and Catawba, among others).

CFUR has no standing in front of the Commission under the current posture of the dispute between CFUR, the NRC, and TU Electric, other than as an appellant of the Commission's denial of its late intervention request. See, Texas Utilities Electric Co., (Comanche Peak Steam Electric Station), CLI 89-06, 29 NRC 348 (1989), and see, Citizens for Fair Utility Regulation v. NRC, Case Nos.: 89-4124 and 89-4310, 5th Circuit filed February 16, 1989. In spite their lack of standing, CFUR has repeatedly and continuously utilized every available forum to criticize CASE, denigrate its activities, and cast aspersions on its motives in regards to the 1988 settlement. These criticisms of CASE have been based on the flimsiest of hearsay information. Handling the CFUR allegations pursuant to a criteria of 10 C.F.R. 2.206 and/or the manual chapter for a review of late filed allegations will eliminate unnecessary expenditure of resources on allegations which are little more than character attacks on CASE.

As CASE reads the stay request, CFUR has essentially raised two types of issues to the Commission: (1) Alleged technical/hardware concerns about the nuclear plant itself; and, (2) charges of impropriety by CASE, TU Electric and the NRC Staff which by inference raise some sort of character and integrity concerns about the parties involved in the settlement.

The Staff has characterized these issues in an attachment to its October 27, 1989, letter. Issues 1 through 4 raise alleged technical/safety concerns about the plant itself. Issues 5 and 6 raise alleged concerns about the NRC regulatory process and the opinions of NRC line inspectors about the performance of TU

Electric and their opinions on the condition of the plant. Issue 7 raises an alleged wrongdoing concern about the motivation of CASE in reaching a settlement of the operating license proceeding and that the settlement was not based on a resolution of safety issues.

Since, to the extent that the comments in CFUR's petition are allegations, they are clearly in the category of "late-filed allegations" as defined by the OSP Office Procedure 0170, "Management of Allegations," May 19, 1987, CASE believes that the Staff should follow the procedures for these types of allegations. Pursuant to the requirements the Staff must first determine in reviewing the allegation:

"Whether, if true, the allegations are material to the licensing decision in that they would require denial of the license sought, the imposition of additional conditions or license, or further analysis or investigation. Allegations which, even if true, are not material to any licensing decision or which on their face or after inquiry are determined to be frivolous or too vague or general in nature to provide sufficient information for the Staff to investigate will receive no further consideration." (Emphases added.)

According to the NRC's allegation management process, if the allegations are material to the licensing decision the NRC must then determine whether the information is "new" i.e., raising a matter not previously considered or tending to corroborate unresolved allegations. If the NRC Staff determines that the information is already available to the NRC, then the Staff may resolve the allegations without further inquiry.

Using the NRC's procedural requirements for handling late filed allegations, CASE believes that it is incumbent upon the Staff to determine first materiality, and then determine whether CFUR has any new information to support their allegations. Because the information in many of the CFUR pleadings before the Commission is distorted, and in some cases untrue, CASE believes that the NRC must insist that CFUR provide any new information under conditions that provide the NRC Staff some degree of reliability and truthfulness, i.e., sworn depositions or transcribed interviews under oath or affirmation. Without requiring this type of testimony, at least as to issues and charges against CASE, the NRC Staff is improperly providing a forum for CFUR to simply attack CASE, the plant, and the NRC without any accountability for their words or the effect they may have.

In reviewing the seven allegations, CASE is of the view that Issues 1 through 4, and 7 are potentially material to the safe

operation of the plant, but questions whether or not CFUR has any new information which would dictate any further Staff inquiry. In fact, it appears to CASE, that CFUR has provided no information not readily available from public sources such as newspapers or the NRC's own inspection reports.

Issue One - (Generic Issue 82) is not new, and is already being considered by both the Staff and TU Electric in connection with NRC standard practice for review of industry identified technical problems.

Issues Two and Four - An APW check valve failure is not a new concern and has already been the subject of extensive inspection and review, and is presently being considered for escalated enforcement action. Thus, the information is not new and is under NRC review.

Issue Three - Counterfeit Bolts is not a new issue, and has been the subject of intensive scrutiny by OI and TU Electric's own internal investigation. The results of these probes is under consideration by the Staff at the present time.

Issues Five and Six - Internal dissent about TU's handling of the Service Water System (SWS) problems and the SALP report has been, and is being, handled by the NRC's internal processes. Furthermore there is nothing to indicate that CFUR has any information on this matter beyond that reported in the media. CFUR points to no new information on these matters.

Issue Seven - CASE settlement/worker settlements. Contrary to CFUR's assertions, the issue of a potentially ill-motivated settlement was addressed by the ASLB at the July 13, 1988, prehearing conference on the CASE/TU settlement. (See, transcript pages 25,194, 25,197-25,200, 25,210-25,211, 25,226, and 25,284-25,291 of July 13, 1988, transcript of proceedings.) No new information has been presented by CFUR for the Staff to consider.¹

¹ It is important to note that all of the "whistleblowers" who settled their civil law suits had already provided substantial information to the NRC throughout a variety of inspections, investigations, hearings, special inspections, and other actions. The

A final allegation is made that the settlement was motivated by a significant but undefined economic interest in the settlement of the "whistleblower" claims, which were contingent on the dismissal of the licensing hearings. This allegation is an improper area of inquiry for the NRC inspection staff; however, the allegation is patently false and cannot be allowed to stand unrefuted.

CASE invites the NRC's Office of Investigations (OI) to conduct an inquiry into this issue and talk to the attorneys charged as well as CASE's President, Mrs. Juanita Ellis.

In conclusion, CASE believes that the Staff must hold CFUR to the same standards of accuracy and truthfulness that it imposes on all alleged and, where appropriate, to seek from CASE and/or its former/current attorneys a response to any charges of impropriety. We also believe that the NRC must be consistent in application of NRC procedures with regards to probing of allegations.

Respectfully,

Billie Pirner Garde
Billie Pirner Garde (SB)

DOL complainants who were offered settlements also had disclosed concerns to the NRC staff and/or the DOL and/or TU Electric. Those complainants who settled their labor disputes in July, 1988, were absolutely free to raise their concerns and that aspect of the settlement was disclosed at the July 13, 1988, hearing, see transcript pages 25,257-25,258, 25,264-25,265, and 25,268. Further, as the NRC is well aware, some of the plaintiffs have continued to pursue their concerns well beyond the settlement with CASE's assistance.