

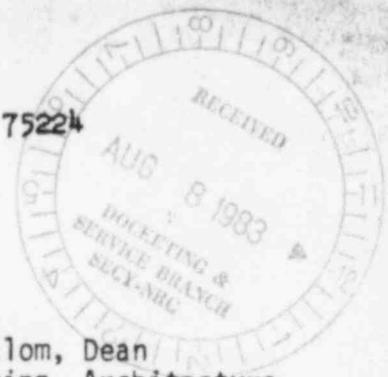
CASE

(CITIZENS ASSN. FOR SOUND ENERGY)

August 3, 1983

1426 S. Polk
Dallas, Texas 75224

214/946-9446



Administrative Judge Peter B. Bloch
U. S. Nuclear Regulatory Commission
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Gentlemen:

SUBJECT: In the Matter of
Application of Texas Utilities
Generating Company, et al. for
An Operating License for
Comanche Peak Steam Electric Station
Units #1 and #2 (CPSES)
Docket Nos. 50-445 and 50-446

Record Regarding Discouragement from
Reporting Nonconforming Conditions at
Comanche Peak Nuclear Plant

CASE has just received a copy of the July 27, 1983, letter to the Board from David Preister, Assistant Attorney General for the State of Texas, regarding a correction he requested be made to the transcript of the July 20, 1983, conference call. CASE's recollection of that conference call is the same as Mr. Preister's recollection and we join him in requesting that the record be corrected accordingly.

In regard to the state of the record regarding discouragement from reporting nonconforming conditions at Comanche Peak, we note that the Board has referenced some of the instances already in the record in its July 29, 1983, Proposed Initial Decision (Concerning aspects of construction quality control, emergency planning and Board questions). In addition, we believe the Board should be aware of the attached information, all of which CASE believes are pertinent to the issues at hand.

Specifically, CASE believes that there are clear indications that there is a pattern at Comanche Peak not just of discouraging the writing of nonconformance reports, but of firing QC inspectors and craftspeople who refuse to wear blinders and insist that nonconforming items be reported. We further believe that there is a pattern of discouraging workers from doing the job right to begin with. This also includes what is generally called "constructive discharge" (whereby a worker is given distasteful jobs to do, harassed, made to feel unwelcome, his/her concerns ignored, etc., to the point where the worker no longer wants to continue working at the plant and quits).

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1426 S. Polk
Dallas, Texas 75224

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(CITIZENS ASSN. FOR SOUND ENERGY)

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CASE'S August 3, 1983, letter to Licensing Board; Subject: Record Regarding Discouragement from Reporting Nonconforming Conditions at Comanche Peak Nuclear Plant - Docket Nos. 50-445 and 50-446

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ATTACHMENTS: Affidavits (2) of J. R. Dillingham
Deposition by Robert L. Messerly
Affidavit of Dennis Culton
July 14, 1983, MEMORANDUM AND ORDER, ASLB, South Texas
Project Units 1 and 2, pages 1, 8, and 12
Affidavit of Larry Witt
Emergency Planning Guide address label sheet for Larry
Witt

(See also July 29, 1983 Proposed Initial Decision, ASLB, Comanche Peak, Docket Nos. 50-445 and 50-446: pages 17 (morale), 21-22 (Bob Hamilton), 28 (Henry Stiner), 41 (Darlene Stiner), and 42 (Charles Atchison).)

1. J. R. Dillingham (2 affidavits attached) -- Mr. Dillingham has been concerned about the construction at Comanche Peak for some time (see affidavits). It was Mr. Dillingham to whom CASE referred in its 2/21/83 Motions to: (1) Respond to Applicants' Charges of Misconduct by CASE; (2) Strike Applicants' February 8, 1983 Answer to CASE Motion (and Supplement) for Protective Orders; and (3) Impose Sanctions Against Applicants (which was later stricken by the Board's March 1, 1983, Memorandum and Order), when we stated on page 35:

"The concerns of this individual had also all been reported to Brown & Root and/or Applicants, at least all the concerns CASE was told about (however, the individual indicated that CASE was not told everything with which the individual was concerned or that such individual had knowledge of). CASE has neither the address or phone number of this individual, who calls CASE from time to time to see what the status of the hearings is, whether CASE has received a response from our request to the NRC in Washington to investigate allegations regarding construction at Comanche Peak, and whether CASE has been able to establish any other lines of communication for reporting their concerns so that they can be assured that they will be thoroughly looked into. It is CASE's understanding that this individual planned to go to Washington himself with the concerns which were discussed by both individuals with CASE, as well as with the concerns which were not disclosed to CASE. CASE has been and is presently very much concerned about the safety of this individual, and we have urged him to make certain that (since he apparently did not even trust CASE with the information) several individuals he considers trustworthy have copies of the information in case anything should happen to him. He has not called CASE in the past few weeks." (Emphasis added.)

Since that time, we have again talked with Mr. Dillingham, and have convinced him that he should report his concerns to the NRC. Since he has no confidence in the NRC Region IV office (see Affidavit of 3/31/83, page 1, attached), I sent it on his behalf to U. S. Congressman Edward Markey, with the request that he see that it got into the hands of the NRC Department of Investigations at the national level. An aide of Congressman Markey has assured me that this was done.

An investigation was done by the NRC Region IV office into Mr. Dillingham's allegations which were contained in the January 7, 1983, FORT WORTH STAR-TELEGRAM (attachment to Dillingham 3/31/83 Affidavit). A copy of the investigation report is attached to the Affidavit of Larry Witt which is included in this mailing.

It should be noted that, according to the I&E Report 83-03/83-01 investigation regarding Mr. Dillingham's concerns:

"NRC Region IV determined that the allegations in the news article should be investigated but that those made in the Feehan letter and in the telephone conversation with TUGCO should not. This decision was based on the premise that Mr. Dillingham has had his earlier concerns satisfied except for those appearing in the article."

It is CASE's understanding from our conversations with Mr. Dillingham that Mr. Dillingham is not satisfied regarding his earlier concerns and that his signing of the items mentioned in the I&E Report on page 11 was under what appears to CASE (from our laymen's knowledge of law) to be duress, primarily because he believed that the craftspeople whom he mentioned to Brown & Root would be fired (rather than those from whom they were taking their orders) otherwise. We have been unable to get an affidavit from Mr. Dillingham at this time regarding this; however, we expect to get one when he contacts us next. (Since he is concerned about his personal safety, he simply shows up usually or calls right before coming by. We cannot contact him; we have to wait for him to contact us.)

As indicated in Mr. Dillingham's affidavits, he believes that he was ROF'd (laid off as part of reduction of force) at a time when they were increasing his department, because after reporting some of his concerns to his superiors at Comanche Peak and receiving no satisfaction, he took his concerns direct to Thomas Feehan, the President of Brown & Root in Houston. (See affidavit of 3/31/83, page 2.)

Mr. Dillingham also states that after the article appeared in the 1/7/83 FORT WORTH STAR-TELEGRAM "I was shot at and have been on the run ever since and have been in touch with CASE a few times by phone from different states. One night when I came home, I found my cat; its head had been cut off smooth and its body was missing. Since the article appeared in the paper, I have had a front-end problem with three different vehicles (one truck and two cars); they all appear to have the same problem -- the nuts were just about to fall off the tie-rod ends. I've been scared to go back and sign up every six weeks for my unemployment because I'm scared someone may shoot me." (Affidavit of 3/31/83, page 3, emphases added.)

Mr. Dillingham also identified certain problems at Comanche Peak (see discussion later in this letter).

2. Robert L. Messerly -- Mr. Messerly's original Affidavit, dated 2/3/83, was attached to CASE's 2/3/83 Supplement to CASE's Motion for Protective Orders for Roy Combs, Lester Smith, and Freddy Ray Harrell (which was also stricken by the Board's 3/1/83 Order).

We are attaching a copy of a deposition taken by NRC investigators of Mr. Messerly on 4/14/83 (Mr. Messerly's sworn statement attached to this deposition is dated 6/18/83; at the time the NRC investigators supplied Mr. Messerly with a copy of his deposition, they did not supply a page with the oath and notary information on it nor did they request that Mr. Messerly sign such a document; CASE requested him to do so when we learned that it had not already been done).

CASE had wanted to bring Mr. Messerly's information forward some time ago, following the taking of his deposition by the NRC investigators. We indicated this to John Collins, Regional Administrator of Region IV (after we had been informed by investigator Richard Herr that his part of the investigation was complete and that it had been turned over to the regional office; he suggested that I contact Mr. Collins). Mr. Collins requested that we not bring this information out publicly until they had had an opportunity to complete their investigation. He has now stated that their investigation is complete (although they may want to do follow-up investigation on some matters), so CASE is bringing this to the Board's attention. As discussed later in this pleading, CASE believes that some of the matters raised in his deposition and affidavit are pertinent to CASE's Contention 5 on QA/QC and further that they are of such potential significance that they belong in the context of these proceedings.

Mr. Messerly stated in his 2/3/83 Affidavit that he was fired about a week after talking to Antonio Vega about waste of materials, and ordering of equipment for drilling through rebar and concrete and gifts received by him and others for ordering all the equipment for drilling through the rebar and concrete. (Affidavit, pages 1 and 2.)

In his 4/14/83 Deposition, he discussed being threatened with being fired if he did not loan out his rebar eater (Deposition, pages 24-25); was told to get his crew out while the polar crane was being used to force the main steam line into place (Deposition, page 30); was told by his superiors to go ahead and put up hangers where holes had been drilled in the tube steel to make the bolts fit at an angle into Richmond inserts (QC couldn't tell it) (Deposition, pages 46 and 47); (see also Deposition, pages 58-59 regarding threat of being fired if didn't do what superiors said to do).

2. Robert L. Messerly (continued):

Mr. Messerly also stated to CASE that he was threatened by Doug Frankum if he had any contact with CASE (long before CASE knew anything about Mr. Messerly -- CASE had not been in contact with him at all before his firing).

Mr. Messerly's affidavit and deposition contain concerns regarding potentially significant matters (see discussion later in this letter).

3. Michael Chandler -- Mr. Chandler was not a CASE witness or potential witness, as are all the other individuals discussed herein. We received his statement through the mail, turned it over to the NRC Region IV investigators for investigation, and (since we believed it raised issues which were within the purview of CASE's Contention 5 on QA/QC and belonged in these proceedings) we entered it as a limited appearance statement in the 9/15/83 hearings. The NRC's investigation report regarding Mr. Chandler's allegations was received by CASE in December 1982. (See fuller discussion in CASE's 1/11/83 Written Argument on Issues before the Appeal Board, pages 2-3 and 11-14; see also tr. 4866/7-4877.)

On the second page of his statement (CASE Attachment 4, Page 4, of CASE/s 1/11/83 Written Argument on Issues), Mr. Chandler discusses the termination of a 1000 MCM cable with the use of a 750 MCM lug that was drilled to accept the larger cable size, which he states was "done after protest by both myself and Dennis Neaves, another journeyman working as my partner on the termination crew." (Emphasis added.) This aspect of Mr. Chandler's statement was not addressed in the NRC investigation. It appears pertinent to the question of whether individuals have been discouraged from reporting nonconforming conditions and/or discouraged from doing work right to begin with. Further, as pointed out on page 14 of CASE's 1/11/83 pleading:

"There is one further concern expressed in Mr. Chandler's original June 14, 1982, statement (CASE Attachment 4, page 3). Mr. Chandler indicated that he is presently incarcerated in a Federal Correctional Institution, and states: 'Prior to incarceration, I was working at the Comanche Peak nuclear power plant construction site under the name of Michael Gale Maxfield, identification number T-797. I was arrested at the site on January 11, 1980. The very fact that a fugitive could obtain employment at the site caused questions to be asked about their security measures, especially when it was learned that my job gave me access to all areas of the construction job, even the most confidential.' It is interesting to CASE that the NRC investigators were apparently not at all concerned about this disturbing fact, and if one did not have the original statement from Mr. Chandler and relied solely on the investigation report by the NRC, one would never have even been aware of it. Why wasn't this concern addressed by the NRC investigators in their investigation report?" (Emphasis in the original.)

4. Roy Combs -- Was laid off 4/7/83 after giving affidavits on 1/9/83 and 2/13/83 and being identified by CASE as a witness in the hearings which had been scheduled for 4/7/83 regarding the NRC's investigation of allegations of whistleblowers. See Affidavits, 1/9/83, Attachments 5 and 6 of CASE's 1/11/83 Written Argument on Issues filed with the Appeal Board in these proceedings; CASE's 1/24/83 Motion for Protective Orders for Roy Combs, Lester Smith, and Freddy Ray Harrell, which was stricken by Board's 3/1/83 Order; (CASE's 2/3/83 Supplement to CASE's Motion for Protective Orders for Roy Combs, Lester Smith, and Freddy Ray Harrell, stricken by Board's 3/1/83 Order); CASE's 2/21/83 Motions to: (1) Respond to Applicants' Charges of Misconduct by CASE; (2) Strike Applicants' February 8, 1983 Answer to CASE Motion (and Supplement) for Protective Orders; and (3) Impose Sanctions Against Applicants, which was stricken by Board's 3/1/83 Order, at page 22, and Affidavit Attachment 1.

Following the cancellation of the April 4-8 hearings, on April 7 Mr. Combs' wife called CASE to let us know that Mr. Combs had been laid off that day and that they were moving out of state.

Mr. Combs was identified (erroneously as Roy McCombs) as one of the individuals whom CASE requested the Board to issue subpoenas for to support the Stiners' allegations (see July 28, 1982, letter from CASE to Board listing individuals CASE requested the Licensing Board to subpoena -- Darlene Stiner was the only witness in support of Henry Stiner's testimony for whom the Board issued a subpoena).

CASE has Mr. Combs' address out-of-state. However, he does not have a telephone. We have written him regarding the investigation which is going on, but have had no response. We believe at this point that he has been so badly shaken by his experience that he probably wants no more to do with Comanche Peak, CASE, or the NRC.

We will give his address to the NRC investigators; however, it is our understanding that their past practice has been not to pursue matters such as this out-of-state. We do not know whether or not they will continue their past practice in this instance. Since Mr. Combs no longer has any faith in the NRC, we do not know whether or not he would talk to the NRC investigators even if they contacted him out-of-state. It would probably be necessary for the Board (or if further hearings regarding these matters are held, perhaps the State of Texas) to subpoena him; CASE no longer has the stomach to do so.

Mr. Combs stated (1/9/83 Affidavit, Attachment 5 to CASE's 1/11/83 Written Argument, pages 2, 3, and 4) that he had been given unpleasant jobs to do, referred to as "probably a stoolie, following his being called in by the NRC to discuss what he knew about the Stiners' allegations, that the NRC investigator stated that he was sorry when Mr. Combs told him that he (Mr. Combs) felt that he was being harrassed because he had talked to the NRC investigator.

4. Roy Combs (continued):

CASE's 1/24/83 Motion for Protective Orders for Roy Combs, Lester Smith, and Freddy Ray Harrell advised the Licensing Board that: Following the filing 1/11/83 of Mr. Combs' affidavit with the Appeal Board, on 1/19/83 he was called into the office of Applicants' Antonio Vega; this was continued on 1/20/83 and Mr. Combs was asked to identify the specific items of concern (hangers and piping); he was told that he would either identify the specific items Friday morning, 1/21/83, or he would be fired. He did identify the locations of the items and took Applicants' representatives to the items, accompanied by a representative from the NRC Region IV office (at the insistence of CASE and GAP); Mr. Vega refused Mr. Combs' request to have CASE's representative or an attorney accompany him; Mr. Combs was therefore without either legal representation or representation by CASE while he was being interrogated and tape-recorded by Mr. Vega, as well as during the plant tour where he pointed out the problem areas with which he was concerned.

Mr. Combs confirmed and elaborated on the preceding in his Affidavit dated 2/19/83, Attachment 1 to CASE's 2/21/83 Motions to (1) Respond, etc. Both CASE's 1/24/83 Motion for Protective Orders and CASE's 2/21/83 Motions to (1) Respond, etc., were stricken by the Board's 3/1/83 Order.

(CASE reiterated in our 2/21/83 Motions to (1) Respond, etc., page 22, that we still planned to have Mr. Combs testify in the hearings.)

5. Lester Smith -- Quit when he heard about an upcoming layoff, convinced that he would be laid off anyway after having been identified as a CASE witness in our 1/24/83 Motion for Protective Orders for Roy Combs, Lester Smith, and Freddy Ray Harrell. Mr. Smith's Affidavit was attached to CASE's 1/24/83 Motion; in it he expressed his concern that he would be fired for coming forward, or that his son-in-law, Freddy Ray Harrell, who also was identified by CASE as a witness who would testify. (See also pages 3 and 4 of CASE's 1/24/83 Motion.)

In our 2/3/83 Supplement to CASE's Motion for Protective Orders for Roy Combs, Lester Smith, and Freddy Ray Harrell, CASE informed the Board that (as we had feared), on 2/1/83 Mr. Smith was called into Antonio Vega's office and interrogated regarding his affidavit. Mr. Vega taped and took notes of the conversation. As in the case of Mr. Combs, Mr. Smith's interrogation took place without either legal representation or representation by CASE. Mr. Smith stated to CASE that he felt that Mr. Vega was trying to trip him up on what he had stated in the affidavit, that Mr. Vega attempted to find out if any ex-workers at the plant had called Mr. Smith, etc. (See details on pages 1-3 of CASE's 2/3/83 Supplement.)

Mr. Smith stated that the following day (2/2/83), they brought a memorandum around for the employees to sign which stated if anyone knew of anything down there at the plant that was wrong pertaining to the work that you were expected to report it to your supervisor; this was put out by the Project Manager, Doug Frankum. (It should be noted that Mr. Smith stated that he repeatedly told Mr. Vega that he had reported his concerns to his supervisor twice, that it didn't do any good and that the supervisor told him to keep his mouth shut.)

(CASE's 1/24/83 Motion and 2/3/83 Supplement were stricken by the Board's 3/1/83 Order.)

After Mr. Smith's interrogation by Antonio Vega, he was changed from working Monday through Thursday to working Thursday through Sunday; he believes this was to split him up from his son-in-law, Freddy Ray Harrell (who had also been identified as a CASE witness).

6. Freddy Ray Harrell -- Son-in-law of Lester Smith. Worked with Mr. Smith. Laid off while he was in the hospital in same layoff Roy Combs was in, after having been identified as a CASE witness. (See same pleadings referenced regarding Lester Smith). CASE does not have an affidavit from Mr. Harrell. However, he is convinced that he was laid off because he was identified as a CASE witness.

It should be noted that all three of the potential CASE witnesses which we identified who were at that time working at Comanche Peak are no longer there -- two were laid off, one quit right before that layoff (convinced that he would be laid off anyway).

7. Howard J. "Robbie" Robinson -- CASE does not have an affidavit from Mr. Robinson. However, he has stated to CASE: He was terminated at Comanche Peak after nearly nine years (almost 5 years as General Foreman of the Structural Fab Shop), after reporting to TUSI's Joe George and Antonio Vega about make-work, misuse of materials for personal use, ordering and use of rebar eaters, theft of materials, etc., etc.

8. Bob Bronson -- Made limited appearance statement 9/15/82. Was Level II QC inspector at Comanche Peak; quit around Labor Day, 1982. In his limited appearance statement, he discussed use of lesser qualified or unqualified QC inspectors, a specific welding problem with a specific pipe hanger, lack of material traceability of hangers, that he could testify to many of the same things contained in Henry Stiner's testimony, non-existent morale among QC personnel at Comanche Peak (and the reasons for it), extensive use of CMC's on hangers, etc. He also stated specifically "I was expressly forbidden to write NCR's on any item other than the traveler package directly inspected (material verification)" (emphasis added); and "Excessive grinding of welds by craft personnel prior to final inspection? Very few weldments which I inspected were in the as-welded condition. Also, why does craft grind the toe of weldments 360⁰, in some cases, causing an undercut condition?" (See notarized Statement of Bob Bronson, 9/15/82 limited appearance statement.)

9. Jack Doyle -- Affidavit attached to CASE's 1/18/83 letter to the Appeal Board in these proceedings confirmed CASE's discussion on page 2 of CASE's 1/11/83 Written Argument on Issues (also filed with the Appeal Board), to the effect that Mr. Doyle believes he was blackballed because he testified at the Comanche Peak hearings in September 1982.

(After taking his problem to the Department of Labor, Mr. Doyle was finally hired by Bechtel to work at the Diablo Canyon nuclear plant in California in February 1983. He quit that position in order to come back to Fort Worth and testify in the May 1983 operating license hearings for Comanche Peak.)

Mr. Doyle also briefly discussed in his Deposition/Testimony (CASE Exhibit 669) that he was not anxious to find out what would happen if one went into Doug Frankum's office to get an NCR form. As Mr. Doyle stated in his Deposition/Testimony (page 74):

"I had considered it (writing an NCR). And so I looked around to find out where they were. They're in Doug Frankum's office. . . . He is Brown & Root's honcho. He's their site manager. . . I found out they were in his office. I don't know what you would have had to do. But I didn't want to find out either. . . . it didn't intimidate me. But I figured if I'd go in there and I'd say, can I have an NCR, the first thing he's going to do is go talk to my boss and say, he wants an NCR. And the next thing you know, we're overcrowded with people. We've got 600 resumes of more qualified people; therefore, good afternoon. So I stayed away from Frankum's (sic) office."

10. Dennis Culton -- See attached 6/29/83 Affidavit (to which are attached pages 23-26 and CASE Attachments 10 and 11 from CASE's 12/21/82 Brief in Opposition to the NRC Staff's Exceptions to the Atomic Safety and Licensing Board's Order Denying Reconsideration of September 30, 1982; Mr. Culton refers to these pages in his Affidavit and states that the statements contained therein are substantively correct to the best of his knowledge and belief).

In his Affidavit, Mr. Culton discusses that, as a worker in the field, one didn't write NCR's; that one of his brothers who worked as a pipe fitter at Comanche Peak made an attempt to write an NCR and made his life in jeopardy; that if one wrote an NCR it jeopardized not just that one person but the whole crew (Affidavit, CASE Attachment 10, page 31). He also stated that was the feeling throughout the plant about writing NCR's (Affidavit, CASE Attachment 10, pages 31-33).

Mr. Culton, in his Affidavit, also discusses the role of the NRC Region IV investigators in discouraging him from reporting his concerns to the NRC (Affidavit, pages 1-5).

As a result of the handling of Mr. Culton's interview with the NRC Region IV investigators, it will probably be difficult to get him to talk further with the NRC at this point; he had, however, agreed to talk to the State Attorney General's office, with CASE present and with the discussion tape-recorded by him. CASE will attempt to encourage him to talk with the NRC investigators.

11. Darlene Stiner -- In addition to the Board's comments on page 41 of its July 29, 1983 Proposed Initial Decision regarding Darlene Stiner's testimony regarding harassment, Mrs. Stiner will also discuss with the NRC investigators the fact that she did not want to go back to work at Comanche Peak following the birth of her baby -- because of the harassment, the whole atmosphere of working there.
Mrs. Stiner is the perfect example of constructive discharge.

12. NRC Investigators -- Even absent other testimony regarding a pattern of discouragement from reporting or writing up nonconforming conditions at Comanche Peak, there is substantial evidence in the record or in affidavits by NRC investigators which clearly indicates the existence of such a pattern.

In the NRC Staff's prefiled testimony for the June 1982 hearings, Robert Stewart stated:

"It was my observation that the Brown & Root ("B&R") construction management, from the foreman up through the site manager, were demonstrating oppressive, domineering and intimidating attitudes toward both TUGCO QA and B&R QA/QC staff personnel. At the time (1976), there appeared to be no attempt to correct this unpleasant atmosphere by either TUGCO or B&R corporate management; thus, my comment that 'the licensee's QA/QC program is in a state of degradation.' . . . On June 11, 1976, at the request of the Region IV staff, the President of Texas Utilities Generating Company/Texas Utilities Services, Inc. ("TUGCO/TUSI"), two Senior Vice-Presidents and the QA Manager met in conference at the NRC Region IV office in order to alert top management of the seriousness of the apparent breakdown in corporate management. . ." (Emphases added.)

(NRC Staff Exhibit 180, page 8, Supplemental Testimony of William A. Crossman, Robert C. Stewart and Robert G. Taylor Regarding Annual Assessments of Applicants' Performance (Contention 5).)

The preceding discussion referred to the NRC Trend Analysis for 1976 (see NRC Staff Exhibit 184, page 1).

It is obvious that this problem was not cured in later years. As stated in the NRC Staff's 1979 Trend Analysis (Staff Exhibit 195, page 2):

". . . I believe that the licensee has been led down a poor path by Brown & Root during past years. It appears to me that Brown & Root has, in many instances, provided construction procedures to fulfill Appendix B that provide a minimum amount of direction to the construction force and yet comply to the words, if not the spirit of Appendix B. This is not too bad if the construction force is really a competent group but leads to some pretty bad things if that is not the case. What I have begun to see, but have difficulty proving, is that the Brown & Root construction philosophy is to build something any way they want to and then put it up to the engineer to document and approve the as-built condition. If the engineer refuses, he is blamed for being to (sic) conservative and not responsive to the client's needs. . ."

12. NRC Investigators (continued):

" . . . too often an installation clearly accomplished other than as originally designed and buildable has been approved by the licensee's on-site engineering arm as fulfilling requirements. In effect, the engineer has approved a nonconforming installation in advance of QC being called. QC is then signing for the as-built condition and the underlying problem is not addressed. . . "

" . . . It seems likely to me that the licensee will use his full powers to be less open with us in the area of identified construction deficiencies than he has in the past. I think he will take maximum advantage of part 50.55(e) and the guidance to go through the necessary formalities but avoid, if at all possible, having to report to us. . . "

(Emphases added.)

The preceding is discussed by Robert Taylor in his prefiled testimony for the June 1982 hearings (NRC Staff Exhibit 180, pages 16-18).

This trend continued into 1980. As stated in the NRC's Systematic Assessment of License Performance (SALP) for the period 8/1/79-7/31/80 (NRC Staff Exhibit 181, page 6):

"Licensee Construction and Engineering Management - The NRC personnel stated that it appears there is a continuing tendency to engineer away construction problems rather than enforce compliance to drawings and specifications . . . " (Emphasis added.)

And in 1983, as stated in the Construction Appraisal Team (CAT) Report (NRC Staff Exhibit 206, page IX-7, next-to-last paragraph):

"These changes are then processed to accept the 'as-built' configuration, rather than modify the support to actually satisfy the design document in effect at the time of the inspection." (Emphasis added.)

There is also an affidavit from NRC Region IV investigators Donald D. Driskill and Richard K. Herr which is pertinent to this matter (a copy of the signed sworn affidavit was forwarded to the service list in these proceedings under cover letter from NRC Staff Counsel on September 2, 1982; it was also included as CASE Attachment 9 to our 12/21/82 Brief in Opposition to the NRC Staff's Exceptions

12. NRC Investigators (continued):

to the Atomic Safety and Licensing Board's Order Denying Reconsideration of September 30, 1982). That affidavit discusses NRC Investigation Reports 80-22 and 82-10/82-05 (regarding Mr. Atchison's allegations) and 81-12 (regarding allegations of Henry and Darlene Stiner) (admitted into evidence as Staff Exhibits 123, 199, and 178, respectively), and attempts by the investigators to determine which, if any, of the individuals identified by letter in those Reports objected to the Staff's disclosure or confirmation of their identities. The affidavit states (page 2, A.5.):

"Each of the individuals contacted, who objected to the NRC staff's disclosure of their identities, as set forth above, described their objections somewhat differently; however, in general, each expresses that such a disclosure could possibly place their present and/or future employment in jeopardy. It appears to be a common belief among them that their simple cooperation with NRC investigators may be interpreted as an act of disloyalty by their employers." (Emphases added.)

The NRC Investigators' affidavit was dated August 1982.

13. NEWS CIRCUIT BREAKER -- Another inhibiting factor to the reporting of nonconforming conditions at Comanche Peak is the fact that a publication called the NEWS CIRCUIT BREAKER was handed out on-site (right where everybody would have to pass their hand over copies of it to get their "brass" every morning) each day during the September operating license hearings (and maybe during the rest of the hearings -- CASE does not know about this). This matter was called to the attention of the Board at that time.

These publications called each CASE witness by name and generally attempted to make it seem as though they didn't know what they were talking about and that they had been made fools of during the hearings. They contained such statements as:

"Outside the hearing room, TU officials told reporters Atchison's latest claims were 'ridiculous,' pointing out that neither TU nor any of the companies involved with building Comanche Peak would have any reason to care if Atchison is employed elsewhere." (Regarding Mr. Atchison's firing from Waterford III.)

". . . 'We only know why he was fired from Comanche Peak, and that was because he was not competent to perform his job.'

"Through cross-examination, Reynolds pointed out persons might see what they believed were problems, but have the NRC decline to substantiate their allegations because it recognized the alleged problems did not exist.

"In his direct testimony, Henry Stiner acknowledged he has a criminal record. Reynolds began cross-examination to get details from Stiner about his record, but was stopped by ASLB chairman Marshall Miller. . ."

--September 14, 1982 NEWS CIRCUIT BREAKER
(Emphases added.)

". . . Testimony by a panel called to give evidence rebutting Atchison and other witnesses for the Citizens Association for Sound Energy (CASE) took most of the day, primarily because of tedious and repetitive cross-examination by CASE president Juanita Ellis. . . ASLB chairman Marshall Miller several times asked Mrs. Ellis to speed up her questioning, saying at one point, 'We're taking so much time that it seems purposeless.'"

(The publication then listed several individual items with which CASE witnesses were concern, giving the impression that Applicants' witnesses had effectively retued each one.)

13. NEWS CIRCUIT BREAKER (continued):

" . . . 'It is noteworthy to point out,' said TUGCO QA manager Dave Chapman after the session, 'that during these proceedings we've been hearing from a few individuals, most of whom are disgruntled and misguided former employees. Not a single safety issue has been identified by any of them.' . . .

" . . . Doyle admitted that, until he talked to plant experts while giving his disposition (sic) for the hearing a month ago, he had not been aware that his group did not have the final word concerning pipe support safety.

"He admitted he had not known that a series of reviews are done - including the final stress analysis - to make sure the pipe supports are safe. . ."

--September 15, 1982 NEWS CIRCUIT BREAKER
(Emphases added.)

"A young graduate engineer spent part of Wednesday's session of the Comanche Peak licensing hearing trying to prove the man who wrote codes governing certain plant construction activities doesn't understand the codes. Mark Walsh . . .

"Reedy made note of his 26 years of experience designing components for nuclear plants, and said, 'I've been associated with at least 50 nuclear plant construction projects. This,' he said of the field engineering procedure, 'is how it's done.'

"At another point, Walsh cited a paragraph in the code dealing with a process for forming steel components, and handed out a chart dealing with stress factors on steel.

"'I was the author of that paragraph,' Reedy said, adding that the chart 'appears to be out of an elementary textbook on materials.'

"Walsh's cross-examination on behalf of CASE was a repeat performance of Tuesday's session. On both days, Atomic Safety and Licensing Board chairman Marshall Miller and other board members kept having to ask CASE president Mrs. Juanita Ellis to speed up.

"Board member Dr. Kenneth McCollum told Walsh and Mrs. Ellis they were 'blue-skying all over the West' in their questioning, and were not producing any testimony that would help the board."

13. NEWS CIRCUIT BREAKER (continued):

Regarding limited appearance statements: "They included Betty Brink, a Fort Worth anti-nuclear and anti-utility activist, and two more former Comanche Peak employees. . .

"The licensing hearing is public, and it provides a convenient forum for a handful of former employees who have a grudge against management or their co-workers to air their complaints," Purdy said. "We can't control what these people may say during these sessions, but we are taking the opportunities available to point out that Comanche Peak is being built by people who are skilled, well-qualified and dedicated to making it a safe, reliable plant."

--September 16, 1982 NEWS CIRCUIT BREAKER
(Emphases added.)

"Company witnesses also have emphasized this week that the pipe supports undergo exhaustive reviews to make sure they are safe, reviews that Walsh and Doyle - who worked in one relatively small computer service group - did not know about."

--September 17, 1982 NEWS CIRCUIT BREAKER
(Emphasis added.)

"Evidence presented by the company's panel of expert witnesses showed that Walsh and Doyle misinterpreted the codes governing construction of pipe supports and, further, that they did not understand the full scope of the review process designed to ensure the supports are safe."

--September 20, 1982 NEWS CIRCUIT BREAKER
(Emphasis added.)

The obvious impact of statements such as these, plus the specific naming of each CASE witness and each person who made a limited appearance statement, clearly is designed to convey to any workers still employed at Comanche Peak that the utility had refuted all the concerns raised, that the people who came forward were disgruntled former employees who have a grudge against management or their co-workers, that the people who came forward have been showed up in public as being misguided, ignorant, and uninformed, that anyone who has a criminal record will have it well-publicized if they come forward, and that if any other employees come forward, they will get the same treatment.

(NOTE: Copies of the NEWS CIRCUIT BREAKER were handed to the Board and all parties in the September 1982 hearings. If the Board cannot locate copies, we request that the Board ask us for copies of them.)

14. Failure to post NRC Form 3 -- Under NRC regulations, Applicants are required to post NRC Form 3, as stated on the form itself:

"POSTING REQUIREMENTS Copies of this notice must be posted in a sufficient number of places in every establishment where activities licensed by the NRC are conducted, to permit employees to observe a copy on the way to or from their place of employment."

CASE discussed this in our 1/24/83 Motion for Protective Orders for Roy Combs, Lester Smith, and Freddy Ray Harrell (page 6), and our 2/21/83 Motions to: (1) Respond to Applicants' Charges of Misconduct by CASE; (2) Strike Applicants' February 8, 1983 Answer to CASE Motion (and Supplement) for Protective Orders; and (3) Impose Sanctions Against Applicants (page 39, last paragraph, through page 40). Both of these Motions were stricken by the Board's 3/1/83 Order.

Messrs. Combs, Smith, and Messerly all stated in their affidavits that NRC Form 3 was not posted at Comanche Peak and Messrs. Combs and Smith stated that they had not been aware that any protection was available for individuals who came forward with concerns about construction at nuclear plants.

The failure to post this form, which sets forth the responsibilities and protections for individuals' reporting nonconforming conditions to the NRC, is in itself an inhibiting factor. Further, and perhaps more importantly, the NRC's failure to require Applicants to follow the NRC's own regulations has, in the eyes of CASE and many workers at Comanche Peak, made the "protections" for such employees a farce -- especially when accompanied by the history of firings and lay-offs of individuals who have come forward.

The report of the NRC's investigation regarding Applicants' failure to post Form 3 is contained in I&E Report 83-03/83-01, copy of which is attached to Larry Witt's Affidavit (which is attached hereto); in the discussion on pages 12 and 13 of that report, it is stated, in part:

"The SRIC (Senior Resident Inspector - Construction, R. G. Taylor) learned of the allegation during early January 1983 and found that the form was posted throughout the main construction administration building and on a bulletin board where most of craft labor force can readily see it, particularly when departing from the construction area. The SRIC has been informed by licensee employed personnel that they received and posted the forms in the administration building about the first of 1983. A senior B&R manager indicated that the forms were received . . . sometime between Thanksgiving and Christmas and were posted on the craft labor bulletin board near the 'brass alley' well before the first of the year. It is thus clear that the forms were not posted

14. Failure to post NRC Form 3 (continued):

on the specified effective date of the change to 10 CFR 50
(October 12, 1982) as alleged." (Emphasis added.)

It should be noted that it was only after CASE raised the issue that the NRC even investigated or noticed that the Form 3 notices were not properly posted.

15. DISCOURAGEMENT BY THE NRC REGION IV OFFICE -- At some point in time, someone, somewhere, is going to have to come to grips with the large role that the NRC Region IV office has played in discouraging people from reporting nonconforming conditions at Comanche Peak.

CASE will not get into too much detail at this time regarding the investigation of allegations of whistleblowers by NRC Region IV. They have already been discussed extensively in CASE's 12/21/82 Brief in Opposition to the NRC Staff's Exceptions to the Atomic Safety and Licensing Board's Order Denying Reconsideration of September 30, 1982, and CASE's 1/11/83 Written Argument on Issues. It was these pleadings before the Appeal Board which led then-Board Chairman Marshall Miller to state in his January 4, 1983, Memorandum and Order (pages 4 and 5): "The Intervenor has challenged the NRC Staff's competence in handling and investigating QC allegations by 'whistle-blowers,' and has questioned the Staff's alleged bias in favor of the Applicants. Clearly further evidence on these issues will be required when the evidentiary hearing resumed . . ." We urge that the Board review our two pleadings in this regard in their entirety.

CASE believes that the NRC's actions (and inactions) are a major contributing cause to the discouragement from reporting nonconforming conditions at Comanche Peak.

Although we do not wish to belabor the point, we believe this is a matter which must be taken up in these proceedings, since it calls into question not only the investigations which have been made in the past, but the NRC Region IV's entire record of inspections at Comanche Peak -- information which the Licensing Board must necessarily rely on to a great extent in reaching the decision as to whether or not to license this nuclear power plant. In addition, it calls into question some of the testimony of NRC witnesses in these proceedings.

There are a few additional comments which we must make at this time.

It has long been known and recognized that the NRC Region IV office's efforts have not been effective in the past. This was perhaps most vividly brought to light during the NRC's investigation into allegations which had been made regarding the South Texas Nuclear Project (STNP). The NRC Region IV office investigated and found little to be concerned about. It was not until there was an investigation at the national NRC level that the true extent of the problems at South Texas were uncovered.

The Licensing Board in the South Texas proceedings recently acknowledged

15. DISCOURAGEMENT BY THE NRC REGION IV OFFICE (continued):

that the inspection activities carried on by Region IV have not always been completely effective. See attached pages 1, 8, and 12 of the ASLB's July 14, 1983, Memorandum and Order (Denying Motion for New Contention), which states, in pertinent part:

" . . . CCANP also questions the efficacy of the Region IV inspection efforts. CCANP refers in particular to instances in 1979 where Region IV failed to uncover certain activities but where the special inspection organized at headquarters found violations with respect to those activities.

"We are also aware that the inspection activities carried on by Region IV have not always been completely effective. Nonetheless, there has been significant reorganization and restructuring of NRC's inspection functions in the recent past. Moreover, the asserted 1979 deficiency in Region IV activities to which CCANP has called our attention (June 2, 1983 reply, pp. 6-7) was well known to the Commission when it amended its financial qualifications rule . . ."

--(Emphases added.)

The recent CAT team findings seem to be contrary to what NRC Region IV has been saying in these proceedings. In addition, new information which just came into CASE's hands also seems to contradict the state of readiness of Comanche Peak to receive an operating license which has been indicated by the NRC Staff and the Applicants in these hearings. From the June 10, 1983 letter and attachments from H. C. Schmidt, to Director of Nuclear Reactor Regulation, Attn: B. J. Youngblood, Chief, Licensing Branch No. 1, Division of Licensing, NRC, Washington, under Subject: Comanche Peak Steam Electric Station, Docket Nos. 50-445 and 50-446, Seismic and Dynamic Qualification, additional information, Ref: NRC Staff memorandum from Vince S. Noonan to B. Joe Youngblood, entitled "Seismic and Dynamic Qualification Review of Safety-Related Equipment for Comanche Peak Unit #1", it is stated, for instance in Attachment 1:

"Generic Item (1) - Equipment Installation

"'Most of the equipment inspected were not in a state ready for plant operation, for example temporary supports and straps, missing supports from accumulator line, missing nuts from U-bolts for charging pumps, spring mounted platform for compressor bottomed out. The deficiencies observed by the SQRT were compared against the check list that is maintained by the applicant to improve quality assurance (QA). However, the SQRT items did not appear in the QA check list.'

15. DISCOURAGEMENT BY THE NRC REGION IV OFFICE (continued):

"The applicant should perform an independent inspection of the installation and supporting arrangement for seismic Category I equipment using personnel familiar with seismic qualification requirements, modify any deficiencies found, and provide a written report to the NRC staff on the inspection activity and the findings."

"CPSES Response:

"The applicant attempted to perform an audit of the seismically mounted equipment in order to provide the NRC staff with the confidence needed to close this item. Again, however, it was found that equipment had not received final acceptance and was not in a state ready for plant operations."

"The applicant will perform an inspection of installation and supporting arrangement for equipment classified at CPSES as seismic Category I. This inspection will be completed and deficiencies resolved prior to fuel load."

The June 10 letter states:

"The referenced memorandum lists eleven generic concerns . . .

"(1) Generic Item (1) - Equipment Installation

"(2) Generic Item (2) - Dynamic Loads

"(3) Generic Item (3) & (11) - Aging/Maintenance & Surveillance

"(4) Generic Item (4) - Equipment Operability

"(5) Generic Item (5) - Damping Values

"(6) Generic Item (6) - Semi-Rigid Equipment

"(7) Generic Item (7) - Qualification Status

"(8) Generic Item (8) - Westinghouse Scope

"(9) Generic Item (9) - Torque Requirements

"(10) Generic Item (10) - Nitrogen Supply System"

It further lists other items which require more detailed responses as Attachments 12-22.

15. DISCOURAGEMENT BY THE NRC REGION IV OFFICE (continued):

In addition, new information recently obtained by CASE indicates that the adequacy of NRC investigations has not improved recently. Attached to this letter is the Affidavit of Larry V. Witt. Mr. Witt briefly discusses some of the statements made in I&E Report 83-03/83-01 (copy of which is attached to his affidavit); included in his discussion are the following statements from the report (at page 11, last paragraph):

"Regarding the above summarized allegation (a), the SRIC (Senior Resident Inspector Construction, Robert G. Taylor) established that Mr. Witt was no longer an employee at CPSES and further established that he had relocated from the Glen Rose, Texas, area to another state. NRC Region IV personnel made several attempts to contact Mr. Witt by telephone at his new address, to no avail. A registered letter, receipt requested, was then sent to Mr. Witt requesting that he contact Region IV as soon as possible. Receipt of the letter was acknowledged but as of this date, Mr. Witt has not contacted the region. It appears that Mr. Witt does not intend to assist the NRC in investigating allegations attributed to him. It should be noted that only the B&R investigative group has been able to establish contact with Mr. Witt; all others have apparently failed." (Emphases added.)

As stated in Mr. Witt's affidavit (pages 3 and 4):

He has not relocated from the Glen Rose, Texas area to another state. His company does have a field office in Hobart, Oklahoma; but he still lives in Glen Rose and his business is still listed as Witt Energy Resources, Inc., in Glen Rose, Texas.

Many of the people at the plant with Brown & Root, including Doug Frankum, B&R Project Manager, know him and know that he is still in Glen Rose.

To his knowledge, there have been no attempts made to contact him by phone at the office in Hobart, Oklahoma, or in Glen Rose, Texas; and it is his belief that someone would have passed that information along to him.

He never signed for a registered letter, receipt requested, from the NRC Region IV office. And to the best of his knowledge, no one affiliated with his business either in Hobart, Oklahoma, or in Glen Rose, Texas, signed for such a registered letter (and it is his belief that someone would have passed that information along to him, but no one he has asked about it knew anything about such a registered letter).

15. DISCOURAGEMENT BY THE NRC REGION IV OFFICE (continued):

The first knowledge that he had that the NRC wanted to contact him or wanted him to contact them was when J. R. Dillingham brought him a copy of I&E Report 83-03/83-01 which Mr. Dillingham had obtained from CASE.

Mr. Witt did not and does not intend to deliberately withhold information from the NRC, and he certainly has not refused to cooperate with the NRC or to assist the NRC in investigating allegations attributed to him.

Mr. Witt has authorized CASE to get his affidavit into the hands of NRC investigators by the means CASE deems best so that they can proceed with their investigation. CASE turned Mr. Witt's affidavit over to the NRC Investigations Division today (August 3, 1983) in person.

In response to CASE's question "Do you have any knowledge or idea why the NRC inspector would have made the preceding statements in the investigation report," Mr. Witt answered: "I don't think they want to talk to me." (Emphasis added.)

CASE had no difficulty in finding Mr. Witt. As Mr. Witt points out in his affidavit, Witt Energy Resources, Inc., is listed in the phone book in Glen Rose (see copy attached of page from Glen Rose phone book). And any of the Witts listed in the Glen Rose phone book would know how to get in touch with him (there are only five listings under Witt).

Also, Tommy Gosdin with TUGCO, the Sheriff, the County Judge, the Commissioners' Court, and many others could have told NRC Region IV investigators how to contact Mr. Witt, according to his affidavit. (Also, a recent mailing from TUGCO on Emergency Planning reached Mr. Witt; see attached.)

CASE submits that if the Senior Resident Inspector - Construction and all the other investigators and inspectors at NRC Region IV can't find Larry Witt, they certainly can't be expected to find problems in construction at the Comanche Peak nuclear power plant.

The effect of all of this is not lost on present employees at Comanche Peak or on past employees. Those who are aware of problems at the plant see a regulatory agency which, at least in the past, either cannot find or will not find the problems which those workers know first-hand exist. How can they have any confidence, then, in the NRC (and it should be pointed out that most such workers make no distinction between the NRC Region IV office, the Washington-based Office of Investigations, or the Atomic Safety and Licensing Board)? What possible incentive is there for such workers to come forward with their concerns about the way Comanche Peak has been constructed?

16. IN CONCLUSION

Despite the problems with past NRC Region IV investigations and inspections, CASE will cooperate fully with the NRC investigation(s) which are going on. We are hopeful that those investigations will be fruitful and accurate, and at this point feel cautiously optimistic.

We believe that those investigations, if done adequately, will prove that there are several patterns which are deeply ingrained and embedded at Comanche Peak:

Not just of discouraging the writing of nonconformance reports,
but of firing or laying off QC inspectors and craftspeople who
refuse to wear blinders and insist that nonconforming items be
reported and the work done right to begin with,
and of discouraging workers from doing the job right to begin
with.

This also includes what is generally called "constructive discharge" (whereby a worker is given distasteful jobs to do, harassed, made to feel unwelcome, his/her concerns ignored, etc., to the point where the worker no longer wants to continue working at the plant and quits (or in the case of Darlene Stiner, decides not to go back).

CASE has supplied NRC investigators today with the names and telephone numbers of many individuals who are willing and eager to talk to someone -- anyone -- who will see that measures are taken to deal adequately with their concerns and assure that Comanche Peak is built correctly and can operate without endangering the health and safety of the public. Most of those individuals do not want confidentiality and want to testify if necessary to assure that their concerns are dealt with adequately.

The extent of information which the NRC investigators can find from other sources is largely dependent on the amount of damage which has already been done by the example which workers see of Chuck Atchison (having to spend months in hearings, working at a job which pays about half what he was making at the nuclear plant, having to sell his home and move into a trailer house, etc., etc., while the NRC appears to be doing nothing to either admonish or punish Brown & Root or the utility for his wrongful firing, although the NRC has the authority to do so) -- coupled with the firing of Bob Hamilton, Joe Krolak, Stan Miles, Henry Stiner, J. R. Dillingham, Bob Messerly, and Robbie Robinson, and the laying off of Jim Yost, Roy Combs, and Fred Harrell.

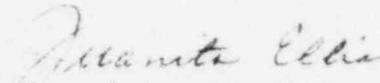
CASE is not hopeful in this regard -- we believe that the damage may have already been too great.

16. IN CONCLUSION (continued):

However, we believe that (even if the investigators interview only those individuals whose names CASE has provided), if the investigators approach their task with an open mind, without preconceived notions, a very clear pattern can be seen from this small snapshot which CASE has been able to see.

Respectfully submitted,

CASE (Citizens Association for Sound Energy)


(Mrs.) Juanita Ellis
President

(Note: CASE has referred to certain documents in this pleading which have been stricken by the Board in its March 1, 1983, Order. If the Board does not still have copies of these or any other documents referenced, we request that it let us know and we will provide copies.)

cc: Service List - First Class Mail

(Note: CASE's two letters to the Licensing Board dated August 2, 1983, under subjects of: ASLB Memorandum and Order Dated July 6, 1983 (Collateral Estoppel; Atchison Case); and Emergency Planning Guide for Comanche Peak Nuclear Plant, have been held and sent in the same mailing with this letter.)