

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

IN THE MATTER OF:)

HOUSTON LIGHTING AND POWER COMPANY)
(South Texas Nuclear Power Plant))

Docket Nos. 50-448
50-449

JOHN CORDER'S RESPONSE TO NRC STAFF'S
MOTION TO MODIFY SUBPOENA AND
MOTION FOR PROTECTIVE ORDER

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Attorney for John Corder

January 8, 1990

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COMES NOW John Corder and requests that the Commission modify the December 11, 1989, subpoena issued to him by the NRC Staff. Mr. Corder requests that as a condition precedent to the taking of his deposition before the Nuclear Regulatory Commission Staff he be provided access to the information that details the allegations that Mr. Corder has previously provided to the NRC Staff, either by responding to the Freedom of Information Act Request pending before the Commission since September, 1989, or by otherwise making the requested documentation available to Mr. Corder.

Mr. Corder agrees with the Staff that the issue of logistics appears to be resolved and withdraws that issue from

consideration upon the understanding that Staff counsel has agreed to take Mr. Corder's deposition at a place and time convenient to all parties, with a recognition that Mr. Corder is not able to pay for the costs of an attorney or representative.

I. BACKGROUND AND ARGUMENT

John Corder was employed as a nuclear engineer for the Bechtel Corporation for over twenty-seven years. In 1986 Mr. Corder was laid off from his employment with Bechtel at the South Texas nuclear power plant. As a result of his belief that his termination was accomplished in violation of 42 U.S.C. 5351 he filed a complaint pursuant to that regulation. (IN THE MATTER OF JOHN A. CORDER VS. BECHTEL ENERGY CORPORATION, 88-ERA-9.) That matter was resolved between the parties by virtue of a RELEASE AND SETTLEMENT AGREEMENT, and an AGREED ORDER OF DISMISSAL WITH PREJUDICE, signed on October 28, 1988, by counsel and the Honorable James W. Kerr, Jr., a U.S. Department of Labor Administrative Law Judge.

On May 25, 1989, the parties were ordered by the Honorable Elizabeth Dole, Secretary of Labor, to submit the agreement for approval. The parties have submitted the Settlement and are awaiting a ruling by Secretary Dole on dismissal pursuant to the position set forth on this matter in POLIZZI VS. GIBBS AND HILL, 87-ERA-38, July 18, 1989.

In September, 1989, after the Secretary of Labor requested

the settlement and the Bechtel Corporation identified Mr. Corder's settlement as potentially having restrictive language in it, the Nuclear Regulatory Commission Staff contacted Mr. Corder, by letter through his former attorney advising Mr. Corder that if Mr. Corder had safety concerns about the South Texas plant "...which have not been brought to the attention of the NRC..." that a mutually agreeable time and place would be arranged for identification of those concerns. (See, September 5, 1989, letter from Dennis Crutchfield, Associate Director for Special Projects, to Robert Rice, Esquire, attached as Exhibit 1.)

In responding to that letter Mr. Corder indicated that he still had safety concerns about the South Texas plant which he believed the NRC had not evaluated. He proposed that the NRC Staff make available to him the materials developed by the agency in response to the various concerns he had raised with the agency since 1986 in order to determine what issues had been reviewed by the NRC Staff, what issues had been resolved, the basis for the resolution of those issues, and what issues had never been pursued. In order to facilitate that information Mr. Corder also filed a Freedom of Information Act request. To date the FOIA request has not been answered.

This request is particularly important to insure that all of Mr. Corder's issues that have a potential effect on public health and safety are resolved for several reasons. First, Mr. Corder has had a long history of contacts with the NRC in which he has

raised numerous concerns. He was originally interviewed by the NRC's Office of Investigations regarding concerns he had about STP. He was never provided a copy of that transcript, no investigation was ever conducted into his concerns and allegations to the best of his knowledge, and there has been no resolution of any of the issues that he raised to OI. Second, he provided numerous detailed allegations to the Government Accountability Project (GAP) in connection with the 1987-88 GAP investigation of STP as a confidential allegor. Since the NRC Staff did not perform a total review of all of the information provided by allegors to GAP it is impossible to know what allegations of Mr. Corder's the NRC Staff looked at, aside from the information contained in SSAT, NUREG 1306, March, 1988.¹ Third, although Mr. Corder had a personal interview with the NRC's Safety Assessment Team regarding some of the allegations and concerns that he had about STP in connection with their review of two of his allegations, those issues are not fully addressed in the SAT report. Finally, Mr. Corder raised the issues of violations of 10 CFR 50.7 that have never been addressed. In short, Mr. Corder has no way of knowing without reviewing documents in the possession of the NRC staff what issues were recorded by the NRC for inspection or investigation and what became of those issues.

¹ See, in general, the background of United States v. Garde, 673 F. Supp. 604 (D.D.C 1987), and the agency actions in connection with the allegations of STP allegors.

Additionally, since Mr. Corder ended his employment at STP he has been involved as an intervenor in the rate hearings before the Public Utility Commission of Texas. In that capacity he had the opportunity to again visit the STP site where he observed additional proof of his original concerns as well as observed additional issues of concern to him. Finally, the passage of time, literally years, makes reviewing the materials prepared contemporaneously by the NRC staff regarding Mr. Corder's comments and concerns critical in refreshing his recollection on those issues and allowing him to reference the supporting details and information he provided to the NRC. No other single source for these issues exist.

In short, the NRC staff probably has most of the raw data regarding Mr. Corder's concerns, however, since they never comprehensively responded to him on the evaluation of his concerns he has no way of knowing whether they were misunderstood, ignored, or just fell through the cracks of the last minute licensing efforts of the Staff.

He has offered to invest the time necessary to sort through the documentation and reach a determination on the issues and the resolutions in order to answer the question posed by the Staff, however, he cannot be expected to appear at a deposition and recount from years of employment at STP specific details that have been previously provided to the Staff, with any degree of accuracy or reliability. Further, Mr. Corder is not satisfied

that the issues he raised which have been evaluated by the Staff and apparently closed were ever even understood because no interview was ever conducted, and Mr. Corder wasn't permitted to show the NRC his concerns at the plant.

Therefore, Mr. Corder, requests the assistance of the Commission in directing the Staff to provide him the information necessary to determine what issues he has regarding the safety of STP that have not yet been resolved and the bans for those that have. This could have already been accomplished had the NRC cooperated in responding to the FOIA request submitted in September, 1989. As demonstrated below the Staff has affirmatively neglected its duties with respect to processing the FOIA request, and left Mr. Corder in this predicament. At this juncture, relief is sought from the Commission.

II. FREEDOM OF INFORMATION REQUEST

On September 28, 1989, this firm submitted a Freedom of Information Act (FOIA) Request which was acknowledged by the Nuclear Regulatory Commission on October 4, 1989, and assigned the NRC FOIA number 89-431. The request sought, inter alia, all information generated in connection with John Corder's concerns and allegations about the South Texas Project (STP) from June 1986 to the present. This request includes, but is not limited to all inspection reports, document reviews". On October 4, 1989, the NRC acknowledged the request. The acknowledgment

required the payment of costs for search for records responsive to the request that exceeded two hours and for duplication of disclosed records which exceed 100 pages. The staff committed to provide an estimate of the fees and time to process the complaint.

On November 3, 1989, (received November 9, 1989) the NRC sent a Statement of Estimated fees for FOIA 89-431 for a total of \$304.29 and requested that fees be paid in advance. On December 11, 1989, this office submitted a FOIA fee waiver which is currently under review according to a recent telephone inquiry to Ms. Linda Robinson.

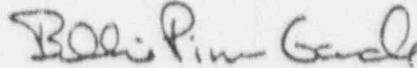
Because of Mr. Corder's inability to pay the fees and expenses, a second FOIA was submitted on December 11, 1989, on behalf of Mr. Corder by this firm as an extension of the work Ms. Garde had done with the Government Accountability Project, a public interest organization regularly exempt from FOIA fees. This request was assigned NRC FOIA number 89-532 and a Statement of Fees has not been received by this office yet. No information has been received under either request.

CONCLUSION

As a result of the situation presented by Mr. Corder's subpoena and his lack of access of NRC information Mr. Corder respectfully requests the Commission to issue a protective order on behalf of Mr. Corder, until the Staff makes documents

available to him (either through the FOIA or directly) that contain the issues presented by Mr. Corder to the NRC, the resolution of those issues, if any, and the basis of the resolution. Upon receipt Mr. Corder will timely review the information and prepare for his deposition.

Respectfully submitted,



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103 East College Avenue
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(414) 730-8533

Attorney for John Corder

Enc. a/s
cc: Certificate of Service



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

RECEIVED SEP 11 1989

September 5, 1989

Richard T. Rice, Esq.
Stevens & Rice
100 North Velasco, Suite 200
P. O. Box 1326
Angleton, Texas 77515

RECEIVED SEP 11 1989

COPY

Dear Mr. Rice:

On April 27, 1989, the NRC sent letters to all utilities, major architect-engineers, nuclear steam supply system vendors, fuel cycle facilities, and major materials licensees concerning provisions in settlement or other agreements which could be interpreted to restrict the settling party or parties from communicating safety concerns to the NRC. If an organization identified potentially restrictive language in an agreement, it was to immediately notify the affected party to ignore any restriction that would prevent that party from communicating freely with the NRC concerning potential safety issues.

Almost all of the organizations responding to this letter indicated they believed that they had no agreements which contained potentially restrictive language. However, a number of respondents were cautious and even though they stated that they felt there were no restrictive provisions in their agreements, they sent letters to certain individuals or parties informing them they could freely communicate with the NRC concerning potential safety issues. Bechtel has written to you concerning an individual your firm represented, Mr. John A. Corder. In his letter, Bechtel stated that while they do not believe the settlement agreement for Mr. Corder contains restrictions on communicating freely with the NRC on safety concerns, Mr. Corder should be notified that he can communicate with the NRC on matters of nuclear safety.

In order to determine whether Mr. Corder has information concerning potential safety issues which have not been provided to the NRC, we request you notify Mr. Corder to contact Mr. Ted Quay (1-800-368-5642, ext. 20705) within thirty days of the receipt of this letter. If there are safety concerns which have not been brought to the attention of the NRC, a mutually agreeable time and place will be arranged for identification of these concerns.

Sincerely,

Dennis M. Crutchfield
Dennis M. Crutchfield, Assistant Director
for Special Projects
Office of Nuclear Reactor Regulation

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CERTIFICATE OF SERVICE

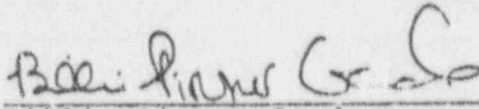
I hereby certify that copies of "John Corder's Response to NRC's Staff Motion to Modify Subpoena and Motion For Protective Order" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk, through deposit in the mail system, this 8th day of January, 1990.

Samuel J. Chilk
Office of the Secretary
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Washington, DC 20555

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