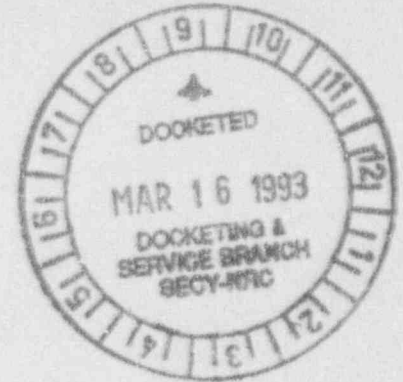


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION



In the Matter of)
)
)
TEXAS UTILITIES ELECTRIC CO.,) Docket No. 50-446-CPA
et al.,) (Construction Permit Amendment)
)
(Comanche Peak Steam Electric)
Station, Unit 2))

PETITIONERS' MOTION TO STAY ISSUANCE OF FULL POWER LICENSE

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.788, Petitioners B. Irene Orr and D. I Orr, hereby seek a stay in further construction, testing and the issuance of a full power license for Unit 2 of the Comanche Peak Steam Electric Station ("CPSES").

II. PETITIONERS MEET THE REQUIREMENTS FOR A STAY

10 C.F.R. §2.788 requires Petitioners to set forth the grounds for the stay, which should address "(1) [w]hether the moving party has made a strong showing that it is likely to prevail on the merits; (2) [w]hether the party will be irreparably injured unless the stay is granted; (3) [w]hether the granting of a stay would harm other parties; and (4) where the public interest lies." 10 C.F.R. §2.788(e)(1)-(4).

A. Grounds for requesting the stay.

Petitioners seek a stay on the following grounds: 1) TUEC is not legally entitled, at this time, to operate the plant at low power not is TUEC entitled to convert the Unit 2 construction permit to an operating license; 2) TUEC does not currently have

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the necessary character and competence to operate Unit 2; 3) TUEC's laps of character has resulted in unsafe operating conditions.

B. Petitioners are likely to prevail on the merits.

First, Petitioners are likely to obtain a hearing on whether TUEC has good cause for the delay in construction. Until such time as Petitioners exhaust their right to a hearing, TUEC may not legally continue to engage in construction, testing and operational activities with respect to Unit 2. Petitioners herein rely on, and incorporate by reference, the briefs Petitioners have filed with the Commission, including the March 12, 1993 brief entitled "Petitioners' Response to the Commission's Order Dated March 5, 1993."

Based on Petitioners' legal challenge to the issuance of the full power license, the Commission must grant a stay until such time as it determines whether Petitioners were improperly denied a right to a hearing on the issue of "good cause" for the delay in construction.¹

¹ The assertion that the issuance of a low power license negates Petitioners' right to a hearing is completely misplaced. As the Commission pointed out in CLI-93-02, "the risk of low power operation are minimal." CLI-93-02 at p. 5, Fn. 3. Because, as the Court of Appeals for the District of Columbia Circuit has found, it "would serve no practical purpose" for a petitioner to seek relief from the harm stemming from the Commission's denial of a right to a hearing in matters concerning the issuance of a "low power" license. See San Louis Obispo Mothers for Peach v. NRC, 751 F.2d 1287, 1317 (D.C. Cir. 1984). As such, Petitioners' request for a stay is ripe. Moreover, Petitioners relied upon the fact that the low power license was, at the insistence of the Commission, issued "without prejudice to future consideration by the Commission with respect to operation (continued...)

Second, Petitioners are entitled to a stay because it is inherently unjust for the Commission to delay ruling on Petitioners' right to a hearing while authorizing TUEC to continue to construct and operate Unit 2.

Third, new factual evidence demonstrates that TUEC's past cover-up of safety related information imperils the health and safety of the public. A review of the briefs Petitioners have filed with the Commission in the instant case allege that TUEC entered into money-for-silence contractual agreements to conceal safety-significant information (and information concerning the character and competence of TUEC) from the Commission. The evidence Petitioners present is irrefutable. Specifically, Petitioners have documented that: TUEC had first hand knowledge that they were required, by way of a standing order, to turn over all newly obtained information that came into the hands of TUEC for CPSES Units 1 and 2 operating license and the Unit 1 construction permit amendment proceeding. See Exhibits 8 & October 5, 1992 Supplement to Petition. Additionally, Petitioners have presented irrefutable evidence that TUEC entered into restrictive settlement agreements with its co-owners

¹(...continued)
at power levels in excess of 5 percent" when deciding not to appeal CLI-93-02. The fact that the Commission effectively counseled Petitioners against pursuing their request for assuring Petitioners that the risk was minimal, together with the incorporation of explicit language in the license indicating there would be no "prejudice" stemming from the issuance of a low power license, demonstrates that Petitioners' request for a stay is ripe.

terms of which required the co-owners to turn over evidence documenting a pattern and practice employed by TUEC to intentionally submit material false information to the ASLB, as well as a pattern of threatening its former co-owners.² To date the illegally secreted documentation has never seen the light of day,³ and NRC Staff has yet to require TUEC to release this information.⁴

² Indeed, Petitioners rely on a legal pleading filed by one of the co-owners before entering into an illegal money-for-silence restrictive settlement. Therein, it asserts, *inter alia*, that the minority owner had amassed documentation demonstrating that: 1) TUEC failed to disclose material information about the adequacy of the design of the CPSES to the NRC; 2) TUEC misrepresented and failed to disclose information about inadequate construction practices employed during the construction of the CPSES; 3) TUEC misrepresented and failed to disclose violations of NRC requirements to the NRC; 4) TUEC failed to disclose information documenting incompetence on the part of TUEC management, TUEC's contractors, subcontractors and the architect/engineers responsible for the design and construction of the CPSES; 5) TUEC failed to disclose material information necessary to correct inaccurate statements TUEC made to the NRC. See Exhibit 1 to October 5, 1992 Supplement to Petition.

³ It appears that TUEC's counsel engaged in unethical conduct through the intentional and blatant disregard of a standing ASLB order. Secreting information from an ASLB knowing that to do so would directly violate a standing judicial order is outrageous conduct. The Commission cannot ignore blatant unethical conduct on the part of TUEC's counsel. Indeed, Petitioners note that the attorney responsible for the drafting of the minority owner agreements, Mr. Robert Wooldridge, continues to appear as counsel to TUEC in the instant proceeding and, upon information and belief, is TUEC chief counsel on licensing matters.

⁴ In CLI-93-02, the Commission acknowledged that the settlement agreements could have resulted in the secreting of safety-related information from NRC Staff, but asserted that "there is no showing that any actions that the NRC directed TU Electric to take [with respect to the release of the secreted documentation] will have any impact on low power operation."

(continued...)

In addition to the above, Petitioners' counsel has uncovered information indicating that TUEC managed to secret material information from the ASLB through the practice of paying "hush money" -- a practice which almost resulted in a catastrophic accident at the CPSES in 1992. In this respect, on the evening of March 14, 1993, Petitioners' counsel spoke with a former inspector employed at the CPSES, Mr. Ronald J. Jones. During the course of this conversation, Mr. Jones recounted events in 1992 which almost resulted in a serious accident at the CPSES. He further asserted that the underlying deficiency resulting in the near accident had initially been identified in a non-conformance report he drafted while at the CPSES site. According to Mr.

⁴(...continued)

Id., at p. 4. The Commission has identified a major problem. The fact that NRC Staff has not taken any action that could impact on TUEC's ability to operate Unit 2 is outrageous. NRC Staff cannot take an ostrich approach to the licensing of a nuclear power plant. The Commission must grant Petitioners' request for a stay until the illegally secreted documents are publicly released and reviewed. To do otherwise ratifies illegal and unethical conduct taken by TUEC and its counsel.

Petitioners have presented sufficient evidence to shift the burden to TUEC to demonstrate that it did not secret safety related information from the Commission. As such, Petitioners are entitled to an adverse inference that the documentation TUEC intentionally and illegally secreted from the ASLB includes information demonstrating that TUEC is aware of the existence of uncorrected safety problems incorporated into the design and construction of the CPSES, and an adverse inference that the withheld documentation constitutes sufficient support to admit the underlying contention Petitioners seek admission in the instant matter. It is simply inconceivable to Petitioners that the Commission would grant a full power license without addressing and correcting blatant illegal and unethical conduct engaged in by TUEC's counsel, particularly in light of the fact that the secreted information reflects on the licensee's character and competence and may pose a significant threat to the health and safety of the public.

Jones, the non-conformance report was given to his then legal counsel, Billie P. Garde, who had assured Mr. Jones that this and some nearly 300 other such non-conformance reports that were not reported to the NRC by TUEC would be released during the course of the ASLB proceedings. Mr. Jones alleges that TUEC, through the payment of a large sum of money to other clients represented by Garde (including a former citizen intervenor group, Citizens Associated for Sound Energy, or "CASE") has resulted in the secreting of this information from the Commission. Late last evening, Mr. Jones agreed to transmit, via facsimile, a hand-written statement outlining how the secreting of safety information has and will continue to directly impact on the safe operation of the CPSES.

According to Mr. Jones's statement,⁵ he was employed at the CPSES between 1983 and 1984 as a Nuclear Electrical Inspector. Statement of Ronald J. Jones ("SRJ") at ¶ 1. As an inspector, Mr. Jones identified over 300 non-conforming conditions, *id.*, at ¶ 2, that were never corrected by TUEC and, to this day, present a significant risk to the public's health and safety. Mr. Jones also states that one of the non-conforming conditions he identified concerned an electrical wiring defect associated with the coolant control valve to Unit 1, and that as a result of the defect, the valve would not control the cooling of the reactor rods. This defect, according to Mr. Jones, was never corrected

⁵ A copy of Mr. Jones' hand-written statement is attached as Exhibit 1.

and eventually, in 1992, gave rise to conditions which could have resulted in a devastating accident at the CPSES. SRJ ¶ 3. Upon information and belief, Unit 1 would have experienced a significant accident due to the failure of the coolant control valve to operate and that TUEC was only able to avoid a catastrophe by pumping water containing an unknown quantity of boron from a source within the CPSES Unit 2 (at the time an unlicensed and uninspected facility). *Id.*, at ¶ 3.

Mr. Jones specifically alleges that Ms. Billie P. Garde was given this and numerous other non-conformance reports prepared by Mr. Jones and that she personally advised Mr. Jones that when this information was presented to the ASLB, "TU would never receive their operating license." SRJ at ¶ 5.⁶ Nonetheless, before Mr. Jones' information was presented to the ASLB, TUEC's counsel, Mr. Robert Wooldridge, met with Ms. Garde to negotiate an agreement to disband the licensing proceedings before Mr. Jones' information could be presented to the ASLB. Notably, these negotiations overlap in time with TUEC's negotiating and secreting information from the ASLB that TUEC received under the terms of the restrictive settlement agreements TUEC forced upon its co-owners and which are the subject of dispute in Petitioners' intervention in the CPA proceeding.

⁶ As the Commission is aware, Petitioners contend that the July 13, 1988 settlement between a citizens intervenor was based on an understanding that TUEC was buying silence and that as such, Ms. Garde would not volunteer information from Mr. Jones and others that related to the safety of the CPSES.

After Garde reaching agreements with TUEC's counsel to pay over \$10,000,000 to her various clients, Ms. Garde actively misled Mr. Jones and other whistleblowers to believe that their safety concerns would be "put before the licensing board to be corrected before the operating license would be issued." SRJ at ¶ 6. The fact remains that once TUEC had arranged to pay some \$10,000,000 to Garde's clients, none of Mr. Jones' allegations, to this date, have been raised before the NRC. SRJ at ¶ 7.

Mr. Jones' allegations indicate that TUEC has managed to secret through the payment of hush money significant safety-related information. The underlying allegation of Petitioners is that TUEC's lack of character and competence resulted in delays in construction, and that this same lack of character has not been corrected to date. Because this lack of character has not direct safety significance, the Commission cannot allowing TUEC to convert its construction permit to an operating license.

C. Petitioners will be irreparably injured

For the reasons set forth above, Petitioners will be irreparably injured if TUEC is allowed to convert its construction permit to an operating license. In matters pertaining to the licensing of a nuclear power plant, irreparable injury includes increased risk to the health and safety of Petitioners and the public. In light of TUEC's history of secreting safety information from the ASLB and NRC through contractual agreements with witnesses and other parties, and in light of the allegation from Mr. Jones that some 300 non-

conformance reports were secreted from the ASLB and that the deficiencies identified therein have never been corrected, Petitioners will suffer irreparable harm if an operating license is granted.

Petitioners will also be irreparably injured if an operating license is issued before their petition to intervene in the CPA proceeding is fully litigated and resolved by the Commission. The issuance of a full power license prior to resolution of Petitioners' CPA appeal, which has been pending before the Commission since December of 1992, will deprive Petitioners of their right to due process and, by so doing, turning Petitioners' right to a hearing into a charade. Such an undertaking by the Commission is not only blatantly illegal, but will irreparably injure the Petitioners by granting a full power operating license to a licensee which lacks the character and competence to construct, let alone operate, Unit 2 at CPSES.

D. The granting of a stay does not constitute a cognizable harm to TUEC

Petitioners' request for a stay is based on their legal right to a hearing. Petitioners' due process does not constitute a cognizable harm to TUEC. Indeed, at the time TUEC sought a license to operate a nuclear power facility it fully realized that interested persons are entitled to hearings on matters pertaining to TUEC's seeking an amendment of its construction permit. TUEC cannot claim that Petitioners' right to a hearing constitutes a cognizable harm.

Moreover, the licensee presumably has an interest, if not a duty, to make sure that its nuclear facility is constructed in compliance with NRC regulations. Rather than a cognizable harm, the requested stay, if granted, would constitute a benefit to TUEC by affording it an opportunity to assure the NRC and the public that it possesses the character and competence to construct and operate the CPSES.

E. The public interest lies in the Granting of a Stay

The public's interest is served by ensuring that the hearing rights of citizen intervenors are scrupulously maintained. Moreover, because the issues related to TUEC's character and competence include allegations that TUEC has intentionally constructed Unit 2 in violation of NRC requirements and continues to engage in a pattern of covering up safety significant information which poses a serious risk to the health and safety of the public, it is in the public's interest to grant a stay until such time as the hearing process is concluded.

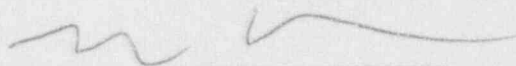
TUEC will not be prejudiced by the delay which might result in permitting Petitioners to litigate their contentions in the CPA proceeding (i.e., that the licensee lacks the character and competence to construct CPSES Unit 2). The public's interest in assuring that CPSES is safe outweighs TUEC's economic interest that would be derived from the licensing and operation of Unit 2. The Public interest overwhelmingly weighs in favor of granting a stay to ensure that Petitioners are not deprived of their right to due process and that the public's health and safety is not

placed at risk by TUEC's insidious practice of paying hush money to suppress safety concerns at the CPSES.

Conclusion

For the reasons set forth above, the Commission should grant a stay of the Unit 2 full power license.

Respectfully submitted,



Michael D. Kohn
David K. Colapinto
KOHN, KOHN AND COLAPINTO, P.C.
517 Florida Avenue, N.W.
Washington, D.C. 20001
(202) 234-4663

Attorneys for Petitioners

Dated: March 15, 1993

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I Ronald J. Jones upon oath do hereby depose and say that, I was a Nuclear Electrical Inspector at Comanche Peak Power Station, between the years 1983-1984.

During this time I found, reported and wrote up over 300 nonconforming Conditions in Unit 1. These nonconforming Conditions consisted of faulty wiring in the control room panels of monitoring devices, safety control modules, sabotaged wiring in spread room underneath control room, separation violations ^{through} ~~through~~ Unit 1, faulty bolts on electrical restraints, unauthorized changes on construction blue prints and numerous smaller violations any one of which made Unit 1 ^{unsafe} ~~unsafe~~ and unreliable.

One particular non conforming condition was addressing faulty wiring to water coolant control valve that controls the amount of water let into reactor to control nuclear heating rods. I believe this was never corrected and in 1992, a NRC man in sight was monitoring the control room and noticed heating levels were rising and in fact there was no coolant let into the heating rods, for a period in excess of 24 hrs, and the only way that coolant water could be supplied to Reactor 1 was to be pumped from the unregulated Unit 2, without any prior knowledge that the water contained the amount of boron, and in clear violation of the license requirements.

Region 4 NRC had prior knowledge

Exhibit
"1"

by the regulator and just not inspection and they failed to act. When a petition 10 CFR, 2.126 was filed requesting suspension of license pending investigation the same was ignored by the Commission itself, had the device I mentioned above been wired and tested properly this near disaster would not have taken place.

At the time that Billie Guard was handling my case on these allegations of non-conforming conditions I presented her with a box of written evidence; after reviewing the evidence she made the statement, that if myself and ~~the~~ ^{this 18} evidence is ever brought to court and the Licensing Board, T.U. would never receive their operating licence and I agreed with her.

At the time of the settlement in 1988 Mr. Guard assured me that the settlement was to make up for the hardships, suffering, brutalizing myself and my family had suffered at the hands of I.U. for being a whistle blower. All the evidence that myself and other whistle blowers have turned over to her ^{would} ~~would~~ ^{not} be given to Quantal Ethics and her United Guard Group and each and every allegation would be put before the licensing board to be throttled before operating licence would be issued to I.U.

I do not believe any of this was done because myself and the other whistle blowers were never called forth to testify like we were told we would. ^{and} my professional opinion on the defaulter that myself and the other whistle blowers brought to her were never addressed or corrected, and will create continuous and deadly accidents

at Comanche Peak until these nonconforming
conditions are addressed and corrected by
present history and immediate records will
show true and correct.

The above statement is true
and correct to the best of my memory,
knowledge and belief, I understand that
false statements or misrepresentation will
subject me to ~~penalties~~ ^{penalties} for perjury.
Ronald J. Jones

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING APPEAL BOARD



In the Matter of)
)
TEXAS UTILITIES ELECTRIC COMPANY,) Docket No. 50-440-CFA
) ASLBP NO. 92-668-01-CFA
) (Construction Permit
(Comanche Peak Steam Electric) Amendment)
Station, Unit 2))

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of PETITIONERS' MOTION TO STAY
ISSUANCE OF FULL POWER LICENSE was served upon the following
persons, via facsimile, on the date shown below:

Office of Commission Appellate Adjudication
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

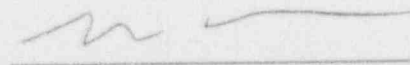
Office of the Secretary, *(original and two copies)
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

George Edgar, Esq.
Newman & Holtzinger, P.C.
1615 L Street, N.W.,
Suite 1000
Washington, D.C. 20036

Janice E. Moore, Esq.
Nuclear Regulatory Commission
Office of the General Counsel
Washington, D.C. 20555

**R. Micky Dow
506 Mountainview Estates
Grandberry, Tx 76048

Dated: March 15, 1993

By: 
Michael D. Kohn

*Also by deposit in the United States mail

**Only by deposit in the United States mail

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