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Disposable Workers
of
Comanche Peak Steam Electric Station

SANDRA LONG DOW, FOUNDER & CEO
JOHNNIE MIKE FLANAGIN, CO-FOUNDER
RICHARD E. DOW, JR., DIRECTOR
PUBLIC RELATIONS

September 11, 1991

930922-32

Giovanna M. Longo, Attorney
Office of the General Counsel
U.S. Nuclear Regulatory Commission
11555 Rock Pike
Rockville, Maryland 20852

Re: In re: Richard E. Dow
Docket Nos. 50-445, 50-446

Dear Ms. Longo:

Your letter of 6 September, 1991 arrived today, and, frankly, I don't know why I'm responding to it. I have been trying to reach you for some time now, and, for some reason, I always get short-circuited and end up with Stephen Lewis. I will, however, respond to your lett

First of all, I never received your letter of 23 July. My wife and myself have been here, in Ottawa, since before that date, and Mr. Lewis has had the address. I found out about the letter from Randy Loftis, the reporter from The Dallas Morning News, but, still have no seen it personally. It was sent, apparently, to my address, back in Texas, and though I had a change of address on file, it was not forwarded to me here in Canada.

It is certainly a relief to be dealing with someone, at last, wh can make proper reference to things, and keep the "facts" straight, if you will. Rather than make complete restatement of what I have said in the past, I have enclosed copies of the letters I have written to Ivan Selin, and Stephen Comley, as well as the letters from both Mr. Lewis and Mr. Hadley, and will simply allude to those portions which apply herein.

Mr. Hadley, and myself, have had some discussions with regard to the tapes, and he is acting as an intermediary, although the Commission is referring to him as a "party", at least in the draft of the proposed "agreement" (enclosed, with Hadley letter) I just received.

With regard to "conversations" with Mr. Lewis, and the word conversations is a misnomer, believe me; I would strongly, and urgently, request that you, not only review the enclosed letters carefully, but that you listen to all the recordings of our talks for the last three months. You will find, I believe, that they are actually studies in double-talk, and arguments on procedure, rather than conversations involving compliance. I think, as well, it will certainly be apparent, that I am interested in compliance, but the real problem, here, is getting the Commission, and particularly Mr. Lewis, to state the same thing twice in succession, or to even stay on the same subject twice.

Everyone I have spoken with, at any level, and in any department of the NRC has urged me to cooperate with the Commission; each has said they are "willing to entertain any reasonable suggestion . . . as to how this may be accomplished. . . .."; and I have suggested and suggested. It might be important to remember, at this point, or, if necessary, allow me to reiterate, that it was I who came to the NRC in the first place! I have made several suggestions, each one Mr. Lewis appears to agree with, says he will check it out and that I should call him back. When I do, he is either not there, or, if he

is there, the conversation suddenly switches to another topic. If we were originally talking about the transfer of the documents, he will key on the tapes, and, if we were talking about the tapes, he will key on the documents, but, no matter what, nothing is ever accomplished.

At one time Bill Stryker was going to come here for some frank discussions and arrangements, according to Mr. Lewis, but when I mentioned it to Mr. Stryker, he not only was shocked, but definately not in favor of the idea.

The only thing I can conclude with if for you to please listen to the tapes of my conversations; then read the letters. We can work together, and we can come to an agreement. The only way we will be able to do this is when everyone is talking about the same thing at the same time, and using the same words. The only things I am unmovable about are the following: a) I will not reenter the jurisdiction of the United States, for any reason; b) I will not, carte blanche, turn over the originals of anything to anyone. I am willing to use an intermediary, although I don't see why this is necessary, but I must, and will, be present during any copying procedures, particularly with regard to the 16 reels of tape.

My final proposal, and continued proposal, is that someone, perhaps yourself, who is capable of doing that mentioned hereinabove, come to us, and openly discuss resolution. I am prepared to go to Court, I am prepared to plead a viable defense to this purported subpoena, and I believe the Court will grant an injunction preventing any enforcement of this subpoena. But that is not the idea of all of this. We are trying to get this evidence presented where it will be addressed in public, not surpressed in private. We want to work with whoever will work with us. So, please, let's stop worrying about who's the best lawyer, and come to an agreement where the interests of the public and the safety of this industry are best served.

In closing, I will provide you with my mother's phone number if you need to reach me sooner than a letter can do. She is home after 7 every evening and will take a message and write it down. I call her every Monday, Wednesday and Friday without fail. He number is 414-468-5389. She is disabled so please let the phone ring, as it takes her a while to get to it.

I hope to hear from you with a viable answer.

Sincerely,

R. Micky Dow

R. Micky Dow
1078 Wellington, #135
Ottawa, Ontario K1Y-2Y3

Enclosures
cc: U.S. District Court file

September 10, 1991

Ernest C. Hadley, Attorney
414 Main Street
P.O. Box 3121
Wareham, Ma. 02571

Re: NRC Subpoena
Your letter of
September 4, 1991

Dear Mr. Hadley: CONFIDENTIAL DO NOT DISCLOSE

Your letter of 4 September was just received today. The mail strike just ended, to be replaced by a public service employee strike which makes communication on a timely basis a little difficult, thus the FED. EX. response.

Sorry about the apparent communication lag, as well, but, as I understood, from our last phone conversation, you knew that my phone would be terminated, and said you would leave a message from "Uncle Eddie" with my mother as soon as you knew something. I asked her everytime I called her about you specifically and there was no message so I assumed you were still working on things. This international intrigue can get to be confusing!

Before I address specific points, in both your letter, and the contract draft, let me reiterate my position. As I have stated, and continue to state, we want out of this. It is destroying our lives, now, to a greater extent than I can outline. We are living like animals, in a foreign land, when we would rather be home, where we belong. I don't even have the typing paper to print this letter, and am storing it in the memory until Sandra can go, and literally beg some paper from the church to print it on. We haven't eaten in two days. I have even stated to you in our first two conversations what we were willing to do, in the extreme. TU's record is clear, that they have "hit-teams" which do what their title implies, is a certainty, and that they must make an example of us, we are sure; therefore, we also know, we can never go home again. Noone, including the NRC, will ever believe that we have presented everything we have, or, more so, that we are through, so this thing is never going to end for us. Our only hope is for a clear future, which I, again, have discussed with you. The bottom line is that we are willing to negotiate with the NRC, we will cooperate, but only in the light, and with the understanding, that this is not my material, per se; I do have custody and control, but only in the sense that I do what I feel is right with it, subject to their final approval. In literally all cases, they take my word for what is right, because I am out here, but there never is a certainty to that. In all honesty, I do have ultimate control, as the material is with me, and I am here, and they are there; but you, as a professional, know the dilemma that imposes. I am not a big fan of judgment calls, but I will make them when I have to, or must. I have representation agreements, and/or limited power of attorney, with all that I am acting for.

Another important factor, which needs discussion, at this point, is the wording of the original subpoena, itself. POINT 1: There is no mention in that document of Tape/audio recordings, nor any terminology with specifics enough to allude to the same; the terminology is too general, and is ambiguous enough, that, utilizing the "reasonable man" theory, it is, and would be, arguable in court, that this precludes the 16

reels. The subpoena duces tecum, and/or a request for discovery, as I choose to feel this is, in actuality, must be made with specifics, which the subpoena in question lacks. POINT 2: The "materials" requested in that subpoena, while they were in my possession, custody, and control, at the time of issuance, no longer are, in a technical, but arguable, sense. Disposable Workers of Comanche Peak Steam Electric Station did not exist at that time, nor was I an officer of that agency, as our registration certificate in Tarrant County, Texas will show. Since that time, however, it has come into existance, and I have officially turned over all the material to that organization, some time back, primarily to give it more viability with the public; but, certainly not, and was never intended to be, a move of evasion of that subpoena. It simply has never been addressed, and I was under no obligation to disclose it as long as it appeared the NRC was going to, in some sense, play by the rules. The subpoena is addressed to me, as an individual, and not to D.W.C.P.S.E.S., so there is nothing to present, if I choose to use that shakey, but arguable, defense at a show-cause hearing. POINT 3: The subpoena, by virtue of its date, alone, but also with regard to discussions with the Counsel General's, and the Inspector General's offices, addresses all materials (save the tapes) in my possession, custody, or control, as of that date (which would be subsequent to my formal interview at the offices of Region IV). The problem here is twofold, in that, a) as the record of that appearance will show, 14 reels of the tapes were not in my possession or custody at the time, and I had no real control, other than advisory, over them, which is now different; and b) fully sixty (60%) percent of the material I now have, has come to me subsequent to that date and time. Were this a discovery request for production/inspection and copying, I would be duty-bound, by the rule, to supplement my response, which would include the newly gathered material, as well as disclosure of the transfer to D.W.C.P.S.E.S., but this is a Subpoena Duces Tecum, and therefore I have no duty, under the law, to supplement, and have no liability for failure to do so.

To address your letter, now, and let me preface that with this is a "critique" not an attack, refusal, or argumentation, I will begin with an objection to the use of the terms "16 tape recordings". This may, or may not, have been a simple misstatement, but I feel it is the Commission's attempt to downplay, not only the quantity, but the importance, and viability, of this material. What I have, in fact, are 16 24 hour capacity REELS of audio tape, which contain wire-tap recordings, from the main PBX board of the Comanche Peak facility, of, not only incoming, but outgoing telephone conversations, many of which were deliberately recorded of management calls, which do contain conversations of not only wrong-doing, but are also indicative of duplicity, between officials of CPSES and Region IV. That the conversations exist, I have irrefutable testimony from the man who monitored these tape, ordered their confiscation, because of what he heard, and removed them from the facility to protect their sanctity. That there is duplicity has been confirmed to me by members of the Office of the Inspector General. The total number of recorded hours is in the neighborhood of 483.

Next, I would agree that there is no legal foundation for a court to quash this subpoena. It is of administrative origin, and could only be quashed by the Commission itself; I do not believe the U.S. District Court would have subject-matter jurisdiction to act in that manner; however, the U.S. District Court does have the power to enjoin the enforce-

ment of that subpoena, and/or the power to issue protective orders in order to preclude any type of order to compel; and I could make application for the same through the present action in the Western District of Pennsylvania (Civil Action No. 91-1238 Dow, et al. v. Texas Utilities, et al.). At the worst, it would be an appellate matter which conceivibly take considerable time to rule upon, thus defeating the NRC's immediate purpose, and allowing the private transcription to take place.

We are still interested in working with We The People, or any other organization that is attempting to bring this joke to the pubic's attention, and I was still under the impression that you were going to come and discuss this matter with us when your knee permitted it. I have no problem with your credentials, your credibility, or your professionalism, but I do have a problem with what we have discussed and what is represented in the draft of the agreement, again, in critique only.

I am curious that the intro has you listed as a party, rather than an independant intermediary, as well as the use of the phrase "to resolve an outstanding subpoena" for that is a misnomer, which is pointed out in the terminology of item 12 therein.

ITEM 1: The subpoena does not have an enforcement date of September 4, 1991. I have never received any communication regarding that date, and although I do not contest the date, itself, it is a return date, not an enforcement date. The phrase ". . . proceeding expeditiously." is too vague and ambiuous, as well as subject to the interpretation of the Commission, which, again, keeps me out on the limb.

ITEM 2: Mr. Dow does not have 16 tape recordings! I have covered this point hereinabove. The recordings were not made by TU, but rather, by two or more of their sub-contractors, and actual physical ownership has never been discussed. Partial copies and transcripts do exist.

ITEM 3: I will execute an affidavit attesting that these 16 reels are as they were when I received them. I cannot, and do not have sufficient knowledge to attest that they are complete, or unaltered, but that the 16 reels are all that were transferred, but again partial copies and transcripts do exist. I will not carte blanche turn these 16 reels over to anyone, nor will I send them carte blanche to the United States. I must, and will, be present during the recording process needed before a transcription takes place. To do otherwise would completely compromise my clients. There is but one alternative which we have discussed in our first conversations, and we need to discuss in greater length. There is no mention of how transfer is to be affected.

ITEM 4: There is no mention of the method, place, or manner of how these tapes will be slowed down so that a transcription can be affected. There is no mention of security during this process, or, if as I suggested the tapes can be relayed; and there is no mention of payment for this process.

ITEM 5: Moot, and of course acceptable.

ITEM 6: Ludicrous! The wording is vague, ambiguous, and convolutant. Certainly if a transcription is attempted without the reels being played at original recording speed, they will contain a passage, or passages that cannot be resolved by transcription (whatever that phrase means) they will be unintelligible! I spent one solid week in a law enforcement sound lab, with the most state-of-the-art equipment, working with these tapes, with qualified technicians, and there is but one way these 16 reels can be transcribed, and without my presence dur-

ing this process to assure the quality, anyone who signs an affidavit ascertaining their complete transcription would be telling a lie. This entire item is an escape clause which would allow the Commission to take possession on their interpretation alone. Not only is it unacceptable, I am insulted at its insertion.

ITEM 7: See Item 6 supra.

ITEM 8: No problem, except as stated in Item 4 supra.

ITEM 9: Reckon whose name is missing, once again. Frankly, I no longer grow tired from the exception of my name and/or presence, I am growing sick of it! I am the individual who brought this evidence to the attention of the NRC, when they didn't even know I was on the Earth! The individual who passed these 16 reels of tape to me, was about to trash them. I saved that from happening, and I saw to it that they were placed where they would be protected and preserved. I realize this action has caused the applicant and the NRC a great deal of concern, fear, and problems, and rightfully so. But, still I have attempted to place it all in their hands, and received nothing but a hassle for that attempt. I read memos of how my sources will be protected, their expenses will be paid, but my name is never on the list, nor has any protection been offered me. Although the Commission agreed to change the location for my presentation of this material because I stated I was in fear of my life to return to Texas (I assume that to mean they agreed with the premise), they had the audacity to state that because it was I who requested the change of location, my expenses would not be reimbursed, when I have never made any sort of request for reimbursement, payment or any manner of compensation! Hell, I even pay for the damn phone calls whenever I can. My wife and myself have had four definite attempts made on our lives, and other threats and probable attempts in the area of uncountability. We have fled to a foreign land in fear of our lives, and are living like animals on the charity of strangers, and are afraid to come back to the country we love because we dared to say "something's wrong--anybody want the evidence to prove it?" We have lost everything in our world that was our world and we have no future. We have been exposed to radiation, reported it to the NRC, to be ignored. I have graham negative baccili in my system and no way to explain how it got there, except three doctors who say I didn't just catch it. We have evidence in our possession that EIGHT people were threatened, intimidated, bribed, blackballed, harassed, in one instance KILLED, and in the last nearly run down on the steps of the capitol in Washington D.C. and yet if we are mentioned, it is as an addendum, if mention is made at all. I'm sorry, but there better be some serious realignment of priority's with regard to status.

ITEM 10: Agreeable, and certainly true.

ITEM 11: We discussed the fact that we, too, would be provided copies of the transcriptions at NRC expense as a checks and balances procedure, and if I could pay for a transcription, it would have already been done! Again, Micky gets left out in the cold--I think not.

ITEM 12: We are back in the terminology argument again. I cannot be in compliance with something that does not address whatever I did comply (?) with. This is not an agreement for resolution. I am still on the hook. It is a sloppy attempt to con the tapes out of me, leaving me still out in the cold facing more proceedings from the NRC.

In closing, and to return to your letter, I am afraid Mr. Lewis has been less than accurate (?) with you with regard to our conversa-

tions regarding negotiations. I would draw your attention to the letter I recently sent to Ivan Selin, a copy of which I sent to your client. It has a more accurate description of what happened. If you still have any doubts, I might suggest a confrontation, and your requesting to listen to the tape of that coversation.

Finally, let me stress that things would go smoother, and resolution be affected for all concerned, particularly your client, if we were to meet in person and you see what we have. We do want out of this. My mother is a widow and keeps erratic hours, she may be hard to catch, but she is always home generally after 7 p.m. Central Time, and she does take accurate messages for me.

I hope to hear from you soon with regard to the foregoing.

Sincerely,

R. Micky Dow

R. MICKY DOW
1078 Wellington, #135
Ottawa, Ontario K1Y-2Y3

CONVERSATION RECORD

TIME: 10 00 | DATE: 9/17/91

TYPE: [X] VISIT [ ] CONFERENCE [ ] TELEPHONE [ ] INCOMING [ ] OUTGOING

Location of Visit/Conference:

NAME OF PERSON(S) CONTACTED OR IN CONTACT WITH YOU	ORGANIZATION (Office, dept., bureau, etc.)	TELEPHONE NO.
DENNIS BOULS DWIGHT CHAMBERLIN		

ROUTING	
NAME/SYMBOL	INT

SUBJECT: M. DOW INTERVIEW OF APRIL 19, 1991

SUMMARY

I DISCUSSED THE ISSUE OF THE M. DOW INTERVIEW WITH DENNIS BOULS AND DWIGHT CHAMBERLIN, OF TREATIES. THEY BOTH RECALLED THAT THE QUESTION OF WHETHER OR NOT TO OFFER DOW THE OPPORTUNITY TO REVIEW AND COMMENT ON THE TRANSCRIPT WAS RAISED PRIOR TO THE INTERVIEW. DENNIS TOLD ME AT THAT TIME THAT DE DOES NOT MAKE IT A PRACTICE TO OFFER TRANSCRIPTS FOR REVIEW AND COMMENT. WE ELECTED NOT TO OFFER DOW THIS OPTION AND HE DID NOT REQUEST TO REVIEW AND COMMENT ON THE TRANSCRIPT AT THE CONCLUSION OF THE INTERVIEW.

ACTION REQUIRED

NAME OF PERSON DOCUMENTING CONVERSATION	SIGNATURE	DATE
M. E. MURPHY		9/17/91

ACTION TAKEN

SIGNATURE	TITLE	DATE

B/4

Express Mail 11/20/91
6. I. Bordenick / Mullins / Moore / Parker / RP
Reply 12/9/91

JE
JG
GL

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

9104357 9104360

In the Matter of:	§	
	§	
TEXAS UTILITIES ELECTRIC COMPANY, ET AL.,	§	Docket Nos. 50-445-OL 50-446-OL 50-445-CPA
	§	
Comanche Peak Steam Electric Station, Units 1 and 2	§	COPY

MOTION TO REOPEN THE RECORD

Pursuant to 10 C.F.R. Section 2.734, petitioners Sandra Long Dow dba Disposable Workers of Comanche Peak Steam Electric Station, and R. Micky Dow, request this tribunal to both re-open the record of the above-styled and numbered proceedings, and thereafter grant petitioners leave to file their motion for intervention.

The Rules of Practice, 29 C.F.R. Part 18, grant to an Administrative Law Judge the authority to "where applicable, take any appropriate action authorized by the Rules of Civil Procedure for the United States District Courts." 29 C.F.R. §18.29(8). Accordingly, the Rules of Practice adopt, where applicable, the Federal Rules of Civil Procedure and grant to the Administrative Law Judge, where appropriate, the power to take action authorized by the Federal Rules of Civil Procedure.

RULE 60, FEDERAL RULES OF CIVIL PROCEDURE

"Rule 60. Relief From Judgment or Order", has direct application in the motion petitioners' now bring before this board.

It states, in part "On motion and upon such terms as are just, the [board] may relieve a party from [an] . . . order, or proceeding for the following reasons: . . . (2) newly discovered evidence which

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by due diligence could not have been discovered in time . . . (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct or an adverse party. . . .". Although the rule states that the motion shall be made within a reasonable time, usually meaning within one year of the order, it goes on to state, in part "This rule does not limit the power of a court to entertain an independent action to relieve a party from [an] . . . order, or proceeding, . . . or to set aside [an order] for fraud upon the court."

CASE BACKROUND

There is no need to remind the members of this tribunal of the difficulties of the past. This entire issue, in its length, mountains of documentary evidence, switching of witnesses, and finally the sudden withdrawl of the only viable intervenor, we are sure, still bring shudders to the minds of the members. What petitioners believe is important to remind this board of, are the continual exposures of material false statements and misrepresentations, by all parties, and the need to continually re-examine facts, data, and testimony. When the Citizens Association For Sound Energy withdrew as Intervenors, this board was left, with but a single choice, to grant the license

It is also important for the board to remember that there was a previous motion, much like this, filed by one Lon Burnam, and then suddenly withdrawn, and petitioners would aver to the board that this motion, as well, was withdrawn, under the same suspect conditions as those of the Intervenor C.A.S.E., and petitioners can support their averment with documentary evidence. This in itself, is sufficient enough reason to consider petitioners' motion as being timely. But, in the alternative, because some of the evidence, of the greatest ma-

terial value to this board, has only come to light within the last thirty (30) days.

1. 10 C.F.R. §2.734(a)(1).

Petitioners satisfy 10 C.F.R. §2.734(a)(1) for the following reasons, and in the following respects:

1) Although this motion is brought more than one year after the close of the record in this matter, Rule 60 F.R.Civ.P. provides the board with the power to entertain an independent action.

2) New evidence regarding the payment of "hush" money to whistleblowers, not to testify before this Board sufaced for the first time after the record was closed; and, new evidence concerning the payment of "hush" money to the intervenor C.A.S.E., has only, now, surfaced.

3) Evidence now exists to show that the intevenor C.A.S.E. and members of the Government Accountability Project conspired to keep the evidence of the whistleblowers from ever reaching the Board.

4) Evidence now exists to show that there was a duplicity between members of the Nuclear Regulatory Commission and members of the upper management of the applicant, to secure the license.

2. 10 C.F.R. §2.734(a)(3).

Petitioners satisfy section 2.734(a)(3) for the following reasons:

1) As evidenced in Petitioners' Exhibit A (excerpts from two secret settlement agreements), money had been paid to potential witnesses, not to testify before this board. As evidenced in Exhibit B (affidavit of Joseph Macktal), a potential witness was coerced into accepting money, not to testify before this board by the attorneys from the Government Accountability Project, representing C.A.S.E., namely one Billie Priner Garde. Petitioners' Exhibit C shows that the organization GAP routinely led whistleblowers to believe they would be given a chance

to testify in proceedings, and receive protection, when in fact their cases would be so utterly mismanaged that they never went to trial. Petitioners' Exhibit D, is the handwritten note from one ALJ to another, for the Department of Labor, showing clearly that they were not fooled by these tactics, and what their opinion of them was.

2) Petitioners allege that false and misleading statements were repeatedly made to this tribunal between 1982 and 1985 by Texas Utilities witnesses and that these false and misleading statements resulted in this Board's reliance on, and adoption of, either false or misleading facts when issuing its December 28, 1983 Memorandum and Order in the matter of Texas Utilities, et al., Docket Nos. 50-445, and 50-446. As memorialized in that order, the ASLB relied on testimony provided by Mr. Finneran and others, as well as false or materially misleading facts contained in a NRC staff Special Inspection Team (SIT) report to answer the following fundamental question:

> "[A]lthough differences in engineering approaches occurred between the three parallel pipe support groups (ITT-G, NPSI and PSE) . . . the fundamental issue for this Board to resolve is whether these differences in engineering approaches represents a safety or engineering concern . . . (by assuring) that each design organization has a clear, documented scope of responsibility. . . ."

A copy of the relevant portion of the December 28, 1983 ASLB Memorandum and Order is attached hereto as Petitioners' Exhibit E.

As a result of false information presented to the ASLB and/or NRC staff, the ASLB was led to believe that:

> The evidence establishes that each of the three pipe support design organizations has its own specific scope of responsibility for a specific group of supports. There is no need for cross communication between the three groups since they share no common, in-line design responsibility . . . The Board concludes that the Applicants have adequately defined and documented the

> responsibility and paths of communication between . . . the pipe support design groups. No NRC regulation has been violated.

After the issuance of the ASLB's December 28, 1983 Memorandum and Order, counsel for Texas Utilities attorneys filed a series of motions for summary disposition, together with affidavits (primarily from Mr. Finneran). During the course of submitting these various affidavits, Mr. Finneran and other affiants, again, materially misled the ASLB by stating that each of the three design organizations, ITT-G, PSE, and NPSI, had "separate and distinct responsibilities for the design of pipe supports" and all design changes during construction are "returned to the original designer for correction and rechecking. . . ." See Affidavit of D.N. Champman, J.C. Finneran, Jr., D.E. Powers, R.P. Duebler, R.E. Ballard, Jr., and A.T. Parker Regarding Quality Assurance Program for Design of Piping and Pipe Supports for Comanche Peak Steam Electric Station, dated July 3, 1984, at pp. 13 and 36. At the time the affidavit was sworn, Mr. Finneran and others knew that the statements contained in the affidavit were false.

3) As detailed in the briefs appended hereto as Petitioners' Exhibits F and G (briefs filed by S.M.A. Hasan before the Secretary of Labor), false and perjurous statements made by Texas Utilities witnesses during the course of a Section 210 proceeding threaten the safety of the Comanche Peak facility by calling into question the integrity and competence of Texas Utilities management.

In Exhibits F and G, Mr. Hasan charged Texas Utilities and Brown & Root management with employing a fraudulent scheme to certify the pipe support system at Comanche Peak with multiple sets of design criteria. As detailed therein, the three pipe support design organiza-

tions then employed on site (ITT Grinnell or "ITT-G", NPS Industries or "NPSI", and Pipe Support Engineering or "PSE") engaged in open and notorious violations of 10 C.F.R. Part 50, Appendix B.

3. 10 C.F.R. §2.734(a)(3).

Petitioners satisfy 10 C.F.R. §2.734(a)(3) for the following reasons:

1) Had these petitioners presented the material herein contained, when the record was still open, they would, in all reasonable probability, been granted leave to intervene.

2) Had this tribunal known of the payment of money to witnesses not to testify before this board and the payment of money to C.A.S.E. ant to their counsel not to raise certain issues before this board; this board, these petitioners would have been allowed to intervene.

3) This board would have, in all probability, granted these petioners' motion to intervene, and would have, in all certainly granted same to the aforementioned Lon Burnam, had the facts concerning the alleged perjury set out in detail in Exhibits F and G been revealed to the Board at the time of Mr. Burnam's hearing on July 13, 1988.

These facts, not known to these petitioners, at that time, were known to some, if not all, of the parties appearing before the Board on July 13, 1988. Counsel for NRC staff, for example, knowingly remained silent rather than reveal to this ASLB that NRC staff had counsel appearing before the ASLB on July 13, 1988, and had knowledge of the perjury allegations contained in Exhibits F and G. To-wit, NRC staff was in possession of Exhibits F and G by April, 1988.

Counsel for C.A.S.E., likewise, failed to inform the Board of this information. Both the NRC staff's and C.A.S.E.'s failure to inform the Board was inviolation of long-standing Board orders to keep the Board informed of any relevant information. Counsel for Tex-

as Utilities took an even more aggressive role in misleading this Board about the existence of perjury allegations (Exhibit F served on Texas Utilities counsel in February and Exhibit G in April, 1988).

In the words of counsel for Texas Utilities:

> "[We] have, as stated on the record today, a suspicion of perjury. We know of no such evidence. We strongly deny any circumstances, and we will ask for accountability outside the confines of these proceedings."

Hearing Transcript at p. 25247 (emphasis added).

Beyond the perjury allegations contained in Exhibits F and G, C.A.S.E. had, itself, alleged that Texas Utilities and its attorneys regularly submitted "material false statements" to this ASLB. See e.g. CASE's Supplementary Response to Applicant's Interrogatories to "Consolidated Intervenors', dated July 6, 1987, at pp. 3-4. Petitioners hereby attach, marked Exhibit H, the same. C.A.S.E.'s allegations regarding the regular submission of "material false statements" consittutes allegations of perjury, in that many of the statements were made under oath. A review of this C.A.S.E. pleading indicates that C.A.S.E. had identified to additional false statements made by Texas Utilities in connection with the Hasan v. NPSI, et al., 86-ERA-24 case. Id., at p. 12.

Furthermore, C.A.S.E. alleged in a July 8, 1987 pleading filed with this Board that facts surfacing during the hearing of the Hasan case were:

> ". . . of such potential significance to both the operating license proceedings and the construction permit proceedings that Applicants should voluntarily provide copies of all pleadings, documents, etc., in that case to the Licensing and CPA Boards. Applicants' failure to do so . . . is considered in the O.L. and the CPA hearings. . . ."

> ". . . CASE also believes that Applicants should now voluntarily provide copies of all pleadings, documents, etc., . . . regarding matters such as this which are so obviously covered by the Board's oft-repeated and numerous Orders that Applicants are to keep the Board informed of potential significant information." July 8, 1987 letter from CASE to the ASLB, at pp. 2-3.

A copy of this letter is attached hereto marked Exhibit I.

In light of the NRC staff's, Texas Utilities' and CASE's failure to notify the Board of the Hasan allegations raised in Exhibit F and G, and given the "Board's oft-repeated Orders that Applicants are to keep the Board informed of potentially significant information," petitioners would, and should be granted leave to reopen the record and to intervene, so as to keep the Board informed of the perjury and other allegations raised in the Hasan proceeding in light of the fact that all of the previously admitted parties could not be relied upon to do so and actually went so far as to cover-up during those hearings and the July 13, 1988 hearing of Mr. Burnam. Petitioners submit, as further evidence of the unreliability of the intervenor CASE, marked Exhibit J, the Secret Settlement Agreement between CASE and the Applicant, as well as an affidavit from a former board member of CASE.

All of petitioners' exhibits are attached hereto, incorporated by reference, the same as if fully copied and set forth at length.

WHEREFORE, PREMISES CONSIDERED, petitioners hereby request that this Board re-open the record and grant them leave to file their Motion To Intervene, granting them status as the same.

Further, petitioners will file, within 45 days, all necessary affidavits and other documentation, including lists of potential witnesses, concerning the above innumerated as well as additional safety allegations they intend to rely on before this tribunal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Motion To Reopen The Record was sent to all parties to the original proceeding, by Federal Express courier, at the last known addresses for each on this the 20th day of November, 1991.

R. Micky Dow

Affiant