

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
TEXAS UTILITIES GENERATING)	Docket Nos. 50-445
COMPANY, <u>et al.</u>)	50-446
)	
(Comanche Peak Steam Electric)	
Station, Units 1 and 2))	

NRC STAFF RESPONSE TO CASE MOTION FOR
PROTECTIVE ORDERS FOR
ROY COMBS, LESTER SMITH AND FREDDY RAY HARRELL

I. INTRODUCTION

Citizens Association for Sound Energy ("CASE") has filed a "Motion for Protective Orders for Roy Combs, Lester Smith, and Freddy Ray Harrell" ("Motion"), dated January 24, 1983. Attached to the Motion is an "Affidavit of Lester Smith", ("Smith Affidavit"), dated January 23, 1983. CASE requests that the Atomic Safety and Licensing Board ("Board") issue a "protective order" pursuant to 10 C.F.R. 2.740(c), ordering Applicants to "cease and desist further interrogation of Mr. Combs except under the provisions of discovery as set forth by the Board in these proceedings." Motion, p. 7. In addition to this request, CASE sets forth seven other requests to this Board. Motion, pp. 7-8.

After filing its Motion, CASE filed a "Supplement to CASE's Motion for Protective Orders for Roy Combs, Lester Smith, and Freddy Ray Harrell" ("Supplement"), dated February 3, 1983. Attached to CASE's Supplement is the Affidavit of Robert L. Messerly ("Messerly Affidavit"),

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Certified By

[Signature]
DS07

dated February 3, 1983. CASE states that the Supplement provides "supplementary information", and requests that the Board consider the Supplement "in conjunction with" its January 24, 1983 Motion. Supplement, pp. 1, 5. For the reasons set forth below, the NRC Staff ("Staff") opposes CASE's Motion.

II. BACKGROUND

On January 11, 1983, CASE filed before the Atomic Safety and Licensing Appeal Board its "Motion for Leave to File Response".^{1/} Attached to CASE's January 11, 1983 Motion were the affidavits of Roy Keith Combs, both dated January 9, 1983 (CASE Attachments 5 and 6 to the January 11, 1983 Motion). Mr. Combs apparently is a welder employed by Brown and Root as a structural welder at the Comanche Peak Station Electric Station ("CPSES") site. Attachment 5 to the January 11, 1983 Motion, p.1. In his two affidavits, Mr. Combs sets forth some concerns and allegations regarding construction practices at CPSES. In brief, he alleges that he has not seen Form NRC-3, "Notice to Employees", posted at the site. Id., p.1. He sets forth his recollection of an investigation by NRC Investigator Mr. Donald Driskill, and alleges that after the interview, he was labelled "a stoolie" by his General Foreman, Paul Collon. Mr. Combs also states that he was subjected to several acts of discrimination. Id., pp.1-3. Mr. Combs sets forth his recollection of a second conversation by telephone with Mr. Driskill regarding the

^{1/} CASE's Motion for Leave to File Response concerned the Staff's appeal of the Licensing Board's "Order Denying Reconsideration" of September 30, 1982.

disclosure of his name to the Board. He claims that he is aware of, and can identify, other construction defects at CPSES. Id., pp.3-4. Finally, he alleges that a pipe weld on a safety related pipe contains a piece of consumable insert. Attachment 6 to the January 11, 1983 Motion, p.1.

In its January 24, 1983 Motion, CASE alleges that Applicants told Mr. Combs that he would be dismissed unless he identified the defects referred to in his affidavits of January 9, 1983. Motion, pp. 1-2. CASE notes that an NRC "representative" was with Mr. Combs during the time period when Mr. Combs pointed out the alleged defects to the Applicants, as well as during several telephone conversations between Mr. Combs and the NRC. Id., pp. 1-2. Finally, CASE states that Applicants refused to allow a CASE representative to accompany Mr. Combs on-site at CPSES, contrary to Mr. Combs' request. Id., pp. 2-3.

Mr. Lester Smith apparently is a pipefitter at CPSES. Smith Affidavit, pp. 1-3. Mr. Smith sets out some concerns and allegations concerning construction practices at CPSES. In brief, he states that on his last day of work in June 1979, he and his crew "sat for eight hours" and made three tack welds on the Unit 2 steel liner that day. Id., p. 1. He also alleges an occurrence where he waited for 24 hours for an authorized nuclear inspector ("ANI") to inspect an arc strike on a pipe. Id., p. 1. Mr. Smith states that he was directed by his general foreman, Mr. Wayne Dennis, to make 3/4" socket welds to give the appearance of increased Brown and Root production. Id., p. 2. Mr. Smith then asserts he resigned his position on June 5, 1980, and received an "excellent" performance rating. Id., p. 2. Mr. Smith then sets forth

his recollection of a re-employment dispute with Brown and Root. Smith Affidavit, pp. 2-3.

Apparently, Mr. Smith was re-employed by Brown and Root in July, 1981. Mr. Smith alleges that it took three months to complete a fitting on the 32" main steam pipe, and that the engineers "shot it three times and finally decided that the one-half inch had to come off. . ." Id., pp. 3-4.

Mr. Smith discusses a situation where a weld data card was lost, and the weld was cut-out and redone. He then alleges in detail a situation where a weld data card for a main steam line weld (MS-2-RB-19-FW1) was lost, and a new data card was substituted and eventually approved. Mr. Smith states that the new data card was incorrectly filled out. Mr. Smith also states that NCR 113425, dated 4-16-82 and signed by R. E. Walters, was assigned to the weld. Id., p. 4.

Finally, Mr. Smith states that he has not seen Form NRC-3 at CPSES, and that he was unaware of the employee protection provisions of the NRC. Id., p. 5.

In CASE's Supplement to its January 24, 1983 Motion, CASE sets forth its version of a meeting between Mr. Smith and Antonio Vega, Applicants' Supervisor for Quality Assurance Services. According to CASE, Mr. Smith was asked why he did not report his concerns to his foreman. Supplement, p.2. Mr. Smith apparently told Applicants that the workers believe they will lose their jobs if they reported defects. Supplement, p.2. CASE states that Mr. Vega asked Mr. Smith to identify any other defects or problems of which he is aware. Mr. Vega also told Mr. Smith to report

any instances of harassment to him, and that Applicants would not "tolerate" any harassment. Supplement, p.3.

CASE then relates that a memorandum was distributed by Applicants to the workers on February 2, 1983, which directed workers to report problems to their supervisor. CASE states that it considers this memorandum:

an effort to intimidate workers and to dissuade them from contacting or talking with CASE or the NRC, since there has been no protection in the past for workers who (having contacted their immediate supervisors ... and received no satisfaction) went to the NRC or higher utility officials.

Supplement, p.3.

CASE states that when Mr. Smith was asked by Mr. Vega whether Form NRC-3 was posted, Mr. Smith admitted that Form NRC-3 was posted on the time office bulletin board. Finally, CASE alleges that Mr. Smith told CASE that he believes other workers will also be fired. However, CASE did not state why those workers would be fired, nor does CASE relate the reasons for Mr. Smith's belief that workers at CPSES will be fired.

Supplement, pp.3-4.

Attached to CASE's Supplement is the Affidavit of Robert L. Messerly. Mr. Messerly apparently was a supervisor in pipe hangers for 4 years at CPSES until June 1982. His employment at CPSES terminated on December 7, 1982. Messerly Affidavit, pp.1-2. According to Mr. Messerly, he and his wife accepted an all-expense paid trip to Florida, watched the Dallas Cowboys football team play, and accepted a \$400 "gift" from Drillco Manufacturing Company ("Drillco") for ordering drilling equipment from Drillco. Id., pp.2-3. It is Mr. Messerly's belief that he was terminated by Applicants for telling Mr. Vega that he accepted these

items from Drillco. Id. Mr. Messerly alleges that he and other workers drilled concrete holes in the containment without appropriate documentation and approval. In particular, he states that he drilled holes using Drillco drills ("rebar eaters") to mount Hilti bolts. Id., pp.2-4. However, Mr. Messerly also contradicts himself by saying that he did keep a log of all drilling he did. Id., p.4.

Mr. Messerly also states that the polar crane was utilized to pull the main steam pipe into position for welding in the Unit 1 containment. Id., p.5. He does not remember seeing Form NRC-3 posted at CPSES during his employment there. Id., pp.5-6. Finally, Mr. Messerly relates his perception of the morale and quality of supervisors and workers at CPSES. Id., pp.6-8.

III. DISCUSSION

1. Declaratory Order

CASE requests that the Board:

[c]onfirm that whistleblowers/witnesses who report their concerns to the . . . Board and other NRC personnel . . . are covered under the protection for whistleblowers.

Motion, p. 7. The Staff interprets this CASE motion as a request for a declaratory order from the Board that Messrs. Combs, Smith and Harrell are entitled to a remedy under Section 210 of the Energy Reorganization Act of 1974.

The Board undoubtedly has the authority to issue a declaratory order "to terminate a controversy or to remove uncertainty". Kansas Gas and Electric Company (Wolf Creek Nuclear Generating Station, Unit No. 1), CLI-77-1, 5 NRC 1, 4-5 (1977); Florida Power and Light Co. (St. Lucie

Plant, Unit No. 1), ALAB-428, 6 NRC 222, 223 (1977). However, a declaratory order is unnecessary and inappropriate in this situation. In the previously cited cases, the licensing boards clearly possessed subject matter jurisdiction over the disputed matter. However, this Board does not possess the jurisdiction and authority to consider and resolve the availability of Section 210 remedies to employees for alleged acts of discrimination. The statutory and regulatory scheme for employee protection was extensively discussed by the Staff in its September 3, 1982 "Response to CASE's Motion for Protective Order". To summarize the Staff's earlier discussion on employee protection, 10 C.F.R. §50.7 restates the employee protection provisions of Section 210(a) of the Energy Reorganization Act of 1974 ("1974 Act").^{2/} Employers are prohibited from discriminating against employees who, inter alia, testify, assist, or participate in any NRC administrative or enforcement proceeding. Section 210(a), Energy Reorganization Act of 1974; 10 C.F.R. §50.7(a). Employees who believe they have been discriminated against in violation of Section 210(a) of the 1974 Act may file an administrative complaint with the Department of Labor, Employment Standards Administration, Wage and Hour Division. Section 210(b)(1), Energy Reorganization Act of 1974. The Department of Labor, not the U.S. Nuclear Regulatory Commission, has exclusive jurisdiction to grant the remedies authorized by Section 210(b). A declaratory order by the Board would have no operative legal effect in the statutory enforcement scheme promulgated by Congress. Accordingly, the Staff concludes that the requested motion for a declaratory order by the Board should be denied.

^{2/} 42 U.S.C. §5851.

2. Section 2.740(c) Protective Order Against Applicants.

CASE requests the Board to:

[o]rder Applicants to cease and desist further interrogation of Mr. Combs except under the provisions of discovery as set forth by the Board in these proceedings.

Motion, p. 7. In what appears to be a related, if not identical motion,

CASE also requests the Board to:

[c]larify whether or not Applicants' actions in interrogating and tape-recording Mr. Combs constituted illegal discovery against an identified potential CASE witness; and take whatever action may be appropriate.

Motion, p. 7.

The Staff assumes that when CASE refers to "further interrogation," CASE means discussions similar to Applicants' January 19, 1983 discussion with Mr. Combs, where he was asked to specifically identify the construction deficiencies he alleged in his January 9, 1983 affidavits.

The Staff does not regard the Applicants' discussions with workers to identify alleged construction deficiencies to be "discovery", as that term is used in 10 C.F.R. §2.740.^{3/} It appears that Applicants were attempting to verify alleged deficiencies in construction, for the purpose of instituting appropriate corrective action, as required by 10 C.F.R.

^{3/} 10 C.F.R. §2.740(a), entitled, "Discovery Methods", states:

Parties may obtain discovery by one or more of the following methods: Depositions upon oral examination or written interrogatories (§ 2.740a); written interrogatories (§ 2.740b); production of documents or things or permission to enter upon land or other property, for inspection and other purposes (§ 2.741); and requests for admission (§ 2.742).

§§21.21, and 50.55(e). Under 10 C.F.R. §21.21(b)(1), Applicants are required to notify the Staff when they obtain information which "reasonably indicates" that there is a defect in CPSES construction, or in a "basic component" utilized at CPSES. See also 10 C.F.R. §21.1. A knowing and conscious failure to comply with Section 21.21 may result in a civil penalty. 10 C.F.R. §21.61.

Under 10 C.F.R. §50.55(e)(1), Applicants must notify the Staff of design and/or construction deficiencies which may adversely affect the safety of CPSES operation, and which represent, inter alia: (1) a significant breakdown in quality assurance ("QA"); (2) a significant deficiency in final designs; and (3) a "significant deficiency in construction of or significant damage to" a structure or component which will require extensive redesign and evaluation. Failure by Applicants to comply with this section is grounds for imposition of a civil penalty, and injunction or other court order. A person who willfully violates Section 50.55(e) may be punished by fine and/or imprisonment. 10 C.F.R. §50.110. Applicants' actions appear to be consistent with their responsibilities under Sections 21.21 and 50.55(e).

Assuming, arquendo, that Applicants' actions do constitute "discovery" as contemplated under Section 2.740, CASE has not made any showing that the Section 2.740(c) standards for issuing a protective order for Mr. Combs have been met. Section 2.740(c), entitled "Protective Order", provides:

Upon motion by a party or the person from whom discovery is sought, and for good cause shown, the presiding officer may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense...

Neither CASE nor Mr. Combs allege any facts which suggest that Applicants' actions were embarrassing, oppressive, annoying or burdensome to a conscientious worker truly interested in trying to remedy apparent construction defects.

Finally, the Staff notes that if Applicants' actions are to be construed as discovery, Applicants nonetheless appear to be in compliance with the most current Board direction on this subject. In its "Memorandum and Order" dated January 4, 1983 ("Memorandum Order"), the Board stated that prior to a projected hearing in this proceeding, the parties "shall complete discovery . . . on all remaining issues". Memorandum Order, p.7.

For the reasons set forth above, the Staff opposes CASE's motion that the Board declare Applicants' actions to identify and verify the existence of construction defects as alleged by Mr. Combs to be "discovery". The Staff further opposes CASE's motion for a Section 2.740(c) protective order because CASE has not shown that "discovery" against Messrs. Combs, Harrell and Smith was annoying, embarrassing, or oppressive.

3. Staff Inspections and Investigations

CASE moves the Board to order that:

[a]ny future interrogation or discussion of the concerns of Messrs. Combs, Smith, and Harrell with the NRC Staff be done only with CASE present . . .

Motion, p.7. CASE also requests the Board to:

[r]ule that whistleblowers/witnesses not be required to provide Applicants or Region IV NRC personnel with the numbers of pipe supports,

hangers, etc. (such as those of concern to Mr. Combs) until such time as the questions regarding the NRC's ability and/or desire to adequately investigate allegations by whistleblowers have been answered and there is assurance that no possibility exists for concerns which are raised to be covered up.

Motion, pp.7-8. While not clear from CASE's Motion, the Staff presumes that CASE is requesting a Section 2.740(c) protective order. With regard to CASE's first request, the Staff does not object to a CASE representative being present during discussions between Messrs. Combs, Smith or Harrell and Staff inspectors, if Messrs. Combs, Smith or Harrell expressly request that CASE be present. The Staff inspectors will endeavor to conduct such discussions off-site, if Messrs. Combs, Smith and Harrell (or any other worker) expressly requests that a CASE representative be present during any meeting with Staff inspectors.^{4/}

Moreover, an order by the Board directing the Staff to conduct its discussions with workers with a representative of CASE present would be an inappropriate interference with the Staff's independent regulatory responsibilities. Licensing boards do not have the power to control or direct the work of the Staff in carrying out its independent responsibilities. Carolina Power and Light Company (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4), CLI-80-12, 11 NRC 514, 516 (1980); Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), slip op., p. 1 (December 16, 1982); New England Power Company, et al. (NEP, Units 1 and 2), LBP-78-9, 7 NRC 271, 280 (1978).

^{4/} NRC Investigators are part of the Office of Investigation ("OI"), which is separate from the Staff, and which reports directly to the Commission. Staff counsel's representations do not necessarily apply to the conduct of investigations by OI.

Accordingly, the Staff opposes CASE's request for an order requiring the Staff to permit CASE to attend any discussions between Messrs. Combs, Smith and Harrell, and the Staff.

Concerning CASE's second request, the Staff takes strong exception to CASE's totally unsubstantiated allegation that there are "questions regarding the NRC's ability and/or desire to adequately investigate allegations by whistleblowers . . ." Motion, pp. 4, 7-8. The Staff also excepts to CASE's charge that there is record evidence in this proceeding that construction defects or other problems are "covered up" by the NRC once NRC investigators or Staff inspectors are given specific pipe support and pipe hanger numbers. Id. There is absolutely no record evidence that NRC investigators or inspectors "covered up" allegations of construction defects or other design problems. Close scrutiny of Mr. Combs' affidavits does not disclose any allegations that NRC investigators failed to investigate, or inadequately investigated his allegations. A reading of Mr. Smith's affidavit shows that Mr. Smith does not even mention the NRC, nor does he refer to any meetings, telephone calls, or other discussions with the NRC. Nor does Mr. Messerly's affidavit relate any instances where he discussed his concerns with the NRC, or where he believed that he was being harrassed by the NRC. CASE's allegations that the NRC investigators and Staff inspectors are acting improperly and are "covering up" construction defects are totally without merit.

Further, the Board does not have the authority to direct workers who possess information on alleged construction defects not to discuss these matters with Staff inspectors and NRC investigators. Such an order would

impermissibly interfere with the Staff's independent inspection responsibilities. Carolina Power and Light Company (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4), CLI-80-12, 11 NRC 514, 516 (1980). If the Board were to issue such an order preventing the identification of construction defects, it would be impossible for Applicants to correct the problem. The result might be the continuing existence of a defect with an unevaluated safety significance.

Denial of CASE's motion would not mean that allegations of NRC impropriety or ineffectiveness cannot be investigated. There is an independent NRC framework for investigating allegations of Staff impropriety through the Office of Inspector and Auditor. The Office of Inspector and Auditor is an NRC organization which reports directly to the Commission. The Office has been vested by the Commission with the responsibility for independently investigating and setting forth findings regarding NRC employee misconduct.

For the reasons discussed above, the Staff opposes CASE's motion requesting that CASE representatives be permitted to attend meetings between Messrs. Combs, Smith and Harrell and the NRC Staff inspectors. The Staff also opposes CASE's motion requesting the Board to order the Staff to stop investigating allegations of construction defects at CPSES until the Board determines if the Staff is "inadequately" investigating such allegations.

4. Intimidation by Applicants and Staff

In this motion, CASE asks the Board to:

[c]aution both Applicants and NRC Staff against

intimidating, coercing, or discriminating against Messrs. Combs, Smith, and Harrell and any future whistleblowers/witnesses who come forward. . .

Motion, p. 6. The Staff presumes that CASE is requesting a Section 2.740(c) protective order directing the Applicants and the Staff not to intimidate, coerce, or discriminate against Messrs. Combs, Smith, Harrell, and other individuals who wish to report their concerns regarding construction deficiencies, or quality assurance/quality control problems to the NRC.

The NRC Staff strongly excepts to CASE's implication that Staff investigators and/or inspectors have intimidated or coerced Messrs. Combs, Smith, Harrell, Messerly, or any other similarly situated individual. CASE has not set forth any facts that would tend to show that NRC investigators or Staff inspectors have intimidated or harrassed Mr. Combs, Smith, Harrell, or Messerly. Nor does a close reading of Mr. Combs' affidavits (CASE's Attachments 5 and 6, dated January 9, 1983) or Mr. Smith's affidavit (January 23, 1983) suggest intimidation by NRC investigators and inspectors.

As discussed earlier, the Office of Inspector and Auditor investigates allegations of Staff improprieties. This independent administrative arrangement for investigating alleged NRC employee improprieties and illegalities, considered together with the Board's limited jurisdiction pursuant to 10 C.F.R. Section 2.721, compel a finding that the order requested by CASE against the Staff should be denied. Accordingly, the Staff opposes CASE's Motion on this subject.

5. Discovery

CASE requests that:

[n]o discovery be had by any party until at least after the filing of the preliminary Findings of Fact which must be in the hands of the Board by February 25, and until such time as the Board shall set forth. . .

Motion, p.8. The Staff first notes that the Board has repeatedly directed the parties to informally confer regarding discovery, prior to coming to the Board. See, e.g., Protective Order (March 23, 1982), p.2; Order (August 20, 1981), pp.1-2; Order (August 3, 1981), p.3; Memorandum and Order (July 23, 1981), p.9. CASE did not attempt to reach Staff counsel to informally discuss this discovery issue.

The Staff has no objection to this motion, if this applies equally to all parties, including CASE. The Staff wishes to draw attention to "CASE's Motion for Board Order for NRC Staff and Applicants to Provide Documents," dated January 18, 1983 ("Document Motion"). In that Motion, CASE requested several documents from Applicants and Staff; the Staff regards CASE's Document Motion as a discovery request. The Staff finds it difficult to reconcile CASE attempting discovery on one hand, and in a motion filed six days later, CASE requesting that no discovery be had until February 25, 1982.

With the understanding that CASE shall be bound by the same discovery limitations as the Staff, the Staff supports this motion.

6. Form NRC-3

CASE requests that the Board order the Staff to:

[s]ee to it that copies of NRC Form 3 notices are posted in a sufficient number of places at Comanche

Peak to permit employees to observe a copy on the way to or from their place of employment, as required by NRC regulations but not enforced by the NRC in regard to Comanche Peak. [CASE also request[s] that the Board order this to be done immediately, by a date certain, under penalty of sanctions if necessary, and that the NRC see to it that the notices are kept posted on a continuous basis.

Form NRC-3 (Attachment A to this Response), entitled, "Notice to Employees," sets forth an employee's rights regarding discrimination by a Commission licensee, permittee or applicant, and their contractors and subcontractors, as set forth in Section 210(a) of the Energy Reorganization Act of 1974, and 10 C.F.R. §50.7(a).

Pursuant to Section 50.7(e) which became effective on October 12, 1982,^{5/} the Applicants must post Form NRC-3 "on its premises." The posting "must be at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work." 10 C.F.R. §50.7(c). Sanctions for violations of Section 50.7(c) are set forth in 10 C.F.R. §50.110.

The Staff is presently investigating the allegation raised by Mr. Combs that Form NRC-3 is not posted in accordance with Section 50.7(c), as part of its ongoing inspection responsibilities. The Staff believes that a Board order directing the Staff to do what it already is doing is unnecessary. Moreover, the Staff concludes that it would be inappropriate for the Board to inject itself into the routine, day-to-day inspection activities of the Staff in this proceeding. As stated earlier, the Board does not have jurisdiction and authority to direct the Staff in its performance of its independent inspection responsibilities.

^{5/} 47 Fed. Reg. 30452 (July 14, 1982).

Carolina Power and Light Company (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4), CLI-80-12, 11 NRC 514, 516 (1980). Nor are there any facts which show that the Staff has not promptly and thoroughly investigated all allegations and concerns raised by concerned workers which were brought to the attention of the Staff.

CASE requests that sanctions be imposed on Applicants for their alleged failure to post Form NRC-3. The Commission has held that licensing boards do not possess the jurisdiction in a licensing proceeding to determine whether civil penalties should be imposed on a licensee for acts uncovered in that proceeding. Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), CLI-82-31 (Slip op.), pp. 1-3 (October 14, 1982). The Commission reversed the licensing board's imposition of a fine on the licensee, after an extensive discussion of the NRC's regulations which confer upon the Staff the authority to impose civil penalties.

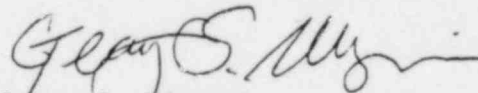
In summary, the Staff concludes that it is inappropriate and unnecessary for the Board to direct the independent inspection and regulatory responsibilities of the Staff, with regard to administration and enforcement of 10 C.F.R. Section 50.7(c). The Staff also concludes that it is beyond the jurisdiction of the Board to impose sanctions on Applicants for failing to post Form NRC-3. Accordingly, the Staff opposes CASE's motion in this matter.

CONCLUSION

The NRC Staff opposes CASE's motions requesting the Board to:
(1) issue a declaratory order stating that individuals "who report their

concerns" to the NRC are protected by 10 C.F.R. Section 50.7; (2) order Applicants not to discuss with Mr. Combs (or any other worker at CPSES) the existence and location of construction defects known by Mr. Combs; (3) order the Staff to conduct its inspections and enforcement discussions with Messrs. Combs, Smith and Harrell only with a CASE representative present; (4) order Applicants and Staff not to intimidate, coerce, or discriminate against Messrs. Combs, Smith, Harrell, and other CPSES workers; (5) order the NRC not to thoroughly investigate the allegations raised by Messrs. Combs, Smith, Harrell, and other CPSES workers with information concerning construction or design defects; and (6) order the Staff to investigate allegations that Form NRC-3 is not being posted at CPSES in compliance with 50.7(c), and independently impose sanctions against the Applicants for violations of 50.7(c).

Respectfully submitted,



Geary S. Mizuno
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 14 day of February 1983



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

NOTICE TO EMPLOYEES

YOUR EMPLOYER'S RESPONSIBILITY

Your employer is required to—

1. Apply these NRC regulations and the conditions of his NRC license to all work under the license.
2. Post or otherwise make available to you a copy of the NRC regulations, licenses, and operating procedures which apply to work you are engaged in, and explain their provisions to you.
3. Post Notices of Violation involving radiological working conditions, proposed imposition of civil penalties and orders.
4. Refrain from discriminatory acts against employees who provide information to NRC.

YOUR RESPONSIBILITY AS A WORKER

You should familiarize yourself with those provisions of the NRC regulations, and the operating procedures which apply to the work you are engaged in. You should observe their provisions for your own protection and protection of your co-workers.

WHAT IS COVERED BY THESE NRC REGULATIONS

1. Limits on exposure to radiation and radioactive material in restricted and unrestricted areas;
2. Measures to be taken after accidental exposure;
3. Personnel monitoring, surveys and equipment;
4. Caution signs, labels, and safety interlock equipment;
5. Exposure records and reports;
6. Options for workers regarding NRC inspections;
7. Identifies "protected activities" that employees may engage in;
8. Prohibits discrimination against employees who engage in these protected activities;
9. Identifies the Department of Labor as a source of relief in the event of discrimination; and
10. Related matters.

REPORTS ON YOUR RADIATION EXPOSURE HISTORY

1. The NRC regulations require that your employer give you a written

report if you receive an exposure in excess of any applicable limit as set forth in the regulations or in the license. The basic limits for exposure to employees are set forth in Section 20.101, 20.103, and 20.104 of the Part 20 regulations. These Sections specify limits on exposure to radiation and exposure to concentrations of radioactive material in air.

2. If you work where personnel monitoring is required pursuant to Section 20.202;
 - (a) your employer must give you a written report of your radiation exposures upon the termination of your employment, if you request it, and
 - (b) your employer must advise you annually of your exposure to radiation, if you request it.

INSPECTIONS

All activities under the license are subject to inspection by representatives of the NRC. In addition, any worker or representative of workers who believes that there is a violation of the Atomic Energy Act of 1954, the regula-

UNITED STATES NUCLEAR REGULATORY COMMISSION

A representative of the Nuclear Regulatory Commission can be contacted at the following address: employees who wish to register complaints or concerns about radiological working conditions.



STANDARDS FOR PROTECTION AGAINST RADIATION (PART 20); NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS; INSPECTIONS (PART 19); EMPLOYEE PROTECTION

The Nuclear Regulatory Commission (NRC) in its Rules and Regulations: Part 20 has established standards for your protection against radiation hazards from radioactive material under license issued by the NRC; Part 19 has established certain provisions for the options of workers engaged in NRC licensed activities; Parts 30, 40, 50, and other parts containing provisions related to employee protection.

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.

ions issued thereunder, or the terms of the employer's license with regard to radiological working conditions in which the worker is engaged, may request an inspection by sending a notice of the alleged violation to the appropriate United States Nuclear Regulatory Commission Regional Office (shown on map below). The request must set forth the specific grounds for the notice, and must be signed by the worker or the representative of the workers. During inspections, NRC inspectors may confer privately with workers, and any worker may bring to the attention of the inspectors any past or present condition which he believes contributed to or caused any violation as described above.

and shall, where discrimination has occurred, issue an order providing relief to the employee if relief is not provided by other means of settlement.

PROTECTION OF INSPECTORS

The amended Atomic Energy Act, section 235, provides criminal penalties against any individual who kills, forcibly assaults, resists, opposes, impedes, intimidates or interferes with any person who performs any inspections which (1) are related to any activity or facility licensed by the Commission, and (2) are carried out to satisfy requirements under the Atomic Energy Act or under any other Federal law covering the safety of licensed facilities or the safety of radioactive materials. The acts described above are criminal not only if taken against inspection personnel who are engaged in the performance of such inspection duties, but also if taken against inspection personnel on account of such duties.

SABOTAGE OF NUCLEAR FACILITIES OR FUEL

The amended Atomic Energy Act, section 236, provides criminal penalties against any individual who intentionally and willfully destroys or causes physical damage, or attempts to do so, to any production, utilization, or waste storage facility licensed under the act, or any nuclear fuel or spent fuel regardless of location.

EMPLOYEE PROTECTION

If an employee believes that discrimination has occurred due to engaging in the "protected activities" said employees may, within 30 days of the discriminatory act, file a complaint with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor shall conduct an investigation

COMMISSION REGIONAL OFFICE LOCATIONS

es and telephone numbers. The Regional Office will accept collect telephone calls from or other matters regarding compliance with Commission rules and regulations.

Regional Offices

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III	U.S. Nuclear Regulatory Commission Region III 799 Roosevelt Road Glen Ellyn, IL 60137	312 932-2500
IV	U.S. Nuclear Regulatory Commission Region IV 611 Ryan Plaza Drive, Suite 1000 Arlington, TX 76012	817 465-8100
V	U.S. Nuclear Regulatory Commission Region V 1450 Marie Lane, Suite 210 Walnut Creek, CA 94596	415 943-3700

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

TEXAS UTILITIES GENERATING
COMPANY, et al.

(Comanche Peak Steam Electric
Station, Units 1 and 2)

}
Docket Nos. 50-445
50-446
}

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO CASE MOTION FOR PROTECTIVE ORDERS FOR ROY COMBS, LESTER SMITH AND FREDDY RAY HARRELL" 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 Nuclear Regulatory Commission's internal mail system, this 14th day of February, 1983.

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Administrative Judge
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U.S. Nuclear Regulatory Commission
Washington, DC 20555

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U.S. Nuclear Regulatory Commission
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Docketing Service Section*
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Commission
Washington, DC 20555

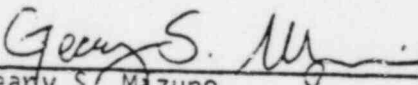
Atomic Safety and Licensing Appeal
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