



Ben B. Hayes

- 2 -

Several of the events described in Mr. Macktal's affidavits, if true, raise significant and serious concerns about the character/integrity of certain individuals with whom he dealt. Mr. Macktal alleges that the actions by these individuals were directed at inhibiting him from coming forth with safety concerns about the design and construction of Comanche Peak.

Of specific concern, in his second affidavit Mr. Macktal alleges that in late April 1986 he met with the President of Brown and Root, Mr. Lewis Austin, and a lawyer from Brown and Root, for several hours in a Stephenville, Texas motel. He further states that following the meeting, Mr. Austin called him and offered to settle with him if Mr. Macktal "was willing to completely forget everything to do with Comanche Peak and move to Arizona." Mr. Macktal also alleges in his second affidavit that he was presented with a settlement agreement that in effect required his future silence. This statement by Mr. Macktal potentially implies participation by TU Electric in the settlement process.

The settlement agreement entered into between Mr. Macktal and Brown and Root precludes his voluntary participation as a witness or party in licensing proceedings. It is the policy of this agency that all persons be free of any restrictions on bringing forth safety concerns to the NRC.

Actions by any party to prevent the disclosure of safety issues are contrary to NRC policy and reflect directly on the integrity/character of that party and are of importance to the NRC. This is particularly true for NRC licensees or license contractors upon whom the NRC relies for forthright disclosure of information.

B. Purpose of Investigation

1. What is the basis for the belief that the violation of a regulatory requirement is more likely to have been intentional or to have resulted from careless disregard or reckless indifference than from error or oversight? (Be as specific as possible.)

Mr. Macktal, in his second affidavit, states that he "was told in November, December (1986) and January (1987) that the terms of the settlement agreement forbade me (Macktal) from raising the very safety concerns I had been instructed by Ms. Garde not to raise to NRC Region IV Staff during the taking of my confidential deposition." This statement implies efforts on the parties involved (including Brown & Root) to have Mr. Macktal withhold information related to plant safety. According to Mr. Macktal, the restrictions placed on him included his never providing the information to the NRC or any other party. Further, Mr. Macktal considered that his settlement agreement formally and deliberately imposed these restrictions upon him. This later conclusion on the part of Mr. Macktal is not clearly supported by the terms of the written settlement agreement.

CASE NO.

4-89-008

LIMITED DISTRIBUTION -- NOT FOR PUBLIC DISCLOSURE W/O DT APPROVAL

EXHIBIT 1b  
PAGE 3 OF 6 PAGE(S)

Ben B. Hayes

- 3 -

2. What are the potential regulatory requirements that may have been violated?

The part of the settlement agreement that imposes restrictions on Mr. Macktal's participation in NRC proceedings may be in violation of 10 CFR 50.7. Determination of whether or not a violation occurred will be influenced by facts regarding the intent of the restrictions.

An important factor influencing the determination of any violation of regulatory requirements is determining what issues were being withheld by Mr. Macktal, when and to whom were the issues raised, and the significance of those issues. To the extent that these issues involve technical matters, technical support will be provided as appropriate to the Office of Investigations.

As discussed above in Items A and B.1, the staff is also concerned about the inference of the matters raised by Mr. Macktal on the character/integrity of the individuals involved. If the information provided by Mr. Macktal proves to be accurate, this information may lead to indication of possible violations of other Federal statutes.

3. If no violation is suspected, what is the specific regulatory concern?

As discussed above, Mr. Macktal's statements describe an intentional attempt by individuals to have safety information withheld from the NRC. This action, if true, would be contrary to the policies of the Commission. Such deliberate actions to withhold safety information could threaten the character/integrity of the licensing process and have implication on the integrity of the parties involved.

4. Why is an investigation needed for regulatory action and what is the regulatory impact of this matter, if true?

The Office of Investigations is requested to investigate the accuracy of the statements in Mr. Macktal's affidavits and the implications, if any, on the intent of the restrictions in his settlement agreement. The results of the investigation will provide information to make judgments concerning the integrity of the individuals or organizations involved. If the allegations are true and if they involve an NRC licensee or licensee contractor, this in turn bears on the fitness of that organization or individual to hold a license or perform work at licensed facilities.

EXHIBIT 1b

Ben B. Hayes

- 4 -

C. Requester's Priority

1. Is the priority of the investigation high, normal, or low?  
High.
2. What is the estimated date when the results of the investigation are needed?  
June 1989.
3. What is the basis for the date and the impact of not meeting this date? (For example, is there an immediate safety issue that must be addressed or are the results necessary to resolve any ongoing regulatory issue and if so, what actions are dependent on the outcome of the investigation?)

The results of this investigation could have an impact on licensing issues which may have an impact on plant fuel load which is presently scheduled for early October 1989.

D. Contact

1. Staff members:

P. F. McKee, Deputy Director  
Comanche Peak Project Division  
Office of Nuclear Reactor Regulation

2. Complainant:

This request has been initiated by the Comanche Peak Project Division based on information contained in the first supplement to CFUR's August 11, 1988 Request for Hearing and Petition for Leave to Intervene and Mr. Macktal's subsequent December 27, 1988 affidavit.

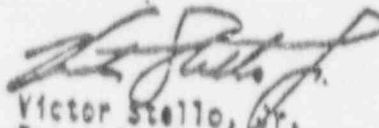
E. Other Relevant Information

There have been a number of filings before the Commission related to issues that are part of this request. A detailed background on these filings is provided in Commission Memorandum and Order CLI-89-06 dated April 20, 1989. CLI-89-06 also provides some background on Mr. Macktal's discrimination case which is still pending before the Department of Labor (DOL). Mr. Macktal has raised many of the same concerns identified herein in support of his DOL case.

Ben B. Hayes

- 5 -

Since this request for investigation relates to the character/integrity of individuals, OI is obligated to seek Commission guidance prior to initiating the investigation (Part III, C.3 of NRC Manual Chapter 0517).

  
Victor Stello, Jr.  
Executive Director  
for Operations

cc: J. Taylor, DEDR  
T. Murley, NRR  
J. Fitzgerald, DGC  
R. Martin, RIY  
J. Lieberman, DE

EXHIBIT 1b

PAGE 6 OF 6 PAGE(S)

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July 13, 1990

\* ADMITTED IN PA  
\* ADMITTED IN NY  
\* ADMITTED IN DC  
\* ADMITTED IN WA

By Facsimile and U.S. Mail

FREEDOM OF INFORMATION ACT REQUEST

Mr. Donnie H. Grimsley  
Freedom of Information Act Officer  
Nuclear Regulatory Commission  
Washington, D.C. 20555

FREEDOM OF INFORMATION  
ACT REQUEST

FOIA-90-316  
Rec'd 7-13-90

Dear Mr. Grimsley:

This is a request under the Freedom of Information Act,  
5 U.S.C. 552 concerning NRC OI Investigation 4-89-008.

The NRC is hereby requested to produce the following  
documents:

1. The following exhibits to the NRC Office of Investigation Report entitled Comanche Peak Steam Electric Station: Alleged Improprieties by Brown & Root, Inc. (Case No. 4-89-008) (hereinafter OI Request):
  - a. Ex. 1(b);
  - b. Ex. 5;
  - c. Ex. 7;
  - d. Ex. 9;
  - e. Ex. 10;
  - f. Ex. 11;
  - g. Ex. 12;
2. All documents obtained by OI from Mr. T. Louis Austin and/or Brown & Root, Inc.;
3. All correspondence between Mr. Austin, the Lawfirm of Shaw, Pittman, Potts and Trowbridge and/or the Lawfirm of Bishop, Cook, Purcell & Reynolds and OI;

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3pp.

4. All copies of or excerpts from Mr. Austin's calendar (See OI Report pp. 13);
5. All documents received from Mr. Glen G. Magnuson, Jr., or other attorneys who represent, or formerly represented Mr. Austin and/or Brown & Root, Inc.;
6. All draft copies of the Macktal/Brown & Root, Inc. settlement agreement;
7. All documents related, directly or indirectly, to OI's "attempts" to obtain a copy of Magnuson's notes, memorandum and/or work product. (See "Investigator's Note" on page 16 of the OI Report);
8. All documents received from or concerning in any way Mr. Bill Bedman;
9. A copy of the settlement check (front and back) referenced on pages 18-19 of the OI Report;
10. A copy of the "note from Ellis" referenced on page 19 of the OI Report;
11. A copy of the Ellis tape recording of Macktal referenced on page 16 of the OI Report;
12. All documents created by Mr. Ben Hayes, directly or indirectly, related to the OI investigation or Report;
13. All documents which identify which employees and/or Commissioner(s) of the NRC obtained a copy or notice of the OI Report and/or the findings of the OI.
14. A copy of the notes taken by Mr. Magnuson at the Macktal/Magnuson/Austin meeting(s) and any memorandum(a) or documents prepared by or for Mr. Magnuson concerning said meeting;
15. A copy of all documents prepared by or for Mr. Magnuson in any way concerning Mr. Macktal;


Donnie H. Grimsley  
July 13, 1990  
Page Three

16. All documents obtained by OI from Texas Utilities Electric Co. (TUEC), Bishop, Cook, Purcell and Reynolds, attorneys representing Brown and Root, TUEC, Garde, Austin, Government Accountability Project (GAP) and/or Trial Lawyers for Public Justice (TLPJ);
17. All documents obtained from GAP, TLPJ, Public Citizen, Arnold and Porter and Jackson and Campbell.

For the purposes of this request "document" shall mean every writing of every type and description, and every other instrument or device by which, through which or on which information has been recorded and/or preserved, including but not limited to memoranda, including those reflecting meetings, discussions or conversations, notes, letters, drawings, files, graphs, charts, maps, photographs, deeds, agreements, contracts, handwritten notes, diaries, logs, ledgers, studies, data sheets, notebooks, books, appointment calendars, telephone bills, telephone messages, receipts, vouchers, minutes of meetings, pamphlets, computations, calculations, accounting(s), financial statements, voice recordings, computer printouts, computer discs and programs, and other data compilations, device or media on which or through which information of any type is transmitted, recorded or preserved. The term "document" also means every copy of a document when such copy is not an identical duplicate of the original.

We request that all fees be waived. We also request that all documents be produced within ten days.

Yours truly,



Stephen M. Kohn

55f/foia