

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETER
NRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD ^{DEC 27 10:35}

In the Matter of

APPLICATION OF TEXAS UTILITIES
GENERATING COMPANY, ET AL. FOR
AN OPERATING LICENSE FOR
COMANCHE PEAK STEAM ELECTRIC
STATION UNITS #1 AND #2 (CPSSES) -

DOCKETING SERVICE
Docket Nos. 50-445
and 50-446

CASE'S BRIEF IN OPPOSITION TO THE
NRC STAFF'S EXCEPTIONS TO
THE ATOMIC SAFETY AND LICENSING BOARD'S
ORDER DENYING RECONSIDERATION OF SEPTEMBER 30, 1982

(Mrs.) Juanita Ellis
President
CASE (Citizens Association for Sound Energy)

December 21, 1982

DS03

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12/21/82

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CASE (Citizens Association for Sound Energy), Intervenor herein, hereinafter referred to as CASE, hereby files this its Brief in Opposition to the NRC Staff's Exceptions to the Atomic Safety and Licensing Board's Order Denying Reconsideration of September 30, 1982, pursuant to 10 CFR 2.762(b).

BACKGROUND

On August 4, 1982, the Atomic Safety and Licensing Board issued an Order to Show Cause requiring the NRC Staff to show cause why sanctions should not be imposed for its failure and refusal to obey the Board's orders to identify individuals interviewed in connection with an investigation of an informer's QC allegations, and to produce unexpurgated copies of signed witness statements taken from persons identified by the informer. The inspection report and testimony affirmatively put into evidence by the Staff concerned allegations by CASE witness Charles A. Atchison, a former QC inspector, that he was wrongfully fired because of his reporting of construction defects.¹

¹ See August 4, 1982, Order to Show Cause and September 30, 1982, Order Denying Reconsideration for further details.

On August 24, 1982, the Staff submitted its response to the Order to Show Cause. The Staff asked that the Licensing Board reconsider its orders and argued that sanctions against the Staff are inappropriate. Intervenor CASE filed an answer to the Staff's response on September 3, 1982, challenging many of the arguments it contained. The Staff filed a reply to CASE's answer on September 10, 1982.

Subsequently beginning September 13, 1982, another week of hearings was held in this case. At that time the Board stated that it would not reconsider its orders to the Staff to produce the information, and that a written Board order would follow (Tr. 3578).

On September 30, 1982, the Board issued its Order Denying Reconsideration which stated, in part, "...the Staff has not shown good cause..." and "If the Staff fails either to obey this order promptly or to seek appellate review, the Licensing Board will use its authority pursuant to 10 CFR 2.713(c) to impose sanctions upon Staff counsel."

On October 8, 1982, the Staff filed its Exceptions to the Atomic Safety and Licensing Board's Order Denying Reconsideration of September 30, 1982, and on November 17, 1982, the Staff filed its Brief in Support of Its Exceptions to Atomic Safety and Licensing Board's Order Denying Reconsideration of September 30, 1982.² CASE's Brief in answer to the Staff's Exceptions is to be mailed to the Appeal Board by December 22, 1982.

² The NRC Staff also filed its Application for a Stay of the Effectiveness of the Atomic Safety and Licensing Board's Order Denying Reconsideration on October 12, 1982, which was denied in the Appeal Board's November 4, 1982, Order, and its Motion for Directed Certification on November 17, 1982.

CASE'S COMMENTS ON NRC STAFF'S EXCEPTIONS

CASE is not represented by counsel in these proceedings and the writer, as CASE's primary representative, has never prepared a brief in answer to exceptions such as this. We therefore ask the Board's indulgence and that they consider content primarily rather than form should our form be less than perfect.

Since its inception in 1974, CASE has always worked within the established system, intervening in all Dallas Power & Light rate hearings since 1974 and currently in these operating license proceedings. We have become increasingly concerned with the attitude and approach of the NRC Staff and especially of the Region IV office in several areas, including the investigation of allegations by "whistleblowers." Although the intervention process is very time-consuming, expensive, and frustrating, the single biggest disappointment and disillusionment in CASE's nine-year history has been the performance and attitude of the NRC Staff in these proceedings. We have gradually come from a belief that the NRC would see that Applicants corrected problems if such problems were brought to the attention of the NRC, to our current sad conclusion that this is not the case and that the NRC lacks the will and/or the ability to adequately protect the health and safety of the public.

We will therefore address primarily the Staff's Exception 4, which states:

"4. The Licensing Board erred in finding that disclosure of the ten individuals' identities would not result in harm to the Commission's ability to investigate future allegations of applicant and licensee misconduct, and in disregarding the Staff's views in this regard (See ODR, at 7)."

. . . and address the other exceptions as time permits in order to meet the deadline for filing this Brief.

Discussion of Exception 4:

Inherent in the NRC Staff's wording of this exception is an assumption that the Commission currently has the ability to adequately investigate allegations of applicant and licensee misconduct. Evidence in these proceedings regarding the past track record of the NRC in this regard as well as sworn affidavits of NRC investigators clearly indicates that the NRC has not possessed and does not presently possess this ability.

Once this assumption is removed from the Staff's Exception 4, it is obvious that this Exception cannot be valid, since no harm can possibly come to an ability that does not exist to any meaningful degree.

Further, the evidence also leads to the ultimate conclusion that the actions and attitude of the NRC itself regarding investigations of allegations by "whistleblowers" has been the primary contributing factor responsible for the current lack of the NRC's ability to adequately and effectively investigate allegations of applicant and licensee misconduct.

(1) The Atchison case.

Perhaps the most striking example of the NRC's inability to adequately investigate allegations by "whistleblowers" is the case of Charles A. Atchison. In fact, it was in regard to the NRC's investigation of Mr. Atchison's allegations regarding problems at the Comanche Peak plant that the question now before the Appeal Board arose.

The background of this matter has been covered very well and very accurately in the Atomic Safety and Licensing Board's August 4, 1982, Order to Show Cause and its September 30, 1982, Order Denying Reconsideration. CASE will not take the time and space to reiterate those details, but fully supports the Board's

analyses of the situation and urges that the Appeal Board consider this in its deliberations. We further would call the Board's attention to CASE's September 3, 1982, answer to the Staff's response to the Board's Show Cause Order, and ask that the Appeal Board consider it also. CASE wishes to call the Appeal Board's attention to significant new information regarding the Atchison case.

On December 3, 1982, the Administrative Law Judge filed a Recommended Decision in the Matter of Charles A. Atchison, Complainant, vs. Brown & Root, Inc., Respondent, before the U. S. Department of Labor. This is the decision resulting from the appeal referenced by the Atomic Safety & Licensing Board on page 5 of its August 4, 1982, Order to Show Cause. See CASE Attachment 1 (CASE Exhibit 738)³, which we have moved the Licensing Board to accept into evidence.

Although we realize that the Administrative Law Judge's decision is a rather lengthy document, we urge that the Appeal Board thoroughly review it in light of the other documents pertinent to the matter at hand. Such review clearly indicates that the Administrative Law Judge, having reviewed and analyzed the evidence in the case, had no difficulty in reaching a decision. She stated on page 20, Prima Facie Case Established:

"The fact of the matter here is that the complainant's prima facie case for discharge for protected activity is established solely on the overwhelming weight of the documentary and other evidence he presented, and does not depend on any question as to his credibility..."

. . . and on page 26:

"I find and conclude that Brown and Root terminated complainant because he engaged in protected activities within the Act's meaning, and that respondent violated the Act and regulations in so acting."

³ Mailed to the Service List in this docket with CASE's Motion to Supplement CASE's Exhibits, filed 12/14/82.

During the Board Examination of NRC Investigator Donald Driskill (Tr. 2605-2689) regarding his investigation of the allegations made by Mr. Atchison⁴, Judge Miller asked many questions as to the manner in which the investigation had been conducted and how Mr. Driskill formed his conclusions. Regarding the alleged wrongful discharge of Mr. Atchison, which was one of the areas of Mr. Driskill's investigation (Tr. 2629, 2641-2689), Judge Miller attempted to ascertain how Mr. Driskill made the determination that he could not substantiate or refute the allegation. In later discussions with the NRC Staff counsel regarding Mr. Driskill's investigation (Tr. 3041-3073), Judge Miller describes the report as:

"The most interesting investigative report that it has been my pleasure to see in a long time, where serious allegations either way cannot be substantiated or refuted.

"In other words, the judgment of this investigator will stab the evidence. The testimony, the facts and the statements he took from the witness is in perfect equipoint. It doesn't tilt ever so slightly one way or the other, a perfect equipoint after having gone through the exercise."

-- Tr. 3045, line 24 - 3046/8

In the decision by the Administrative Law Judge in the Labor Board hearings, it is stated⁵:

"Since there are numerous statements in this record as to the complainant's job performance deficiencies uncovered by respondent and its client post April 12, 1982, it should be clearly understood that in analyzing the evidence it is the facts as they existed, and were known to respondent at the time the Act was averredly violated, April 12, 1982, that must of necessity control the findings here."

Although the Labor Board Judge had some additional information as to the credibility of the witnesses available to her (such as the inconsistent statements of Applicants' witnesses⁶), her decision was based primarily upon information and documents which were available to NRC Investigator Driskill at the

⁴ See Staff Exhibit 199, I&E Report 50-445/82-10, 50-446/82-05; and page 5 of ASLB August 4, 1982 Order to Show Cause.

⁵ See CASE Attachment 1, page 20, next-to-last paragraph.

⁶ See CASE Attachment 1, page 7, first full paragraph.

time he made his investigation and report. Certainly Mr. Driskill was privy to the same information as Mr. Fortman, who was investigating the wrongful discharge allegation for the Department of Labor (Tr. 2669-2670). Mr. Fortman's investigation led to a finding by the Department of Labor that Mr. Atchison had indeed been wrongfully discharged; the report stated, in part⁷:

"Based on our investigation, the weight of evidence to date indicates that Charles A. Atchison was a protected employee engaging in a protected activity within the ambit of the Energy Reorganization Act, and that discrimination as defined and prohibited by the statute was a factor in the actions which comprise his complaint." (Emphasis added.)

The report then gave further specifics as the basis for its conclusion.

This raises many questions regarding the investigation by the Region IV NRC investigators of the allegation that Mr. Atchison had been wrongfully discharged. Many questions have already been asked (Tr. 2605-2689, etc.), but there is one other question which must now be asked:

Why wasn't the NRC investigator able to substantiate or refute the allegation when he had the same information available which led other investigators to conclude that the allegation was true?

There are other related questions as well: What is the use of having NRC Investigators who go through the exercise of "investigating" but come to no conclusions one way or the other? What are the tax-payers getting for their money from such investigations? What is the NRC's problem?

These questions become even more pressing when one looks at the history of NRC Region IV's investigations of allegations by "whistleblowers." The fact is that the investigation into allegations by Mr. Atchison is not the first in which the investigators were unable to substantiate or refute the allegations. This will be discussed in more detail later in this pleading.

⁷ See CASE Exhibit 650B, Attachment 2 to 7/16/82 Pre-filed Testimony of Charles A. Atchison, May 14, 1982, letter from Department of Labor to Brown & Root.

The NRC Staff's position in Exception 4 is inconsistent, to say the least, when one looks at the facts in the case of Mr. Atchison. In regard to his request for confidentiality, Mr. Atchison testified that although he had not asked for confidentiality in regards to Investigation Report 82-10/82-05⁸ about allegations that he made after he had been fired, he had requested and never waived confidentiality regarding Investigation Report 80-22⁹. Yet the NRC Staff not only identified Mr. Atchison, it filed written testimony in rebuttal to Mr. Atchison's testimony.

The Staff, in its Brief¹⁰, made reference to court cases and NRC precedents which the Staff embraces as proving that legal precedent exists for the idea not only of the informer's privilege, but also for the idea that an explicit understanding that information was being given in confidence is not an absolute prerequisite for this nondisclosure consideration to apply (see especially Brief pages 6, 7, and 8).

The Staff's position in this regard is also inconsistent. If the Staff's concern is as great as it has indicated, why did it refuse to identify the other lettered individuals when ordered to do so by the Board while at the same time freely identifying Mr. Atchison? Why did the Staff prefile written testimony rebutting Mr. Atchison's testimony? Why didn't the Staff ask for a protective order regarding their testimony so that Mr. Atchison's identity could be kept confidential? Why did the Staff feel that it had to file rebuttal testimony rather than saying "no comment" and thereby protecting the identity of all the lettered individuals, including Mr. Atchison? If the Staff is indeed so very concerned about protecting the confidentiality of not only whistleblowers but also of anyone who may be interviewed in the

⁸ Staff Exhibit 199.

⁹ Staff Exhibit 123.

¹⁰ NRC Staff's November 17, 1982, Brief in Support of Its Exceptions to Atomic Safety & Licensing Board's Order Denying Reconsideration of September 30, 1982.

course of an NRC investigation (including, apparently, those who are accused of wrongdoing, as well as those who never asked for it, relied on it, asserted it, and who were identified by the Applicants' own witness), would it not be reasonable to expect that the Staff would also have refused to identify Mr. Atchison as being Individual A in the two Investigation Reports, just as they refused to identify the other Individuals even when they had been identified by the Applicants' own witness? -

The facts of the matter are that the NRC Staff did prefile written testimony in rebuttal to Mr. Atchison's testimony, did identify Mr. Atchison in direct conflict with the Staff's own avowed noble principles of confidentiality, while at the same time refusing to identify individuals who had never asked for confidentiality, never relied on it, never asserted it, and who were identified by the Applicants' own witness. It would appear, then that the Staff in this instance practiced a very selective and peculiar sort of confidentiality.

It is not clear as to the reasons or motivations behind this peculiar set of circumstances. However, CASE believes it is absolutely imperative that they be determined in order to avoid irreparable harm to the entire fabric of the NRC's ability to investigate allegations of whistleblowers and to the credibility of the NRC as a regulatory agency. CASE does not claim to have the answers in this regard, but we believe there is one question of paramount importance to the entire licensing process which must be answered: Is it even possible that the NRC Staff, in this particular instance, abandoned its own avowed principles of confidentiality because of its zeal to file testimony favorable to the granting of an operating license for Comanche Peak?

CASE, of course, has no way of determining this, but we sincerely and fervently hope that someone will make a thorough investigation in this regard -- someone unbiased, objective, and completely dissociated from the Region IV

NRC office and the Comanche Peak operating license hearings. Anything less at this point will leave the question unanswered and inevitably damage the NRC's ability and credibility still further.

This is a matter of grave concern to CASE and we are in full agreement with the principles of confidentiality for whistleblowers.¹¹ However, we must agree with the Licensing Board Chairman in his discussion with the NRC Staff's counsel¹²:

"We suggest you're standing that principle on its head."

CASE is every bit as concerned (perhaps more so) as the NRC Staff purports to be that the true principles of confidentiality for whistleblowers be maintained. However, this is not what we are dealing with in this particular and (hopefully) unusual instance, where we have a perverted reversal of those principles, to the detriment of the entire licensing process.

The Atchison case points out another deficiency in the NRC's ability to investigate allegations -- it is a classic example of the NRC's unwillingness and/or inability to protect whistleblowers once they have come forward.

Following his firing from Comanche Peak on April 12, 1982, Mr. Atchison had tried to find a job. He had been unable to do so, until he was hired by Tompkins-Beckwith to work at the Waterford III nuclear plant in Louisiana; he was hired July 26, 1982, the very week he was to testify as a CASE witness in the Comanche Peak nuclear plant operating license hearings. An investigation by the Department of Labor found that he was fired from the Waterford job because he had testified at the Comanche Peak hearings¹³. The Labor Department's ruling has been appealed by Tompkins-Beckwith.

¹¹ See Tr. 2501 and CASE's 9/3/82 Answer to NRC Staff's Response to Order to Show Cause and Motion for Reconsideration, and CASE's Motions, especially last half of page 4 through page 5.

¹² Tr. 3064/2-3.

¹³ See CASE Exhibit 684A, Attachment to Atchison September 1982 testimony.

He was again hired to work at Waterford III by Mercury of Norwood, Inc., and was fired within a couple of hours. A Labor Department investigation determined that he was fired only after it was disclosed that he had been in the employ of Tompkins-Beckwith, notwithstanding the fact that Mercury of Norwood knew that his previous discharge was determined to be discriminatory.¹⁴

Mr. Atchison is again working, for a company which he understandably does not wish identified, at a much lesser salary than he had previously made. The toll on the physical, mental, and financial well-being of him and his family has been staggering.¹⁵ It will be months, perhaps years, before there is a final resolution of the Labor Department and possibly court hearings regarding his three terminations.

The impact of the results of Mr. Atchison's coming forward with allegations of problems at Comanche Peak so that they can be corrected before the plant receives an operating license has not gone unnoticed by present and past workers at Comanche Peak who are aware of other problems at the plant. Many of those workers are simply not ready to put their present and future job future on the line by coming to the NRC with their concerns.

What can CASE tell those potential witnesses and whistleblowers? Can we, in good conscience, tell them to go to the NRC, that their identities will be kept confidential, that they won't lose their jobs and all hope of ever working again in the nuclear industry with its far-above-average pay? Can we, in good conscience, subpoena them as witnesses, knowing the consequences to other CASE witnesses? Can we even assure them that their

¹⁴ See Attachment 2 hereto.

¹⁵ For example, Mr. Atchison's thirteen-year-old daughter wanted to quit school to go to work to help keep them from losing their home.

allegations and concerns will be thoroughly investigated and fully resolved -- when we are no longer certain of this ourselves?

The "revised" Investigation Report -- I&E Report 82-14. On October 15, 1982, CASE received a copy of I&E Report 50-445/82-14 under cover letter dated September 29, 1982. On November 22, 1982, we received a copy of I&E Report 50-445/82-14 under cover letter dated November 8, 1982¹⁶.

On November 22, 1982, we received a call from Jack Booth, a reporter with the DALLAS TIMES HERALD newspaper, asking for a comment on an article he was writing for publication on Friday, November 26, 1982 (the day after Thanksgiving)¹⁷. In our discussion, it became obvious that there were two I&E Reports 50-445/82-14 and that the reporter had a copy of another I&E Report (50-445/82-22) which we did not have, although we are supposed to be on the mailing list to receive copies of all I&E Reports relating to Comanche Peak direct from the NRC Region IV office in Arlington, Texas (after the ten-day waiting period). (The writer was not particularly concerned that we had not yet received that particular report, since it was under cover letter dated November 10, 1982, and might well not have been received by the 22nd. However, there was some concern that we had not yet received I&E Report 50-445/82-19, a previous report which was referenced in I&E Report 50-445/82-22.)

After the newspaper article appeared on November 26, the writer received a telephone call from the NRC Region IV office asking me to come by their office at my convenience to discuss some of the reports which had been issued recently. An appointment was made for 10:00 A.M. the following Monday, November 29.

¹⁶ Copies of both I&E Reports 50-445/82-14, along with NRC's supplemental letter re: 50-445/82-14 to TUGCO dated Dec. 9, 1982, were mailed to the service list in these proceedings with the request that the Licensing Board accept them into evidence (marked as CASE Exhibits 735, 736, and 739, respectively; we have asked that the Board review this instant pleading prior to making its ruling on the admissibility of these documents. We are including copies for the Board members marked as CASE Attachments 3, 4, and 5, respectively.

¹⁷ See CASE Attachment 6 hereto.

A copy of a rough transcript of the meeting is attached¹⁸. This transcript was typed by the writer personally, transcribed from the tape recording which I made at the meeting. (It should be noted that it was very difficult at times to understand the tape due to the distance of some of the people from the microphone and the fact that at times several people were talking at once. It does not purport to be totally and completely accurate like a court reporter's transcript. However, it was transcribed to the best of my ability and I believe that the substance of the conversations is accurate. I'm certain that the NRC Staff will let us know of any inaccuracies. The Region IV representatives also made a tape recording of the meeting, and should any question arise, it may be that their recording is clearer in some parts than my recording, since the two recorders were located at different places on the table. If there is any substantive difference, the Board could be supplied with a copy of both my tape and the Region IV tape, although I don't really believe that will be necessary.)

It was the writer's distinct impression that the Region IV representatives were primarily attempting in the meeting to allay any concerns that CASE might have about the fact that an I&E report had been issued, then later revised. (although we did discuss other matters before the meeting was completed).

There are indeed some questions raised by the manner in which this matter was handled. For example, this is the only time, to my knowledge, that there has been an apparently completed I&E Report issued, then later "revised" in this manner. The normal procedure has always been to issue a report based on the information known at that time, and to make any follow-up report on

¹⁸ See CASE Attachment 7 hereto. References to a previous meeting with Dennis Culton in the transcript will be discussed later in this pleading.

the matter in a later I&E Report. Further, the changes which were made in the report were of a rather substantive nature, changing the meaning of the report considerably.

I&E Report 50-445/82-14 under cover letter of September 29, 1982 (CASE Attachment 3) stated (CASE Attachment page 3):

"Results: No violations or deviations were identified. The concerns expressed by Mr. C. Atchison in his oral testimony of July 30, with regard to pipe whip restraints had been identified and corrected by the licensee. Matters regarding Mr. Atchison's allegation regarding the lack of written QC procedures for the examination of skewed fillet welds remains unresolved."

I&E Report 50-445/82-14 under cover letter of November 8, 1982 (CASE Attachment 4) stated (CASE Attachment page 3):

"Results: No violations or deviations were identified. The specific concerns expressed by Mr. C. Atchison in his oral testimony of July 30, with regard to pipe whip restraints had been identified and corrected by the licensee. Region IV does plan to perform additional inspections of vendor shop performed welding and this issue remains open. Matters regarding Mr. Atchison's allegation regarding the lack of written QC procedures for the examination of skewed fillet welds remains unresolved." (Emphases added.)

The original report (CASE Attachment 3) stated (CASE Attachment page 7):

"In conjunction with the documentation review, and in view of Mr. Atchison's testimony, the inspector conducted a random sampling inspection of the NPSI-supplied component supports and pipe bumper assemblies. Although no pipe bumpers were installed, the inspector examined approximately 20 bumper assemblies located in various outside storage areas. In addition, the inspector examined sections of the main steam/feedwater pipe whip restraint on top of the safeguards building and the one NPSI structure at elevation 823 feet in the Unit 1 reactor containment building. There were no observed defects, warpage, or discontinuities that would be considered unacceptable within the AWS Structural Welding Code, D1.1. It was observed by the inspector that, due to the particular weld configuration, slight warpage had occurred on some of the pipe bumpers; however, these were considered acceptable with in the AWS Code, Section 3.4, Limitations." (Emphases added.)

The revised report (CASE Attachment 4) stated (CASE Attachment page 7):

"In conjunction with the documentation review, and in view of Mr. Atchison's testimony, the inspector conducted a random sampling inspection of the NPSI-supplied component supports and pipe bumper assemblies for warpage. Although no pipe bumpers were installed, the inspector examined approximately 20 bumper assemblies located in various outside storage areas. In addition, due to inaccessibility, the NRC inspector conducted a very limited examination of sections of the main steam/feedwater pipe whip restraint on top

of the safeguards building and the one NPSI structure at elevation 823 feet in the Unit 1 reactor containment building for warpage. There was no observed warpage that would be considered unacceptable within the AWS Structural Welding Code, D1.1. It was observed by the inspector that, due to the particular weld configuration, warpage had occurred on some of the pipe bumpers; however, these were considered acceptable within the AWS Code, Section 3.4, Limitations." (Emphases added.)

The original report stated (CASE Attachment 3, Attachment page 7 continued on 8):

"With regard to Mr. Atchison's observation of other NPSI fabricated pipe whip restraints on the switchgear building and which contain unacceptable welds, the NRC inspector made a random selection of five pipe whip restraints from drawing 2323-SI00474 'Turbine Building Switchgear Area,' Revision 8, as follows: MS-1-07-908-757W, MS-1-22-906-T57W, FW-1-11-902-557W, MS-1-22-904-757W, and MS-1-17-904-T57W. The NRC inspector examined the five installed assemblies and found no apparent defects or discrepancies. It was also observed that pipe whip restraints on the turbine and switchgear buildings are classified as 'non-nuclear safety-related,' QA program applicable to procurement and shop fabrication only."

The revised report deleted the entire preceding paragraph and replaced it with (CASE Attachment 4, Attachment page 7):

"Region IV does plan to do additional inspection of vendor shop performed welding (including NPSI) during a subsequent inspection. (Open Item 8214-01)"

The Region IV NRC representatives attempted to explain this to the writer at the November 29 meeting¹⁹ and later in the NRC Region IV's December 9, 1982, letter to TUGCO²⁰. The writer obtained a copy of I&E Report 50-445/82-22 under cover letter of November 10, 1982²¹, following the 11/29/82 meeting before leaving the NRC office. It described how a TUGCO employee had discovered a cracked weld which led, upon further investigation, to the discovery of "numerous other nonconforming weld conditions in the immediate area." The cracked weld which was discovered just happened to be "on the NPS Industries

¹⁹ See CASE Attachment 7, pages 1 and 2.

²⁰ See CASE Attachment 5.

²¹ See CASE Attachment 8.

supplied main steam pipe-whip restraint located outside the reactor containment building (RCB) 1."²² Thus, the Applicants found the problem. There's nothing at all in I&E Report 82-22 to indicate that Mr. Atchison's allegations and concerns had anything to do with it or that the problems were anywhere even near the area Mr. Atchison had discussed with the NRC as reported in I&E Report 82-14. Besides, the licensee had in most cases already "identified those areas" where there were problems with some welds and "those areas had been corrected."²³

The fact remains that finally, after Mr. Atchison has been jumping up and down and saying, "LOOK HERE! LOOK HERE!" it appears that there will be an investigation into what has been a major problem at Comanche Peak for a long time -- the vendor welding. And according to the NRC representatives at the 11/29/82 meeting, "Anything that was purchased with weldment which was bought by source inspection originally with no subsequent onsite inspection will now receive an onsite inspection."²⁴

But the handling of the NRC of this matter has again raised questions which need to be answered: Why did the NRC revise I&E Report 82-14 rather than follow the usual procedure (which, as far as CASE is aware, has always been followed in the past) of making any follow-up report on the matter in a later I&E Report? Why is the NRC so very reluctant to admit that, yes, Mr. Atchison may have been right? If the painter had not discovered the cracked weld which led to the discovery of the other numerous nonconforming weld conditions, wouldn't I&E Report 82-14 as originally written²⁵ have been the final version, giving the impression that everything regarding this specific matter had been taken care of? Have there been past I&E reports which have been

²² See CASE Attachment 8, Attachment page 5.

²³ See CASE Attachment 7, page 1.

²⁴ See CASE Attachment 7, bottom of page 3.

²⁵ See CASE Attachment 3.

similarly revised as substantively as I&E Report 82-14 was, but changed prior to release?

I&E Report 82-22²⁶ states that following the further investigation which disclosed numerous other nonconforming weld conditions in the immediate area of the NPS Industries supplied main steam pipe-whip restraint located outside the reactor containment building (RCB) 1:

"A thorough inspection of all welds on this structure was conducted by the TUGCO welding engineering department personnel documented on NCR M-82-01589. An engineering analysis of the deficient welds has been initiated to determine their structural significance.

"The NRC inspectors toured the structure and visually examined approximately 75% of the vendor supplied welding. Anomalies such as undercut, lack of fusion, porosity, incomplete welds, undersize welds, overlaps, insufficient weld throats, and base material defects were noted in most sections of the structure...The NRC inspectors did not perform a total visual inspection due to the lack of complete staging around the structure."

This raises two more questions: If the NRC inspectors did not perform a total visual inspection due to the lack of complete staging around the structure, how was "A thorough inspection of all welds on this structure...conducted by the TUGCO welding engineering department personnel" (emphasis added)? And more importantly, if Mr. Atchison's allegations were thoroughly checked out, how could a problem as extensive as this one possibly have been overlooked in that investigation?

²⁶ CASE Attachment 8, page 5.

- (2) NRC Region IV investigators have admitted that "whistleblowers" are afraid for their present and future jobs if they come forward with allegations to the NRC.

As part of its Response To Order to Show Cause and Motion for Reconsideration, dated August 24, 1982, the NRC Staff included an affidavit by NRC Region IV investigators Donald D. Driskill and Richard K. Herr. A copy of the signed sworn affidavit was forwarded to the service list in these proceedings under cover letter from NRC Staff Counsel on September 2, 1982.²⁷

That affidavit discusses NRC Investigation Reports 80-22 and 82-10/82-05 (regarding Mr. Atchison's allegations) and 81-12 (regarding allegations of Henry and Darlene Stiner)²⁸, and attempts by the investigators to determine which, if any, of the individuals identified by letter in those Reports objected to the Staff's disclosure or confirmation of their identities. The affidavit states (on page 2, A.5.):

"Each of the individuals contacted, who objected to the NRC staff's disclosure of their identities, as set forth above, described their objections somewhat differently; however, in general, each expresses that such a disclosure could possibly place their present and/or future employment in jeopardy. It appears to be a common belief among them that their simple cooperation with NRC investigators may be interpreted as an act of disloyalty by their employers." (Emphases added.)

The apparent inability or unwillingness of the NRC to protect "whistleblowers" was also acknowledged at the 11/29/82 NRC/CASE meeting²⁹.

²⁷ See CASE Attachment 9.

²⁸ Admitted into evidence as Staff Exhibits 123, 199, and 178, respectively.

²⁹ See CASE Attachment 7, bottom of page 10 through page 11.

(3) The case of Henry and Darlene Stiner.

Another very striking example of the NRC's handling of investigations is to be found in the Comanche Peak proceedings -- the case of Henry and Darlene Stiner.³⁰ The reason Mr. Stiner testified was because of the way the NRC had handled the investigation of allegations made by him and his wife Darlene³¹.

Mrs. Stiner testified under subpoena and supported and elaborated on the allegations made to the NRC and the NRC's handling of the investigation.

Both Mr. and Mrs. Stiner testified under very difficult circumstances³², consequences of which could have been severe but for the deft handling of the Licensing Board

Mr. Stiner testified that after reading the investigation report of the allegations made by him and his wife and comparing it with the "sanitized" back-up notes provided by the NRC Staff, he found that³³:

"The notes were in some cases unreadable, some were not labeled as to even a letter designation, there were many omissions of allegations, and some of the information contained in the I&E Report did not match the investigator's own notes and in some cases, his notes even appear to contradict his own I&E Report."

Both Mr. and Mrs. Stiner discussed the matter of confidentiality in regards to the NRC's handling of the investigation. Mr. Stiner stated that the NRC investigators³⁴:

"...came pulling up to our house in a car with U. S. federal government markings all over the side of it. If they're trying to keep a low profile and if they're so concerned about informants' identities being kept confidential, to my way of thinking, that's not the way to do it."

³⁰ See: Henry Stiner direct testimony, Tr. 4203-4267, and cross-examination, Tr. 4268-4377, 4478-4491; and Darlene Stiner direct testimony, Tr. 4125-4196, and cross-examination 4026-4124.

³¹ Tr. 4203/7-4204/16 and on.

³² See especially Tr. 4277/20-4288/8, 4333-4343, 4471-4477, 4482/23-4484/25, 4486/1-7, 4487/24-4489/21, and 4112/11-4117/2.

³³ Tr. 4408/6-10.

³⁴ Tr. 4408/19-23.

And Mrs. Stiner testified³⁵:

"On September 8, 1981, two NRC investigators, Mr. Don Driskill and Mr. Richard Herr came to our house in Walnut Springs and interviewed both Henry and I. Henry and I both made allegations to the investigators regarding problem areas at Comanche Peak...I told them that I would like to remain anonymous if there was any way possible. Even before they asked me about confidentiality, it was too late. That night when they came to our house, I came home from work with some other people from the plant. We always tried to ride together. Anyways, my ride pulled up to my house and there sat a big old car marked 'U. S. Federal Government' or something like that. Everyone in the car noticed the car and made some comment on it. I didn't know who was at our house. From that point on, it didn't seem like any promise of confidentiality would do any good...

"Like I said, the investigators never seemed terribly concerned about any type of secrecy right from the start. The day after the meeting at our house, I was standing around at the plant with a few QC inspectors, and Mr. Driskill walked by and in an outgoing manner said hello to me and asked how I was doing. If everything was supposed to be so confidential, you'd think the investigators themselves would have been a little more careful."

The NRC Staff chose not to file rebuttal testimony to Henry and Darlene Stiner's testimony, and it was not rebutted on cross-examination by either the NRC Staff or the Applicants³⁶ regarding the handling of the investigation by the NRC investigators. The Stiners' testimony therefore stands unrefuted in the record in this regard.

Very serious questions have been raised regarding the manner in which the NRC investigators conducted the investigation of the Stiners' allegations, the extent and thoroughness of their investigation, and the conclusions arrived at in the Investigation Report³⁷ -- questions which need to be answered before Comanche Peak is granted an operating license and in order to increase the NRC's effectiveness and ability to encourage "whistleblowers" to come forward so that otherwise undiscovered and unreported problems in construction can be

³⁵ Tr. 4143/1-4, 4143/7-15, 4143/18-24.

³⁶ See Tr. 4268-4377, 4478-4491, and 4026-4124.

³⁷ Staff Exhibit 178, I&E Report 81-12.

corrected, thereby possibly averting a disastrous accident.

In addition to the Stiners' testimony regarding confidentiality per se, another matter which has to do with the NRC's ability (or lack thereof) to adequately investigate future allegations of applicant and licensee misconduct is pointed out in regards to the Stiners and other CASE witnesses. This is the inability of the NRC to protect "whistleblowers" in the real world outside the hearing room.

One example of this is an instance when Darlene Stiner had been told that two women on the Comanche Peak jobsite planned to beat her up. She was understandably concerned about this, and she asked CASE to ask the Board for assistance. We did³⁸ by filing a Motion for a Protective Order (the only avenue CASE knew of at the time which might possibly apply). The motion was denied, but it was indicated in the record that if there was anything necessary for security, the attorney for the Applicants would indicate it to your people to look into it, so part of Mrs. Stiner's worry in that regard was relieved. However, the fact remains that there is no way to guarantee protection of witnesses or whistleblowers offsite, especially if potential problems in this regard are exacerbated by events or actions onsite.

This brings us to the second example. There is a publication which is distributed on site at Comanche Peak, in stacks at most of the windows where the workers pick up their "brass" every time they come and go from the plant, called the News Circuit Breaker. In that publication, which was printed up

³⁸ See Tr. 4112/11-4117/2.

every day of the September operating license hearings, CASE witnesses were identified by name and their allegations were downplayed or discounted. (CASE is not attaching copies of these publications because we don't want to spread their contents still further; however, we will provide copies if the Appeal Board wishes to pursue this further.) In addition, information was contained which could be very detrimental to Henry Stiner (see footnote 32) in particular.

This identification by name of whistleblowers and witnesses in the context in which it was couched made it very difficult for Mrs. Stiner, who was still employed at Comanche Peak and had testified under subpoena. Formerly friendly co-workers turned cool, some would not speak to her at all; she was subjected to cat-calls and crude remarks when she rode the bus to work and eventually was told she could no longer ride the bus because there was no insurance provided for pregnant women (although there had been no problem with this prior to her being called to testify). Apparently accommodations were later worked out so that she was able to go to and from work safely and without harassment.

We realize that there is simply no practical way for some of this to be adequately remedied. Our point is that there are enough obstacles for whistleblowers in the real world over which the NRC has no control. This increases the need to assure that everything possible which is within the control of the NRC (such as the methods used by their investigators) is done to protect whistleblowers and witnesses.

(4) The Culton case.

One of the people who made a limited appearance statement at the September 1982 operating license hearings for Comanche Peak was Dennis Culton³⁹. There were two areas with which Mr. Culton was especially concerned: Q (quality-control or safety-related) cable which had been spliced contrary to regulations; and pipe supports or hangers which he was concerned had not been done correctly. Following his limited appearance statement, Licensing Board Chairman Miller instructed the Applicants and Staff "To the extent that these matters concern issues that are controverted matters in this proceeding, they will be given appropriate consideration by Applicants and Staff."⁴⁰

On Saturday, November 6, 1982, the writer was asked to accompany Mr. Culton on Monday, November 8, to the NRC Region IV offices so that he could discuss his allegations further with the NRC. It was explained that he did not want to go alone and the person who had originally planned to accompany him had illness in the family. I agreed to do so. On Monday, November 8, 1982, Dennis Culton and I attended a meeting in Arlington with the NRC. Both Mr. Culton and I tape-recorded the meeting, and a copy of a rough transcript of the meeting is attached⁴¹. (The circumstances of taping are similar to those already described regarding CASE Attachment 7, as detailed on page 13, first paragraph, of this pleading; and it was transcribed by me personally to the best of my ability and I believe that the substance of the conversations is accurate.) The NRC has stated that they did not record the meeting⁴².

The writer initially tried to participate in the meeting only as an observer.

³⁹ Tr. 5551-5559.

⁴⁰ Tr. 5555.

⁴¹ See CASE Attachment 10 hereto.

⁴² See CASE Attachment 7, page 9.

However, as the meeting progressed, it became very obvious to me that Mr. Culton was becoming increasingly upset, to the point of walking out. I felt that it was important to try to keep a dialogue going and thereafter participated in the discussion⁴³ from time to time.

Sometime after the meeting, I contacted Mr. Culton to see if he had gotten together with the NRC again. He told me of a phone conversation with an NRC representative (Mr. Stewart, he believed) afterward and the general substance of that conversation. He also told me of his decision not to discuss the drawings or anything else further with the NRC. He was quite upset about the manner in which the whole meeting had been handled.

During the preparation of this Brief, it became obvious that the meeting between Mr. Culton and the NRC and his feelings about it should be included in this Brief. I discussed this with Mr. Culton and asked if he preferred that the tape of the 11/8/82 interview with the NRC remain confidential; he stated that he did not. I also asked him to try to articulate his feelings about the meeting, and on December 13, 1982, he dictated a rough draft of his thoughts and feelings to me over the telephone, I typed a rough draft of them, and mailed it to him. Our intent was to type up a final version, after his review of it, and prepare it as a sworn affidavit to be attached as part of this pleading. However, he had guests from out of town for the holidays and it was physically impossible to get the affidavit prepared in time to send with this pleading. Therefore, on December 20, I contacted Mr. Culton again by telephone, we discussed the rough draft, and he advised me by phone of the changes he wanted.

⁴³ See CASE Attachment 10, page 13.

I have typed this up as comments of Mr. Culton regarding his feelings following the meeting with the NRC, and it is attached hereto⁴⁴. The words and thoughts are Mr. Culton's own; I have tried very hard not to influence his thinking in this matter. He is aware and approves of CASE's inclusion of CASE Attachments 7, 10, and 11.⁴⁵

As Mr. Culton indicates, he felt that the NRC representatives tried to discredit him; that they tried to intimidate him and me; that they did not try to take him seriously at all; that what they really wanted to do was find out what other information he had, if he had a grudge against the NRC or Brown & Root; that they did not intend to do anything about the spliced Q cable; that he was being badgered; that the NRC treated him like a very low-class person from a little Podunk dirt town; that the NRC treated him very poor, very bad; he did not like the way the NRC representatives conducted themselves; and that if he had it to do over again, he would not have gone to the meeting with the NRC; etc.⁴⁶

CASE is very disappointed about the way this entire matter has developed. We had hoped that we might be able to persuade the Licensing Board to allow Mr. Culton to testify, since there is nothing other than the two limited appearance statements in the record at this time regarding spliced Q cable, and since his allegation was similar to that contained in another limited appearance statement⁴⁷. We believe this testimony should certainly be in the record as sworn testimony. However, as disenchanted as Mr. Culton is at the present time with the manner in which the NRC handled his allegations, it is doubtful that he would testify even if the Licensing Board did allow it. I believe that he still plans to

⁴⁴ See CASE Attachment 11 hereto.

⁴⁵ The writer also realizes that there are too many "I's" in the preceding; however, this was an unusual situation where I was personally involved, as President of CASE and CASE's representative in these proceedings.

⁴⁶ See CASE Attachment 11 hereto.

⁴⁷ See CASE Attachment 10, page 27, middle of page.

provide CASE with the sworn affidavit, however, and we will send it as soon as we receive it.

The meeting between Dennis Culton and the NRC was the second such meeting that I have attended as President of CASE. The first was the initial meeting between Henry Stiner and the NRC⁴⁸. Neither meeting did anything to inspire confidence in the NRC's investigations of whistleblowers' allegations. This was especially true regarding the Culton/NRC meeting. The writer shares many of Mr. Culton's impressions about the meeting, and so do others who have listened to the tape of the meeting⁴⁹, including other CASE Board members. CASE has now been placed in a very awkward and untenable position. As an Intervenor in these proceedings (and in accordance with CASE's natural inclinations), we feel a responsibility to work within the established system. This would mean that when we are contacted by potential whistleblowers, we normally would urge them to take their concerns to the NRC's Region IV investigators. But under the circumstances and in light of what we now know, how can we in good conscience and with any sincerity urge them to do so? And what are we to do about the potential whistleblowers who contact us who will not go to the NRC under any circumstances but who believe there are significant construction deficiencies at Comanche Peak which should be investigated and corrected prior to the plant's receiving an operating license? The Licensing Board has indicated little interest in allowing testimony from new witnesses. Are we to be forced after going through all the time, expense, and difficulties of intervening in the operating license hearings to now see new allegations tried in the press rather than in the hearings process?

⁴⁸ See Tr. 4205/6-4207/2, Direct Testimony of Henry Stiner; and CASE Exhibit 666C-17 and 666C-39, "sanitized" notes provided by NRC Staff re: investigation report of Stiner's allegations (Staff Exhibit 178).

⁴⁹ See transcript, CASE Attachment 10 hereto.

(5) Further questions regarding the NRC's ability to adequately investigate allegations of whistleblowers were raised in sworn testimony in the operating license hearings.

Marjorie Rothschild, NRC Staff Attorney, as represented to Licensing Board Chairman Marshall Miller in the June 1982 hearings, stated⁵⁰:

"...the Staff, as part of its regulation, does not attempt to either detect or analyze each and every construction deficiency. That's not our role."

. . . and regarding the Nonconformance Report which referred to the crack in the base mat, stated⁵¹:

"...we did not attempt, in our approach to this contention, to address each and every or any construction deficiencies. It was not the subject of an inspection or investigative finding of fact."

. . . and⁵²:

"Well, our position is basically based not on the existence -- it's based on our inspection and investigative findings. We obviously can't -- that is basically what we can address, what our regulation of the Applicants would reveal."

And Robert Taylor, the NRC Resident Inspector at Comanche Peak, testified⁵³:

"...our program in particular is completely non-statistically based. It's almost what I like to call intuitively based. It inspects enough to provide enough information to the inspectors to arrive at what amounts to a subjective judgment."

. . . and regarding the QA/QC program and the independent organization and function⁵⁴:

JUDGE MILLER: "...Then how could one determine the effectiveness or lack of effectiveness of the performance of that function by X independent organization?"

WITNESS TAYLOR: "X independent organization can only look at relative

⁵⁰ Tr. 1512/20-22.

⁵¹ Tr. 1514/13-15.

⁵² Tr. 1515/16-20.

⁵³ Tr. 1715/21-24.

⁵⁴ Tr. 1726/16-1727/10.

detail, from what I'll call a professional judgment, an intuitive feeling about whether it's working or not working and if the intuitive feel is that it is not working, then the main change that you have to make is to cause the people to have to change.

"Organizations of and by themselves are no assurance whatever for saying that the work is going to be done or not done correctly. That is a matter largely of people."

JUDGE MILLER: "How would the NRC and whatever branch or component analyze the effectiveness or lack of effectiveness of the performance by these people of a QA/QC program in a nuclear power plant?"

WITNESS TAYLOR: "In terms of analysis, I don't really think that it can be done.

"That's largely why they hire and pay people like me, sir."

And when asked about his final assessment of the safety factors in the construction of Comanche Peak, Mr. Taylor testified⁵⁵:

"I would be very comfortable building a house on top of that plant and living in it for the entire future of my life and not be concerned whatever with my safety or my family's safety."

Regarding the reportability of problems by Applicants under 10 CFR 50.55(e), in a sworn affidavit in response to CASE's interrogatories, Mr. Taylor stated:

"There is no specific procedure in the NRC inspection program for construction that requires an inspector to determine if the construction permit holder reports every appropriate item to the NRC. Some of the inspection procedures, however, do require that inspectors examine nonconformance reports for completeness, clarity and the appropriateness of corrective actions. The inspectors would normally consider whether an item had the significance to be reportable. The nature of 50.55(e) requires sound technical judgments on the part of the permit holder in regard to what should be and what should not be reported to the NRC. Within the body of the guidance (Footnote 1) it is stated that the licensee has to make a judgment based on his (or others) evaluation/analysis. If the licensee decides on the basis of the above that a matter is not reportable, he has satisfied the intent of this part of the regulation." (First emphasis in the original; second emphasis added.)⁵⁶

But the NRC guidance in this regard⁵⁷ differs in the last sentence in a very significant way:

"If the licensee decides, on the basis of the above, that a matter is not

⁵⁵ Tr. 1735/16-19.

⁵⁶ See Tr. 2405/3-2412/13 for details regarding this and the following related comments.

⁵⁷ See CASE Exhibit 300, page 8, last full paragraph.

reportable, he may have satisfied the intent of this part of the Regulation."

The NRC Guidance then goes on to state:

"However, the inspector can exercise his option and challenge the licensee's decision of nonreportability. A challenge may be valid if:

- ". the evaluation is clearly faulty by way of omission of facts
- ". engineering or other calculations are in error
- ". the evaluation is not supported by adequate records
- ". the evaluation has not considered interactions
- ". past IE experience (including that of the inspector) provide a basis as precedent for reportability
- ". the licensee has established a trend or pattern of habitually evaluating deficiencies as non-reportable
- ". evaluation is performed by a person(s) or organization without expertise in the subject.

"The inspector has the right and the responsibility to examine the technical validity of the licensee evaluation and if an inappropriate or unsupported decision of nonreportability has been made by the licensee, enforcement action should be considered. Regional management should review and, when valid, determine the appropriate enforcement action to take. If there is evidence that superficial evaluations are being made to procedurally satisfy or bypass NRC requirements, strong escalated enforcement action should be considered." (Emphasis added.)

- It is reasonable to assume that the Staff attorney and the Resident Inspector were articulating the position and approach of the NRC Region IV office in their statements when they described the program of the NRC: does not attempt to either detect or analyze each and every construction deficiency; completely non-statistically based; intuitively based; inspects enough to provide enough information to the inspectors to arrive at what amounts to a subjective judgment; unable to analyze (in terms of analysis) the effectiveness or lack of effectiveness of the performance by Applicants of a QA/QC program in a nuclear power plant; interprets the requirements of reportability under 10 CFR 50.55(e), contrary to what is specifically stated in the NRC Guidance, such that if the licensee

decides on the basis of a judgment based on his (or others) evaluation/analysis that a matter is not reportable, he has satisfied the intent of this part of the regulation; and, when describing the Staff's position and approach regarding CASE's Contention 5 regarding the QA/QC program and construction of Comanche Peak: did not attempt to address each and every or any construction deficiencies; position is based on our inspection and investigative findings.

It is not quite as clear whether Mr. Taylor, the NRC Resident Inspector at Comanche Peak, was articulating the position of the rest of NRC Region IV inspectors and investigators when he stated he thought the plant was so safe he'd be comfortable building his house on top of it, or whether he was expressing his personal opinion only. However, it would appear from the Staff's testimony and position in these proceedings that it is a view shared by the other Region IV personnel.

If this indeed is the case, it would appear that we may have individuals with preconceived views making intuitively-based subjective judgments about matters vital to the health and safety of the public in the area of Comanche Peak nuclear plant.

This possibility appears to be strengthened when one considers the pre-filed rebuttal testimony of the Staff to the testimony of CASE witnesses Mark Walsh and Jack Doyle⁵⁸. During direct-examination of the Staff witnesses, it was brought out that neither of them had fully evaluated the concerns raised by CASE witness Jack Doyle⁵⁹. Licensing Board Chairman Miller later stated⁶⁰:

"So what it amounts to is that the Staff's witnesses have not reviewed the testimony of Mr. Doyle; and, therefore, they're not in a position to say much about it; is that it?"

⁵⁸ See Tr. 5324-5396, 5407-5426, and Staff Exhibit 201 (Testimony of NRC Staff Witnesses Tapia and Chen).

⁵⁹ See Tr. 5352/19-25.

⁶⁰ Tr. 5382/23-5383/1.

. . . and⁶¹:

"...if they haven't finished their study, why are they on the stand with reference to those matters? Why don't you withdraw whatever testimony they have -- anything that refers to matters that they haven't completed their studies, and let us get on with what they have studied and testified about, and conclude this matter?"

STAFF ATTORNEY MIZUNO: "...I believe that the Staff's testimony was intended to show that although the Staff had not finished or had not completed its evaluation of the concerns which were raised by Mr. Doyle and Mr. Walsh, that there was a procedure -- there were two separate procedures which the Staff is intending to rely on to make sure that these concerns, if they are valid, will be reviewed.

"And if there are any problems, then there will be appropriate action taken."
--(Emphases added.)

JUDGE MILLER: "...Why are we taking the time to go through his preliminary cogitations? I don't really understand the state of the record. Why are you proffering this testimony?"

"If they haven't had a chance to finish it, fine; let them go study it. But why are we taking time to see what they did and might do and would do perhaps in the future.

"Don't you think that it's a waste of time really?"

MR. MIZUNO: "Well, the Staff is proffering the testimony so that the Board would have a basis to close the record out, that it would be assured that if there was any safety problem -- and we're not saying that there is any -- that the Staff has -- there are two mechanisms for identifying and correcting any problem that may occur." (Emphasis added.)

JUDGE MILLER: "If that philosophy were to prevail, we wouldn't need any evidentiary hearings, would we?"

"The Staff would just say, 'Everything is okay, or if it isn't, we'll review it and take care of it.' So why do we have a hearing?"

"You puzzle me; you really do.

"All right. Let's get ourselves organized. I don't think the Board is interested in having the record reflect preliminary examinations, whatever they may be and however useful they may be, and whatever ultimate conclusion your witnesses are going to come to, if you are going to say they haven't finished; they are not, therefore, able at the present time to present their professional conclusions as to the testimony presented to this date by Messrs. Doyle and Walsh."

⁶¹ Tr. 5383/6 on.

. . . and⁶²:

MR. MIZUNO: "...the staff is of the legal opinion that the preliminary nature of the nature and of the analysis only goes to whether the Board should give it appropriate weight."

JUDGE MILLER: "Well, suppose that appropriate weight is zero. The Staff has duties. These are safety questions.

"You are going to tell us, - 'Gee, we don't know. We are working on it.' Do you think the Board should go ahead and make a finding? Is that what you are honestly telling us?"

"I don't think you really mean that..."

"...What I am saying is that to the extent that the Staff, Staff's Counsel, Staff's expert witnesses, Staff's panel, gentlemen of experience and ability and we have no quarrel with them.

"We are having cross-examination, but in order to have it make any sense at all -- it doesn't do any good to have cross-examination of a moving target.

"Every time they say, 'Did you do so-and-so,' they say, 'Well, we're thinking about it.'

"That's not the way you try a lawsuit is what I'm telling you very plainly.

"I can understand your problem. We are not being critical. We are not accusing the Staff of malingering.

"If you haven't had, (a), the basic information to complete your analysis in a tryable form, and secondly, if you have not had sufficient opportunity because of that and the other factors of the testimony presented here by Mr. Doyle and others to analyze it and testify meaningfully, we would much rather have you say so and let's suspend the matter at that point until the Staff's witnesses are susceptible of, (a), aiding the Board, and being cross-examined in some intelligent fashion."

. . . and⁶³:

JUDGE MILLER: "...we think that we would lose more time and efficiency and rationality if we try to pull out something piecemeal now and have cross-examination and still have to wait to have the Staff complete whatever analysis they are going to, together with the other documents, in order to put on whatever evidence that they wish..."

. . . and⁶⁴:

JUDGE MILLER: "...It is the Board's intention to wait until the Staff tells us if they're ready to proceed. In this case we will have prefiled

62 Tr. 5390/1-5391/12.

63 Tr. 5394/17-23.

64 Tr. 5408/25 on.

written rebuttal testimony after your witnesses have, (a) completed their analysis of the testimony of Mr. Doyle and Mr. Walsh, and, secondly, when they have sufficiently analyzed whatever they're going to do with these codes which have been the subject matter of a good deal of discussion here by the expert witnesses, and they're in a position to tell us and to show us by prefiled testimony that their witnesses are ready to address these questions.

"Now, we leave to your judgment as to when that is, or as to whether it need await the final evaluation. We don't know what your plans are. You'll have to use your own judgment on that.

"But the next move is up to the Staff."

MR. MIZUNO: "The Staff -- Before the Board rules, the Staff would just like to represent that it feels that the testimony as presently proffered is sufficient to address the concerns of Mr. Doyle and Mr. Walsh." (Emphasis added.)

JUDGE MILLER: "Well, we don't agree, because every time they try to cross-examine -- as I say, it's a moving target. We don't think that's fair to the parties, to the public or to the Board.

"So I'm afraid we'll have to rule against you. We're not throwing it out. We're just leaving it there. We would hope that you would get in a position sooner or later -- whatever the Staff is able to do -- but to get your written rebuttal testimony where full consideration is given, these witnesses are susceptible to cross-examination on whatever codes or whatever editions they were relying on and not have this kind of cross-examination."

. . . and⁶⁵:

MR. MIZUNO: "...we felt that the testimony of Mr. Tapia and Dr. Chen, together with the Applicants' rebuttal testimony, would clearly address the issues raised by Mr. Walsh and Mr. Doyle." (Emphasis added.)

MS. ELLIS: "Mr. Chairman, perhaps I missed something. It was my understanding that the Staff had not had a chance to fully evaluate Mr. Doyle's testimony; is that correct?"

JUDGE MILLER: "That's what we were told."

MR. MIZUNO: "That is correct."

JUDGE MILLER: "We were told that by Counsel. We were told by witnesses.

. . . and⁶⁶:

JUDGE COLE: "If the Staff hasn't completed its evaluation and cannot

⁶⁵ Tr. 5412/8-20.

⁶⁶ Tr. 114/5 on.

render any conclusions concerning that, is it your opinion that the Board has sufficient information in front of it to make a decision?...I'm referring to the allegations that are made."

MR. MIZUNO: "I think that there's sufficient information that at this moment, assuming that the testimony of both the Staff and the Applicants is admitted, that the Board can make findings regarding the allegations by Mr. Walsh and Mr. Doyle concerning the preliminary design of the piping, pipe hangers and --"

JUDGE COLE: "But the Staff is making no conclusions as to the end result?"

MR. MIZUNO: "No, the Staff cannot make any conclusions. The important thing is the final as-built configuration of the plant.

"That is what is going to be there at the plant, and the Staff will review that configuration to determine whether it is safe or not, and that is what the Staff cannot do right now."

JUDGE COLE: "Don't we have to make that same determination now?...If not, what determination do we have to make?"

MR. MIZUNO: "I believe that the determination that the Board would have to make in this proceeding is that there are sufficient guarantees that if there are any design problems raised by Mr. Walsh or Mr. Doyle that whether they are true or not, that the Staff will be able to -- well, first, that the Applicants have a sufficient procedure for detecting them and correcting them; and, also, that there is a sufficient guarantee or there are sufficient procedures --"

JUDGE MILLER: "Well, what are the guarantees? You've used the term twice, and I'd like to know precisely what you mean. 'Sufficient guarantees?'"

MR. MIZUNO: "A reasonable assurance that the Staff will in fact do what it says it's going to do in its testimony; i.e., review the Applicants' design verification program, and second of all, do this confirmatory analysis, a supplementary confirmatory analysis." (Emphases added.)

JUDGE MILLER: "Which the Staff hasn't yet done...And can't really do it at the present time."

MR. MIZUNO: "Yes, that is correct."

. . . and finally⁶⁷:

MR. BURWELL (NRC STAFF): "...The Staff estimates that December '83 but for the purposes of our scheduling of a review schedule, we used the Applicants' fuel load estimates --"

JUDGE MILLER: "I see. The Staff really believes now it is more likely to be December rather than June, 1983; is that right?...my question was a statement that the Staff apparently believes that it is more likely to

⁶⁷ Tr. 5426/8-23.

to be December of 1983 than June before the fuel loading is actually ready but that they are willing to accept an earlier date for their own scheduling purposes." (Emphasis added.)

MR. BURWELL: "Yes."

There are numerous questions raised by the preceding regarding the pre-filed rebuttal testimony of the Staff to the testimony of CASE witnesses Mark Walsh and Jack Doyle. Many of those questions have already been asked the the Licensing Board Judges.

The Staff was ready to close the record out before the allegations of Mark Walsh and Jack Doyle had been adequately evaluated or corrected (if necessary). The Staff was basing everything on the assumption that everyone, including the Licensing Board, should be willing to trust the Staff to do what it says it's going to do. And the Staff is perfectly willing to close out the record now, even though the Staff admittedly believes it is more likely to be December of 1983 than June before the fuel loading is actually ready.

In addition to the questions raised by the Licensing Board Judges, this raises other questions: Given the probable December 1983 (at the earliest) fuel loading date, why is the Staff in such a hurry to close out the record? It would appear that the Staff was relying in part on the Applicants' rebuttal testimony, in conjunction with the Staff's, to provide the basis for the Licensing Board's making findings on the Walsh/Doyle allegations. Did the Staff and the Applicants get together on preparing their testimony prior to filing it? Is that the normal practice in licensing hearings? Is it proper to do so?

And, finally, why should the Licensing Board, this Intervenor, or the public trust the Staff to do what it says it's going to do in this regard? What is their in the record of the Comanche Peak operating license hearings to support such trust? CASE submits that there is nothing in the record to so indicate and much in the record which indicates the contrary. If the

hearings process is to have any real meaning, the NRC Staff should not be treated as a "super-Party" -- it should have to prove its case just as the Applicants or the Intervenor should. It should not be allowed to rely on gut feelings or bestowed blind trust.

It may at first appear that the preceding is a little off the subject at hand. However, on closer analysis, it can be seen that these issues are at the very heart of the NRC's inability to adequately investigate allegations of whistleblowers. Given the manner in which the program of the NRC is conducted and the attitude of the NRC personnel conducting that program -- which includes the investigation of allegations by whistleblowers -- what assurance is there that allegations will be investigated with the skeptical, unbiased, probing eye of the skilled investigator? CASE submits that there is no such assurance, as demonstrated by the preceding -- and by the following.

The Staff stated that its position is based on its inspection and investigative findings⁶⁸. Thus, the key to the Staff's position in these proceedings is inexorably intertwined with its past record of investigations of allegations by whistleblowers. Let's look at that record.

Regarding the Investigation (I&E) Reports, it should be noted that the NRC Staff had not planned to introduce into evidence a single I&E Report. It was not until Intervenor CASE sought to introduce several of the I&E Reports into evidence that the Staff decided that it should be the party to introduce the I&E Reports, and the Staff exhibits were admitted into evidence and CASE's exhibits were deleted.

⁶⁸ Tr. 1515/16-20.

In the June hearings⁶⁹:

MR. JORDAN (FOR CASE)⁷⁰: "We were told by the Staff on May 28th that they would have no exhibits -- I'm sorry. They would not put any I&E reports into the record..." (Emphasis added.)

MS. ROTHSCHILD (FOR NRC STAFF): "Mr. Chairman, the Staff did not intend to introduce as exhibits the numerous I&E reports and letters that are referenced in its testimony, because of sheer volume.

"And we feel that our testimony was self-contained without those documents. However -- and we did tell -- he is correct -- we did tell Mrs. Ellis that we did not intend to introduce all of those documents as exhibits.

"However, since Mrs. -- since CASE has chosen to introduce some of the I&E Reports relating to a particular findings, we felt that the record would be incomplete without the other I&E Reports and related documents that are --" (Emphases added.)

. . . and in July⁷¹:

MS. ELLIS (FOR CASE): "As far as the I&E reports, the Inspection and Enforcement reports, we feel very strongly -- in fact, we felt so strongly that we spent some \$5000 or so on copying I&E reports before we knew the Staff was going to present them into evidence.

"We think it's vital that the I&E reports be presented into evidence in these proceedings."

MS. ROTHSCHILD (FOR NRC STAFF): "Mr. Chairman, I believe the -- The Staff had prepared rather lengthy testimony for the May hearing, and it did not want to burden the record with all the inspection documents, which in and of themselves, the probative value may not be evident.

"So for that reason, the Staff would not really offer documents without witnesses, so we had the inspectors who prepared the reports and who had first-hand knowledge to provide that testimony.

"When at the May hearing, some of the inspection reports were introduced, but not all of the documents related to that inspection report, it became obvious to the Staff that the record might be incomplete without all of those documents.

"And also, for the convenience of the Board and the parties, we felt

⁶⁹ Tr. 1341/16-18; 1342/11.

⁷⁰ In the June hearings only, CASE also had an attorney working with us.

⁷¹ Tr. 3026/6 on.

that it was better to provide as exhibits all of the Inspection and Enforcement reports that we mentioned in our testimony." (Emphasis added.)

"...And while CASE may have already copied some of them, it's obvious that the Staff was responsible for that testimony, and as the party who prepared the documents, is the appropriate party to introduce them...

"...Now I don't know what question remains...what the problem remaining is with respect to the NRC documents which she has included in her exhibit list."

"...What you're saying then, you are concerned about the documents that are not in evidence?"

MS. ELLIS: "Yes."

MS. ROTHSCHILD: "Well, with respect to those documents, as the Staff stated in its letter to Ms. Ellis, she has made no showing of what the relevancy of those documents is.

"I mean we have included every inspection and investigation report that was mentioned in our testimony. We feel our testimony is complete, at least with respect to the issues raised at the time it was written and also at the time received." (Emphasis added.)

MS. ELLIS: "...One of the problems that we had in reading through the Staff's testimony was that we had the feeling that if the Board relied just on the testimony, they could not help but come to the conclusion that very little had ever gone wrong at the plant, and whatever few minor little things had happened were all fine and dandy now.

"I did not feel that the record should be left with only that."

We call the Appeal Board's attention to the following I&E Reports of investigations made of allegations (6 out of 7 would not be in evidence in these proceedings but for CASE, and the Applicants introduced the 7th):

50-445/79-09, 50-446/79-09 (Staff Exhibit 63)
50-445/79-11, 50-446/79-11 (Staff Exhibit 64)
50-445/79-15, 50-446/79-15 (Staff Exhibit 120)
50-445/79-22, 50-446/79-21 (Staff Exhibit 121)
50-445/79-26, 50-446/79-24 (CASE Exhibit 253)
50-445/80-02, 50-446/80-02 (Staff Exhibit 122)
50-445/81-04, 50-446/81-04 (Staff Exhibit 149)

We will not take a great deal of time in discussing these reports; the documents speak for themselves. Instead, we will briefly summarize some of the findings regarding the various allegations:

- 79-09: Allegation 1 - concrete aggregate tests falsified - "cannot be refuted" but "would not have impacted on the quality of the concrete" anyway. Wording is interesting; doesn't say "was substantiated" but "cannot be refuted." Was the purpose of the investigation to refute this allegation?
- Allegation 2 - equipment used to run aggregate tests had not been used for 3 months - "cannot be substantiated." Doesn't say it was refuted either.
- Allegation 3 - shortcuts were taken on tests involving sizing of aggregate and its moisture content - "neither substantiated nor refuted" but doesn't really matter anyway since "the tests in question were of a monitoring nature and not material acceptance tests."
- Allegation 4 - truck drivers added excess water to concrete in transit from the batch plant. "This matter was the subject of an IE citation...IE Inspection Report 75-10...allegation, relative to safety related structure(s), cannot be substantiated."
- Allegation 5 - "flunked" concrete for-Turbine Generator Building was placed anyway; B&R made it difficult to do concrete tests and sometimes small pours were completed before QC inspectors arrived to do tests. "neither substantiated nor refuted;" "Although the falsification of test records on the part of individual 'C' may have occurred, no impact on the safety of the structures can be identified."
- Allegation 6 - "Three different persons (unidentified) allege that, during the placement of 6,600 cubic yards of concrete for the Unit 1 Containment Building foundation on February 21, 1976, some concrete was placed without testing." "This allegation was refuted. The base mat concrete placement was properly batched and adequately tested. Inspection of the base mat was included in IE Inspection Reports...76-04...76-06..."
If this allegation were true, could it have led to the crack in the base mat referred to in Applicants' NCR C650⁷²? Comments of Interviews with various individuals in this report are also interesting (pages 19 and 20). "Investigation Effort" (page 20) does not mention the fact that the original concrete pour card for Pour 101-2812-001 was lost⁷³.

⁷² CASE Exhibits 8, 9, 10, 11, 12.

⁷³ See CASE Exhibit 13.

79-09 (continued):

Allegation 6 - See also discussions in previous CASE pleadings (continued) regarding the crack in the base mat⁷⁴.

CASE could continue with its analysis of these I&E Reports at length. However, due to the press of time, suffice it to say that a thorough review of the I&E Reports regarding the investigation of allegations raises many questions about the adequacy of the investigation, the investigators' inability oftentimes to either substantiate or refute the allegations, the depth of the investigation, the apparent tendency to acknowledge that an allegation has been substantiated but doesn't really matter anyway. The testimony which has been presented in these proceedings regarding known details of the NRC's investigation of allegations by whistleblowers, coupled with the questions raised by a close study of other investigation reports referenced above, calls into question the entire Region IV inspection and investigation program.

This, in turn, calls into question the position of the Staff in these proceedings, since it is based on the Staff's inspection and investigative findings⁷⁵.

In light of the preceding, CASE finds little to inspire confidence in the findings and conclusions of any of the NRC's I&E Reports and investigative reports.

⁷⁴ See especially CASE's 6/2/82 Response to Applicants' Motion for Summary Disposition of CASE's Contention 5, pages 31-37; CASE's 10/18/82 Response to Board's Directive Regarding CASE Exhibits, pages 13 and 14, re: CASE Exhibit 253; pages 27 and 28, re: CASE Exhibits 529, 530, 533; pages 32 and 33, re: CASE Exhibit 479; page 34, re: CASE Exhibit 534, and note.

⁷⁵ Tr. 1515/16-20.

(6) NRC Region IV investigation track record has not been good.

Obviously, the matter at hand in this and related pleadings transcends the Comanche Peak operating license hearings. It is therefore appropriate to include in this Brief other pertinent information bearing on this issue.

The South Texas Nuclear Project. There were numerous allegations about lack of quality control, intimidation of quality control inspectors, cover-ups, etc., at the South Texas Nuclear Project. The Region IV office investigated those allegations and found no really major problems. It was not until investigators were brought in from outside the Region IV office that investigations revealed that many of the allegations were indeed true, resulting in an order to show cause which threatened to suspend all safety-related construction and a fine to the utility of \$100,000. (See South Texas Nuclear Project hearings, CLI80-32.)

The compromising of the Hayward-Tyler Pump investigation by the Region IV office is already a matter of record.

(7) A problem exists at the highest levels of the NRC regarding confidentiality.

On November 24, 1982, the Assistant Director for Licensing, Division of Licensing, ONRR, NRC, Washington, D. C., issued a Board Notification - Alleged Design Deficiency (Board Notification No. 82-105)⁷⁶. Since it appeared that some of the allegations made in that document might have a bearing on similar allegations made about Comanche Peak⁷⁷, CASE decided to contact the author of the allegations, William Van Meter. When we were finally able to contact him (after about two weeks), he was surprised to find that a Board Notification had been sent out which included his name and address.

If ever there was an instance where somebody obviously wanted confidentiality, this was it!⁷⁸ But Mr. Van Meter stated to the writer that he had not been contacted by the NRC asking if he would waive his confidentiality.

The questions raised by this alarming breach of the NRC's own principles of confidentiality are numerous and obvious. We hope someone answers them.

⁷⁶ See CASE Attachment 12 hereto.

⁷⁷ On 11/18/82, CASE Board Member Kathy Welch attended a meeting in Bethesda, Md., between TUGCO and the NRC to Discuss Applicants' Plans for An Independent Design Verification Program; Attachment 13 is a copy of CASE's comments.

⁷⁸ See CASE Attachment 12, page 4, above the address, in the subject of the letter and the statement immediately following, which states: "The information contained herein is furnished to the United States Nuclear Regulatory Commission (NRC) under 10 CFR 21 as Confidential Information and is marked as such. This information may not be disclosed without the written consent of William Van Meter; but the information may be used by the NRC, as a source, for obtaining information under their own powers."

IN CONCLUSION

As demonstrated in this Brief, the NRC Staff's Exception 4 cannot be valid, since no harm can possibly come to an ability that does not exist in any meaningful degree.

Further, the evidence leads to the ultimate conclusion that the actions and attitude of the NRC itself regarding investigations of allegations by "whistleblowers" has been the primary contributing factor responsible for the current lack of the NRC's ability to adequately and effectively investigate allegations of applicant and licensee misconduct.

Due to the press of time, CASE has not responded in detail to the other Exceptions of the NRC Staff. However, we urge that the Appeal Board take into consideration in its decision the following:

The Atomic Safety and Licensing Board's August 4, 1982, Order to Show Cause and its September 30, 1982, Order Denying Reconsideration -- It is CASE's opinion that the Board has articulated the background of this matter very well and very accurately. We fully support the Board's analyses of the situation, and urge that the Appeal Board consider the pleadings in that light.

CASE's September 3, 1982, answer to the Staff's response to the Board's Show Cause Order, which details our position regarding many of the matters at issue.

The issues raised in this pleading demonstrate that there is an additional urgently compelling problem which has not yet been adequately addressed -- the credibility of the NRC's entire program and investigative capability. CASE believes that the issues cannot be separated but are instead inexorably intertwined. We urge that the Appeal Board consider them in that context.

Respectfully submitted,



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CASE EXHIBIT 738



In the Matter of

- CHARLES A. ATCHISON
Complainant

v.

EROWN AND ROOT, INC.
Respondent

CASE NO. 82-ERA-9

Kenneth J. Mighell, Esq.
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For the Complainant

Peter R. McClain, Esq.
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For the Respondent

Before: ELLIN M. O'SHEA
Administrative Law Judge

RECOMMENDED DECISION

Statement of the Case

This is a proceeding under § 210 of the Energy Reorganization Act of 1974, as amended (42 U.S.C. §5851), hereafter called the Act. The Act (42 U.S.C. §5851(a)) prohibits a Nuclear Regulatory Commission (NRC) licensee from discharging or discriminating against an employee who has commenced a proceeding to carry out the purposes of the Act. The Act is implemented by regulations designed to protect so-called "whistle-blower" employees from retaliatory or discriminatory actions by their employers (at 29 C.F.R. Part 24). An employee who believes that he or she has been discriminated against in violation of that section may file a complaint within 30 days after the violation occurs.

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The complainant on April 16, 1982 filed a complaint under the Act and regulations with the Secretary of Labor. Following an investigation the Area Director of the Department's Employment Standards Administration issued a May 14, 1982 determination that complainant was a protected employee engaging in a protected activity within the Act's ambit and that discrimination prohibited by the Act was a factor in the actions of which he complained, warranting the Director's notice to respondent to abate their violation of the Act and provide specified appropriate relief to complainant, including his reinstatement and payment of back wages and expenses incurred because of his termination and unemployment.

Respondent timely appealed this determination, as a result of which by July 8, 1982 notice, this matter was scheduled for formal hearing held in Dallas, Texas on August 19, 1982, August 20, 1982 and August 21, 1982. The parties were both represented by counsel at hearing, and at counsel's joint request an opportunity to submit written briefs was afforded. The record was closed on October 6, 1982, with the receipt of briefs.

Hereby admitted into the record is complainant's counsel's September 1, 1982 letter, submitted in accord with my instructions at trial, which also encloses an identifying exhibit list of the Claimant's 26 Exhibits admitted at trial, as well as an identification list of the contents of Claimant's Exhibit 26, the Department of Labor file. Counsel's fee petition, included with his September 1, 1982 letter, is admitted.

An identifying description of the contents of respondent's three volumes of Exhibits conditionally admitted at trial, then marked and identified as Respondent's Volumes A, B, and C, was received with respondent's counsel's September 1, 1982 letter. It, and counsel's September 1, 1982 letter are hereby entered into the record. Given complainant's counsel's September 1, 1982 lack of objection, all of respondent's exhibits are finally admitted into the record. Respondent's counsel's September 22, 1982 letter with his enclosed motion to correct the transcript is admitted, and this motion is granted. Complainant's counsel has not objected to this motion since service; most of the changes are minor spelling corrections, the remainder consistent with the sense of similar testimony, and the page 452 correction is in accord with this witness' omitted response.

To the extent possible, for ease and clarity in review of a voluminous and unwieldy record, this decision's references to the evidence will attempt to conform to respondent's counsel's method of reference described in footnote one of his post-trial brief.

Both parties having been afforded full opportunity to be heard and to present evidence and arguments on the issues, this

recommended decision, and the findings of fact and conclusions reflected below, are based on the entire record of the proceedings, and on consideration of their briefs.

Complainant's Credibility

In reaching the following findings of fact and weighing the credibility of the witnesses' testimony, the fact that complainant lied on his application for Brown and Root employment when he stated he received an associate's degree from Tarrant County Junior College has been carefully considered. In this regard, Brown and Root was constructively aware of the complainant's false statements as to his educational achievements no later than sometime in the summer of 1980, when they received such advice in response to their apparent routine inquiry (NCR Exs. 134, 137; NCR 3199-3469.) However, no action in accordance with their standard advice to potential employee job applicants that any misrepresentation of application facts may be a cause for dismissal was taken at any time prior to the April 12, 1982 termination at issue. Apparently this was because this filed reply (NCR Ex. 134) indicating complainant's false statements, was overlooked or unread on receipt. It is clear that neither Mr. Purdy nor Mr. Brandt was aware of any of the claimant's false representations as to his educational achievements until they came to light in connection with the July 1982 Nuclear Regulatory Commission (NRC) hearings.

However, Brown and Root's inaction does not alter the fact of complainant's initial misrepresentation; and further, the record establishes complainant also physically altered a copy of the Tarrant County Junior College reply to Brown and Root to reflect his achievement of a degree and then used this altered form as part of his January 1982 application for TUGCO employment. These facts as to the complainant's document alteration were elicited from him in connection with post termination activities, and his testimony before the NRC (NCR 3199-3469), and were also unknown to Mr. Brandt and Mr. Purdy at his April 12, 1982 termination.

Careful consideration has been given to these misrepresentations, not under oath, including the circumstances thereof; as well as complainant's misstatements at points under oath. (NCR 3199, at 3277: 15-18, NCR Ex. 200). While they are not, in my opinion, weighing the entire record to decide the issues before me, determinative of complainant's total lack of credibility, these serious, unbelievably explained actions, of necessity, are of considerable significance in assessing his credibility vis-a-vis respondent's witness' where their testimony conflicts.

However, complainant's credibility does not determine his establishment of a prima facie case of discharge for a protected activity; the internal Brown and Root written documents do. In

reaching factual findings where attestations conflict I have looked to, and particularly weighed the other evidence surrounding the events in question to judge the actuality of the situation presented, giving weight to complainant's representations only when corroborated by other evidence of record over which he had no control, including reasonable inferences therefrom.

The findings reached below are made because the other surrounding evidence in this case persuades of the issue-determinative averments of one who misrepresented; lied; and altered a college record. My evaluation of the respondent's witnesses' testimony itself, and when analyzed with their pre April 13, 1982 records, and their pre and post April 12, 1982 statements, convinces that their proffered explanation of the non-protected reasons for complainant's termination is not reasonable nor credible and is pretextual. The question of complainant's credibility plays little, if any, part in this finding and conclusion.

Complainant's Background with Brown and Root and His Firing

Brown and Root, the respondent, hereinafter B&R, is the constructor of the Comanche Peak Steam Electric (CPSE) Nuclear Project at Glen Rose, Texas for Texas Utilities Generating Company, herein (TUGCO). Complainant was employed by Brown and Root at the Comanche Peak Nuclear Project on February 28, 1979, and at all times since, and until his April 12, 1982 termination was Brown and Root's employee. He was hired as a QA/QC¹/ document specialist. As such he was responsible for insuring that all required documentation was completed and accurate in accordance with applicable procedures and standards. He held this job until the fall of 1979 when he became a Quality Assurance Engineering Specialist where as such he was involved in reviewing reports of nonconformance against the appropriate applicable standards and requirements; and which ultimately resulted in his being assigned the job title of Project Training Coordinator, writing, instructing and teaching courses to certify personnel of Brown and Root as qualified to perform a variety of inspection functions involved in documentation/inspection for compliance. He also, as of 1981, was certified as an auditor and was involved in vendor audits.

He had held his project training coordinator position for more than a year as of late 1981 when, as a result of a management reorganization at Brown and Root, affecting a number of respondent's employees, he was transferred, in compliance with his specific request and desires, and apparently on the recommendation of Jim Hawkins, a prior site QA manager, to a field job as a quality control inspector on the project. Organizationally in this field position he was assigned to what is known within Brown and Root as

¹/ Quality Assurance/Quality Control. Hereinafter Quality Control will be referred to as QC, as in QC inspector.

the ASME^{2/} side of the project, the mechanical QC inspection staff, where he worked under the immediate supervision of Richard D. Ice, the QC ASME Mechanical Equipment Supervisor. His primary QC inspector job function responsibility from the time of his 1981 transfer to the field and during the organizational changes of his position thereafter, until he was terminated April 12, 1982, was inspection of pipe whip restraints.

As complainant's supervisor from December 1981 until late January 1982, Mr. Ice found complainant's performance as a quality control inspector excellent, (NRC Ex 5A) and he testified he would have willingly accepted complainant back into his group, if he had any say in the matter, despite the one questioning incident reflected at TR 275-277 where complainant was concerned because the certification paper-work for the job he was being asked to perform was not completed. Mr. Ice's testimony as to complainant's field work performance is not dissimilar to the prior good work performance evaluations he received from earlier Brown and Root rating supervisor, albeit they assessed him in the different job titles he held prior to his transfer to the field (Exhibits within Plaintiff's Exhibits 3-15; within Plaintiff's Ex. 26).

Sometime in late January 1982 another management realignment of project site responsibilities took place which affected complainant. A decision was made to transfer several employees of the Brown and Root ASME QC inspection group, including complainant, to a non-ASME mechanical inspection group organizationally under TUGCO, in connection with a transfer of inspection of pipe whip restraints responsibilities from Brown and Root to TUGCO.

Mr. Gordon Purdy is the Brown and Root Site QA Manager at Comanche Peak, and at all times since his assignment to this position in late 1981, has organizationally been complainant's ultimate supervisor, many layers removed. As such he was the responsible Brown and Root official who made the April 12, 1982 decision to fire the complainant, and it was Mr. Purdy who personally orally advised him of this decision on April 12, 1982. It would appear that the Brown and Root management reorganization of late 1981 was connected with Purdy's transfer to the project from a corporate entity in Houston. It was Mr. Purdy who was responsible for advising Mr. Brandt, the Ebasco Services employee of TUGCO's subcontractor, of just which Brown and Root employees would be transferred to Brandt's group in connection with the 1982 transfer of pipe whip restraints inspection responsibilities from Brown and Root to TUGCO.

Mr. Brandt was the project's non-ASME Mechanical/Civil QA/QC Supervisor. When advised by Purdy that Atchison was being transferred to his group, Mr. Brandt objected. He told Purdy he did

^{2/} American Society of Mechanical Engineers

not want complainant in his group. While complainant had never previously worked for, or under Brandt; or for anyone who reported to Brandt who would have personal knowledge of complainant's work performance, or job habits, Mr. Brandt had formed an opinion, for reasons stated below, that complainant was unqualified as a, and to test welders, and spent his time as training coordinator job seeking for, and "stirring up" the project's quality control inspectors. Brandt had previously conveyed this opinion of Atchison to Purdy prior to complainant's 1981 transfer to the field. Purdy nevertheless advised Brandt that Atchison would be transferred to his group.

As a result of this transfer, sometime in February 1982 complainant organizationally came under the direct and immediate supervision of Randall D. Smith, the non-ASME Mechanical QC Lead Supervisor, a Brown and Root employee. Between Brandt and Smith, Smith reported to a Mr. Foote, an Ebasco employee, (not qualified as a welder) who reported to Brandt.

On April 2, 1982 Smith evaluated complainant's job performance and job habits, in connection with the promotion from QC Inspector B to QC Inspector A that Smith then recommended to Brandt, through Foote, at complainant's request, a request apparently generated by Purdy's February 12, 1982 memorandum as to salary adjustments for QC inspectors and complainant's achievement of the certification necessary to qualify for the promotion it described. (Pt Exhibit D, PX Exs. 18, 19). Complainant was outstanding to exceptional in five of the six rated items, average in only one - leadership potential. The quality as well as quantity of his work was, in Smith's judgment, outstanding. When called upon to initiate and process the paperwork to effectuate Purdy's April 12, 1982 termination decision Smith had to again rate complainant's job performance. He reiterated it was excellent. (PX Ex. 24).

According to what Smith was told by Purdy April 12, 1982 complainant was being fired because Brandt told Purdy his services were no longer required and Purdy had no place to assign Atchison on the ASME Staff. The counseling and guidance report which Purdy signed in connection with complainant's termination stated his termination was recommended because of Atchison's "lack of ability to perform assigned tasks and follow supervisory instructions" in his work performance (PX Ex. 22); an obvious reflection of Brandt's April 12, 1982 written advice to Purdy that complainant's services were no longer required by him because while Atchison was assigned the responsibility for inspection of pipe whip restraints installation he

"has demonstrated a lack of ability in performing assigned task, in that (emphasis supplied) he refuses to limit his scope of responsibility to pipe whip restraints, and insists on getting involved with other areas outside his scope." (PX. Ex. 23).

Complainant in commenting as requested on Brown and Root's April 12, 1982 internal counseling report, above Purdy's signature that day and assumedly prior to such signature (TR 711-714), stated that his termination in fact resulted from his reporting of unsatisfactory, vendor-supplied^{3/} pipe whip restraints being installed on this nuclear project, and a personal conflict with Mr. Brandt and Mr. Foote over his reporting this noncompliance (PX Ex. 22).

Brown and Root's Trial Contentions As To Termination

Brandt's, Purdy's and Brown and Root's post April 12, 1982 statements as to the reasons for Atchison's firing vary from and are inconsistent with those reflected in their April 12, 1982 internal communication, the Brown and Root termination forms that day and some of Purdy's April 12, 1982 statements to Atchison and Smith. Brandt's later statements indicate that in fact the complainant's firing resulted from a combination of Brandt's perceptions and evaluations of Atchison's job performance inadequacies and mistakes personally observed on two occasions in March 1982, one in connection with the nonconformance report reported and logged in complainant's name, #M-82-00296 (hereinafter NCR 296); and TUGO's and Brown and Root's belief that complainant's April 12, 1982 nonconformance report #M-82-00361 (hereinafter NCR #361) was an attempt to leverage or secure a promotion through the attached "pow wow" note. However, Purdy attested complainant was fired because of the circumstances attendant on his April 12, 1982 filing of NCR #361, including Purdy's belief complainant's "pow wow" note to Smith was an attempt to use a nonconformance report to secure a promotion and Purdy's unsuccessful efforts to place complainant in any other Brown and Root job after Brandt's PX Exhibit 23 advice.

APPLICABLE LAW - ISSUE FOR DECISION

The respondent's position is that the complainant has failed to state a proper cause of action for which relief may be granted under § 210 of the Act, 42 U.S.C. 5851. This section provides:

"Sec. 210(a) No employer, including a Commission licensee, an applicant for a Commission license, or a contractor or a subcontractor of a Commission licensee or applicant, may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee) -

(1) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this Act or the Atomic Energy Act of

^{3/} Vendor referred to was CB&I, Chicago Bridge and Iron.

1954, as amended, or a proceeding for the administration or enforcement of any requirement imposed under this Act or the Atomic Energy Act of 1954, as amended;

(2) testified or is about to testify in any such proceeding or;

(3) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other manner in such a proceeding or in any other action to carry out the purposes of this Act or the Atomic Energy Act of 1954, as amended."

Complainant asserts he was discharged by respondent April 12, 1982 because of, and following his actions to report construction deficiencies, and to give information as to quality control violations under this Act or the Atomic Energy Act of 1954, i.e., because he filed NCR #296 and NCR #361. In effect, the quality control procedure under which he was functioning when these NCRs were averredly filed by him, (10 C.F.R. Part 50, § 50.34(a)(7), Appendix B), and in, and for, the performance of which he alleges he was fired, in my opinion in themselves constitute an action or a proceeding for the administration or enforcement of the Acts' requirements; and further, in such performance, giving rise to the averred discriminatory firing at issue, the complainant was carrying out the Acts' purposes. Thus, in my opinion, and it is so found, the complainant's activities giving rise to his April 12, 1982 firing, that is his averred filing of NCR #296 and his filing of NCR #361, were protected activities within this Act's meaning to which the protected activity provisions of §5851 apply.

I also find from Smith's testimony that in connection with his work on NCR #296 complainant mentioned he would, as he had in the past, go to the Nuclear Regulatory Commission with his unanswered concerns about a backfit program, knowledge as to which Smith conveyed to Foote. (TR 430-433). I also infer from the total circumstances presented in this record that he voiced these concerns to other inspecting personnel at the worksite. Nevertheless I do not believe in the circumstances here, where the filing of NCR #296 and NCR #361 themselves constitute protected activity under the Act, that complainant's stated intent to approach the Commission, or knowledge of this statement by Brandt and/or Purdy, determines whether complainant was engaged in a protected activity when fired.

Brandt and Purdy's testimony establish complainant's firing resulted from his filing NCR #361, and the circumstances surrounding and resulting from the complainant's filing of this report, a report which in and of itself was an action to carry out the Act's

purpose. The argument that the NCR itself did not precipitate and result in the complainant's firing, but that the "pow wow" note alone resulted in his firing, divorced from the NCR to which it was attached; and that the latter is an activity beyond the ambit of the Act's protection, is totally illogical and unconvincing. Reason dictates that the "pow wow" note is meaningless absent NCR #361.

Therefore the issue to be determined here is whether Brown and Root violated the employee protection provisions of the Act, 42 U.S.C. §5851, by discharging Atchison for complaining about and reporting the construction defects and quality control deficiencies in the nuclear plant workplace, for his averred filing of NCR #296, and his April 12, 1982 filing of NCR #361.

I am of the opinion that under the case law applicable to this issue under the Act; Mt. Healthy City School District Board of Education v. Doyle, 429 U.S. 274; Texas Department of Community Affairs v. Burdine, 101 S.Ct. 1089; TRW, Inc. v. NLRB, 654 F.2d 307 and Consolidated Edison Company of New York, Inc. v. Donovan, Dkt. No. 81-4215, 2nd Circuit Court of Appeals, 3/8/82; this record must be analyzed and findings made in accord with the following principles. The complainant must make a prima facie showing sufficient to support an inference that protected conduct was a "motivating factor" in the employer's decision to terminate him. Having so established, which as indicated below I find from this record, the employer must articulate a legitimate business reason for the action taken against complainant, demonstrate that the same action would have taken place even in the absence of the protected conduct; and the complainant must then persuade by substantial evidence that the protected activity was the moving cause for the dismissal or other complained of discriminatory action under §5851.

With the background facts noted above, and this concept of the legal framework against which the issue before me is to be decided, all the evidence gathered and reflected in this record, including that not recited below, is analyzed to reach specific findings of fact and conclusions determinative of the issue of whether complainant was discharged for engaging in activity protected by the Act.

FINDINGS OF FACT

Non Conformance Reports (NCRs) Procedures

The record establishes that in September 1980, complainant advised the NRC of welding deficiencies in vendor manufactured (CB&I) pipe moment restraints which on NRC investigation resulted in their issuance of a Notice of Violation. Complainant's averment that these defects, identified by a Brown and Root QC inspector at the CB&I vendor site, were waived for shipment to the Commanche Peak nuclear plant by Brown and Root personnel was not substantiated by the NRC's 1980 investigation. (NRC Ex. 199).

In January 1982, Atchison discussed his identification of rejectable weld defects in a number of CB&I vendor-supplied pipe whip restraints with his then supervisor, Ice. He was advised that similar problems with such items having been identified on prior occasions, these vendor-supplied restraints were not subject to further inspection by site QC personnel, having been inspected by the vendor, the TUGCO vendor release inspection personnel, and the CPSES receiving QA inspection personnel.

Ice verbally discussed Atchison's submission of an NCR^{4/} Atchison had drafted regarding these restraints but told him he did not believe it would be accepted because of the previous acceptable inspections and the response Ice had received from upper level supervision to the same question he had posed on these CB&I vendor supplied pipe whip restraints. Complainant did not take the action necessary to commit this noted nonconformance to the system, i.e., secure an NCR number from the appropriate NCR Coordinator. (NCR ZX 199)

The record establishes that under the procedures in effect at this project, it is the issuance of this NCR number by the NCR Coordinator which commits the NCR to the system. Once an NCR number is taken or assigned the deficiency or nonconformance logged has to be acted on to disposition, or voided by management, with a record maintained solely because the NCR number was or is taken or assigned. There was no way in which complainant, or any employee who took or was assigned an NCR number in similar circumstances could retract or withdraw the NCR so issued, that is, issued in the sense of the number being issued.

There is a written procedure to be followed for the documentation, handling and disposition of NCRs. (Respondent's Ex.Z-2). It has been carefully considered in conjunction with the witnesses' testimony as well as the testimony of the NRC Staff Members, Taylor and Driskill, at the July 1982 NRC hearings, as to how, in practice at this project site, the NCRs were in fact handled in accord with these procedures, including the reworking and rewriting of NCR #296 to comply with Brandt's directions after this NCR was committed to the system upon NCR number issuance.

I do not find that the use of the words "issue" or "issuance" of NCRs at this project had any specialized, procedurally-directed meaning such that its use would convey to employees working within this system any impression other than that the NCR had been finally typed by the NCR coordinator, and was ready to proceed through the supervisory line of command to ultimate disposition or voiding. It is clear from this record that depending on the particular circumstances of the nonconformance item being questioned or identified, discussions of NCRs could and were had between the

^{4/} Nonconformance Report (Exhibit R-Z.2).

originator of the NCR (person in whose name NCR number logged) and his supervisor both prior to the assignment of an NCR number, as well as after the number was assigned or taken and while the draft NCR was being written.

Incident at Pressurizer Tank Room, Reactor Building 1, 822 level.

The complainant's specific responsibility was inspection of modification areas of pipe whip restraints, site modifications, or additions to, or installations of pipe whip restraints that could be vendor fabricated. The reporting by NCR of obvious defects, located outside Brown and Root's modification areas, using AWS D1.1 inspection criteria, was also within complainant's scope of job responsibility (PX. Ex. 21).

Sometime in March 1982, but prior to March 23, 1982 the complainant was performing his inspection testing, in an area where site welders had complained to him of bad vendor item welds they were seeing. He noted, about 18 inches to his right according his attestations, through paint, a number of defects he believed were rejectable under the standards to which he was inspect (AWS D1.1).^{5/} He drafted an NCR and advised Smith of his findings.

This incident provided the first occasion for Brandt to have any supervisory contact with Atchison's work activities. Brandt's concern, on viewing the problem raised by Atchison through Smith and Foote was the fact that the vendor defects Atchison visually noted were "at the closest 3 to 4 feet away from the weld he was suppose to inspect," (UEA, page 10) and the rejectable porosity Atchison noted was within acceptable limits.^{6/} Brandt told Foote that the porosity defects Atchison noted and mapped on his one page sketch were not unacceptable porosity defects, but as to the other welding defects noted by Atchison, Brandt could not make a judgment unless the paint was removed.

Analysis of the witnesses' attestations at trial as to what comments Brandt made following this inspection, at which Atchison was not present, referable to Atchison's work, differ. According to Brandt he casually and without emphasis and perhaps in Smith's hearing mentioned to Foote that Atchison was requiring excess preparation for his liquid penetrant testing. Atchison testified Smith conveyed to him that the vendor weld items he questioned were

5/ American Welding Standards.

6/ Brandt's testimony as to the specifics, however, at TR 535: 3-7 raises a question as to whether in fact "porosity" is what was noted by Atchison. Note the conditional statement as to porosity at TR 535: 21-23. Brandt did not have the draft NCR at that examination; he had only the one-page sketch to work from.

not nonconforming and he was outside the scope of his responsibility in his reporting these items, and this information was coming from Brandt. While it is clear Smith as a result of the circumstances of this incident, at this time conveyed to Atchison his concern about the porosity acceptance criteria he was using, it is also clear to me on an analysis of this record that through Smith's statements to him, which I infer came from upper management involved in this incident, i.e., Brandt and/or Foote, complainant was given to understand he was exceeding the scope of his inspector responsibilities in reporting what he believed were vendor weld defects, i.e., they were beyond his testing area, (PX. Ex. 26.14); and complainant then initiated his request for information as to his responsibilities in this regard.

I believe from the total information in the record as to the circumstances in connection with this incident that Atchison was, at some time during it, given to understand that over and above the porosity reading problems upper management found with his inspection, upper management also found that in noting vendor item defects he was exceeding the scope of his responsibility, which message triggered his request for written clarification of his responsibilities in this regard (PX. Ex 21, 21A). I also find that no information was conveyed to Atchison as to Brandt's casual comments as to his overpreparation for testing.

No further action was thereafter taken on the question of the non-porosity defects Atchison questioned about which Brandt could not make a judgment, absent paint removal.^{7/} Atchison apparently accepted his supervisors' judgment, advice and instructions as to this particular problem. He did not secure an NCR number for the possible deficiency, did not pursue the matter. The NCR drafted by Atchison was never logged into Respondent's NCR system until after the July 1982 NCR licensing hearings during which it was learned that Atchison's draft NCR on this problem was found at home by the non-ASME NCR Coordinator, somehow scooped into a Tupperware packet on her desk and carried home. (TR 538).

Brandt's judgment based on this incident that Atchison was not inspecting to acceptable porosity criteria and was overpreparing (polishing the welds), and his attestation that this first of two observed job performance deficiencies was the basis for complainant's firing, and not his protected activities in filing NCRs, has been viewed in the light most favorable to the respondent in determining whether he and Brown and Koot had a legitimate reason for firing complainant prior to his reporting NCR #296. According to Brandt's own attestations on this point at trial and at the UEA

^{7/} Counsel's October 4, 1982 representation at page 9 of his brief as to Brandt's post August 17, 1982 determination, in connection with NCR M-82-01236, that Atchison also accepted rejectable defects, is not in evidence.

hearing, he clearly did not. Further Brandt's testimony as to how off-handed and generalized his comments were to Foote after he descended from the scaffold in the tank room (TR 534-536) are indicative of the insignificance of his attested observations of Atchison's job performance deficiencies.

It is noted that this was the sole occasion for such job performance observation by Brandt, as Atchison's supervisor, prior to NCR #296. There were not, prior to NCR #296, "several" occasions which gave him opportunities to so observe after Atchison's assignment to his group, which unquestionably is the thrust of his written statement to the NRC. Further, if as he advised in PX. Ex. 26.15 he discussed these Atchison job deficiencies with Foote and Smith, that is not in accord with the picture presented by his testimony. However, weighing all the testimony as to what was said and conveyed between the parties and ultimately conveyed to Atchison, I am convinced that statements were conveyed to Atchison through Smith his supervisor indicating he was exceeding his responsibilities in noting vendor defects.

NCR Number 296

It is Brown and Root's contention that in fact this NCR originated with Brandt as a result of the defects being noted and brought to his attention by Brown and Root's Subcontract Administrator. It is their position that Atchison was merely the QC inspector assigned to perform the inspection and work necessary to document and write up this NCR. Brandt attested that during the course of his review of Atchison's work in connection with this NCR he, for the second time, noted defects in Atchison's work performance as a welding quality control inspector in that he overinspected: reported as unacceptable, porosity defects acceptable for the standards and criteria under which Atchison was to measure; and he took an unnecessary length of time to perform this inspection.

These job performance deficiencies of Atchison are posited by Brown and Root as among the reasons for Atchison's termination, in conjunction with their contention that by his "pow wow" note to Smith, Atchison was attempting to use NCR #361 to leverage a promotion, for which Purdy fired him. As noted above, none of these explanations for Atchison's April 12, 1982 termination was conveyed to Atchison or Smith when he was terminated on April 12, 1982; they are not reflected in the written termination reasons Brown and Root gave Atchison that day, and were first voiced in the post April 12, 1982 NRC/DOL investigation..

Given these inconsistencies, all of the evidence documentary and testimonial, has been carefully analyzed to reach factual determinations; and in evaluating the evidence, all of the factors by which the credibility of testimonial evidence is adjudged have been

most carefully considered, weighing the complainant's attestations against the other evidence and its inferences which I find corroborative of his version of the events.

NCR #296 dated March 23, 1982 is issued in complainant's name and reflects that this nonconformance was reported by complainant. To the extent that Brandt's testimony conflicts with Atchison's attestations that Atchison was solely responsible for the initiation of the actions which resulted in the issuance of NCR #296, to report the welding defects in the four CB&I vendor-supplied pipe whip restraints in the Reactor 2 lay down area, I credit Atchison's testimony which is corroborated by the manner of reporting the first NCR Brandt received and reviewed; the logging in Atchison's name, the thrust of Smith's testimony, the black markings Brandt described, and the unconvincingly explained delay in NCR number issuance if the defects were actually first found and reported and directed to be committed to the NRC system by Brandt following Hutchison's call. Further, given Brandt's opinion as to Atchison's competency as a welding inspector, and the sensitive nature of the question raised by the defects of NCR #296 (TR 440), I cannot believe that Brandt would have permitted Atchison's involvement in the defect reporting unless Atchison initiated the NCR.

The craft general foreman had brought these defects to Atchison's attention, since he would be responsible for inspecting the questionable items after installation. He asked complainant to look at the pipe whip restraints before installation because they thought a QC inspector would probably have a problem with them and told Atchison they would prefer to have the laid-down restraints inspected before they went through all the trouble of installing them and then had to take them back out again.

The Nuclear Regulatory Commission's July 7, 1982 Region IV investigation of NCR #296 resulted in a finding that the pipe whip restraints which were the subject of NCR #296 were deficient. Further the NRC's investigative report indicates that between February 10, 1982 and April 2, 1982, TUGCO's QA was experiencing increasing weld problems in the pipe whip restraints of their CB&I vendor, and with this vendor's QA/QC program. The deficiencies in these vendor-supplied pipe whip restraints, the subject matter of NCR #296, whether "the restraints arriving at the CPSES were capable of performing their intended function," would remain unresolved as of the July 7, 1982 investigative report, although evaluated not reportable under 10 C.F.R. Part 55(e), "until the NCR had an opportunity to review this program in detail." (NCR Exhibit 199).

Atchison marked the defects, consulted Smith who looked at them and a draft NCR was prepared by Atchison. Inferentially hold tags were applied (TR 426). After careful examination of the various statements, and testimony given by Atchison, Brandt and

Smith as to who first noted and reported the defects reflected on NCR #296, I not only am of the opinion, and find that the defects were initially reported by Atchison, but also find that when the subject matter of Atchison's NCR #296 was brought to Brandt's attention, the initial question raised was: "(h)ow did the inspector come to identify the defects". "They were concerned about how did he find them;" and that there was some questions raised as to whether Atchison in so reporting was inspecting outside his area of responsibility (TR 414-415).

After Brandt and Foote looked at the reported defects, Smith was advised to get several employees to work with him in detail mapping and documentation of NCR #296. The second draft NCR #296, the first with the detailed documentation, was the second occasion where Brandt, as Atchison's supervisor, had an opportunity to judge his job performance. However the record establishes that the mapping containing the excessive rejectable porosity readings was in fact the joint work effort of four inspectors. Brandt attested he nevertheless attributed all the excessive porosity readings to Atchison, based on his suspicions arising out of the 822 experience, and until trial his statements attributed the delay in getting NCR #296 finally released to Atchison. In fact, as reflected at trial, Brandt's actual concern with the excessive time involved was directed to all his involved subordinates, although not so reflected in his statements at NCR Exhibit 5A (G), PX 26.15, or at the unemployment compensation hearing.

A subsequent reinspection of the restraints was ordered by Brandt, from which Foote directed Smith to exclude Atchison, when it was ascertained that the inspection criteria under which all believed they were operating was found not to be that applicable to these particular items. While Brandt attested at the unemployment compensation hearing that Atchison, as well as all involved including himself, should have known the appropriate inspection criteria to use, and that the delay in getting NCR #296 documented more timely was a reflection of Atchison's job performance inadequacies, testimony at trial established that in fact Atchison checked with Smith as to the appropriate criteria to use, and Smith went to his supervisor to make sure he was right in his advice to Atchison, an action Smith wanted to make sure he was correct on "due to the nature of the nonconformance" (TR 427). Nevertheless, and despite the fact that the work assignment was the work of four employees, it is clear that until trial Brandt's statements as to Atchison's job inadequacies on NCR #296 reporting were skewed, and not fully reflective of the actual facts as they occurred.

While Smith testified that the majority of the excessive porosity readings on the mapped NCR #296 team effort report were

made by Atchison^{8/}, he also testified that such errors by Atchison were judgment errors which in his opinion did not, even considering complainant's prior 822 judgment error, warrant any change in his April 2, 1982 evaluation of the quality and quantity of Atchison's job performance as good. Of the same opinion on April 12, 1982 when Purdy fired complainant, Smith was upset by a firing he believed unjustified by Brandt's problems with Atchison's job performances in the 822 and NCR #296 incidents, and on April 13, 1982 he asked Brandt if complainant was fired for reporting the CB&I pipe whip restraints defects on NCR #296, and was advised no. The two occasions where as Atchison's upper level supervisor Brandt noted problems with Atchison's job performance, the 822 incident and NCR #296, would not, by Brandt's own testimony, warrant firing an inspector for incompetency; yet inconsistently, on April 13, 1982 he told Smith Atchison was incompetent.

Brandt testified at the complainant's unemployment compensation hearing that if he fired, or recommended firing, of a QC inspector for one mistake, he would have no QC inspectors on the job site. He testified here that his perceptions of complainant's mistakes or job inadequacies based on the two March 1982 occasions he had an opportunity to examine complainant's work, the only such occasions he had prior to his advice to Purdy he would no longer use him, were not in and of themselves sufficient to warrant a recommendation to fire Atchison. Thus it is clearly established that the respondent prior to April 12, 1982 and NCR #361 had no legitimate business reason for removing complainant from his job with Brandt's group, or for firing him, and that to do so would be treating complainant in a manner dissimilar to other comparable employees.

However, even prior to the incidents of April 12, 1982 and as of April 8, 1982, Brandt told Purdy he would no longer be needing Atchison's services, yet he did not then take action, as he could have through Brown and Root's Personnel Manager, to terminate him. (UEA 35-36). Purdy testified Brandt, prior to April 12, 1982, twice advised him in very general statements that he had problems with Atchison's job performance but Purdy, because of his high regard for Brandt's expertise, at no time asked for any details and accepted Brandt's evaluation of Atchison's poor performance at face value. Purdy, at that time, knew of the following incidents, the basis for Brandt's earlier objection to Purdy's assignment of complainant to his group.

Prior to Atchison's February 1982 assignment to Brandt's group he had had one personal dealing with Atchison as training coordinator. A welder in whom Brandt was interested failed a practical

8/ He also testified that he did not know who made all the excessive porosity readings; and Brandt testified he had problems accepting the rejectable porosity readings of the 25 year veteran inspector involved in the NCR #296 mapping. (UEA, pg 8-11).

examination which Brandt found incredible based on this welder's experience. Atchison had graded the failed applicant based on an answer key, signed and approved by Ragan, a supervisor above Atchison. According to Brandt "Atchison's rationale in explaining to me why things were acceptable and rejectable per the answer key . . . gave me occasion to question his qualification as a level II visual inspector . . ." although so certified by Brown and Root. Atchison conveyed this opinion to Purdy at the time. (TR 605-610). Then while functioning in a staff position for Mr. Tolson the site QA Supervisor of TUGCO, Brandt conveyed to Purdy "my observations and observations being made by other people, he was serving as Comanche Peak placement officer and was spending excessive amounts of time on the phone contacting other sites looking for jobs either for himself or other people;" and several inspection supervision personnel came to him as an ear for Mr. Tolson to tell him Atchison was creating "a little bit of a morale problem". . . he was "stirring the pot to the extent that they [sic] were trying to get them all upset and trying to find other locations of employment for them". (TR 605-606).

At the time Brandt conveyed these judgments to Purdy, Atchison was not Brandt's supervisor, had never been his supervisor, and Atchison was not under TUGCO's jurisdiction at the time. Whether Brandt conveyed to Purdy the basis on which he made these judgments as to Brandt's telephone and office conversations is unknown. The basis for Brandt's speculations as to Atchison's conversations and affect on site operating personnel, as described at trial, at a time when Atchison's supervisors were rating him well in his job performance, a job in which his communication skills strengths were noted, is so poorly founded; and his description of how he observed Atchison's activities while "passing down the hall," is so conjectural, that in conjunction with Brandt's advice to Purdy in 1982 that he did not want Atchison in his group, it is clear that his evaluation of Atchison was significantly colored by his adverse personal feelings.

Based on this record at all times during the period in which the events are being analyzed for a determination of the issue here, i.e., prior to April 13, 1982 and as of his April 12, 1982 decision to fire Atchison, Purdy was well aware of what can only be termed, in the circumstances presented at trial and in this record, of Brandt's conjecturally and speculatively founded prejudgment of Atchison's job incompetency prior to February 1982.

Incidents of April 12, 1982

On April 12, 1982 complainant reported another nonconformance condition at the jobsite. This condition was the subject of NCR

#361. This record establishes that at the time complainant left this handwritten NCR with Smith for processing, through Foote to Brandt, he had secured the NCR number from the appropriate NCR Coordinator, and this number was handwritten on his NCR.

Brandt's decision to turn Atchison's promotion request down was made prior to April 8, 1982, and while he then returned the request to Foote with his decision, the decision was not conveyed to Smith or complainant prior to his termination. Instead Foote took the promotion request to Purdy to see if he could do something to change Brandt's decision, but Purdy in effect told Foote the decision was up to Brandt. None of these facts was known to complainant. However he undoubtedly knew of Brandt's attitude toward him, and his promotion request, and had on April 12, 1982 requested permission to seek other site employment, which request was granted; as well as transfer out of Brandt's jurisdiction and back to Ice's group, a request Brandt granted but conditioned on Purdy's acceptance.

It is the handwritten NCR #361 and the "pow wow" note which precipitated, and ultimately resulted in the complainant's April 12, 1982 firing, according to the testimony of both Purdy and Brandt. The position of Brown and Root at trial was that complainant was terminated because of his job quality performance inadequacies known to Brandt, as well as his April 12, 1982 attempt to leverage a promotion^{9/} through inappropriate use of an NCR. Both these post April 12, 1982 stated reasons conflict with the statements and reasons Brandt and Purdy gave for his termination on April 12, 1982, PX 22, PX 23, the clear and plain meaning of which is that his lack of ability in performing assigned tasks and following supervisory instructions was demonstrated by his failure to limit the scope of his inspection responsibilities. To similar effect is respondent's PX 26.2 May 13, 1982 advice to the Department.

The facts as to NCR #361 are that on the day it was handwritten by complainant, the day he had the NCR number issued for it, and logged into the system, he left it on Randall Smith's desk because Smith was off that day. Attached was a 3x5 handwritten note, the "pow wow" note which forms the basis for respondent's contention he was using NCR #361 to leverage a promotion. This note read as follows:

"Randy,

TAKEN Not issued
yet.

^{9/} Post-trial, leverage of a transfer now also appears to ^{bc} argued.

Open to pow.wow.
on subject

Black or white

No grey AREA'S

Chuck"

(NCR EXHIBIT 135)

Notwithstanding respondent's witnesses' testimony, the record indicates that discussion between a QC inspector and his supervisor as to NCRs is not an unusual occurrence. Further once the NCR number was assigned, complainant had absolutely no control over its disposition. This record does not indicate that the complainant's NCR #361 could not be a valid concern of a QC employee, or that it was frivolous in nature (TR 422-425: 12; TR 453; TR 732-734; 742-745), although others at the site might and did differ with him. Respondent's articulation of its reasons for viewing NCR #361 as a leverage or arbitration attempt, its purported non-discriminatory reason for terminating him based on NCR #361, nowhere voices such contentions; nor do they contend that the substance of NCR #361 itself was an abuse by complainant of the nonconformance process of Respondent's Exhibit Z-2. Rather Respondent ties this NCR filing to his promotion request in explaining why it was viewed as a leverage attempt.

Smith had a discussion with complainant after he reviewed NCR #361 on April 12, 1982 and told complainant he would recommend it be voided by the upper management official responsible for ultimate disposition of this, or any such NCR, Brandt. However, from his conversation with Atchison, prior to bringing NCR #361 with the attached note to Foote, Smith was of the impression that Atchison was very certain he had found a problem in the training program, as reflected in NCR #361's content.

According to Brandt, Foote handed him NCR #361, with the "pow wow" note attached, as well as Smith's request for complainant's promotion, which Brandt had denied the week before. His testimony indicates that his immediate reaction was a lack of understanding as to what Atchison meant by "pow wow."¹⁰/ TR 564. However, he thereafter determined in his mind that NCR #361 was an attempt to leverage a promotion, and testified that after a meeting between himself, Purdy and Tolson as to complainant's intent, they decided it was such an attempt. Purdy testified that since Brandt would no longer use Atchison, after unsuccessfully trying to place Atchison

¹⁰/ Any conference or gathering. The American Heritage New College Dictionary.

elsewhere in the Brown and Root organization, he decided to terminate him. However, when Purdy advised Atchison of his termination in effect he told him he was being terminated because of Brandt's statements that he lacked ability to perform assigned tasks, i.e., he failed to follow instructions in not inspecting out of his area of responsibility. (PX 22, 23) He never told him that he was being fired because of the "pow wow" note, and how it was perceived by himself, Brandt and Tolson. The note and what it meant, and NCR #361 was never discussed with complainant by Purdy or Brandt.

Prima Facie Case Established

The fact of the matter here is that the complainant's prima facie case for discharge for protected activity is established solely on the overwhelming weight of the documentary and other evidence he presented, and does not depend on any question as to his credibility. Brown and Root's records establish that he was an employee rated by his supervisor as excellent in performance April 2, 1982 and April 12, 1982 and rated satisfactory in performance by prior supervisors; he engaged in a protected activity April 12, 1982 when he filed NCR #361, and was that day fired, with the explanation he lacked ability to perform assigned tasks and follow supervisory direction because he failed to limit his scope of responsibility and insisted on "getting involved in other areas outside his scope" of responsibility. Further PX 26 indicates that a protected activity he engaged in three weeks before, i.e., filing NCR #296, formed the basis for his removal from his job assignment, and his ultimate firing April 12, 1982.

Evaluation of Respondent's Case

Since there are numerous statements in this record as to the complainant's job performance deficiencies uncovered by respondent and its client post April 12, 1982, it should be clearly understood that in analyzing the evidence it is the facts as they existed, and were known to respondent at the time the Act was averredly violated, April 12, 1982, that must of necessity control the findings here.

In my opinion, having heard their testimony, Brandt and Purdy's explanation for job removal and then termination of the complainant, i.e., their April 12, 1982 interpretation of the "pow wow" note, is unbelievable. It was never verbalized as a cause of complainant's firing until investigative statements were secured in connection with the later NRC and Department of Labor investigation; is inconsistent with their April 12, 1982 statements (Px 22, Px 23), as

well as Brown and Root's May 13, 1982 statement to the Department of the reasons for complainant's termination. (Px 26.2).

Aside from Brandt and Purdy's inconsistent explanations over time of the reasons for complainant's job removal/termination, I find their respective attested explanations and written statements as to why and how they concluded the "pow wow" note was an attempt by complainant to use NCR #361 to leverage a promotion (or transfer) unconvincing, unbelievable, and irrational - it just does not make sense - when considered with their total testimony, the note's verbiage, NCR #361's content and the other evidence of record.

They knew on reading NCR #361 that it was logged into the site's NCR control system. Thus its disposition and any leverage use was beyond complainant's control, or that of his immediate supervisor, to whom it was addressed. The note itself, in the context of what this record indicates as to the substance of the nonconformance reported, in my opinion does not provide any reasonable basis for the leverage conclusions of Brandt and Purdy. Their explanation of why they so believed, which took a three party meeting to arrive at, just does not ring true. Most importantly, if Purdy believed as he attested he would not have attempted to place complainant elsewhere with Brown and Root, actions contradictory of his words.

Brandt's attested interpretation of the note as a leverage or arbitration attempt is inconsistent with his stated initial reaction to the note; and I found his explanation as to how, and why, the denied promotion request was handed to him with NCR #361 and the "pow wow" note strange. Purdy's explanation of how he viewed the note, and why, indicates that in fact he did not know what it meant or intended. It is clear Purdy was told by Brandt the week before that he would no longer use Atchison; Brandt had made and conveyed that decision before NCR #361 was filed. Purdy then stated on April 8, 1982 he had no place to put complainant, yet at hearing he testified he probably would and could have placed him April 12, 1982 had any of his four supervisory contacts made that day been positive for Atchison. Purdy and Brandt's testimony as to why they did not state on April 12, 1982 that the job removal/termination was due to the "pow wow" note indicates they knew their stated interpretation was based on suspicions, speculations and conjecture; and in Purdy's case, analyzing his explanations, cryptic and unexplained conclusions and judgments as to complainant's personality.

These witnesses' testimony, in conjunction with what the entire record reveals were the circumstances existing April 12, 1982, convinces that the "pow wow" note explanation for job removal/discharge is incredible, false and pretextual; and it is so found. As

to respondent's other articulated business reasons for its April 12, 1982 job removal/job termination action the following is noted.

It is clear and established from this record that had not NCR #296 been filed by Atchison, a protected activity within the Act's meaning, Brandt would not have called Purdy the week prior to April 12, 1982 and told him he would no longer use Atchison. Such action by Brandt affected Atchison's terms, conditions and privileges of employment within § 5851's meaning. It is also clear and established by this record that Brandt would not have removed an inspector other than Atchison from his job, which is what in effect he did by his advice to Purdy, solely for the deficiencies Brandt noted on the two occasions he had a supervisory opportunity to observe Atchison's job performance, judgment call errors from the record in total.

When Brandt advised Purdy telephonically April 8, 1982 he would no longer use Atchison his motivation was dual-faceted. First, he did not want Atchison in his group prior to Purdy's assignment; and then his opinion was confirmed following his observation of Atchison's work in connection with the 822 incident and NCR #296. However, neither of these factors was a legitimate business reason for Brandt's decision he would no longer use complainant's services. Such lack of legitimacy is established by Purdy and Brandt's testimony. Purdy assigned complainant to Brandt's group despite Brandt's opinions and statements; and, by the impact of Brandt's testimony, he would not have removed any similarly situated inspector who erred in technical proficiency as Atchison did after his assignment to Brandt's group.

Thus it is found that the job performance, job deficiency errors, including inspection reading errors, observed by Smith and Brandt, which Brandt gave for his April 12, 1982 actions removing complainant from his non-ASME employment position were not legitimate business, non-discriminatory, reasons for removing or terminating complainant as of April 8, 1982 and April 12, 1982; and that prior to April 12, 1982 and NCR #361 Brandt had no legitimate business reason to remove complainant from his shop. By Brandt's own testimony, as well as Smith's, they were not a legitimate reason and I so find.

Absent a legitimate business reason for Brandt's April 8, 1982 advice to Purdy he would no longer have a need for Atchison's services, prior to April 12, 1982 neither he, Purdy nor Brown and Root had any legitimate business reason for complainant's job removal and termination. I must therefore find that on this record complainant has established that his filing of NCR #296, a protected activity, was the circumstance, occasion and vehicle for Brandt's job removal action. But for the fact that Atchison reported and filed NCR #296 his condition of employment would not have been so affected and changed.

While Purdy attested he was unaware that some of the job deficiencies related to him by Brandt occurred in connection with NCR #296, and did not know that complainant contended he filed NCR #296, Purdy was aware when he fired complainant of the conflict between Smith's evaluation of his job performance and Brandt's. He knew Foote, over Brandt's head, disagreed with Brandt's rejection of complainant's promotion. Then Smith told Purdy at the termination interview that the firing was unwarranted (PX 26.14). Purdy, as well as all Brown and Root personnel who handled the April 12, 1982 conference report of termination, were on notice by it of Atchison's contention that Brandt's PX 23 statement to Purdy was a result of Atchison's reporting unsatisfactory CB&I vendor-supplied pipe whip restraints. Further Purdy had in hand PX 23 which, by its language, raises unasked and unanswered questions as to a written job removal justification inconsistent with what Brandt was telling him of Atchison's job deficiencies, i.e., patently unclear relationship of porosity, polishing problems to "refusal to limit his scope of responsibility to the pipe whip restraints" and "getting involved in other areas outside his scope." Notwithstanding his reliance on Brandt's statement of complainant's job performance inadequacies, these factors indicate Mr. Purdy knew or should have known that Brandt's language in Plaintiff's Exhibit 23 raised clear questions as to whether Brandt's action was based on complainant's engagement in protected activities.

Purdy's action under these circumstances, his unquestioning acceptance of Brandt's job removal decision, which in effect resulted in Atchison's job termination, was a knowing adoption of Brandt's protected activity violation resulting from complainant's NCR #296 filing, and Purdy, based on the job deficiency information conveyed by Brandt, had no legitimate business reason for terminating Atchison. I find this aspect of Purdy's explanation pretextual.

This record convinces that the reasons for job removal and termination which Brandt and Purdy committed to writing on April 12, 1982 were in fact the reasons for their respective actions; and that the reasons they thereafter voiced, their interpretation of the "pow wow" note and complainant's work performance deficiencies, were pretextual and not the true reasons he was removed from Brandt's group and ultimately terminated, and it is so found.

On April 12, 1982 Brandt specifically, not generically, stated that complainant's job removal and termination were due to his refusal to limit his scope of responsibilities to pipe whip restraint installation, and so defined his statement that complainant lacked the ability to perform assigned tasks and failed to follow instructions. Purdy's termination notice was based on this memorandum of Brandt, conveyed to Atchison and Smith as the partial basis

for his termination decision. By this action Purdy clearly adopted Brandt's stated definitions as his definitions, the only reasonable interpretation of his actions. I see no reason to disbelieve their April 12, 1982 contemporaneous written statements particularly when weighed with their later shifting interpretations of what they in fact meant by their April 12, 1982 statements (Brandt's at TR 576-577; 599-602; 604-605) including Mr. Purdy's testimony that when he signed to "lack of ability to perform assigned tasks and follow supervisory direction" as the reason for termination he was also attributing under this generic statement, as complainant's responsibility, 150 recently uncovered coordinator deficiencies Mr. Opelski, the site NDE level III who now supervised the maintenance and control of the training files, had found.

While Purdy stated these deficiencies may have been Atchison's predecessor's responsibility, Purdy attested they nevertheless reflected and demonstrated the termination reasons he signed to the April 12, 1982, as well as Opelski's reasons for telling Purdy "definitely not" during Purdy's contacts to ascertain if he should keep Atchison, and if Opelski would use him. Complainant, as of April 12, 1982, had not been involved in Opelski's shop's activities for five months, during which management and personnel changes had been made, and during which procedures were being changed as part of the reorganization described at trial. Complainant, while performing the job in which these cryptically described and dated errors were uncovered, was rated well in his job performance by his Brown and Root supervisors, and Opelski on February 24, 1982 certified him, based on his three years with Brown and Root, as warranting the certification at PX 18.

Jim Ragan is the same supervisor who supported complainant's field transfer. He is presently the supervisor of Ice and Patton who had no supervisory problems with Atchison returning to their shop. Yet Ragan told Purdy he did not want complainant because he found out he was not what he thought, a B inspector. Purdy did not otherwise explain this cryptic response of Ragan which is totally inconsistent with Ice and Patton's evaluations. Ragan's NDE records unhappiness, referred to at TR 708, occurred after April 12, 1982, and whether the facts as to this reference are similar to the basis for the Opelski reference is unknown. Assumedly Ragan was the responsible upper level supervisor when these errors occurred, which have not affected his Brown and Root position.

Sanders told Purdy the complainant was "not really qualified to be a quality engineer," the job in which Brown and Root had placed, certified and permitted him to perform. Why he so stated is also unknown from the cryptic quotation of this supervisor's response.

The responses Purdy attested to just do not reasonably, believably, credibly explain why Purdy was unable to place an employee rated as complainant was rated throughout his Brown and Root

employment and who, according to what is in this record, had no reason to believe that his supervisors had any problem with his job performance or work habits until the 822 incident. (TR 742-743). In this light, Mr. Leigh's answer as attested by Purdy is the most unbelievable of all. He had no prior supervisory contact with complainant but advised that based on brief communications with Atchison, he did not feel he could effectively supervise his activities.

In determining whether Purdy's articulation of his inability to place Atchison in other Brown and Root components, after Brandt's effective removal, was in fact a legitimate business reason for Purdy's decision to terminate him, the following is noted. Purdy attested he could have, and would probably have retained complainant if any of the four supervisors' responses were positive. New hires were brought on in late April and May. Evaluating the credibility of his explanation as to why he did not place Atchison on April 12, 1982, and fired him on the basis he could not place him after Brandt removed him, the whole story does not make sense, given the complainant's past satisfactory to good and even excellent job evaluations, and his job history as related by his rating supervisors. To explain these ratings by a Brown and Root need to misrepresent because of pay problems, is unconvincing.

The evidence respondent presents in no way indicates complainant in job performance and work habits was a marginal employee, a problem to management for any reason prior to the 822 incident. If as Mr. Hoech related, complainant in his job performance caused "continual interruptions" and "warnings" were given, if much duplication of effort and turmoil was caused by complainant's job performance problems, what respondent has articulated and evidenced here, in response to complainant's case, does not so indicate.

I am therefore of the opinion, and find that Purdy's articulation of a lack of ability to place complainant after Brandt's removal as the reason for his decision to terminate was pretextual.

Weighing Brandt and Purdy's testimony with the facts found above as to the circumstances of complainant's filing NCR #296, I not only disbelieve and find pretextual respondent's proffered legitimate business reasons for complainant's termination, i.e., their interpretation of the "pow wow" note, complainant's job deficiencies and their inability to place him after Brandt's removal, I am also convinced of the following. The weight of the evidence supports a finding that as of his April 12, 1982 job removal by Brandt and job termination by Purdy, respondent had no legitimate business reason for his removal and termination, and that he was removed by Brandt and terminated by Purdy solely because he filed NCR #296 and NCR #361, protected conduct within the Act's meaning; but for this conduct complainant, as of April 12, 1982, would not

have been removed from his non-ASME job in Brandt's group, and terminated by Purdy. It is further found these protected activities were the sole bases for Brandt and Purdy's conclusion complainant was unable to perform his assigned tasks, and did not follow supervisory instructions and the motivating basis for Brandt and Purdy's evaluation and administrative response, Brandt to remove and Purdy to fire. It is so found.

I find and conclude that Brown and Root terminated complainant because he engaged in protected activities within the Act's meaning, and that respondent violated the Act and regulations in so acting.

REMEDIES

Reinstatement - Back Pay

Respondent urges that the remedies of the Act, § 5851(b)(2)(B), specifically reinstatement and back pay liability beyond mid-June 1982 should not be ordered because by this date Brandt and Purdy knew of Atchison's fraudulent representations and falsifications.

The complainant's lies, misrepresentations and document alterations are a most serious concern. However this record indicates that Brown and Root took no action based on NCR Ex. 134, and from the total evidence of record as to how this document was altered I can only infer that the unaltered response, as dispatched by the college in July or August 1980, was in Brown and Root's personnel records by that date and was thereafter not acted upon. If complainant had any control over this inaction, such is not clear from the record.

Whether in fact Brown and Root would have taken action to terminate complainant based on his application lies is not established here for several reasons. Brown and Root's statement on PX 2 as to dismissal for misrepresentation is conditional, as is Mr. Purdy's response at TR 682: 23-24. Mr. Purdy's testimony as to personnel practices in this regard at the site since his November 1981 assignment is not enlightening as to personnel practices as of mid-1980; and the record indicates there were changes in personnel practices after October 1981, e.g., the counseling and warning procedures prior to dismissal were changed.

Under these circumstances I do not believe that there is an appropriate basis for finding that respondent should not place complainant in the same position he was prior to the April 12, 1982 discriminatory firing, with reinstatement and back pay to reinstatement. This finding and complainant's reinstatement do not in any way preclude future action by respondent based on complainant's actions and conduct not protected by the Act.

Attorneys Fees

I have considered respondent's objection to complainant's counsel's fee request listing of services rendered complainant in connection with the NRC hearings. I do not agree that these services, or complainant's participation, was not reasonably related to the subject matter at issue. Therefore, for other than 30 hours of services listed for potential appellate work, I find the 87.6 hours counsel lists, as well as his billing rate, reasonable in the circumstances here. Accordingly a fee of \$7,875.00 is awarded.

In accordance with the above findings of fact and resulting conclusions the following recommended ORDER is issued.

RECOMMENDED ORDER

Respondent, Brown and Root, shall take the following affirmative action to abate the violation:

1. Reinstatement complainant to his position and pay at the Comanche Peak Project exactly as it existed as of April 12, 1982.
2. Pay complainant all wages and benefits that he has lost since his termination on April 12, 1982 to the date he is reinstated.
3. Pay to complainant's counsel, Kenneth J. Mighell, Esquire, all expenses incurred for his legal services in connection with this action, \$7,875.00.
4. Remove all references to complainant's April 12, 1982 termination from his personnel files.

Ellin M. O'Shea

ELLIN M. O'SHEA
Administrative Law Judge

Dated: DEC 3 1982
San Francisco, California

EMO:ma

SERVICE SHEET

82-ERA-9

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#164-694

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Dallas, Texas 75250
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Administrator
Wage and Hour Division
Employment Standards Administration
U. S. Department of Labor, Rm. S3502
200 Constitution Avenue, N. W.
Washington, D.C. 20210

Assistant Secretary for Employment
Standards Administration
USDOL, Attn: Donald Elisburg
Room S2321, 200 Constitution Ave., N.W.
Washington, D. C. 20210

M. M. Arcas
(Name)

DEC 3 1982

(Date)

500 South Street, Room 703
Baton Rouge, Louisiana 70801-4001

November 3, 1982

Mr. Fred Gallatin
QA/QC Supervisor
Mercury of Norwood, Inc.
P. O. Box 752
Millona, Louisiana 70065

SUBJECT: CHARLES A. ATCHISON vs MERCURY OF NORWOOD, INC.

This letter is to notify you of the results of our compliance actions in the above case. As you know Charles A. Atchison filed a complaint with the Secretary of Labor under the Energy Reorganization Act on October 6, 1982. A copy of the complaint, a copy of Regulations, 29 CFR Part 24, and a copy of the pertinent section of the statute were furnished in a previous letter from this office.

Our initial efforts to conciliate the matter revealed that the parties would not at that time reach a mutually agreeable settlement. An investigation was then conducted. Based on our investigation, the weight of evidence to date indicates that Charles A. Atchison was a protected employee engaging in a protected activity within the ambit of the Energy Reorganization Act, and that discrimination as defined and prohibited by the statute was a factor in the actions which comprise his complaint. The following disclosures were persuasive in this determination:

Mr. Atchison was terminated only after it was disclosed that he had been in the employ of Tompkins-Beckwith, a contractor at the same Waterford Three worksite, notwithstanding the fact that Mercury of Norwood, Inc. was informed that Mr. Atchison's discharge from Tompkins-Beckwith was determined by the Wage and Hour Division's investigation to have been discriminatory.

Information came to your company that Mr. Atchison had worked for Brown and Root at the Comanche Peak project. It was also brought to the attention of Mercury of Norwood's officials that Mr. Atchison had been considered a "troublemaker" while there. Conclusion might easily be drawn that the factors of prior employment with Brown and Root and Tompkins-Beckwith, employment laced with controversy dealing with reporting of potential safety violations and subsequent testimony at safety hearings, could be the reason for his termination from Mercury of Norwood. Even giving EBASCO's policy of prohibiting contractors, "... from soliciting the

Mercury of Norwood, Inc.
November 5, 1982

Page 2

non-manual employees of other contractors" an interpretation most favorable to Mercury of Norwood as it relates to the question at hand, would not, it is felt, lead a reasonable person to conclude that a primary concern when terminating Mr. Atchison was the fact that he was previously employed by an on-site contractor.

In concluding, if the site policy of not hiring any employee who has worked for another contractor at the site is pivotal it has the effect of perpetuating a violation of the Act ad infinitum. This is especially true where the facts show Mr. Atchison's termination from Tompkins-Beckwith was illegal.

This letter will notify you that the following actions are required to abate the violation and provide appropriate relief:

1. Employment of Mr. Atchison as a QA Engineer, the position he was originally hired for.
2. Payment of all wages and benefits that he has lost since his termination on September 27, 1982 to the date he is reinstated.
3. Payment of all expenses incurred because of his termination and period of unemployment.
4. Purging of all references to Mr. Atchison's termination from Mercury of Norwood, Inc. from his personnel file.

This letter will also notify you that if you wish to appeal the above findings and remedy, you have a right to a formal hearing on the record. To exercise this right you must, within five (5) calendar days of receipt of this letter, file your request for a hearing by telegram to:

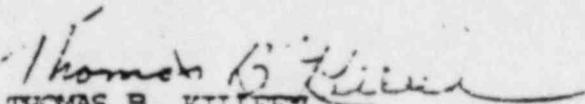
The Chief Administrative Law Judge
U. S. Department of Labor
Suite 700, Vanguard Building
1111 - 20th Street, NW
Washington, D. C. 20036

Unless a telegram request is received by the Chief Administrative Law Judge within the five-day period, this notice of determination and remedial action will become the final order of the Secretary of Labor. By copy of this letter I am advising Mr. Charles A. Atchison of the determination and right to a hearing. A copy of this letter and the complaint have also been sent to the Chief Administrative Law Judge. If you decide to request a hearing it will be necessary to send copies of the telegram to Mr. Atchison and to me at Room 703, 600 South Street, New Orleans, Louisiana 70130-3494 (504-589-6171). After I receive the copy of your request, appropriate preparations for the hearing can be made. If you have any questions do not hesitate to call me.

Mercury of Norwood, Inc.
November 5, 1932

Page 1

It should be made clear to all parties that the role of the Department of Labor is not to represent the parties in any hearing. The Department would be neutral in such a hearing which is simply part of the fact-development process, and only allows the parties an opportunity to present evidence for the record. If there is a hearing, an Order of the Secretary shall be based upon the record made at said hearing, and shall either provide appropriate relief or deny the complaint.


THOMAS B. KILLEEN
Area Director

cc: Mr. Charles A. Atchison
Chief Administrative Law Judge ✓
Nuclear Regulatory Commission
William Otter, Administrator
Wage Hour Division
A. A. Ramsey, Asst. Regional Administrator
Wage Hour Division
Jim Frost, Corporate Manager
Mercury of Norwood, Inc.

Attachments:

Original Complaint and Supplementary Statement



UNITED STATES

NUCLEAR REGULATORY COMMISSION

REGION IV

611 RYAN PLAZA DRIVE, SUITE 1000
ARLINGTON, TEXAS 76011

CASE ATTACHMENT 3 - page 1

rec. 10-15-82

CASE EXHIBIT 735

Docket: 50-445/82-14

SEP 29 1982

Texas Utilities Generating Company
ATTN: R. J. Gary, Executive Vice
President and General Manager
2001 Bryan Tower
Dallas, Texas 75201

Gentlemen:

This refers to the special inspection conducted by Messrs. R. C. Stewart and R. G. Taylor of our staff during the period August 3-20, 1982, of activities authorized by NRC Construction Permit CPPR-126 for the Comanche Peak Facility, Unit 1.

Areas examined during the inspection and our findings are discussed in the enclosed inspection report. Within these areas, the inspection consisted of selective examination of procedures and representative records, interviews with personnel, and observations by the inspectors.

Within the scope of the inspection, no violations or deviations were identified.

One new unresolved item is identified in Detail Section, paragraph 4.

In accordance with 10 CFR 2.790(a), a copy of this letter and the enclosure will be placed in the NRC Public Document Room unless you notify this office, by telephone, within 10 days of the date of this letter, and submit written application to withhold information contained therein within 30 days of the date of this letter. Such application must be consistent with the requirements of 2.790(b)(1).

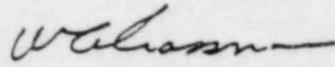
Texas Utilities Generating
Company

2

SEP 29 1982

Should you have any questions concerning this inspection, we will be pleased to discuss them with you.

Sincerely,


for G. L. Madsen, Chief
Reactor Project Branch 1

Enclosure:

Appendix - NRC Inspection Report 50-445/82-14

cc w/encl:

Texas Utilities Generating Company
ATTN: H. C. Schmidt, Project Manager
2001 Bryan Tower
Dallas, Texas 75201

APPENDIXU. S. NUCLEAR REGULATORY COMMISSION
REGION IV

Report: 50-445/82-14

Docket: 50-445

Category: A2

Licensee: Texas Utilities Generating Company
2001 Bryan Tower
Dallas, Texas 75201

Facility Name: Comanche Peak, Unit 1

Inspection At: Comanche Peak, Unit 1

Inspection Conducted: August 3-20, 1982

Inspectors: R. J. Redman 9-23-82
for R. C. Stewart, Reactor Inspector Date
 Reactor Project Section A

R. J. Redman 9-23-82
for R. G. Taylor, Senior Resident Inspector Date
 (Details Section, Par. 4)

Approved: R. J. Redman 9-23-82
for T. F. Westerman, Chief Date
 Reactor Project Section A

Inspection SummaryInspection Conducted During the Period August 3-20, 1982 (Report 50-445/82-14)

Areas Inspected: Special, unannounced inspection of pipe whip restraints and review of licensee's method of QC inspection of skewed welds in response to concerns expressed by former Brown & Root (B&R) QC inspector during Atomic Safety and Licensing Board (ASLB) hearings being conducted for issuance of Comanche Peak Steam Electric Station (CPSES) operating license. The inspection involved 110 inspector-hours by two NRC inspectors.

Results: No violations or deviations were identified. The concerns expressed by Mr. C. Atchison in his oral testimony of July 30, with regard to pipe whip restraints had been identified and corrected by the licensee. Matters regarding Mr. Atchison's allegation regarding the lack of written QC procedures for the examination of skewed fillet welds remains unresolved.

Details1. Persons ContactedPrincipal Licensee Employees

- *R. G. Tolson, Site Quality Assurance Supervisor, TUGCO
- B. G. Scott, Quality Engineering Supervisor, TUGCO
- C. T. Brandt, QA/QC Supervisor - Mechanical/Civil, TUGCO
- W. Hartshorn, Quality Engineer, TUGCO
- W. Wright, Project Welding Engineer, B&R
- S. Ali, QA Engineer, TUGCO
- R. Baker, Staff Engineer, B&R

Other Personnel

- C. A. Atchison
- *G. Purdy, Project Quality Assurance Manager, B&R

*Denotes those persons attending management interviews

The NRC inspectors also contacted other licensee and contractor employees during the course of the inspection.

2. Atchison's Concern Regarding Quality of Welding of NPS Industries (NPSI) Pipe Whip Restraints

During the Comanche Peak evidentiary hearing session on July 30, 1982, before the presiding ASLB regarding Contention 5 (construction QA/QC), Citizens Association for Sound Energy (CASE) witness, C. A. Atchison, made the following statement ^{1/} in response to some questions concerning the safety for operating purposes of the Comanche Peak Nuclear Power Plant.

- "Q. Are there any physical defects at Comanche Peak Nuclear Power Station of any nuclear safety significance that you have personal knowledge of that have not been corrected?
- "A. Not being an engineer, I can only relate to what I personally observed. On the NPSI pipe whip restraints, which has not fully been looked at or investigated, the 588 material that is used in those, during the welding process has extreme warpage to it. The angle provided for

^{1/} Transcript, July 30, 1982, before the Atomic Safety Board, pages 3458, 3459, and 3460.

a fit-up on the main steam lines for these were not addressed in Welding Procedure WPS-10047 at that site. The configurations of these, and the warpage of the pre-welded, or the vendor welder items, are as bad and in some cases worse than those supplied on the CB&I pipe whip restraints.

"To my knowledge, these defects in welding may or may not constitute a defect that could be injurious to the plant or the failure to a safety system. My concern is, as a utility payer, as an inspector on the jobsite, if I'm going to pay for a Cadillac, I want a Cadillac, I don't want a Ford, to kind of paraphrase it.

"The items there, they would rather -- management say these are no problems and try to cover up and go on in order to get the plant on line as soon as possible to recover the money. That's a heavily invested area.

"Q. Well, sir, these items that you mentioned, were these the subject of your inspections or investigations?

"A. Yes, they are.

"Q. Did you file NCR's on these items?

"A. An NCR, in my scope of responsibility on the pipe whip restraints, yes, I was -- there was not an NCR filed on the vendor supplied items of NPSI. The first step, first one that I was able to get through was the one that I had filed on the four pieces on the pipe whip restraints furnished by CB&I.

"Shortly thereafter I was terminated, and there was never an NCR generated on the vendor defects of the welds on the NPSI pipe whip restraints.

"Q. Do you know if that was or is being looked into, sir?

"A. I do not."

In an effort to determine the specific pipe whip components of Mr. Atchison's concern, Mr. Atchison was requested, by members of the NRC Region IV staff, to visit the NRC Region IV office to discuss the matter.

In a brief meeting, held on August 17, 1982, Mr. Atchison was provided copies of CPSES detail and installation drawings on which he delineated the areas of his concerns. On Gibbs and Hill (G&H) Installation Drawing No. 2323-SI-0671, "Safeguards Building Pipe Whip Restraint Supports, SH 5," Revision 2, Mr. Atchison identified five girder attachment field welds, NPSI vendor welds, and the corner field welds on 4 feet 6-inch by 4 feet 6-inch box-type structure of which he stated has an unqualified

joint. (Detail-3 of TUSI Drawing 2323-51-0671-01) The G&H Drawing, 2323-SI0671, is the installation drawing of the outside main steam line(s) pipe whip restraint on top of the safeguards building. The structure was fabricated by NPSI and assembled by bolting and field welding by B&R. In addition, Mr. Atchison stated that he had observed other NPSI components in a "lay-down" area on top of the adjacent switchgear building that had warpage and code rejectable welding.

3. NRC Site Inspection Followup

a. Initial Documentation Review and Inspection

During the period August 3-13, 1982, the NRC inspectors conducted an independent onsite documentation review and sampling inspection of NPSI-supplied components. Documents reviewed included the following:

- . CPSES FSAR, Section 3.6
- . NPS Industries, Inc., Contract CPD-0363, dated July 17, 1980
- . NPS Industries, Inc., Contract CPD-0324, dated March 12, 1980
- . NPS Industries, Inc., Control CPD-0351, dated June 19, 1980
- . NPS Industries, Inc., Contract CPD-0403, dated October 23, 1980
- . G&H Specification SS-16B
- . B&R Weld Procedure WPS-10046
- . TUGCO Procedure QI-QP-11.14.3, "Inspection of Structural/Miscellaneous Steel Welding," Revision 6, dated May 21, 1982
- . G&H Drawings 2323-SI-0576, Figures 2 through 6, "Pipe Bumper Restraint Details"
- . AWS D1.1, Structural Welding Code

During the documentation review the inspectors observed that, with regard to pipe whip restraints, NPSI contracts are essentially limited to providing (crushable) pipe bumper restraints, miscellaneous structural supports for the auxiliary and turbine buildings, and the large main steam/feedwater pipe whip restraint structure on top of the safeguards building. Aside from the crushable pipe bumpers and one support assembly at the 823 foot level, there are no NPSI-supplied pipe whip restraints inside containment. The inspectors also noted that the G&H Specification SS-16B and related drawing details called for design fabrication and installation of the component structures be performed in accordance with American Institute of Steel Construction (AISC) Specification for "The Design Fabrication

and Erection of Structural Steel for Buildings" and the American Welding Society (AWS), "Structural Welding Code," D1.1

In conjunction with the documentation review, and in view of Mr. Atchison's testimony, the inspector conducted a random sampling inspection of the NPSI-supplied component supports and pipe bumper assemblies. Although no pipe bumpers were installed, the inspector examined approximately 20 bumper assemblies located in various outside storage areas. In addition, the inspector examined sections of the main steam/feedwater pipe whip restraint on top of the safeguards building and the one NPSI structure at elevation 823 feet in the Unit 1 reactor containment building. There were no observed defects, warpage, or discontinuities that would be considered unacceptable within the AWS Structural Welding Code, D1.1. It was observed by the inspector that, due to the particular weld configuration, slight warpage had occurred on some of the pipe bumpers; however, these were considered acceptable within the AWS Code, Section 3.4, Limitations

b. Additional Followup on Mr. Atchison's Concerns

Subsequent to Mr. Atchison's visit to the Region IV office on August 17, 1982, the NRC inspector returned to the site, during the period August 19-20, 1982, to review the specific areas identified by him.

With regard to the five girder welds, the NRC inspector observed that a Nonconformance Report (NCR) M8100846, dated August 19, 1981, identified these areas of unacceptable welds. Repairs were completed July 13, 1982, and final NDE (VT, MT, and UT) inspections completed during the period August 4-9, 1982. The NRC inspectors made a visual inspection of the specific welds and found no discrepancies.

With regard to the alleged unqualified corner field welds on the four 4 feet 6-inch by 4 feet 6-inch box structures on the main steam/feedwater pipe whip restraint, the AWS "Structural Welding Code," D1.1, page 14, figure 2.9.1, depicts a prequalified weld joint identical to that described by Mr. Atchison and as shown on NPSI shop drawings. In addition, the NRC inspector made a visual examination of 8 of the total of 16 corner field welds. There were no defects or discrepancies observed. QC inspection records reflect UT examinations were completed and found acceptable on July 2, 1982.

With regard to Mr. Atchison's observation of other NPSI fabricated pipe whip restraints on the switchgear building and which contain unacceptable welds, the NRC inspector made a random selection of five pipe whip restraints from drawing 2323-SI-0474 "Turbine Building Switchgear Area," Revision 8, as follows: MS-1-07-908-757W, MS-1-22-906-T57W, FW-1-11-902-557W, MS-1-22-904-757W, and MS-1-17-904-T57W. The NRC inspector examined the five installed assemblies and found no apparent defects or discrepancies. It was also observed that pipe whip restraints on the turbine and switchgear

buildings are classified as "non-nuclear safety-related," QA program applicable to procurement and shop fabrication only.

4. Review of Licensee's Method of QC Inspection of Skewed Welds

Subsequent to Mr. Atchinson's testimony on July 30, 1982, Mr. Atchison made a statement to an NRC investigator alleging that the licensee's QC inspection procedure for welding did not contain written instructions for examining skewed fillet welds.

Skewed welds are those joining two structural members that are other than in the same plane and are not perpendicular to each other. A typical example is two members joined at an angle of 45° with a weld at the joint toe of 135° and another at the heel of 45° . The senior resident inspector-construction (SRIC) has reviewed the several quality assurance procedures that might be expected to provide inspection instruction on the measurement verification that such welds are of specified size. None of the procedures reviewed contained any such instructions but it was found that instruction had been given to the welding QC inspectors during training classes and the written examination given the welding QC inspectors contained a specific question dealing with the measurement of such welds as a part of their certification process to be qualified inspectors. The SRIC interviewed one experienced QC inspector for the purposes of having the inspector explain the measurement process that he had been using during the past several years on skewed welds. The process the person described was consistent with that previously described by a person who at one time had been an instructor in the inspection training courses. The SRIC would further note that during the many inspections of structural weldments conducted by both the SRIC and other NRC inspectors, there has been no indication of undersized skewed fillet welds. The allegation that the QC procedures do not address inspection of skewed welds is therefore, substantiated but it has not been established that there are any safety-related consequences of the lack of procedural addressment since apparently adequate training was given to the QC personnel. In order to provide additional assurance that the instructions have been effective, B&R QA management has initiated a reinspection of randomly selected skewed welds based upon statistical sampling techniques. The licensee QA supervisor has stated that appropriate QC procedures will be revised to address in detail the inspection techniques to be used both for the random reinspection effort and for future inspections. This matter will be considered unresolved pending a review of the revised procedures and the outcome of the reinspection effort.

5. Unresolved Item

Unresolved items are matters about which more information is required in order to ascertain whether they are acceptable items, violations, or deviations. One unresolved item is identified in paragraph 4 of this report.

6. Management Interview

The SRIC held a management interview on August 26, 1982, with the persons identified in paragraph 1 to discuss inspection findings and to confirm the commitments stated in paragraph 4.

UNITED STATES
NUCLEAR REGULATORY COMMISSION

CASE EXHIBIT 736

REGION IV
611 RYAN PLAZA DRIVE, SUITE 1000
ARLINGTON, TEXAS 76011

Docket: 50-445/82-14

NOV 8 1982

Texas Utilities Generating Company
ATTN: R. J. Gary, Executive Vice
President and General Manager
2001 Bryan Tower
Dallas, Texas 75201

Gentlemen:

This refers to the special inspection conducted by Messrs. R. C. Stewart and R. G. Taylor of our staff during the period August 3-20, 1982, of activities authorized by NRC Construction Permit CPPR-126 for the Comanche Peak Facility, Unit 1.

Areas examined during the inspection and our findings are discussed in the enclosed inspection report. Within these areas, the inspection consisted of selective examination of procedures and representative records, interviews with personnel, and observations by the inspectors.

Within the scope of the inspection, no violations or deviations were identified.

One new unresolved item is identified in Detail Section, paragraph 4.

In accordance with 10 CFR 2.790(a), a copy of this letter and the enclosure will be placed in the NRC Public Document Room unless you notify this office, by telephone, within 10 days of the date of this letter, and submit written application to withhold information contained therein within 30 days of the date of this letter. Such application must be consistent with the requirements of 2.790(b)(1).

Texas Utilities Generating
Company

2

NOV 8 1982

Should you have any questions concerning this inspection, we will be pleased to discuss them with you.

Sincerely,

G. L. Madsen
G. L. Madsen, Chief
Reactor Project Branch 1

Enclosure:
Appendix - NRC Inspection Report 50-445/82-14

cc w/encl:
Texas Utilities Generating Company
ATTN: H. C. Schmidt, Project Manager
2001 Bryan Tower
Dallas, Texas 75201

APPENDIXU. S. NUCLEAR REGULATORY COMMISSION
REGION IV

Report: 50-445/82-14

Docket: 50-445

Category: A2

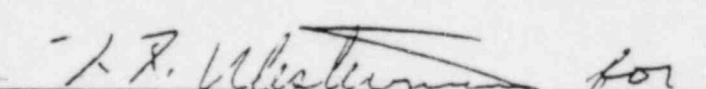
Licensee: Texas Utilities Generating Company (TUGCO)
2001 Bryan Tower
Dallas, Texas 75201

Facility Name: Comanche Peak, Unit 1

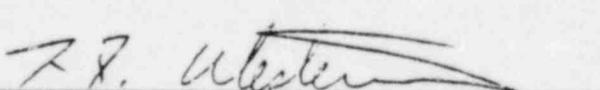
Inspection At: Comanche Peak, Unit 1

Inspection Conducted: August 3-20, 1982

Inspectors:


R. C. Stewart, Reactor Inspector
Reactor Project Section A11-3-82
Date
T. F. Westerman, Senior Resident Inspector
(Details Section, par. 4)11-3-82
Date

Approved:


T. F. Westerman, Chief
Reactor Project Section A11-3-82
DateInspection SummaryInspection Conducted During the Period August 3-20, 1982 (Report 50-445/82-14)

Areas Inspected: Special, unannounced inspection of pipe whip restraints and review of licensee's method of QC inspection of skewed welds in response to concerns expressed by former Brown & Root (B&R) QC inspector during Atomic Safety and Licensing Board (ASLB) hearings being conducted for issuance of Comanche Peak Steam Electric Station (CPSES) operating license. The inspection involved 110 inspector-hours by two NRC inspectors.

Results: No violations or deviations were identified. The specific concerns expressed by Mr. C. Atchison in his oral testimony of July 30, with regard to pipe whip restraints had been identified and corrected by the licensee. Region IV does plan to perform additional inspections of vendor shop performed welding and this issue remains open. Matters regarding Mr. Atchison's allegation regarding the lack of written QC procedures for the examination of skewed fillet welds remains unresolved.

Details1. Persons Contacted

- *R. G. Tolson, Site Quality Assurance Supervisor, TUGCO
- B. G. Scott, Quality Engineering Supervisor, TUGCO
- C. T. Brandt, QA/QC Supervisor - Mechanical/Civil, TUGCO
- W. Hartshorn, Quality Engineer, TUGCO
- W. Wright, Project Welding Engineer, B&R
- S. Ali, QA Engineer, TUGCO
- R. Baker, Staff Engineer, B&R

Other Personnel

- C. A. Atchison
- *G. Purdy, Project Quality Assurance Manager, B&R

*Denotes those persons attending management interviews.

The NRC inspectors also contacted other licensee and contractor employees during the course of the inspection.

2. Atchison's Concern Regarding Quality of Welding of NPS Industries (NPSI) Pipe Whip Restraints

During the Comanche Peak evidentiary hearing session on July 30, 1982, before the presiding ASLB regarding Contention 5 (construction QA/QC), Citizens Association for Sound Energy (CASE) witness, C. A. Atchison, made the following statement ^{1/} in response to some questions concerning the safety for operating purposes of the Comanche Peak Nuclear Power Plant.

- "Q. Are there any physical defects at Comanche Peak Nuclear Power Station of any nuclear safety significance that you have personal knowledge of that have not been corrected?
- "A. Not being an engineer, I can only relate to what I personally observed. On the NPSI pipe whip restraints, which has not fully been looked at or investigated, the 588 material that is used in those, during the welding process has extreme warpage to it. The angle provided for a

1/ Transcript, July 30, 1982, before the Atomic Safety Board, pages 3458, 3459, and 3460.

fit-up on the main steam lines for these were not addressed in Welding Procedure WPS-10047 at that site. The configurations of these, and the warpage of the pre-welded, or the vendor welder items, are as bad and in some cases worse than those supplied on the CB&I pipe whip restraints.

"To my knowledge, these defects in welding may or may not constitute a defect that could be injurious to the plant or the failure to a safety system. My concern is, as a utility payer, as an inspector on the jobsite, if I'm going to pay for a Cadillac, I want a Cadillac, I don't want a Ford, to kind of paraphrase it.

"The items there, they would rather -- management say these are no problems and try to cover up and go on in order to get the plant on line as soon as possible to recover the money. That's a heavily invested area.

"Q. Well, sir, these items that you mentioned, were these the subject of your inspections or investigations?

"A. Yes, they are.

"Q. Did you file NCR's on these items?

"A. An NCR, in my scope of responsibility on the pipe whip restraints, yes, I was -- there was not an NCR filed on the vendor supplied items of NPSI. The first step, first one that I was able to get through was the one that I had filed on the four pieces on the pipe whip restraints furnished by CB&I.

"Shortly thereafter I was terminated, and there was never an NCR generated on the vendor defects of the welds on the NPSI pipe whip restraints.

"Q. Do you know if that was or is being looked into, sir?

"A. I do not."

In an effort to determine the specific pipe whip components of Mr. Atchison's concern, Mr. Atchison was requested, by members of the NRC Region IV staff, to visit the NRC Region IV office to discuss the matter.

In a brief meeting, held on August 17, 1982, Mr. Atchison was provided copies of CPSES detail and installation drawings on which he delineated the areas of his concerns. On Gibbs and Hill (G&H) Installation Drawing No. 2323-SI-0671, "Safeguards Building Pipe Whip Restraint Supports, SH 5," Revision 2, Mr. Atchison identified five girder attachment field welds, NPSI vendor welds, and the corner field welds on 4 feet 6-inch by 4 feet 6-inch box-type structure of which he stated has an unqualified joint. (Detail-3 of TUSI Drawing 2323-SI-0671-01) The G&H Drawing, 2323-SI0671, is the installation drawing of the outside main steam line(s)

pipe whip restraint on top of the safeguards building. The structure was fabricated by NPSI and assembled by bolting and field welding by B&R. In addition, Mr. Atchison stated that he had observed other NPSI components in a "lay-down" area on top of the adjacent switchgear building that had warpage and code rejectable welding.

3. NRC Site Inspection Followup

a. Initial Documentation Review and Inspection

During the period August 3-13, 1982, the NRC inspectors conducted an independent onsite documentation review and sampling inspection of NPSI-supplied components. Documents reviewed included the following:

- . CPSES FSAR, Section 3.6
- . NPS Industries, Inc., Contract CPD-0363, dated July 17, 1980
- . NPS Industries, Inc., Contract CPD-0324, dated March 12, 1980
- . NPS Industries, Inc., Control CPD-0351, dated June 19, 1980
- . NPS Industries, Inc., Contract CPD-0403, dated October 23, 1980
- . G&H Specification SS-16B
- . B&R Weld Procedure WPS-10046
- . TUGCO Procedure QI-QP-11.14.3, "Inspection of Structural/Miscellaneous Steel Welding," Revision 6, dated May 21, 1982
- . G&H Drawings 2323-S1-0576, Figures 2 through 6, "Pipe Bumper Restraint Details"
- . AWS D1.1, Structural Welding Code

During the documentation review the inspectors observed that, with regard to pipe whip restraints, NPSI contracts are essentially limited to providing (crushable) pipe bumper restraints, miscellaneous structural supports for the auxiliary and turbine buildings, and the large main steam/feedwater pipe whip restraint structure on top of the safeguards building. Aside from the crushable pipe bumpers and one support assembly at the 823-foot level, there are no NPSI-supplied pipe whip restraints inside containment. The NRC inspectors also noted that the G&H Specification SS-16B and related drawing details called for design fabrication and installation of the component structures be preformed in accordance with American Institute of Steel Construction (AISC) Specification for "The Design Fabrication and Erection of Structural Steel for Buildings" and the American Welding Society (AWS), "Structural Welding Code," D1.1.

In conjunction with the documentation review, and in view of Mr. Atchison's testimony, the inspector conducted a random sampling inspection of the NPSI-supplied component supports and pipe bumper assemblies for warpage. Although no pipe bumpers were installed, the inspector examined approximately 20 bumper assemblies located in various outside storage areas. In addition, due to inaccessibility, the NRC inspector conducted a very limited examination of sections of the main steam/feedwater pipe whip restraint on top of the safeguards building and the one NPSI structure at elevation 823 feet in the Unit 1 reactor containment building for warpage. There was no observed warpage that would be considered unacceptable within the AWS Structural Welding Code, D1.1. It was observed by the inspector that, due to the particular weld configuration, warpage had occurred on some of the pipe bumpers; however, these were considered acceptable within the AWS Code, Section 3.4, Limitations.

b. Additional Followup on Mr. Atchison's Concerns

Subsequent to Mr. Atchison's visit to the Region IV office on August 17, 1982, the NRC inspector returned to the site, during the period August 19-20, 1982, to review the specific areas identified by him.

With regard to the five girder welds, the NRC inspector observed that Nonconformance Report (NCR) M8100846, dated August 19, 1981, identified these areas of unacceptable welds. Repairs were completed July 13, 1982, and final NDE (VT, MT, and UT) inspections completed during the period August 4-9, 1982. The NRC inspectors made a visual inspection of the specific welds and found no discrepancies.

With regard to the alleged unqualified corner filed welds on the four 4 feet 6-inch by 4 feet 6-inch box structures on the main steam/feedwater pipe whip restraint, the AWS "Structural Welding Code," D1.1, page 14, figure 2.9.1, depicts a prequalified weld joint identical to that described by Mr. Atchison and as shown on NPSI shop drawings. In addition, the NRC inspector made a visual examination of 8 of the total of 16 corner field welds. There were no defects or discrepancies observed. QC inspection records reflect UT examinations were completed and found acceptable on July 2, 1982.

Region IV does plan to do additional inspection of vendor shop performed welding (including NPSI) during a subsequent inspection. (Open Item 8214-01)

4. Review of Licensee's Method of QC Inspection of Skewed Welds

Subsequent to Mr. Atchison's testimony on July 30, 1982, Mr. Atchison made a statement to an NRC investigator alleging that the licensee's QC inspection procedure for welding did not contain written instructions for examining skewed fillet welds.

Skewed welds are those joining two structural members that are other than in the same plane and are not perpendicular to each other. A typical example is two members jointed at an angle of 45° with a weld at the joint toe of 135° and another at the heel of 45° . The senior resident inspector-construction (SRIC) has reviewed the several quality assurance procedures that might be expected to provide inspection instruction on the measurement verification that such welds are of specified size. None of the procedures reviewed contained any such instructions but it was found that instruction had been given to the welding QC inspectors during training classes and the written examination given the welding QC inspectors contained a specific question dealing with the measurement of such welds as a part of their certification process to be qualified inspectors. The SRIC interviewed one experienced QC inspector for the purposes of having the inspector explain the measurement process that he had been using during the past several years on skewed welds. The process the person described was consistent with that previously described by a person who at one time had been an instructor in the inspection training courses. The SRIC would further note that during the many inspections of structural weldments conducted by both the SRIC and other NRC inspectors, there has been no indication of undersized skewed fillet welds. The allegation that the QC procedures do not address inspection of skewed welds is therefore substantiated, but it has not been established that there are any safety-related consequences of the lack of procedural addressment since apparently adequate training was given to the QC personnel. In order to provide additional assurance that the instructions have been effective, B&R QA management has initiated a reinspection of randomly selected skewed welds based upon statistical sampling techniques. The licensee QA supervisor has stated that appropriate QC procedures will be revised to address in detail the inspection techniques to be used both for the random reinspection effort and for future inspections. This matter will be considered unresolved pending a review of the revised procedures and the outcome of the reinspection effort. (Unresolved Item 8214-02)

5. Unresolved Item

Unresolved items are matters about which more information is required in order to ascertain whether they are acceptable items, violations, or deviations. One unresolved item is identified in paragraph 4 of this report.

6. Management Interview

The SRIC held a management interview on August 26, 1982, with the persons identified in paragraph 1 to discuss inspection findings and to confirm the commitments stated in paragraph 4.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
611 RYAN PLAZA DRIVE, SUITE 1000
ARLINGTON, TEXAS 76011

CASE ATTACHMENT 5 - Page 1 of 1

CASE EXHIBIT 739

Docket: 50-445/82-14

DEC 9 1982

Texas Utilities Generating Company
ATTN: Mr. R. J. Gary, Executive Vice
President & General Manager
2001 Bryan Tower
Dallas, Texas 75201

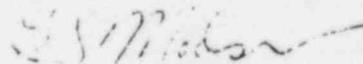
Gentlemen:

This refers to the special inspection conducted by Messrs. R. C. Stewart and R. G. Taylor of our staff during the period of August 3-30, 1982, of activities authorized by NRC Construction Permit CPPR-126, for the Comanche Peak Facility, Unit 1.

As a matter of clarification with regard to the NRC Inspection Report 50-445/82-14 which was issued as a result of this special inspection, an initial inspection report was issued September 29, 1982. Subsequently, information was verbally reported by your personnel to the Senior Resident Inspector, Construction, regarding a potentially reportable construction deficiency involving structural welding performed by NPS Industries. NRC Inspection Report 50-445/82-14 was revised and issued on November 8, 1982, as a result of the additional information provided to reflect that this office planned to perform additional inspections of vendor shop-performed welding and that this issue was considered as an open item. NRC Inspection Report 50-445/82-14, which was issued November 8, 1982, supersedes the previous inspection report issued September 29, 1982.

Should you have any questions concerning this inspection, we will be pleased to discuss them with you.

Sincerely,


G. L. Madsen, Chief
Reactor Project Branch 1

cc:
Texas Utilities Generating Company
ATTN: H. C. Schmidt, Project Manager
2001 Bryan Tower
Dallas, Texas 75201

Weld defects

Agency report backs charges of flaws at Comanche Peak

DALLAS TIMES HERALD 11/26/82

By JACK BOOTH
Staff Writer

A report by the U.S. Nuclear Regulatory Commission has substantiated charges by a former Comanche Peak nuclear plant inspector that there were defective welds at the plant.

The report states that NRC investigators found weld defects of the type mentioned in testimony by Charles A. Atchison, who has been branded as an incompetent and a liar by officials at the plant near Glen Rose.

Company officials say it hasn't been determined whether the welds are actually defective, and they deny that Atchison's allegations led to the discovery of the possible problem.

But Clyde E. Wisner, the NRC public affairs director in Arlington, said the weld problems in pipe support restraints are a "significant item" that may indicate a "breakdown" on the plant's inspection procedure for parts received from two suppliers.

Wisner said the NRC ordered plant officials to evaluate all welds of that type. He added that although Atchison did not point out the specific pipe support restraint mentioned in the report, he did charge in sworn testimony that many

Two other engineers fired from the Comanche Peak plant have charged that design flaws could make as many as 5,000 pipe supports unsafe. They said repairs could cost as much as \$1.5 billion, and that the faulty supports could allow system failures during an earthquake or coolant-loss accident. Such failures could lead to a meltdown of the reactor and a release of radioactivity into the surrounding area.

At the July hearings, Atchison told the U.S. Atomic Safety and Licensing Board that he saw warpage and defective welds in pipe whip restraints supplied by NPS Industries in Secaucus, N.J. He said similar problems existed in pipe supports made by Chicago Bridge and Iron in Salt Lake City.

After conducting inspections from Aug. 3 to Aug. 20, the NRC inspectors said they saw no warpage in the large steam pipe restraint cited by Atchison. But the report said inspectors conducted only a "very limited examination" because other equipment was blocking their view.

In a report based on the Oct. 19-20 inspections, the NRC said "numerous" weld problems were found in a main steam pipe restraint located in the same general area as the pipe Atchison had identified. Wisner said the restraint, which has 10,000 feet of welds, is the same type as the one Atchison had cited.

Tony Vega, the TUGCO supervisor for quality assurance, said in an interview that the possible weld defects in the pipe support were discovered after a painter noticed a cracked weld and reported it to the TUGCO engineering department.

Vega said weld evaluations are "subjec-



Atchison

"The company doesn't want to admit that any of the allegations made by our witnesses are what have led to the findings of these significant problems."

— Juanita Ellis, president
Citizens Association
of Sound Energy

Meeting 11/29/82 at NRC's Arlington (Region IV) offices between Juanita Ellis and Jerry Lee Ellis of CASE and NRC's Bob Taylor, Clyde Wisner, Jim Gagliardo, Tom Westerman, Bob Stewart, and Gary Mizuno (at request of NRC's Westerman on 11/26/82):

GAGLIARDO: "I don't know if you've met everybody here. It's been some time ago since you met me, I don't even know if you remember me. I'm Jim Gagliardo. And I think you know most of the others: Bob Taylor, the Resident; and Clyde Wisner, our Public Affairs; Tom; and Bob; and Gary.

"Uh, the reason we asked you to come by, Juanita, is there was some confusion raised with regard to the report 82-14 and the fact that there were two copies of it that you had received, and we wanted to, since there had been some confusion and some questions raised on that, we wanted to have a chance to chat with you a little bit about it so that you understood what the problem was. So, Tom, I'll let you take it and talk about it."

WESTERMAN: "Basically, we started off with the testimony from the hearing, which we then subsequently were trying to follow up on. Initially we tried to do it without talking to Mr. Atchison and found that it was like a needle in a haystack that we were looking for..."

ELLIS: "Right."

WESTERMAN: "...so to speak, so then we asked Mr. Atchison to come in and he did cooperate and we by that time had the specific drawings and what have you in a number of different areas and from that we were able to have Mr. Atchison identify specifically the welds that he had in question and the areas he had in question. So then we went out and did inspection and we concentrated primarily on those welds and on the basis of that, we then wrote our -- that initial report. Let me say, in the initial report, you know, Mr. Atchison had indicated there were some problems in some welds and indeed there may well have been, but we found that the licensee had in most cases identified those areas and those areas had been corrected. In addition, there was one that dealt with a weld procedure that he didn't think met code. As we explained to Mr. Atchison when he was here, we'd have to look at it from the regulatory standpoint as to what the code will allow, and when we did look into that, we did find that that particular weld is allowed by the code. So we wrote the initial report based on where we stood at that point in time. We were in the midst of getting ready to issue that report when the licensee reported to us that in the structure, which is the pipe whip restraint that's outside the Safeguards Building, that there were some welds that the painter had identified a crack and that they were writing a nonconformance and they'd report it as potentially a significant deficiency. We at that point in time then decided to revise the report until we had some time to go back and look. The subsequent report which is the final and that we consider our final report is the November 8 report, and..."

ELLIS: "Right. Yeah, I got a copy of that I think on last Monday."

WESTERMAN: "O.K. And that says we consider the quality of vendor welds as an open issue and that we're going to look at it further and we did follow subsequently then with a report that Mr. Stewart and Mr. Tomlinson and Mr. Roberds did which was 82-22. That's how we got to where we are. We did go back and look at the -- let me explain one of the things that did occur from the time we were first there and the time we went back the second time. They had scaffolding installed to paint. A lot of the areas in that thing were -- but again, we did -- Bob Stewart can tell you -- we did manage to get to the area that we thought were Mr. Atchison's primary -- were his concern. And subsequently, of course, they did install the scaffolding which is around those things and then that's

11/29/82 Ellis/NRC Interview

WESTERMAN (continued): how they found -- the painter then essentially found a weld that had a crack. Now, this weld..."

STEWART: "Well, it wasn't a vendor weld, per se."

WESTERMAN: "Was not a vendor weld..."

STEWART: "It was a vendor weld, but the crack occurred subsequent to the..."

WESTERMAN: "The crack occurred when the pipeman bolted the structure into place, in other words, that structure is bolted in place. NPSI mainly manufactured, according to this job, these crushable bumpers which go in a pipe whip restraint. These are once in a lifetime device, and essentially they're not a strength union, they're not in tension during normal operating -- they're only if a pipe does break."

STEWART: "Yeah, that whole structure doesn't touch the pipe per se. It's there in case of a guillotine rupture on the main steam line or feed water line that passes through those. They're not an operating type structure as a moment restraint is or a pipe hanger similar type structure. This is once in a lifetime use if they ever have a guillotine break..."

WESTERMAN: "Which I don't think we've ever had one."

STEWART: "It is virtually an impossibility but there is a -- one case -- it could happen."

GAGLIARGO: "You really hope it's never used, not just once in a lifetime."

STEWART: "Yeah. I don't know of any in any industry where they've had a guillotine break of the type that we're designing for."

WESTERMAN: "The Germans, I understand, are looking at the whole issue of pipe whip restraints as to whether they're -- there's something new that came up about a couple of weeks ago (unintelligible). Strange that all of a sudden something like that would show up. Does anybody -- is there something else maybe, or you think of anything else?"

GAGLIARDO: "No, I don't know of...if you (to Ellis) had any questions."

WESTERMAN: "Do you have any specifics?"

ELLIS: "Well, one of the questions that -- you said that when you looked at these things you found that the licensee had already identified them and taken care of them."

WESTERMAN: "That's correct."

ELLIS: "When did they do that?"

STEWART: "Just right after Atchison had left. Apparently, uh, subsequent...."

WESTERMAN: "It was during the period of time when they were working up there, I think...."

11/29/82 Ellis/NRC Interview

STEWART: "Yeah. It was, uh -- see, when Atchison saw them, there had been no inspections done as to the -- I don't -- Bob, maybe you know a little more of the history on that."

TAYLOR: "That's essentially correct."

STEWART: "And there was a hold up on, I think, on the corner welds that...."

TAYLOR: "(unintelligible)...it's a huge structure, it's 50-odd feet long, 35-odd feet tall. It's 50 feet long and approximately 35 feet tall, and is on the order of 4 foot through its cross section. And came in in bits and pieces, literally, from the fabricator, had to be assembled onsite in part by welding and in part by folding. The process went on for many, many weeks, in fact we'll say many, many months, literally. Some of the iterative actions like bolting caused some stresses to build up in some of the materials that had been previously fabricated. They couldn't stand the stress, hence (unintelligible). It appears on the record value that during the period in which Charles was there, that he didn't say apparently very much about the NPSI; it was nothing but whip. During the process of the fabrication through the spring and last summer, the utility found things, that QC found things largely in relation to the work that was ongoing with the site construction people rather than with the previous vendor, and these things were corrected as they went along. Didn't really correct the vendor errors. They didn't really look for them until the painter spotted the crack that had apparently occurred as a result of the bolting action."

WESTERMAN: "But, as a result of that, then the vendor welds which are code rejectable. Let me explain that part, though, that is there's some X inches of weld in this structure which does not meet the code. Now I'd like to differentiate so you can understand the difference between a weld in this structure and a weld in, say, a main coolant pipe or a high pressure pipe. In that, the weld itself is very critical, and we do a lot -- well, the non-destructive testing, for example, that's done there is volumetric which means they are like X-ray or that you can examine it are ultrasonic which you can examine the full thickness of the weld. In a structure like this, it's simply a visual inspection with an NP or PT of the surface. If you would, if you had a fishnet and you had your fingers in it and you were trying to pull it apart, you might be able -- you could come in here and snip some of these strings and this fishnet would still function, which is the situation on this structure which we now have the licensee evaluate to see overall had it gone undetected it would have been significant. We have made the issue of vendor welds an unresolved item and we have a commitment from the licensee to go back and look at all vendor welds."

ELLIS: "O.K. Will that be just NPSI welds or other vendors, the whole...."

NRC (not sure who): "No. No, CB&I."

TAYLOR: "Anything that was purchased with weldment which was bought by source inspection originally with no subsequent onsite inspection will now receive an onsite inspection."

WESTERMAN: "So, you know, it has brought up an area that we feel now the licensee needs to fully respond to and look at again and that is vendor welding -- vendor-supplied weld components."

ELLIS: "In I guess it was 82-22, there was something mentioned on that -- by the way, one of the things that's always bothered me is the fact that I don't get these I&E Reports until a reporter calls where the utility has attached them as part of a news release. That never has set very well with me."

WESTERMAN: "Well, that is a problem -- we have to give them a ten-day review period for proprietary nature. That's standard that we..."

GAGLIARDO: "And until that ten days expires, we can't make any releases outside of the agency. If the licensee within that ten day period has reviewed it and said, yes, I don't think it's proprietary, and he sends it out then as part of discovery or whatever effort that he does to send it out, then you would not receive your copy before someone else might receive theirs."

ELLIS: "Right. Can I get a copy now of 82-22?"

GAGLIARDO: "Has it passed the ten day...November 10th. Yeah."

WESTERMAN: "I can't see any reason...in fact, you should have had one in the mail to you."

ELLIS: "Yeah, yeah. What about 82-19 that was mentioned I think in that one or one of the others?"

WESTERMAN: "I'd have to check with my secretary to find out...."

GAGLIARDO: "Why don't you double check with (unintelligible). We can give you a copy of that if you'd like."

ELLIS: "I'd like to have a copy of it."

GAGLIARDO: "Because I don't recall having received any request from the licensee and the ten days has expired."

(UNINTELLIGIBLE COMMENTS)

STEWART: "What was 82-19?"

ELLIS: "Uh, I think it's referred to -- let me take a look at that just a second. I think it was in this. Yeah. It's talking here about this was verified in 82-19."

WESTERMAN: "O.K. I believe that we're talking about the panels."

ELLIS: "Uh huh."

WESTERMAN: "O.K. There was -- previously had been to the site, had looked at the panels and said yeah, there are some welds similar to the ones that our vendor inspection branch had identified back at the vendor shop and..."

ELLIS: "Uh huh."

WESTERMAN: "O.K."

STEWART: "Yeah, that's all inclusive in the re-examination...."

(UNINTELLIGIBLE COMMENTS)

WESTERMAN: "I believe that one's been issued also."

GAGLIARDO: "Yes, it has been."

WESTERMAN: "You'd like both of those?"

ELLIS: "I'd like to get a copy of that."

WESTERMAN: "Sure, we can make a copy of those."

ELLIS: "We might just double-check to see if there's any others that, you know, are past the time...."

WESTERMAN: "That have been released just....O.K."

NRC (not sure who): "...don't know of any recent..."

GAGLIARDO: "I can't think of any offhand, but Debbie would have that in her records."

STEWART: "Well, isn't Juanita on the mailing list...."

GAGLIARDO and WESTERMAN: "Yes."

GAGLIARDO: "She is on the one after the ten days expires then that's put in the mail and it's just that...and recognizing too that we had a holiday weekend...Debbie may have been out. Well, she was out."

ELLIS: "Sure."

WESTERMAN: "I hope you can appreciate, we -- when somebody has concerns, we have to tie it to some specifics and if a guy says, there's a fish in the ocean, and it looks like this, we may not...and that's what we tried to do with Mr. Atchison was to identify the specific welds that he -- so we could then look at those, you know, the same position we are now with Mr. Culton."

ELLIS: "Right."

WESTERMAN: "We may have enough information from him to look at that -- he's indicated that he's turned over any specifics he has to you in a subsequent telephone conversation."

ELLIS: "He hasn't yet. He plans to, but I haven't gotten anything yet."

WESTERMAN: "O.K. If we find we need something more, we'd like to have the opportunity to see if there's something..."

11/29/82 Ellis/NRC Interview

STEWART: "Well, you know, whatever he turns over to you we would appreciate seeing because it's something apparently that he has sketches of his things made up himself or something, it's just rather nebulous at this time what he really has specifically, and we would appreciate whatever he does turn over to you."

ELLIS: "Do you anticipate that you'll do what we were talking about, going through and pulling his drawings and then some of the other drawings perhaps regarding the pipe supports?"

STEWART: "Whatever we can do we'll pursue it as much as we can..."

WESTERMAN: "we specific..."

STEWART: "It may not be his specific drawings, but it will be field drawings that were made up and whether they still have them. Do you know what drawings I'm talking about?"

TAYLOR: "No, I do not know what you're talking about."

STEWART: "His sketches that he, as a draftsman, made up for the field to install hangers..."

TAYLOR: "O.K. Now I know. I recollect."

WESTERMAN: "If we can tie that down specific enough, we'll..."

TAYLOR: "I can explain it already. I went back and checked out when he was there what he was doing, what record -- what type of drawings he would have generated, and I don't have any problem. I think my wife could have done the job very nicely, and she's not a draftsman."

WESTERMAN: "A lot of times we have a problem with an individual who doesn't.... (unintelligible)"

TAYLOR: "...has an overappreciation for what he thinks he was doing."

STEWART: "Yeah. I mean, you gotta realize he was only employed in that area for about four months, and in that four month period he was doing both electrical and drafting, so, but we will fully explain that in the report... (unintelligible) I hope there won't be any questions by the time the report comes out. It's still in motion so we're fitting it in where we can."

ELLIS: "I think one of his primary concerns was that he felt that he tried to do his job the best way he knew how, but he felt that some of the other people in the area just really weren't that concerned about how they did their work, and he was concerned I think from that aspect as much as anything else. And..."

GAGLIARDO: "So his allegation is not so much in his work but in the work the work of others?"

WESTERMAN: "I didn't understand the part he says he threw the thing in on the cable splice just to see what we'd react to it."

ELLIS: "Well, no he didn't throw it in just for that. But he wanted to know what you were going to do with it. Frankly, he didn't have very much confidence in the NRC, and that's shared by quite a few people at the plant, I might add."

WESTERMAN: "If he -- if you get it specific, you know, saying that there's a cable splice in the cable spreading room is very difficult. There's lots of cable in there. We've got it narrowed down to a cable of such-and-such a length. We may well be able -- (unintelligible) it looks like now there's a limited number of those cables."

STEWART: "That are 800 feet and over."

WESTERMAN: "And so we may be able to hand in hand go down and, you know, look at those particular cables. But we have to have something specific, you know, to be able to look at it."

ELLIS: "Uh huh."

WESTERMAN: "We did try to I think subsequently on the telephone try to question him if he understood the difference between a splice and a sheathing repair which is an approved procedure. But I don't know if we were successful...."

STEWART: "Yeah, he had quite a bit of ignorance on what a sheathing is, and I asked him did he know what a sheathing is and what I'm talking about and he said no...(unintelligible)"

WESTERMAN: "If it's not a class one-E cable, you also are allowed to do some splicing and it's acceptable. Again, we've got to really get down to what the cables so we could go look..."

ELLIS: "Uh huh. To see what specifically...(unintelligible)"

WESTERMAN: "But we are. We, you know, we get a lot of people that come with concerns to us, and we don't neglect them."

ELLIS: "One of the things that concern me about his statements were that after what had happened with the fellow who's in prison in Oklahoma, after his allegations, they seemed to go hand-in-hand, and that was one of the things that especially concerned us because it seemed that was substantiating at least possibly part of what was said with that, so..."

WESTERMAN: "Well, that report..."

ELLIS: "Is there anything new on that, is that investigation ongoing, or (unintelligible)"

WESTERMAN: "The investigation is essentially complete and the report's gone back to the headquarters..."

GAGLIARDO: "...the report has gone to the headquarters for review to determine if it's pursued any further with the Justice Department. All of our investigation reports go back to headquarters for determination if the Justice Department wants to pursue the criminality aspects of it."

ELLIS: "Uh huh."

WESTERMAN: "For example, (unintelligible), you know, I think he had a problem with lugs he said they used with oversized washers or..."

TAYLOR: "You've got me there."

WESTERMAN: "O.K. It turns out that the lug is a one piece with a very small screwhead and a big part to it, you know, some of those kind of things if you look at the outside it might appear to be a problem but if you actually take a look at the lug, you'd find it's an integral lug, so a lot of those things are kind of clearing up, you know. But we have to have time to look at it and have to have time to process it...."

ELLIS: "Right. Right, I know it takes time to do all of that."

WESTERMAN: "And we've got enough going..."

GAGLIARDO: "You know, we do need to stress to all of our allegers, though, the need for specific information. If, you know, we get an allegation that there's a problem out there somewhere with a weld or a hanger or a cable splice or what have you, without the specific information of where it's at and helping us locate it, we're really at a loss to be able to expend the type of manpower to go and look at all of the cable or all of the hangers to try and locate something like that."

WESTERMAN: "You can walk a lug but you're not going to (unintelligible)"

ELLIS: "Yeah."

WESTERMAN: "You're giving it a more cursory look than, you know, anybody. I can walk in the cable spreading room and look around and see if I see any splices and, you know, say, no I don't see any splices."

ELLIS: "Oh yeah."

TAYLOR: "Especially when all the cables are overhead."

WESTERMAN: "You have to crawl into trays and lift covers and then you can't..."

TAYLOR: "Most of the cable in the cable spread room is something over 10 feet off of the floor, so it isn't a casual thing that you're going to be doing."

ELLIS: "You don't stroll through and take a look at it. I know that specifics are helpful on this. And I think one of the things that upset Dennis was that he felt that perhaps someone else other than the people in the room were listening. I think he indicated that in the phone conversation."

WESTERMAN: "The two calls were mine. I was in another meeting, I broke loose one time and called in to see how it was going because I didn't want to come in and interrupt it. That was the easiest way to...and then I went back to my meeting, and then at a subsequent time I called Bob Taylor to tell him the meeting's ongoing, Mr. Taylor says, ask him the color of the cable. So the second call back in was a ask him if he can tell us the color of the cable, that would give us a fair clue, you know, if we can identify it as being over

WESTERMAN (continued): 800 foot and being a red colored cable, then that may only be four cables instead of 65. The calls into the room were -- we didn't even have a -- we did not have a tape -- we didn't tape that session, as a matter of fact."

ELLIS: "Uh huh."

WESTERMAN: "But, naw, there was nobody listening in. What would -- even if there had been somebody listening in, what, you know, other than we're trying to think if we get some other -- but there was no -- there was nobody listening in. We don't tap any rooms. We're not the FBI or somebody else..."

GAGLIARDO: "It's not our style."

WESTERMAN: "...no, it's not our style of doing things. So we didn't even -- you guys, you made two tapes, I understand."

ELLIS: "Yes, he taped it and I taped it."

WESTERMAN: "If it's possible, sometime we would like a copy of one of those tapes, if we could..."

ELLIS: "Yeah..."

WESTERMAN: "...and we'd be willing to pay you for the cost of your tapes or whatever, so at least we've got a --"

ELLIS: "...record of (unintelligible)"

WESTERMAN: "(unintelligible) I can come back and listen. I had another meeting (unintelligible) and was not able to be at the meeting that day or I would have been there."

ELLIS: "Uh huh. I think another thing that kind of bothered him was that, you know, you didn't have any drawings or anything there already. He had hoped, you know, that you'd have some things there and he could maybe sit down and look at the specifics...."

WESTERMAN: "I was under the impression that he had drawings, and would come in with the drawings, and that we'd (unintelligible)"

STEWART: "He had previously stated that he had drawings (unintelligible) point in

WESTERMAN: "...had drawings, so we at that/time had not even tried to go to the -- you know, we had not tried at the site because we didn't have enough specifics to even begin, you know..."

STEWART: "Well, even in his testimony he said he had documents, and apparently what he's done is gave them to a professor over at North State (unintelligible) one of the universities up at Denton, and, uh..."

WESTERMAN: "(unintelligible) I hope you don't feel that any of our evaluations have been, you know, if we've got a specific we will look at it, but we will look at it from a regulatory standpoint, we have to say does it meet the code or did it meet the commitment or that kind of thing. A lot of times a guy,

WESTERMAN (continued): somebody has a bad feeling about something and if you open it up and look at the -- (unintelligible) comes in with X number of concerns and many one out of all this list of concerns will pan out. If we don't get specific enough on the ones we got, then we might not even find that one, that's how come we're after specifics."

STEWART: "I hope you understand, we've spent many many man-hours for every one of these. Bob, down at the site, Tom, the supervisor, and myself, I don't know how many hours we've expended on Dennis alone."

TAYLOR: "And a great deal of utility time (unintelligible)."

STEWART: "Yes, a lot of utility time."

TAYLOR: "I have access to a computer program...for instance, there are somewhere in the area of 27,000 electrical cables if you ever want to count them. So if I ask the computer people to, shall we say, spit out only those which are safety cables and only those which are 800 feet long, they can re-program their computer to do this (unintelligible), but it takes the programmer about four hours to make that change in the program, and then it takes probably three hours or four hours to get that kind of a computer run out of the main thing. Because what it's having to do, of course, is go through every card in there and make a decision on that card, either print it or throw it out. So it doesn't come that quick. And on the other hand, I can't really address 27,000 cables."

ELLIS: "Yeah, I can appreciate that there's an awful lot out there to look at. And I think I've probably mentioned this before. I think one of the biggest problems with the NRC is that there's a real lack of communication between the people who come in and make allegations. I think that many times they feel that they're put on the defensive and this is..."

WESTERMAN(?): "Well, that's (unintelligible)."

ELLIS: "...this is a real problem."

WESTERMAN: "Well, we hope, we were trying to get specifics from you. You know, we were digging, you know, what really is your -- what really is the problem here, you know, where is it, what is it. And maybe that...."

TAYLOR: "Perhaps we ought to spend a little more time trying to explain to them why we're asking (unintelligible)."

ELLIS: "Yes, I think that would be helpful."

WESTERMAN: "Sometimes a lack of education on the...you know, a guy has got a very small segment of something that he's involved in and where does that fit into the overall thing, a lot of time's I think it's an education problem."

ELLIS: "All right. I think that's one of the reasons, though, that a lot of the people don't come forward, because when they talk with other people and see how they feel after having talked with the NRC, it's not very conducive to getting other people to come forward with problems. There are a lot of people down at the plant right now or who have been at the plant who will not talk to the NRC."

TAYLOR: "Oh, I'm sure that's the case. We have a problem of understanding here."

ELLIS: "Uh huh. And that's, uh..."

TAYLOR: "The typical construction contractor, and Brown & Root is no exception, has some, shall we say, some relatively harsh employment practices. It isn't that they have a practice which says that if you talk to the NRC that you're going to be fired. But it might contribute, I won't deny it."

ELLIS: "Uh huh. Right."

TAYLOR: "The system is such that a foreman can't fire anybody, but a general foreman can fire anyone that's in his crew, usually upon a foreman's recommendation, and there is no review. It's just done. The reasons when he's fired may not be the reasons which are stated. The simplest reason, and the one I've always liked, is 'I don't like you, Mrs. Ellis, you're fired...'"

ELLIS: "...and there you go."

TAYLOR: "...that takes care of it. More often than not, strangely enough, that's really the real reason -- the foreman doesn't like a worker and he finds other reasons to fire him, but he finds reasons regardless."

ELLIS: "And under the system there's nothing to do -- that the NRC really can do to protect whistleblowers."

TAYLOR: "No, it's a commercial enterprise. I spent some number of years on the commercial side of the construction business before I came with the Commission, and I'll have to be perfectly honest, in that environment, I would be as arbitrary and capricious as anyone else. If I told someone to do something and they didn't do it the way I wanted them to do it, they didn't work there the next day. It's just that simple. I couldn't afford them."

GAGLIARDO: "We would appreciate it, though, if you have people that contact you and that are reluctant to come to us, please, please tell them, you know, why we..."

(HAD TO CHANGE TAPE)

Gagliardo (continued): "...cause we, you know, we just don't have the resources to send out a team of people, inspectors, out there to spend two or three weeks to trace down, you know, all of the cables to find splices, or look at all of the hangers to find faults(?)....(unintelligible)."

TAYLOR: "Well, it's more difficult than that, Jim."

GAGLIARDO: "...this is why we need to into specifics."

TAYLOR: "I've been a electrician a fair share of my life (unintelligible). And I could not look at a repaired cable and tell whether it was a jacket repair or a splice. Now, jacket repairs are perfectly legal. Splices are not. But I can't look at it and tell. The only way I can do that is to unwrap that jacket."

ELLIS: "You mean the jacket around the wire itself."

STEWART(?): "Yes, there's sheathing..."

TAYLOR: "Well, there's jacket and jacket and jacket."

WESTERMAN: "Yeah, this is the insulation around the cable, several materials normally. But you can have tears in that, you may get that in pulling it or something and if that's identified, then it is a perfectly legal repair to wrap it. That's been environmentally tested and was all shown that it's acceptable repair. If you, I guess if you come up with any other -- if you come up with an individual that won't talk with us, but if you think the concern is sufficient, I think you certainly ought to be willing to..."

GAGLIARDO: "That too would be -- you know, if the individual doesn't want to come to us and he would provide you with the specifics, you can give them to us, we would appreciate that."

WESTERMAN: "We'll look at the specifics (unintelligible)."

ELLIS: "Well, I think you may have gathered by now that I think there's some major problems at the plant that haven't really been looked at sufficiently, and I think that eventually the truth is going to come out one way or another. I think it should be, hopefully, through the NRC and through the established procedures, but one way or another, it's going to, either now or possibly with an accident later on, and let's hope that it's not that way."

GAGLIARDO: "I hope you will encourage them to come see us."

ELLIS: "I will."

GAGLIARDO: "...or at least encourage them to give you the specific information that we can look at."

ELLIS: "I certainly don't want Comanche Peak to be the one that has the big accident. So...."

WESTERMAN: "As big a structure that is and how many crafts and how much is going on, that is a very good (unintelligible)."

11/29/82 Ellis/NRC Interview

ELLIS: "That's one of the big problems, I think, is that it's so massive that it's really difficult for anyone to know exactly what's going on."

GAGLIARDO(?): "That's true."

ELLIS: "It really is."

WESTERMAN: "I often wonder, though, here I am sitting in a building and almost no controls over being built."

ELLIS: "But the repercussions just wouldn't be quite as great."

(SEVERAL COMMENTS AT ONCE - MOSTLY UNINTELLIGIBLE)

ELLIS: "It would be for the people involved."

GAGLIARDO: "Well, I don't think that we have anything more unless you have anything specific that you wanted to bring...."

WESTERMAN: "And if there's any other questions, I'll..."

ELLIS: "No, nothing really...."

GAGLIARDO: "We'll get you a copy of those two reports. Have you been receiving the ones that we've been mailing to you, or is it just that they've been coming a little late?"

ELLIS: "Well, yeah, I guess so, as far as I know. You know, I don't know which ones have been released and which ones haven't."

WESTERMAN: "Well, Mr. Taylor, of course, has been involved an awful lot with the hearings, so as far as the Resident construction type reports, that -- the last one was put...."

TAYLOR: "...few and far between and they've covered a large period of time, so we've taken a lot of his time with the hearings. And we are, the other inspectors are from this office going out and looking at the overall program. We still have (unintelligible) has to spend an awful lot of time with the hearing."

ELLIS: "Yeah. One other thing -- do ya'll have any idea right now about when the allegations of Walsh and Doyle will be, you know, when ya'll have a report or anything on it? I think the last thing that's in writing is December 31st (unintelligible) still the same?"

MIZUNO: "Still the same. If it changes, it changes."

WESTERMAN: "I don't think we want to be committed until we put it all down and see where we -- if we've got enough...."

ELLIS: "Oh, yeah, right. If you don't have anything further..."

WESTERMAN: "We have to see if we're far enough along. We've been working on it."

ELLIS: "Right. Well, and we don't want to rush you on it, either. We want to be sure it's -- you know, that you've got time to do it right."

WESTERMAN: "The term rebuttal testimony has always kind of bothered me. We are not necessarily rebuttal, but we would tell the regulatory -- from the regulatory eyes how these concerns are viewed, and whoever it falls out on, you know, we will simply say we've looked and here's how it looks...."

TAYLOR: "If we looked at the other side, would it be confirmatory rather than"

WESTERMAN: "Yeah, maybe it ought to be (unintelligible) rebuttal confirmatory."

GAGLIARDO: "That term bothers me too, because we may -- the results of our investigation may in fact confirm these allegations, so I don't like to hear the use of the term rebuttal..."

ELLIS: "It could be confirmatory either way."

GAGLIARDO: "...of his testimony, because that's not the intent of our going and looking at it, to rebut his allegations. To determine the facts."

WESTERMAN: "It's a legal term and we have no other vehicle -- in fact, the last session when we were trying to get our witnesses on the stand, it was more than anything was to make them available for the Board to ask the kind of questions we felt the Board ought to ask, so the Board could be clear from a regulatory viewpoint."

ELLIS: "Uh huh. And, oh, there's one other thing: When ya'll say 'as-built' what do ya'll mean?"

TAYLOR: "I'll try and define it. This is a very old construction term. In (unintelligible) of construction, very few things are in reality built exactly as a drawing with spec(?) would indicate it's supposed to be drawn. Frequently it's impossible. In order to give the owner a set of drawings which reliably represent what has been built, it is pretty normal to go back and reinspect, sometimes remeasure, resurvey, whatever you have to, to give an absolute reliable set of drawings to the owner. In this particular case, through 79-14 and in regard to pipe stress analysis systems, we have dictated what you have to do. The dictation already actually in fact existed in the Codes, but it needed some reinforcement, and 79-14 was the vehicle for reinforcing that. Now, in this particular case, what the QC organization is doing is going out and resurveying the location of each and every finished hanger. Sometimes it's a reiterative process, because they've gone out and surveyed them in and then found out that the hanger had to be changed and moved to a different location or it took on a different configuration, then they have to go back out and do it again to keep on going. The ultimate purpose is to define exactly where everything is within a very small tolerance -- we're talking in this case plus or minus 2 inches in space."

ELLIS: "So like in a report or something like that, unless you said..."

MIZUNO: "O.K., hold on. The way that Mr. Taylor seems to determine as-built is not necessarily the way that the Applicants have been using it. They made some distinction between as-built, as-built confirmed."

TAYLOR: "Yes, they did, because -- but it's a terminology problem."

MIZUNO: "So we don't want to be -- NRC says it one way and we don't want to be putting words into the mouth of what the Applicants say."

TAYLOR: "O.K. I won't disagree with you, Gary, but the definition that I gave is in effect the proper definition. The Applicant, for purposes of internal controls, misused the term at one point in time. And misused a rubber stamp on a couple of thousand support drawings. It was a misused term. It isn't worth the expense of going back and republishing those particular drawings, and since we know what the terminology means."

ELLIS: "So, in any reports or anything that ya'll put out, unless you said -- you would indicate in some way that it was really complete."

TAYLOR: "That is our indication of as-built, our indication of being complete."

ELLIS: "Right. O.K."

(NRC CHANGED THEIR TAPE)

WESTERMAN: "Well, sometimes when as-built may be in our inspection report, we are -- what we are referring to is the structure as we actually see it in the field at the time we are viewing it."

ELLIS: "It's up there and that's complete, that's it."

WESTERMAN: "Yeah, and it is complete at this point in time, that's the way the structure is."

ELLIS: "But now, as I understand it, that does not mean that they won't go back and do something else to it."

TAYLOR(?): "That's right."

WESTERMAN: "It may well change."

(MUFFLED CONVERSATIONS)

TAYLOR: "But then it goes through another, in computer terminology, (unintelligible) and it's reinspected."

WESTERMAN: "We may not necessarily...."

TAYLOR: "We may not do it again, certainly."

GAGLIARDO: "You may recall hearing about a problem we had at one of our operating plants, namely Arkansas, here recently where we found some problems with the configuration where the licensee chose himself to verify his as-built drawings on one of his systems and found that there were some discrepancies, did some checks on some other systems and found additional discrepancies, and we did some checks and walk-downs of systems. It turned out the problem was that there had been some modifications made and the people who were responsible for making the changes to the drawings that had been marked up to show the as-built configuration hadn't completed that. The red line -- what they call red line drawings were still in

GAGLIARDO (continued): the mill and hadn't been processed yet. We had to spend quite a bit of effort in looking into that & so did the licensee."

ELLIS: "You said the red line drawings -- what do you mean?"

GAGLIARDO: "When they do a design change, then the engineers involved in that change will take the previous as-built drawing and red-line it to mark up to show where the modifications that have been made to that system. Those red-line drawings then go to the drafting department that takes the original as-built drawing and modifies it to show what its current as-built configuration is and sends it out."

TAYLOR: "At Comanche Peak, Juanita, it's a shade of difference. Relatively, we'll say minor, changes are handled on your precious CMC document. If the change is so significant that a CMC can't really cope with it because of its physical size, then they will red line the original drawing, it will go back to drafting and be republished as another issue of that drawing, with no CMC involved. It's just a matter of magnitude in this case."

ELLIS: "O.K. I remember something on one of the documents that said 'blue line.'"

TAYLOR: "Same terminology."

ELLIS: "Same terminology? Means the same thing?"

TAYLOR: "It's just the color of a pencil or pen."

ELLIS: "It doesn't really indicate anything different."

GAGLIARDO: "Were they referring to blue-lining a drawing or the blue-line reproduction process?"

TAYLOR: "No, they don't use a blue-line reproduction very often."

GAGLIARDO: "Because see, there are blue prints and then you have a reproduction process for drawings which is sometimes referred to as blue-line. Blue-line copy of it."

ELLIS: "That may be what the -- it was imprinted on the drawing."

TAYLOR: "No, the blue line means red line in this particular concern. They don't frequently use blue prints. Depends on the size of the drawing. Frequently it's only the very largest drawings go through the blue print process. Smaller ones go through a quasi-photographic process very similar to Xerox."

(MUFFLED CONVERSATION IN BACKGROUND.)

GAGLIARDO: "Well, if you don't have any other questions, then thank you for coming by --- "

ELLIS: "There's one more thing. I knew there was something else there.... One of the things that one of our witnesses was concerned about was the pasting up of the drawing so that when you got to the end of a drawing -- the end of a series of drawings, the latest one, you might have signatures on there who had never seen that particular drawing. Has that ever -- is that a normal process?"

11/29/82 Ellis/NRC Interview

WESTERMAN: "Well, as current as the docket file is. There may still be some in the chain, my project section license(?) and there's a different project section in the other branch may write them, so you're welcome to look at the docket file. I don't know how -- it may have a couple -- it may have a month or something lag in it, but you're welcome to it."

ELLIS: "That might be helpful, and those other two that I mentioned."

WESTERMAN: "O.K."

ELLIS: "Thank you much."

GAGLIARDO: "Well, thank you for coming by."

(END OF TAPE)

CASE EXHIBIT 737

Docket: 50-445/82-22

NOV 10 1982

Texas Utilities Generating Company
ATTN: R. J. Gary, Executive, Vice
President and General Manager
2001 Bryan Tower
Dallas, Texas 75201

Gentlemen:

This refers to the inspection conducted by Messrs. R. C. Stewart, D. P. Tomlinson and Ms. M. J. Roberds of our staff during the period October 19-20, 1982, of activities authorized by NRC Construction Permit CPPR-126 for the Comanche Peak facility, Unit 1, and to the discussion of our findings with Mr. R. G. Tolson of your staff at the conclusion of the inspection.

Areas examined during the inspection and our findings are discussed in the enclosed inspection report. Within these areas, the inspection consisted of selective examination of procedures and representative records, interviews with personnel, and observations by the inspectors.

Within the scope of the inspection, no violations or deviations were identified.

Two new unresolved items are identified in paragraphs two and three of the enclosed report.

In accordance with 10 CFR 2.790(a), a copy of this letter and the enclosure will be placed in the NRC Public Document Room unless you notify this office, by telephone, within 10 days of the date of this letter and submit written application to withhold information contained therein within 30 days of the date of this letter. Such application must be consistent with the requirements of 2.790(b)(1).

Texas Utilities Generating
Company

2

Should you have any questions concerning this inspection, we will be pleased to discuss them with you.

Sincerely,

15/

G. L. Madsen, Chief
Reactor Project Branch 1

Enclosure:
Appendix _ NRC Inspection Report 50-445/82-22

cc w/enclosure:
Texas Utilities Generating Company
ATTN: H. C. Schmidt, Project Manager
2001 Bryan Tower
Dallas, Texas 75201

bcc to DMB: -IE01

bcc to RIV:
RESIDENT
SECTION CHIEF
INFO SYSTEMS
RPB2
RPB1
RIV FILE
STATE
J. COLLINS
R. STEWART
M. ROBERDS
D. TOMLINSON

APPENDIXU. S. NUCLEAR REGULATORY COMMISSION
REGION IV

Report: 50-445/82-22

Dockets: 50-445

Category A2

Licensee: Texas Utilities Generating Company
2001 Bryan Tower
Dallas, Texas 75201

Facility Name: Comanche Peak, Unit 1

Inspection at: Comanche Peak Steam Electric Station

Inspection conducted: October 19-20, 1982

Inspectors:

D. P. Tomlinson
D. P. Tomlinson, Reactor Inspector, Engineering Section
(Paragraphs 1, 2, 3, 4, 5)11-02-82
Date*R. C. Stewart*
R. C. Stewart, Reactor Inspector, Reactor Project
Section A (Paragraphs 1, 3, 5)11-02-82
Date*M. J. Roberts*
M. J. Roberts, Engineering Technician, Engineering
Section (Paragraphs 1, 2, 5)11-02-82
Date

Reviewed:

T. F. Westerman
T. F. Westerman, Chief, Reactor Project Section A11-3-82
Date

Approved:

D. M. Hunnicutt
D. M. Hunnicutt, Chief, Engineering Section11/2/82
DateInspection Summary:Inspection During October 19-22, 1982 (Report 50-445/82-22)Areas Inspected: Routine, unannounced inspection of construction activities.
The inspection involved 36 inspector-hours onsite by three NRC inspectors.Results: In the area inspected, no violations or deviations were identified.

DETAILS1. Persons ContactedPrincipal Licensee Personnel

- *R. G. Tolson, Site QA Supervisor, TUGCO
- *C. T. Brandt, QA/QC Supervisor, TUGCO
- *M. R. McBay, Engineering Manager, TUSI
- R. Blackett, Staff Assistant for Special Projects, TUGCO
- L. Yates, Welding Technician, TUGCO

Other Personnel

- G. R. Purdy, Site QA Manager, Brown & Root (B&R)
- B. O. Cromeans, QA Supervisor, B&R

The NRC inspectors also interviewed other licensee and contractor employees during the course of the inspection.

*Denotes those attending the exit interview.

2. Potential Source Inspection Breakdown

Information Notice 82-34, dated August 20, 1982, was sent to all holders of power reactor operating licenses or construction permits as early notification of a potentially significant problem with vendor supplied welded control panels. The Licensee conducted a visual inspection of the welds on all control panels onsite supplied by the vendors in question. It was noted by the licensee that the accessible welds on these panels exhibited conditions that were in conflict with the acceptance criteria of American Welding Society (AWS) Standard D1.1. These anomalies were verified by the NRC inspector and documented in Inspection Report 50-445/82-19. These findings along with the discovery that other welded items supplied by other vendors, all of which were subject to TUGCO source inspection, had been received onsite with unacceptable welds. The licensee, noting that a potential program breakdown could exist, has voluntarily begun a reinspection of these vendor supplied welded components and a comprehensive review of source inspection activities. A total of 122 components fabricated by Chicago Bridge and Iron (CB&I) have been identified among those requiring reinspection. Of these, only 12 are listed as being completed with the record packages forwarded to the storage vault. The CB&I components have been identified and located, but the visual examination had not begun at the close of this inspection period. The NRC inspectors chose not to examine these components until completion of the TUGCO examination.

Pending the completion and reporting of the reinspection in progress by TUGCO, this will remain an unresolved item.

3. Followup on Potentially Reportable 50.55e Item

On September 30, 1982, the licensee verbally notified the Senior Resident Inspector, Construction, (SRIC) of a potentially reportable construction deficiency involving structural welding performed by NPS Industries. This item is directly related to paragraph 2, above, of this report.

A member of the TUGCO welding engineering department was notified by a painter of a previously unreported cracked weld on the NPS Industries supplied main steam pipe-whip restraint located outside the reactor containment building (RCB) 1. Further investigation disclosed numerous other nonconforming weld conditions in the immediate area. A thorough inspection of all welds on this structure was conducted by the TUGCO welding engineering department personnel documented on NCR M-82-01589. An engineering analysis of the deficient welds has been initiated to determine their structural significance.

The NRC inspectors toured the structure and visually examined approximately 75% of the vendor supplied welding. Anomalies such as undercut, lack of fusion, porosity, incomplete welds, undersize welds, overlaps, insufficient weld throats, and base material defects were noted in most sections of the structure. In some cases, the discrepancies were lengthy; in other cases, the discrepancies extended for only a very small percentage of the total weld length; and in some cases the weld was free of discrepancies. The NCR deficiency tabulation does not differentiate between short or lengthy weld deficiencies but merely lists the individual weld identification numbers and the conditions existing in those welds. The NRC inspectors did not perform a total visual inspection due to the lack of complete staging around the structure.

The NRC inspectors reviewed seven receiving inspection reports (RIR) related to this pipe-whip restraint. The inspection found that documentation generated by NPS Industries and TUGCO indicated that all required NDE and visual examinations had been performed with acceptable results. The RIR packages contained no notations for the existing deficiencies. RIR numbers 16756, 16826, 16896, 17033, 17112, and 17156 were each signed by one of the three TUGCO source inspectors as having been inspected and that the welding did comply with AWS D1.1 requirements. As was stated earlier, this item is directly related to the potential source inspection program breakdown discussed in paragraph 1 of this report.

Pending completion of the TUGCO engineering analysis and disposition of the weld discrepancies, this will remain an unresolved item.

4. Unresolved Items

Unresolved items are matters about which more information is required in order to ascertain whether they are acceptable items, violations, or deviations. An unresolved item related to potential source inspection program breakdown is discussed in paragraph 2. A second unresolved item related to a potentially reportable item is discussed in paragraph 3.

5. Exit Interview

The NRC inspectors met with licensee representatives (denoted in paragraph 1) and R. G. Taylor (NRC Resident Reactor Inspector) on October 20, 1982, and summarized the scope and findings of the inspection.

Q.3. Have you attempted to contact the individuals identified by letter in NRC Staff Exhibits 123, 178, and 199, in an effort to determine whether any of them object to the Staff's disclosure or confirmation of their identities? If so, please describe your efforts in this regard.

A.3. Yes. Contacts were made with Individuals B through F of the NRC investigative report identified as NRC Staff Exhibit 123. Contacts were also made with Individuals B through K of the NRC investigative report identified as NRC Staff Exhibit 199. Efforts were made to contact Individuals C through L of the NRC investigative report identified as NRC Staff Exhibit 178. Six of these persons were contacted.

Q.4. Please state whether any of the persons you so contacted objected to the NRC Staff's disclosure or confirmation of their identities.

A.4. Yes.

Q.5. What reasons, if any, were provided by those persons who objected to the Staff's disclosure or confirmation of their identities as grounds for their objection.

A.5. With regard to NRC Staff Exhibit 123 one individual requested confidentiality. With respect to NRC Staff Exhibit 199, two individuals requested confidentiality. With respect to NRC Staff Exhibit 178, all of the six contacted requested confidentiality. Each of the individuals contacted, who objected to the NRC staff's disclosure of their identities, as set forth above, described their objections somewhat differently; however, in general, each expressed that such a disclosure could possibly place their present and/or future employment in jeopardy. It appears to be a common belief among them that their simple cooperation with NRC investigators may be interpreted as an act of disloyalty by their employers.

Richard K. Herr

Richard K. Herr

STATE OF TEXAS

COUNTY OF TARRANT

On this, the 24th day of August, 1982, personally appeared Richard K. Herr, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes therein expressed.

Subscribed and sworn before me on the 24th day of August, 1982.

Gloria Brown
Notary Public in and for Gloria Brown
said County and State

My Commission Expires: 6-30-84

Donald D. Driskill

Donald D. Driskill

STATE OF TEXAS

COUNTY OF TARRANT

On this, the 27th day of August, 1982, personally appeared Donald D. Driskill, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes therein expressed.

Subscribed and sworn before me on the 27th day of August, 1982.

Gloria Brown
Notary Public in and for Gloria Brown
said County and State

My Commission Expires: 6-30-84

11/8/82 Interview at NRC Region IV Offices, Arlington, Texas between Dennis Culton and the U. S. Nuclear Regulatory Commission (NRC); present were: Dennis Culton; Juanita Ellis, President, CASE (Citizens Association for Sound Energy); Robert Stewart; Dan Tomlinson; and Richard Herr.

STEWART: "...if you have anything more you could add to this...what you're describing ..."

CULTON: "Do you want a copy of this? Do you have a copy of that?" (To Mr. Stewart, then to Mrs. Ellis, referring to Mr. Culton's testimony and transcript from the September 1982 operating license hearings)

ELLIS: "Uh huh..."

CULTON: (To Stewart) "I was wondering if you had a copy. I felt sure that you did."

STEWART: "Yeah. This is out of the transcript. Yeah. Down on, uh...let's see..."

CULTON: "Down near line 20...it's O.K. if I record this...is that all right?"

STEWART: "No. Fine. Go right ahead."

STEWART: "Let's see if I can get a line and a page...on page 5552."

CULTON: "O.K."

STEWART: "Now you said...let's see, it'd be line 2 where you said...well, 1, 2 and 3...800 foot pull, quality control cable, I guess you didn't finish the pull and it ended up in the cable spreading room, the lower section of control room number one..."

CULTON: "Yes, sir."

STEWART: "O.K. You said..."

CULTON: "That should have been 800 plus."

STEWART: "...or 800 plus, O.K., that's immaterial. On line 6, 7 and 8 and 9, you said "Several weeks later, or a week later, in fact it was four days later, I went back to that location to check to see if it was spliced and I found out that it was spliced."

CULTON: "Yes, sir."

STEWART: "Do you have a cable pull number or some way that we could locate that?"

CULTON: "Well, of course not."

STEWART: "Well, I didn't know, uh, you know, pretty specific, said that it was a splice."

CULTON: "Yes, sir. It was."

STEWART: "O.K. Can you add anything more to this so/..you realize what's down ^{where we could} there-- in the cable spreading room."

CULTON: "Yes, sir, right. Oh, I know."

STEWART: "And there's no way in the world we could find that..."

CULTON: "No, I couldn't go back...I could not go back right now and find that location. I can give you an estimate of the location, but right now you know as well as I do..."

PHONE RINGS, TOMLINSON ANSWERS, CONVERSATION MUFFLED IN BACKGROUND AS CULTON CONTINUES.

CULTON: "...that when I left the cable in that tray was over a foot thick and it was in the middle, it was probably about six inches in the middle, so you know, who knows how much cable's on top of that now."

STEWART: "Do you have...you say it went to a relay panel..."

CULTON: "Yes, sir, in control room number one."

STEWART: "Do you know what relay panel that was?"

CULTON: "Negative."

STEWART: "And where it's located?"

CULTON: "I can give you an estimate of where it's located, but I don't know the panel and as far as I know, other panels could have been put up in that area, it could have been changed out cause they were constantly changing things."

STEWART: "Uh huh. Can you give me a sketch of where it might be located?"

CULTON: "I tell you what, do you have a layout of the cable spread room?"

STEWART: "No..."

CULTON: "You don't?"

STEWART: "Not right here. It would take us a while to get one. We normally don't..."

TOMLINSON: "If we had to keep the prints for all of the rooms on all of the sites that we go to, we wouldn't have room here on the 10th floor."

CULTON: "Well, I feel sure...I understand that. You know, I don't see how you can expect me to have all those drawings either..."

STEWART: "No, no, I'm not suggesting..."

CULTON: "...I do have a lot of them, but uh..."

STEWART: "that, I'm just asking if you can just draw a sketch to show what approximate location that relay panel's in."

"Uh huh."

CULTON: / That's still not going to tell you anything. I mean, I can give you all kinds of drawings. I tell you what, I'll go ahead and make a note of it and sit down and try and sketch it out. Let me put some more time and thought of it, sketch it out and I'll bring that drawing to you. How's that sound? Do you want to do that?"

STEWART: "Yeah, sure, anything that would help."

CULTON: "Cause I think I could make it a little more accurate than I can right here, cause I can think back and which panel it was, you know, how many panels in; I know it was, I think right now, it's the third panel from the aisleway, from the aisle, and there's..."

ELLIS: "You all" (the NRC) "have access to those drawings, don't you?"

STEWART: "Oh, certainly."

ELLIS: "You couldn't get a copy of the drawing and maybe get that to him and then he could do that..."

CULTON: "Yeah, you could do that. I could make a sketch, then we could take that drawing and sit down and go over it. Do you want to do that?"

STEWART: "Yeah. We could..."

CULTON: "Control Room No. 1."

ELLIS: "That might give you a little closer location..."

TOMLINSON: "You don't remember any names on the panel or any numbers or..."

CULTON: "No."

STEWART: "Let's see, you mentioned that there were two?"

CULTON: "Well, I know that there were two that we pulled that...I don't know if our last Q cable if it was spliced or not. But I know that I saw Q cable in the spread room and in Safeguard No. 2 -- No. 1 -- Safeguard No. 1 that was spliced. And the..."

STEWART: "You say in the Safeguards Building or in..."

CULTON: "Safeguard. Safeguard No. 1."

STEWART: "The room...the relay panel room or the..."

CULTON: "No. It's the...in a tray, uh..."

STEWART: "Oh, that was the tray name?"

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CULTON: "Safeguard. Safeguard No. 1."

STEWART: "The room...the relay panel room or the..."

CULTON: "No. It's the...in a tray, uh..."

STEWART: "Oh, that was the tray name?"

CULTON: "No, no, it's a Q cable that was spliced that is in Safeguard -- Safeguard Building No. 1."

STEWART: "Oh, O.K. But it was in what, an overhead tray?"

CULTON: "Yes. Everything was in an overhead tray."

STEWART: "Well, as opposed to the cable spreading room type of tray; they're down lower, they're not all overhead."

CULTON: "Yes. O.K....O.K., in that case, it was in an overhead tray."

STEWART: "If we get a drawing can you help us locate that one also?"

CULTON: "I can try. In fact, I have a layout of the cable spreading room."

STEWART: "Do you? Well then, maybe you can use that drawing..."

CULTON: "I'll pull it out. Well, no, you'll have to get an electrical...I've got the mechan...I've got just a layout drawing of the cable...of the Safeguard."

KNOCK ON DOOR WHILE CULTON IS TALKING,

SOMEONE SAYS: "Come on in." (Stewart or Tomlinson)

STEWART: "Hi, Dick. You know Juanita Ellis."

HERR: "How're you doing?"

ELLIS: "Hello."

STEWART: "This is Dennis Culton."

HERR: "Dennis. How are you. Richard Herr."
"Mr."

CULTON: "/Hart?"

HERR: "Herr."

CULTON: "Herr."

HERR: "H-e-r-r."

STEWART: "...to bring you up to speed, we were...she's taping, of course, it's all on tape...and we're just trying to get a...tie these statements down as to where the location to help us locate something if we can. We're talking about the splices. O.K. I guess we can hopefully get something better from you..."

CULTON: "Well, get an electrical drawing of the...I'm trying to think of a close elevation, above...I can't remember...uh, do you have a layout of the elevation versus locations for the plant?"

PHONE RINGS WHILE CULTON IS TALKING; TOMLINSON ANSWERS AND CARRIES ON FOLLOWING CONVERSATION WHILE CULTON IS TALKING:

TOMLINSON: "Mr. Seidle's office; Tomlinson. Yes. Yes. Yeah, we're kinda involved right now....if I call you back? O.K. O.K. Very good. Thank you. I'll do it. Thank you."

STEWART: "As described in the PSAR?"

CULTON: "Yes."

STEWART: "Yeah. We'd have to go check it out."

CULTON: "O.K. Well, I can cross-section it for you."

STEWART: "O.K. I'll tell you what, since we don't have the other drawings and to avoid the repetition, let's get all of this stuff together, we'll make a note of what we want and then you can come back later and we can go through the drawings and"

CULTON: "I'll tell you what I came here for. I came here to find out what information that I give you and that you've already gotten, what you're going to do with it."

STEWART: "We're going to pursue it, if there's any possibility of locating these, you know, we're certainly not gonna go down there and inspect every damn cable in the cable spreading room to try to find a splice..."

CULTON: "Right. Well, I understand that. I understand that, you know, what you're looking for is factual information..."

STEWART: "Right."

CULTON: "...stuff that you can go by and that you can take care of..."

STEWART: "Absolutely."

CULTON: "...and the information that I have given you is items that either I was related with or that I know should be still there now. I mean, there's a hundred and one other items that's going on there or have gone on there that, you know..."

STEWART: "Well, I want to get these two subject matters down first, and then we can, let us know what else you saw or that's not in the testimony. You follow?"

CULTON: "Yeah."

STEWART: "O.K. I think we have established now that what we need is some drawings and elevations. We will get the control room No. 1 panel drawings since you don't have those. We will also get some elevation drawings..."

CULTON: "O.K."

STEWART: "...so you can help locate these trays."

CULTON: "O.K."

STEWART: "And you're going to provide...what are you gonna provide? You have some sketches you say of the..."

CULTON: "I'll just bring what I have and we'll sit down and..."

STEWART: "O.K."

STEWART: "O.K. You were transferred back into the drafting department?"

CULTON: "Yes, sir."

STEWART: "You were put on the Brown & Root hangers location known as the BRHL?"

CULTON: "Uh huh."

STEWART: "O.K. What specifically did you do there?"

CULTON: "I was given..."

STEWART: "Some isos?"

CULTON: "...some isometric drawings of..."

STEWART: "O.K., I guess..."

CULTON: "...Brown & Root hangers, no of piping that was to go up. I was given on another sheet how many hangers were to be hung on each spool, each piece of pipe, each section of pipe, and the type of hanger it was."

STEWART: "They were already identified on the spool or the isos?"

CULTON: "Yes, they were identified, and I was to locate them on the isometric drawings and make a redraw..."

STEWART: "O.K. Were the dimensions..."

CULTON: "...to go, to be issued to the field."

STEWART: "Were the dimensions already on it?"

CULTON: "Negative. No, there were no dimensions on it. I was to put them down there. I was just to place them on there; that's what I couldn't understand. I was just to place the hangers on the drawing, just to put them down on paper right then, then later on, after we had our production going, we were...they were turned back to us to put locations. I was given no other information to go by, I was to estimate the feet or the space in between that area of that hanger, just an estimate of what I thought was there, and, uh..."

STEWART: "Then the field crews would..."

CULTON: "Then it was issued to the field."

STEWART: "Uh huh, and then they would go put the hangers up."

CULTON: "Yes."

STEWART: "Did you go back and verify?"

CULTON: "Yes, I did. I went out in the field and just out of curiosity -- I had a brother that worked out there as a pipe, uh what do you call it, just places the pipe up to each other..."

TOMLINSON: "fitter...pipe fitter?"

CULTON: "Pipe fitter. And he showed me around some where the pipe that were hung and a couple of them were off a little bit, but all of them were within the estimates of where I placed them, where I placed the hanger on that piece of spool. You know, of course, there's so much up there, you know, they're gonna have to put that in a different...you know, they're hanging a little bit ~~XXXXXX~~ they're either off maybe several inches or they may be off several feet, but there's so much junk on that ceiling or on the wall that they could not, you know they had to move it down, it was all as-built, and it came back, and sometimes we were issued as built drawings and changes to that Brown & Root hanger location."

STEWART: "But you didn't actually go out and do the as-built, somebody else did?"

CULTON: "No. Somebody else did."

STEWART: "O.K. Do you know what the process is from there? The system?"

CULTON: "No."

STEWART: "'Cause they are verified..."

CULTON: "You mean the as-built drawings? Yes, they are, yeah, but they come back to me."

STEWART: "...Yes. But they use the as-builts to recalculate the seismic, O.K.?"

CULTON: "Yes. But it's the same hanger number."

STEWART: "Yeah. I mean, is there something wrong with that?"

CULTON: "Well, it was a different hanger. It was a different hanger that...the hanger numbers that I had put down on the paper and the type of hanger it was, if it was a shock hanger or if it was, you know, a direct support, then it was out there. That's what was hung. At least, that's what I saw. I know that as-built will go back and change that and they may change the type of shock, they may change the type of support and they may change it and never let us know. That could be. But what I saw is what I drew, what I put up. Now I'm not saying that all of them are that way."

STEWART: "What's wrong with that is what i'm saying?"

CULTON: "Because...what is wrong with it is why did they put this on me to put in the footage, why did they put this on me to put in the distance between the hangers? I had no information."

STEWART: "You've had four years..."

CULTON: "But I'm not an engineer, that doesn't mean -- that's not a damn thing. I'm not an engineer. I'm not qualified to put in this hanger."

STEWART: "Why aren't you? /you've had four years of drafting experience."
I mean,

CULTON: "Sure."

STEWART: "And that's what a draftsman was to do."

CULTON: "As a draftsman, that's right, but..."

STEWART: "But you don't do any calculations, did you?"
"No."

CULTON: /Of course not."

STEWART: "O.K. You made a location. The location could have, or could not have, been exactly where you put it."

CULTON: "Those engineers went back and they used my drawings to put those supports in?"

STEWART: "Why, what's wrong with that?"

CULTON: "Could be nothing. That's why I'm here."

STEWART: "There is the process that you do the first phase of it. The craftsmen go and hang the hangers."

CULTON: "No, an engineer does the first part...first phase."

STEWART: "Well, the installation..."

CULTON: "All that information should have already been figured, should already have been done. I know that from experience from working with other hangers and other piping supports that all that information is already done, then it's given to the draftsman. A draftsman is not an engineer."

STEWART: "Yes. Well, the pre-installation is what I'm talking about. You're taking the engineer's work and converting it to a field work drawing."

CULTON: "That's true."

STEWART: "The workman goes and puts it in. Then there is a verification program that follows."

CULTON: "...estimating a location. That's not my job."

STEWART: "Well, that's the job that was assigned to you, wasn't it?"

CULTON: "Yes, sir, that's true."

STEWART: "You know, I'm..."

CULTON: "No, it's you don't understand."

STEWART: "No, I think you don't understand the system."

CULTON: "I am not an engineer, and I don't know how heavy that piece of pipe is, I don't know what that load is carrying..."

TOMLINSON: "Who determined what hanger would be placed?"

CULTON: "I did."

TOMLINSON: "It was up to you..."

CULTON: "I stuck it on there."

TOMLINSON: "...to decide whether it was a rigid hanger, or a spring can?"

CULTON: "Oh, negative. No. That was already done."

TOMLINSON: "And the size of the hanger itself, who determined that? Did they give you a number that said it will be such-and-such a spring can?"

CULTON: "Yes. The numbers were already put down."

TOMLINSON: "That eliminates the engineering."

CULTON: "It doesn't eliminate the location."

TOMLINSON: "With a reason it does."

CULTON: "Well, does that mean that I could have stuck that hanger anywhere? I could have stuck them all together this far away on a 20-foot piece of pipe that was carrying an 8?"

STEWART: "Well, I assume you have some reasonable thinking ability to say that that isn't going to be done."

CULTON: "Well, I'm glad you trust me."

STEWART: "Well, I don't know, uh. You just don't have the confidence in yourself to do it right, or what?"

CULTON: "Well, it's not that, sir, it's exactly what I've told you."

TOMLINSON: "How much latitude were you given in the placement of these hangers."

CULTON: "I don't understand."

TOMLINSON: "Well, you say that each one of the hangers had already been preassigned a number -- a type and number."

CULTON: "That's right. Yes, sir."

TOMLINSON: "When this came to you, it came to you as an isometric drawing with just a list of hanger numbers and types or was there some rough location given to you?"

CULTON: "No rough location at all."

TOMLINSON: "Were you given instructions..."

CULTON: "An isometric drawing from this isometric pipe drawing, O.K. Another list came in from the engineers with the hangers, the drawing number and the type of hanger it was, all that was on one sheet of paper. And this was on a sheet of paper. I was to go back and make re-draws -- or my group was -- to go back and make a re-draw of the hanger for the people in the field. They were given this same list of just the hanger numbers."

TOMLINSON: "The list of hanger numbers -- was it broken up by hanger types or was it put down in the order that the hangers would be installed from, say, a wall here to a wall here. Like you would be given a spring can, a spring can, a rigid support, a rigid support, another spring can, or would you have three spring cans in a row and two rigid supports in a row, or who determined the placement of these?"

CULTON: "I don't remember."

TOMLINSON: "Well, was it your decision to make where the hangers would go and in what order, but if you so desired you could put all spring cans at one end of the line?"

CULTON: "No, it was..."

TOMLINSON: "Then someone else had already done this?"

CULTON: "Yes."

TOMLINSON: "O.K. Their calculations were based on a rough placement of these hangers prior to your ever seeing the list. There is a post-installation that Bob was talking about that is a re-verification of this and they go back to the as-built drawings and they perform new stress calculations based on the as-built condition. Not what they thought they had and what you thought you had when you made the first drawing, it's what they come up with on the as-built drawings, the actual as-built drawings, where the hanger had to be because of other interference. Now, if it's a foot off, if it's four feet off, does this span allow for this type hanger to perform as it should, or do we have to redesign? Do we have to put another hanger some place in between? But you weren't doing the engineering though."

CULTON: "No. But you know, what I said is that I gave the approximate distance between the hangers, I put that in. No matter how long that spool was, no matter what angle it was at, I stuck it there. I put it in there. And I went out in the field to check it, if it was 18', if it was 6", if it was 20 plus feet, it was there. Almost every one of them I'll say was within less than a foot of the location that I put on that drawing."

TOMLINSON: "How many of these were anchored into base plates, or were installed in ceilings or in the walls?"

CULTON: "I have no idea."

TOMLINSON: "Because that would have a lot to do with where the hangers would be placed. The base plates were installed at the time the wall was installed or the ceiling was installed or the ceiling was installed in anticipation of attaching a hanger to it. So again, somebody had done this before."

CULTON: "That's great."

STEWART: "Have you been out in the field and noticed the plates with just numbers on them?"

CULTON: "Sure."

STEWART: "And those are hanger numbers."

CULTON: "Yeah."

STEWART: "And those are the ones that you located?"

CULTON: "Yeah."

STEWART: "On the pipe?"

CULTON: "Some of them were already there. Some of them were just already put up. Like this, whenever -- when I first hired on out there I was a scheduler and we were given -- a lot of the crews want to go ahead and to keep up with their schedule, they find the shortest distance between two points, O.K.? Because it makes them look good, it makes their crew look good if they put in their required 800 foot of pipe or they pull their, you know, 1200 foot of cable or 12,000 foot of cable, or whatever. It makes them look good. They're meeting their schedule. They don't give a damn if there's an HVAC unit coming in or if there's another pipe that comes in this location if they can get theirs in first regardless of anybody else as long as they meet their schedule. I had to go back and reschedule a lot because I found out that the competition out there in the field; one that I remember rerouting was an 8" pipe that went through and HVAC needed to come through -- you know, which one had priority. They were pretty much on the same level, you know, where the HVAC -- you know, the pipe was a priority, the HVAC could have been rerouted and HVAC unit went in first, so they had to tear it all back out and put in the pipe and reroute the HVAC."

STEWART: "NCR was written on it, is that correct? So that there was a decision made by engineering as to who had priority, the pipe or the..."

CULTON: "Probably was, I don't know for sure."

ELLIS (to Stewart): "Do you know for sure?"

STEWART: "Oh, it's routinely done that way."

CULTON: "That's bullshit."

STEWART: "How many construction jobs have you been on? How many nuclear plants have you been on?"

CULTON: "None, sir, except Brown & Root. Construction, I've been on eight or ten."

STEWART: "So the only one you've been on is here at Comanche Peak?"

CULTON: "Yes, sir."

STEWART: "So, I mean..."

CULTON: "I went to all the meetings. I went to all the NCR meetings. I know what went on; I knew the people there. It's like this: If they wrote an NCR report up, it would go back to this guy right here. You know, you knew that that pipe wasn't supposed to go there. Why did you put it up? I had to meet my schedule. And, you know, he was going to take a long time, and I tried to force you a little bit so you could, you know, stay ahead, so you could keep up with your schedule. I asked you if you were going to put it up, and you said no. O.K., go ahead and tear it down and, you know..."

(HAD TO CHANGE TAPE TO SIDE 2)

STEWART: "...except at tremendous cost in labor while somebody sit around andthat's why they tell them to go ahead and put it in..."

CULTON: "...they don't care. No."

STEWART: "...that an engineering decision will be made."

CULTON: "Then why wasn't it rescheduled? Why couldn't they do something else?"

STEWART: "It really didn't matter, did it?"

CULTON: "No, of course not. It doesn't matter."

TOMLINSON: "To us it really doesn't matter either because it's a money problem that you're talking and that's the least of our concerns. Our big thing is safety. Does it affect safety."

CULTON: "I don't know. I'm not an engineer."

STEWART: "Well, uh..."

TOMLINSON: "How they reschedule...."

CULTON: "It's ya'll job to find that out. I just give you information. I'm not here to argue, I'm not here to fight. I'm here to give you some facts and let you deal with the facts. I'm here..."

STEWART: "Well, we'll certainly do that, but...."

CULTON: "It's fine. If this is right...if this is right, if this is routine for you to do this or...that's fantastic, I think that's great. I'm not here to argue that at all. Now, you know, if...cause I know that there's always, these drawings are always coming back, you know, they're always being rev'd and once they get to a rev. 10 they have to be redrawn again, and you know, those papers are filed somewhere. And as far as I know, those papers could be -- you know, a total redraw done on them. They could be thrown out. An engineer might have caught a hold of them and said, my God, hey, what is this? This is not right. Let's get rid of these, let's straighten this thing out. I feel that it is a possibility that that has happened, BUT how can I go back and check on it. That's where I asked you, that's where I asked Juanita, that's where I asked -- I gave some of my finer drawings to a group that I didn't really, I didn't agree with, that Armadillo Coalition at North Texas State when I went there. I heard of Juanita's group and I thought, there's a lady that I have to give these papers to."

TOMLINSON: "Well, I haven't heard anything that you've said yet that was wrong, as far as the hangers go."

CULTON: "That's great. Then we don't have to worry about it."

Tomlinson: "That's as far as the hangers go."

STEWART: "I mean, we want...yeah."

ELLIS: "Let me ask ya'll something. You're making an awful lot of assumptions,

TOMLINSON: "That's the only way we would be able to locate what he had done. So, how many drawings would there be, let's say, on a run of pipe that had 5 hangers? The potential is there that you've got as many as 15 drawings. You've got the isometric for that, you've got possibly two or three pages on the larger hangers, you've got drawings for base plates, just any number of things could be there. Now, we could be talking, you know, talking a mountain of paper for someone to go through just to locate what he has done."

ELLIS: "And you're saying that you don't have the personnel or the time to do it?"

TOMLINSON: "Ma'm, we've got five sites."

STEWART: "We have...there's checks and balances for all of this, not only from the construction side, installation side, then there's the verification program which is an engineering recalculation program. Everyone wants..."

ELLIS: "Yeah, I understand all of that. But what I'm concerned about is whether or not this works. We don't think it works too well because of some of the things we've been told by people, and if you're not checking it out, how do you know that it's working?"

STEWART: "We do check that out. We..."

ELLIS: "You haven't checked out what he's saying specifically, is what I'm saying."

STEWART: "I know routinely that's the manner in which it is done. Routinely. He's not separate."

ELLIS: "If you don't have the time to go through the drawings and stuff, bring some of them here and I'll go through them and find some of the ones that he's done."

TOMLINSON: "I don't think Brown & Root would like the idea of us taking a bunch of their drawings offsite."

ELLIS: "Well, at the site."

STEWART: "I mean, for what purpose?"

ELLIS: "To check out what he's saying, the things that he's concerned about. How are you going to know what..."

STEWART: "I'm telling you what he is concerned about is routinely done, not just him. There is checks and balances. Like he says,..."

CULTON: "It's routinely done to go in and estimate a spool of pipe..."

STEWART: "You have to..."

CULTON: "I know an engineer, what -- my father's an engineer. This is why..."

TOMLINSON: "But remember now, the base plates for those supports were in there before you ever saw the isometrics. The base plates were already installed. Someone...."

CULTON: "Not necessarily."

TOMLINSON: "An awful lot of them, I'll bet they were."

CULTON: "An awful lot of them were."

TOMLINSON: "Because, the walls and the ceilings and the floors were all there."

CULTON: "But in Unit No. 2, Safeguard No. 2 and the Steam Generator No. 2 was not there."

STEWART: "In No. 2. You know what they have in Unit 2? In that corridor? The wall is steel plated for hangers. That's the very purpose. The problems they had in Unit 1 locating hangers was tremendous. So in Unit 2 in the corridor they put a whole steel panel up rather than locate individual hanger inserts."

TOMLINSON: "Base plates...."

CULTON: "Are you talking inside the containment building?"

STEWART/TOMLINSON: "No. Safeguards."

CULTON: "Safeguards? O.K."

STEWART: "So, I mean...you know, there has been a tremendous amount of rework that has gone on in Unit 1 because of the location of hangers. Interferences, primarily. They've been...they're down now to about 4% rework, but at the initial onset, the location, the system in which they were locating them, they were wrong. So they had to rework."

CULTON: "I was there when that went on. I was doing it. That's the reason I was doing the locations, because it was, at that time it was all being redone. It was not like, you know, we couldn't use the same drawings we used in Unit 1. That's the reason I was doing this."

STEWART: "Well, would it satisfy you if we sat down and went step by step in what is done at the site in the verification program?"

CULTON: "Satisfy me? No."

ELLIS: "You mean what is supposed to be done."

CULTON: "Cause I -- that's right. That's what you're...."

STEWART: "I know that it's what is being done. That's what we go down and inspect to see that their program is working. We don't go down and..."

ELLIS: "I don't see how you can satisfy his concerns if you don't address his specific concerns."

CULTON: "No."

STEWART: "There was nothing on the iso that would locate the hanger at all?"

CULTON: "No."

STEWART: "Not even approximate?"

CULTON: "No. I was given an isometric drawing and that's it. With the distance..."

Stewart: "...pipe number?"

Culton: "With the pipe number, with a spool number, with the distance between the spool from one end to the other, from one valve to another. I knew that. I was given the information, No. 2, I was given the information of how many hangers was to go on this drawing. I did not know if it was supposed to go from left to right, right to left, I did not know what hanger was supposed to be hung between these distances. I could have stuck every one of these hangers just right in here, and then I -- my job was finished. Later on, this came back to me, verbal communication came to me from my supervisor which was to estimate the distance between each hanger that I and my group have located on the isometric drawings. We went back, we gave a rough estimate of how far apart the hangers were, put them in a box, each week they are issued to the field -- they were stamped and issued to the field."

STEWART: "Can you give me a system that you worked on? A name of a system? An iso? Some way that we can go back and do some checking...."

CULTON: "I can give you my crappy drawings that I have. I have, you know, like I said, the choice drawings that I have are given away to a professor at UTA, are given away to a professor at North Texas State that are in turn with the group the Armadillo radical coalition. They're the ones that have that."

STEWART: "Do you have duplicates...."

CULTON: "They're the ones that have that. What?"

STEWART: "Are they duplicates or what you...."

CULTON: "Yes, they are duplicates. They are just copies. They are not the drawings. They are just copies. I took those drawings -- a draftsman always saves some of his work, some of his finer work, a draftsman saves for the benefit of going back into another position that you, as an employer, would like to see what kind of work I do. You'd like to see how, you know, some of my ideas. I might be able to help you to, you know, to change some of your ideas. I might have a better idea. You might have a better idea. But you want to see my work to see what kind of quality draftsman I am. So where am I supposed to get that information? On my own time drawing it? Well, that's fine and dandy, but 9 times out of 10, if you draw it on your own time, for you, I would do a fantastic job, I would do a very quality job of doing it. That's not what you want to see; you want to see production work. O.K., that's it, that's what you want to see."

TOMLINSON: "Let's go back to some of the things/^{that} you said a minute ago that you first...."

CULTON: "That's what I did and that's what my group did."

TOMLINSON: "You turned over some of the drawings to a gentleman down here at UTA and another one at North Texas State..."

CULTON: "Yes, sir."

TOMLINSON: "...and you said that they, it was their opinion that this was not being done in the proper manner."

CULTON: "Yes, sir."

TOMLINSON: "Did they verify any of the stress calculations or find out that the hangers were in the wrong place, were not the proper strength, or did they find any fault with them?"

CULTON: "They found, for instance, that some of the hangers were -- had^{some} improper welds, the wrong type of bevel weld, the -- some of the types of welds that they used in the location of stress were the wrong types."

TOMLINSON: "Now this, if you could get me on to specifics on this..."

CULTON: "Well, I think I only -- we went through..."

TOMLINSON: "...then we're in my ball park."

CULTON: "...^{I thought he was an engineer}the last time I talked to you -- I'm not sure if he was an engineer,/^{that looked at it.} No, he was a welder down at the nuclear power plant in Glen Rose and he pointed out several of the welds that were wrong, they were improper welds..."

TOMLINSON: "...the design or the..."

CULTON: "It was design. It was the design on the hanger and on the base plate."

TOMLINSON: "If you can give me something specific on that..."

STEWART: "Did they have the loads and everything and everything for the weld design?"

CULTON: "I'm not sure they did..."

STEWART: "I mean, how did they say -- what was their basis that it was wrong?"

CULTON: "Some of the material/^{I had} I had written down some information off a piece of paper onto the drawings..."

STEWART: "You mean, they were stress calculations or..."

CULTON: "And it was for my benefit, you know, because it made the drawing look neat, it looked -- you know, I was going to keep it, you know, a copy of this drawing, just for my benefit. I didn't know what I was really putting down. I didn't know that that was, you know, the improper or the stress, where the stress load was, but when I took it to North Texas State, he gave it, the professor gave it to I felt an engineer, I don't know, somebody, and he came back and told me that they were improper stress loads. I don't know."

STEWART: "You said you had some rough sketches that you have..."

CULTON: "Just what everybody picked through."

STEWART: "Do you have them with you?"

CULTON: "No. Cause I was going to find out and see what you were going to do first. If you're not going to do anything, there's no reason wasting my time."

STEWART: "Well, I mean, if we weren't going to do anything, we wouldn't have called you in."

CULTON: "Well, I don't know that."

STEWART: "O.K. I mean, give us some credit."

CULTON: "Oh, yeah, I give you credit. I give you credit for being here, for making an attempt, you know, for giving Brown & Root, or not necessarily Brown & Root, but you know, the nuclear power plant in Glen Rose a headache."

STEWART: "We want it right..."

CULTON: "I want it right."

STEWART: "Our responsibility to see it safe...you know, that's our job..."

CULTON: "I'm paying for part of it; you're paying for part of it."

STEWART: "Right. Well..."

CULTON: "I know what went on there. You know, the people that I worked with knew what went on there."

STEWART: "I mean, I've been in the business for 30 years and I know construction."

CULTON: "That's good."

STEWART: "I know just every phase of it, and..."

CULTON: "That's great."

STEWART: "...I am concerned. And my fanny comes first, you know, as far as the health and safety of the public. So if it isn't safe for me..."

CULTON: "I'm not here to stop it. Believe this, I'm not here to stop, you know, the production of electricity at the nuclear power plant in Glen Rose. I'm here, like I said ten times, to give you the information that I have..."

STEWART: "Well, we certainly appreciate it."

CULTON: "...and if you work with it, that's fine and dandy. You know, if you can't do anything with it, then give it back to me where I can give it to my employer some day so he can look at it and see if he might want to give me a raise."

STEWART: "Well, I'm not going to keep anything you've got. All I want is to see it. I'd like to see it and maybe make copies of some of it if..."

CULTON: "Well, I'm very sorry that I can't give you the good stuff that I had. I don't know who has it at North Texas State. I will be up there later on this week and I'll go by and talk to the professor, and see if I can get..."

STEWART: "Well, if you can get some of the..."

CULTON: "...cause I'll tell him what's going on and, you know, I think it would be of benefit to him, both groups and myself."

STEWART: "Certainly."

TOMLINSON: "You're saying that the isometrics and the hanger lists were given to you by your boss. Could we get a name for him, please. It probably would be easy to go through him to get copies of things that you had worked on before. He would probably have some record of what you or your crew had done."

CULTON: "No, he's not there anymore."

TOMLINSON: "He's bound to have a replacement."

CULTON: "Yeah."

TOMLINSON: "And there's bound to be a record kept someplace."

CULTON: "...remember his name. I think -- did I mention his name here? I mentioned it back over here... Brian Lee. Brian Lee was my supervisor in the drafting department. I thought the scheduling department was fantastic, they had some very fine schedulers. I've been scheduling for -- this is my seventh year as a scheduler, and I still go by some of the techniques and I still pull out some of their little manuals on scheduling. I like it. I've scheduled at Vought Corporation in Grand Prairie for a year and a half as a production scheduler and I've given a lot of the information for some of the course that they had that I went through, courses that I took there onsite at the nuclear power plant, and that they are using at Vought right now. But that was fine. I thought the scheduling schedulers were very good. But at least that's what we issued the field. Now what you see could be something totally different from what I drew."

STEWART: "Well, what I'd like to get if possible is a typical or a sampling of your sketches. If you've got some old ones or you don't think they're that good, I'd like to see them anyway, just to get a sampling."

CULTON: "O.K."

STEWART: "You can be more specific on the drawings...."

CULTON: "O.K."

STEWART: "So if you can bring that back with you..."

ELLIS: "If ya'll go through and find some of the things in this and they turn out to be all right, would you pursue it further?"

STEWART: "Well, it all depends..."

ELLIS: " some of the others?"

STEWART: "...on what is being done in a manner so that we know there's a stopgap or a check point that what he's saying is overlooked."

ELLIS: "Well, you know that they're going to say that there is, but it's a matter of whether it's working or not."

STEWART: "No, no, we don't just go verbally."

ELLIS: "That's what I wanted to know."

STEWART: "We actually do the inspection ourselves. But again, it's only on a sampling basis, and if we have any doubts at all, then we put the burden of proof on them, particularly if we find some questionable area."

ELLIS: "One thing that concerns me is, after taking such a strong position in the hearings for their getting a license, frankly is how close ya'll might look at some things at this point."

STEWART: "At this point?"

ELLIS: "Uh huh. I don't mean to impune your integrity or anything like that, but, uh..."

STEWART: "No, no, I -- the thing is that..."

ELLIS: "...it would be awfully hard to take a contrary position at this point."

STEWART: "...that the checks and balances...Not for us. By no means. We can shut a plant down just like right now if there's a concern of safety. So, the thing is trying to describe to you the checks and balances that go on, well, on every safety system in that plant. There's a tier of inspections. Right now, the start-up crews do their own system walk-down from as-built drawings, and they walk every inch of those lines. They have to, for one, I mean, that's

STEWART (continued): a requirement. Secondly, it's the best way to know a system if you're an operator. After the start-up crews go through and do their start-up checks, then the operations crews go through and do their own system walk-downs, and, you know, there's things caught, you know, not anything really significant other than like, not, is it San Onofre where they did find mirror images were wrong, you know, dual plans. But the checks and balances that go on are numerous, and that's in addition to our samplings that we do in every system in every plant in our region."

TOMLINSON: "Through safety systems."

ELLIS: "When ya'll check this out, will ya'll be doing this yourselves, actually doing the checking out and everything yourselves?"

STEWART: "Oh, yeah."

CULTON: "You'll do it yourself? You'll walk it?"

STEWART: "Oh, absolutely. Absolutely. But I'm not going to walk 17,000 hangers, you know. I want to tie it down to try to get it to an area that you're concerned with in the time frame that you're..."

TOMLINSON: "If we can take the things that you worked on and that you have concerns with and do these in depth, then we find that either there are things wrong or there're not things wrong. There's always the two possibilities. If we find that there is nothing wrong, then it goes away. If we find there are things wrong and you're right, then all of a sudden it becomes a major problem and then is when we go into other systems..."

CULTON: "I'm concerned about, you know, some of the drawings that I did, like I told you, but I'm more concerned about is some of the drawings that my group did."

TOMLINSON: "Can you give us names of the people that worked for you, so that we could pull the work that they did."

CULTON: "Yes. Because they, you know, a lot of them. I can't give you the names now. I will. I have--I also did the, you know, the special event drawings, anything that Texas Utilities came down to see the -- what do you call it -- rank of hierarchy of people in the departments. I did all those, where you put everybody's name down, and I kept a copy of it. I drew all of those.... made them real nice and pretty.... kept a chart of who's working for who. I did all those. So you can take those and make copies of those and go by the names, but you know, there's a hundred people before me and a hundred people after me that you don't see. All you see is the time span when I worked there. You don't see any other people that I worked with and you don't see..."

TOMLINSON: "Is that what you have here...is that what raises a major concern in your mind, is the time that you were there, what you did see?"

CULTON: "That's why I'm here."

TOMLINSON: "Those are the ones that we're interested in then."

STEWART: "Can you give us some dates?"

CULTON: "For what?"

STEWART: "That time span."

CULTON: "I can't recall them right now."

STEWART: "....a year? Was it one year, two years?"

CULTON: "

I had my copy of my resume, copy of my -- the day that I quit and walked out the gate, I got a copy of my report about me which you're not supposed to get, but I got it, and I'll let you just go ahead and make copies of everything that I have."

STEWART: "Well, we'd certainly appreciate it."

CULTON: "...and then you can see, see what I've got."

ELLIS: "Once you've done this, will you let him know what you've done?"

STEWART: "Oh, absolutely."

TOMLINSON: "Yes."

ELLIS: "This has been one of the problems with some of our witnesses. They've asked for things and never found out what happened to them. I know Henry Stiner in particular was very upset because he'd never been given a copy of the I&E Report in regard to his allegations."

TOMLINSON: "As a matter of course, he will not be given a copy of the report, but it will be filed in the PDR and it will be available. In the case of a special request, maybe we'll make a phone call and we'll tell them what the outcome was. But as far as mailing a copy of our report to an individual, that just isn't done."

ELLIS: "Well, if he had even known what it was or anything...he wanted to find out what had happened and I think he made that pretty clear, and...this, to me, is one of the problems. I think there's a real communications breakdown between the NRC and people who make allegations, and we've talked to an awful lot of people who wouldn't come to the NRC with an allegation under any circumstances because they don't believe you'll do anything about it."

CULTON: "I was reluctant to come here. That's the reason that I brought Juanita and the reason that I...you know, I even went down to the little hearing that you had. I was reluctant to do anything about it. I was more inclined to go ahead and just give all the information to the radical group or somebody like that that might at least hold this up and say, hey, this is wrong, bugger. This is what's going on, this is what is...you know, the problem is there now."

Stewart: "Yeah, I can see you've got your time span here. You said you started work in October 18, '79, and then you say, I quit in June of 1980 in order to go back to school."

CULTON: "That's about right."

ELLIS: "And then later came back to work..."

CULTON: "Negative...."

(HAD TO CHANGE TAPE)

CULTON: "...which it was for my benefit. My supervisor thought it was a good idea because of the past experience that I have and I intended and intend to become a mechanical engineer, or really right now a civil engineer, and to work in construction. I have...I live on a farm, lived on a farm all of my life, so I know how to wire something together and keep it running, but I've also worked in construction for six years as a scheduler, you know, same time for a total of seven years, production field one year."

STEWART: "O.K., well, how soon can you get this information back to us?"

CULTON: "When do you want it?"

STEWART: "As soon as you can. We'll have to get some drawings also. Can you come back Friday?"

ELLIS: "There's another aspect of this that kind of bothers me. I think after talking to Dennis just recently, we feel like his testimony should be part of the record, and as you know, these limited appearance statements don't really, you know, mean all that much in the record because they're not sworn statements, they're not cross-examined on them or anything like that. I really feel that some of the things ~~XXXXX~~ need to be in the record, especially about the Q cable being spliced, because there's nothing officially in the record even though we've got allegations from the fellow who's in prison in Oklahoma about the same sort of thing. There's still nothing officially in the record about this. I think it needs to be there. One of the things I'm concerned about, frankly, is that if Dennis gives you the names of some of these people and says, you know, to look at this; you go out and investigate it and talk to them, then they're veiled in this cloak of secrecy, whereas if we present the information in the hearings and he names names in the hearings, then we could ask that the Board subpoena these people and the records and go from there and it would be part of the public record. We ran into that problem with the Stiners. Now, Mrs. Stiner tried to tell the Board Chairman what she really meant about that -- they never at any time meant to say that the people who were interrogated who were being accused of doing things wrong should not be brought forward in the hearings or that confidentiality was, in their opinion, being offered to them. So we have a very weird sort of situation in that regard. This decision will have to be Dennis's, for sure, but that's one of the problems that I've got with some of this right now."

"Well,

STEWART: /You know this is being adjudicated right at this point as to naming names, and I don't wanna any comment about it one way or another. But, no, I think that we've got a good beginning here and that we can start off and if we can get these drawings, information that you have and sit down and try to locate these splices, uh..."

CULTON: "O.K. Some of the drawings that I have at UTA, I'm going to talk to a professor today about them, then I'll get back with you on those."

STEWART: "O.K."

CULTON: "Before I give you anything I want to talk to two other people and Juanita, and what papers I give you you'll get."

STEWART: "Well, all we wanna do is make copies..."

CULTON: "It'll be about five minutes before I need to leave..."

STEWART: "O.K. Let's...how soon can you call me on that?"

CULTON: "...if there's anything else... ^{Call you} /on what?"

STEWART: "On the...when you can..."

CULTON: "On the drawings?"

STEWART: "Yeah."

CULTON: "How about day after tomorrow?"

STEWART: "That's fine."

CULTON: "Wednesday?"

STEWART: "Wednesday is fine."

CULTON: "About what time? How about..."

STEWART: "Well..."

CULTON: "Wednesday. It'd be, it'd have to be in the afternoon. Three o'clock?"

STEWART: "Fine."

CULTON: "O.K."

STEWART: "And in the meantime, you said you'd seen other things that you noticed, why don't you give us a run-down on those, what you can remember or recall?"

CULTON: "Well, why don't we just hold off on that right now, and then..."

STEWART: "No, I don't mean now, I mean in the meantime..."

CULTON: "O.K."

STEWART: "You can just make notes on what you're concerned with."

CULTON: "O.K."

STEWART: "O.K.? You say you've got to get going to class?"

CULTON: "Uh huh."

ELLIS: "I haven't really had a chance to talk to Dennis. It may be that his situation will be different from the Stiners anyway. It may be that if he has someone that he thinks has not done work correctly or ~~WMA~~ he's concerned that may not have done work correctly, and he says, 'Joe Blow, down there, didn't give a damn about the way things were done and I don't think he did it right, or there's a good possibility he didn't do it right,' and we give you that name and you go check with Joe Blow and he says, 'Why, I always did everything right, everything's beautiful,' and that's confidential then between you and him and we never get to even hear about it or to cross-examine him or anything like that..."

STEWART: "Normally we don't talk to him if we know specifically. If we have specifics, we can track these things down. When people talk in generalities, what can we do?"

TOMLINSON: "...a lot of cables, a lot of hangers, an awful lot of people, the proverbial needle in the haystack. We really have to have something that will pin it down a little closer than that. There's a cable at Comanche Peak, or there's a hanger at Comanche Peak."

ELLIS: "Right."

CULTON: "The information that I've given you, is it pretty much common, do you get this all the time? Or am I pretty much an isolated case, I'm one out of the hundreds of people that work there, that just happened to realize that that was the Q cable that was spliced? Or that was the, you know, that they're crowding the trays, or that they're doing something?"

TOMLINSON: "You're in a better position to answer that than we are." (to Herr)

CULTON: "How many people come by here and talk to you like this?"

HERR: "Yeah, and ^{my answer} ~~I~~ may tend to identify various people and I don't know if I'd like to answer that or not...."

CULTON: "Well, you don't have to mention any people, just give a percentage... just give an idea of how many people come by and talk to you..."

ELLIS: "Well, not names. All he wants is just -- he just wants to know if he's just an isolated case."

CULTON: "...that's all I care about."

HERR: "No."

TOMLINSON: "No."

STEWART: "No."

CULTON: "Do you get a lot of people, a few people, ten, twenty? Less?"

HERR: "Somewhere in there."

(laughter)

ELLIS: "Ten, twenty, or less."

HERR: "I have one question I'd like to ask you on the Q cable. Is there a way you can take a Q cable and splice it and it be all right?"

CULTON: "Yes, sir, it's probably true. But that's not what the contract says."

HERR: "...I just wanted to know if there's a way and you're aware of that way."

CULTON: "I am not an electrician."

TOMLINSON: "I've got another question on that. When ~~you're talking about~~ you're talking about a spliced cable, is it a factory-spliced cable or is it a site-spliced cable?"

CULTON: "No. Site-spliced."

TOMLINSON: "Site-spliced."

CULTON: "That is right. It was a site-spliced cable, it was not a factory-spliced cable."

TOMLINSON: "O.K."

HERR: "How did you recognize it?"

CULTON: "I pulled it. I'm telling you the cable that I pulled."

STEWART: "No. Recognized exactly where it was spliced?"

CULTON: "Yes, sir."

STEWART: "What did it look like at the time you saw it? Had it been a finished splice?"

CULTON: "Oh, it was very nice, very neatly done..."

(TELEPHONE RINGS)

CULTON: "...very well done splice. They did a very good job..."

TOMLINSON (answering phone): "Seidle's office. Tomlinson."

CULTON: "...of splicing it, but..."

TOMLINSON: "Oh, we're just about closing up."

CULTON: "...my understanding of the contract that they had with Q cable was that there was no splicing..."

TOMLINSON: "Hang on just a second."

CULTON: "...whatsoever."

TOMLINSON: "What color was the cable?"

CULTON: "I don't recall."

TOMLINSON (into telephone): "He says he doesn't recall the color."

CULTON: "Green, yellow, orange, black..."

TOMLINSON (into telephone): "O.K. Uh huh." (Hangs up telephone)

CULTON: "They had all colors, all different colors, but I know at that time, I -- hell, it's been, what, two years ago, three years ago? I don't remember. At that time I had worked on six different sites pulling, you know, pulling cable, routing it, routing it conduits."

HERR: "Did you write this up -- when you saw this, did you write it up as a nonconformance or bring it to anybody's attention?"

CULTON: "Negative. Are you kidding?"

HERR: "I don't kid very much."

CULTON: "Well, I'm sure you don't, sir, but I expressed that as a -- I didn't mean that as a wise comment, but as a person in the field, as a worker in the field, you didn't do that because my brother did that. I had two other brothers that worked there. My one brother that worked as a pipe fitter made an attempt to write up a nonconformance report and made his life in jeopardy

And when you're working out with that many people, you had -- I'm not going to say a low class -- you had people that were coming from a \$3.00 an hour job that they were happy with at one time and then jumped up and made \$8.00, \$10.00, \$12.00, \$13.00, \$14.00 an hour; you weren't going to take that job away from them. If you wrote that nonconformance report up, in turn, not just that one person but that crew would be jeopardized."

HERR: "Are you telling me that nonconformances aren't written out there in your department?"

CULTON: "No, sir, I'm not telling you that."

HERR: "What are you telling me? Your brother didn't write one because he was afraid of getting beat up. That was an isolated case..."

CULTON: "That happened, sir..."

HERR: "...or is that the feeling..."

Culton: "...that happened outside all the time..."

HERR: "Is that a feeling throughout the department that you..."

CULTON: "Yes, sir."

HERR: "...worked for?"

CULTON: "Not -- that's a feeling that's throughout the plant."

HERR: "So therefore, if that feeling persisted, there wouldn't be any non-conformances written."

CULTON: "I know that on the containment No. 1 door, the -- what's it called? the pressure door, airlock, there was a faulty weld on that door that was reported and four people were fired. And out in the parking lot, there was a good fight going, and it was due to that."

HERR: "Did you participate in the fight?"

CULTON: "No, I ran like hell."

HERR: "Did you know it was a fight over that and not over some girl?"

CULTON: "Yes, sir."

HERR: "Well, how many nonconformances are written down there? Do we have any?"

STEWART OR TOMLINSON: "Oh, are you kidding?"

CULTON: "Hundreds. Thousands."

HERR: "Thousands....we're talking about a five-year period."

STEWART (to Ellis): "You've been looking at them, you've been sorting through them."

ELLIS: "I may be the most expert person here on that."

STEWART: "Right. How many is there? Did you ever count them?"

ELLIS: "There's a few thousand...however..."

CULTON: "I got to sit in on the meetings as a scheduler, as a planner/scheduler, I had the opportunity to sit in on some of the meetings where they discussed some of the nonconformance reports. When they felt that there was a problem somewhere, they tried to talk it out before it was formally written up, can we go ahead and get this thing taken care of? That happens on every site. They try and go ahead and see what they can do to settle it before it's formally written up."

HERR: "Probably good management practice. Besides that, probably you said you saw thousands?"

ELLIS: "Probably, I imagine, three or four thousand."

HERR: "Three or four thousand?"

TOMLINSON: "That's a decent number."

HERR: "So I guess there're not too many people who feared for losing their job if they write a nonconformance."

ELLIS: "Also, you need to look at what has been written up and what hasn't been written up also."

HERR: "See, if this is a problem, I've investigated these things before..."

ELLIS: "I think in certain areas you'll find some things written up and some things not."

HERR: "...and I've found some of them to be true in some departments. I would only be concerned if it was true in your department. But it's obviously not true throughout the whole plant, so I can dismiss 95% and concentrate on the other 5%."

CULTON: "Well, if you want to dismiss 95% of it, then that's fine..."

ELLIS: "I think I'd have to...."

CULTON: "All I know was the feeling throughout the plant. I went down there as a very green person. I didn't know what was going on. I didn't know, so I had to follow everybody, I had to talk to other people. My crew -- you know, we were a small group but you always heard, you know what's going in a construction plant, you know where you are in the percentage of completion from the start to the completion, you just know it. You're putting it up, you're doing it."

ELLIS: "There's a lot of things that happen down there -- if somebody tells you you've got to be very very careful, that can be taken a lot of different ways, and you don't have to always be told 'I'm going to beat the hell out of you in the parking lot if you do this' to know that that's what they mean. And as far as what's written up, I think that that's something else that bothers us, but I don't know if we really want to get into all that right now."

HERR: "Yes, but you're telling me that you didn't write this question up because you felt intimidated and threatened, and if you...."

CULTON: "No, I felt at that time it would probably be repulled, be pulled back, but it was too long -- it was a full spool, they'd have to go back..."

HERR: "So you didn't report it because you felt that it was going to be repulled."

Culton: "At that time, I probably did. In fact, maybe I can come back and say I really didn't care. I had the idea in my mind that I cared but I wasn't overly concerned, I had other problems going on outside of my..."

HERR: "What has changed your thinking?"

CULTON: "Sir?"

HERR: "I mean, could they have pulled that and you not know about it?"

CULTON: "Very true. All these drawings could be redone and properly relocated. If that's true, that's fine and dandy, but there's no way that they're going to let me in that gate right now and find out."

HERR: "...I just wanted to know, that's all."

CULTON: "I would like to find out. You know, if I could go down there and I could scrounge through some of that cable to see if it's been spliced, you know, it seems like that's all I'm basing my comments on, is that cable and, you know, a few of these drawings, a few hundred of these drawings that I've drawn, which is a very small fraction of what is really going on there. Juanita, I spilled my guts out to her one time and she was going 'My God, I don't believe what I'm hearing!' But what you want is facts, what you want is what I had or I have on a piece of paper."

ELLIS: "All that he's talked to you about here is what he can pretty well prove or that he has concerns about that is provable."

STEWART: "Well, like I say, I think we can't do much more now until you get, you know, try to tie this stuff down a lot closer than what it is."

ELLIS: "When you get this done, if you went and found that there were problems, would those specific problems be addressed or would a thorough investigation then follow if there were problems?"

TOMLINSON: "A little of both. Because it would be done in two stages. First, we would locate the things that he has said; there would be a report written on that. Then there would probably be some action taken. I hate to use the words stop work or anything else, but some action would be taken and then it would go much further."

CULTON: "It's getting close to that time..."

ELLIS: "Yeah..."

CULTON: "I need to go ahead and run. We can continue this later on if you like, if you feel that there's enough information for you or the information that I'm going to continue to give you. We can meet some other time, but I need to go ahead and get to my class. What was your name again, you're...?"

STEWART: "Bob Stewart."

CULTON: "And you're...?"

TOMLINSON: "Dan Tomlinson."

CULTON: "Dan Tomlinson?"

TOMLINSON: "T-o-m-l-i-n-s-o-n."

CULTON: "And you're...? It'll still pick up, sir."

ELLIS: "Richard Herr."

CULTON: "It'll pick up very well." (referring to his tape recorder)

HERR: "Richard Herr."

CULTON: "Richard Hart?"

HERR: "Herr."

ELLIS: "Herr."

CULTON: "Richard Herr."

Comments of Dennis Culton regarding his feelings following meeting with NRC; relayed to CASE President Juanita Ellis by phone 12/13/82, and 12/20/82:

I was especially concerned about the Q (safety-related) cable that was in the cable spread room being spliced, and one of the main reasons we went there was to see what the Nuclear Regulatory Commission was going to do about the spliced Q cable. I gave them the location and we discussed the statement that I made at the Nuclear Regulatory Commission hearing. We wanted to know what the NRC was going to do about the spliced Q cable.

I have other information that I believe shows that pipe supports and pipe hangers are not located in the proper areas, that there are faulty welds on the supports. They kept asking us questions about it. They tried to discredit my conversations. They tried to say thing and make me say things that were not true. As far as I'm concerned, we were badgered in the conversations that we had. We kept trying to find out what they were going to do about that spliced Q cable. The meeting went on for about an hour and forty-five minutes and Juanita Ellis and I decided to go ahead and leave.

I felt they were trying to intimidate us. I don't think that they tried to take me seriously at all. They tried to feel me out. I think what they really wanted to do was to find out what other information I had, if I had a grudge against them (the Nuclear Regulatory Commission or Brown & Root), which I did not. I came out of Brown & Root with a very high classification, they were very much willing to rehire me. I left of my own accord. I had intentions of going back to school and also, the other main reason that I left was that I couldn't condone what was going on at the plant. I thought that they were not treating the problem areas as they should. I knew that these problems or faults were being conducted or were going on, and I tried to stop it, and they just told me to keep my mouth shut about it. So the only recourse as far as I knew was to go ahead and quit.

Bob Stewart telephoned me after the meeting, I believe on Friday (11/12/82). He asked me why I didn't come down and give them the papers, and I told him that at this time I have no intentions of giving him the papers, for the reason that I felt that he wasn't going to do anything about the spliced Q cable. The conversation went something like this, to the best of my recollection. He made several comments like, "Well, if we don't have that information, how do you expect us to do it?" And I said, "Well, I gave you a location, I expect you to locate this area." He said, "How can we go through a couple of thousand cables in that area?" And I said, "Well, it's a spliced cable. You have a job to do it. You're being paid to do that job." He said, "Well, how can we do it without your drawings?" I said, "I gave you the location of where it was, you can go and find it." He said, "Well, are you going to bring those drawings to us?" I said, "No, I'm going to turn them over to Juanita Ellis." And I asked him also if someone else was listening in on the phone conversation. His answer was no.

I told him that I had talked to an engineering professor at UTA and let him listen to the tape and look at my drawings and he suggested not to do anything -- not to let any of the papers out of my hands -- in fact, he suggested not to even turn them over to Juanita Ellis. And to just go ahead and hold them but scatter them to different areas where I can locate them sometime if anything ever does happen like a fire or accident at my home, or if a thief accidentally does take one box of information that I have. And Mr. Stewart also tried to figure out what papers I did have and I told him I wasn't going to talk to him about

it any more. And he said, "Well, you made statements and you're going to have to back them up." And I said, "I have all the information. You know, my statement's backed up. You know, you're badgering me now, you badgered me during that meeting, you're trying to discredit me now in this telephone conversation that we're just having, and you tried to discredit me there, so I see no further point in conducting our conversation any further." And he said, "Well, if you feel that way, you go ahead and do what you have to do." I said, "I'll do what I have to do." And that was pretty much the end of the conversation. The total conversation lasted about ten minutes or less.

When people that come in and have something to say, some information to give the Nuclear Regulatory Commission, I think that the people are discredited. I think that they're not taken seriously, that the Nuclear Regulatory Commission says, "Well, that's no big deal, and you know, that's just a routine -- could be a routine thing." And the people think, "Well, it's possible; these guys ought to know, they're a government agency, they're paid by the government, they're independent, and they have no reason to lie." The way I see it now, I believe that the NRC's not telling us the full story. At least that I didn't get the full story. And I think if they talked to me that way, they talk to everybody else that way.

I don't know what I would have done if Mrs. Ellis hadn't been there and I hadn't had that tape recorder, because I'm sure that they would have made me very mad. I got so upset during that meeting that I almost got up and walked out. I literally cussed, I said some foul language, and I don't do that -- I don't get that mad. They were very, very tactful in doing it. The guy would make a very good attorney in cross-examination. There is one guy, Mr. Stewart, who sat across the table and kept on popping questions at me as fast as he could, he popped questions to me. The second gentleman, Mr. Tomlinson, he asked some more logical questions. He felt me out.

While Stewart badgered these questions one after another, Tomlinson asked more specific questions, and a little bit more in detail, and that's where Stewart also just kept on popping questions, you know, to relate to these questions. And then, Richard Herr asked very classic questions, very detailed, direct, and he did more cut down than anything. He sat back and listened to all this. And if I were to cross-examine somebody, that's the way I would conduct it. I thought it was very good the way they did it, but very poor class. Very low class. They treated me like a very low class person, and I can grant you that I do not consider myself a low-class person. I consider myself up, you know, as high as the NRC people are if not higher. I think the NRC representative tried to make me feel like I came from a little Podunk dirt town and treated me as such, and I think I'm pretty well educated. This is my sixth year in college, I'm working on my second degree, and I didn't appreciate his attitude.

If Mrs. Ellis hadn't been there with me, I would have walked out. I would have told them, "To hell with it" and walked out. I would have said, "You and I have no more conversation, nothing else to say." And I would have probably gotten up and walked out because they were treating me very poor, they were treating me very bad. I didn't like the way that they conducted themselves.

If I had it to do over again, I don't think that I would have gone. I don't think that anybody else would go if they find out. If somebody else had a situation that they knew that there was a fault in the plant that might cause a problem at some time and they knew that the Nuclear Regulatory Commission was not conducted in a proper procedure or not doing anything about it, they wouldn't go to them. I wouldn't go back there to them. I don't think I'd turn my information over to them. I think I'd turn it over to Mrs. Ellis. I gave some of the information to the Armadillo Coalition and I thought that they might be able to do something about it. I knew from previous experience that the Nuclear Regulatory Commission down at Brown & Root had a notorious reputation as supposedly being the arm of -- or the negotiator in between the people and the -- doing what's right and doing what's wrong. The people that worked there felt that the Nuclear Regulatory Commission was not doing their job. I believe that there are people at the plant now that know of problem areas that might come forward if the Nuclear Regulatory Commission didn't have the reputation that it does now.

I think that it jeopardizes the people that work at the nuclear power plant when Brown & Root puts out their newsletter and makes statements about people that are talking against them like the gentleman that has been fired a number of times. Also my name was written up and many other people that did make comments or did talk to the Nuclear Regulatory Commission were written up in the newsletter. This newsletter is put out onsite to all the employees or available to all the employees onsite. And most of the people that did make conversation or did talk to the Nuclear Regulatory Commission live in that area, and some of the people are not used to making this kind of money. They're used to living and maintaining a \$3.00-an hour job and living in a one-room house with barely one car running, and now they have a job at Comanche Peak making \$8, \$10, \$12, \$15 an hour and they have added on to their home or a new home, they have two new cars, all new clothes and having parties every weekend. And not one or two beers in the refrigerator, but a case of beer. And when they see that their friends have turned against them, which is the way that they really see it, they see that if they talk against Brown & Root, they talk against their brothers and relatives (B&R), and they feel that, "Heck, we don't need you anymore," and they do not counsel one another anymore and they do not talk to them.



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

November 24, 1982

MEMORANDUM FOR: The Atomic Safety & Licensing Boards for:

Callaway Plant, Unit 1
Clinton Power Station, Units 1/2
Comanche Peak Steam Electric Station, Units 1/2
Enrico Fermi 2
Midland Plant, Units 1/2
Palo Verde Nuclear Generating Station, Units 1/2/3
Shoreham Nuclear Power Station
South Texas Project 1/2
Waterford Steam Electric Station, Unit 3
William H. Zimmer Nuclear Power Station, Unit 1, and

The Atomic Safety & Licensing Appeal Boards for:

Offshore Power Systems, FNP 1-8
Comanche Peak Steam Electric Station, Units 1/2
Diablo Canyon Nuclear Power Plant, Units 1/2
San Onofre Nuclear Generating Station, Units 2/3
Virgil C. Summer Station, Unit 1
Susquehanna Steam Electric Station, Units 1/2
William H. Zimmer Nuclear Power Station, Unit 1

FROM: Thomas M. Novak, Assistant Director
for Licensing
Division of Licensing, ONRR

SUBJECT: BOARD NOTIFICATION - ALLEGED DESIGN DEFICIENCY
(Board Notification No. 82-105)

In accordance with present NRC procedures regarding Board Notifications, the enclosed information is being provided for your information as constituting new information relevant and material to safety issues.

An alleged generic design deficiency in ASME Code Class 1 piping has been received by the NRC staff. The concern in this allegation is that the effects of local pipe wall stresses, due to support loads introduced by pipe clamps, are not being evaluated properly.

This concern potentially relates to all plants (BWR and PWR) currently under OL review. It is NRR's experience, as gathered from our own audits on NTOLs and from the Independent Design Review Program, that the effect of support reactions on piping is being considered by system designers. Specific support and piping design criteria are committed to by all applicants; however, the level of the NRR review does not generally address pipe clamp details unless inspection during construction raises questions.

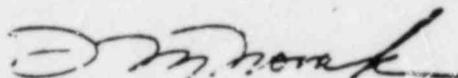
Contact:
Suzanne Black, ONRR
X29788

The Atomic Safety & Licensing Board - 2 -
The Atomic Safety & Licensing Appeal Board

November 24, 1982

The magnitude of the problem discussed in the allegation has not yet been assessed, and, in fact, without more precise information regarding the exact nature of the allegor's concerns, we would not be able to make such an assessment. Office of Investigations personnel will be assisting Region V in the interview of the allegor in the near future.

A complete failure to deal with the pipe support-pipe interface design issue, as implied in the enclosed letter, would be a serious matter if substantiated and could affect prior NRC staff positions taken in Safety Evaluations and other documents on a generic basis. Further information will be provided upon any significant findings by the staff.



Thomas M. Novak, Assistant Director
for Licensing
Division of Licensing, ONRR

Enclosure:
As stated

cc: Licensee/Boards Service
List



*Rec DND
12/5/82
PM*

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

September 30, 1982

MEMORANDUM FOR: Darrell G. Eisenhut, Director
Division of Licensing

FROM: Richard H. Vollmer, Director
Division of Engineering

SUBJECT: ALLEGED DESIGN DEFICIENCY--POTENTIAL BOARD
NOTIFICATION ITEM

An alleged design deficiency in ASME Code Class 1 piping which is discussed in the attachment letter to Chairman Palladino was brought to our attention by the NRR Director's office. The concern in this allegation is that the effects of local pipe wall stresses, due to support loads introduced by pipe clamps, are not being evaluated properly.

This concern potentially relates to all plants (BWR and PWR) currently under OL review, but to our knowledge it is not the subject of any contention in any operating reactor hearing. It is NRR's experience, as gathered from our own audits on NTOLs and from the Independent Design Review Program, that the effect of support reactions on piping is being considered by system designers. Specific support and piping design criteria are committed to by all applicants; however, the level of the NRR review does not generally address pipe clamp details unless inspection during construction raises questions.

The magnitude of the problem discussed in the allegation has not been assessed, and, in fact, without more precise information regarding the exact nature of Mr. Van Meter's concern, we would not be able to make such an assessment. We expect that we will be assisting the Office of Investigations in evaluating the significance of the allegation.

A complete failure to deal with the pipe support-pipe interface design issue, as implied in the enclosed letter, would be a serious matter if substantiated. As this information appears to meet the guidelines of Office Letter No. 19, we recommend the licensing board be notified.

Richard H. Vollmer, Director
Division of Engineering

Enclosure: As stated.

415 Perkins St
Oakland, CA 94610

CONFIDENTIAL

August 18, 1982

Mr. Nunzio Palladino
Chairman NRC
U.S. Nuclear Regulatory Commission
Washington, D.C. 20055

Statement: CONFIDENTIAL INFORMATION

1. The information contained herein is furnished to the United States Nuclear Regulatory Commission (NRC) under 10 CFR 21 as Confidential Information and is marked as such. This information may not be disclosed without the written consent of William Van Meter; but the information may be used by the NRC, as a source, for obtaining information under their own powers.

Enclosure 1: "Nuclear Power Plant Piping Legal Requirements", Notes by William Van Meter, 8-13-82.

Subject: Serious design deficiencies in nuclear power plants, concerning class 1 piping.

Dear Mr. Palladino:

It is with deep regret that I must inform you of the following deficiencies in nuclear power piping. I consider these so serious, and which may undermine the U.S.A. nuclear program, that I must bring these matters directly to your personal attention.

1. I have spent the past 30 years in piping design work. For the past 13 years I have been involved in piping design work for numerous nuclear power plants. For the past 4 years I have been employed by Western Consulting Engineers, 440 Grand Ave, Oakland, CA 94610.

2. Since seismic or other dynamic analysis of nuclear piping has been rather recent, i.e., since from about the year 1969, I am familiar with the development history of the methodology of piping seismic analysis.

At first, the piping support restraint seismic loads were small, and therefore there was not a problem with the additional local strains imposed in the piping wall due to said loads.

This was based on a judgemental evaluation, as there was not any good economical method to analyze the thick walled pipes.

Later, the piping support restraint seismic loads became large, and in some dynamic cases they are herrendous.

8208010001

CONFIDENTIAL

3. The piping seismic analysis is usually performed by personnel termed stress analysts and called "the stress group". The piping support design is usually performed by personnel termed pipe support designers and called the "pipe support group".

A. The pipe stress analysis is performed by computer program with the total load assumed distributed across the entire pipe wall cross section. This is because this method is built into the computer mathematical programs and is state-of-the-art.

B. The pipe support design is usually accomplished by human decision selection of pipe attachment components that will satisfy the pipe total load for the pipe support component portion only.

4. The method described in paragraph 3 is satisfactory if the piping loads are small, which was true for early nuclear plants. However, the loads have increased substantially in later plant seismic design, and the effects of local pipe wall loading are significant. In addition, pipe clamps are used in a negligent manner that causes additional stress in the wall of the pipe, in the case of stainless steel pipes. Hence, the methodology of evaluating this problem practically and economically was never developed, and consequently no analysis is performed. (See Ref. 1c, page 45, line 10; Ref. 1b, page 30, line 10.)

5. The need for analysis is recognized by the ASME Code, and is a part of the requirement of said code. (See paragraph 3 of Enclosure 1)

6. If the effects of local pipe wall stress are not evaluated properly, the piping system is not legal, which consequently puts the licenses of the plant in question (See Enclosure 1- Note: this has been reviewed by the NRC, except for the technical sections, which are straightforward, see Reference 2.).

7. Therefore, in view of the foregoing paragraphs, many of the nuclear power plants under construction and operation are in serious violation of NRC licensing regulations and could possibly be unsafe.

I trust that you will take positive action on this information, without delay, and you can expect my fullest cooperation in this matter.

Yours truly,

William Van Meter

William Van Meter

WVM:WVM
encl.

References

1. Van Meter vs Western Piping, U.S. Distric Court,
Northern California, Civil Action No. C-81-2262 RHS:
 - a) Deposition: Joe Majors, General Electric Nuclear
 - b) Deposition: Javad Gangi, General Electric Nuclear
 - c) Deposition: Henry Hwang, General Electric Nuclear
2. Letter from William Olmstead, NRC Director and Chief
Counsel, to w. Van Meter, 8-2-82.

2-20-82; revised 8-13-82

Nuclear Power Plant Piping
Legal Requirements

by
William Van Meter

1. Nuclear power plant construction, including design, and operation are controlled by the U.S. Nuclear Regulatory Commission (NRC), an independent federal agency, established by the Energy Reorganization Act of 1974, 42 U.S.C. Article 5801 et seq. The NRC has the statutory responsibility for prescribing licensing standards to protect public health and safety and for inspecting industry's activities against these standards. The regulated industry bears the primary responsibility for the proper construction and safe operation of licensed facilities.

The NRC uses the "Code of Federal Regulation, Title 10, Part 50" (10CFR50), and in addition Parts 19, 20, 21, 73, 75, 100 and Part 140 are also used to deal with reactor safety (either directly or indirectly), as the legal establishment concerning nuclear power plant safety, and controls the plant construction and later, operation by issuing permits for these functions.

2. Prior to the commencement of the plant construction, the utility (permit holder) must furnish to the NRC, under 10CFR50, article 50.34 "Technical Information", by paragraphs:

paragraph (a) "Preliminary Safety Analysis Report" (PSAR).
paragraph (b) "Final Safety Analysis Report" (FSAR), and by
paragraph (2) "Analysis Basis" which is included in the FSAR.

And stated in Article 50.55a "Codes and Standards", by paragraphs:

paragraph (i) "Design to recognized Codes"
paragraph (b)(1) "Section III of ASME Code"
paragraph (d) "Piping"
paragraph (d)(2) "Construction Permits"
paragraph (d)(2)(ii) "requirements of Class 1 piping of Section III of ASME Code."

3. per "American Society of Mechanical Engineers Boiler and Pressure Vessel Code", Section III (Rules for Construction of Nuclear Power Plant Components), Division 1, Subsection NB (Class 1 Components), the following excerpts from the section on Design- NB 3000, are given for Class 1 piping. (Note: Class 1 piping has the higher order of subsequent numbered classes, and is defined as those systems that through inoperation would compromise the safety of the plant in preventing the exposure of radiation to the public.)

paragraph NB-3624 (Page 118.1): States the "...restraining effects of hangers, supports [clamps], and other localized loadings [local stress to the pipe wall]."

paragraph NB-3625 (Page 119): States the stress analysis shall be done for said loadings.

paragraph NB-3645 (Page 127): States the effect of attachments [clamps] on pressure retaining members [piping] shall be checked with stress criteria. This would be the effect of thermal constraint stress (Lock-up).

Also included is the reference from Class 2 piping, Subsection NC, on the same subject, which is more explicit in context: paragraph NC-3645 (Page 152).

... supports or other causes, the wall thickness of the pipe shall be increased, or, if this is impractical or would cause excessive local stresses, the superimposed loads or other causes shall be reduced or eliminated by other design methods.

NB-3620 DESIGN CONSIDERATIONS

NB-3621 Design and Service Loadings

The provisions of NB-3110 apply.

NB-3622 Dynamic Effects

NB-3622.1 Impact. Impact forces caused by either external or internal loads shall be considered in the piping design.

NB-3622.2 Earthquake. The effects of earthquake shall be considered in the design of piping, piping supports, and restraints. The loadings, movements (earthquake anchor movements), and number of cycles to be used in the analysis shall be part of the Design Specifications. The stresses resulting from these earthquake effects must be included with weight, pressure, or other applied loads when making the required analysis.

NB-3622.3 Vibration. Piping shall be arranged and supported so that vibration will be minimized. The designer shall be responsible, by design and by observation under startup or initial service conditions, for ensuring that vibration of piping systems is within acceptable levels.

NB-3622.4 Relief and Safety Valve Thrust. The effects of thrusts from relief and safety valve loads from pressure and flow transients shall be considered in the design of piping, pipe supports, and restraints. See Appendix O.

NB-3623 Weight Effects

Piping systems shall be supported to provide for the effects of live and dead weights, as defined in the following subparagraphs, and they shall be arranged or properly restrained to prevent undue strains on equipment.

NB-3623.1 Live Weight. The live weight shall consist of the weight of the fluid being handled or of the fluid used for testing or cleaning, whichever is greater.

NB-3623.2 Dead Weight. The dead weight shall consist of the weight of the piping, insulation, and other loads permanently imposed upon the piping.

NB-3624 Thermal Expansion and Contraction Loads

NB-3624.1 Loadings, Displacements, and Restraints. The design of piping systems shall take into account the forces and moments resulting from thermal expansion and contraction, equipment displacements and rotations, and the restraining effects of hangers, supports, and other localized loadings.

NB-3624.2 Analysis of Thermal Expansion and Contraction Effects. The analysis of the effects of thermal expansion and contraction is covered in NB-3672.

NB-3624.3 Provision for Rapid Temperature Fluctuation Effects. The designer shall provide for unusual thermal expansion and contraction loads caused by rapid temperature fluctuations.

NB-3625 Stress Analysis

A stress analysis shall be prepared in sufficient detail to show that each of the stress limitations of NB-3640 and NB-3650 is satisfied when the piping is subjected to the loadings required to be considered by this Subarticle.

NB-3630 PIPING DESIGN AND ANALYSIS CRITERIA

(a) The design and analysis of piping when subjected to the individual or combined effects of the loadings defined in NB-3100 and NB-3620 may be performed in accordance with this Subarticle. Design for pressure loading shall be performed in accordance with the rules of NB-3640. Standard piping products that meet the requirements of ANSI 916.9 or NB-3649 satisfy the requirements of NB-3640, and only the analysis required by NB-3650 need be performed.

(b) Within a given piping system, the stress and fatigue analysis shall be performed in accordance with one of the methods given in NB-3650, NB-3200, or Appendix II. Stress indices are given in NB-3680 for standard piping products, for some fabricated joints, and for some fabricated piping products. Some piping products designed for pressure by applying the rules of NB-3649 may not be listed in NB-3680. For such products, the designer shall determine the stress indices as required in NB-3650.

(c) When a design does not satisfy the requirements of NB-3640 and NB-3650, the more detailed alternative analysis given in NB-3200 or the experimental stress analysis of Appendix II may be used to obtain stress values for comparison with the criteria of NB-3200.

(d) The requirements of this Subarticle shall apply to all Class 1 piping except as exempted under (1) or (2) below.

(1) Piping of 1 in. nominal pipe size or less which has been classified as Class 1 in the Design Specifi-

fication may be designed in accordance with the design requirements of Subsection NC.

(2) Class 1 piping may be analyzed in accordance with the Class 2 analysis of piping systems in Subsection NC, using the allowable Class 2 stresses and stress limits, provided the specified service loads for which Level A and B Service Limits are designated meet all of the requirements stipulated in (a) through (e) below.

(a) *Atmospheric to Service Pressure Cycle.* The specified number of times (including startup and shutdown) that the pressure will be cycled from atmospheric pressure to service pressure and back to atmospheric pressure during normal service does not exceed the number of cycles on the applicable fatigue curve of Figs. I-9.0 corresponding to an S_a value of three times the S_m value for the material at service temperature.

(b) *Normal Service Pressure Fluctuation.* The specified full range of pressure fluctuations during normal service does not exceed the quantity $\frac{1}{2} \times \text{Design Pressure} \times (S_a/S_m)$, where S_a is the value obtained from the applicable design fatigue curve for the total specified number of significant pressure fluctuations and S_m is the allowable stress intensity for the material at service temperature. If the total specified number of significant pressure fluctuations exceeds 10^6 , the S_a value at $N = 10^6$ may be used. Significant pressure fluctuations are those for which the total excursion exceeds the quantity: Design Pressure $\times \frac{1}{2} \times (S/S_m)$, where S is the value of S_a obtained from the applicable design fatigue curve for 10^6 cycles.

(c) *Temperature Difference — Startup and Shutdown.* The temperature difference, ΔT , between any two adjacent points¹⁹ of the component during normal service does not exceed $S_a/2E\alpha$, where S_a is the value obtained from the applicable design fatigue curves for the specified number of startup-shutdown cycles, α is the value of the instantaneous coefficient of thermal expansion at the mean value of the temperatures at the two points as given by Table I-5.0, and E is taken from Table I-6.0 at the mean value of the temperature at the two points.

(d) *Temperature Difference — Normal Service.*²⁰ The temperature difference, ΔT , between any

¹⁹Adjacent points are defined as points which are spaced less than the distance $2\sqrt{Rt}$ from each other, where R and t are the mean radius and thickness, respectively, of the vessel, nozzle, flange, or other component in which the points are located.

²⁰Normal service is defined as service, other than startup and shutdown, resulting in specified Service Loadings for which Level A Limits, Level B Limits, or Testing Limits are designated.

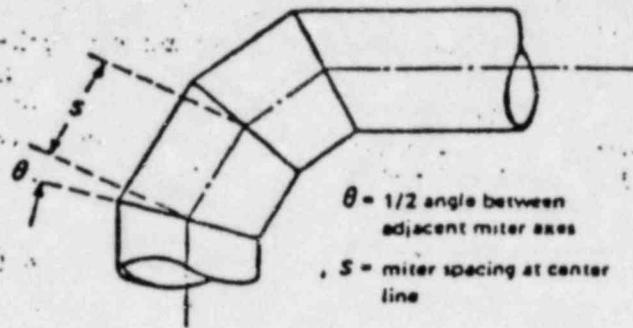


FIG. NB-3644(b)-1 MITER JOINT GEOMETRY

(b) The half-width of the reinforcement zone shall be limited as shown in Fig. NB-3643.3(a)-3:

$$L_A = d$$

(3) *Metal Available for Reinforcement.* The reinforcement area shall be the sum of areas $A_1 + A_2 + A_3$ defined in (a), (b), and (c) below and shown in Fig. NB-3643.3(a)-3. Metal counted as reinforcement shall not be applied to more than one opening.

(a) Area A_1 is the area lying within the reinforcement zone that results from any excess thickness available in the wall of the branch pipe:

$$A_1 = 2L_N(T_b - t_b)$$

(b) Area A_2 is the area lying within the reinforcement zone that results from excess thickness available in the lip of the extruded outlet:

$$A_2 = 2r_1(T_e - T_b)$$

(c) Area A_3 is the area lying within the reinforcement zone that results from any excess thickness in the run pipe wall:

$$A_3 = d(T_r - t_r)$$

NB-3644 Miters

Mitered joints may be used in piping systems under the conditions stipulated in (a) through (d) below.

(a) The minimum thickness of a segment of a miter shall be determined in accordance with NB-3641. The minimum thickness thus determined does not allow

for the discontinuity stresses that exist at the junction between segments. The discontinuity stresses are reduced for a given miter as the number of segments is increased.

(b) The angle θ in Fig. NB-3644(b)-1 shall not be more than $22\frac{1}{2}$ deg.

(c) The center line distance S between adjacent miters shall be in accordance with Fig. NB-3644(b)-1.

(d) Stress indices and flexibility factors shall be determined in accordance with the requirements of Appendix II.

NB-3645 Attachments

(a) Lugs, brackets, stiffeners, and other attachments may be welded, bolted, or studded to the outside or inside of piping. The effects of attachments in producing thermal stresses, stress concentrations, and restraints on pressure retaining members shall be taken into account in checking for compliance with stress criteria.

(b) Figure NB-4433-1 shows some typical types of acceptable attachment welds (NB-4430).

NB-3646 Closures

(a) Closures in piping systems may be made by use of closure fittings, such as blind flanges or threaded or welded plugs or caps, either manufactured in accordance with standards listed in Table NB-3132-1 and used within the specified pressure-temperature ratings, or made in accordance with (b) below.

(b) Closures not manufactured in accordance with the standards listed in Table NB-3132-1 may be made

CASE

(CITIZENS ASSN. FOR SOUND ENERGY)

CASE ATTACHMENT 13 - Page 1 of 1

1426 S. Polk
Dallas, Texas 75224

214/946-9446

CASE COMMENTS

AT

11/18/82

MEETING BETWEEN TUGCO AND NRC
TO DISCUSS APPLICANTS' PLANS FOR
AN INDEPENDENT DESIGN VERIFICATION PROGRAM
(DOCKET NOS. 50-445 AND 50-446)

We want to call to the attention of the NRC Staff people here that in the operating license hearings for Comanche Peak, CASE witnesses have presented testimony that indicates that Applicants are in violation of IE Bulletin 79-14, Section 2 of CPSES guidelines, and various ASME Codes.

We would also call your attention to the November 24, 1982 Board Notification - Alleged Design Deficiency (Board Notification No. 82-105) which attached concerns from William Van Meter.

This is important to the Comanche Peak hearings because:

(1) There is included in CASE's exhibits which have been introduced and accepted into evidence documents which indicate that there are numerous instances of minimum wall violations at CPSES. (We had to limit our introduction of the exhibits regarding this item to a few examples, since Applicants had to go back and reopen numerous nonconformance reports which had been erroneously closed, resulting in one nonconformance report about a foot thick under which number all the previously closed reports were included. As far as CASE is aware, this nonconformance report is still an open item; at least it was at the time it was discussed in the hearings in July 1982.)

It is obvious that these minimum wall violations assume even greater importance if the concerns expressed by Mr. Van Meter are correct.

(2) Testimony by CASE witnesses expresses their concerns about the fact that U-bolts around the main steam line at CPSES are cinched up tight and torqued. CASE witness Jack Doyle estimates that about 1/2 of all supports at Comanche Peak, including some whole systems, are involved. Some of them are: main steam; safety injection; emergency diesel oil; service water; feedwater; component cooling; containment spray; and others.

CASE does not believe adequate attention has been given to these and other concerns expressed by CASE witnesses, either by the Applicants or the NRC Staff in our hearings, and we have little confidence that they will be prior to the granting of an operating license for CPSES.

We urge that those of you who are concerned about whether or not CPSES is built correctly and can operate safely prior to the granting of its license closely monitor the resolution of the issues raised in our proceedings.

We appreciate this opportunity to provide these comments.

For further information, please contact Mrs. Juanita Ellis, President of CASE.

12/21/82

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of

APPLICATION OF TEXAS UTILITIES
GENERATING COMPANY, ET AL. FOR
AN OPERATING LICENSE, FOR
COMANCHE PEAK STEAM ELECTRIC
STATION UNITS #1 AND #2 (CPSSES)

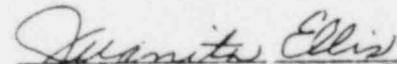
Docket Nos. 50-445
and 50-446

AFFIDAVIT OF JUANITA ELLIS

My name is Juanita Ellis. I am President of CASE (Citizens Association for Sound Energy), the only remaining Intervenor in the Comanche Peak operating license proceedings.

As President of CASE, I have been duly elected by its members and selected by its Board of Directors to represent CASE's members, some of whom live about five miles from the Comanche Peak plant, in these proceedings. CASE is the only party in these proceedings which has taken a position contrary to the granting of an operating license for the plant. (Two former Intervenor were forced to withdraw from the proceedings.)

The statements which are purported to be factual in the preceding document (CASE'S BRIEF IN OPPOSITION TO THE NRC STAFF'S EXCEPTIONS TO THE ATOMIC SAFETY AND LICENSING BOARD'S ORDER DENYING RECONSIDERATION OF SEPTEMBER 30, 1982) are true and correct to the best of my knowledge and belief. Questions, arguments, and opinions expressed represent the concerns not only of me, as President of CASE, but of CASE's members and Board of Directors and many members of the general public as well.

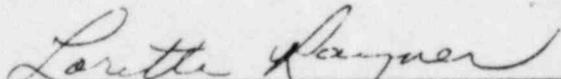


(Mrs.) Juanita Ellis, President
CASE (Citizens Association for Sound Energy)
1426 S. Polk
Dallas, Texas 75224
214/946-9446

STATE OF TEXAS)

On this, the 21 day of December, 1982, personally appeared Juanita Ellis, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes therein expressed.

Subscribed and sworn before me on the 21 day of December, 1982.

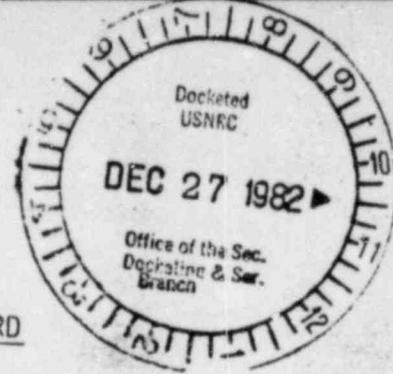

Notary Public in and for the State of Texas

My Commission Expires: 2/28/85

The original of this two-page affidavit (this page plus one additional page) if being mailed under separate cover, First Class Mail, to the Secretary, U. S. Nuclear Regulatory Commission, Washington, D. C. 20555, Attn: Chief, Docketing and Service Section, on this 22nd day of December, 1982.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD



In the Matter of

APPLICATION OF TEXAS UTILITIES
GENERATING COMPANY, ET AL. FOR
AN OPERATING LICENSE FOR
COMANCHE PEAK STEAM ELECTRIC
STATION UNITS #1 AND #2 (CPSES)

Docket Nos. 50-445
and 50-446

CERTIFICATE OF SERVICE

By my signature below, I hereby certify that true and correct copies of
CASE'S BRIEF IN OPPOSITION TO THE NRC STAFF'S EXCEPTIONS TO THE ATOMIC SAFETY
AND LICENSING BOARD'S ORDER DENYING RECONSIDERATION OF SEPTEMBER 30, 1982
have been sent to the names listed below this 22nd day of December, 1982
by: Express Mail where indicated by * and First Class Mail elsewhere.

- * Administrative Judge Marshall E. Miller
U. S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board
Washington, D. C. 20555
 - * Alan S. Rosenthal, Esq., Chairman
Atomic Safety and Licensing Appeal Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555
 - * Dr. Kenneth A. McCollom, Dean
Division of Engineering, Architecture,
and Technology
Oklahoma State University
Stillwater, Oklahoma 74074
 - * Dr. W. Reed Johnson, Member
Atomic Safety and Licensing Appeal Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555
 - * Dr. Richard Cole, Member
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555
 - * Thomas S. Moore, Esq., Member
Atomic Safety and Licensing Appeal Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555
 - Nicholas S. Reynolds, Esq.
Debevoise & Liberman
1200 - 17th St., N. W.
Washington, D. C. 20036
 - Atomic Safety and Licensing Appeal Panel
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555
 - Atomic Safety and Licensing Appeal Panel
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555
 - Docketing and Service Section
Office of the Secretary
U. S. Nuclear Regulatory Commission
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 - * Ms. Lucinda Minton, Law Clerk
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