

TEXAS UTILITIES GENERATING COMPANY

2001 BRYAN TOWER • DALLAS, TEXAS 75201

R. J. GARY
EXECUTIVE VICE PRESIDENT
AND GENERAL MANAGER

September 28, 1983

Mr. Richard C. DeYoung, Director
Office of Inspection and Enforcement
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

RESPONSE TO NOTICE OF VIOLATION AND
PROPOSED IMPOSITION OF CIVIL PENALTY
IN EA NO. 83-64

Dear Mr. DeYoung:

On August 29, 1983, the NRC Staff (Region IV) issued a Notice of Violation and Proposed Imposition of Civil Penalty to Texas Utilities Generating Company, et al. ("Licensees") for an alleged violation of 10 CFR Part 50, Appendix B, Criterion I. Pursuant to 10 CFR Sections 2.201 and 2.205, Licensees respond to the Notice of Violation and Proposed Imposition of Civil Penalty in the attachments hereto.

As set forth in the attached responses, Licensees deny the alleged violation and respectfully request that the Notice of Violation and Proposed Imposition of Civil Penalty be withdrawn. Alternatively, Licensees urge that the Staff hold in abeyance further consideration of and final action on this enforcement action until a ruling by the U.S. Court of Appeals for the Fifth Circuit on the appeal taken by Brown & Root of the decision by the Secretary of Labor in Atchison v. Brown & Root, 82-ERA-9, June 10, 1983, on which this enforcement action was solely based. However, should the Staff nevertheless proceed with this enforcement action, Licensees submit that the proposed civil penalty should be mitigated in its entirety.

Licensees wish to emphasize from the outset that they regard this enforcement action as a matter of considerable concern. The Staff's serious allegation regarding quality assurance at Comanche Peak has already had an adverse and unfair impact on the public perception of Licensees' commitment to quality assurance. This is particularly disturbing because Licensees have always actively attempted to ensure that all persons performing quality assurance functions have sufficient organizational freedom to perform their jobs, as required by Appendix B, Criterion I.

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From its initial decision to construct Comanche Peak, Licensees have been committed to the implementation of a strong and effective quality assurance program. This commitment is reflected in the Comanche Peak PSAR, FSAR and Corporate Quality Assurance Program, and plans, documents and policy statements included therein. This commitment is also reflected in the history of the Comanche Peak project. Licensees' management has always stressed and ensured adequate QA/QC resources and a quality-conscious environment for the design and construction of Comanche Peak. Licensees' management has taken action to assure that each person performing quality-related work has sufficient organizational freedom to perform his or her job.

To implement this commitment, Licensees have recognized the need for an effective quality assurance program and have taken the initiative to strengthen that program whenever and wherever such improvement was appropriate. On numerous occasions Licensees have taken direct management actions to assure that effective QA programs were implemented within vendor and/or contractor organizations.

In addition, QA/QC personnel have been and will be familiarized with the requirements of 10 CFR Part 50, Appendix B as they apply to their job. Further, safety-related inspections at Comanche Peak have been and will be performed by certified inspectors. To enhance the formal training, Licensees' QA management periodically holds meetings with QA and QC personnel to provide support, encouragement and guidance and to express appreciation for the conscientious efforts of QA and QC personnel.

At a more personal level, management interviews have been conducted by Licensees' QA group to assure that all QA and QC personnel at Comanche Peak have adequate procedures, training, resources, and management support to perform their jobs. Following these interviews, the top management of Licensees and Brown & Root met with QA/QC site supervisors to reiterate their commitment to quality assurance and to express their support of the QA/QC effort.

At bottom, Licensees believe that aggressive management attention in the past has been successful in establishing an effective program which ensures that Comanche Peak personnel performing quality assurance functions have sufficient organizational freedom to identify quality problems; to initiate, recommend, and provide solutions; and to verify implementation of solutions.

During the construction of a project the magnitude of Comanche Peak, instances of disagreement between managers and employees obviously will arise, given human nature and the traditional relationship between employers and employees. In view of the thousands of employees at the site, and the interface that must exist between those employees and management, some conflicts are inevitable. They arise for a host of reasons. They arise because an employee feels that he is undercompensated, because an employee misinterprets the intent of an instruction by his supervisor, or because a supervisor believes that an employee is not performing his job adequately. They arise also because inspectors do not establish acceptance criteria for the project, but rather inspect to those criteria. This has led to instances when inspectors have had honest, although unfounded, disagreements with the qualified engineer who sets the standards as to what is acceptable.

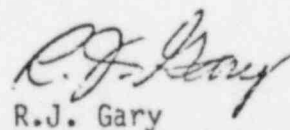
In every such instance at Comanche Peak, Licensees have attempted to act in a responsible and prudent manner, in order to accomplish the overall objective of construction of a safe and reliable plant. Licensees have counseled employees and managers, transferred employees and managers, and even terminated individuals as Licensees have deemed appropriate, given the facts presented. Licensees recognize, as must the NRC, that mistakes will be made during the tens of thousands of employment decisions such as have been made at Comanche Peak. This does not suggest bad faith on the part of Licensees. Further, where Licensees discover such mistakes, they take action to rectify them.

The Atchison matter does not fall within the category of a mistaken employment decision, in Licensees' view. Atchison was not terminated for identifying non-conformances. No one has ever been terminated for identifying non-conformances at Comanche Peak, and management intends that no one ever will be so terminated. Mr. Atchison was terminated for lawful and justified management reasons. The result of the Department of Labor proceeding came about because all of the reasons for the inspector's discharge were not adequately and fully documented. The inspector was not discharged for engaging in protected activities in good faith. The decision of the Secretary of Labor is wrong, and Licensees believe that it will be reversed by the courts.

It would have been much simpler for Brown & Root to reinstate Atchison following the investigation of the Labor Department or following the decision of the Administrative Law Judge at Labor. Had that course of action been taken, the instant enforcement action in all likelihood would not have been proposed. Nor would the considerable and unfair, adverse publicity have been generated by this matter. However, Brown & Root could not take that course because it believed then, and believes now, that Atchison's termination was justified. Further, Brown & Root could not reinstate to a sensitive position of QC inspector someone whose lack of candor and veracity had been demonstrated in both the NRC Licensing case and the Labor Department case.

Notwithstanding the above, Licensees are initiating several new, aggressive measures to reemphasize that quality in construction is of foremost importance at Comanche Peak. These measures are discussed at some length in the attached "Response to Notice of Violation." We believe that these measures demonstrate convincingly that Licensees are committed to an effective quality assurance program. Licensees will assure that all members of the quality assurance organization have the independence necessary to perform their jobs effectively.

Sincerely,



R.J. Gary
Executive Vice President
and General Manager

Attachments: (1) Licensees' Response to
Notice of Violation
(2) Licensees' Answer Protesting
Civil Penalty

cc: John Collins

I hereby swear that the above-stated information and the referenced attachments are true and correct to the best of my knowledge and belief.

R. J. Gary
R. J. Gary

Subscribed and sworn before me this 28th day of September 1983.

Glenda Benson
Notary Public