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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

OFFICE OF THE SECRETARY  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20545

BEFORE THE COMMISSION

In the Matter of	)	Docket Nos.	50-445-OL
	)		50-446-OL
TEXAS UTILITIES ELECTRIC	)		
COMPANY, <i>ET AL</i>	)		
	)	Docket No.	50-445-CPA
(Comanche Peak Steam Electric	)		
Station, Units 1 and 2)	)		

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NRC STAFF'S RESPONSE TO APPLICATION TO THE SECRETARY FOR HEARINGS AND ORAL ARGUMENT IN SUPPORT OF PETITION FOR LEAVE TO INTERVENE OUT OF TIME AND MOTION TO REOPEN THE RECORD SUBMITTED BY SANDRA LONG DOW DBA DISPOSABLE WORKERS OF COMANCHE PEAK STEAM ELECTRIC STATION AND R. MICKY DOW

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April 23, 1992

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NUCLEAR REGULATORY COMMISSION

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HEARINGS AND ORAL ARGUMENT IN SUPPORT OF PETITION FOR LEAVE  
TO INTERVENE OUT OF TIME AND MOTION TO REOPEN THE RECORD  
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INTRODUCTION

On February 20 and 21, 1992, Sandra Long Dow dba Disposable Workers of Comanche Peak Steam Electric Station and R. Micky Dow (Petitioners) filed "Petition for Leave to Intervene Out of Time" (Petition) and "Motion to Reopen the Record" (Motion to Reopen), respectively. On April 6, 1992, Petitioners filed "Application to the Secretary for Hearings and Oral Argument in Support of Motion for Leave to Intervene Out-Of-Time and Motion to Reopen the Record Submitted by Sandra Long Dow dba Disposable Workers of Comanche Peak Steam Electric Station and R. Micky Dow" (Motion). For the reasons set forth below, the Staff of the Nuclear Regulatory Commission (Staff) submits that Petitioners' Motion should be denied.

BACKGROUND

On November 20, 1991, R. Micky Dow and Sandra Long Dow, dba Disposable Workers of Comanche Peak Steam Electric Station, filed, pursuant to 10 C.F.R. section 2.734 of the Commission's regulations, a motion to reopen the record. On January 27, 1992, the Commission denied Petitioners' motion for two reasons. *Texas Utilities Elec. Co. (Comanche Peak Steam Electric Station Units 1 and 2)*, CLI-92-01, 35 NRC 1 (1992). First, the Commission denied Petitioners' motion because they were not a party to the original proceedings and, therefore, had no standing to seek reopening under the provisions of 10 C.F.R. section 2.734. *Id.* at 6. Second, the Commission found that even if Petitioners had been a party in the original proceedings, their motion failed because they did not in substantive terms meet the requirements for reopening the record. *Id.* at 7. Specifically, Petitioners offered no new information relating to safety or environmental concerns at Comanche Peak. *Id.* at 7-9.

In response to that decision, Petitioners filed their Petition and Motion to Reopen on February 20 and 21, 1992, respectively. On February 28, 1992, the Commission issued an order consolidating its review of both requests and directing both Texas Utilities Electric Company (Licensee) and the Staff to file consolidated responses. The Commission also extended the time for filing responses. On March 13, 1992, Petitioners filed a supplement to their Motion to Reopen. "Supplement to Motion to Reopen the Record." On March 16, 1992, Licensee filed its response in opposition to both the Petition and Motion to Reopen. "TU Electric's Answer to the Petition to Intervene and Motion and Supplemental Motion to Reopen by Micky Dow and Sandra Long Dow and

TU Electric's Request for Admonition of the Dows" (Licensee's Response). The Staff filed its reply in opposition to the Petition and Motion to Reopen on March 23, 1992. "NRC Staff's Reply to Petition of R. Micky Dow and Sandra Long Dow dba Disposable Workers of Comanche Peak Steam Electric Station for Leave to Intervene Out of Time and Motion to Reopen the Record" (Staff's Response).

On April 6, 1992, Petitioners filed the instant Motion. In their Motion, Petitioners request both a hearing and an oral argument.<sup>1</sup> For the reasons set forth below, both of Petitioners' requests should be denied.

#### DISCUSSION

##### A. The Granting of Oral Argument Would Not Assist the Commission in Making a Decision In This Matter

In their Motion, Petitioners request that an oral argument be held, pursuant to 10 C.F.R. section 2.763 of the Commission's regulations, with respect to their Petition and their Motion to Reopen. Motion at 1-2. This request should be denied. Section 2.763 of the Commission's regulations provides that the Commission may grant, in its discretion,

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<sup>1</sup> The Petitioners also request that the Secretary review their previous motion to reopen and the response filed by the Staff. Motion at 3. Petitioners make the assertion that the Staff completely rejected Licensee's position regarding the Petitioners' previous motion. *Id.* This claim is completely untrue. The Staff made no comment on the Licensee's response to Petitioners' first motion to reopen. Throughout their Motion, Petitioners allege that both the Staff's and Licensee's responses to their previous Petition and Motion to Reopen contain "material false statements, and in some areas . . . border if not completely encompass perjury." Motion at 2. Petitioners' allegations lack any details and are completely unsubstantiated. The Staff denies these unfounded, self-serving allegations. Moreover, they are not relevant to Petitioners' Motion for oral argument.

a request for oral argument made in either a notice of appeal or in a brief.<sup>2</sup> 10 C.F.R. § 2.763. Furthermore, section 2.730(d) of the Commission's regulations provides that oral argument "will not be heard on a motion unless the presiding officer or the Commission directs otherwise." 10 C.F.R. § 2.730(d). Clearly, the decision regarding the holding of an oral argument is entirely within the Commission's discretion. Generally, the Commission will not provide an opportunity for oral argument where oral argument could not aid the Commission in making a decision. *See, Joseph J. Macktal*, CLI-89-12, 30 NRC 19, 23 n.1 (1989); *Advanced Nuclear Fuels Corp.* (Import of South African Hexafluoride), CLI-87-9, 26 NRC 109, 112 (1987); *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-76-14, 4 NRC 163, 167-168 (1976).

Here, Petitioners have not even attempted to explain how an oral argument before the Commission could aid the Commission in making its decision. The only claim which Petitioners make is that it would be in the best interest of the public to hold an oral argument. Motion at 2, 5. Petitioners claim that by holding "hearings" the "Comanche Peak affair" could finally be put to rest. *Id.* at 5 (emphasis added). The use of the term "hearings" by Petitioners interchangeably with the term "oral argument" demonstrates Petitioners' lack of understanding as to what an oral argument actually entails. As

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<sup>2</sup> As the Petitioners themselves are aware, this proceeding is not on appeal. *See* Motion at 2. Moreover, assuming that the Commission were to accept Petitioners' characterization of their Petition and Motion to Reopen as an appeal of "earlier attempts at the same process" (*Id.*), Petitioners' request is late. Section 2.763 clearly requires that a request for oral argument be made either in the notice of appeal or in the brief. Neither of Petitioners' pleadings requested oral argument.

discussed further below, the request for a hearing on the Motion to Reopen and on the untimely Petition is inappropriate. The question raised by this Motion is whether, in the circumstances of this case, an oral argument could aid the Commission in making its decision. As the pleadings in this case amply demonstrate, it would not.

Petitioners have totally failed to address the issue of how their participation in an oral argument would aid the Commission in making its decision. It is unclear how Petitioners can assist the Commission by an oral argument when Petitioners do not even know what an oral argument would entail. Furthermore, the Petitioners have repeatedly demonstrated either an unwillingness or inability to understand and comply with the Commission's regulations governing either late intervention or motions to reopen a closed record. For example, Petitioners fail to understand the concept of standing. Although the legal requirements for standing and intervention were set out in the Staff's response to Petitioners' first motion to reopen, Petitioners failed to address these requirements in their subsequent Petition. *See*, both "NRC Staff's Reply to Motion of R. Micky and Sandra Dow to Reopen the Record," dated December 9, 1991, at 6-9 (Staff's Reply to First Motion) and Staff's Response at 12-19. In addition, as noted in the Staff's Response, Petitioners misunderstand the concept of timeliness as it applies to a motion to reopen a closed record. *See*, Staff Response at 22. Petitioners have also consistently failed to provide properly notarized affidavits in support of their motions to reopen the record, although required by section 2.734, even though that requirement was pointed out to them in the Staff's reply to their first motion to reopen. Staff's Reply to First Motion at 11.

Petitioners continue to display a lack of understanding of Commission regulations and legal issues in the instant motion. As discussed below, Petitioners erroneously rely on section 2.104 to request a new hearing. Clearly, Petitioners, at the very least, lack a basic understanding of the Commission's regulations regarding intervention and motions to reopen a closed record. It is, therefore, unlikely that they will be able to provide any assistance to the Commission in making its decision as to whether either Petitioners should be granted party status or, if they were granted party status, whether the Comanche Peak proceedings should be reopened.

Finally, the pleadings filed by Petitioners thus far demonstrate that they are unable or unwilling to present sufficient information on the issues they raise to relate those issues to Comanche Peak as it exists today. Petitioners have had several opportunities to present their arguments to the Commission. They have filed two motions to reopen the record and one petition for late intervention. In their most recent Motion to Reopen, filed on February 21, 1992, they even filed a supplement, albeit untimely, to which both Licensee and the Staff responded. Petitioners have repeatedly claimed to have evidence of perjury, cover-ups, and safety concerns. In their Motion here, they once again make totally unfounded, accusations of perjury and material false statements. Motion at 2, 5. As both the Staff and Licensee have pointed out in response to their pleadings, Petitioners have failed to provide the Commission with even a scintilla of evidence to support any of their allegations. *See*, Staff's Response, at 28-30; Licensee's Response at 10-11. It is, therefore, clear that nothing would be gained by holding an oral argument. Even if Petitioners had evidence to support their allegations, oral argument is not the place to



present it. If they have any evidence to support their claims, it should have been submitted with their Motion to Reopen. In light of Petitioners' continuing failure to meet the Commission's requirements with respect to motions to reopen the record and petitions to intervene, there is no reason to hold an oral argument.

B. Petitioners' Requests for Hearing is Without Merit and Should Be Denied

Although Petitioners claim they are requesting an oral argument (Motion at 1), it is clear from their Motion that they are, in essence, requesting a hearing on the licensing of Comanche Peak. For example, Petitioners claim that "[b]y holding hearings, creating a record, allowing testimony, on the viability of [Petitioners'] motion to reopen this record, these matters could be laid to rest once and for all." *Id.* at 5. Petitioners go on to request "an open forum, with the ability to call and question witnesses. . . ." *Id.* at 6. Finally, Petitioners request that "the Secretary grant them hearings on their Motion for Leave to Intervene Out-Of-Time, and their Motion to Reopen the Record. . . ." *Id.* All of the procedures which Petitioners request are hearing procedures. Oral arguments are for the purposes of explaining legal positions set forth in the pleadings and for answering any questions that the Commission might have. Witnesses are not called, testimony is not given, and witnesses are not questioned. Petitioners are actually requesting that the Commission allow the taking of evidence on the issues raised in their Motion to Reopen.

Such a request is premature since the Commission has not granted them intervenor status and has not granted their Motion to Reopen.<sup>3</sup>

Petitioners request that the Commission hold a hearing regarding the Comanche Peak proceedings, pursuant to 10 C.F.R. section 2.104. Motion at 2. Petitioners' reliance upon this section of the Commission's regulations is incorrect. Section 2.104 of the Commission's regulations does not provide a vehicle for a member of the general public to request a hearing. Section 2.104 is a procedural regulation governing how a hearing is initiated upon an application to issue, amend, transfer or renew a license. 10 C.F.R. § 2.104(a). A hearing was initiated regarding the issuance of an operating license for Comanche Peak Units 1 and 2 in 1979. *See*, 44 Fed. Reg. 6925. Petitioners cannot use this section to request a new hearing regarding Comanche Peak.

It appears that Petitioners are trying to use Section 2.104 as a way to reopen the Comanche Peak proceedings. Only a party to the original proceeding may file a motion to reopen the record. *Comanche Peak*, CLI-92-01, 35 NRC at 6. The only way a party may move to reopen a record is through Section 2.734 of the Commission's regulations. Petitioners have tried to reopen the record on two occasion; they failed in their first attempt (*Comanche Peak*, CLI-92-01, 35 NRC 1) and the second attempt is currently before the Commission and is the subject of this Motion. Petitioners cannot avoid the

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<sup>3</sup> Moreover, even if the Commission were to grant both Petitioners' Petition and Motion to Reopen, a full evidentiary hearing would not necessarily be held. Formal proceedings need not be held solely because some violations are alleged. *Porter County Chapter v. NRC*, 606 F.2d 1363 (D.C. Cir. 1979).

requirements of Section 2.734 by requesting a hearing pursuant to Section 2.104 of the Commission's regulations. Therefore, Petitioners' request for a hearing should be denied.

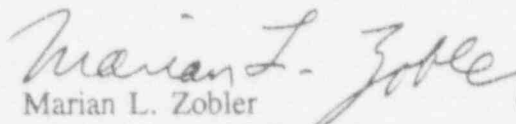
CONCLUSION

For the reasons stated above, Petitioners' requests for oral argument and a hearing must be denied.

Respectfully submitted,



Janice E. Moore  
Assistant Deputy General Counsel  
for Adv. Reactors and Spec. Proc.



Marian L. Zabler  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 23rd day of April, 1992

UNITED STATES OF AMERICA  
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Station, Units 1 and 2)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO APPLICATION TO THE SECRETARY FOR HEARINGS AND ORAL ARGUMENT IN SUPPORT OF PETITION FOR LEAVE TO INTERVENE OUT OF TIME AND MOTION TO REOPEN THE RECORD SUBMITTED BY SANDRA LONG DOW DBA DISPOSABLE WORKERS OF COMANCHE PEAK STEAM ELECTRIC STATION AND R. MICKY DOW" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system, this 23rd day of April 1992:

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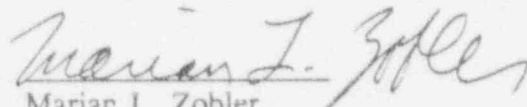
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Adjudicatory File (2)\*  
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Washington, D.C. 20555  
Attn: Docketing and Service Section

Office of the Secretary (16)\*  
U.S. Nuclear Regulatory Commission  
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