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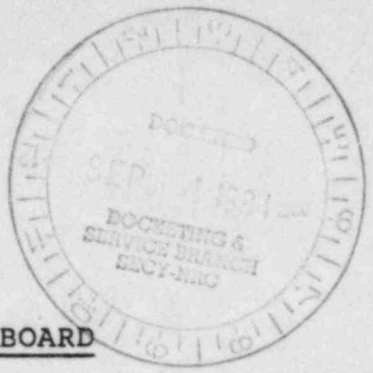

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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| In the Matter of | ) | |
| | ) | Docket Nos. 50-445-2 and |
| TEXAS UTILITIES ELECTRIC COMPANY, et al. | ) | 50-446-2 |
| | ) | |
| | ) | (Application for |
| (Comanche Peak Steam Electric Station, Units 1 and 2) | ) | Operating Licenses) |
| | ) | |

50-445 OL-2
50-446 OL-2

# APPLICANTS' PREHEARING PROPOSED FINDINGS OF FACT CONCERNING ALLEGATIONS OF HARASSMENT, INTIMIDATION AND THREATS OF QUALITY CONTROL INSPECTORS AT THE COMANCHE PEAK STEAM ELECTRIC STATION


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September 4, 1984



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TABLE OF CONTENTS

Page

Page

Page

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# APPLICANTS' PREHEARING PROPOSED FINDINGS OF FACT CONCERNING ALLEGATIONS OF HARASSMENT, INTIMIDATION AND THREATS OF QUALITY CONTROL INSPECTORS AT THE COMANCHE PEAK STEAM ELECTRIC STATION

## I. INTRODUCTION AND SUMMARY

### A. Scope of Proceeding and Procedural History

1. One element of Intervenor's contention in this proceeding is whether, as a result of alleged incidents of harassment, intimidation or threats of persons employed at the Comanche Peak site, Applicants have failed to satisfy the requirements of 10 C.F.R. Part 50, Appendix B. This partial initial decision addresses that aspect of Intervenor's contention.[1]

2. The Board initially defined the scope of the proceeding in a Memorandum issued March 15, 1984, in which the Board limited the proceeding to alleged incidents of intimidaition involving QC inspectors and one craftsman, Henry Stiner. At Intervenor's

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[1] These proceedings were held before a separate Licensing Board convened to decide the allegations of harassment, intimidation and threats. See 49 Fed. Reg. 13613 (1984).

request, the Board subsequently expanded this proceeding to include the allegations of one startup engineer, "Witness F," and a broad allegation that the NRC was part of the alleged pattern of intimidation at Comanche Peak. At the Board's request, the parties also introduced evidence concerning Applicants' response to allegations of harassment and intimidation raised by QC inspectors.

3. In lieu of live hearings, the parties developed the record through a series of evidentiary depositions held in Glen Rose, Texas. The depositions commenced during the week of July 9, 1984 and continued for four weeks. At Intervenor's request, the first witnesses deposed were Applicants' managers and employees who Intervenor wished to cross-examine; Intervenor then presented its witnesses.[2] During this phase of the hearings, again at Intervenor's request, as many as seven depositions were taken at a time. Applicants then presented their rebuttal evidence. These depositions lasted one week and were held two at a time, which schedule was also adopted at Intervenor's request and was intended to accommodate its more limited resources.[3]

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2 The Board required Applicants to make witnesses available for cross-examination before Intervenor produced its witnesses, based on Intervenor's representation that its witnesses were committed to their positions in affidavits and other statements already filed in this proceeding or already submitted to NRC. This turned out to be incorrect for at last half of Intervenor's witnesses.

3 Because Applicants were limited to holding two simultaneous depositions as a result of Intervenor's limited resources, Applicants were unable to complete all of the depositions

(footnote continued)

B. Summary of Findings

4. The parties deposed scores of witnesses and generated well over ten thousand pages of transcript. Because of the voluminous record, it is necessary to provide a summary of the Board's findings. First, Applicants' proof demonstrates convincingly that there is a commitment to quality assurance at all levels in Texas Utilities. From the first day of construction, Applicants' management has emphasized that the construction of a quality plant must be the first and foremost priority of everyone involved in the project. Applicants' proof demonstrates that this commitment extends from the Chairman of the Board to the inspectors and craftsmen in the field.

5. Second, contrary to Intervenor's assertions, QC inspectors have not been harassed or intimidated from performing their jobs. To the contrary, Applicants demonstrated convincingly that inspectors are regularly encouraged to report nonconforming conditions, through training, through the support of their leads, supervisors and corporate management, and through plant procedures that they use every day.

6. Third, Applicants have acted promptly and decisively to respond to the few relatively minor differences which have arisen over the years. A site policy which prohbits intimidation of QC inspectors has been enforced throughout the life of the project,

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(footnote continued from previous page)
required to put on its affirmative case. As a result it presented the testimony of many of its witnesses through prefiled testimony.

and whenever management has become aware of an allegation concerning intimidation, it has acted quickly and aggressively to remedy the situation.

7. In addition, Applicants' current framework for investigating and resolving allegations by employees is a model for the industry. Applicants have retained an on-site ombudsman to hear, investigate and resolve employee concerns. Any employee at Comanche Peak may anonymously voice any concern to a toll-free telephone hotline, which automatically triggers an investigation of the matter. Finally, management conducts interviews of QC inspectors leaving the QA/QC organization to ascertain any problems which may have gone undetected. Collectively, these measures provide employees with a variety of avenues in addition to the chain of command through which they can express any concern they have about the project.

8. In sharp contrast to Applicants' proof, Intervenor's evidence is noteworthy for what it fails to establish. First, Intervenor promised to prove that Applicants adopted (or at least approved) a policy of harassing, intimidating or threatening QC inspectors so that they would not identify safety concerns. The motive for doing so, according to Intervenor, "was the desire to complete the plant as quickly as possible without regard for those requirements of 10 C.F.R. which Applicant believed were unnecessary and/or truly burdensome." CASE's Proposed Standard for Litigating Allegations of Intimidation, June 12, 1984 at 9.

Intervenor adduced no evidence on this point. This motivation was fueled, according to Intervenor, by what Intervenor characterized as Applicants' group financial condition. id. at 14. Again, Intervenor introduced no evidence on this point.

9. Intervenor also promised to present from sixty to eighty witnesses who would recount scores of alleged incidents of harassment, intimidation and threats against QC Inspectors. These putative witnesses and a general description of what Intervenors hope to prove through their testimony is described in Intervenor's final witness list dated June 27, 1984. In fact, Intervenor produced only eleven witnesses, and in every case the Board rejects their claims or the claims advanced for them by Intervenors.

10. Intervenor promised to demonstrate that a few alleged incidents of intimidation were common knowledge on the site and that they had a chilling effect on the entire QC inspection workforce. Intervenor represented in this regard that it would demonstrate through the "testimony of experts" that the import of Applicants' conduct "was to create an atmosphere which was bound to influence the exercise of duties by the workforce." Intervenor's Proposed Standard at 9. Again, Intervenor failed to produce any competent evidence on the point.

11. Finally, Intervenor represented that the NRC itself was part of a "pattern of intimidation" and that the actions of the NRC Staff "enhanced the impact of the activities that Applicants

engaged in which [QC inspectors] viewed as being either harassment or intimidation" (tr. 13,622B). Intervenor also alleged that, "Instead of providing relief when employees . . . have turned to the NRC [,] the regulators engaged in undermining the concerns of the workforce, [and in] revealing their identity . . . ." Intervenors's Proposed Standard at 9-10. These are serious charges, and should not be made lightly. Nevertheless, Intervenor defaulted on its evidentiary burden. As a result, based on the current record, the Board concludes Intervenor's claim is totally without merit.

II. INTERVENOR'S WITNESSES

In this section, the Board addresses the allegations of Intervenor's witnesses. In each case the Board finds that their claims have not been substantiated.

A. Allegations of William A. Dunham

12. Brown & Root, Inc. terminated William Dunham, a lead coatings inspector at Comanche Peak, on August 16, 1983. Dunham subsequently filed a complaint with the Department of Labor (DOL) alleging that he had been terminated in violation of Section 210 of the Energy Reorganization Act of 1974 as amended, 42 U.S.C. § 5851. Dunham's case was tried in February, 1984, but a decision has not been rendered by the DOL. Dunham did not testify in this proceeding; instead, at Intervenor's request, the parties stipulated that the evidentiary record from Dunham's DOL

trial would be received into evidence in this proceeding. Dunham Stipulation 1. The parties also stipulated that the Dunham record was being introduced for the limited purpose of presenting their respective positions on Dunham's claim that he was terminated for complaining to management about alleged harassment and intimidation (Dunham Stipulation 1).

13. Despite Dunham's contentions, the DOL record reveals that each time Dunham complained his allegations were investigated by the party to whom he complained or were directed to other management officials who addressed his concerns (Findings 24-34, 39, 42-43); that, when appropriate, corrective action was taken in response to Dunham's complaints (Findings 37-39); that on August 24, 1983, during a meeting held between QC inspectors and the corrosion engineers responsible for rewriting coatings specifications and procedures, Dunham interrupted the speakers, denigrated the craft, strayed from the stated purpose of the meeting, and generally prevented the meeting from accomplishing its legitimate purpose (Findings 49-54, 60); that Dunham's supervisors decided to counsel him based on his conduct at the meeting (Findings 57-60); and that Dunham was terminated for his abusive and insubordinate behavior during the counseling session (Findings 65-66, 69). On the basis of the detailed findings made below, the Board finds no substance to Dunham's allegation that he was terminated for complaining to management about alleged harassment and intimidation of QC inspectors.

1. The Board credits Mr. Dunham's testimony only when it is corroborated by independent evidence.

14. For several reasons, Dunham's testimony must be evaluated with utmost caution. William Dunham has twice been convicted of felonies: burglary in 1973 (Hearing Transcript, Dunham v. Brown & Root, Inc., 84-ERA-1 (February 13 and 14, 1984), 107-08); and breaking and entering in 1978 (Dunham tr. 110), the year before he commenced work for Brown & Root. Dunham also was arrested eight other times for felonies ranging from burglary of a physician's office and possession of morphine to "transporting the daughter of the justice of the peace across the state line" and "unlawful delivery of marijuana" (Deposition of William Dunham, Case No. 84-ERA-1, 25-26, Applicants' ex. D-1; see Certified Arrest Record, Applicants' ex. D2).

15. Dunham, apparently uncomfortable with his criminal record, concealed it from Brown & Root by falsifying his original application for employment at the South Texas Nuclear Project. To the question "Have you ever been convicted of anything other than a misdemeanor?", Dunham, in the year following his most recent felony conviction, answered "No" (Dunham tr. 126; Dunham ex. E). Dunham could not deny that he repeated this misrepresentation on his Brown & Root Comanche Peak application, where the same inaccurate answer appeared (Dunham tr. 106-07; Dunham ex. A). Dunham also admitted that he answered a similar question untruthfully in an employment application he submitted to Mundy Industrial Maintenance in April, 1979 (Dunham tr. 129; Dunham ex. C).

16. Dunham did not limit his misrepresentations to his criminal record. He stated on his Mundy application that he left his job at Mobile Steam Cleaning because of "No raise" (Dunham ex. C); the true reason, Dunham testified at trial, was that he "missed work and was terminated for absence" (Dunham tr. 120). On his application for employment at Comanche Peak, Dunham stated that he left a job at Olsen Engineering due to "R.O.F." (Dunham ex. A); when asked whether he left due to a reduction of force, however, Dunham conceded that "I just quit" (Dunham tr. 123). Dunham claimed on his resume (Dunham ex. D) to have worked at two different Air Products, Inc. plants, but he admitted at trial that he had worked at only one of the plants (Dunham tr. 134).

17. The Board notes that Dunham's employment history includes several terminations by employers other than Brown & Root: International Metal Company in 1972, for his failure to show up for work (Dunham tr. 118-19); Viking Industries in 1973, for his failure to show up for work (Dunham tr. 119); Mobile Steam Cleaning, who terminated him for absence (Dunham tr. 120); Woodlee Contracting (Dunham tr. 122); Olsen Engineering (Dunham tr. 122-23); and Texas Industrial Paint Company, from which Mr. Dunham just walked off and didn't come back (Dunham tr. 125). In at least three instances, the reason for Mr. Dunham's euphemistic "absences," as he conceded at trial, was that he had been arrested and missed work due to the arrests (Dunham tr. 118-20).

18. Dunham found it difficult to confront the facts regarding his employment history and his documented misrepresentations regarding his personal history. At his deposition, Dunham was given a copy of his application for employment at Comanche Peak (Dunham ex. A) and asked to identify it. His response was emphatic: "Yes. And I see that it's been altered" (Dunham Depo. 9). Dunham repeatedly insisted that someone other than he had responded to the question concerning felony convictions (Dunham Depo. 10):

> A. That is a copy of my application and it has been altered.
>
> Q. (By Downey) In what way has it been altered?
>
> A. This box right there (indicating). When I applied to Comanche Peak I left it blank.
>
> A. The box you are referring to is the response "no" to the question: Have you ever been convicted of anything other than a misdemeanor? If yes, explain.
>
> A. That entry was made by persons other than myself.
>
> Q. You did not answer that question when you completed this application?
>
> A. I left it blank.

19. At the trial, Dunham was much less emphatic; indeed, he admitted he might have falsified his Comanche Peak application (Dunham tr. 106):

> Q. My last question to you, Mr. Dunham, which I will repeat. Did you answer the question, "Have you ever been convicted of anything other than a misdemeanor," in the negative on this application?
>
> [Colloquy between counsel and Court omitted.]
>
> A. You see, I'm not sure.

Counsel reminded Dunham of his deposition testimony -- which Dunham interpreted as having expressed only "a possibility" that someone altered the application -- and then repeated (Dunham tr. 107):

> Q. Which is it? Was it altered, or did you fill it out?
>
> A. It's hard to tell . . .

20. Whatever may have been the case with the Comanche Peak application, Dunham at least conceded that he falsified his original Brown & Root application (Dunham tr. 106; Dunham ex. E). But, he assured the Court (Dunham tr. 106),

> I only answered that question on employment applications in the negative one time, and that was my original application with Brown & Root. At all other times, to the best of my memory, I left it blank on purpose.

Dunham did offer a temporal qualification to his statement (Dunham tr. 127) :

> Q. And apart from that one answer on the Brown & Root application, have you, on any other job application, answered that you had not been convicted of a felony after you had been?
>
> A. I do not recall. I believe Brown & Root was the first time I ever ran across that, for a long time, anyway.

Nevertheless, when confronted with his application to Mundy Industrial Maintenance (Dunham tr. 129) -- which he filled out only 18 days before he executed the Brown & Root application -- Dunham admitted that he was untruthful in his answer to the same question (Dunham ex. C; Dunham ex. E).

21. Perhaps as troublesome as Dunham's penchant for prevarication and his admitted falsification of employment applications, is his selective memory. Dunham managed to recall facts that he felt were helpful to his claim with some facility. As to all other matters, however, Dunham suffered a capacious failure of memory. Sixty-five times, Dunham answered questions with, "I don't recall," "I don't know," or "I don't remember."[4]

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[4] Dunham tr. 106, 110, 114, 116, 118 (two statements), 119 (2), 121 (2), 126, 127, 135, 137 (4), 138, 139, 141, 142, 147, 148, 150, 151 (2), 152 (3), 153, 155, 160, 161 (3), 164, 165, 166, 168, 169 (2), 170 (2), 171 (3), 175 (2), 185, 193, 194, 195 (3), 198 (2), 199, 201 (2), 202, 203, 204 (2), 209 (2).

Perhaps a few of Dunham's failures of memory may be excused due to the passage of time, such as whether he falsified his employment application at Comanche Peak (Dunham tr. 106), when he was released from jail (Dunham tr. 110), the reason for which he left a job (Dunham tr. 118), whether the dates of employment stated on his resume were accurate (Dunham tr. 119, 121), or whether he had worked for a company on two separate occasions, or only once (Dunham tr. 121). But Dunham's memory also failed as to much more recent events. He did not remember when he applied for his job at the South Texas Project (Dunham tr. 199), even though he submitted the application and interviewed for the job approximately two weeks before his termination at Comanche Peak (Dunham tr. 200), the facts concerning which Dunham claims to be clear. Dunham doesn't recall whether he called in sick in order to interview at South Texas (Dunham tr. 201), and he did not recall the days of the week that he took off to attend the South Texas interview (Dunham tr. 201-02). Despite his trip to South Texas for the interview, he does not recall whether the individual with whom he interviewed indicated whether or not Dunham would be hired (Dunham tr. 203).

22. Dunham's selective memory applies to his employment responsibilities at Comanche Peak. Although he was lead inspector for the backfit group (Dunham tr. 75) and a "front line supervisor of the quality control coatings inspectors" (Dunham tr. 55), he could not remember whether a large number of inspectors were assigned to the backfit group in May, June or July of 1983 (Dunham tr. 137), whether the number of inspectors in the backfit group had diminished substantially by August (Dunham tr. 137), or how many backfit group employees he supervised at the time of his termination (Dunham tr. 137). Indeed, Dunham was unable to recall when his promotion to lead inspector was effective (Dunham tr. 135), or whether he received copies of personnel records showing his promotion in July 1973 (Dunham tr. 153, 154).

23. Dunham complained that he was instructed not to use nonconformance reports (NCRs) (Dunham tr. 59) and claimed that the use of NCRs was mandated by procedures (Dunham tr. 59-60, 64). Yet, when asked whether other procedures mandated a different reporting document, an inspection report, he did not recall (Dunham tr. 193), he did not remember whether the procedures distinguished between the use of IRs and NCRs (Dunham tr. 193-94), he had "no idea" how many IRs he had written as an inspector (Dunham tr. 195), he could not recall how many times his supervisor had

tried to explain the IR-NCR distinction to him (Dunham tr. 198), and he could not remember his supervisor's explanation of the difference (Dunham tr. 198).[5]

24. Dunham's habit of rationalizing his improper conduct and of offering numerous excuses for problems identified by Brown & Root also weighs heavily against his credibility. Falsifying his employment application was not his fault, but was due to the circumstances that prevailed when he filled out his application (Dunham tr. 204). The fact that he lied on his application does not matter because he found out that he "was not alone" (Dunham tr. 126). If Dunham had trouble remembering whether he, or someone else, answered "no" regarding criminal convictions on his Comanche Peak application, that is not his fault "because there was a lot of funny business with documents at Comanche Peak, including involving the copy machine" (Dunham tr. 107). Misstatements appear in his resume because someone else changed it without his knowledge (Dunham tr. 114-16). The inconsistencies between answers that Dunham offered at trial and his answers to the same questions at his deposition were either because he'd "had quite a bit of time to think about that since then" (Dunham tr. 119), he just did not remember (Dunham tr. 116), or because he had to drive to the deposition, and then home again afterwards (Dunham tr. 185). If Dunham, despite his firm allegation that directives not to use NCRs supported his complaint, could not answer ques-

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5 Dunham's interpretation of the procedures was clearly wrong (Dunham tr. 476-77).

tions about the procedures, he may be excused because "[y]ou know I've been gone for quite a while from there. I don't recall" (Dunham tr. 193).

25. Where Dunham did not have an explanation, he found it necessary to assure Court and counsel as to his truthfulness: "I didn't mean to mislead you" (Dunham tr. 116); "I'm not trying to mislead you" (Dunham tr. 119); "I'm not trying to evade you" (Dunham tr. 137); "I'm not trying to lie or mislead anyone" (Dunham tr. 171); "I pour out a story which I felt would bring the attention of this above myself, and it was true" (Dunham tr. 179-80); "I'm not trying to be evasive" (Dunham tr. 195).

26. Dunham apparently found it necessary to misrepresent certain facts to his own attorney, only to recant them while under oath. In the December 2, 1983 pre-hearing conference, Mary L. Sinderson, Dunham's counsel, represented to the presiding Administrative Law Judge that her client encountered problems with his new employer after counsel for Brown & Root made an inquiry to his new employer concerning when Dunham had applied for and had received employment at the South Texas Nuclear Project. Sinderson represented to the tribunal that "my client will testify as to having . . . the way he performs his job changed because of this phone call." Pre-hearing Conference tr. 18-20. In his deposition, taken only a month later, however, Dunham twice denied that the way he performed his job had been changed in any way since the phone call (Dunham Depo. 198-99).

27. Dunham's apparent misrepresentation concerning the tape recording of a conversation involving Ron Tolson is particularly relevant to this proceeding. In his deposition, Dunham testified that he had given a statement to the NRC regarding the "transcription of a tape" he had previously provided to the NRC (Dunham Depo. 71-73). The tape was a recording of a conversation between Tolson, site QA/QC Supervisor, and several QC inspectors (Dunham Depo. 73), an incomplete transcription of which the Intervenor has offered into the record of this proceeding (Intervenor's Offer of Proof, August 20, 1984). Dunham unequivocally denied that he had recorded the conversation:

Q. And you tape recorded the conversation?

A. No, I didn't.

Dunham Depo. 73. Intervenor's counsel, however, stated to this Board in the prehearing conference held on June 14, 1984 conference call that he knew of "a surreptitious tape recording made by Donam [phonetic spelling] at a meeting." (Conference Call tr. 13,962). The meeting to which counsel referred was the meeting between Tolson and the QC inspectors, including Dunham (Conference Call tr. 13,962-63).

28. The representation regarding Dunham's recording of the Tolson conversation was recently corroborated by Dobie Hatley, a former Brown & Root employee. Hatley testified in her sworn deposition of July 23, 1984, that Dunham told her he had recorded the conversation with Tolson. Deposition of Dobie Hatley, Vol.

III 198-99 (July 23, 1984) ("Hatley Depo.") (emphasis added) (Applicants' ex. D-3). Dunham's representation regarding the tape recording is disturbing because it involves evidence that the Intervenor seeks to introduce in this proceeding.

29. On this record, William Dunham has shown himself to be a convicted felon, who lied about his criminal record and then lied about lying about it; an individual who, immediately prior to commencing his employment with Brown & Root, was terminated by numerous employers, often after simply walking off the job without giving notice; possessed of a memory that produced different versions of the same facts when questioned at different times; the possessor of a selective recall of facts and details favorable to his claim, accompanied by a failure of memory as to other facts regarding those claims; the offeror of an excuse for each of his representations; and his own guarantor of his truthfulness, by numerous assurances to that effect.

30. Several additional problems with Mr. Dunham's testimony are detailed below (Findings 45-46, 55, 63-64, 70). In light of these facts, this Board discredits Dunham's testimony except where it is substantiated by corroborative evidence.

2. Dunham was terminated for his insubordinate behavior, not for complaining about alleged harassment and intimidation.

31. Dunham was hired by Brown & Root as a coatings inspector at Comanche Peak in November, 1981 (Dunham tr. 28). He was promoted to lead coatings inspector effective February, 1983 (Dunham ex. H).

32. Dunham first complained to Brown & Root management on June 14, 1983 (Dunham tr. 478). That morning, a draftsman called Gordon Purdy, site ASME QA supervisor, and told Purdy that a QC inspector (Dunham) wanted to meet with him. The draftsman, in response to Purdy's question regarding the nature of the lead's concerns, said that the lead "had been concerned" about some harassment and intimidation issues. Purdy set up a meeting for right after lunch. Dunham tr. 436-37.

33. At the meeting, Dunham told Purdy that Dunham's supervisor, Harry Williams, was harassing, intimidating, and threatening coatings inspectors (Dunham tr. 56-57, 437-39). In addition, Dunham raised certain technical concerns unrelated to his intimidation complaint, (Dunham tr. 437), that Purdy was unable to address because he did not technically supervise the coatings QC program (Dunham tr. 422).

34. Purdy assured Dunham that he would bring Dunham's concerns to the attention of QA management because QA management was then in charge of the coatings program and would be capable of addressing all of Dunham's concerns (Dunham tr. 148, 439, 474).

On the same day, Purdy conveyed Dunham's concerns to Ronald Tolson, the site QA manager, (Dunham tr. 423), who indicated that he would like to meet that day with C. Thomas Brandt, non-ASME QA/QC supervisor, and Dunham (Dunham tr. 440).

35. The second time Dunham complained to management was in the meeting held that afternoon with Tolson, Brandt, and Purdy. Dunham and Brandt "walked in together" to Tolson's office (Dunham tr. 478), and Purdy arrived shortly after the meeting started (Dunham tr. 441). Dunham repeated his concerns about harassment, intimidation, and threats (Dunham tr. 57, 441, 479), and Brandt "told Dunham that [he] would talk to the inspectors individually and see what their concerns were" (Dunham tr. 482; see Dunham tr. 442). Dunham testified that "they said they would look into the matter . . ." (Dunham tr. 58). Dunham's complaints were the first complaints of harassment and intimidation that Brandt had heard (Dunham tr. 498). Tolson also assured Dunham that, if Dunham felt that it was necessary, he would take him "down to the NRC and introduc[e] him to the resident inspector" (Dunham tr. 479).

36. Brandt began investigating Dunham's complaints immediately following the meeting, interviewing at least eight inspectors in the following week (Dunham tr. 482). Brandt's interviews revealed that Williams had a communication problem with his inspectors and he admonished Williams to be more precise when communicating with his inspectors (Dunham tr. 486). Brandt also learned from these interviews that "the inspectors had lost confi-

dence in [Williams] as a supervisor or a manager, [and] they didn't feel that Williams stood up for their interest . . ." (Dunham tr. 482).

37. Based on his investigation and interviews, Brandt "came to the conclusion that something had to be done in [Williams'] group," (Dunham tr. 499), and decided to replace Williams (Dunham tr. 483). With Tolson's approval, Brandt arranged in late July to have Evert Mouser, lead inspector, Design Change Verification Group, transferred to the coatings group (Dunham tr. 483-84, 503). Mouser officially transferred to the coatings group on August 1, 1983 (Dunham tr. 323).

38. Brandt told Mouser that he would be brought on as a lead inspector and that he would replace Williams as QC Supervisor when Brandt felt that Mouser was familiar with the coatings group's responsibilities (Dunham tr. 325, 483-84). Less than a month later, Williams transferred to another job site, and, on September 1, 1983, Mouser assumed his duties as QC Supervisor (Dunham tr. 323, 500).

39. Dunham's two complaints on June 14 precipitated prompt management attention to his concerns. After his meeting with Dunham, Purdy went to the site QA/QC supervisor to ensure that Dunham's concerns would be addressed by parties responsible for the coatings program and those who had the technical expertise. Dunham tr. 422-23, 439-40, 474. When Tolson was informed of Dunham's concerns he scheduled a meeting for that very day (Dunham

tr. 440), and Brandt conducted an investigation into Dunham's concerns immediately following his meeting with Dunham (Dunham tr. 482). It is also important to note at this point that Brandt took corrective action and replaced Williams, the very person of whom Dunham had complained, with Mouser (Dunham tr. 483-84, 499, 503).

40. Dunham nevertheless alleged that the very first meeting with Mr. Purdy resulted in his termination. In response to a question about whether his complaints to management led to his termination, he said:

> A Well, I believe so. Just the fact that I complained at all. It only took once.
>
> Q So you really think it was the first meeting with Mr. Purdy that resulted in your termination?
>
> A Yes, I did.

Dunham Depo. 42-43. But shortly after the Purdy meeting and the second meeting on the same day, Dunham received a raise and was promoted from a level C to a level B inspector (Dunham ex. G). The promotion was recommended by Williams, the man about whom Dunham had complained, and was approved by Purdy and Brandt, the supervisors to whom Dunham had complained (Dunham ex. G).[6]

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[6] Dunham testified that some time during the summer of 1983 he told Williams "give me a raise or find another man" (Dunham tr. 156), but nevertheless claimed that his statement was not a threat to quit (Dunham tr. 156). In any event, Dunham concedes he received his raise after he made the statement to Williams (Dunham tr. 161).

41. The third time Dunham complained to management occurred on August 18, 1983. Management had convened a meeting among the coatings inspectors, certain craft, and supervisors to discuss various aspects of the coatings program. Dunham tr. 325, 373. After the meeting, Dunham approached Myron Krisher, Quality Engineer in Mechanical and Welding, and expressed general concerns about harassment and intimidation of QC inspectors (Dunham tr. 375). At the time, Dunham knew Krisher only by his nickname, Curly (Dunham ex. 2B, p.2), and Krisher did not know Dunham by name (Dunham tr. 374).

42. There was conflicting testimony on the nature of Dunham's complaints to Krisher. Dunham asserted at the hearing that he "cited him [Krisher] some examples" of harassment and intimidation. Dunham tr. 69. In his sworn deposition, however, Dunham testified that he did not tell Krisher about specific instances of harassment and intimidation (Dunham Depo. 127). When Dunham was apprised of this inconsistency during cross-examination, he could say only that he "believe[d]" he had raised specific instances with Krisher (Dunham tr. 162). On the other hand, Krisher testified consistently at the hearing and in his deposition in this proceeding that Dunham did not provide him any specific incidents of harassment or intimidation (Dunham tr. 375; Deposition of Myron Krisher ("Krisher tr.") at 37,013-15, 37,072).

Krisher, however, in Dunham's words, "said he would look into it [Dunham's concerns] and acted sincerely concerned" Dunham ex. 2B; p.2, see Dunham tr. 376).

43. Krisher, like Brandt before him, did look into Dunham's general concerns. The nature of his search is indicative of a search responsive to a general complaint, as opposed to a specific allegation, of harassment and intimidation: (1) He talked to several inspectors, craft foremen, craft and quality control supervisors, and various superintendents (Dunham tr. 376; Krisher at 37,038-40); (2) He observed the QC and craft people working in the reactor building (Krisher at 37,038-39); (3) He spoke with Harry Williams, who denied any knowledge of harassment and intimidation (Dunham tr. 376); and (4) The investigation was conducted from August 18 until sometime after Dunham's termination, at least an eight-day period (Krisher tr. 37,073). The investigation did not uncover any evidence of harassment and intimidation (Dunham tr. 377; Krisher tr. 37,074). Krisher's thorough response to Dunham's concerns was "strictly the normal thing that a supervisor of personnel at any level would do if a person came to him with a concern" (Krisher tr. 37,074).

44. On August 24, Jerry Firtel, a corrosion engineer from Ebasco Services, Inc.'s New York office, and Thomas Kelly, a corrosion engineer from Ebasco's Houston office, met with the day-shift coatings inspectors and supervisors. Kelly and Firtel were revising site coatings specifications and procedures (Dunham

tr. 239, 327, 488), and Brandt and Mouser arranged the meeting so that the engineers could explain to the group what changes were being made and the technical reasons for them (Dunham tr. 327, 488).

45. Dunham's version of the meeting -- on direct examination, in any event -- is that he had no idea what the August 24 meeting was about or who would be there, that it was routine and casual, and that, although he asked questions, nothing was out of the ordinary. Dunham's recollection of the meeting is demonstrably flawed. In his DOL complaint, for example, he stated that the purpose of the meeting was "primarily to tell the inspectors that they were too picky" (Dunham ex. 2B, p. 2). He testified at the hearing, however, that he was given no notice of the purpose of the meeting with the corrosion engineers (Dunham tr. 71).

46. When asked whether Williams had told him the purpose of the meeting, Dunham first stated that he "didn't see Harry" (Dunham tr. 164). Dunham was then presented with his deposition testimony, in which he not only stated that he had discussed the meeting with Williams, but that Williams had told him that "these guys are going to come down here and change the spec. They're going to discuss the spec changes" (Dunham tr. 165; Dunham Depo. 129, 130). With his memory thus refreshed, Dunham was at least willing to acknowledge -- contrary to his statement only moments before -- that "I believe Harry and I had discussed it" (Dunham tr. 165). But as to whether he "knew what was to be discussed"

(Dunham tr. 165), even with the aid of his deposition testimony, Dunham did not recall (Dunham tr. 165). Finally, Dunham conceded that he did know what the purpose of the meeting was:

> Q: So you do recall now that it was to discuss this specific issue [the changes in the specifications], do you not?
>
> A: Right.

Dunham tr. 165.

47. Dunham's witness, Jerry Artrip, had no difficulty recalling exactly who the consultants were and that their business at Comanche Peak was "getting ready to make a revision in the procedure and the specifications, and they were going over these . . . . They were just kind of giving us previews of what they had in mind for the specifications" (Dunham tr. 239-240). Artrip understood exactly why the consultants were called in to meet with the inspectors (Dunham tr. 240):

> Q: [T]hey were there that day to explain those to you and answer any questions you had regarding those changes?
>
> A: Exactly.

48. Artrip's explanation of the meeting's purpose was corroborated by Mouser (Dunham tr. 329) and Krisher (Dunham tr. 377). Accordingly, the Board finds that the purpose of the meeting was to give Kelly and Firtel, the engineers responsible for making the changes in the program, an opportunity to explain the changes and the technical bases for them, and to answer the inspectors' questions about the changes (Dunham tr. 239-40, 329-30, 377).

49. At the meeting, Mouser introduced Kelly and Firtel (Dunham tr. 166, 329-30), who commenced discussing such technical matters as the changes in dry film thickness tolerances, substrate preparation, and glossy shine appearance for coatings systems (Dunham tr. 330, 378). Dunham commented on "nearly every change" (Dunham tr. 378), remarking that "there was no need for it, the engineering and quality management were collapsing to the pressure of the schedule and to the craft" (Dunham tr. 378), and that "[i]t was not necessary, wasn't required, didn't need to be done" (Dunham tr. 378).

50. Dunham's remarks went well beyond technical matters. He denigrated the abilities of the craft painters and their supervisors by observing that "he wouldn't let them paint his barn or his garage" (Dunham tr. 378), that "they were totally unqualified, both the painters and their superintendents" (Dunham tr. 378), that "he could paint as well as any of them" (Dunham tr. 240), and that "he'd been a coatings application foreman for about six months and never had a reject in that period" (Dunham tr. 379). Dunham confirmed that he "said plenty about the painters" (Dunham tr. 168), although he claims that his opinion of them was solicited (Dunham tr. 168), and that it "may be accurate" to say that he commented "I can paint the pants off anybody" (Dunham tr. 169). At his deposition, however, Dunham was less reticent about his comments:

> Q. Did you say, I can paint better than anyone in the craft at Comanche Peak or something to that affect?

A. I said I'll paint the pants off of anybody.

Dunham Depo. 135. Dunham's apparent point was his belief that the only reason the engineers were changing the specifications "was because the painters couldn't paint" (Dunham tr. 330).

51. Dunham also spoke on the subject of harassment and intimidation (Dunham tr. 72-73), commenting that "[o]ur problem lies with the QC Supervisors," who "won't support us. They make a decision and they won't stand behind it" (Dunham tr. 332). As Jerry Artrip, Dunham's witness, testified, Dunham interrupted Kelly's technical presentation to complain about his supervisor: "Thomas Kelly was trying to justify some of the problems with technical answers, and that's when Bill stood up and said, 'No, that's not the problem. The problem is that man over there in the corner'" (Dunham tr. 244-245), referring to Williams.

52. Dunham testified that the engineers could not answer his questions:

Q. Were you asking engineers for answers to the problem of harassment and intimidation?

A. Yes, ma'am. I was still trying to get relief for myself and my inspectors.

Q. Did you get an answer?

A. No, ma'am.

Dunham tr. 74. Dunham received no answer because Kelly and Firtel were plainly unequipped to deal with his non-technical questions, comments and interruptions. As Artrip put it, "They did not have

any insight at all into anything, other than their technical capacity that they were qualified for" (Dunham tr. 245). Artrip didn't "see how they could have known" about management or other problems (Dunham tr. 245), because they had been on site for only a short period of time.

53. As a result of Dunham's conduct, "Firtel quieted up. From what I [Jerry Artrip] perceived, he felt like he couldn't touch the topics" (Dunham tr. 245). "Both Firtel and Kelly declined to comment on these items" (Dunham tr. 379), and "suggested that they stay with the technical content" (Dunham tr. 379). Indeed, the engineers "told Dunham that any concerns they had like this they should take up with the management, that they couldn't answer these questions" (Dunham tr. 331). Mouser and Krisher attempted to redirect the focus of the meeting to technical matters within the engineers' competence (Dunham tr. 332, 379), but were unsuccessful.

54. Dunham's improper comments, by one account, consumed one-half the meeting (Dunham tr. 333). Artrip testified that Dunham dominated at least the last third of the meeting, noting that Dunham and Krisher had "a dialogue" during the last fifteen minutes of the meeting (Dunham tr. 238, 240). Dunham closed, in his words, by saying to the engineers, "I have one final question, and then I'll leave you guys alone" (Dunham tr. 76).

55. In an attempt to downplay the significance of the August 24 meeting, Dunham originally stated that the meeting lasted "Fifteen minutes. I remember inspectors getting up and saying, this is the same old horse shit and walking out" (Dunham Depo. 139; see Dunham tr. 171). At trial, he changed the time to "[a]pproximately 45 minutes. I know this because the meeting began at 4:30 as per memo, and at 5:30 we have to go home, so I had to leave the meeting a little early in order to lock up outstanding original documentation which was lying on my desk" (Dunham tr. 75). In fact, as all the other witnesses testified, the meeting began right after lunch and ended forty-five minutes to an hour and a half later (Dunham tr. 233, 240, 333, 355, 380).

56. Dunham's recollection of the time and purpose of the August 24 meeting -- which are relatively straightforward facts on which all other witnesses were clear (see Dunham tr. 233, 240, 333) -- is mistaken at best. There is no reason to rely on his recollection of other, more detailed facts regarding the meeting. As Dunham himself observed regarding his memory on the meeting, the "details are fuzzy" (Dunham tr. 171).[7]

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[7] Walter Elliott's recall of the meeting also was spotty. He did not remember who raised the subject of the nickel test (tr. 228), any specific subjects of discussion other than the nickel test and harassment issues (tr. 229), whether Dunham said anything about the painters (tr. 232-233), or who made any one statement (tr. 233). Accordingly, the Board declines to accept Elliott's sanitized version of the August 24 meeting.

57. After the meeting, Krisher summarized Dunham's conduct to Thomas Brandt, and concluded "[t]hat we had a lead inspector who was very negative, totally unwilling to accept the changes in the program" (Dunham tr. 382-83, 489-90). Krisher did not provide specific details of what was said, but rather described the general nature of Dunham's behavior (Dunham tr. 382-83, 489-90). He clearly indicated, however, that the meeting did not achieve its objectives (Dunham tr. 489). Kelly told Brandt that the meeting "hadn't been too erfective and mentioned Dunham's demeanor in the meetings" (Dunham tr. 490).

58. The next morning, August 25, Brandt described the problem to Ronald Tolson and recommended that management counsel Dunham and give him three days off without pay (Dunham tr. 491). Tolson concurred and instructed Brandt to get together with Gordon Purdy (Dunham tr. 491), because Purdy was Dunham's administrative superior. In his position as Brown & Root's Site QA Manager, Purdy was responsible for "administer[ing] Brown & Root policies for the QA/QC Department employees. Those include items like normal time accounting, vacation, sick leave, pay, benefits, disciplinary action, counseling, this type of thing." Dunham tr. 422.

59. Purdy, at Brandt's request, stopped in at Brandt's office late that afternoon. At the time, Brandt was meeting on procedural changes with Krisher, Mouser and Williams (Dunham tr. 334-35, 383-84, 424-26, 491-93). Brandt interrupted the meeting

to brief Purdy on Dunham's conduct at the meeting the day before (Dunham tr. 335-36, 383-84, 424-26, 491-93). Purdy confirmed Brandt's description of the meeting with Krisher and Mouser (Dunham tr. 335-36, 492), and asked for Brandt's recommendation. Purdy concurred with the recommended counseling plus three-day suspension (Dunham tr. 426), and, because it was so late and Purdy had other commitments, the counseling was scheduled for the following day (Dunham tr. at 426-27, 456).

60. The Board finds that Dunham's dominance of the meeting, his denigration of the craft, his refusal to confine his comments to the meeting's stated purposes, and his disruptions, all led to management's decision to counsel him for what they believed to be his disruptive behavior and his attitude problem. Even Dunham's witnesses testified that he interrupted the speakers, dominated parts of the meeting, denigrated the painters, and interrupted the speakers (Dunham tr. 238, 240, 244-45). Dunham himself admitted that he asked lots of questions and made comments about the painters (Dunham tr. 168-69). There is no evidence that management was motivated to counsel Dunham for any reason other than his behavior at the meeting.

61. On August 26, Tolson informed Purdy and Krisher that to suspend Dunham for three days would be inappropriate due to the amount of time that had elapsed since the August 24 meeting, and instructed them to limit the discipline to a counseling session (Dunham tr. 384, 429-30).

62. Purdy asked Krisher to prepare a counseling report, scheduled the meeting for 4:30, and asked Krisher to come by his office before the meeting to review the report (Dunham tr. 429-30). Krisher prepared a draft counseling report, and had Laurie Parry, his secretary, type it. Krisher edited the draft, and had Parry type the final version on a Brown & Root Employee Counseling and Guidance Report (Dunham tr. 385-86, 417; ex. H). Krisher also told Mouser to escort Dunham to the meeting (Dunham tr. 336-37, 385). Later in the day, Parry called Dunham to get his employee badge number (Dunham tr. 417).

63. Dunham attempts to make an issue of Parry's phone call (Dunham tr. 151; Dunham ex. 2B, p. 2), and the fact that Mouser told him he had no idea about the subject matter of the 4:30 meeting (Dunham tr. 184-85; Dunham Dep. at 151). He speculates that these events were evidence that there was a conspiracy to terminate him (Dunham tr. 186; Dunham ex. 2B, p. 2; Dunham Depo. 151).

64. Dunham's conspiracy contention is meritless. First, Parry called Dunham and asked for his badge number because the counseling form required the employee's badge number (Dunham tr. 417), and her testimony is corroborated by the counseling form itself (Dunham ex. H). Second, the top half of the termination form is completed, including badge number, when the employee is first hired by Brown & Root (Dunham tr. 315-16; Dunham ex. L). Thus, had there been a conspiracy to fire Dunham as he alleged,

there would not have been any reason to call Dunham for his badge number. Third, Krisher told Mouser to inform Dunham of the meeting with Purdy, and added that "I was to discuss this with no one," and "to keep it to myself" (Dunham tr. 337, 364). Mouser interpreted this to mean that he should keep the meeting quiet and for that reason did not tell Dunham about the subject matter of the meeting (Dunham tr. 338). Krisher confirmed that he told Mouser to keep the meeting confidential because it was normal procedure to do so (Dunham tr. 406). Fourth, Dunham was being counseled for his behavior at the August 24 meeting, but not terminated (Dunham tr. 335-36, 383-83, 426, 491-93). Due to the lapse of time, the original decision to counsel Dunham and to suspend him for three days was reduced to a counseling session to discuss management's concerns with Dunham's behavior at the August 24 meeting (Dunham tr. 384, 430, 436). Dunham reads too much into the actions of Mouser and Parry. There is no evidence that anyone in management conspired to terminate Dunham.

65. Krisher arrived at Purdy's office around 4:15 p.m. and discussed the counseling report with him. Dunham and Mouser arrived at 4:30 and sat down around Purdy's desk (Dunham tr. 81, 338, 366-67). Purdy handed Dunham the counseling report prepared by Krisher and typed by Parry (Dunham tr. 385, 417), told him his supervisors had prepared the counseling report (Dunham tr. 432), and asked Dunham to "read it and discuss it" (Dunham tr. 433; see Dunham tr. 338, 389). Dunham briefly looked at the report (Dunham

said (at 77, 176) he "skimmed" or "scanned" the document), threw it at Purdy while uttering an obscenity,[8] said he wasn't changing his attitude and stated that Purdy "might as well walk me to the gate. I'm not going to change" (Dunham tr. 338-39, 390, 433). Despite several efforts by Purdy to have Dunham discuss the report and his supervisors' concerns, Dunham continued to refuse to discuss the matter or to change his attitude (Dunham tr. 339, 390, 433). Based on Dunham's conduct, Purdy decided, at that very moment (Dunham tr. 436), to terminate Dunham for refusing to discuss management's concern about his attitude and for his responses and attitude during the counseling session. As Purdy testified (Dunham tr. 433-34):

> I had been placed in a position that I had two choices. I could either walk him to the gate or else I could ignore the fact that supervision and management within the organization had a problem and wanted to discuss it and he didn't.
>
> Q. And what did you decide?
>
> A. I decided to take him up on his offer and walk him to the gate.

In sum, Dunham was "insubordinate" (Dunham tr. 433-34, 462-63).

66. Dunham claimed that nothing he did at the counseling session caused his termination, but that a decision to fire him had been made long before (Dunham tr. 177). Yet Dunham testified

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8 Dunham's obscenities went beyond the normal "shop talk" heard at construction sites. Moreover, his obscenities were directed at his supervisors and were spoken in conjunction with his defiant refusal to discuss his supervisors' concerns. The Board does not feel it is necessary to delineate Dunham's outbursts. See Dunham tr. 338, 390, 433.

that after his initial exchange with Purdy, "Purdy got a startled look on his face and burst from the room (Dunham tr. 78). As Dunham stated in his complaint (Dunham ex. 2B, p. 2), Purdy "stormed from his office."[9] If Purdy had decided to fire Dunham before the meeting even began, he would not have "burst" or "stormed" from his office, nor would he have been startled by anything Dunham said or did. Indeed, Dunham himself expressed some regret -- for something he had done (Dunham tr. 78):

> Purdy got a startled look on his fact and burst from the room, and when I saw that, then I wanted to sign the document and I followed him out of the room, and wanted to tell him that I'd sign the document . . .

67. Dunham's testimony regarding certain details of the meeting is contradicted by several other witnesses. Dunham claimed, for example, that Purdy gave him a "speed letter. It's a three or five-part document, handwritten" (Dunham tr. 76), with "no space for my comments" (Dunham tr. 77). But Krisher prepared a handwritten counseling report and then had Parry type the counseling report on the Brown & Root form used for that purpose (Dunham tr. 385, 405). Parry remembered typing the form and identified the report as Exhibit H (Dunham tr. 417), and Krisher (Dunham tr. 386) and Purdy (Dunham tr. 430-31) identified Exhibit H as the form that Purdy gave Dunham at the counseling session.

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[9] Dunham testified that when Purdy left the room he used a phone "down the hall" to call some unidentified person. All Dunham allegedly heard was Purdy saying "Go ahead with it." Dunham tr. 78; Dunham ex. 2B, p. 2. Purdy, however, was only out of the office for a few seconds, and, more significantly, there was no phone located in the hall. Dunham tr. 341, 390-91, 434.

The Board notes that the counseling report, Exhibit H, does have a space for the employee's comments and is a single sheet of paper, not a multipart document.

68. After Purdy made his decision to terminate Dunham, he left the room to ask his administrative assistant to prepare Dunham's termination papers, but he discovered that the administrative staff had gone for the day. Purdy returned to his office and told Mouser and Krisher to take Dunham to his trailer to get his belongings (Dunham tr. 341, 391, 434). Purdy then went to the Time Office, where he informed the Time Office personnel that he wanted to terminate one of his employees (Dunham tr. 444). He listed the reason for the termination ("insubordination"), signed the termination form (Dunham ex. K), and left the time office (Dunham tr. 445).

69. Xalli Ivers, the Time Office clerk, had not, nor did she know of anyone in the Time Office who had, received any communication from any source regarding Dunham's termination prior to the time Purdy came into the office. Dunham tr. 468-70.

70. Dunham's account of what transpired at the Time Office also lacks creditability. In his DOL complaint, under penalty of making a false statement, Dunham stated "I wrote 'Fucking Lie' [on his termination form] instead of my signature because at this point I was no longer employed by anyone and felt that, with checks in hand, at this point I had nothing to lose (Dunham ex.

2B, p. 2) (emphasis added). Come the trial, Dunham had another explanation of why he wrote "Fucking Lie" on his termination form, implying that he was forced to sign the form to receive his check:

> The girl had my check in one hand and this [the termination form] in the other --
>
> * * *
>
> She held the check back here, and sat there and said --
>
> * * *
>
> The girl at the Time Office held this one [the termination form] out and my check back here, and said, "Will you sign this?"

Dunham tr. 187-88. Dunham, however, was not required to sign the form in order to receive his checks (Dunham tr. 471). Moreover, contrary to Dunham's assertion in his complaint and deposition that either both or one of his checks was ready (Dunham ex. 2B, p. 2; Dunham Depo. 153), neither of Dunham's checks were ready when he arrived at the Time Office (Dunham tr. 469). In light of these blatant contradictions between Dunham's DOL complaint, his deposition testimony and his testimony at trial, the Board simply does not believe Dunham's version of the events occurring in the Time Office.

71. In sum, the Board finds that Dunham's complaints to management did not form the basis of his termination. The record shows that his concerns were addressed promptly by management and, in one instance, that his concerns precipitated the removal of the very supervisor about whom Dunham complained. The investigations of Brandt and Krisher further demonstrate management's construc-

tive response to Dunham's concerns. Moreover, Dunham's conduct at the counseling session warranted disciplinary action, and his subsequent insubordinate outburst at the counseling session, which was convened merely to counsel Dunham and to discuss management's concern with his conduct at the August 24 meeting, warranted his termination. Accordingly, the Board finds that Dunham was not harassed or intimidated for complaining to management and was instead terminated for just cause.

B. Robert Hamilton and Joseph Krolak

72. Robert Hamilton, lead protective coatings inspector, and Joseph Krolak, a protective coatings inspector, raised several instances of alleged harassment and intimidation during their testimony in this proceeding. Their primary contention is that they were terminated improperly for refusing to perform an unsafe inspection. The inspectors claimed that the rotating access platform rail leading to the inspection "had grease and oil on it," and the rail's safety cable had too much slack (Hamilton tr. 9; Krolak tr. 52,531). Hamilton and Krolak also claim to have been harassed or intimidated on four other occasions. These allegations concern the filing of NCRs, revising inspection reports, and alleged harassment by painters.

73. The record on the termination establishes that Hamilton and Krolak were fired for refusing to perform their assigned duties and failing to follow instructions (Purdy tr. 41,377; Brandt tr. 45,306; Britton tr. 24). Moreover, it is manifest that

the rail was safe and did not have oil or grease on it, that there was no unsafe slack in the safety cable, that there were no safety violations or unsafe working conditions, that the inspectors were given four opportunities to conduct the inspection, that several painters had walked the rail in question on March 9, that refusing to do work is a terminable action, and that only those inspectors who were asked to do the inspection and refused, were fired. The Board accordingly finds that the termination of these individuals was proper and was not an incident of harassment or intimidation. The Board also finds that the other allegations raised by Hamilton and Krolak either did not occur or have no merit. Each of the five allegations raised by Hamilton and Krolak are discussed in separate findings below.

1. The Termination of Hamilton, Krolak, and Shelton

74. At approximately the 1,000'+ elevation in Unit 2 there is a rotating access platform rail. The rail is two feet wide and consists of "a series of steel guides that go all the way around the inside of the reactor building" (Scarbrough/Ethridge tr. 74,508; Britton tr. 14). The center of the rail lies five to six feet from the liner plate of the reactor building (Britton tr. 13-14; Hoggard tr. 74,008).

75. To gain access to the rail, workers climb a series of ladders extending from the nearest floor elevation (905') to the rail (1,000'+) (Scarbrough/Ethridge tr. 512-13; Britton tr. 13); the climb from the floor to the rail takes approximately five

minutes (Scarbrough/Ethridge tr. 75,514). The rail is used only to gain access to the work area, and all work is done from scaffolding that is placed between the liner plate and the rail (Britton tr. 15-16; Scarbrough/Ethridge tr. 74,509).

76. Safety apparatus for the rail consists of a 1/2-inch steel cable, permanently affixed to the liner plate, which runs approximately four feet above the rail (Hoggard tr. 74,008-09, 013; Britton tr. 14). All employees are required to wear a safety belt and a lanyard while they are on the rail. The lanyard is attached to the safety belt and then to the safety cable, approximately an arm's length away. Hoggard tr. 74,009; Scarbrough/Ethridge tr. 74,516. The rail's safety system complies with all applicable OSHA and ANSI requirements (Hoggard tr. 14-15).[10] All scaffolding that is placed between the rail and the liner plate is equipped with hand rails and a rope binder to which inspectors and painters attach their lanyards (Britton tr. 15).

77. Site practices include other precautions to ensure the safety of persons who must walk along the rail. For example, paint foremen must ensure that the work area is safe before any work can be performed (Hoggard tr. 74,010; Scarbrough/Ethridge tr.

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10 The Brown & Root Safety Department at Comanche Peak is responsible for employee protection and for compliance with all governmental safety requirements, including OSHA requirements, and is completely independent from construction management (Hoggard tr. 74,006-07). Samuel Hoggard, Project Senior Safety Supervisor, reports directly to Brown & Root's Power Safety Offices in Houston and cannot be fired by the Brown & Root Project Manager (Hoggard tr. 74,006-07). The Safety Department is fully empowered to shut down operations if there is a threat to any employee's life (Hoggard tr. 74,006-07).

74,517-18), and the paint crew is instructed by the craft safety committee to clean up immediately any oil or grease they find on the rail (Scarbrough/Ethridge tr. 74,516-17).

78. In March 1982, David Ethridge, a spray painter, was working from a scaffold between the liner plate and rail preparing a section of liner plate and steel substrate for primer application. When the preparation was complete, Ethridge requested QC inspection of the work through his foreman, James N. Scarbrough. Scarbrough/Ethridge tr. 74,509-10. Scarbrough, pursuant to normal procedure, called the QC field shack, described the area to be inspected, and requested a QC inspector (Scarbrough/Ethridge tr. 74,511).

79. Hamilton received the call in the QC shack. Hamilton claims that he sent Krolak to make the inspection, and that Krolak returned some time later and said that the rail was unsafe. Hamilton tr. 7. Hamilton claims that he then "physically climbed up there and looked it over myself and I too felt it was unsafe" (Hamilton tr. 8).[11]

80. Ethridge had a clear view of the access ladders and the rail from his work area, and he waited in his work area, as he was required to do, for a QC inspector to respond to Scarbrough's call

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[11] Hamilton's assertion that the painters "wanted me or someone in my crew to make an inspection from the rotating platform crane rail," (Hamilton tr. 8 (emphasis added)), is unworthy of credence because no work on or inspection of the liner plate was done from the rail. The liner plate was approximately six feet from the rail and all work on the liner was performed from scaffolding placed between the rail and the liner plate (Scarbrough/Ethridge tr. 74,509; Britton tr. 15-16; Brandt tr. 45,303-04).

(Scarbrough/Ethridge tr. 74,512-13). Although Ethridge remained in the area for several hours, he did not see Krolak or Hamilton climb the access ladders or walk the rail (Scarbrough/Ethridge tr. 74,512-13, 524). Scarbrough, who also was waiting in the area and looking for an inspector, did not see Krolak or Hamilton climb the ladders or walk the rail (Scarbrough/Ethridge tr. 74,513-14).[12]

81. After waiting an hour for an inspector, Scarbrough called his boss, Jim Brackin, and informed him that they were not getting QC coverage (Scarbrough/Ethridge tr. 74,511). Brackin or Charles Oxley then called Neill Britton, QC Supervisor of ongoing protective coatings inspection and the backfit program, and informed Britton that they had an area that needed to be inspected and that the inspectors refused to do the inspection because the inspectors thought the area was unsafe (Britton tr. 12, 16). Britton, who had replaced Hamilton as Supervisor on the previous day, (Britton tr. 8; Hamilton tr. 14), said he would look into the situation (Britton tr. 12-13).[13]

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12 Krolak testified that the area he was asked to inspect was a "small patch repair on the liner plate" (Krolak Depo. 52):

> Q: So the liner plate had been painted and inspected and then repaired, and it was the repairs you were asked to go up and reinspect?
>
> A: Yes, sir.

The area to be inspected, however, was a section of the liner plate Ethridge had prepared for a primer (Scarbrough/Ethridge tr. 74,509-510). At the very least, his testimony established that Krolak did not look at the area to be inspected.

13 Prior to March 8, 1982, the ongoing coatings group and the (footnote continued)

82. Britton called Hoggard, the Safety Supervisor, and asked him if the area was safe (Britton tr. 16-17; Hoggard tr. 74,010). Hoggard, who was responsible for installing the lifeline system on the rail, assured Britton that the rail was safe and met all applicable safety requirements (Britton tr. 17; Hoggard tr. 74,008-010).

83. After Britton's call, Hoggard decided to reinspect the rail to confirm what he had told Britton, even though Hoggard had inspected the rail just a few days before. Hoggard testified as follows (Hoggard tr. 74,012-14):

> Q. Would you describe your inspection, please?

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(footnote continued from previous page)
backfit inspection program consisted of two separate inspection groups of approximately equal size. Britton supervised the backfit group and Hamilton supervised the ongoing group. The two groups performed two distinct functions: inspectors in the backfit program, initiated in October-November 1981, performed special destructive tests on previously applied coatings; ongoing coatings inspectors conducted inspections of surface preparation and coatings application. Britton tr. 7-8. When the two coatings groups were consolidated on March 8, Britton was named QC supervisor of the combined group (Britton tr. 8). Hamilton was clearly displeased with Britton's appointment (Hamilton tr. 13-14), and considered himself more qualified (Hamilton tr. 14-16). Indeed, Hamilton asserts that at one time he "was more qualified on coatings than anyone else on the job site" (Hamilton tr. 24; see Hamilton tr. 16, 39, 43; Hamilton Depo. 63, 81).

The Board finds, however, that Britton was equally well, if not better, qualified for the QC supervisor's position. Although both Hamilton and Britton were Level II inspectors, only Britton had worked in both the ongoing and the backfit programs at Comanche Peak. Moreover, Britton had prior experience as a quality engineer for the civil and protective coatings disciplines and had served as QC superintendent over those disciplines at another nuclear project. Britton tr. 5-10.

A. Yes, sir. I went up through using the access ladder, I went up and physically hooked off my safety belt lanyard to the lifeline, reversed it completely around the lifeline, and I found everything to be in order. The lifeline itself was taut. There was not an excessive amount of slack in it. It was properly secured.

Q. Approximately how much slack did you note in the cable?

A. Approximately three to six inches from static position.

Q. Did you completely traverse the circumference of the rail as it travels around the containment?

A. Yes, sir, I did.

Q. Did you notice any oil or grease on the rail at that time?

A. No, sir, I didn't.

Q. Did you notice any other foreign objects on the rail?

A. Not on the rail itself, no, sir.

Q. Did you notice any miscellaneous ropes or cables or other safety equipment hanging from the safety cable?

A. No, sir, the cable was clean.

Q. Were you looking for those items?

A. Yes, sir, I was.

Hoggard did not know Hamilton and the others at the time he inspected the rail, and his judgment as to the rail's safety was not in any way related to the inspectors (Hoggard tr. 74,015).

84. After his conversation with Hoggard, Britton called his supervisor, Harry Williams, who told Britton "to get up with Mr. Hamilton and see what the problem was" (Britton tr. 17). Britton went to the QC shack and spoke with Hamilton, Krolak and Shelton. Britton explained that he had spoken with the safety department and that Hoggard had assured him that there were no safety violations or unsafe working conditions. He then asked them to do the inspection, but they refused. Finally, Britton told them that their refusing to do an inspection was a serious matter; Hamilton responded "they're bluffing." Britton tr. 18-19.[14]

85. Britton then reported the substance of his conversation with the inspectors to Williams, and Williams reported the problem to C. Thomas Brandt, then the non-ASME Mechanical/Civil QA/QC Supervisor. Brandt asked Williams and Mike Foote to inspect the

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14 Hamilton asserted in his prefiled testimony "even though we all figured that we'd lose our jobs, we wouldn't walk it [the rail]" (Hamilton tr. 8 (emphasis added)). Krolak, however testified to the contrary:

> Q. Try and remember back to the day that you were terminated, Mr. Krolak [sic], and give me you honest, best recollection:
>
> Were you surprised that you were fired that day?
>
> A. Yes. Shocked, is the word.
>
> Q. "Shocked."
>
> You have no anticipatation that they would do anything like this to you?
>
> A. No.

Krolak tr. 52,549.

area and report back to him (Brandt tr. 45,301-02). Shortly thereafter, Williams, Foote and Britton climbed the access ladders and inspected the rail (Brandt tr. 45,302; Britton tr. 19-21; see Scarbrough/Ethridge tr. 74,525-26; Britton ex. 1). They found that the inspection area was accessible, the rail provided adequate footing, the safety cable was taut, and the rail was free of grease and oil (Britton tr. 20). Williams, Foote and Britton concluded that the inspection posed no safety problems (Britton tr. 21).

86. Ethridge confirms that Hoggard (who he could identify only as a Safety Supervisor) and "Neill Britton, Harry Williams, and another fellow I didn't know" came up to the rail, inspected it, and looked at the scaffolding (Scarbrough/Ethridge tr. 74,525-26). Ethridge, who was a member of craft safety committee, also confirms that there was no oil or grease on the rail that day (Scarbrough/Ethridge tr. 74,517).

87. It is also important to emphasize that several employees walked the rail that day, and "[d]ozens of craftsmen and other inspectors repeatedly walked the rail to their work area without incident" (Hoggard tr. 74,014-15; Britton tr. 23). Even Hamilton

admitted that several painters had been on the rail preparing the surface for painting (Hamilton Depo. 22-23, 30), and as many as forty people were up on the rail before and after he refused to do the inspection (Hamilton Depo. 31). Krolak simply said "there was a lot of traffic up there" (Krolak tr. 52,531). Krolak also testified that he "worked up there many a day" (Krolak tr. 52,602), and both Shelton and Krolak had previously inspected work Ethridge had done off the rail (Scarbrough/Ethridge tr. 74,714-15). Indeed, inspection reports signed by Krolak and Shelton confirm that they had traversed the rail to perform inspections within two weeks of the date of their termination (Scarbrough/Ethridge tr. 74,518-20; Scarbrough/Ethridge exs. 1 and 2).

88. When Williams, Foote, and Britton returned from their inspection, Williams reported to Brandt that the rail was safe. Brandt, who also had confirmed the safety of the rail in a conversation with Hoggard, then asked Britton to bring the inspectors to his office. Brandt tr. 45,305; Britton tr. 22. Britton complied with Brandt's request. On the way to Brandt's office, Britton asked the inspectors to reconsider their decision and perform the inspection; again, they refused. Britton tr. 23.

89. While Britton was assembling the inspectors, Brandt called Gordon Purdy, Brown & Root Site QA Manager, briefed him on the problem, and asked him to attend the meeting (Brandt tr. 45,305; Purdy tr. 41,374). Brandt, an Ebasco employee, asked

Purdy to attend because Hamilton, Krolak, and Shelton all worked for Brown & Root. Before coming to the meeting, Purdy also called the Safety Department and verified that the rail was a safe working area and that all OSHA requirements had been met (Purdy tr. 41,375).

90. At the meeting, Brandt told the inspectors that the Safety Supervisor and their supervisors independently had inspected the rail and that they had found no safety violations or unsafe working conditions (Brandt tr. 45,305; Britton tr. 23-24; Purdy tr. 41,375). Brandt and Purdy then informed the inspectors they would be terminated if they continued to refuse to do their job, and gave them another opportunity to inspect the area. Purdy tr. 41,375; Brandt tr. 45,306; Britton tr. 24. For the fourth time, the inspectors refused to conduct the inspection, and they were terminated. The basis for the termination was "refusing to do [their] assigned work" (Brandt tr. 45,306; Purdy tr. 41,375, 377; Britton tr. 24), which is clearly identified as a termination offense in Brown & Root's Policy for Disciplinary Action (Brandt ex. 43-3).

91. After the inspectors were fired, they filed a complaint with OSHA alleging that the rail was unsafe (Hamilton tr. 9; Krolak Depo. at 56). OSHA, however, dismissed the complaint and stated that it would take no further action on the matter (Hoggard tr. 74,015-16). As Krolak put it, "the final [OSHA] investigation

proved us wrong" (Krolak Depo. at 56). The NRC Senior Resident Inspector also conducted an independent investigation and found the inspectors' allegations meritless (I&E Report at 4).

92. Hamilton and Krolak contend that their termination was linked to their expressions of concern about the coatings program. In fact, Hamilton and the other inspectors never raised concerns about plant safety with Brandt or Purdy, the supervisors who fired them. Brandt tr. 45,300, 306-07; Purdy tr. 41,377. And more significantly, Hoggard, the safety supervisor who inspected the rail, did not know the inspectors (Hoggard tr. 74,014-15).

93. The only "evidence" Hamilton and Krolak cite in support of their contention is their testimony to the effect that other inspectors were asked to perform the inspection, that they refused, and that they were not fired. Their testimony on this point, however, is simply not credible. Indeed, their story on the issue of who was asked to walk the rail varied each time they testified.

94. Hamilton, for example, three times stated that Houston Gunn was not asked to walk the rail. Hamilton tr. 10; Hamilton Handwritten Affidavit, January 21, 1984 ("Hamilton Aff.") at 10; Voluntary Statement Given to H. Brooks Griffin, September 28, 1983 at 1, but he also testified to the contrary: The "man in the shop [Gunn] also refused to walk the rail, but he wasn't fired" (Hamilton tr. 26). Krolak also testified that he did not "believe they [the other two coatings inspectors] were approached to walk

it" (Krolak tr. 52,535), but then claimed that two unidentified inspectors "who were up at the blasting yard" refused to walk the rail and were not terminated (Krolak tr. 52,236). It is clear from the testimony, however, that Krolak is saying Hamilton, not Britton and Williams, allegedly asked these inspectors to do the inspections (Krolak tr. 52,536). Krolak admitted that he was not present when the two inspectors were allegedly asked to walk the rail (Krolak tr. 52,602-03), and Hamilton did not testify that he asked these people to walk the rail. In any event, these inspectors could not have been assigned to ongoing inspections since Hamilton, Krolak, Shelton, and Gunn were the only ongoing inspectors assigned to the day shift at the time (Britton tr. 9-10; Gunn tr. 25,007-08).

95. Hamilton also said Joe Fazi, one of two night shift coatings inspectors at the time, was not asked to walk the rail (Hamilton Voluntary Statement at 1), but then testified that one of the night shift inspectors (perhaps Fazi or perhaps the other inspector) refused to walk and was not fired. Fazi and the other night shift coatings inspector, however, both "walked the rail on the night in question" (NRC I&E Report 83-47 (February 28, 1984), Appendix ("I&E Report"), p. 4).

96. There were only four ongoing day shift inspectors -- Krolak, Shelton, Hamilton and Houston Gunn -- at the time of this incident (Gunn tr. 75,007-08; Britton tr. 9-10). Gunn was not asked to do the inspection (Gunn tr. 75,005; Britton tr. 25)

because he has acrophobia. In fact, Gunn had been assigned to the paint fab shop in 1977 after he experienced physical problems while performing an inspection in a spider basket in Unit 2. Gunn tr. 75,006; Britton tr. 10-11, 25-26. The only field inspection he has performed since that time was at floor level (Gunn tr. 75,007). Backfit inspectors were not asked to do the inspection because they were assigned to other duties, and some of them were not qualified to perform ongoing inspections (Britton tr. 26). The inspection on the liner plate was ultimately conducted by one of the two night shift ongoing coatings inspectors (Britton tr. 25), both of whom walked the rail the night that the inspectors were fired (I&E Report, Appendix, p. 4).

97. The evidence justifies the termination of Hamilton, Krolak, and Shelton. Site policy and common sense compel the termination of employees who unreasonably refuse to perform assigned work, and it is crystal clear that the inspectors' refusal to walk the rail was unreasonable. Dozens of employees, including Krolak and Shelton, walked the rail without incident before the day the inspectors were terminated. Britton, Brandt, and Purdy separately reviewed the inspectors' concerns with Hoggard, the site Safety Supervisor. Hoggard, who did not know the inspectors, assured them the rail was safe and personally reinspected the area to confirm his judgment. Brandt also sent three supervisors to inspect the area, and they too found it was safe. Britton, Brandt, and Purdy communicated the results of

these inquiries to the inspectors, and four times the inspectors woodenly refused to do their job. Brandt and Purdy then terminated the inspectors; they really had no choice, given the inspectors' repeated refusal to do the job for which they were hired.

2. The Kelly Heater NCRs

98. Krolak claimed that management improperly "squashed" an NRC he wrote on paint that had been contaminated by soot from Kelly Heaters (Krolak tr. 52,529). This Board previously found that Hamilton's Kelly Heater NCR was properly dispositioned by management (Memorandum and Order (Emergency Planning, Specific Quality Assurance Issues and Board Issues), LBP-83-60, 18 NRC 672, 686-87 (September 23, 1983)). The NCR written by Krolak involved the same problem (Brandt tr. 45,330-31; Brandt ex. 20) and the same disposition:

> To solvent wipe the coatings on the hangers. If contaminantes are visibly present after wiping, the area should be sanded slightly until removal of discoloration is complete. After completion of the repair the area should be checked for dry film thickness. The coatings on the shim plates are to be used as is, due to the small amount of exposed painted surfaces after placement of the shim.

Brandt tr. 45,331; see Brandt ex. 20. Krolak even conceded that another QC inspector approved the rework on the contaminated hangers (Krolak tr. 52,574). The Board accordingly finds that Krolak's NCR was properly dispositioned.

99. Therefore, the only concern over the "squashing" of the Kelly Heater NCRs is whether Hamilton's and Krolak's dissatisfaction with the disposition discouraged them from filing NCRs. It is clear that this incident did not discourage Hamilton and Krolak. In fact, Krolak admitted that he was never discouraged

from writing NCRs (Krolak tr. 52,576, 592).[15] Indeed, Krolak continued to do his job and filed inspection reports right up to the day he left Comanche Peak (Krolak tr. 52,567, 583). Hamilton admits that upper management "were anxious for me to write [the

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A. Well, I'm going to answer that if a fourth NCR would have warranted being written, I would have written it.

Q. Oh. And is it your testimony that you didn't observe a condition for writing a fourth NCR?

A. Right. Yes.

Q. So you have never been discouraged from writing NCR's?

A. No.

* * *

Q. You say you wrote about three NCR's while you were a QA inspector at Comanche Peak?

A. To my knowledge, yes.

Q. And you stated that one was squashed. And you don't know what happened to the other two?

A. I don't recall.

Q. The one that was squashed, that was the first one?

A. First or second, I don't recall. But that's the one that stands out in my mind.

Q. You do remember writing an NCR after you had written the one that was squashed?

A. Um-huh.

Q. So the one that was squashed, you know,

(footnote continued)

Kelly Heater NCR]" (Hamilton tr. 22). He also testified that he wrote "[s]everal" or "quite a few" NCRs during his employment at Comanche Peak (Hamilton tr. 21).

100. The Board finds that Applicants properly dispositioned the Kelly Heater NCRs, that the NCRs were not "squashed," and that Hamilton and Krolak were not harassed or intimidated by the disposition of the NCR, nor were they discouraged from filing NCRs. The Board further finds that after this incident Hamilton and Krolak continued to perform fully their job duties.[16]

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(footnote continued from previous page)
as you put it, it did not discourage you from writing future NCR's?

A. No.

Krolak tr. 52,576, 592; see Brandt ex. 21.

16 Moreover, the record does not support Krolak's testimony in several other respects. Krolak claimed he wrote three NCRs while employed as a protective coatings inspector at Comanche Peak, but he could not remember any details about the other NCRs. Krolak tr. 52,528, 533. In fact, Krolak filed only two NCRs while employed as a protective coatings inspector (Brandt tr. at 45,329-30; Brandt exs. 20, 21). Second, although Krolak could not recall the details of his second NCR, it was properly dispositioned by management. In the second NCR, Krolak claimed that some shim plates were coated improperly with a zinc-enriched coating from a spray can. Brandt tr. at 45,332-34. Krolak's NCR stated that a Q-coating should be applied to the shim plates, but the disposition was use-as-is because the coating used did not create a nonconforming condition. Brandt tr. at 45,334-35; Brandt ex. 21. Krolak's failure to recall this particular NCR is surprising because he closed out the NCR by completing an inspection report which stated: "The Non-Conforming Condition is in Accordance with 2323-ES-100 . . . [.] CCP 30 and QI-QP-11.4-1 Do Not Apply To Galvanized Surfaces Hold Tags Have Been Removed and Non Conforming Items Will Be Used as is" [sic] (Brandt ex. 21, p. 3; see Brandt tr. at 45,334). Thus, Krolak was aware of the disposition and of the fact that his interpretation of the coatings requirement was wrong.

3. The Alleged Harassment Of John Moon

101. Comanche Peak has one medical facility which is open twenty-four hours a day, seven days a week. The facility maintains two types of medical records, the Brown & Root first aid roster and OSHA Form 200. The roster is a chronological list of all but the most minor first aid treatments, and each entry in the roster includes, among other things, the employee's name, craft, type of injury, and the medical officer's initials (Hoggard tr. 74,020-21). A subset of injuries and illnesses treated on-site, including all chemical burns and exposure to chemicals causing occupational illness or injury, are also recorded on OSHA Form 200 (Hoggard tr. 74,022).

102. Hamilton asserted that "John Moon [a QC inspector] had some real hot thinner poured on him by the Paint Department" (Hamilton tr. 36). Although Hamilton did not witness the incident and could not identify who supposedly poured the thinner on Moon, he assured the Board that the incident occurred because "I saw the places on him where it burned him. . . . He, therefore, had to go to the Medical Department." Hamilton tr. 36-37.

103. Moon worked as a QC inspector from October 13, 1975 until he resigned to return to college in January, 1982 (Affidavit of Raymond Yockey, filed August 20, 1984 at 1-2; Attachments 1-4). Hoggard, the site Safety Supervisor, personally reviewed the first aid roster and OSHA Form 200s for this period, and his review establishes that Moon was never treated for burns (or anything

else) by the Medical Department (Hoggard tr. 74,021, 022-23; see NRC I&E Report (February 28, 1983), Appendix, p. 3). Since Hamilton admits that he did not witness the incident and at least part of his testimony is demonstrably wrong, the Board gives no weight to the John Moon story.

4. The "Bench Incident"

104. One Saturday a group of painters ate lunch, as they often did, behind the QC shack; Krolak ate lunch inside the shack (Krolak tr. 52,588-89). Krolak testified that "when dinner time was over, I went out the back door, opened the door, and the sun hit me in the eyes and there the bench was . . . . So I skinned up both my ankles (Krolak tr. 52,589).

105. Krolak thinks, but he is not sure, that the painters deliberately put the bench by the door so he would trip (Krolak tr. 52,589). Krolak's uncertainty is understandable. He admits that no one was there when he tripped, that he does not know who ate behind the shack, and that he did not have any dealings with the painters that day (Krolak tr. 52,589).

106. Hamilton embellished the story, but his version of the incident actually contradicts Krolak's. For example, Hamilton claims the paint department "called for an inspection and asked for Joe Krolak specifically." Hamilton tr. 36; Hamilton Depo. at 69. Krolak, however, never mentioned a phone call and said he left the shack because the lunch hour was over (Krolak tr.

52,589). Like Krolak, Hamilton concedes that he was "not sure" the bench had been intentionally placed by the door to trip Krolak:

> Q Who put the bench there?
>
> A Somebody from the Paint Department, I imagine.
>
> * * *
>
> Q But you're not sure?
>
> A I'm not sure.

Hamilton Depo. at 69-70 (emphasis added).[17]

107. Krolak's and Hamilton's speculation that this was an incident of harassment is not supported by evidence. The inspectors' stories are inconsistent and both acknowledge that they have no evidence, beyond mere suspicion, that anyone in the paint department intentionally placed the bench by the door to trip Krolak. Moreover, neither even speculated how the "perpetrators" of this incident knew that Krolak would use the back door, or knew that he would be so blinded by the sun that he would not see a bench six feet long when he walked out. The Board places no credence on the testimony about this matter.

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[17] Hamilton's prefiled testimony attempted to qualify his sworn deposition testimony:

> Q. But you're not sure.
>
> A. I'm not sure, at least to the extent that I can't prove it. I'm sure in my own mind.

Hamilton tr. at 36.

108. We find it significant that Krolak testified that he "[n]ever, never" felt threatened by the painters (Krolak tr. 52,588) and that he had previously told an NRC investigator that no one intimidated or attempted to intimidate him to perform improperly while he was employed at Comanche Peak (Telephonic Interview with H. Brooks Griffin, October 7, 1983, p. 1 ("nobody intimidated or attempted to intimidate [me] into performing . . . work improperly")). Indeed, Krolak testified that he always did his job (Krolak tr. 52,583). We conclude that this alleged incident is unsubstantiated by the record.[18]

5. The IR Incident

109. Since September 1980, all QC disciplines using Inspection Reports (IRs) to document inspections, have used the same preprinted forms. Among other entries, this form has a blank in which inspectors identify the location of the inspection being performed (Brandt tr. 45,336-37). In October, 1981, the coatings

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18 Intervenor also failed to prove harassment, intimidation, or threats in the so-called "Blasting Yard Incident." Most of Krolak's testimony is hearsay, but it is nonetheless clear that this was not an incident at all. Krolak alleged that he and Hamilton were threatened by Williams after Hamilton found some "discrepancies" in certain pipe restraints located in the blasting yard. Despite Williams' alleged threats, Hamilton wrote an IR on the discrepancies. Krolak tr. at 566. Moreover, the restraints were not finished in the time period allegedly set by Williams, and neither inspector was fired as Williams allegedly threatened to do (Krolak tr. at 560). Krolak also admitted that the discrepancies Hamilton found were corrected (Krolak tr. at 566-67). Finally, it is significant that Hamilton, the inspector to whom Williams directed his alleged threats, never mentioned this incident in any of his appearances before the Board.

group began using this form; prior to that time, coatings inspectors used several check lists to document their inspections (Brandt tr. 45,337).

110. Krolak testified that three or four months before he was terminated Hamilton and Williams worked together designing a new IR form. According to Krolak, a draft IR prepared by Williams failed to include a space for identifying the location or the inspection. Krolak says that Hamilton criticized the draft because of this failure, but Williams initially ignored Hamilton's remarks. Krolak tr. 52,509-10. At some time in the drafting process, Krolak said Williams became upset with the criticism and told Hamilton and some other inspectors "write it the way I want it . . . or you'll all go out the gate" (Krolak tr. 52,511).

111. Despite Krolak's "IR story," Williams was never asked, nor did he have the authority, to change the IR form. In fact, the site IR form was adopted by the coatings department in October 1981, and it has been used by the department since that time. Brandt tr. 45,378. Krolak conceded he had no idea who was responsible for the final approval of the new inspection forms (Krolak tr. 52,551), and that only one IR form was used during his employment at the site (Krolak tr. 52,501).

112. Krolak himself said that the IR form used by the coatings group was a good form and contained blanks for locating the area of the inspection:

> Q Once the new inspection report form came out, did it accomplish its purpose? Did it work reasonably well?

A Yes.

Q And the inspection report form that came out did have on it blanks to fill in the evaluation and the azimuth?

A Yes.

Q The form, itself, once it finally came out did its job; did it not?

A Yes.

Krolak tr. 52,551-52.

113. The Board finds no evidence that Krolak was harassed, intimidated, or threatened during the "IR incident." Hamilton, who was present when Williams allegedly made the threatening statement, never mentioned the incident. Similarly, in his deposition taken July 1, 1982, Krolak discussed Williams trying to change the IR form, but he did not mention the remarks Williams allegedly made to the inspectors. Krolak Depo. 65-66. Even assuming this incident occurred, the Board finds insufficient evidence to establish that anyone was harassed, intimidated, or threatened by what happened.

C. Witness F

114. By Order of the Atomic Safety and Licensing Board, these proposed findings regarding Witness F and his allegations have been separately bound and paginated for in camera filing.

D. Sue Ann Neumeyer

1. The Liner Plate Traveler

115. The spent fuel pool is used to store spent fuel. The transfer canal is used to transfer new fuel from the new fuel pool to the reactor vessel during fueling operations, and is also used to transport spent fuel from the reactor to the spent fuel pool during refueling operations (Brandt tr. 53,314-15).

116. The spent fuel pool and transfer canal are formed by stainless steel liner plates welded together. The welds are non-ASME. Although these welds are safety-related, they are not structural welds; their purpose is to form, with the plates themselves, a continuous liner to prevent irradiated water from seeping out of the liner into the surrounding concrete. The liner plate and associated welds are designed, literally, to hold water (Brandt tr. 45,315-316).

117. The design specification for welds on the spent fuel pool and transfer canal liner plates requires only that the welds be made, that they be smooth enough to allow decontamination, that they be liquid penetrant tested to give some assurance that

the weld surfaces are smooth enough to allow decontamination, and that they be vacuum box tested to assure that they are water tight (Brandt tr. 45,316).

118. The liner plate welds in no way affect either the operation of the nuclear reactors or the safe shutdown of the nuclear reactors (Brandt tr. 45, 316).

119. Some time during the first calendar quarter of 1983, C.C. Randall, a non-ASME QC supervisor, brought a box of documents to C. Thomas Brandt, then the non-ASME QA/QC supervisor. The documents consisted of travelers for the Unit 2 stainless steel liner plate. Some of these travelers were incomplete in that fit-up and cleanliness hold points had not been signed by a QC inspector at the time the inspection was performed (Brandt tr. 45,317-318).

120. At the time that the liner plates were welded, there was no distinction in the QA organization between ASME and non-ASME functions or personnel. When Randall brought the documents to Brandt, however, the ASME and non-ASME functions had been separated within the QA organization. Because the inspectors who had worked on the liner plate were, at the time, in the ASME organization, Brandt instructed Randall to work with John T. Blixt, the ASME Quality Engineering Supervisor, and Jim Ragan, then ASME night shift QC supervisor, to resolve the problem (Brandt tr. 45,317-18).

121. Randall requested Blixt to work with him on the travelers (Blixt tr. 57,029). Randall and Blixt worked on the documents for three nights (Blixt tr. 57,020, 028). They principally addressed the problem posed by the missing hold points on the travelers (tr. 57,029). Randall and Blixt examined several options, then decided to review the records relating to the welds and, if there was documentation substantiating that the inspection for the traveler hold point had been performed, to have a QC inspector sign the traveler, date it, and show a "late entry" with an asterisk (tr. 57,030-31).

122. In general, a QC inspector may sign a hold point for an inspection performed by another inspector where documentation verifies that the inspection was originally performed (Siever tr. 58,014-16; see Woodyard tr. 56,510). With particular reference to the liner plate travelers, it was entirely appropriate for an inspector to verify that an inspection had been performed on the basis of NDE chits signed by another inspector and to sign the traveler hold point on that basis, provided that the inspector signing the traveler indicated "late entry" based on the chit, and attached the chit to the traveler (Brandt tr. 45,319). In this case the inspector's signature does not certify that the inspector performed the inspection, but verifies that another inspector had performed that task (Brandt tr. 45,319).

123. Blixt told Woodyard that he needed an inspector to work on the documents, and Woodyard assigned Sue Ann Neumeyer to the job (Blixt tr. 57,066-67).

124. The record is inconsistent regarding exactly who said what to whom regarding Neumeyer's assignment. Neumeyer, for example, contends that Woodyard played a major role in her allegation (e.g., Neumeyer tr. 59,518; 525). Blixt, on the other hand, did not tell Woodyard that he needed an inspector to work on liner plate travelers (tr. 57,066-67), and Woodyard doesn't remember anything about Neumeyer's work on the travelers (Woodyard tr. 56,561-62; 564-69). Neumeyer also remembered Robert Siever, QC group supervisor, as having participated in the event (Neumeyer tr. 59,516-17). Siever, however, testified that although he remembered Blixt working on the liner plate travelers (Siever tr. 58,051), he was not involved in the project (Siever tr. 58,052-53).[18]

125. Blixt showed Neumeyer the travelers and chits, and explained that the objective of the task was to substantiate the traveler hold point inspections with the chits, and to sign and date the traveler (Neumeyer tr. 59,518; Blixt tr. 57,033). Blixt instructed Neumeyer to show her hold point signatures as late entries (Blixt tr. 57,033), and explained that if supporting

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18 Siever did point out that his son, Mike Siever, worked with Blixt on the liner plate travellers (Siever Tr. 58,051). Perhaps Neumeyer's references to "Siever" in connection with this incident were intended to identify Mike Siever, but it cannot be ascertained on this record.

documentation was not available for a traveler, she should write an NCR (Blixt tr. 57,033). In addition, Randall, the non-ASME QC supervisor, referred Neumeyer to a procedure, which she now thinks he would have shown her although she can't remember for sure, and advised her to reference the procedure in connection with her late entries (Neumeyer tr. 59,773-75).

126. The travelers and chits with which Neumeyer worked corresponded by drawing number, by weld number, and by type of activity (i.e., "plate to plate," "embed to plate," etc.) (Neumeyer exs. 17-26, pp. 2). The travelers and chits also showed Weld Material Requisition (WMR) numbers, which corresponded to the WMR numbers given for the "first fit" (or, in some cases, "FF") for each traveler.

127. Neumeyer signed only the first hold point, for fit up and cleanliness, on each of 32 travelers. She wrote "SAT" for result, signed and dated, asterisked the hold point, and at the bottom of the traveler indicated late entry, identified a procedure, and referenced the NDE chit corresponding to the fit up and cleanliness hold point (Neumeyer exs. 17-26).

128. Neumeyer was not happy with her traveler assignment. First, she couldn't understand why she was asked to sign hold points based on inspections that were performed by another inspector (Neumeyer tr. 59,524). As QC supervisors explained to her, however, the NDE chits documented that the inspection had been performed (Neumeyer tr. 59,524; Blixt tr. 57,033), and on

that basis a QC inspector may sign a late entry based on the documentation. Neumeyer did so (Neumeyer exs. 17-26), which is an entirely appropriate verification activity (Brandt tr. 45,319).

129. Neumeyer also claims that the NDE chits did not match the travelers (Neumeyer tr. 59,526). In every case, however, the fit up and cleanliness hold points on the traveler that Neumeyer signed matches the accompanying chit as to drawing number, weld number, activity, and WMR number (Neumeyer exs. 17-26).

130. Finally, Neumeyer was unhappy because, she now states, she was instructed to finish her work on the travelers if it took three days to do it (Neumeyer tr. 59,529). Neumeyer undertook this work on the night before a three-day weekend (Neumeyer tr. 59,533). It was to be the first three days off that Neumeyer had had in some time (id.). She had plans to leave the area for the weekend (Neumeyer tr. 59,700), and in fact did so (id.). Neumeyer had been working substantial hours prior to the night she worked on the travelers (Neumeyer tr. 59,533; 770-71), and as she described her mental condition that night, "I was about to go up the walls" (Neumeyer tr. 59,777).

131. In fact, however, Neumeyer was not simply asked to work with the travelers on a single night, March 3. Neumeyer began working on the travelers and chits two days earlier, on Tuesday, March 1, as the dates next to her signature on several travelers plainly show (Neumeyer exs. 22, 23, 26). The travelers

on which Neumeyer worked on March 1 are easily distinguishable from those on which she worked on March 3; Neumeyer affixed her signature and the date ("3/3/83") underneath the "late entry" notation at the bottom of each traveler that she signed on that day (e.g., Neumeyer exs. 17, 13, 19, 24). As to the travelers on which Neumeyer worked two days earlier, however, Neumeyer did not sign or date the "late entry" notation (Neumeyer exs. 22, 23, 26).

132. Neumeyer believes that she only worked on the liner plate travelers on a single night (Neumeyer tr. 59,636-37; 672), but the travelers themselves reflect otherwise. Neumeyer's recollection of the dates on which she worked on the travelers is, in any event, vague. Neumeyer testified that she has "never been sure" of the month that she performed this work (Neumeyer tr. 59,635-636). Presented with her sworn statement dated March, 1984, in which she stated that the traveler work took place in June, 1983, she still maintained that she was not sure of the date (Neumeyer tr. 59,636). She was firm, however, that the time period was late spring or early summer (Neumeyer tr. 59,639). Early March, of course -- when she actually performed the work -- is neither late spring nor early summer.

133. Neumeyer alleges that when she returned to work following her three days off, someone told her that there had been a meeting that morning at which Larry Wilkerson stated that the chits did not correspond to the traveler hold points, and

that there had been a discussion of firing Neumeyer for falsification of documentation (Neumeyer tr. 59,534). Neumeyer's statement of what someone told her about what other people had said is hearsay within hearsay, and as such is inherently unreliable. In this case, moreover, Neumeyer cannot remember the name of the person who made the statement (tr. 59,534; 704), whether that person was a man or a woman (tr. 59,704-05), whether that person was a supervisor (tr. 59,705), or even whether that person attended the meeting in question (tr. 59,705). Neumeyer thus acknowledges that she has no basis for knowing whether what she was told was or was not true (tr. 59,705). In fact, it developed that Neumeyer may have incorrectly related the substance of the hearsay (tr. 59,705-06):

> Q. Could you, to the extent you recall, repeat the nature of the problem that this individual told you had developed at the meeting?
>
> A. That the chits were not for the -- for what I had been asked to sign off for, that Larry had told them they were for something else.
>
> Q. As you recall what you were told, Mr. Wilkerson was at the meeting; is that correct?
>
> A. I wasn't told Mr. Wilkerson was at the meeting. I was just told what happened.
>
> Q. Well, were you told that Mr. Wilkerson said something at the meeting?

A. No.

Q. Well, if that is so, then how could this person have known that Larry Wilkerson said that the chits were for something else?

A. I don't know.

Q. Did you ever discuss this matter with Mr. Wilkerson?

A. No.

134. A few days later, Neumeyer's supervisor, Jim Ragan, asked her to describe her work on the travelers (Neumeyer tr. 59,534-035). Ragan did not indicate that he intended to discipline Neumeyer in any way (tr. 59,706), and that was the last time that she discussed the travelers with Ragan, Blixt, Woodyard, Siever (tr. 59,707) or any other supervisor (tr. 59,708). Neumeyer was not disciplined in any way regarding this matter (tr. 59,706-07), nor should she have been, for her late entries based on backup documentation was entirely appropriate (Brandt tr. 45,319). Indeed, Neumeyer told Meddie Gregory, a document reviewer, that Ragan had assured Neumeyer that she would retain her job (Gregory tr. 54,690).

135. Neumeyer remained on the job for almost a year before resigning her employment (Woodyard ex. 1).

2. The Neumeyer NCR

136. On Friday, January 13, 1984, Gene Everson, a Piping Superintendent, ordered Alan Justice, a Piping General Foreman, to complete all work on Auxiliary Feedwater System line AF-1-SB-007 by the next day, Saturday, January 14 (Justice tr. 5-6). One

item of work to be completed on the system was the replacement of valve 1AF-067 (Justice tr. 5; see Simpson ex. 1). Justice assigned this valve replacement to one of his foreman, Ronald McBee (Justice tr. 6; see McBee tr. 5-6).

137. At that time, Saturday was not a normal workday for welding crews under McBee's supervision (Justice tr. 7; McBee tr. 6; Simpson tr. 12). McBee asked Jackie Ables, a welder, and Richard Simpson, a pipefitter, to report for work on Saturday to work on replacing valve 1AF-067 (McBee tr. 5-6; Simpson tr. 12-13). McBee also asked Justice to request that a QC inspector report for work on Saturday in connection with this job (McBee tr. 6). Justice did so (Justice tr. 7). Saturday was not a normal workday for QC inspectors at that time (Stanford tr. 57,514).

138. The valve replacement involved three welds: one each on either side of the valve, Field Welds 39C and 40C, about two feet apart; and a third weld, Weld 34A, approximately six inches to the east of FW 39C (Simpson tr. 6-7 and ex. 1; McBee tr. 6-7; Justice tr. 5).

139. On Friday the 13th, Simpson prepared Weld 34A for cleanliness QC inspection (Simpson tr. 9); Jack Stanford, a Level II QC inspector, found the cleanliness satisfactory (Simpson tr. 10), and signed the appropriate Weld Data Card hold point signifying QC approval (Simpson ex. 2). Simpson then began fitting up Weld 34A with the help of his welder, Ables (Simpson

tr. 10). When they had fit up the weld, they called for QC inspection of fit-up and preheat (id.). Laurel Yates, another Level II QC inspector, approved fit-up and preheat, and signed the Weld Data Card QC hold points for those items (Simpson tr. 10-11 and ex. 2). Ables completed welding 35 per cent of Weld 34A before the end of work on Friday the 13th (Simpson tr. 11-12 and ex. 3; McBee tr. 7).

140. Simpson, Ables, McBee and Justice reported for work at 7:00 a.m. on Saturday, January 14 (Brown tr. 12-14 and exs. 3, 4, 6, 7). Jack Stanford, the QC inspector, also reported at 7:00 a.m. that day (Brown tr. 11 and ex. 2). Stanford had been called in specifically to inspect work done by McBee's crew on the auxiliary feedwater system (Simpson tr. 17; Justice tr. 8; Stanford tr. 57,514-515).

141. Saturday morning, Simpson began preparing Field Welds 39C and 40C, which were on either end of the valve, for cleanliness inspection (Simpson tr. 13-14). When ready, he presented both welds to Stanford for inspection at the same time. Stanford had to inspect both welds for cleanliness at the same time, because after the valve was fit up, a cleanliness inspection could no longer be performed (Simpson tr. 14). Stanford approved the cleanliness of both welds (Simpson tr. 15; see Stanford tr. 57,515), and signed the Weld Data Card hold

points (Simpson tr. 15 and exs. 4, 5). Simpson and his welder could not proceed with their work on the valve until the cleanliness hold points had been signed (Simpson tr. 15).

142. After the cleanliness inspection, Simpson and Ables began fitting up the valve (Simpson tr. 15). As part of the process, they tack welded the valve into place (id.), and then requested a QC inspection (Simpson tr. 16). Stanford inspected the fit-up of both welds and, as is normal in such cases, inspected the weld joints for preheat as well (Simpson tr. 16; Stanford tr. 57,515-516). Stanford approved fit-up and preheat for Field Welds 39C and 40C and signed the appropriate hold points on the Weld Data Cards (Simpson tr. 16 and exs. 4, 5; McBee tr. 7). Ables commenced welding some time between late Saturday morning and early Saturday afternoon (Simpson tr. 17; McBee tr. 8; Justice tr. 8).

143. By noon Saturday, Justice was concerned that his crew was not making satisfactory progress on the valve operation. His concern reached a turning point at about 3:30 in the afternoon, when he met with McBee and Stanford (Justice tr. 8-9; Stanford tr. 57,516). After discussion, Justice concluded that weld operations would not be finished for many hours, and decided to let Stanford go home, despite Stanford's willingness to stay (Justice tr. 9; McBee tr. 8; Stanford tr. 57,516). Justice's decision was difficult, for it amounted to an admission to

himself that he would not complete his task on schedule (Justice tr. 9-10). Stanford left work at 3:30 p.m. (Stanford tr. 57,516; Justice tr. 9; McBee tr. 8; Brown tr. 11 and ex. 2).

144. Welding on Weld 34A and Field Welds 39C and 40C continued throughout Saturday afternoon and into Saturday night (Simpson tr. 17-18; Justice tr. 10; McBee tr. 8). At some point, Justice and McBee assigned another welder, Danny Wright, to help Ables complete the welding (Justice tr. 10; McBee tr. 6; Simpson tr. 18; Wright tr. 4-5). Simpson remained on the job to help out (Simpson tr. 18), and McBee and Justice actively supervised the operation.

145. Ables and Wright completed welding the three welds about midnight Saturday (Wright tr. 5; Justice tr. 10; McBee tr. 8-9). They commenced "prepping" the welds, a standard process designed to make the welds presentable for QC non-destructive examinations (NDE) (Wright tr. 5; Justice tr. 10-11; McBee tr. 9; Simpson tr. 22-23). At one point, Justice sent Simpson, Wright and McBee home (Justice tr. 12); they all clocked out at 1:30 a.m. Sunday morning, January 15 (Simpson tr. 22; Wright tr. 5; McBee tr. 8; Brown tr. 12-13 and exs. 4, 5, 7). That was the longest day that Simpson and McBee had ever worked for Brown & Root (Simpson tr. 23; McBee tr. 5).

146. Ables and Justice continued prepping the welds until they completed the process at 2:15 a.m. (Justice tr. 11). Justice then hand-carried three requests for radiographic test

(RT) (McBee exs. 1, 2, 3), one for each weld, to the RT trailer (Justice tr. 13-14). Justice left the forms, which McBee had prepared on Saturday (McBee tr. 10-12), where RT personnel would be sure to see them (Justice tr. 13). RT crews worked Sunday nights during that period, and Justice wanted radiographs taken before Monday, if possible (Justice tr. 12).

147. Justice and Ables left work at 2:30 a.m. Sunday, January 15 (Justice tr. 14; Brown tr. 14-15 and exs. 3, 6). At no time on Saturday or early Sunday did Justice or any of his crew members present Weld 34A or Field Welds 39C or 40C for final visual or penetrant QC inspections (Justice tr. 12; Wright tr. 6; McBee tr. 9; Simpson tr. 23). The welds were not completed on Saturday the 14th, and by the time prepping was completed in the early morning of the 15th, there were no QC inspectors available to perform these tests (Justice tr. 16-17; McBee tr. 9-10; Simpson tr. 33-34).

148. The ASME code classifies the auxiliary feedwater system, of which line AF-1-SB-007 is a part, as a class III system (Siever tr. 58,093). The ASME code does not require that welds on class III systems be radiographically tested, but only that such welds receive surface examination, such as visual tests (VT) or liquid penetrant tests (PT) (id.). Applicants have committed, over and above code requirements, to perform radiography on all piping welds on the auxiliary feedwater and component cooling systems (Siever tr. 58,093-094). These RTs are

designated "information" radiographs, and the weld data cards for such welds do not include separate QC hold points (id.). Nonetheless, the film from these RTs is reviewed by level II QC radiographers (Siever tr. 58,093) and by ANI (Purdy ex. 16 at 3).

149. McBee reported for work at 6:30 a.m. Monday, January 16, and learned that, while the RT's for Weld 34A and Field Weld 39C had been accepted, the RT for FW 40C had been rejected (McBee tr. 12 and exs. 1, 2, 3). McBee waited until Welding Engineering opened for business at 7:00 a.m., then carried the rejected RT form over and requested James Zwahr to prepare a Repair Process Sheet (RPS), so that McBee's crew could repair FW 40C (McBee tr. 13).

150. Simpson, in the meantime, reported for work Monday morning and learned that Weld 34A and FW 39C had satisfactory RT results (Simpson tr. 24). Simpson requested a visual test (VT) and a penetrant test (PT) by QC inspectors for these welds by writing his request on the callboard sheet used for that purpose (Simpson tr. 25 and ex. 8). Stanford and Robert Duncan performed these inspections (Simpson tr. 26; Duncan tr. 5, 7). At the time, Duncan was training for his Level II certification in PT, for which he needed 175 hours of PT under the supervision of a Level II such as Stanford (Duncan tr. 8-9; Stanford tr. 57,517 .

151. Stanford and Duncan determined that the VT and PT for each weld were satisfactory (Duncan tr. 5, 7 and exs. 1, 3). Duncan signed the Weld Data Card QC hold points for the visual

tests, and Stanford signed the QC hold points for the penetrant tests (id; Simpson tr. 26). Duncan also signed and dated an "NDE chit" for each weld (Duncan tr. 6-8 and exs. 2, 4). These chits are forms used by craftsmen to show that final NDE's for a weld have been completed (Duncan tr. 6; Simpson tr. 30-31; McBee tr. 16). Simpson, who prepared the NDE chits for Weld 34A and FW39C (Simpson tr. 31-32), uses the chits to report completion of welds to his foreman, McBee (Simpson tr. 30-31).

152. As a foreman, McBee fills out a daily progress report to record the work performed by his crews (McBee tr. 14-15). On Monday, January 16, McBee reported that Weld 34A and Field Weld 40C were 100 per cent complete, and referenced the NDE chits prepared by Simpson and signed by Duncan (McBee tr. 15-16 and ex. 5). McBee reported no progress on Field Weld 40C (McBee ex. 5).

153. When James Zwahr, of Welding Engineering, received the RT reject (Zwahr/Wilterding tr. 8) and McBee's request that he prepare an RPS, he collected the isometric drawing for the relevant AF system and the Weld Data Card for Field Weld 40C (Zwahr/Wilterding tr. 9). The Weld Data Card is a preprinted form, with the WDC on one side and the RPS on the other (Zwahr/Wilterding tr. 8-9). Zwahr recorded the relevant information from the RT reject on the RPS (Zwahr/Wilterding tr. 7). He then determined that the repair on FW 40C should be designated an "inprocess repair" (Zwahr/Wilterding tr. 10), which procedures define as a repair undertaken before final code-

required NDE examinations have been performed (Zwahr/Wilterding tr. 10, 12 and ex. 4). Zwahr based his decision on the fact that the VT (Step 5) and PT (Step 6) QC hold points on the Weld Data Card for FW 40C had not yet been signed (Zwahr/Wilterding tr. 10). Accordingly, Zwahr designated each step in the repair cycle as a subset of Step 4, that is, "4A", "4B", "4C", and so on, until the repair was completed (Zwahr/Wilterding 10-11 and ex. 1). At that point, Zwahr specified "return to step 5 of WDC," to indicate that when the repair was complete, the weld would be ready for step 5 (final VT) (Zwahr/Wilterding tr. 11 and ex. 1).

154. Daniel Wilterding reviewed Zwahr's RPS (Zwahr/Wilterding tr. 8) . Wilterding specifically reviewed the WDC on the other side of the RPS to assure that Zwahr had properly designated the repair as "in process" (Zwahr/Wilterding tr. 13-14). Wilterding approved Zwahr's RPS; he would not have done so had steps 5 or 6 of the WDC already been signed (Zwahr/Wilterding tr. 14).

155. Simpson and Ables, under supervision by McBee and Justice, repaired FW 40C Monday afternoon, January 16 (Simpson tr. 24; McBee tr. 13; Justice tr. 14-15). They concluded the repair that evening (id.). As it happened, an RT crew was working in the immediate vicinity of FW 40C when the repair was completed, and Justice gave the RT personnel another form requesting an RT of the weld (Justice tr. 16; McBee tr. 14),

which McBee had prepared earlier that day (Justice tr. 15; McBee tr. 14 and ex. 4). The craftsmen did not request any other NDE on Monday (McBee tr. 14; Justice tr. 16; Simpson tr. 28-29).

156. On Tuesday morning, January 17, McBee learned that the second RT on FW 40C had been accepted (McBee tr. 17-18 and ex. 4). Simpson requested final VT and PT inspections of the weld, again by entering the request on the callboard (Simpson tr. 29-30 and ex. 10; Stanford tr. 57,517; Duncan tr. 8-9). Stanford and Duncan also performed these inspections, with Duncan performing the penetrant test under Stanford's supervision (Stanford tr. 57,517; Duncan tr. 9).

157. Depending on the inspection, a penetrant test can take from 30 minutes to an hour (Duncan tr. 9). While Stanford and Duncan awaited final examination of the penetrant, Stanford climbed down off the scaffolding to the floor, about 10 feet below (Stanford tr. 57,517; Duncan tr. 9). Duncan reported to Stanford that the PT showed no negative indications, and asked Stanford if he wanted to look (Duncan tr. 9-10). Stanford declined, and instructed Duncan to clean up (Stanford tr. 57,517; Duncan tr. 9-10).

158. Stanford signed the Weld Data Card hold points for VT and PT (Stanford tr. 57,517; Duncan tr. 9). When Stanford dated the hold point, he inadvertently put "1/14/84," due to the fact that he was signing and dating hold points immediately under the fit up and preheat hold points that he had signed and dated on

January 14 (Stanford tr. 57,517). Stanford cursed, and explained his error to Duncan, who was still up on the scaffolding (Stanford tr. 57,517; Duncan tr. 10). As prescribed by procedures, Stanford corrected his error by crossing out the "14" next to his signature for hold points 5 and 6, entering the correct date, the 17th, initialling the corrections, and entering the date on which he made the corrections (Stanford tr. 57,517 and ex. 1; Duncan tr. 10).

159. When the inspections were completed, Duncan signed and dated an NDE chit for FW 40C (Duncan tr. 10-11 and ex. 5), which Simpson had prepared (Simpson tr. 32-33).

160. In his daily progress report for Tuesday, January 17, McBee reported that FW 40C was 100 percent complete, referencing the NDE chit that Duncan had signed (McBee tr. 18 and exs. 8, 9).

161. On Wednesday, January 18, McBee signed a Startup Work Authorization, signifying that all work in connection with the replacement of Valve 1AF-067 was complete (McBee tr. 19-20 and ex. 10).

162. A week later Sue Ann Neumeyer, a document reviewer in the ASME QA organization, received for review a package of documents relating to Field Weld 40C, including the Weld Data Card, the RPS, the Weld Filler material log, McBee's request for RT dated January 14, and two RT reports, one dated January 15 (rejecting the weld), and the other dated January 16 (accepting the weld) (Neumeyer tr. 59,559-560 and exs. 3, 4, 7, 8, 9, 10).

163. Neumeyer reviewed the Weld Data Card to assure that all QC hold points had been properly signed (Neumeyer tr. 59,562-564). When Neumeyer looked at hold points 5 and 6, the VT and PT inspections, she could not understand why Stanford had lined out the "14" and corrected it to "17" as the date of his inspection (Neumeyer tr. 59,564). Neumeyer then reviewed other documents in the package. When she discovered the McBee request for RT, the two RT reports, and the RPS (id.), Neumeyer became suspicious that something was amiss, based in part on her erroneous assumption that Stanford, who signed the hold points, had actually performed the VT and PT inspections on January 14, and had changed the date later (Neumeyer tr. 59,566).

164. Neumeyer was solicitous of Stanford, because she believed that he was not too bright (Neumeyer tr. 59,793, 59,824). She had adopted a protective attitude toward Stanford, and in this spirit asked Stanford in to discuss the Weld Data Card (Neumeyer tr. 59,580, 59,590).

165. Neumeyer showed Stanford the Weld Data Card and questioned him about it (Neumeyer tr. 59,580; Stanford tr. 57,518). Although Stanford acknowledged his signature on the WDC, he could not remember the inspection or the reason for the corrected dates (Stanford tr. 57,518-519); indeed, he would not remember performing the inspection until several days later (Stanford tr. 57,552). Stanford could not, however, understand

why the WDC was causing Neumeyer difficulty (Stanford tr. 57,519). Indeed, Neumeyer recalled Stanford questioning why she had written an NCR, several days later (Neumeyer tr. 59,593).

166. Neumeyer, on the other hand, came away from her conversation with Stanford believing that she had confirmed a full-blown conspiracy, although the details of her theory remain spotty. First, Neumeyer assumed that Stanford had, in fact, performed the final VT and PT on Field Weld 40C on Saturday, January 14 (Neumeyer tr. 59,580). Second, she theorized, Welding Engineering had erred by failing to specify additional hold points in the RPS, which they should have done, given Neumeyer's conclusion that Stanford had already performed the VT and PT inspections (Neumeyer tr. 59,791-792). Finally, Neumeyer speculated, someone instructed Stanford to change the dates of his VT and PT inspections three days later. Neumeyer is vague about who this someone was: it was either Stanford's lead (Neumeyer tr. 59,580; 59,788), or a craftsman (Neumeyer tr. 59,580, 59,748), or someone in Welding Engineering (Neumeyer tr. 59,793-794).

167. Although Neumeyer had concluded, in her own mind, that Stanford had falsified an inspection document, she excused his behavior (as she imagined it), perhaps because she perceived Stanford to be a "a victim" (Neumeyer tr. 59,749), or perhaps because she herself had signed and dated inspection documents at

times other than the time she actually performed the inspection (Neumeyer tr. 59,808). Neumeyer placed the blame on Welding Engineering (Neumeyer tr. 59,792-793).

168. Neumeyer took the Weld Data Card and other documents relating to FW 40C to her supervisor, Dwight Woodyard (Neumeyer tr. 59,581; Woodyard tr. 56,569). When she had explained her concern with the apparent discrepancy in dates, Woodyard advised Neumeyer to write an NCR (Neumeyer tr. 59,581-82; Woodyard tr. 59,569-570; Barnes tr. 59,008).

169. Neumeyer wrote the NCR on January 24 (Neumeyer tr. 59,583; Stanford ex. 4). The NCR identified as a nonforming condition the fact that because it appeared that final NDE hold points had already been signed at the time the RPS was issued on January 16, Welding Engineering should have established additional QC hold points (Stanford ex. 4; Neumeyer tr. 59,780).

170. Robert Siever, ASME QC group supervisor, supervised both Neumeyer and Stanford. When Siever saw Neumeyer's NCR, he asked Woodyard to show him the backup documentation (Siever tr. 58,063). After reviewing the documents, Siever convened a meeting in his office with Stanford, Neumeyer, Woodyard, John T. Blixt, ASME Quality Engineering group supervisor, Terry Matheny, Stanford's Lead QC inspector, and perhaps others (Siever tr. 58,066, 58,069; Woodyard tr. 56,571; Stanford tr. 57,521; Blixt tr. 57,048).

171. Siever does not tolerate falsification of documents by QC inspectors subject to his supervision, and has fired one inspector for such an act (Siever tr. 58,072-073). Siever's review of Neumeyer's NCR and the FW 40C Weld Data Card aroused Siever's concern that Stanford, instead of simply correcting errors per procedure, had falsified the dates (Siever tr. 58,073). Based on this concern, Siever questioned Stanford at the meeting regarding the corrected dates on the Weld Data Card (Siever tr. 58,074). Blixt also questioned Stanford on the lined-out dates, and became irritated when Stanford appeared unresponsive (Blixt tr. 57,069).

172. Until Stanford attended the meeting in Siever's office, he was not particularly concerned that his conduct was to be questioned (Stanford tr. 57,551). Neumeyer had told him that she wasn't writing the NCR against Stanford, but against Welding Engineering (Neumeyer tr. 59,592; Stanford tr. 57,520). At the meeting, Stanford was given the Weld Data Card (Stanford tr. 57,541). When Siever and Blixt began questioning him and showing irritation, he became concerned, partly because he couldn't see what the problem was (Stanford tr. 57,571-572), and partly because he couldn't remember the inspection to which his signature on hold points 5 and 6 related (Stanford tr. 57,546, 57,552). His responses to Siever and Blixt were, for those reasons, incomplete, and did not resolve the matter (Siever, tr. 58,074-075).

173. The meeting ended with Siever instructing Stanford to provide additional documentation that the VT and PT inspections of FW 40C had been performed on January 17, and not the 14th (Siever tr. 58,071, 075).

174. Stanford, wanting to get clear in his own mind the inspection to which the WDC related, sought out McBee to see whether McBee could aid his recollection (Stanford tr. 57,553; McBee tr. 20-21). McBee and Simpson, who was also present, remembered FW 40C vividly, because their work on that weld and the others associated with the valve replacement on Saturday, January 14, took place on the longest day either of them had ever worked for Brown & Root (McBee tr. 20-21; Stanford tr. 57,553). At that point, Stanford remembered working on Saturday, January 14, and going home at 3:30 p.m. because the welds would not be completed for many hours (Stanford tr. 57,553). Stanford also then remembered that Duncan had been with him when he performed the VT and PT on FW 40C on the 17th (id.).

175. Stanford returned to Siever's office to relate the facts (Stanford tr. 57,554). Siever spoke with Duncan (Duncan tr. 13-14; Stanford tr. 57,554). When Siever heard Duncan's confirmation of the VT and PT inspections on the 17th, he had Matheny prepare a statement for Stanford and Duncan to sign (Siever tr. 58,076-077). Siever also made inquiries to satisfy himself that Duncan was not protecting Stanford (Siever tr. 58,078-079).

176. After Stanford and Duncan signed the statement, and after, at Siever's request, Stanford added a notation to the Weld Data Card indicating that he had dated the hold point in error (Siever tr. 58,077-078; Simpson ex. 5), Siever voided the NCR (Siever tr. 58,080 and ex. 3).

177. Neumeyer did not witness Stanford perform any of his inspections on Field Weld 40C (Neumeyer tr. 59,739-40). Neumeyer did not witness Stanford sign any of the hold points on the Weld Data Card for FW 40C (Neumeyer tr. 59,740). Neumeyer did not see the WDC at the time Welding Engineering prepared the Repair Process Sheet, and she did not witness the preparation of the RPS (Neumeyer tr. 59,739). Neumeyer first saw the WDC when it reached her for review, at which time Stanford had already corrected his error in dates (Neumeyer tr. 59,739). Neumeyer did not witness Stanford sign the visual examination check list (Neumeyer tr. 59,740; see Stanford ex. 2). Neumeyer bases her perception that Welding Engineering "had make this mistake" and had "attempted to cover up their mistake by using" Stanford (Neumeyer tr. 59,798) exclusively on what she says Stanford said when she first spoke with him (e.g., Neumeyer tr. 59,580, 738-40, 779). Applicants repeatedly objected to Neumeyer's hearsay testimony (e.g., Neumeyer tr. 59,579, 786, 788). Intervenors represented that they did not elicit Neumeyer's testimony for the truth of what Stanford told her (e.g., Neumeyer tr. 59,579).

There is thus no evidence in this record to support the notion that Stanford performed VT or PT inspections on FW 40C on January 14. Indeed, all of the evidence is to the contrary.

178. One of the most common errors that Neumeyer encountered in her duties as a document reviewer was errors in dates on inspection documents (Neumeyer tr. 59,813). To correct a mistake on an inspection document, the inspector should line through the error, add the correct information, initial the correction, and date the correction (Siever tr. 58,120, Stanford tr. 57,555-56). Neumeyer herself has made such corrections numerous times (e.g., Neumeyer exs. 17, 18, 19, 27, 28, 30).

179. Despite the fact that line-throughs of errors are common in inspection documents, Neumeyer's supervisors responded positively and promptly to her identification of the discrepancy on the Weld Data Card for FW 40C. When Neumeyer explained the situation to her immediate supervisor, Woodyard, he advised her to write an NCR (Neumeyer tr. 59,581; Woodyard tr. 59,569-70; Barnes tr. 59,008). As to whether Neumeyer should have been concerned about the Weld Data Card discrepancies, Woodyard commented, "Of course she should. That's her job" (Woodyard tr. 56,569). When Neumeyer's NCR showed up on Blixt's printout of open items, he promptly raised the item with Siever (Blixt tr. 57,048-49). Blixt, too, believes that Neumeyer "did what she was supposed to do" in writing the NCR (Blixt tr. 57,069). When Siever learned of the NCR, he readily asked for the backup

documentation (Siever tr. 58,063). Not satisfied with what he saw, Siever expeditiously convened a meeting to address the discrepancies (Siever tr. 58,066). The purpose of the meeting was, in Siever's words (id.):

> I said we're going to have a meeting. Get Jack Stanford. Let's get everybody together, and we're going to discuss this situation. I want to find out what happened.

180. Neumeyer was asked to attend the meeting simply because she wrote the NCR. If Blixt and Siever were upset with anyone, they were upset with Stanford. Blixt raised his voice to Stanford (Blixt tr. 57,069); if he had a problem, it was with Stanford, not Neumeyer (id.). Stanford certainly perceived that Siever was upset with him and that he was in trouble as a result (Stanford tr. 57,571-72, 575). Stanford doesn't even remember that Neumeyer attended the meeting (Stanford tr. 57,521, 573).

181. At the conclusion of the meeting, Siever specifically asked Neumeyer if she was satisfied with the outcome (Neumeyer tr. 59,598; Siever tr. 58,073-74), and she expressed no dissatisfaction or objection (Neumeyer tr. 59,598; Siever tr. 58,073-74). Woodyard, her immediate supervisor, made a special point of asking Neumeyer, a second time, after the meeting, whether she was satisfied with the meeting (Woodyard tr. 56,548-49, 572-73, 601). As Woodyard understood it, Neumeyer expressed her satisfaction that she had identified a problem, and that the problem had been brought to the attention of the proper people (Woodyard tr. 56,549).

182. At some point, Neumeyer felt that she "was in trouble" due to writing the NCR (Neumeyer tr. 59,594), but nothing that anyone said to her indicated that she was. Indeed, on direct examination, Neumeyer did not "know how to explain" why she felt she was in trouble (Neumeyer tr. 59,595). In any event, Neumeyer visited Boyce Grier, the site ombudsman, told Grier that she had written the NCR, and that she was afraid she was in trouble for writing it (Neumeyer tr. 59,591). Grier discussed the matter with Gordon Purdy, who assured Grier that "in no way, shape or form was Sue Ann doing anything other than exactly what she was supposed to do and there was definitely nothing relative to her job that was in any danger at all" (Purdy tr. 41,160; Grier tr. 45,611). Grier communicated this information to Neumeyer before lunch on the same day that she visited him (Grier tr. 45,611; Neumeyer tr. 59,591).

183. Neumeyer resigned her employment at Comanche Peak in February, 1984, by submitting notice to Woodyard (Woodyard ex. 1). Woodyard wished her luck (id.). Prior to leaving, Neumeyer visited Siever to tell him that she did not have back problems (Siever tr. 58,118), despite her statement to the NCR coordinator only a few weeks earlier that she "was restricted from going to the field due to a back injury" (Neumeyer tr. 59,723). Neumeyer did not raise the NCR with Siever (Siever tr. 58,119), although at that time she had already submitted her resignation (Siever tr. 59,118-119) and presumably was free to voice any concerns.

184. Neumeyer did not voice concrete concerns regarding the NCR or any other matter to any supervisor before she resigned. In her exit interview with Grier, she commented that Grier's office should be relocated to provide employees with greater confidentiality (Neumeyer tr. 59,758). In another exit interview, Neumeyer was asked to report any problems in the QA/QC program of which she was aware (Siever ex. 1). To the question:

> Are you aware of any problems in the implementation of the quality assurance/quality control program?

Neumeyer answered (id.):

> No comment @ this time.

To the question (id.):

> Are you aware of any defects in the design, manufacture, fabrication, placement, erection, installation, modification, inspection, or testing of safety related/nonsafety related components and/or structures?

Neumeyer answered (id.):

> No comment @ this time.

To the question (id.):

> Are you aware of any other matters related to the design, construction, or quality assurance program which should be brought to the attention of management?

Neumeyer answered (id.):

> No comment @ this time.

Upon leaving Neumeyer presented Purdy with an "Open Letter to CPSES Management and Brown & Root" (Purdy tr. 41,161; Siever ex. 8), in which she expressed a variety of philosophical opinions. Siever, who reviewed the letter after Neumeyer's departure,

agreed with much of what Neumeyer had to say (Siever tr. 58,115-17, 332). None of Neumeyer's statements referred to the Comanche Peak QA/QC organization, however, and none presented Siever with a problem which, as a manager, he could address with a view to corrective action (id.).

E. Meddie Gregory

185. From September, 1983, until she was laid off in July, 1984, the period to which her testimony principally relates, Meddie Gregory worked as a clerk in the ASME QC document review organization (Gregory tr. 54,575-578). Gregory transmitted piping packages to ANI and the permanent plant records vault, and kept track of where the packages were (Gregory tr. 54,508-509; 575-578). This was not a difficult job (Gregory tr. 54,576). Gregory was not a certified QC inspector and performed no field work and, although she received certification as a level II QC document reviewer in May, 1984, she continued her duties as a clerk until she left the site (Gregory tr. 54,579; 587-88).

1. "Loyalty to the Company"

186. Gregory Bennetzen, ASME QA/QC N-5 Supervisor, supervised Gregory and Linda Barnes, a document reviewer (Bennetzen tr. 4, 6). Gregory and Barnes shared the same office (Barnes tr. 59,044). Gregory recalls that one day Bennetzen walked through the office and "out of the clear blue" stated that "Those that are loyal to the company will stay and those who are not will hit the gate" (Gregory tr. 54,525). Bennetzen did

comment on loyalty on one occasion, but it was neither out of the clear blue nor did it involve hitting the gate. Bennetzen had just attended a meeting with two employees who had resigned without giving notice (Bennetzen tr. 10-11). While passing through the office, Barnes stopped him and asked why Bennetzen had placed Walter Trautschold in the position of reviewing hydrostatic test package documentation (Bennetzen tr. 10), a position just vacated by another employee, Kay Gilley, who was leaving (id.). Bennetzen responded to Barnes that, while Trautschold might take awhile to understand the program, in Bennetzen's judgment, Trautschold would do a very good job (id.). Barnes then offered her opinion that Trautschold couldn't handle the job (id.). Bennetzen further explained that management had made the decision regarding Trautschold's duties, and expressed his view that Trautschold was a loyal employee who reported to work every day, on time, and "in our group we definitely needed more employees like" Trautschold (id.).

187. Bennetzen grew up with Trautschold in Waco, Texas, and has known him for over 20 years (Bennetzen tr. 11). Bennetzen was close to Trautschold's family; Trautschold's older brother, now dead, was Bennetzen's best friend (id.). Five years ago, Trautschold suffered severe head injuries in a motorcycle crash (Bennetzen tr. 11-12.). In this context, Bennetzen's sensitivity to Barnes' criticism of Trautschold is apparent, and Bennetzen's comment regarding Trautschold's loyalty as an employee, and the

qualities that, in Bennetzen's view, make him so, are understandable. Bennetzen's comment does not represent harassment, intimidation, or a threat, and Gregory's testimony in this regard is not relevant to this proceeding.

2. "40 ISO's Per Week"

188. Bennetzen's N-5 group prepares N-5 Code Data Reports. (Bennetzen tr. 5-6). The report covers all materials, components and processes relevant to an isometric drawing (ISO), which depicts a piping system (Bennetzen tr. 5). In preparing the report, the N-5 reviewer must, among other thing, check for NCRs against the ISO, make sure that all travelers relating to the piping system have been reviewed by the QA organization and the ANI, and ensure that all relevant hydrostatic testing documentation is included in the package (Bennetzen tr. 6). When these tasks are completed, the document reviewer prepares the N-5 Code Data Report, which undergoes several reviews by leads and by Bennetzen himself (id.). If all is well, Bennetzen has the report transmitted to A I for review and approval (id.). Because each N-5 report relates to a single isometric drawing, the report itself is commonly referred to as an "ISO" (see Gregory, tr. 54,522; Purdy tr. 41,323-324).

189. Gregory testified that in June, 1984, Bennetzen implemented several measures to promote more expeditious processing of N-5 code data reports, or ISOs, by his N-5 group, and established a goal of 40 ISOs a week for the group (Gregory

tr. 54,522, 640-641). These measures did not amount to harassment, intimidation, or threats. For one thing, Gregory never saw any QC person who was being pressured to not carry out what they perceived to be their job responsibilities (Gregory tr. 54,510). For another, Gregory herself did not perform N-5 reviews (Gregory tr. 54,508-09; Bennetzen tr. 12), and had no problems herself in getting her job done (Gregory tr. 54,661). The very worst that Gregory can say is that Bennetzen's measure created a "tense atmosphere" (id.). On the whole, however, Gregory approved many of Bennetzen's changes, as further findings show.

190. Gordon Purdy, supervisor of the ASME QA organization, originated the analysis that yielded a goal of 40 N-5 code data reports per week (Purdy tr. 41,323). The preparation and completion of these reports is completely independent of construction schedules; the task is, essentially, an in-house ASME QA function involving review of documentation (id.). Purdy convened a meeting with his supervisors, including Bennetzen, and analyzed the number of ISO's remaining to be completed and the personnel resources available to do the job. Bennetzen calculated that, on average, an N-5 reviewer can complete a code data report in five or six hours (Bennetzen tr. 14). Purdy, more conservatively, believed that one ISO per day per reviewer was achievable (Purdy tr. 41,324); he and his supervisors had worked at that pace before (id.). Giving the approximately 20 N-5

document reviewers the benefit of the doubt, Purdy and Bennetzen settled on a goal of two ISO's per week per reviewer, for a total of 40 per week for the entire group (Purdy tr. 41,324; Bennetzen tr. 13-14).

191. The 40 ISO per week goal was not a quota (Bennetzen tr. 13). In Purdy's words, "It was something to shoot at. It was something to weigh our internal QA productivity against" (Purdy tr. 41,324). Both Purdy and Bennetzen explained the goal to the N-5 group (Purdy tr. 41,327; Bennetzen tr. 13-14). Purdy stated his belief that the goal was achievable if the work was performed properly and efficiently, but emphasized "first and foremost" that the work must be done right, whether they met the goal or not (Purdy tr. 41,327). After they explained the goal, the N-5 group produced 92 ISO's one week (Bennetzen tr. 14), and the group usually produced between 40 and 50 a week (Gregory tr. 54,630-631). Some weeks, however, the group did not meet the goal (Bennetzen tr. 14; Purdy tr. 41,325). Neither Purdy nor Bennetzen took any action against the group or any individual in the group when they did not reach the goal (Purdy tr. 41,325; Bennetzen tr. 15-16). Rather, they took several steps to enable the reviewers to work more efficiently.

192. First, Bennetzen assigned QC "runners" to the review group (Gregory tr. 133-134).[19] When a document reviewer

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[19] Counsel stipulated that pages 131 through 143 of Gregory's discovery deposition would be bound into the transcript of her evidentiary deposition, and treated as if she had testified.

(footnote continued)

encountered a problem, he or she could dispatch a runner with the documentation in question directly to the lead in the field, who would correct the error and send the documentation back with the runner (Gregory tr. 133). Gregory thought it was "a very good change"; "it was a big assistance" (Gregory tr. 134).

193. Second, Bennetzen had the reviewers enter problems with isometric packages into the computer's N-5 master data base (Gregory tr. 134-135; Bennetzen tr. 15). When the group implemented this program, they were able to identify the deficiencies with each package (Gregory tr. 134-135). As Gregory noted, the group could then show that although they ha only completed work on 30 ISOs in a given week, they had actually reviewed 40 more (for a total of 70), but that the 40 were deficient and could not be completed until the deficiencies were corrected (Gregory tr. 135; see Bennetzen tr. 15). Bennetzen explained to the group that they were not at fault for the deficiencies that kept them from completing the N-5 packages (Bennetzen tr. 15).

194. Third, Bennetzen had the document reviewers hand-carry completed N-5 packages to the ANI, rather than have them transmitted indirectly, as they had been (Gregory tr. 137-138). This procedure also helped to move things along more quickly (Gregory tr. 137-138).

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(footnote continued from previous page)
These pages appear between pages 56,640 and 56,641 of Gregory's evidentiary deposition transcript.

195. Fourth, Bennetzen arranged for a special room adjacent to the permanent plant records vault for use by the document reviewers (Gregory tr. 138-140; Purdy tr. 41,326). The reviewers needed to review vault documentation in connection with the N-5 review, and had experienced trouble getting what they needed from the vault prior to this change (Gregory tr. 138). This work area made it easier for the document reviewers to perform their duties (Gregory tr. 140); Gregory thought the change was good (id.).

196. Fifth, Bennetzen set up a similar room adjacent to the vault for use by the ANI in conducting its review of N-5 packages and associated documentation (Gregory tr. 140-142; Purdy tr. 41,326). This move also made the N-5 review process work more smoothly (Gregory tr. 141).

197. Sixth, Bennetzen assigned a clerk to assemble all of the documentation relevant to a given ISO out of the vault or the QA files and assemble the package for the N-5 reviewer (Gregory tr. 142-143). This measure saved time because the reviewers were relieved of the task of compiling these materials themselves (Gregory tr. 142). Gregory had no problem with this measure (Gregory tr. 143).

198. Purdy also assigned additional personnel to the document review group (Purdy tr. 41,326) and, in addition, set up a program under which eight welding engineers and a mechanical engineer supervisor reviewed all ISO's for problems before they were sent to the document reviewers (Purdy tr. 41,326-27).

199. Gregory generally approved of the measures implemented by Bennetzen to improve the efficiency of the document reviewers (Gregory tr. 134, 137, 138, 140, 1 1, 143). Management's goal of 40 ISOs a week in no way impeded Gregory in the performance of her job (Gregory tr. 54,661). If she believed that the goal had an adverse effect on the document reviewers, Gregory did not communicate that belief to Purdy or to any other supervisor (Gregory tr. 54,664). Purdy perceived a positive reaction to the program from his document reviewers (Purdy tr. 41,328), and the N-5 group experienced significantly fewer questions and concerns regarding their work from the ANI for the four or five month period prior to mid-August, 1984 (Purdy tr. 41,328-329).

3. Job Shoppers

200. Gregory recalls Bennetzen indicating to the document reviewers that they would be replaced with job shoppers if they didn't produce ISOs (Gregory tr. 54,521). The record, however, does not support Gregory's allegation.

201. Job shoppers supply personnel for a job on a short-term basis, like an employment agency (Gregory tr. 54,637; Bennetzen tr. 7). At some point project management offered Purdy additional personnel from job shoppers to supplement the document review work force (Purdy tr. 41,330). Purdy refused the offer, believing the idea was counter-productive (id.). In discussing the idea of job shoppers with Siever and Bennetzen, Purdy indicated that he had no intention of bringing in job shoppers (Purdy tr. 41,331). Although neither Purdy nor Siever asked for

his opinion, Bennetzen told them that his group could handle the work "and we did not need a bunch of job shoppers in . . . our way" (Bennetzen tr. 9). Bennetzen thought that adding job shoppers was a bad idea (Bennetzen tr. 8).

202. Bennetzen, in turn, told his N-5 group that the idea of job shoppers had been raised, but that "we could do the job ourselves" without help from people that they would have to train and who would be making more money (Bennetzen tr. 8).

203. Even as proposed by project management, the job shoppers would not replace the document reviewers, but supplement the existing work force (Purdy tr. 41,330; Bennetzen tr. 8). Significantly, job shoppers were never brought into the document review group (Gregory tr. 54,637; Purdy tr. 41,330; Bennetzen tr. 9).

4. The QES Cover Sheet

204. An N-5 code data report covers an entire piping system depicted on an isometric drawing (Bennetzen tr. 5-6). A traveler, on the other hand, relates to a single process or installation activity on the piping system (Bennetzen tr. 5-6). Travelers are permanent plant records (Purdy tr. 41,318). The traveler includes hold points that QC inspectors must sign to indicate that each step in the process to which the traveler relates has been properly performed (Darby tr. 7).

205. When installation work is completed in the field and a qualified QC inspector has signed all of the traveler's hold points, the traveler is first reviewed for completeness and legibility by a quality control engineer, or QE (Purdy tr. 41,319), who is a lead inspector (Siever tr. 58,012-13). The QE signs the traveler to indicate review and approval (Purdy tr. 41,319). The traveler (or "package") then goes to the QES review group, where a document reviewer verifies that the traveler and associated documentation are complete and legible (id.). The QES review group then transmits the traveler to the ANI (id.). If, after review, the ANI approves the traveler, the ANI transmits the package back to the QES group, which in turn transmits the package to the permanent plant records vault (Gregory tr. 54,642-643; Bennetzen tr. 5).

206. The QE who first reviews the traveler signifies review and approval by signing the traveler itself (Purdy tr. 41,319). The QES document reviewer does not sign the traveler, but fills out a "QES cover sheet" or "QES review sheet" (see Darby ex. 1). The cover sheet is essentially an index to the contents of the package, the purpose of which is to show that QA has reviewed the package (Purdy tr. 41,316). The ANI will not accept a package for review unless the QA document reviewers have already reviewed it (Purdy tr. 41,317). Because the QES reviewer does not sign the traveler itself, but only the cover sheet, ANI will accept a package only if a QES cover sheet accompanies the package (Darby

tr. 8-9; Purdy tr. 41,317; Gregory 54,641-642). The QA program does not identify the QES cover sheet as a quality document (Purdy tr. 41,316) and it is not a permanent plant record (Purdy tr. 41,318). The cover sheet does not affect the acceptability of hardware or the control documents that substantiate installation (id.).

207. ANI signifies its approval of the traveler by signing or initialing the traveler itself (Darby tr. 7; Gregory tr. 54,644; Purdy tr. 41,320). The ANI independently reviews the traveler and associated documentation and in no way relies on the QES cover sheet except as the indication that QA had already reviewed the package (Purdy tr. 41,319-320). Although the QES cover sheet has a space for ANI signature (Darby ex. 1), there is no requirement that the ANI representative sign it (Gregory tr. 54,644; Darby tr. 10). Usually ANI doesn't sign it (Darby tr. 10; Gregory tr. 54,643).

208. Some time in June, Gregory received an N-5 code data report and several associated travelers from ANI (Gregory tr. 54,641-642). One of the travelers lacked a QES cover sheet (Gregory tr. 54,527, 641). The ANI had approved the traveler (Gregory tr. 54,644), and Gregory's job was to transmit the traveler to the permanent plant records vault (Gregory 54,642-43). Her problem was that, just as ANI will not accept a

traveler without a QES cover sheet, so too will the vault not accept a traveler without the cover sheet (Gregory 54,527, 643; Purdy tr. 41,318; Darby tr. 6-7).

209. Gregory recalls taking the traveler to Bill Darby, a document reviewer, and telling him that she needed a cover sheet (Gregory tr. 54,527). According to Gregory, Bennetzen told Darby to sign a cover sheet, and Darby did (id.). Gregory believes that Darby acted improperly; in her view, the QES document reviewer cannot rely on the ANI's review and approval of the traveler, but must conduct an independent review (id.).

210. Darby cannot recall the traveler to which Gregory referred (Darby tr. 6). He did, however, identify all flange travelers[20] that the review group transmitted to the vault during the period from the first week of June, 1984, until the week after Gregory was laid off (Darby tr. 5-6). Darby pulled all such flange travelers from the vault, and identified only one traveler and cover sheet that fit Gregory's description (Darby tr. 6 and ex. 1).

211. ANI had returned the flange traveler to the document review group without a QES cover sheet (Darby tr. 6). ANI had reviewed and approved the traveler, as reflected by John Harper's initials at the bottom of page 1 of the traveler (Darby tr. 7-8 and ex. 1, p. 2). Darby, whom Gregory described as

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20 Although it does not appear in the evidentiary transcripts of Gregory's direct or cross-examination, she identified the traveler as a flange traveler in her discovery deposition.

"knowledgeable" and "experienced" in QES review (Gregory tr. 54,581), concluded that, despite the missing QES cover sheet, the QES review group had already reviewed the traveler, for two reasons. First, ANI will not accept a traveler for review without a QES cover sheet (Darby tr. 8-9; Purdy tr. 41,317; see Gregory 54,641); ANI has returned numerous travelers and packages to the QES group because they were sent over without the cover sheet (Darby tr. 9). Second, the flange traveler was part of an N-5 package that Darby himself had reviewed prior to transmittal to ANI (Darby tr. 9-10 and ex. 2). In reviewing the N-5 package, Darby specifically checked to make sure that each traveler in the package included the requisite cover sheet (Darby tr. 10).

212. Darby does not know what happened to the flange traveler's original cover sheet (Darby tr. 10). He did need a cover sheet as an index for the vault, which would otherwise not accept the traveler (Darby tr. 8). Darby therefore conducted a cursory review of the traveler to verify that entries were legible, that all required hold points were signed, and that there was traceability of items (Darby tr. 8). Darby then prepared and signed a replacement cover sheet (id. and ex. 1).

213. Darby's preparation of the replacement cover sheet fully comported with relevant procedures and the ASME QA program (Purdy tr. 41,318; Darby tr. 8).

214. ANI has returned approved travelers to the QES group before without cover sheets, which has required the preparation of a replacement for transmittal to the vault (Darby tr. 11). The first time or two that it happened, Darby consulted with Bennetzen, who advised him to prepare the replacement sheet (id.). Darby considers these conversations neither to have been intimidating nor to have constituted pressure to do something improper (id.). Absent testimony by Gregory that the QES cover sheet had any effect on her performance of her duties--and there is none--this matter lacks any relevance to this proceeding.

5. Reduction of Force

215. Gregory testified that she was dissatisfied with the way in which employees are selected for ROF, although she admits she doesn't know what criteria were used in making the selections. Gregory believes that the majority of persons laid off when she was are more qualified than the employees who were retained. Gregory tr. 54,646, 654. Gregory's suspicions about the layoff conflict directly with the evidence.

216. In late 1983, site QA management developed a comprehensive policy for selecting employees for ROF. While the policy is complicated to administer, the key elements of the policy are really quite simple. Once management identifies an area for ROF, and determines the size of the ROF, employees in the group are measured against three screening criteria: (1) whether the employee has been denied a security clearance for

unescorted access to the Unit 1 security boundary; (2) the number and level of certifications held by the employee; and (3) whether the employee missed eighty or more hours of work within the last twelve months. Under the laid off policy, employees who have been denied a security clearance are laid off first, those with the fewest and lowest levels of certifications are laid off second, and those who missed eighty plus hours of work are laid off last. All three screening criteria are objective and clearly related to job performance at the site.

217. The initial process may or may not screen out enough employees to reduce the workforce to the desired level. If it does not, the rest are identified through a "tiebreaker" evaluation.[21] The tiebreaker is a rating system divided into two parts. The first part rates employees on their knowledge of procedures, the quality of the reports they produce, and their willingness to accept new assignments and ability to work with others. The second part rates employees on the basis of attendance and seniority. Employees can earn up to nine points on each part of the evaluation, and employees who earn the fewest

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21 The tiebreaker evaluation is also used to select persons for ROF where the initial process screens out too many employees. For example, suppose ten more employees must be ROF'd after the application of the first two screening criteria, and twenty people in the remaining pool have missed more than eighty hours of work in the preceding twelve months. The ten who are laid off are selected through the tiebreaker system from the pool of those who missed eighty plus hours of work.

points overall are laid off first. As with the screening process, the criteria used in the tiebreaker evaluation are clearly related to job performance at the site.

218. QA management scrupulously followed site policy in implementing the ROF about which Gregory complains. John T. Blixt, ASME Quality Engineering Supervisor, and Robert Siever, ASME Quality Control Supervisor, prepared the original analyses. They measured employees against the screening criteria and rated them on the tiebreaker forms. Blixt's and Seiver's work was then reviewed for accuracy by Purdy, Antonio Vega, site QA/QC Manager, and David Chapman, TUGCO QA Manager. The Board finds the ROF was conducted by the book, and Gregory's claims are without merit.

F. Allegations of Linda Barnes

219. Valves installed in the ASME fluid system at Comanche Peak are certified by the vendor's Quality Assurance program and its ANI on an NPV-1 Code Data Report. An executed Data Report indicates that all requirements of the applicable designer code and designer specification have been satisfied. Purdy tr. 41,331-32. The Data Report also lists pressure boundary parts, such as valve disks, and the identification necessary to verify the acceptance of the material (Purdy tr. 41,332).

220. Valve disks can and will be replaced throughout the life of the plant to maintain the system integrity of the systems in which the valves are installed. Disks also are replaced frequently during installation and testing to obtain a particular

valve that functions or operates in accordance with the testing and startup procedures. Purdy tr. 41,332. Accordingly, the removal of a particular disk does not indicate that the valve itself is inadequate in design or function (Purdy tr. 41,333).

221. All replacement valve disks meet the vendor's original configuration and material requirements, and are installed according to the applicable process control documents (Purdy tr. 41,333). Replacement disks are requisitioned by field engineering on a form that specifies the valve in which the disk will be installed and the replacement part number. Insurability, not adequacy of the valve, is at issue when a disk is installed with an identification different from the vendor's Data Report. Purdy tr. 41, 333-34. See ASME Boiler and Pressure Vessel Code, § 11.

222. For at least three years, the management has planned to review, prior to final completion of all systems at Comanche Peak, all processed documents. The purpose of the review is to identify whether replacement parts other than those supplied by the vendor have been installed in an N-stamped component provided by the vendor. Section 11, ASME Boiler and Pressure Vessel Code, governs this review. NIS-2 forms are used to document the review and the NIS-2s assure traceability of the valve parts and provide for continued insurability of the particular item. Purdy tr.

41,334. There is also an independent ANI review to ensure that traceability of component parts and vendor supplied items have been maintained (Purdy tr. 41,336).

223. The review began in July, and the ASME QA organization is currently in the process of executing approximately 400 NIS-2 forms to ensure traceability of valve parts and N-stamped components replaced during installation and testing. Purdy tr. 41,334-35. The process ensures documentation correlation and was undertaken at the end of the construction phase to avoid a meaningless exercise of identifying parts that might be replaced during construction (Purdy tr. 41,334-35).

224. Linda Barnes worked as a document reviewer in the ASME QA Department from December 1981 until she resigned on April 19, 1984 (Barnes tr. 59,004). In September 1983, Meddie Gregory was between job assignments and she was assigned temporarily to work as a document reviewer trainee. Gregory's temporary assignment lasted about two weeks. Gregory tr. 54,508; Barnes tr. 13.

225. Barnes testified that sometime during the two weeks that Gregory worked in her area, Gregory showed her a valve traveler with a disk number that did not match the disk number on the valve's Data Report (Barnes tr. 59, 012). Barnes, however, could not identify the Data Report, the disk, the valve, the vendor who supplied the valve or the system in which it was installed (Barnes tr. 59,013, 104). Barnes claims that she and

Gregory raised the discrepancy in the numbers with Greg Bennetzen, the QC Supervisor responsible for the document review group. Barnes also claims that she suggested to Bennetzen that procedures required an inspection to see if the right disk was in the valve (Barnes tr. 59,015). (In fact, applicable procedures did not require any such inspection (Purdy tr. 41,336)).

226. According to Barnes, Bennetzen told Gregory and her that the discrepancy "didn't matter" (Barnes tr. 59,015-16), and that "it would cost too much money to open the valves up and check the disks" (Barnes tr. 59,015). If Bennetzen had a conversation with Barnes or Gregory about disk numbers on a traveler, he does not recall it (Bennetzen tr. 16). Bennetzen unequivocally stated, however, that he would never let the cost of an operation or QC function affect his judgment as to what had to be done, and that he would never hesitate to order an inspection because it would be costly (Bennetzen tr. 17).

227. Gregory also did not recall this communication during her testimony, despite the fact that she allegedly initiated the whole incident by finding the discrepancy in disk numbers and bringing the manner to Barnes' attention. Barnes tr. 59,085-86. She did, however raise several other instances of alleged harassment and intimidation. Her failure to consider the "disk incident" worthy of mention in this proceeding at the very least indicates that she did not consider the incident harassing or intimidating.

228. Even if it occurred, it is apparent that Barnes' limited familiarity with disk numbers caused several misperceptions on her part. Bennetzen's alleged statement that the number discrepancy "didn't matter," was, assuming that it was made, quite accurate. Because all replacement disk numbers were to be verified at a later date pursuant to Section 11 procedures, the existence of an unexplained discrepancy was, at that time, irrelevant. See Purdy tr. 41,331-34. Barnes believed traceability could not exist without a valve check (Barnes tr. 59,014). In fact, steps had been taken to ensure traceability and insurability, but these measures were not part of the document review function being peformed by Barnes and Gregory (Purdy tr. 41,336).

229. This explains Barnes' unfamiliarity with review of vendor supplied disks. She could not remember or did not know whether valve disks or other components of a valve are sometimes changed or whether she had come across such changes in her document reviews. Barnes tr. 59,098-99. She also claimed improperly that the procedures required an inspection of the valve when discrepancies arose (Barnes tr. 59,015; Purdy tr. 41,336).

230. If the facts alleged by Barnes are true, the discrepancy in the disk number poses no safety related problems for Comanche Peak since, at that time, a final review of the disks had not taken place (Purdy tr. 41,336). Similarly, because

Barnes and her fellow reviewers were not responsible for a Section 11 review, her allegations do not negatively reflect on the document review program at Comanche Peak (Purdy tr. 41,336).

231. Barnes does not claim she was harassed or intimidated by this incident (Barnes tr. 59,174). Barnes does claim she was "discouraged" by the incident, but this extended to only the subject matter of disks (Barnes tr. 59,177-78).

Q: Okay. Did you interpret Mr. Bennetzen's statements and actions at this meeting to mean that you should not write NCRs on this particular problem in the future?

A: I felt discouraged as to whether the next time a problem with this comes up like this, whether the answer is going to be, "It's going to cost too much money."

Q: Okay. When you say "another problem like this," do you mean another problem with the disk numbers not matching -- the traveller numbers not matching up with the records in the vault? Is that what you're referring to?

A: Yes.

Q: Okay. So you did not interpret Mr. Bennetzen's statements and action at this meeting to say, "I don't want these -- to have you identifying problems in the future, or any kind of problems."

A: What is the last question you asked?

Q: Okay.

A: Because I thought it was only about the disks. See Barnes tr. 59,219-20.

232. In sum, the Board finds that Barnes' limited knowledge of valve disks and the system for ensuring the traceability of the disks, likely led to her confusion on the issue. She did not testify that she was harassed or intimidated. Significantly, Gregory, who testified in these proceedings, did not mention the incident. The fact that Barnes was discouraged with respect to reporting disk numbers is more the result of her confusion than Bennetzen's alleged comments. More important, because Barnes' job function did not include reviewing the traceability of valve disks, her job performance was not affected by the incident. The Board accordingly finds that Barnes was not harassed, intimidated, or threatened for bring her concern to management.

G. Darlene Stiner

233. Darlene Stiner, a former QC inspector at Comanche Peak, testified regarding several incidents that she claimed constituted acts of intimidation or harassment by craft personnel or her supervisors. Stiner has testified in this proceeding twice before, addressing on both occasions many of the incidents she now contends constitute incidents of intimidation or harassment. Stiner's testimony on these matters has been inconsistent and shifting, and in her most recent version she embellishes prior testimony with "facts" that, if true, might lend support to her allegations. These new "facts," however, cast considerable doubt on the veracity of both her former testimony and her testimony in this proceeding. The Board accordingly gives little credit to these new assertions.[22]

234. The Board also declines to adopt Stiner's novel definition of intimidation. Stiner contends that the mere voiding of an NCR or a "use as is" disposition constitutes an act of intimidation (D. Stiner tr. 52,074-75; 126), unless the disposition meets with the inspector's approval (D. Stiner tr. 52,072-79). She maintains that her own supervisor had no right to void an NCR without "proof" (D. Stiner tr. 52,073; 110; 174-75) and that an engineer was required to show her a "procedure"

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22 Under these circumstances the Board finds it appropriate to admit into the record in this phase of the proceeding portions of the record from the other phase, cited below, for purposes of impeachment as prior inconsistent statements. All portions of the record were given under oath.

or the basis for a calculation before dispositioning an NCR (D. Stiner tr. 52,176-77). Stiner added that she became cognizant of what the term "intimidation" meant only on the day of her deposition (D. Stiner tr. 52,506-07).

235. Stiner, however, testified that she wrote many NCRs, but on only a few occasions did she believe that the manner of disposition was unsatisfactory even by her standards (D. Stiner tr. 52,181, 245). In addition, she stated she never failed to write an NCR when she believed it was appropriate (D. Stiner tr. 52,247; 250). The Board finds that even assuming Stiner's assertions concerning the manner in which these NCRs were dispositioned are true, there is no pattern of supressing or discouraging the writing or proper disposition of NCRs. Indeed, the evidence is fully to the contrary.

1. Specific Incidents of Alleged Harassment or Intimidation

a. Polar Crane Bus Box

236. Stiner witnessed an electrical cable accident that caused damage to the polar crane bus box. The equipment involved was outside the scope of Stiner's inspection responsibilities and she discussed the accident with a QC superintendent to ascertain the proper course of action. D. Stiner tr. 52,005-10; CASE ex. 667 at 53-56. The superintendent instructed Stiner to prepare and submit an NCR, which she did (D. Stiner tr. 52,005-10; CASE ex. 667).

237. Following the writing of the NCR and the placement of hold tags, two unidentified craft personnel allegedly asked Stiner how long the hold tags would be in place. Stiner claimed that one of these individuals told her that she "didn't know what she was talking about," that she was not authorized to write an NCR on the polar crane, and that if she did not pull the hold tags she could lose her job. Stiner did not pull the hold tags and instead instructed the individual to call her supervisor (D. Stiner tr. 52,005-07; 082-83; 189). These alleged statements of the unidentified craftsperson were never raised in Stiner's previous testimony (CASE ex. 667 at 54-55).

238. Stiner testified that the craftsperson contacted her within minutes of her placing hold tags on the polar crane bus box. She also alleged that her supervisor called her into his office within "a couple hours" to tell her that the NCR was voided. On cross-examination, Stiner stated that the NCR was not voided for about a day. D. Stiner tr. 52,005; 006-07; 189. In fact, as she had originally testified, the NCR was not voided for two days (CASE ex. 667 at 54-55; Brandt ex. 11; CASE ex. 6670).

239. The NCR was dispositioned by Bob Scott, the Non-ASME Quality Engineering Supervisor. Scott voided the NCR because the bus box involved was not a safety-related item and, thus, was outside the scope of the quality assurance requirements

established by 10 C.F.R. Part 50, Appendix B. Stiner's supervisor informed her of Scott's disposition (Brandt tr. 45,274-76; D. Stiner tr. 52,007).

240. The Board finds that the NCR in question was properly dispositioned. The evidence shows that Stiner erroneously believed that the polar crane bus box was safety-related (Stiner tr. 52,008; 083-84; 240). She, however, "didn't have any way of knowing" the safety significance of this incident and she "didn't really understand that much" about this incident (tr. 4095). There is no evidence to support Stiner's contention that the voiding of the NCR was intimidating, especially in light of the fact that she did not pull the hold tags as she was allegedly "ordered" to do by the craftsperson.

b. Weave Welding

241. Weave welding as defined by Section IX of the ASME Code is a weld with significant transverse oscillation (NRC Staff Testimony at 4 (received into evidence at tr. 12,146); Applicants' ex. 177 at 7). The AWS D1.1-1975 Code also defines a weave weld as a type of weld bead made with transverse oscillation. Weave welding may be distinguished from a stringer bead, which is defined as a type of weld made without appreciable transverse oscillation (NRC Staff Testimony at 5, tr. 12,153). Neither the ASME Code nor the AWS Code prohibits weave welding (Applicants' ex. 177 at 7, NRC Staff Testimony at 5, tr. 11,222 and 12,211). Further, weave welding is not in itself contrary to

applicable welding procedures used at Comanche Peak unless the final welding bead width is in excess of four times the diameter of the weld rod being used (Applicants' ex. 177 at 7).

242. Stiner alleges she was intimidated or harassed because she wrote an NCR against what she believed were unacceptable weave welds on a pipe support at the 790' level in the auxiliary building. D. Stiner tr. 52,010-16; 063-65; 085-105. Stiner first conceded that she did not understand at the time she filed the NCR that weave welds were unacceptable only if the oscillation exceeded four core wire diameters (D. Stiner tr. 52,085-86). She then contradicted herself, claiming that she did understand the oscillation (D. Stiner tr. 52,096). In any event, Stiner claimed that the oscillation on these welds was over four core wire diameters "by a long shot" (D. Stiner tr. 52,086).

243. In this proceeding, Stiner's asserts that allegedly intimidating comments were made to her by craft personnel when she first applied the hold tag (D. Stiner tr. 52,087), and when craft supervision spoke with her supervisor (D. Stiner tr. 52,088-89, 093). Craft personnel also allegedly put "pressure" on her to make her feel unqualified. These actions purportedly discouraged her from doing her job. Stiner's original description of this incident, however, contained no suggestion that craft personnel pressured her to accept this weld. Rather, she testified that when she applied a hold tag, the craft simply

contacted their supervisor who met with Stiner and her superintendent. No acrimonious exchanges were mentioned in her original testimony. CASE ex. 667 at 25.

244. Stiner also claimed that she was intimidated because she believed craft personnel "lied" to her when they agreed to cut the hanger down (D. Stiner tr. 52,098). Stiner alleged that Willis, a QC superintendent, directed her to have the craft cut the hanger down when she informed him that the hanger had weave welds. Willis, however, was an ASME QC Supervisor who had no authority to order the hanger cut down (tr. 11,797). Stiner even admitted that she did not know if any QC personnel were authorized to instruct craft to cut down a hanger (D. Stiner Tr at 52,090-91), and conceded that when she went to reinspect the weld the craft told her that it had not been necessary to cut the hanger down (D. Stiner tr. 52,014).

245. More important, Stiner did not write an NCR on this hanger as she claimed. Stiner accepted this hanger by signing an Inspection Report covering the welds in question (tr. 10,264; Applicants' ex. 180).

246. Stiner nevertheless contends that the alleged repair of this weld was unacceptable (D. Stiner tr. 52,103-04). The material on this hanger was not of the kind which required Charpy impact testing and, thus, even if there had been unacceptable weave welding there would have been no adverse safety

consequences (tr. 9,998-09, 10,012, 11,789, 12,156; NRC Staff Testimony at 7) and the disposition contested by Stiner would have been proper if it had, in fact, been used.

247. The Board finds that Stiner's allegations simply are not credible. The Board concludes that the incident was properly handled by both craft and QC personnel. In particular, the Board views the discussion that craft initiated with Stiner's supervisor to be a necessary and appropriate approach to the resolution of disputes between QC inspectors and craft -- far preferable to direct confrontation and conflict between the parties to the dispute. The Board also concludes that Stiner's disagreement with the technical resolution of this matter is unfounded and provides no basis for finding that the manner in which the alleged problem was dispositioned would be intimidating.

c. Diesel Generator Inspections

248. Stiner was asked to inspect welds on the diesel generator skids and supports, but did not feel qualified to conduct the inspection (D. Stiner tr. 52,016). She allegedly informed her supervisor that she was not qualified and was told to perform the inspections "to the best of [her] abilities" (D. Stiner tr. 52,018). Randall Smith, another QC inspector, was performing the same tasks on another generator (D. Stiner tr. 106).

249. In this proceeding, Stiner claimed that her supervisor became "agitated" with her lack of progress with these inspections and became so upset with her that he "slammed out of the office two or three times" (D. Stiner tr. 52,019). She "felt like" she would lose her job if she did not do the inspections, although she did not claim that anyone threatened her job (D. Stiner tr. 52,018-20; 107).

250. C. Thomas Brandt, Non-ASME QA/AC supervisor, who was coordinating the inspection of the diesel generator skids, became aware through reading daily status reports that Stiner was having an abnormal amount of difficulty with these inspections. To confirm his observation Brandt spoke with Stiner's supervisor, Williams, and the other inspector assigned to these inspections, Smith. Brandt recommended that Stiner be removed from these inspections and Williams did so shortly thereafter. Brandt tr. 45,278-80.

251. Stiner did not communicate her concern regarding these inspections to any management personnel above Williams (D. Stiner tr. 52,107), claiming that the only person she could go to was Tolson (D. Stiner tr. 52,195). She knew, however, that these inspections were being performed under Brandt's direction (CASE ex. 667 at 15).

252. Stiner's most recent testimony is inconsistent with her past testimony. Stiner originally testified that when she informed her supervisor that she did not feel qualified to

perform the inspections he had told her to do the best she could, not to worry about it, and to take her time. He also told her that if she had any problems to discuss them with another inspector who was also performing inspections on the diesel generators skids. Stiner did not suggest that her supervisor was upset with her performance, that she felt pressured in any way by her supervisor, or that she believed her job was in jeopardy. CASE ex. 667 at 14-16.

253. Stiner's new assertions regarding her supervisor's attitude and her newly voiced concern that she could lose her job simply are not credible in the face of her initial testimony concerning the same incident. The Board finds that her supervisor's response to this matter was appropriate. The Board also finds that no actions were taken by her supervisors that could have reasonably been construed as intimidating, and that no technical concern for the safety of the plant is implicated in Stiner's Diesel Generator allegation.

d. Weld Symbols on Doors in Fab Shop

254. In October, 1982, Stiner allegedly found improper weld symbols on doors being constructed in the fab shop and placed hold tags on the doors. She was told by craft personnel that the symbols were proper, but she refused to remove the hold tags. D. Stiner tr. 52,020-21. Stiner had not raised this allegation in any of her previous testimony.

255. Stiner never obtained a number for an NCR. D. Stiner tr. 52,021; 199; 219; Brandt tr. 45,285-86. Stiner testified that Brandt called her later that day and told her that the weld symbols were proper. She claims that Brandt said he would check into the question further after she insisted that the symbols were "wrong according to procedure." D. Stiner tr. 52,023.

256. Although Brandt recalled this issue having been raised, he learned that Stiner was the inspector involved only during preparation for his deposition in this proceeding (Brandt tr. 45,281). Brandt was not aware that the inspector involved was Stiner because he discussed the matter only with Smith, another QC inspector; he never spoke with Stiner regarding this matter. Brandt tr. 45,281.

257. Stiner alleged that Smith informed her that Brandt had determined that the welds were acceptable and should be accepted or Stiner "would be gone" (D. Stiner tr. 52,023). Brandt, however, told Smith that the welds were acceptable and that he (Brandt) would perform the inspection and approve the welds if necessary. Brandt was at the site and is a certified Level III inspector. Brandt tr. 45,283-84.

258. The weld in question was a groove weld on lifting lugs attached to missile barrier doors. These lugs were not safety-related and would have posed no safety concern, even if they had fallen off, because they are used only for lifting the doors. The lug welds are inspected because they are welded to safety-

related doors. The AWS Code provision applicable to groove welds (Section 4.6) states that such welds are to be filled to the full cross-section of the weld and that they be terminated in a manner which ensures sound welds. To assure compliance with this requirement, the termination of the weld requires wrapping the weld around the end of the lug to achieve full cross sectional thickness. Stiner incorrectly believed the weld symbol for these lugs should have included a symbol for fillet welds to reflect the welds wrapped around the end. Brandt tr. 45,281-86; Brandt ex. 12, 13.

259. We find that, even assuming Stiner's assertions to be valid, the actions of craft personnel and her supervisors were reasonable given the clearly erroneous interpretation of the weld symbol made by Stiner, and their actions afford no basis for a finding of intimidation.

e. Meetings With Management

260. Stiner alleged that as a result of a meeting with Tolson prior to her testifying in September 1982 she believed Tolson wanted her "off the site." D. Stiner tr. 52,025-26; 114. Tolson met with Stiner four times during her employment at Comanche Peak (Tolson tr. 51,043-44). All the meetings were prior to her testifying in this proceeding in September, 1982.

261. The first meeting took place in early 1982. Tolson and Brandt met with Stiner and encouraged her to obtain a GED certificate. Brandt tr. 45,242. Tolson had encouraged all

inspectors without a high school diploma, including Stiner, to obtain a GED certificate to upgrade their qualifications in view of more stringent inspector qualification requirements. Although the inspectors were "grandfathered" while they were at Comanche Peak, the new requirements would apply if they were to work as a QC inspector at another site. The meeting was very cordial and not acrimonious. Brandt tr. 45,242-44.

262. The next meeting between Tolson and Stiner occurred some time in July 1982, two or three days after Stiner had given Brandt a note from her doctor that she was to avoid heavy lifting or stair climbing due to her pregnancy (Brandt tr. 45,244-45). The note was dated July 7, 1982, and was of particular concern to Brandt and Tolson because they both knew of Stiner's history of miscarriage (Tolson tr. 51,044-45; Brandt tr. 45,245). The meeting was held in Tolson's office (Brandt tr. 45,244-45; Tolson tr. 51,044-45; D. Stiner ex. 1).

263. Prior to this meeting Brandt removed Stiner from field inspection duties, which required climbing scaffolding and stairs. Stiner was assigned to inspections in the fab shop where her duties involved no climbing or lifting. Brandt tr. 45,244; 246-47; D. Stiner tr. 52,138.

264. The purpose of the second meeting was for Tolson and Brandt to satisfy themselves that Stiner was able to continue, and felt comfortable in continuing, to perform her inspections. Simply put, Tolson and Brandt "were concerned about Ms. Stiner's

health." Brandt tr. 45,245. They had learned that Stiner previously miscarried and wished to assure themselves that Stiner's inspection activities would not increase the possibility of miscarriage. Brandt tr. 45,245; Tolson tr. 51,044-45.

265. At the meeting, Stiner raised questions concerning unemployment compensation and insurance benefits that might be available to her when she left. She also inquired into the possibility of a reduction-in-force layoff or a leave of absence, but also stated that she was interested in continuing her employment at that time. She also mentioned that she planned a hysterectomy and Tolson told her he understood that operation to be very costly. Tolson and Brandt informed Stiner that the decision to continue work was hers and that they would have to check on Brown & Root policies regarding the benefits questions she raised. Brandt tr. 42,245-47. Neither Tolson nor Brandt tried to persuade Stiner to leave the site (Brandt tr. 42,246-47), and the meeting was not acrimonious in any way (Brandt tr. 45,247; Tolson tr. 51,045).

266. Shortly after the second meeting, Tolson and Brandt again met with Stiner. This meeting was to respond to Stiner's inquiries regarding benefits. Also present at this meeting was Raymond Yockey, the Brown & Root Personnel Services Manager on site. Yockey explained to Stiner her options regarding a leave

of absence and insurance benefits. Stiner also indicated at this meeting that she wished to work as long as she could. Brandt tr. 45,247-48; Tolson tr. 51,045-47; 120.

267. The fourth meeting between Tolson and Stiner occurred in mid-August 1982. This meeting concerned Stiner's attempts to obtain documents (e.g., copies of nonconformance reports) unrelated to the performance of her job. Stiner was apparently not satisfied with Tolson's decision, previously communicated to her, that she was not to be provided such documents. Tolson requested a meeting upon learning of Stiner's dissatisfactions. Brandt tr. 45,248-49; Tolson tr. 51,130-31.

268. The documents requested by Stiner were not necessary for the performance of her job, and Tolson explained that her requests went beyond the scope of her responsibilities. Stiner was assured that whatever documents she required for her job would be provided. Tolson also informed Stiner that there were legal means, i.e. discovery, for CASE to obtain documents. The meeting was not acrimonious, but more of an information session. Brandt tr. 45,249-50; Tolson tr. 51,118-20.

269. Stiner asserted in her deposition that she had never taken anything from the site for CASE (D. Stiner tr. 52,059). However, prior to this meeting Stiner had, in fact, already provided to Juanita Ellis, CASE's President, a draft NCR that she claims she had found in some Tupperware brochures. This fact had already been disclosed in public at the time of her fourth

meeting with management. Stiner also personally disclosed this to Brandt. Stiner claimed that the NCR had been inadvertently put into the package of brochures which she took home. The NCR was a draft prepared by Atchison, for which no number had been obtained. Brandt had previously seen drawings that went with the NCR but not the NCR itself. Brandt tr. 45,250-51; CASE exs. 660 at 6, 660A (July 29, 1982).

270. Stiner also claimed that a large percentage of her job was making copies of documents and that Tolson's directive would prevent her from doing her job (D. Stiner tr. 52,037). Stiner's job function included such clerical duties only for a short period of time (from the time of Brandt's receipt of her note from her doctor until her relocation to an office outside the fab shop). Brandt tr. 45,253. During this period she performed clerical activities for Foote. Stiner was not, however, performing that function at the time of the fourth meeting with Tolson. Even if she had been performing that clerical function the documents that she tried to obtain would not have been required for the job she was performing for Foote. Brandt tr. 45,253-54.

271. At the time of the fourth meeting, Brandt and Tolson knew Stiner was going to testify in the licensing proceeding. During this meeting Tolson told Stiner he did not care which side she was on but requested that she tell the truth. Tolson intended to "loosen her up" and suggested that she should approach

the hearings in a relaxed manner. Tolson tr. 51,115-16; Brandt tr. 45,249-50. Stiner, however, had a "feeling" from this discussion that Tolson was going to "punish" her for telling the truth. D. Stiner tr. 52,026, 116.

272. Stiner alleged that both Tolson and Brandt conveyed the impression to her during this meeting that they wanted her to leave Comanche Peak (D. Stiner tr. 52,026). Neither Tolson nor Brandt made any effort to convey directly or indirectly such an impression to Stiner during their meetings with her. Brandt tr. 45,252; Tolson tr. 51,115-17.

273. The Board finds that Stiner unreasonably interpreted the genuine concern of Tolson and Brandt, and others, as an effort to have her leave Comanche Peak. Given Stiner's condition, and prior medical history, Tolson and Brandt sought to ensure a safe pregnancy for Stiner. Stiner's assessment of the intentions of Brandt and Tolson is unreasonable. Her attempt to cast these meetings in a negative light simply does not square with the facts and circumstances surrounding each meeting. The inaccuracies and inconsistencies in Stiner's testimony cast even further doubt on the veracity of her claim. In sum, the Board finds that none of these meetings or the events which transpired at the meetings constitute an instance of harassment or intimidation.

f. Meeting with Brown & Root Representative

274. On October 12, 1982, a meeting was held between Stiner and David K. Egbert, Quality Assurance Administrative Manager for Brown & Root, Inc. Egbert was asked by Gordon Purdy to discuss maternity available benefits with Stiner. Such meetings were routinely held by Egbert with Brown & Root employees at different construction sites. Egbert and Stiner met in Purdy's office; no one else attended the meeting. Egbert discussed the options available to Stiner regarding maternity and other benefits. At the conclusion of the meeting, Stiner expressed her appreciation for Egbert taking time to explain the benefits available to her. (Affidavit of David K. Egbert Regarding Discussion With Darlene K. Stiner, with attachments.)

275. The only other contact Egbert had with Stiner was in a telephone conversation a few days after the meeting. Such meetings were routinely held by Egbert with Brown & Root employees at different sites. No other person from the quality assurance administrative office of Brown & Root met with Stiner during Egbert's tenure. Egbert held his position until December, 1982. There is no evidence that Stiner was told by Egbert that she would be required to leave at her eighth month. Egbert Aff. at 1.

276. Stiner alleges that in early December, 1982, she was called to Tolson's office to meet with Brown & Root personnel from Houston to discuss benefits. The individuals from Brown & Root allegedly told her that she would have to leave Comanche Peak because she was in her eighth month of pregnancy. D. Stiner tr. 52,034-37; 52,131-34. Stiner, however, subsequently testified that only one person from Houston spoke with her, and conceded that she was not sure when the meeting took place. D. Stiner tr. 52,133-34.

277. Stiner also alleges that she was told by Randy Smith that Brandt said that she could not work past her eighth month and, therefore, she would have to leave. She claims that three to four times a week Smith or Brandt would come to her to ask when she was ready to leave. She interpreted their alleged statements to mean they wanted her to leave Comanche Peak. D. Stiner tr. 52,034-36.

278. The Board finds that Stiner has so confused the material facts surrounding this meeting that her assertion that this meeting was indicative of an attempt to get her to leave the site must be rejected. She not only presented incorrect or inconsistent testimony regarding the people involved and the location of the meeting, but her testimony regarding the timing of the meeting, which was the principal premise of her assertion, was totally inaccurate. The Board finds that this meeting was routine for employees in Stiner's condition, and if anything

indicated a valid concern by Applicants and Brown & Root for Stiner's well-being. It was not an effort to harass or intimidate her.

g. Relocation of Office

279. Stiner alleges that she was intimidated or harassed by the relocation of her office (D. Stiner tr. 52,027-34). The record reveals, however, that the relocation was intended to benefit Stiner, who was pregnant at the time, by moving her closer to the work area.

280. Brandt made the decision to relocate Stiner. He was in the process of moving the entire group of inspectors in which Stiner worked to a new area near the main construction entrance. If Stiner had been moved along with the other inspectors, she would have been approximately a three eights to half a mile from the work area (fab shop) to which she was assigned. But Brandt knew that Stiner was pregnant, and he had received a request from her doctor that she not do any climbing or heavy lifting. Accordingly, Brandt decided to move Stiner to a separate location near the fab shop. He did not intend to harass her in any way. Brandt tr. 45,262.

281. Stiner's original office was located one eighth to a quarter of a mile and down a hill from the fab shop.[23] Brandt

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23 The transcript of Mr. Brandt's testimony regarding the distance between Stiner's original office and the fab shop is incorrect. Line 2 of page 45,265 should read "Approximately one eighth to a quarter of a mile" (correction underscored). Applicants will correct this error at the hearing.

Tr. 45,254-56. From this location, Stiner had to walk up a hill and along a gravel road to reach her work area (D. Stiner tr. 52,119). Her new office was located "right across the street" from the fab shop (id.)

282. Stiner also complains that she was moved several times in the process of being relocated to her new office. But the record reveals that this was due to the difficulties inherent in any relocation of offices, and not to harassment or intimidation.

283. When Brandt decided to move Stiner's group to its new location, he called Ken Liford, the Assistant General Mechanical Superintendent for Construction, to determine whether there was space available near the fab shop in which Stiner performed her inspections. Liford informed Brandt that there was a building adjacent to the fab shop that he could clean out and make available for Stiner. The following day Brandt directed Foote to have Stiner moved. Brandt tr. 45,257; 259.

284. Stiner was temporarily located at two intermediate locations prior to her permanent relocation in the office near the fab shop. When Foote found that the building to which Stiner was to move had not been cleaned out and no air conditioner had been placed in the building, he temporarily located her in a trailer at the top of the hill. However, the individual in charge of that trailer had made an error in determining the number of people that would occupy the office and informed Foote that Stiner could not remain there. Foote again determined that

her building was still not ready and informed Smith, Stiner's immediate supervisor, that she would be moved temporarily into the new offices for Smith's group near the main construction entrance. Stiner remained in that location for several hours until she was finally relocated to her new office near the fab shop. Brandt tr. 45,255-61. The entire sequence of moves lasted less than two days.

285. Stiner alleges that when she arrived at her new office that it was "knee-deep in trash" and that she cleaned the room out herself. Stiner claims that she had requested a laborer but one was not sent (D. Stiner tr. 52,031-32). The record indicates, however, that both Brandt and Foote took care to assure that Stiner was not moved into her new office until it had been cleaned. Brandt tr. 45,257; 259-60.

286. Stiner also testified that there was little room in her new office. But the office to which Stiner was moved is approximately 8' x 12', which is larger than Brandt's present office. She occupied that office by herself. The office from which she was moved housed nine or ten people in a 10' x 40' trailer. Brandt tr. 45,263.

287. Stiner also complained that the air conditioner in her new office did not operate for a few days after she moved in. (She later claimed there was no air conditioner (D Stiner tr. 52,142).) The Board finds that this was not the result of harrassment or intimidation.

288. The offices at Comanche Peak are air conditioned by window units except for the main administration building which has a central unit. The window unit in Stiner's office was similar to those in other office buildings at the plant. Brandt tr. 45,266-67.

289. The air conditioning units at Comanche Peak are subjected to adverse conditions. Because the buildings are not designed or insulated as residences the units are required to run full time, as well as being exposed to the dust and dirt of the construction site. There are ten to fifteen requests for repairs of air conditioning units each day (D. Stiner tr. 70,507-10; 513-14).

290. Stiner testified that when she discovered her air conditioner did not work she contacted three different supervisors, Smith, Foote and Brandt. They indicated that they would try to get an air conditioner up to her. She testified that after three days she again contacted Foote, but she did not immediately receive an air conditioner. She testified that she contacted a "friend" in the electrical department who brought her an air conditioner. D. Stiner tr. 52,032; 126-27.

291. When Brandt learned from Foote that the air conditioner in Stiner's new office was not working, he sought to obtain a new air conditioner from the warehouse but was informed that none was available. He requested that Foote or Smith have the air conditioner in the office fixed. Smith was informed that

it would be two to three days before the air conditioner could be repaired. Brandt learned a few days later that the air conditioner in Stiner's office had been fixed by an acquaintance of Stiner's. Brandt tr. 45,264-65.

292. The usual repair time for air conditioners at Comanche Peak is from one to three days, and can be up to several weeks depending upon the problem with the air conditioner. Requests for repairs of air conditioners are often not answered for two or three days even to the extent of coming to look at the air conditioner. Brandt has personally experienced air conditioners breaking down where it took up to two days to have the air conditioner repaired. Tr. 45,266-67. Ronald L. Dempsey tr. 70,507-10; 513-14.

293. Since Stiner's departure from Comanche Peak, the air conditioner in her office has broken twice. It took two days for the air conditioner to be repaired one of those times. McClain tr. 71,018. Based on these facts, the Board finds no harrassment in the failure to repair Stiner's air conditioner immediately.

294. Stiner also was dissatisfied with the alleged condition and location of her new office. She alleges that nails were coming out of the plywood floor. (She also testified that the nails were only "loose".) She further testified that the office was at the edge of a "road" and that she was afraid that a truck might "accidentally intentional[ly]" run over her office.

D. Stiner tr. 52,032; 129-31. Stiner did not contact personnel in the safety department regarding these concerns. D. Stiner tr. 52,128.

295. The office to which Stiner was relocated is presently occupied by Jimmie Dale McClain. Brandt tr. 45,262. McClain is the QC inspector for the fab shop. He considers his present office location to be "great". He considers his present office to be the best of other facilities at which he has worked. In fact, he described his move to this office as being his turn for some "gravy". He has worked at construction sites for approximately twenty years. McClain tr. 71,003-04; 008-09; 012.

296. The "road" next to this office is a dirt and gravel driveway which is used by vehicles picking up fabricated items. The traffic is strictly small vehicles (e.g., pickup trucks, small tractors, fork lifts). The traffic is extremely light and slow moving. There is no reason for the vehicles to speed. Indeed, there is a fifteen mile an hour speed limit on the whole site. McClain has no fear of a vehicle running into his office. McClain tr. 71,009-10.

297. The Board finds Stiner's complaints regarding the conditions of her office, including her fear of being run over by a truck while in her office, to be unreasonable. The office may not have been a palace, but it certainly was functional and

convenient for Stiner in the performance of her job. Applicants' relocation of Stiner to this office indicates to the Board a genuine concern for her well-being.

h. Base Metal Defects

298. Stiner alleges that an NCR she claims to have written regarding base metal defects was voided. Stiner testified that the NCR concerned a piece of sheet metal in the fab shop, and that this NCR was written after she testified in the September 1982 hearings. Stiner could recall no details regarding the NCR, even though she claimed that the NCR was returned to her. D. Stiner tr. 52,219-21. Stiner did not raise this allegation in previous testimony.

299. The Non-ASME QA program requires that base metal defects are to be reported on an inspection report, in accordance with procedure QI-QP-16.0-5, and not NCRs. Brandt tr. 45,268-69, Brandt ex. 7, 8 and 9. Stiner herself reported base metal defects on inspection reports. Brandt tr. 45,269-70, Brandt ex. 10.

300. If Stiner had written the alleged NCR, it would have been recorded. But a computer search for NCRs written by Stiner on that subject and a review of the NCR log for the dates on which she claims this NCR was written, indicates that no such NCR was written. Brandt tr. 45,271-72.

301. Only one inspection report on base metal defects was written by Stiner. This fact was established by a computer search of the appropriate disciplines for IRs written by Stiner concerning base metal defects. The only IR identified in that search was a base metal defect in an embedded plate which does not involve anything in the fab shop. Brandt tr. 45,272. The Board finds that Stiner's story regarding this alleged incident is simply not supported by the evidence of record.

i. Denial of Access to Private Commuter Bus

302. Stiner alleges that shortly after she testified in September 1982 she was prevented from riding a commuter bus into work.

303. The bus was operated by James Comptom, an employee of Brown & Root at Comanche Peak who also drives a private bus in which he transports workers to Comanche Peak. Comptom was an independent contractor in the operation of his bus; he was not instructed by Brown & Root as to who could ride it. Chapman ex. 7, Report of Interview with James Comptom.

304. Stiner was not a regular rider on Comptom's bus and had not ridden the bus immediately prior to this incident. Regular riders pay in advance and are guaranteed a seat on the bus. Other passengers ride if space is available. Chapman ex. 7, Interviews with Comptom and Orfield.

305. When Stiner attempted to board Comptom's bus on September 16, 1982, the bus was full with regular passengers. Stiner would have had to stand for the remainder of the trip. Compton informed Stiner before she entered the bus that because she was pregnant Comptom's insurance would not cover Stiner if she were injured. D. Stiner tr. 52,038; Chapman ex. 7, Comptom Interview. The Board finds the actions of the driver to be reasonable under the circumstances, and not indicative of harrassment.

306. Stiner also alleges that when she left the bus after being informed she could not ride there were four or five people standing in the door and she was elbowed or shoved and almost fell (D. Stiner tr. 52,040). But Gary Orfield, an eyewitness identified by Stiner, stated that Stiner did not enter the bus, although she may have put her foot on the first step (id., Orfield Interview); and that no one "elbowed" Stiner while she was standing at the bus door. No one other than Orfield was near Stiner. id., Orfield Interview.

307. Following this incident, Mr. Stiner, who was then driving Mrs. Stiner to work, attempted to block the bus several times with his truck and made an obscene gesture (id., Interviews with Comptom and Orfield). During this ride Mr. Stiner took a hammer and indicated he wanted to fight someone on the bus. Chapman ex. 7, D. Stiner Interview.[24]

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[24] When Chapman learned that Stiner had informed people at
(footnote continued)

308. Stiner alleged that when she arrived on site she was verbally harassed by passengers from the bus (D. Stiner tr. 52,042). But Stiner's eyewitness stated that passengers on the bus did not yell or threaten either Mr. or Mrs. Stiner during the ride on the bus or after the bus arrived at Comanche Peak (id., Comptom and Orfield Interviews).

309. After arriving at the site, Comptom again explained to Stiner why she could not ride the bus. Comptom believed Stiner was satisfied and did not appear angry. id., Comptom Interview.

310. Mrs. Stiner claims that upon arrival at Comanche Peak Mr. Stiner contacted Frankum to request an escort for Mrs. Stiner (D. Stiner tr. 52,148). She claims Frankum was "rude" and told her husband to take her home if she was afraid, although she did not personally speak with Frankum (D. Stiner tr. 52,148). She later admitted that an escort was provided that day, as requested. (Chapman ex. 7, Interview of Stiner). She also was subsequently authorized to leave her work early to avoid the

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(footnote continued from previous page)
Comanche Peak that she was being harassed or intimidated because of her testimony in the licensing hearings, he directed that an investigation be conducted. The results of the investigation are memorialized in a memorandum dated September 24, 1982. Chapman ex. 7.

Stiner was interviewed on September 21, 1982 by a member of Applicants' corporate security office. Chapman was present at the interview. Chapman ex. 7, Report of Interview with Darlene Stiner. Stiner attempted to disavow her statements memorialized in this investigation report in general and by asserting that she was tired because the interview was "in the evening, late" (D. Stiner tr. 52,166-68). But Stiner's interview with Applicants was at 2:00 p.m. (Chapman ex. 7, Stiner Interview).

crowd and was given daily transportation from the parking lot to the job site rather than having to walk with other workers (D. Stiner tr. 52,159-62; Chapman ex. 7, Interviews of Frankum, Hoggard and Fortune). In view of this undisputed preferential treatment by Applicants, the Board finds her assertion regarding Frankum's attitude to be unreliable and Applicants' response to her concern commendable.

j. Reports in the "Circuit Breakers"

311. Stiner also alleged that upon arrival at the site people called her names and told her to go home. Stiner believed the reason for this behavior was an article had appeared in a company newsletter, the Circuit Breaker, which she claimed was misleading and stated that she and her husband were "testifying against their co-workers." Stiner did not approve of the words used in the Circuit Breaker. D. Stiner tr. 52,042-44; 149-50.

312. Even assuming this assertion of actions by co-workers to be true, the Board independently reviewed the two newsletters introduced by CASE in support of this allegation and find they present only factual statements regarding the Stiner's testimony which do not even suggest an intent or attempt to cause others to harass the Stiners (Locke ex. 2 and 3). The Board finds it more likely that if such an effect occurred, it is attributable to the public media coverage, including extensive articles on the

Stiners which appeared in the two major newspapers in the area the week prior to the 1982 hearings (Locke tr. 41,559-60; Locke App. exs. 1 and 2).

313. The Board has examined the evidence regarding this allegation, and finds that even assuming the allegation to be true, management's response was swift and appropriate. The Board finds that given the evidence adduced in Applicants' investigation no further action by Applicants should have been expected.

k. Alleged Threats by QC Inspectors

314. Stiner testified that her father-in-law told her that Jerry Lamb, a labor foreman at Comanche Peak, informed him that "two black girls" from the site were going to beat her up. Stiner believed the two individuals were Ms. May and Ms. Sanchez. D. Stiner tr. 52,045-46. Stiner stated she told Purdy, Brandt and Smith of this alleged threat (D. Stiner tr. 52,046). This allegation was investigated at the request of Chapman, and documented in a memorandum dated September 24, 1982 (Chapman ex. 7).

315. In her interview during this investigation, Stiner stated that she had since spoken with one of the women to whom she had attributed the threats and no longer believed either woman was involved in threatening her. She stated she had named these women to Brandt because they were the only black women she knew at Comanche Peak. Chapman ex. 7, Stiner Interview.

316. During the investigation ordered by Chapman, both Sanchez and May were interviewed (id., Sanchez, May Interviews). Sanchez stated that she had never told anyone she was going to beat up Stiner and had never heard May say anything to anyone to indicate she intended to beat anyone up. She stated the only danger she believed Mrs. Stiner could be in was from Mr. Stiner. id., Sanchez Interview. May stated in her interview that she considered Stiner to be a friend and had never made any threats against her nor is she aware of anyone else at Comanche Peak making such threats. She recounted her recent conversation with Stiner and believed Stiner no longer believed that either Sanchez or herself had threatened Stiner. id., May Interview.

317. Jerry Lamb was also interviewed during the investigation. He stated that Stiner was lying and that he had never made such statements to her father-in-law. He stated he had never heard of anyone at Comanche Peak making threats against either Mr. or Mrs. Stiner. id., Lamb Interview.

318. Upon learning of this allegation, Brandt met with both May and Sanchez. Both women assured Brandt that there was no truth to the allegation. Brandt had known both women for approximately a year and did not believe either woman was the violent type and, in fact, considered both to be very easy-going people. Brandt was satisfied that neither of these women posed any threat to Stiner and took no further action. Brandt tr. 45,287-90.

319. The Board finds that the testimony of Stiner is lacking in any probative value, and that Applicants' response to this allegation was appropriate. The investigations by Chapman and Brandt evidence a prudent management concern for any allegation of harassment or intimidation, regardless of its apparent validity.

H. Allegations of Henry Stiner

320. Henry Stiner was employed as a welder at Comanche Peak from December 1979 until November 1980 and for three weeks in mid-1981. Stiner has testified extensively in the parallel case involving Comanche Peak, Docket Nos. 50-445-1 and 50-446-1, but his testimony here is limited to two specific issues. Stiner contends (1) the NRC Staff failed to respond promptly and fully to his concerns about problems at the site, and (2) he was fired in July 1981 because he told a QC inspector about a gouge in a pipe.[25]

321. Stiner's contentions about Staff misconduct are addressed later in this decision. As to Stiner's contentions about his termination, the Board finds that he was fired for missing work on July 13 and 14, and failing to report on time on July 15, 1981. Stiner's prior attendance record, his probationary status at the time he was fired, and his failure to present satisfactory written statements from his physician when he returned to work, clearly justify his termination. Stiner's contentions also fail for an independent reason. John Hallford, the supervisor who fired Stiner, did not know about the gouge in the pipe when Stiner was fired, nor did he know that Stiner had

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25 Stiner's direct testimony about Staff misconduct and his termination is contained in H. Stiner exs. 1 and 2. These exhibits are portions of CASE ex. 666, which was received in evidence in the parallel Comanche Peak proceeding at tr. 4,202.

reported it to a QC inspector. Without such knowledge the incident involving the gouge in the pipe could not have affected Hallford's decision.

322. Stiner's testimony about Applicants' alleged misconduct is more significant for what Stiner doesn't say, than for what Stiner said about his termination. Intervenor has represented to the Board for many months that Stiner would testify extensively about harassment and intimidation of craftsmen at Comanche Peak.[26] Indeed, less than two weeks before he testified, Intervenor represented to the Board and the parties that Stiner would testify about at least four such incidents of harassment and intimidation.[27] Applicants voluntarily produced several witnesses for deposition based on these representations, and their depositions were taken at considerable inconvenience to the witnesses and considerable expense to the parties. At the time the Board thought such testimony was necessary to develop a full record of Stiner's contentions. In retrospect, however, the time and expense devoted to these depositions was unnecessary, and the parties' efforts were wasted.

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26 See, e.g., "CASE's Answer to Board's 10/25/83 Memorandum (Procedure Concerning Quality Assurance)," November 28, 1983; "CASE's Proposed Standard for Litigating Allegations of Intimidation," June 12, 1984, pp. 11-12.

27 June 27, 1984, letter to L. W. Belter (Applicants) from B. P. Garde (Trial Lawyers for Public Justice).

1. The Board Credits Mr. Stiner's Testimony Only When It Is Substantiated By Independent Evidence

323. The Board made detailed findings concerning Stiner's credibility in its Partial Initial Decision (Concerning Welding Issues),[28] which findings are hereby incorporated into this decision. These findings reveal that Stiner's testimony simply cannot be believed unless it is substantiated by independent evidence. The Board's findings on Stiner's credibility initially were based on the evidence presented in Dockets 50-445-1 and 50-446-1, but their correctness is confirmed independently by the record in this proceeding. Where appropriate, the Board highlights some of the evidence that destroys Stiner's credibility in the context of addressing, and rejecting, his substantive claim.

2. Mr. Stiner Was Terminated For Absenteeism, Not For Telling A QC Inspector About A Gouge In A Pipe

324. Stiner was employed as a welder at Comanche Peak from December 5, 1979 until he was fired in November 26, 1980, for chronic absenteeism and for coming in late and leaving early (Johnson tr. 39,017-18, 060-61). Stiner's attendance record, upon which his termination was based, reveals there were six

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[28] Applicants' proposed findings of fact on the welding issues are to be filed on September 7. Applicants assume that the decision of the Board on the welding issues will be issued before the decision on the intimidation issue. If this assumption is incorrect, Applicants request that the Board adopt their proposed findings on the welding issues, as those findings pertain to Stiner's credibility, in the Board's intimidation decision.

weeks during which Stiner didn't show up at all, and eight other weeks during which he worked thirty hours or less (Applicants' ex. 177 at 5).

325. Stiner was rehired in June 1981, and he requalified as a welder on June 22, 1981 (Applicants' ex. 177 at 5). Jimmy Green the foreman over the crew to which Stiner was assigned, was Stiner's first level supervisor, and John Hallford, the general foreman to whom Green reported, was Stiner's second level supervisor (Hallford tr. 70,005; 009). Hallford knew that Stiner had been terminated in 1980, and he reviewed the reasons for the termination at the time Stiner was assigned to his group (Hallford tr. 70,007). Hallford learned of Stiner's attendance problems and then met with Stiner to discuss the matter (Hallford tr. 70,007). During this meeting, Hallford told Stiner that he would not tolerate absenteeism in his crew, and he placed Stiner on probation in light of his prior attendance record (Hallford tr. 70,007). Stiner denied ever talking with Hallford prior to his termination (Stiner tr. 51,565-66). Nevertheless, the Board declines to credit Stiner's testimony on this point. Moreover, even Stiner admits that Hallford conveyed a stern warning to all of the welders concerning absenteeism, particularly absenteeism on Monday morning (Stiner tr. 51,653).

326. On Monday, July 13, Stiner did not report to work. Hallford was informed that Mrs. Stiner called the office and said that Stiner would not be in because he was needed at home to

repair an air conditioner or to attend to some other electrical problem (Hallford tr. 70,008; 029-30). On July 14, Stiner again failed to report to work. Hallford again was informed that Mrs. Stiner called the office. This time he was told that Stiner would not be in because he had sunburned his back while he was working on the air conditioner. Hallford tr. 70,009, 030-31. After receiving this report, Hallford went to see Mrs. Stiner at the job site, but Mrs. Stiner was also absent that day. Hallford tr. 70,009. Hallford then told Green to fire Stiner if he failed to report for work the next day (Hallford tr. 70,009).

327. On Wednesday, July 15, Stiner again failed to report for work and again Hallford was informed that Mrs. Stiner called the office. This time Hallford was told that Mrs. Stiner said that Stiner was going to see a doctor and that he would be in late with a doctor's excuse. Hallford tr. 70,032-33. Hallford then instructed Green in writing, to terminate Stiner (Hallford tr. 70,010; 031-33), and Green did so (Green tr. 35,051; 053).

328. Stiner arrived at the job site around 9:00 a.m. on the fifteenth (Green tr. 35,051), but Green had already terminated Stiner, pursuant to Hallford's instructions (Green tr. 35,048). Stiner then asked to see George Bunt, the superintendent to whom Hallford reported, and he was permitted to do so. Hallford joined the meeting between Bunt and Stiner, and Stiner tried to persuade Hallford to reconsider his decision (Hallford tr. 70,011; 047-48; Stiner tr. 51,654). Stiner apparently provided

Hallford with a doctor's excuse to support his position that medical considerations required his absences. The only documentation that could have been provided on July 15, 1981, was H. Stiner Exhibit 4 (dated July 14, 1981). That document stated Stiner was to return to work on July 15. Stiner admitted that he did not return to work on July 15, but came in to obtain a medical excuse from the on-site medics to leave work. Further, Stiner acknowledged that Hallford was concerned that Stiner's written "excuses didn't cover [his] absences" (Stiner tr. 51,670). This document did not excuse Stiner's absences on July 13 and 15. Stiner nevertheless nearly succeeded in persuading Hallford (Hallford tr. 70,012; H. Stiner ex. 1, pp. 37-38), but Hallford ultimately decided that overlooking Stiner's absences, in light of his prior record and probationary status, would establish a bad precedent, and he reaffirmed his decision to terminate Stiner (Hallford tr. 70,012).

329. Stiner's version of the events of July 13, 14, and 15 and all of the key elements of his story are contradicted by more credible witnesses. First, Stiner contends that he told Green on Friday, July 10, that he wouldn't be in until noon on Monday because he was going to the doctor "to have some treatment on . . . . [his] back" and to take care of some "flu-like symptoms." H. Stiner ex. 2, p. 36. Green expressly denies that Stiner told him on Friday that he (Stiner) had a doctor's appointment on Monday. (Green tr. 35,053). (Stiner later testified that he

also "had some warts removed off of my privates that rendered me literally incapable of working . . ." (H. Stiner ex. 2, p. 37).)

330. Second, Stiner contends that he saw a doctor on the thirteenth and that the doctor gave him some "medication that made him drowsy," and restricted him to his home. Stiner contends that he then telephoned the office and said he was not coming in at all. H. Stiner ex. 2, p. 36. Stiner woodenly contends that he had a doctor's excuse for the thirteenth (Stiner tr. 51,663), but he has failed to produce it, despite numerous requests that he do so (Stiner tr. 51,663-66).

331. Third, Stiner's testimony provides several versions of calls to the site reporting his absence. In his direct testimony Stiner testified that he phoned after he saw the doctor (H. Stiner ex. 1, p. 36), but in cross-examination Stiner testified that Mrs. Stiner made the call before 7:00 a.m. (Stiner tr. 51,636-37); that his written, prefiled testimony was in error (Stiner tr. 51,638); and that he did not call the office on the thirteenth. Stiner recanted again, however, and testified that he had, in fact, called, but that he placed the call before 7:00 a.m. (Stiner tr. 51,640; 646). With respect to the call on the fourteenth, Stiner first testified that he did not call in at all (Stiner tr. 51,569-70). However, he subsequently recalled having placed such a call and claimed he had forgotten to mention that

call in his testimony in the previous hearings (Stiner tr. 51,570). Stiner later claimed it was Mrs. Stiner who had called in (Stiner tr. 51,640-42).

332. Fourth, Stiner's assertions regarding the time at which he arrived at the site on July 15 is inconsistent with the testimony of two reliable witnesses. Mr. Stiner claims that he arrived at the site by 7:00 a.m. and when he arrived he had already been terminated (Stiner tr. 51,647-48; 691-92). Green recalled that Stiner did not report for work until 9:00 a.m. (Green tr. 35,051-52) and Hallford had personally checked to see if Stiner had reported to work at 7:00 a.m. and found that he had not (Hallford tr. 70,009).

333. Finally, Stiner himself questioned the accuracy of the doctor's excuses which he submitted in support of his claim that his absences were due to medical reasons (H. Stiner exs. 4 and 5). H. Stiner Exhibit 4 is dated July 14, 1981, and states that Stiner was totally incapacitated on that day and was to return to work on July 15, 1981. H. Stiner Exhibit 5, dated July 16, 1981, states that Stiner was totally incapacitated from July 15 to 17, 1981. Stiner first states that the dates on H. Stiner Exhibit 4 are not correct (Stiner tr. 51,536). Further, Stiner states that the instructions on the documents regarding being able to return to work may also have been in error (Stiner tr. 51,643). Finally, it appears that Stiner's recollection of when he saw the doctor and the dates on the two documents are substantially

different (Stiner tr. 51,643). Despite these uncertainties and repeated inquiries by Applicants, Stiner has failed to produce further evidence of his being under a doctor's care on July 13 or July 15 (Stiner tr. 51,663-66). Most recently, CASE promised but failed to produce this material during the depositions (Stiner tr. 51,670-72; 672-73).

334. Stiner alleges that on Friday, July 10, 1981, he found a gouge in a pipe which he reported to Green (H. Stiner ex. 1, pp. 35-6). Stiner claims that Green directed him to make an illegal downhill weld on the gouge to cover it up (Stiner tr. 51,620-21). He states that when declined to perform the weld, Green went to get another welder to perform the weld (Stiner tr. 51,628-29). Stiner testified that while Green was gone, a QC inspector looked at the gouge and reported it on a nonconformance report. Stiner stated that Green saw him showing the gouge to the QC inspector and that is the reason he was terminated (Stiner tr. 51,630).

335. Green did not disagree that a gouge in a pipe was found or that it was pointed out to the QC inspector by Stiner (Green tr. 35,035-38). However, Green stated that it was company policy to point out defects to QC (Green tr. 11,720-21 (incorporated into the deposition transcript at tr. 35,029 by Board ruling at tr. 35,031)). Indeed, this policy is evidenced by the fact that Hallford, Mr. Green's general foreman, had reported to QC that another supervisor was acting inappropriately

and yet Hallford was not terminated or demoted ("NRC Staff Testimony on Welding Fabrication Concerns Raised by Mr. and Mrs. Stiner," pp. 29-30, received into evidence at tr. 12,146).

336. The evidence of record suggests that Stiner's concern was more that someone would believe that he had made the gouge rather than a concern for retribution for reporting it to QC (Neumeyer tr. 59,761-62). In any event, if Green had been displeased with Stiner for reporting the gouge and had wanted to cause Stiner to be fired, he could have done so immediately without talking to anyone else (Hallford tr. 70,037). He did not do so. Further, Hallford, the individual who fired Stiner, testified that he did not remember being informed of the gouge in the pipe (Hallford tr. 70,041; 053). Even assuming Hallford was aware that Stiner had reported this gouge to QC, the Board finds that given the evidence of Hallford's desire to assure quality it is improbable that Hallford would have taken any action against Stiner for that incident.

337. Stiner also testified that his termination may have been based on a "three-part" memorandum from Hal Goodson to fire Stiner. Stiner stated that a similar memo was sent from George Bunt to Hallford (H. Stiner ex. 1, p. 38). This testimony was allegedly based on a conversation at Stiner's home with some man who heard from his wife (a secretary at CPSES) that she had overheard someone talking about Stiner's termination. Stiner could not remember the name of the secretary (or apparently the

husband) (Stiner tr. 51,586-87). The Board concurs with Applicants' motion to strike the testimony as hearsay (Stiner tr. 51,587). The direct testimony on this subject establishes that Hallford received no such memorandum and the decision to fire Stiner was his alone (Hallford tr. 70,045).

I. Robert Messerly

338. Robert Messerly, a former welder and fitter at the site, offered testimony that sometime in 1979 he had observed Mike Robinson, then the general foreman of cable tray supports, threaten a QC inspector, ostensibly to get him "to start passing his hangers . . ." (Messerly tr. 50,007). Messerly testified that the QC inspector then walked away, saying he would report the incident to his superiors (Messerly tr. 50,009). Messerly also testified that, after the incident, he saw fewer hold tags on hangers. This, he concluded, was because the inspector "had been warned." Messerly tr. 50,012-13.

339. Other than this sketchy outline of a claimed incident, Messerly was unable to offer any credible detail regarding the alleged intimidation. He could not pinpoint the date any more exactly than "sometime" in 1979. He could not remember where

this alleged incident was supposed to have taken place, nor could he identify the QC inspector who allegedly had been threatened.[29] Messerly tr. 50,019-23.

340. his absence of verifiable detail raises serious questions about the authenticity of Messerly's recollection. Particiularly, when this lack of detail is contrasted with Messerly's vivid recollection of what was said, the threat made, the physical action and the quiver in the QC inspector's voice and his pallor.

341. More troubling still is Messerly's repeated failure to mention this episode in any of his prior affidavits submitted in these proceedings or statements made to NRC investigators. For example, Messerly's first affidavit, dated February 3, 1982, includes quite a number of allegations, but it fails utterly to mention the alleged incident about which he testified here (Messerly tr. 50,029; 032; Messerly tr., ex. 4). Similarly, Messerly did not raise this matter when he gave a sworn statement to the NRC in April, 1983 (Messerly tr. 50,041). Finally, Messerly failed to raise the incident when he was interviewed telephonically by NRC Investigator Brooks Griffin on August 17, 1983 (Messerly tr. 50,043; 048-49).

342. Messerly's failure to raise this allegation during his telephonic interview is particularly telling. The entire purpose behind that investigation was to contact individuals identified

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[29] Applicants' counsel interviewed approximately twenty craft and QC employees who could have witnessed the alleged incident or who could have knowledge of it, but none of these persons recalled the incident described by Messerly.

by Intervenor as former plant employees who Invervenor allege were intimidated, or subjected to attempted intimidation and to document their concerns on the subject. March 7, 1984 Report of Investigation, 4-84-006 at 1. This Report was transmitted to the Board and parties on April 3, 1984. It begs credulity that Messerly would fail to discuss in that interview the only incident of intimidation about which he claims now to have any knowledge, when that was the sole purpose of the call: To solicit his concerns on the subject of harassment and intimidation. Under these circumstances, the Board cannot place any weight on Messerly's testimony.

343. Notes taken by the NRC investigator do suggest, however, the explanation for Messerly's "refreshed recollection". He believed that Robinson (who he accused of intimidation) had tried to get him fired on a number of occasions because of his friendship with craft superintendent, Hal Goodson. Messerly said Robinson was afraid that he would get his job. Messerly ex. 2. This personal animosity is yet a further reason for the Board to reject Messerly's uncorroborated testimony.

344. In addition to those concerns for Messerly's credibility, the Board also must note the evidence bearing on his character. Messerly admitted that he accepted "gifts" from a company with whom the site did business; including an all-expense paid trip to Miami, Florida and $400 in cash, in exchange for ordering equipment and parts (Messerly tr., ex. 4, p. 3). Messerly's acceptance of such "gifts" was manifestly improper.

345. Nevertheless, assuming that the incident of claimed intimidation described by Messerly, or some version of it, actually did occur, there is still no reason to believe that it resulted in fewer deficiencies being identified. The only "evidence" Messerly cites in support of that contention is his otherwise demonstrably hazy recollection that he "saw" fewer hold tags after the incident, than before. Messerly presented no data in support of this contention, and, in light of his other lapses in memory, there is little reason to accept his testimony on this point.

346. Moreover, even were the Board to assume the truth of Messerly's observation, a number of legitimate reasons could explain any perceived decline in hold tags. For example, the amount of work performed could have declined; the inspection procedures governing the use of hold tags could have changed; or, craftsmen in the area could have been doing a better job. In sum, there is little, if anything, in Messerly's testimony that supports a finding of intimidation. Thus, the Board declines to rely upon it.

J. QA Three

347. During the summer of 1983, B.R. Clements, TUGCO Vice President, Nuclear Operations, and David Chapman, TUGCO, QA Manager, learned second-or-third hand that one or more QA auditors were dissatisfied with their job (Clements tr. 40,142-43). Although the auditors had not complained directly to Clements, he decided to look into the matter (Clements 40,142-43).

348. Clements appointed Richard Kahler, Supervisor of Engineering and Administrative Services, to oversee an investigation, and he assigned Robert Spangler and William Keeley to work with Kahler on the project (Clements tr. 40, 142, 146; Kahler tr. 36,025, 209). Clements instructed the trio to investigate the source of the auditor's discontent (Kahler tr. 36,032; Keeley tr. 43,504-05). Pursuant to Clements' instruction, Spangler and Keeley interviewed all 23 TUGCO QA auditors, and asked each auditor to answer a series of questions designed to uncover any and all concerns that the auditors might have about the program (Spangler tr. 36,168).

349. The auditors identified two primary areas of concern. First, one auditor alleged that management had deleted or altered portions of the audit report for audit TCP-66. Second, N. F. Cote' complained about an incident that occurred during an audit, which incident Cote' thought was intimidating (Clements 40,159; Kahler 36,053-54; 42,510-11; Keeley 43,506-07; Spangler 42,510-

11). In addition, an auditor alleged that a name had been forged on an audit report. The forgery allegation was referred to Clements, who investigated the matter and found it was meritless (Keeley tr. 43,551-54; Spangler tr. 43,067-68; Clements tr. 40,158-59).

350. The allegation that an audit report had been changed involved the rad waste audit, TCP-66 (Kahler tr. 36,060; 42,505). The audit team was composed of two auditors, A.E. Kesler and Cote'; Kesler was the audit team leader (Kahler tr. 42,505). The investigation established that the audit file was complete. It included all of the auditors' field notes, all of the auditors' checklists, the draft audit report as worked on by Vega, and a memorandum by Kesler to the file regarding the audit. In short, the file included all of the appropriate materials. Spangler tr. 43,016, 032, 071-73. Based on these findings, the investigators concluded that no cover-up had occurred (Spangler tr. 43,032-33; 073.

351. The second incident involved the allegation of intimidation raised by Cote'. The incident arose during an insulation and non-ASME audit. Kahler tr. 42,511. During the audit, an auditor identified what he believed was a hardware problem on a hangar and he directly informed craft of the matter. After a discussion between the auditor, a craftsman, and a QA inspector, the craftsman agreed to rework the item. Anderson tr. 73,010-11; Tolson tr. 51,081.

352. A craftsman then went to see C. Thomas Brandt, now ASME QC Supervisor, and asked for the document package he needed to rework the item. Brandt asked the craftsman why the hangar was being reworked after it had been accepted by QC. Brandt was told that an auditor had stated the hangar was deficient and that rather than "causing a big to do about it, there were just going to fix it". Brandt tr. 45,292. Brandt told the craft representative that he would resolve the problem with the auditors and that craft should not repair the hangar. Brandt tr. 45,292.

353. Brandt then went to Tolson's office and told Tolson about his conversation with the craftsman. Based on their understanding of what had happened, both Tolson and Brandt believed that the auditor was improperly directing craft activities. According to site practice, if an auditor wanted to report what he believed was a deficiency in the field, he could either write a nonconformance report or identify the deficiency as an audit finding. Brandt tr. 45,293.

354. Tolson and Brandt went to the auditor's office to discuss the situation with the auditor involved. Tolson wanted to make sure that the auditor understood the procedure for reporting hardware deficiencies through QA/QC channels. Tolson tr. 51,070; 51,074.

355. Larry Rillera, one of the auditors assigned to the audit, was in the office when Tolson and Brandt arrived (Tolson tr. 51,068). Tolson asked Rillera if he was the audit team leader, because Tolson normally discusses audit matters with the team leader. Tolson tr. 51,072. At that time Ron Cote' entered the office, and both Cote' and Rillera responded affirmatiavely to Tolson's question as to who was the team leader (Tolson tr. 51,073). Tolson then asked who of the two auditors had been involved in the incident in the field, and Rillera responded it was he. Tolson then began discussing the matter with Rillera. Tolson tr. 51,073. At about this point, Debra Anderson, QA Audit Supervisor, entered the room. Anderson tr. 73,004; Tolson tr. 51,073.

356. Cote' interrupted Tolson's conversation with Rillera (Tolson tr. 41,074) and raised his voice (Anderson tr. 73,009-10; Brandt tr. 45,294). In the discussion, Tolson attempted to explain to the auditors that he and Mr. Vega had for years agreed that if auditors identified what they believed to be hardware deficiencies in the field, they should either write a nonconformance report or include the deficiency as a hardware finding. Brandt tr. 45,294-95. The entire conversation lasted about five minutes. Brandt tr. 45,295.

357. Kahler, Spangler and Keeley found that two of the twenty-three QA auditors believed that Tolson acted in an intimidating manner (Kahler tr. 42,541). Those auditors,

however, did not state that they would be prevented from doing their jobs as a result (Clements tr. 40,153). In addition, Kahler, Spangler and Keeley found that Tolson had never prevented any QA auditor from carrying out his or her job and that the auditors would not alter any of their findings on the basis of Tolson's manner (Kahler tr. 45,541-43; Spangler tr. 43,074; Keeley tr. 43,517-18).

358. To a large extent this incident of alleged intimidation was the result of various individuals not acting through channels. Tolson was concerned that an auditor was bringing directly to the attention of craft what the auditor believed were potential hardware deficiencies rather than working through the QA/QC program (Tolson tr. 51,069-70). Anderson was concerned that to resolve this problem Tolson had contacted the auditors directly rather than working through her (Anderson tr. 73,006). Later, both the auditor and Tolson agreed to work through the proper channels. Tolson tr. 51,075; Anderson tr. 73,006-07.

359. Following the incident, Clements was concerned that Anderson and Vega had not expressed to Tolson the need for him to work through channels, and that they had failed to inform their auditors that they had done so (Clements tr. 40,154-55). Vega and Anderson informed Clements that they had spoken to Tolson

about the matter (Clements tr. 40,155; Anderson tr. 73,006-07), and the auditors were subsequently told that Vega and Anderson had spoken with Tolson about the incident (Clements tr. 40,155).

360. This incident also involved Cote', who had a difficult time fitting in as a QA auditor. He believed that Anderson was inadequate as a supervisor, apparently because she had at one point been a QA secretary (Anderson tr. 73,027-28). In addition, he resented being supervised by a woman (Anderson tr. 73,040).

Cote' in the opinion of Anderson was at times unprofessional and immature and he had a difficult time dealing with his co-workers. Anderson tr. 73,041.

361. Finally, Cote' was directly involved in every allegation involving a cover-up or intimidation raised during the investigation by Kahler, Keeley, and Spangler. He was a member of the audit team which completed TCP-66 (Kahler tr. 42,505) and alleged that during the insulation and non-ASME audit an incident of intimidation occurred (Spangler tr. 43,038). Cote' was also involved in an alleged forgery incident (Clements tr. 40,158-159) and was implicated in an incident where he allegedly intimidated a site subcontractor (Spangler tr. 43,046-48; 057-58). That allegation was examined and resolved (Spangler tr. 43,057-58).

K. T-Shirt Incident

362. Approximately two weeks before the T-shirt incident, the Building Manager for Safeguards Unit 1 came to Tolson asking for assistance because, in his view, "things were not working as well" as they should be. (Tolson tr. 40,580-83). In response, Tolson began attending daily meetings of craft, QC and building management personnel, to get a flavor of how things were functioning in the building. Tolson also talked with QA personnel to find out generally how things were progressing. Tolson tr. 40,656; 582; 659-60.

363. About 8 to 10 days later Tolson was informed that a few of the electrical inspectors were being "destructive in the manner in which they were accomplishing their inspections" (Tolson tr. 40,580). Tolson was informed that the inspectors were jerking wires from terminal lugs, rotating flex conduit to such a point that the conduit would loosen up, and then identifying the items as defective. Tolson tr. 40,580; 582-83.

364. Tolson asked to be taken to the field and shown where the inspections in question were conducted (Tolson tr. 40,660-61). He saw that wires had been pulled from termination lugs, and loose conduit. Based on these observations, Tolson believed that some inspectors could have conducted destructive examinations. Tolson tr. 40,580; 586. Tolson then met with the

Safeguards QC supervisor, Greg Bennetzen, and the lead electrical inspector, Stan Vore (Whitehead tr. 55,009), asking for their input regarding the matter (Tolson tr. 80,581).[30]

365. At this time, there was also a communications gap between inspectors and management regarding the post-construction verification procedures being used in Safeguards Unit 1 (Pitts tr. 73,513, 73,518; Welch tr. 53,048-49). Some inspectors had concerns about whether a gauge they were to use to measure crimps after installation was out of tolerance (Welch tr. 53,051). They were also concerned about inspections of lighting terminations (Welch tr. 53,055). See also Whitehead tr. 55,014-16; 020-21; 058-59; 55,060-63. These matters, however, had been brought to the attention of management and were being resolved (Whitehead tr. 55,063; Welch tr. 53,055-060A; Grier tr. 45,590-92).

366. On Thursday, March 8, a group of approximately twelve QCIs wore black T-shirts to work on which was printed the phrase "Comanche Peak Nitpickers, We're In the Business of Picking Nits" (Whitehead tr. 55,083; Welch tr. 53,119-20). On March 8, Mark Welch was the QC supervisor in Safeguard Unit 1; it was his first day in that position. Welch tr. 53,115; 232. He had previously

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30 Tolson concluded that an independent review of the matter was warranted and that those performing the review should be free of any influence from the inspectors involved in the inspections. Therefore, Tolson concluded that a temporary reassignment of those inspectors was warranted. Tolson tr. 40,581; 40,588.

received instructions from his supervisor, Dan Hicks, that if the inspectors showed up wearing the T-shirts they should sent home to change (Welch tr. 53,121).

367. Between 8 a.m. and 9 a.m. Welch learned that several electrical QCIs were wearing the black T-shirts, and he called Tolson's office to confirm his instructions (Welch tr. 53,119-121). Tolson instructed Welch to send the inspectors home to change their shirts. (Tolson tr. 40,551). Welch then went to the electrical QC work area where eight of the inspectors wearing the T-shirts were gathered. The inspectors were Eddie Snyder, Milton Barfield, Lan Davis, Wayne Whitehead, Bruce Hearn, Anthony Ambrose, Jack Pitts and D. T. Oliver.[31] Welch tr. 53,122-23. Welch, following his instructions, asked the inspectors to go home and change shirts. Some of the inspectors asked why they were being required to change, to which Welch responded that the message on their T-shirts prevented them from performing their jobs effectively. Welch tr. 53,124.

368. Welch told the inspectors that if they had questions, they could talk to Tolson. The inspectors clearly perceived Welch's remark as an option, not as a threat. Welch tr. 53,125; Whitehead tr. 55,088. The inspectors requested to meet with Tolson, after which Welch called Tolson's office. Welch was instructed to bring them to Tolson's office. Welch tr.

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31 Apparently four other were the T-shirt as well (Whitehead tr. 55,084-85).

53,126.When the inspectors arrived in Tolson's office, Tolson had no pre-planned intentions. Tolson, however, did want to see the T-shirts and the individuals involved. Tolson tr. 40,557-58.

369. When the inspectors were in Tolson's office, a number of other individuals were also present, including Stan Vore, Gordon Purdy, Dan Hicks, and Bill Cromeans (Welch tr. 53,130-31). Cromeans was a QC supervisor (Whitehead tr. 55,091). As soon as the inspectors were all in Tolson's office one of the QC inspectors, Eddie Snyder, asked Tolson if he could tape record the meeting. Tolson said no and left the room. Welch tr. 53,129-30; Whitehead tr. 55,089; Tolson tr. 40,557. Tolson had heard a rumor that he was taped surreptitiously during a previous meeting and he tied the request from Snyder to that incident. Tolson tr. 40,560-61.

370. Tolson went from his office to the Assistant Project General Manager's office to await direction from corporate headquarters in Dallas (Tolson tr. 40,558). Tolson was instructed by corporate headquarters to keep the inspectors in a room immediately across the hall from his office until headquarters had time to consider the matter further (Tolson tr. 40,561; 576). This decision was based on what was at the time perceived to be a need to avoid any physical violence or any verbal abuse between craft and the inspectors (Clements tr. 40,099-100).

371. Tolson then returned to his office and instructed Cromeans to take the inspectors to the QA auditors' office, which was done. The inspectors were escorted by Cromeans and C. C. Randall, who was also a QC supervisor. Welch tr. 53,151; Whitehead tr. 55,091; 093. At this time Tolson's secretary called Curtis Biggs and asked him to meet Cromeans in front of Tolson's office. When Biggs arrived he and Cromeans were instructed to escort the inspectors if they needed to go anywhere and to make sure that they were returned safely to the auditors' office. Biggs tr. 71,599-600.

372. One of the inspectors, Jack Pitts, went to Brandt's office about ten or fifteen minutes after they were taken to the auditors' office. Pitts was the only inspector involved in the T-shirt incident who was employed by Ebasco. Brandt was his immediate supervisor with Ebasco. Pitts tr. 73,507; Brandt tr. 45,326-27. Brandt and Pitts discussed why he wore the T-shirt, and Pitts agreed with Brandt that wearing the T-shirt was not professional. Pitts tr. 73,507-508; 536-37.

373. Boyce Grier interviewed the inspectors throughout the morning of March 8. Tolson had asked Grier, at the beginning of the week of March 5, to meet with all Safeguards Unit 1 electrical inspectors and Grier scheduled these interviews prior to March 8. Grier tr. 45,590-91. Tolson's instructions to Grier

were to interview the inspectors concerning their complaints about the procedures, and report to Tolson on the matter. Grier tr. 45,591.

374. One of the inspectors wearing a T-shirt was meeting with Grier at 8:30 a.m. on March 8, in accordance with the schedule Grier had established. During this interview Grier was interrupted and told that the inspector he was interviewing was to be sent to an office a short distance away. He was also told that another inspector would be brought to him. During that day Grier interviewed the eight inspectors involved in the T-shirt incident. Grier interviewed the rest of the electrical inspectors the following day. Grier tr. 45,591-92.

375. After the inspectors were settled in the auditor's office, Welch returned to Tolson's office. Tolson instructed Welch to accompany some security guards to search the work tables of the inspectors for utility documentation (Welch tr , 53,160-161). The guards searched only the desks of the eight inspectors known to be wearing the T-shirts and confiscated utility documentation. The documentation was then put in a file folder with the inspector's name on it. They did not confiscate personal belongings. Welch tr. 53,162-164. By around 12 noon Welch finished assisting the guards and returned to Tolson's office with the documents. Welch and Cromeans then put the documents in another nearby office, where Cromeans examined them. Welch tr. 53,170-171.

376. Biggs was in the auditors' office during most of the time the inspectors were there. He perceived that the QCIs were frustrated because of the amount of time it took to "get things taken care of." Biggs tr. 71,609-10. The record does not reflect any efforts by the QCIs to leave the auditors' office without an escort. Nor did the inspectors state that they were being "held" (Whitehead tr. 55,098-99; Biggs tr. 71,604-05) against their will in the auditors' office (Pitts tr. 73,540-41; Biggs tr. 71,600; 71,609-10; see Whitehead tr. 55,105-06). The only limitation placed on the inspectors was that they were to be escorted when they left the room (Biggs tr. 71,599), and that limitation was imposed to avoid the possibility of physical violence or verbal abuse (Clements tr. 40,099-100) in what was an obviously a very volitile situation (Purdy tr. 41,367).

377. At about 1:30 p.m. Gordon Purdy told the inspectors that they were to go home for the rest of the day although they would be paid for a full eight hour day. Purdy also assured the inspectors that their jobs were not in danger, and he asked that they not wear the T-shirts again. Whitehead tr. 55,100; Purdy tr. 41,367. By 2:30 the inspectors had picked up their personal belongings and were on their way to the gate accompanied by Randall and Cromeans.

378. As the inspectors were walking to the gate, they asked for a meeting with Tolson and Welch. Whitehead tr. 55,111-12. On March 9, Vega and Welch met with the inspetors who had

requested a meeting the previous day (Welch tr. 53,185; Whitehead tr. 55,120; Vega tr. 36,718-19). Tolson asked Vega to sit in for him during that meeting because of Tolson's decision to seek a transfer (Tolson tr. 40,663-64).

379. During this meeting Vega and Welch listened to numerous concerns of the inspectors, one of which involved a newspaper article appearing in the March 9, 1984, Fort Worth Star Telegram. The inspectors wanted to disavow any connection with that article (Welch tr. 53,185). The newspaper article stated that the inspectors were accused of being an organized group trying to sabotage the plant, which was not accurate (Whitehead tr. 55,113). The article also stated erroneously that there would be a change of procedures so that non-conformances or unsatisfactory conditions in junction boxes and terminal blocks were not going to be reported and fixed (Pitts tr. 73,529).

380. The inspectors asked Vega how they could show that they were not involved in the article and he suggested that they prepare a statement. Vega did not suggest what should be in the statement. Whitehead tr. 55,153-154. After the meeting the inspectors asked Lan Davis to draft a statement, which they all reviewed. Welch made one or two suggested word changes so that the statement would better reflect what the inspectors were trying to state and he then arranged to have the statement typed. Each of the eight inspectors then signed the statement. Whitehead tr. 55,154-155.

381. During this meeting discussions also took place regarding inspection procedures, management support, turning over buildings with open NCRs and dispositioning of NCRs. Numerous other issues were raised as well. Whitehead tr. 55,121-125; Welch tr. 53,188-195. Vega subsequently initiated action with engineering to address the technical concerns of the inspectors. He also initiated action to address their non-technical concerns. Vega tr. 36,718-19.

382. Additionally, Vega and Welch discussed with the QCI's why they wore the T-shirts. Whitehead stated that he wore the shirt for reasons unrelated to safety and that it had nothing to do with any earlier incidents at Comanche Peak. It was simply a joke. Whitehead tr. 55,148-49. Pitts wore the T-shirt to fit in with the group of QCIs with whom he was working. He also regarded wearing the shirt as a joke. Pitts tr. 73,502; 550-51.

383. The slogan on the T-shirt was based on an exchange which occurred when a QC inspector "unsated" something and his craft counter-part stated that the inspector was nit-picking. The inspector responded by saying that he was in the business of picking nits. Whitehead tr. 55,127. Vega concluded following an investigation into the T-shirt incident that the shirts were worn as an act of levity and that the inspectors did not intend to convey dissatifaction or conerns (Vega tr. 36,718).

384. The NRC Staff reached the same conclusion after interviewing three of the inspectors involved in the March 8, 1984 incident (Cummins 54,070-1; 54,072).

Meeting with NRC and Utility Management

385. In early April, six of the QCI's involved in the T-shirt incident met with Darrell Eisenhut, Ben Hayes, John Collins, and Michael Spence. The purpose of the meeting was to discuss the T-shirt incident. Whitehead tr. 55,148; Spence tr. 48,077-78. There was an air of complete openness during that meeting and senior management of NRC and the President of TUGCO expressed their interest in hearing any complaints the inspectors had, including complaints about intimidation (Spence tr. 48,085). During this meeting, the inspectors again reiterated that wearing the T-shirts was not related to safety concerns. (Whitehead tr. 55,148).

386. The inspectors also indicated that there was no friction between QC and craft in their work assignments and that they felt free to write up non-conforming conditions (Spence tr. 48,078-79). Because of the openness of the meeting, it is likely that if the ispectors had first-hand knowledge of acts of intimidation raised against them they would most likely have expressed them (Spence tr. 48,085).

Subsequent Employment History of QCIs

387. In March of 1984, a stop work order was issued on final post-construction electrical inspections in the Unit 1 Safeguards Building (Vega tr. 36,720). Because of the stop-work order there was less work for the electrical inspectors, and as a result, it was necessary to reduce the work force. Vega tr. 36,720.

388. As the building QC supervisor, Welch was responsible for selecting the QCIs who would be transferred. He decided to transfer Milton Barfield, Ron Jones, Gerald Prior, Scott Shamblin, Eddie Snyder and Wayne Whitehead. Vega tr. 36,718; 722; Vega ex. 6. When deciding which QC inspectors to transfer, Welch used a number of criteria, including level and number of certifications, number of absences, number of late arrivals, and number of early outs. Welch wanted the inspectors with the best attendance records and the most certifications to remain. Vega tr. 36,721-22; Vega ex. 6.

389. When Welch applied these criteria, some inspectors involved in the T-shirt incident were transferred to Unit 2 while others were not (Vega tr. 36,723-24). Specifically, of the six inspectors transferred, Barfield, Snyder and Whitehead were involved in the incident (Welch tr. 53,122-23; Vega tr. 36,722). The only inspector transferred for reasons other than attendance and certifications was Whitehead. He was transferred because he was acting as lead and Welch needed only one lead in Safeguards Unit 1 at that time. Vega tr. 36,722. Whitehead was perceived

and acted as a natural leader. As a result Welch believed that other inspectors would go to Whitehead and not to the designated lead, thereby compromising the supervisory chain (Vega tr. 36,722-23). At bottom, none of the transfers to Unit 2 was motivated by the T-shirt incident (Welch tr. 53,216; Vega tr. 36,723).

390. Whitehead was subsequently transferred to the Unit 1 Control Building (Whitehead tr. 55,139; 156) and has expressed satisfaction with his job (Vega tr. 36,726). He has also been complementary of the QA program (Vega 36,726).

391. Of the eight who wore the T-shirts on March 8, five are no longer employed at Comanche Peak. These individuals are Milton Barfield, Eddie Snyder (Vega 36,724; 726), Jack Pitts (Brandt 45,325-26); Anthony Ambrose, and Bruce Hearn (Purdy tr. 41,361; 363).

392. Barfield requested an ROF in early May 1984, because he wanted to move to Virginia in order to be closer to his elderly parents. Vega did not approve the ROF until he spoke with Barfield to make sure that his request was unrelated to the T-shirt incident. Barfield stated to Vega that he had experienced no adverse treatment, that he was happy with the way things were going, and that he was very complementary of the program. Once Vega was satisfied that this was the case, he approved the ROF request. Vega tr. 36,725; Vega ex. 7. Purdy

also approved the ROF and concluded that Barfield's severence from Comanche Peak was in no way associated with the T-shirt incident (Purdy tr. 41,365).

393. Snyder resigned from Comanche Peak on March 23, 1984. He did so in order to accept a position at another facility. His resignation was unrelated to the T-shirt incident. Purdy tr. 41,366. Before Snyder resigned, Vega met with him to make absolutely sure that Snyder was not experiencing any kind of adverse treatment. Snyder assured Vega that he had received no ill treatment and that he was anxious to take advantage of a higher paying job in Louisiana. Vega tr. 36,720-27.

394. Pitts also is no longer employed at Comanche Peak, although he remains employed by Ebasco. Brandt offered Pitts a transfer to Clinton, where Ebasco had been awarded a new contract. Brandt knew that Pitts was uncomfortable being the only Ebasco employee in a group of Brown & Root employees. For this reason Brandt thought that Pitts would be interested in the transfer, which he was. Brandt tr. 45,323-27.

395. Brandt stated to Pitts that he could transfer to Clinton or to the South Texas project, or remain at Comanche Peak (Brandt tr. 45,327). Pitts voluntarily decided to transfer to Clinton. He believed that doing so would further his career with Ebasco because the work at Clinton was just beginning and he could get in at the ground floor. (Pitts tr. 73,505; Brandt 45,327). Pitts transfer was unrelated to the T-shirt incident

except to the extent that as a result of that incident Brandt learned that Pitts felt uncomfortable being the only Ebasco employee in his group (Brandt tr. 45,326).

396. Ambrose resigned after being implicated in the drug investigation at Comanche Peak. A polygraph examination and corroborative evidence suggested that Ambrose had used drugs unlawfully on site. Ambrose denied the charge and stated during a meeting with Purdy and others that he would resign rather than have his credibility threatened. Purdy asked Ambrose to contact him during the next few days rather than immediately processing his resignation. When Ambrose failed to do so, Purdy accepted his resignation. Purdy tr. 41,361-62; Purdy ex. 14. Ambrose's resignation and his employment situation were not affected in any way by his participation in the T-shirt incident (Purdy tr. 41,362-63).

397. Hearn volunteered to be ROF'd. Again, his departure from Comanche Peak was unrelated to the T-shirt incident (Purdy tr. 41,364).

Conclusions

398. Based on these findings, the Board concludes that the T-Shirt incident did not constitute harassment or intimidation of QC inspectors.

IV. ALLEGATIONS AS TO NRC MISFEASANCE

A. Introduction

399. Intervenor asserted that the NRC's response to complaints of intimidation is relevant to the question whether Applicants had intimidated QC inspectors at Comanche Peak (tr. 13,885-87; 618B-228). Indeed, counsel for Intervenor promised to prove that the NRC was itself part of a "pattern of intimidation" at the site (tr. 13,888), and that actions of the NRC Staff "enhanced the impact of the activities that Applicants engaged in which these people viewed as being either harassment or intimidation" (tr. 13,622B).

400. Based on the evidence adduced by Intervenor, the Board finds that these claims are without merit. In reaching this conclusion, the Board is particularly influenced by the stark contrast between that which Intervenor promised on this issue, and that which it delivered.

B. Intervenor Claims

401. Intervenor called Dennis Culton to testify about the NRC interview and inspection process. Culton expressed his view that, among other things, the NRC Staff displayed a "Gestapo" attitude when it met with him to learn about his alleged safety concerns (Culton tr. 58,510; 537-38). The Board listened to a tape recording of that meeting and concluded that the NRC Staff acted properly in all respects.

402. During his deposition, Culton refused to be cross-examined by either the Applicants or Staff (e.g. Culton tr. 58,533; 545-546; 550; 574-76). For these reasons, the Board has stricken Culton's testimony. The Board hereby incorporates that ruling here.

403. Henry Stiner testified, on Intervenor's behalf, that the NRC reacted too slowly to his complaint, and that the NRC investigators were pessimistic regarding "every allegation" the Stiners raised (Stiner tr. 51,712-20). As to the NRC's reaction time, Stiner's testimony shows that he called the NRC in Washington two or three days after he was terminated; he was told that someone would call him back on the matter; and Mr. Driskill, an official with the Office of Investigation, returned Stiner's call "that night or the very next day" (tr. 51,717-20). According to Stiner, Driskill told him he was going to be tied up for a week or so. A week later, Driskill called Stiner back to arrange a meeting. At Stiner's request, the meeting was held at the offices of Roger Gilmore, a local attorney (Stiner tr. 51,705; 0). The Board finds that the NRC's response to Stiner's call was timely under any reasonable standard.

404. As to the NRC's pessimism, Stiner testified (Stiner tr. 4,249):

> [A]bout the gouge mark in the pipe, they said that unless I had proof it wouldn't do them any good to investigate it. They said that if we didn't have hanger numbers, and time, and dates, and names, that just the fact that I could tell them where it was at wasn't good enough, that they'd have to have all the information before they could do any investigation on it. They let me know right there that I was barking up the wrong tree.

The Board concludes that this testimony reveals nothing more than an attempt by the NRC to get th facts necessary to investigate Stiner's complaint.

405. Intervenor's final witness list dated June 27, 1984 listed Betty Brink as a witness, who would testify that the NRC improperly released the names of persons which she provided to it in confidence. Intervenors did not call Brink as a witness.

406. Intervenor's final witness list also promised that Sue Ann Neumeyer would testify from personal knowledge that the NRC is indifferent to examples of harassment, intimidation or pressure. Neumeyer's deposition spans over 300 pages, but she makes no mention of the NRC's indifference to such complaints.

407. Intervenor also anticipated proving that efforts to secure NRC intervention in the T-shirt incident failed, and that this lack of response by the NRC was nonfeasence. James Cummins, Senior Resident Inspector of Construction (Cummins tr. 54,005) and Doyle Hunnicutt, Chief of Reactor Project Section B, Region IV, (Hunnicutt tr. 1) interviewed three of the QCIs involved in the T-shirt incident (Cummins tr. 54,045 and ex. 1-4; Hunnicutt tr. 7-8). All three of the inspectors were asked what purpose the NRC could or should have served before, during and/or after the incident. None of them indicated that NRC should have done anything to intervene on the day of the incident. Cummins ex. 1-4.

408. Two other QCIs involved in the T-shirt incident were deposed, Whitehead and Pitts (Whitehead tr. 55,000-164; Pitts tr. 73,500-553). In neither case did these witnesses state that NRC intervention in the incident was expected.

409. Intervenor's June 27 witness list promised that "Witness A," Eddie Snyder, Jack Pitts, D.T. Oliver, A. Ambrose, M. Barfield, Lan Davis, Bruce Hearn, Ron Jones, Gerald Prior, and Jerry Stephens would testify that efforts to secure NRC intervention in the T-shirt incident failed, and that the NRC's response reflected nonfeasence. Only one of these witnesses, Jack Pitts, testified at all, and he was called as a witness by Applicants. Intervenor failed to ask Pitts a single question about requests for NRC assistance. The Board finds that the failure of Intervenor to call these witnesses or to elicit testimony from Pitts as to the very subject for which it originally stated it would call him constitutes a default by Intervenor of its evidentiary obligations.

410. Cummins testified that the NRC Staff's mission is to make sure that power reactors are built in accordance with Commission requirements. The Staff should not, however, become involved in personnel matters unrelated to public health and safety. Cummins tr. 54,018. On this record, we find that NRC Staff correctly identified the T-shirt incident as a personnel matter and declined to intervene in the matter as it happened. We note, however, that the Staff appropriately monitored the event, and conducted a follow-up to ensure that the event did not affect the public health and safety.

## IV. THE RECORD REFLECTS A UNIFORM COMMITMENT TO COMANCHE PEAK'S QUALITY

411. Intervenors have elicited testimony regarding fewer than two dozen incidents or events that, presumably, constitute harassment, intimidation or threats directed at QC inspectors at Comanche Peak. As the foregoing findings show, the majority, if not all, of these allegations either lack merit or are not relevant to the subject-matter of this proceeding. In any event, these incidents can only be evaluated in the context of the overall quality program at Comanche Peak. Considered against the backdrop of uniform personal and programmatic commitments to quality, Intervenor's allegations, even assuming they are all true, address isolated incidents not generally reflective of the program.

### A. Applicants are Committed to Quality as a Matter of Corporate Policy

#### 1. Corporate Organization

412. Texas Utilities Generating Company ("TUGCO") is a division of Texas Utilities Electric Company (Spence ex. 1). TUGCO is the lead Applicant for a license to operate Comanche Peak, and is responsible for the design, construction, and operation of Comanche Peak (FSAR § 13.1).

413. Perry Brittain is Chairman of the Board and Chief Executive Officer of Texas Utilities Electric Company (Spence tr. 48,010); Michael Spence is President of TUGCO (Spence tr. 48,004). Billy Ray Clements is Vice President of Nuclear

Operations, TUGCO (Clements tr. 40,013); and Louis Fikar is the Executive Vice-President, Engineering-Construction, TUGCO (Spence tr. 48,010). Clements is ultimately responsible for the Comanche Peak QA/QC program (40,019) and Fikar is responsible for the design and construction of Comanche Peak (Fikar tr. 46,011).

2. Perry Brittain

414. Brittain recognized at the very outset of construction of Comanche Peak that the company was not engaged in routine business (Brittain tr. 48,515). He has always believed that the plant's quality is extremely important (Brittain tr. 48,524-26). Brittain has constantly emphasized that there is no reason to build anything but a safe, high-quality plant (Brittain tr. 48,421).

415. Brittain stresses to his subordinates his personal commitment to quality. On at least fifty occasions, he told the executive vice president to whom the QA department reports that his ultimate success depended on the quality of Comanche Peak (Brittain tr. 48,524). Tony Vega, now the site Quality Assurance Manager, recalls that on his very first day of employment with TU, in 1983, Brittain met with him, emphasized Brittain's availability and support for the QA program, and "charged us with not only making sure that Comanche Peak met all regulatory requirements, but that because of our Quality Assurance involvement, Comanche Peak would be a safer and more reliable plant" (Vega tr. 36,671).

416. Brittain has taken measures to implement his commitment to quality. At first, for example, the Quality Assurance manager reported directly to him. After construction commenced, however, Brittain directed that the QA manager report to TUGCO operations, as opposed to the division of Texas Utilities responsible for engineering and construction (Brittain tr. 48,518-519). He did so not just to assure that QA would be independent from cost and scheduling but also to assure that QA had an independent perspective (Brittain tr. 48,517).

417. Brittain hired operating personnel during the design phase in order to bring their perspective to the design and construction process (Brittain tr. 48,516). He took a lot of kidding from the industry for hiring people so early, but went ahead anyway because "the quality of that plant was something they would live with" (id.).

418. Brittain took a personal role in establishing the QA program at Comanche Peak. He spoke with many different companies and consultants involved with nuclear construction regarding their QA programs, and personally approved Applicants' quality assurance manual (Brittain tr. 48,515-516).

419. Brittain actively monitors the status of Comanche Peak. Spence and Spence's associates brief Brittain weekly on the project and significant events relating to it. (Brittain tr.

48,508). Spence attends bimonthly meetings at Comanche Peak, which the site QA manager attends (id.), and makes additional visits to the site on his own (id.).

420. In Brittain's unequivocal view, corporate policy has condemned harassment or intimidation of QC inspectors since construction of Comanche Peak began (Brittain tr. 48,119). He and managers at all levels "recognize that we have more at stake in the quality of that plant than anyone else. The quality of the plant is vital to us. . . . [T]here is zero motivation on the part of our Management to have it otherwise" (Brittain tr. 48,521).

3. Michael Spence

421. Like Brittain, Spence is personally committed to assuring that no corners are cut on safety-related construction in order to expedite plant completion (Spence tr. 48,032-033). When he assumed his current responsibilities as President of TUGCO in May of 1981, Spence familiarized himself with all aspects of the Comanche Peak program, including quality assurance commitments and the quality assurance plan (Spence tr. 48,023). At the same time, Spence satisfied himself that the individuals to whom implementation of the QA program was delegated were aware of this policy (id.).

422. As he has since 1981, Spence meets with Clements, and Fikar each Monday morning to discuss activities associated with the project. All three officers also meet with Brittain weekly

to review the project. In addition, Spence participates in a weekly Saturday meeting on site with Fikar, Clements and other management personnel (Spence tr. 48,010-012; 120).

423. Spence also participates in bi-monthly meetings with management officials of Applicants' major contractors and vendors and, from time to time, with major suppliers (Spence tr. 48,010-11).

424. Charles Atchison's allegations caused Spence to focus on Applicants' efforts to reaffirm that the QA program at Comanche Peak was working effectively (Spence tr. 48,044-045). Spence prepared and distributed two memoranda. The first (Spence ex. 2) reaffirms and emphasizes in a visible way Applicants' pre-existing commitments to quality and safety. The second (Spence ex. 6) restates Applicants' policy against discouraging, harassing or intimidating anyone from reporting nonconforming conditions (Spence tr. 48,042). Spence also signed two letters that were enclosed in the pay envelopes for all site personnel. These letters included forms for reporting concerns and the hotline number (Spence exs. 4 and 5). Spence's actions were taken in conjunction with Applicants' eight point program, which was designed to improve the effectiveness of the QA program (Spence tr. 48,087 ).

425. Spence has personally involved himself with Comanche Peak QC inspectors. He has met, on site, with a total of approximately 80 inspectors from various disciplines, in four or

five separate meetings (Spence tr. 48,071-072). Spence's purpose, in his words, was to initiate "open season on the President of TUGCO" (Spence tr. 48,072). During these meetings, Spence assured QA/QC personnel that TUGCO has no bigger commitment than to ensure that Comanche Peak is built properly and safely. Spence expressed his appreciation for the work performed by the inspectors and encouraged them to express their concerns to him during the meetings (id.). Although inspectors voiced a variety of concerns to Spence, such as access to the permanent plant records vault (Spence tr. 48,075), no inspector indicated any limitation on the reporting of unsafe or nonconforming conditions (Spence tr. 48,077), and no inspectors complained that they had been harassed, intimidated or threatened (id.; Vega tr. 36,680).

426. Several inspectors expressed frustration to Spence that newspaper stories about Comanche Peak were negative, and suggested that the company be more aggressive in presenting positive aspects of the program, particularly the Quality Assurance program (Vega tr. 36,681-82).

427. Spence personally followed up on several items raised at these meetings, and wrote to two inspectors regarding points they had raised with him (Vega tr. 36,683-84). Several QC inspectors subsequently conveyed to Vega their pleasure at having met with Spence and their satisfaction with the meetings (Vega tr. 36,684).

428. Spence also met personally with six of the QC inspectors involved in the T-shirt incident (Spence tr. 48,077-078). The inspectors indicated that there was no friction in their work assignments between QC and craft, and that they did not feel inhibited from reporting nonconforming conditions (Spence tr. 48,978-979).

429. Spence, TUGCO's President, has actively devoted his attention to the Comanche Peak program. In particular, Spence has chosen to involve himself directly with QC inspectors at the plant, to ascertain their problems and to express Management's support for their efforts, as well as his personal support.

4. Billy Ray Clements

430. As the Vice-President of Nuclear Operations, Clements is the corporate officer to whom David N. Chapman, Quality Manager, Quality Assurance reports (Clements tr. 40,014). Clements assumed his responsibilities in 1978 (Clements tr. 40,019).

431. Clements has often demonstrated his personal commitment to producing a quality product at Comanche Peak. At Clements' request, all complaints of harassment or intimidation are reported to him (Clements tr. 40,046). In addition, he played a significant role in developing several of the points in the eight point program (Clements tr. 60,024).

432. Clements has often emphasized Applicants' corporate philosophy regarding QA quality assurance to Chapman, Tolson, Purdy and Brandt (Clements tr. 60,018-019). In particular, Clements has reiterated to them "that the plant would be built in accordance with specifications and that harassment and intimidation of inspectors would not be tolerated" (Clements tr. 60,019).

5. Louis Fikar

433. On the construction side, Fikar is as committed to quality as Brittain, Spence and Clements. Fikar has given the construction of Comanche Peak his constant attention, even though he has construction responsibilities extending beyond Comanche Peak. In fact, Fikar spends most of his time at Comanche Peak (Fikar tr. 66,011-012).

434. Fikar does not condone rushing the plant to completion at the expense of quality. Fikar will not trade off a day, a week, or even months that might be gained against possible jeopardy to the company's 3.9 billion dollar investment in the plant (Fikar tr. 46,134).

435. Fikar has demonstrated his commitment to quality by deliberately imposing construction delays to improve the plant's safety or quality. For example, work was stopped when the reactor vessel in Unit 2 was delivered and it was discovered that some foundations were not built properly. This cost considerable money and caused delay (Fikar tr. 46,135). Moreover, Applicants

have committed to and are building into Comanche Peak additional plant structures, systems and or components which are designed to make the plant safer, although they are not required by regulation, are costly, and have caused significant delays. These include the SPUD system and a plant simulator (Fikar tr. 46,132-133).

436. Fikar emphasized that he would not condone pressure of any sort not to write Nonconformance Reports. In Fikar's view, quality does not begin with QC inspectors, but with craftsmen construction craft people (Fikar tr. 46,136). He believes that if there is anything wrong, it is to everyone's advantage to learn of it quickly (Fikar tr. 46,137).

B. Management Has Translated The Corporate Commitment to Quality Into an Effective Quality Assurance Program

1. Applicants' QA Program Is In Fact Independent From Cost And Schedule

437. The construction organization at Comanche Peak does not take part in or influence QA department activities. Fikar receives no reports on QC personnel matters (Fikar tr. 46,067). He has never submitted recommendations to Clements or anyone else in QA regarding hiring (Fikar tr. 46,121). He never reviews the performance of QA personnel, and is never involved in the disciplining of QA personnel (Fikar tr. 46,122).

438. The only interaction between craft and QC regarding schedule involves the coordination of construction and inspection activities. When craftsmen complete a given item of work, they

normally request a QC inspection (e.g., Simpson tr. 25; Scarbrough/Ethridge tr. 74,510-511). To that limited extent, QC inspectors necessarily work according to the craft's schedule. But craft has no control over whether QC inspectors are actually assigned to perform inspections; craft can only request an inspection, and has no control over what follows (Murray tr. 50,556-557). Whenever there are not enough QC inspectors in a particular area, craft may contact QC supervisors should the problem be serious enough (Fikar tr. 46,113; 122). The decision to allocate inspectors, however, rests solely with QA/QC management (Frankum tr. 49,038; Calicutt tr. 38,038-039; Murray tr. 50,546). If QA/QC does not provide inspectors to an area, then craft supervisors reduce the number of craftsmen in that area (Frankum tr. 49,039; Murray tr. 50,546).

439. Chapman has always recognized the importance of the QA/QC program remaining independent of cost and scheduling considerations. He does not receive construction schedules (Chapman tr. 35,560) and is not sensitive to delays in construction if the necessity for inspections causes delays (Chapman tr. 35,571-572).

440. Antonio Vega was Supervisor of Quality Assurance before assuming current responsibilities as site Quality Assurance Manager (Vega tr. 36,505). At no time has management indicated to Vega that the construction schedule for Comanche Peak was slipping and that this may have financial consequences.

To the contrary, his management has repeatedly stressed to Vega that his job is to assure that the plant is built correctly, regardless of cost and schedule considerations. Vega tr. 36,629-631.

441. Similarly, Ronald G. Tolson, formerly site QA manger, always recognized his independence from cost and scheduling. Tolson did not inform his employees about budgetary matters (Tolson tr. 40,639). In addition, he budgeted primarily for his manpower needs and did not include any amounts for costs incurred as a result of construction delays initiated by QC. Nor did Tolson include the cost of making repairs mandated by inspection activity. Tolson tr. 51,136-137. When preparing his budget, Tolson was expected to estimate and project expenditures for the QA/QC Department, including ASME activities. He routinely exceeded that budget. In no instance did his supervisors ever bring this matter to this attention (Tolson tr. at 51,034-035).

442. The commitment to maintaining independence from cost and schedule has been rigorously implemented. For example, in 1978 Tolson became aware of a Brown & Root practice in which expense accounts for its QA employees were approved by the Brown & Root construction manager. Tolson brought the matter to Chapman's attention, and the practice was discontinued. Expense accounts for Brown & Root QC employees are now approved by the site QC manager's supervisor within the Brown & Root organization in Houston. Tolson tr. 40,639.

443. Similarly, all Brown & Root QC inspectors are carried on the company's Houston payroll, completely independent from the Comanche Peak craft payroll, which is administered on site (Brown tr. 9).

2. QA/QC Personnel are Instilled with Applicants' Commitment to Quality Through Training

a. Training

444. All employees in the QA/QC organization, regardless of their employer, attend a slide/tape training program (Manning tr. 61,510). This training program (1) emphasizes the requirements of 10 C.F.R. Part 50, Appendix B; (2) stresses the independence of the QA/QC organization from cost and scheduling, from engineering, and from procurement and construction; and (3) describes QA activity, including inspections, measurements and tests designed to verify that construction and components meet required quality standards and that tools, gauges and instruments used in this process meet appropriate standards (Manning ex. 1).

445. The training presentation for all QA/QC personnel states as follows (Manning ex. 1, p. 6):

> If the management of any company chooses to view their requirements for QA as just another bureaucratic requirement, that company will have difficulty staying in the nuclear field. If the engineers on the project don't follow the procedures and comply with the codes, the design will not be accepted. If the construction project management looks at QA as just a bunch of restrictions which will not allow them to run the project the way they want to, that project will get into trouble. And, if the workers in the field fail to follow procedures and to document their work because they think they know a better way to

> do it, or a short cut, it will get everybody into trouble at great expense to both their company and their client.

446. The training program emphasizes the importance of properly completing inspections and provides examples of what can happen if this duty is not fulfilled. It advises the inspectors that (Manning ex. 1, p. 9):

> You must be aware of the extent of your authority and be prepared to handle any situation in tactful manner.

In addition, the program stresses that inspectors must identify errors so that they can be corrected immediately because no one benefits from mistakes (Manning ex. 1, p. 10).

447. The QC training program describes the various channels of communication and suggests methods for working with craft (Manning ex. 1, pp. 11-13):

> As an inspector you have certain channels of communications to follow if you find nonconformance to a procedure. If the work that is in progress would lead to a noncompliance, try to have construction correct nonconformance so that they are in compliance with the procedure.
>
> As an alternative step you may take the problem to your QC supervisor.
>
> In the first case, dealing with construction, be diplomatic and tactful at all levels. You are not construction's boss, nor is construction your boss.
>
> Before talking with craftsmen, reach agreement with the discipline construction supervisors. Develop a working relationship. Make sure the construction supervisor does not object to your talking with his workers.
>
> . . . [N]ever get into a personal disagreement with construction personnel.

> Remember that an alternative approach is taking a problem to your supervisor. Before you do so, talk with the foreman in charge. If he does not take prompt corrective action, or he cannot produce action leading to compliance, write a nonconformance report or, when applicable, stop work.
>
> . . . [Q]uality cannot be inspected into a product, it can only be built in. And, it is construction that carries the basic responsiblity for building a quality plant. You, as an inspector, cannot inspect quality into anyone's work, but you do have the authority and the responsibility to sign off documentation attesting to the qualiity of that work.

448. This formal training is constantly reinforced as inspectors perform their jobs. QC personnel work with quality assurance procedures and instructions on a daily basis. It is impossible for them to refer to those procedures or instructions, which they must as they perform their jobs, without a clear understanding that they are to identify nonconforming conditions. Purdy tr. 41,280-281.

b. Site QA/QC Management

449. Key site personnel have over the years emphasized the commitment to quality by assuring the effectiveness of the QA/QC program. In doing so, they have reinforced the obligation of QA/QC personnel to identify nonconforming conditions. Gordon Purdy came to Comanche Peak in 1981 and shortly thereafter became site QA Manager for the ASME Program (Purdy tr. 41,276-277). Purdy has always stressed the policy that QC personnel be free from harassment, intimidation and threats. This policy has been

verbally transmitted to personnel ever since Purdy has been an employee of Brown & Root and has been reemphasized by TUGCO's program, to which Brown & Root adheres (Purdy tr. 41,283-285). As a result, it is not conceivable to Purdy that any employee of the QA department would not understand that they are free to perform their jobs free from harassment or intimidation (Purdy tr. 41,285; 290-91).

450. In 1981, Purdy undertook an in-depth review of the ASME QA program, including a review of the QA manual and an evaluation of all personnel within the organization. Purdy then brought on board two managers and two level III quality engineers to supplement the existing management organization. Purdy tr. 41,290-291. He found that QC field inspectors were well-qualified to perform their functions, but felt it would be desirable to have the inspectors cross-trained in all aspects of ASME-related fabrication, installation and testing (Purdy tr. 41,288).

451. Today, approximately 98% of the field inspection personnel are fully-qualified ASME inspectors, certified to inspect and develop the documentation for every aspect of ASME fabrication and installation. By initiating this training, Purdy not only increased the efficiency of the QA/QC organization, but also provided the QC inspectors with broader skills which should benefit them in future employment. Purdy tr. 41,288-229.

452. Purdy also made a concentrated effort to meet collectively with the disciplines and individually with each QA/QC inspector. During the two or three months after he assumed responsibility for the ASME QA/QC program, he talked to everyone in the QA organization, approximately 350 to 400 people. In the course of these meetings, Purdy emphasized his commitment to an effective QA program and the responsibility of the organization to verify that Comanche Peak is built in accordance with requirements. He stressed that nonconformances must be identified. Purdy tried to create an environment in the ASME QA/QC organization in which people would feel free either to come directly to him or to their supervisors and express any concerns. Purdy wanted his people to feel comfortable approaching their supervisors, and to feel confident that management would act to resolve any problems. Purdy tr. 41,295.

453. In his review of the QA/QC ASME program, Purdy found no evidence of harassment, intimidation or threats. Purdy did find, as is natural when one group of individuals determines the acceptability of another group's work, that differences of opinion occur from time to time. These disagreements, however, did not amount to harassment and intimidation which deterred the QA/QC from performing its job. Purdy tr. 41,297-98.

454. To assure that disagreements between craft and QC are effectively resolved, the policy of the QA/QC Department was and is that as soon as a difference of opinion is identified, the

matter is to be elevated to the next successive layer of supervision. This policy is followed by all other groups on site, including craft (Purdy tr. 41,297-98; see findings 57, 61, 63 and 67).

455. Tolson also took steps to assure that the QA/QC program was working effectively and to reinforce QA/QC training. For example, in 1979 he perceived a higher than normal rate of attrition among key individuals. He, along with Vega and Albert Boren, Supervisor of Vendor Compliance (Anderson/Spencer/Boren tr. 72,509), recommended to Chapman that a program of interviews be commenced to get to the heart of the problem (Tolson tr. 40,514).

456. Tolson reviewed the interview results and initiated a number of actions in response. He met with electrical inspectors either individually or in groups of five or six. The purpose of the meetings was to get a better feeling for their concerns. Tolson tr. 30,613-14. Tolson subsequently adjusted start and stop work times to fit the specific needs of the QA/QC department without regard to craft working hours (Tolson tr. 51,026). He also made personnel adjustments where necessary (Tolson tr. 51,026A). In addition, Tolson initiated a review and revision of inspection procedures in areas where improvements were needed (Tolson tr. 51,027).

457. Because the majority of concrete had been placed by 1979, civil inspectors perceived that they had a limited future at the project. To address this concern, Tolson began a program of cross-training, to retain the experience of such employees. As a result, many of the individuals who requested retraining are still employed at Comanche Peak. Tolson tr. 51,028-30.

458. Tolson also sought to address the underlying sources of possible conflict between QC and craft, such as work which did not meet all applicable requirements. For example, Tolson initiated the use of trend analyses, which documented areas in which craft could improve its performance. Tolson tr. 40,619-23. Tolson and other key managers worked diligently to avoid a hostile atmosphere between craft and QC (Tolson tr. 40,627-28).

459. Vega became Site QA Manager in March, 1984 (Vega tr. 36,506). Based on his prior work as Quality Assurance Supervisor, he was familiar with the site QA/QC organization (Vega tr. 36,663-64). Nevertheless, Vega conducted a comprehensive review of the QA program (Vega tr. 36,665). Although he concluded that the Comanche Peak program is effective, Vega decided to reemphasize some existing policies and practices to all QA/QC personnel (Vega tr. 36,665).

460. As part of his review, and to emphasize Applicants' commitment to an effective QA program, Vega met with all site QA/QC personnel in a series of meetings. He solicited expressions of concern. Some concerns were expressed, but none

of them involved harassment, intimidation or threats of QC inspectors. Vega concluded that harassment, intimidation or threatening of QC inspectors is not a problem at Comanche Peak. Vega tr. 36,666-67.

461. Vega reaffirmed and personally embraced existing policies and practices in a March 22, 1984 memorandum to all site QA/QC personnel (Vega tr. 36,666 and ex. 1). In this memorandum, Vega stated that TUGCO management is totally committed to the construction of a safe and reliable plant and to a strong and effective QA/QC program. Vega encouraged all QA/QC personnel to express quality-related concerns to their leads and to QA management. Vega also reminded site QA/QC personnel that Boyce Grier, the site ombudsman, was available to listen to any of their concerns. Vega added that he, himself, has an "open door" policy. He specifically encouraged site QA/QC personnel to voice their concerns without fear of retribution and encouraged the use of Requests for Information and Clarification (RFICs). Lastly, Vega stated his intention to place greater emphasis on communicating to affected inspectors the reasons for changes in inspection procedures and instructions. Vega tr. 36,666 and ex. 1.

3. Applicants Indoctrinate Craftsmen As To Commitment To Quality and An Effective QA/QC Program

462. The slide/tape presentation shown to all Brown & Root employees since 1979 advises craftsmen that their work will be inspected repeatedly and rigorously (Yockey tr. 61,003-04 and ex. 1, pp. 2-3):

> To help assure that the plant we are building today will be able to meet the future energy needs of the community, both Brown & Root and our client are committed to the construction of a quality plant. This commitment to quality extends from executive management through project management and supervision to craftsmen, helpers and laborers in the field . . . .
>
> We must have error free work from everybody - construction, administration, engineering, purchasing - everybody. Only then will we have achieved quality. Only then can we meet our quality standard - zero defects . . . .
>
> The primary difference between the work we are doing here and experience you may have had in the past, is that at this site, your work will be checked and inspected repeatedly to make certain that specifications have been met and procedures have been followed. Our QC inspectors use examination, observation and measurements to verify that quality has been achieved.

463. In addition, craftsmen are shown the QA/QC slide/tape presentation in a number of craft courses and in several supervisory courses (Yockey tr. 61,006).

464. Whenever procedures are changed, training sessions are held for the affected craft. During these sessions, craftsmen are again instructed as to the manner in which they are expected to work with QA/QC personnel, even if production levels will not be met as a result (Liford tr. 38,168).

465. Craft employees are also shown the audio-visual presentation stressing the importance of quality work, cooperation with all departments on site, and the various means available for anyone on site to identify quality concerns (Clements tr. 60,008-09). The presentation is a part of Applicants' eight point program (Clements tr. 60,004; see Findings 89-98).

a. Site Construction Management

466. Site construction management has consistently shown a commitment both to quality and to Applicants' QA/QC program. James Calicutt began work at Comanche Peak in 1978 as a general mechanical superintendent, which remains his title. Two assistant superintendents report to him and at the peak of construction activity, he was responsible for about 1,400 employees. Liford/Calicutt/Johnson tr. 6-7.

467. When Calicutt was hired, he met with U.D. Douglas and Doug Frankum who were then project and assistant project managers respectively (Liford/Calicutt/Johnson tr. 10; 14). Douglas and Frankum informed him that all contacts with QA/QC would be handled in a professional manner and that disagreements were to be resolved by supervisors, if necessary. Calicutt was specifically told that there was to be no intimidating, harassing or threatening of QC inspectors. Liford/Calicutt/Johnson tr. 15.

468. Calicutt personally made sure that these policies were communicated to craftsmen under his supervision. He held monthly meetings with his superintendents and asked foremen, general foremen, and craft personnel if they were familiar with the policies regarding QA/QC. Based on the responses to his questions, he concluded that the policies were being communicated to the field. Liford/Calicutt/Johnson tr. 16-18.

469. Kenneth Liford, the Brown & Root Assistant General Superintendent, began work in 1978 as a piping superintendent. In this capacity he supervised from 1,100 to 1,400 craftsmen. One superintendent and several general foremen and foremen reported directly to him. Liford became general superintendent about a year and a half ago. Six superintendents now report to him. Calicutt/Liford/Johnson tr. 4-5. Liford reports to Calicutt (Calicutt tr. 38,013).

470. Liford was first indoctrinated in the Brown & Root policies governing the relationship between QA/QC and craft in 1976 when he worked for Brown & Root at the Brunswick nuclear plant. Upon arriving at Comanche Peak, Douglas and Frankum reemphasized those policies to him. Calicutt/Liford/Johnson tr. 9-11.

471. As Liford understands the policy, there is to be a working relationship between craft and QA/QC with each group doing its specific job. Harassment, intimidation or threats of QC inspectors are not permitted. Whenever a craftsman and an

inspector disagree, the disagreement is taken to the next immediate supervisor for resolution. Calicutt/Liford/Johnson tr. 8-9; Frankum tr. 49,015.

472. Like Calicutt, Liford has communicated these policies to his subordinates. After about three weeks on the job he called a meeting with all supervisors reporting to him, during which time he emphasized the policies Douglas and Frankum had discussed with him. Calicutt/Liford/Johnson tr. 12-13. Liford reaffirmed these policies during subsequent meetings with the supervisors reporting to him. Liford has gone to the field to talk with fitters, welders and helpers to make sure that the policies were being transmitted to them. Liford found that his craftsmen were instructed in these policies (Liford tr. 38,151-53). Specifically, the craft understood that they would be terminated for harassment and intimidation (Liford tr. 38,152).

473. James R. Johnson is the superintendent of civil and mechanical disciplines in Unit 2. Johnson began work in 1975 as a carpenter and has worked his way up the construction supervision chain. Calicutt/Liford/Johnson tr. 7-8. Johnson became familiar with the policies governing the relationship between QA/QC and craft when he became involved with quality-related work. His general foreman instructed Johnson that if he could not resolve a problem with a QC inspector, he was to notify the general foreman, who would discuss the matter with the QC

lead inspectors. Johnson was also told that he would not harass the QC inspectors, and that if he did, he would be terminated. Calicutt/Liford/Johnson tr. 21-22.

474. Johnson was often reminded of these policies in the normal course of business. Whenever Calicutt had a meeting of his superintendents, he would reaffirm the policies prohibiting harassment, intimidation and threats and the procedures for resolving disputes with craft. Calicutt/Liford/Johnson tr. 24.

475. Johnson has communicated these policies and procedures to employees he supervises during meetings with the general foremen and foremen. To follow up, he would talk to people in the field to make sure they "had the word." Calicutt/Liford/Johnson tr. 24-25.

476. Liford has suited his actions to his words. Liford has fired three craftsmen for failure to adhere to policy governing the manner in which craft works with inspectors (Calicutt/Liford/Johnson tr. 25-32). In the most recent case, Bob Siever, ASME QC group supervisor, came to Liford to say that a craftsman had become irate and "threatened to whoop the QC inspector's ass" over the interpretation of a procedure (Calicutt/Liford/Johnson tr. 28). Following interviews with the QC inspector and the craftsman, Liford concluded that the craftsman was in the wrong, and fired him on the same day the incident happened (Calicutt/Liford/Johnson tr. 30-31). Following

this event, Liford required the supervisors reporting to him to have meetings with their subordinates to emphasize that such conduct would not be tolerated (Liford tr. 38,176).

477. On several occasions Calicutt has worked with QC management and quality engineering to resolve areas of disagreement involving procedures. One such case involved disagreements as to the installation of certain snubbers. In another case, questions arose as to a welding inspection procedure. Calicutt sat down with his counterpart from QA and resolved the areas of disagreements, which resolution was then conveyed to both craft and QC personnel. Calicutt/Liford, Johnson tr. 41-46.

478. Frankum has met with Tolson on numerous occasions to resolve disagreements between craft and QA/QC. E.g., Frankum tr. 49,015-027. Frankum has also disciplined a superintendent, Johnson, for allegedly intimidating or harassing a QC inspector. Frankum tr. 49,068-069.

C. Management Has Consistently Taken Aggressive Action In Response To Alleged Incidents Of Harassment, Intimidation And Threats And In Response To Situations Which Could Evolve Into Incidents Of Harassment, Intimidation And Threats

1. Programmatic Actions

a. The 1979 Survey

479. In 1979, Chapman and Tolson began hearing of complaints from QA/QC personnel, most of which appeared related to pay and equities (Chapman tr. 35,613; Tolson tr. 40,511).

Chapman and his staff were already considering appropriate actions when the NRC, Region IV, suggested that management should address the area. The NRC did not, in this connection, identify any deficiencies or non-conformances in the QA/QC program. Chapman tr. 35,613; Tolson tr. 40,511-512.

480. Tolson, in consultation with Boren and Vega, recommended that QA/QC personnel be interviewed. Chapman agreed with the recommendation so interviews were scheduled with every QA/QC employee, from clerks to upper level supervisors. Tolson tr. 40,514; Chapman 35,614.

481. The interview process was carefully structured. No one on the interview team was in the direct chain of command on site (Chapman tr. 35,614). Moreover, all interviewees were told that the results of the interviews would be treated confidentially and that their names would be given to no one on site (Chapman tr. 35,614). Although the results of the interviews were organized by discipline, those conducting the interviews met with QA/QC employees from all disciplines (Anderson/Spencer/Boren tr. 72,513-514).

482. The purpose of the interviews was to elicit the maximum amount of information possible, by asking the interviewees to indicate all of the concerns that were on their minds. No effort was made to put those concerns in perspective. Chapman tr. 35,613-615. The interviews elicited hearsay information as well as information based on direct knowledge

(Vega tr. 36,731; Purdy tr. 41,387-388; Anderson/Spencer/Boren tr. 72,507-508), in order to learn as much as possible from the interviews. The interviewers wanted to assess the inspectors' working environment, the adequacy of their procedures, their interface with different organizations on site, and how they perceived management (Vega tr. 36,731).

483. The results of the interviews were summarized by discipline and provided to Chapman and Tolson. The confidentiality of the interviewees was maintained. Anderson/Spencer/Boren tr. 72,518; Purdy ex. 42-1.

484. Among the concerns identified by the survey was a single incident involving a craftsman's intimidation of a QC inspector (Anderson/Spencer/Boren tr. 72,509). This incident was immediately communicated to Chapman, who promptly responded, as further described below. On the whole, however, those who conducted the interviews unanimously concluded that there was no significant problem with harassment, intimidation, or threats directed to QC inspectors at Comanche Peak (Anderson/Spencer/Boren tr. 72,665-669).

485. Both Chapman and Tolson responded affirmatively to the information generated by the 1979 surveys. Chapman disussed the summaries with the members of the interview team (Chapman tr. 76,530). He also discussed a future course of action with Tolson and agreed that it would be useful for Tolson to set up a series of small group meetings on a daily basis for several weeks until

Tolson had talked with all of his inspectors (Chapman tr. 76,531). Chapman expected Tolson to express to the inspectors management's personal commitment to resolve their concerns (Chapman tr. 76,531).

486. In addition, Chapman called a meeting with senior TUGCO management, including Gary and Fikar. A member of the survey team summarized the items that the survey results suggested needed management attention. Several weeks later a senior management meeting was held with Brown & Root personnel in Houston involving both Brown & Root construction and corporate personnel. Matters such as pay, which were of concern to the QC inspectors, were raised with the Brown & Root corporate officials. Chapman tr. 76,531-32.

487. Like Chapman, Tolson took action in response to the survey. He reviewed each of the summaries by discipline and developed a plan of attack (Tolson tr. 40,518). He then discussed with his staff the results of the survey and any questions they had (Tolson tr. 40,613).

488. After receiving the interview results, Tolson reached three conclusions: first, that QC inspectors generally wanted to be treated in a more professional manner; second, that he needed to improve supervision; and third, that in some cases there was a need for additional training. Tolson tr. 51,024.

489. Tolson met with craft and QC inspectors to get a better understanding of their concerns. He subsequently adjusted working hours, made certain personnel changes and modified certain inspection procedures. Tolson also began a cross-training program and initiated actions to promote good relations between QC and craft. See finding 47.

490. Finally, training sessions with QC and craft were also scheduled. The sessions were held so that inspectors would understand what craft was required to do before offering work for inspection, and so that craft would understand what inspectors had to find before they could accept work completed by craft. These sessions successfully increased the overall understanding by craft and QC of the construction and inspection process. Vega tr. 36,736-37.

b. Follow-up to the 1979 Interviews

491. Approximately five months after the 1979 interviews, Chapman commissioned an audit by the Dallas audit group in order to verify the effectiveness of actions taken in response to the interviews (Chapman 76,533). The follow-up audit was conducted on-site by Anderson and Vega (Anderson/Spencer/Boren tr. 72,568-69). The auditors talked with approximately thirty individuals to ascertain whether there had been improvement since the 1979 surveys.

492. The audit team concluded (Anderson/Spencer/Boren ex. 1, p. 1):

> On the whole, the morale of the quality control personnel has greatly improved. Major improvements were cited in the areas of salary administration, management support, training, QC working environment and relationships with construction personnel.

The audit team documented its conclusions in Audit Report TCP-7 (Anderson/Spencer/Boren tr. 72,526-27).

493. The audit team reaffirmed that harassment, intimidation and threats of QC inspectors was not a problem at Comanche Peak (Vega tr. 36,737-38).

c. The Eight Point Program

494. During the fall of 1983, Applicants implemented an eight point program, the purpose of which was to reemphasize and increase the understanding of QA/QC policies. As a result of a meeting with Region IV of NRC the preceding summer, Applicants believed that the NRC was unaware of the extent to which Applicants were committed to quality. For this reason, Applicants decided to stress its existing QA/QC policies and procedures. Clements tr. 60,024-25.

495. The first point of the program is an audio-visual presentation stressing the importance of QA/QC. Clements played an active role in developing this program (Clements tr. 60,008). The presentation makes the following points:

- Quality is expected in all aspects of construction;
- Cooperation between craft and QA/QC is expected and harassment or "bullying" will not be tolerated;

- If a craft employee identifies what he believes is a nonconforming condition, he should bring it to the attention of his supervisor, to QA/QC personnel, to Applicants' management or to the NRC;

- If a QA/QC employee finds what he believes is a nonconforming condition, he should follow his procedure, contact Applicants' management or contact the NRC;

- If an employee has a concern about quality, he has the right to voice the concern without fear of retribution; and

- Employees may contact Applicants' management through the "hotline."

The presentation states in conclusion:

> Those who will be operating Comanche Peak will depend on your dedication to quality - just as you would depend on quality everyday. This continued dedication to quality requires that you do your job well, and report any defects you notice because quality is your job.

Clements tr. 60,005 and ex. 1.

496. As the second point of the program, Clements met with all Brown & Root employees who were foremen or higher. Clements stated what had been done to put the program together; explained the position of Brown & Root and TUGCO management with respect to the program; and voiced his expectation that Brown & Root management would demonstrate its backing for the program. A vice president from Brown & Root attended the meeting. Clements tr. 60,008.

497. The third point of the program included meetings with QC inspectors. During these meetings, management emphasized the right and responsibilty of the inspectors to report what they believed to be non-conforming conditions at Comanche Peak. The inspectors were told that they could report such non-conformances to either TUGCO or Brown & Root management or to the NRC. Clements tr. 60,009-10.

498. The fourth point of the program was the establishment of a telephone "hotline" in the office of the Director of Corporate Security of Texas Utilities. The line can be accessed through a toll-free number twenty-four hours a day. During regular working hours the phone line is staffed; during non-working hours, the telphone is answered by an answering machine and the information is picked up the following working day. Clements tr. 60,010.

499. The hotline was initiated by J. S. Farrington, the President of Texas Utilities Electric Company. He directed that it be installed in the office of David Andrews, the Director of Corporate Security, so that it would be completely outside of the chain of command from the Comanche Peak engineering, construction or QA/QC Department. Clements tr. 60,010-11 and ex. 2. Farrington and Spence receive periodic status reports of the hotline program informing them of the nature of the calls received and the status of any investigations commenced as a result (Clements tr. 60,013; Clements ex. 3). Clements also

receives copies of these reports and monitors investigations triggered by calls to the hotline. Based on these reports, he may ask the QA/QC Department if they have acted upon a request from Corporate Security to take a particular action. Because of the confidential nature of the telephone calls, however, the reports are not given to the QA/QC Department. Clements tr. 60,014-15.

500. The hotline program provides for the results of an investigation to be transmitted to the individual triggering the inquiry, provided that the individual gave sufficient identifying information. This is desirable because in many cases the individual may not have a full understanding of either the process involved or the relevant regulatory requirements, and for this reason have perceived a safety concern. Brandt tr. 45,174-75.

501. For the fifth point of the program, Spence wrote letters which on two occasions, were included in the pay envelope of every site employee. Spence reminded the employees of management's commitment to build a quality plant, and informed them of the hotline. The letters also indicated that they could submit their concerns in writing to Corporate Security. These letters were given to the employees in the fall of 1983 and again in May 1984. Clements tr. 60,015-16; Spence tr. 48,056-58; Spence ex. 4 and 5.

502. As the sixth point of the program, Applicants posted large signs throughout the construction, start-up, and operations areas advertising the hotline number and emphasizing quality on the job. To make sure that the signs attracted attention, banners were also hung up in different locations at Clements' personal direction. Clements tr. 60,016-17.

503. The seventh point of the program was the implementation of an exit-interview process. When employees leave the QA/QC organization for any reason, they are interviewed and given an opportunity to discuss any concerns they may have. They are specifically asked if they are aware of any problems in the implementation of the QA/QC program. They are also asked to identify any defects in the design, manufacture, fabriction, placement, erection, installation, modification, inspection, or testing of safety related components and/or structures of which they are aware. Chapman tr. 76,505; Chapman ex. 2, p. 2. If they identify these or other concerns, their comments are passed along to either Boyce Grier, the plant ombudsman, or to Corporate Security. Clements 60,017.

504. The final element of the program was internal management training as to the requirements of the Atomic Energy Act and related federal labor laws (Clements tr. 60,017-18).

d. QAI Program

505. On January 3, 1984, Applicants put into effect a formal system for investigating allegations relating to QA/QC matters. A form was designed for use when a QA supervisor believes that an allegation or concern brought to his attention warrants an in-depth investigation. Each request is assigned a Quality Assurance Investigation (QAI) number by the Quality Engineering Group, which is also responsible for tracking the status of all investigations until they are closed. The QA supervisor initiating the investigation is responsible for advising the individual making the allegation of the results of the investigation. If the individual is not satisfied with the results of the investigation, the supervisor advises him of other ways his concerns may be addressed, including calling the NRC (Chapman tr. 76,506 and ex. 3, p. 1).

506. The QA supervisor initiating a QAI investigation identities the individual making the allegation, states whether the individual requests confidentiality, outlines the allegation and indicates the individuals needed to help in investigating the allegation. The completed form is distributed only the Chapman, Grier, and Corporate Security (Chapman tr. 76,506; Chapman ex. 3, p. 2).

507. Since the program has been in effect, approximately 19 QAIs have been filed. Of those, seven involved alleged incidents of harassment, intimidation or threats against QA inspectors. Vega tr. 36,703-04.

508. Much like the eight point program, the QAI Program only formalizes procedures that have long been in place at Comanche Peak. Vega tr. 36,705.

e. Site Ombudsman

509. In late 1983, Applicants retained Boyce Grier as an on-site consultant to investigate all concerns expressed by any employee regarding the quality of construction at Comanche Peak (Chapman tr. 76,504; Chapman ex. 1). Among other things, Grier investigates concerns brought to the attention of management through the exit interview process. When a concern is brought to his attention he will discuss the matter with Vega and decide how the allegation will be investigated. Grier tr. 45,515-16. Grier has full access to all levels of plant management (Chapman ex. 1).

510. Grier worked for the Atomic Energy Commission and the Nuclear Regulatory Commission for 21 years. Grier was formerly director for Region I, where he was responsible for the NRC inspection and enforcement program in eleven northeastern states. He was also director for the Division of Reactor Inspection Programs at NRC headquarters. Grier tr. 45,507.

511. All employees were advised of Grier's presence on site by memorandum in December 1983. Since that time, employees have been bringing their concerns to him (Grier tr. 45,606-07). In every case in which Grier has recommended corrective action following an investigation, management has implemented Grier's recommendation (Grier tr. 45,613).

512. The ombudsman program operates in conjunction with other elements of the eight point program. Employees may bring concerns on an anonymous basis to the attention of corporate security in Dallas through the hotline. Alternatively, the employee may take a concern to the ombudsman, who is located on-site and interfaces directly with QA/QC. Employees thus have two independent points of management contact outside of existing channels of communication. Grier tr. 45,518.

f. 1983 Survey

513. During the summer of 1983, C. Thomas Brandt, then the non-ASME QA/QC supervisor, decided on his own initiative to conduct a survey of all non-ASME inspectors to ascertain how they felt about their jobs. Brandt tr. 45,118; 334-45; 351. No specific event caused him to undertake the survey.

514. Brandt had always maintained an open door policy, consistent with Applicants' corporate policy. He also attended group meetings and spoke with inspectors informally on a regular basis (Brandt tr. 45,343-44). Brandt was, however, concerned

about his accessibility (Brandt tr. 45,119). The survey in Brandt's judgment would provide another means by which inspectors could bring to his attention any concerns (Brandt tr. 45,119).

515. Approximately 150 surveys were distributed (Brandt tr. 45,097), of which most were returned (Brandt 45,098).

516. Brandt concluded after reviewing the survey results that some supervisory changes were necessary. However, the survey results alone did not trigger such conclusion. They were a contributing factor in his decision to make the changes. Brandt tr. 45,347; 350. Brandt took no actions beyond this in response to the survey results (Brandt tr. 45,350).

517. Brandt discussed the survey with Tolson before he initiated it and after the results were tabulated. He also informed Tolson of the changes in supervisory personnel he was contemplating. Brandt did not pass the detailed survey results along to others in the chain of command because he initiated the survey for his own use. Brandt tr. 45,350-51.

2. Responses to Alleged Incidents[32/]

518. During the 1979 survey, one of the interviewers obtained information with respect to an alleged incident of physical intimidation (Chapman tr. 35,616-19; Anderson/Spencer/Boren tr. 72,509). This was the only alleged incident identified by the interview process which could have constituted harassment or intimidation. The matter was immediately brought to the attention of Chapman (Anderson/Spencer/Boren tr. 72,509).

519. Upon learning of it, Chapman immediately went to the site and personally interviewed the inspector involved. He understood that after rejecting certain work, a craft worker grabbed a female QCI by the coat. The craft employee then allegedly realized that he had overstepped his bounds and let her go. Chapman indicated to the QC inspector that the foreman should be fired but the QC inspector was insistent that he not lose his job. Chapman tr. 35,716-19.

520. Chapman acceded to the wishes of the QC inspector after determining that the alleged incident did not receive widespread publicity. Moreover, a few weeks later Chapman reinterviewed the QA inspector to determine whether there were any problems with the foreman. Upon being advised that their working relationship was normal and that there were no problems,

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32/ This discussion does not purport to address Applicants' responses to all alleged incidents of harassment, intimidation and threats. Rather, it demonstrates the actions Applicants have taken in repsonse to alleged incidents other than those Intervenor has endeavored specifically to litigate in this proceeding.

Chapman again acceeded to the wishes of the QC inspector not to discharge the craft employee. Chapman also determined that construction personnel initiated appropriate counseling of the individual involved in that the individual was told he would be discharged with no questions asked if another incident of this type occurred. Chapman tr. 35,62-26.

521. Brandt was also aware of several instances which, in the absence of management action could possibly have led to the harassment, intimidation or threatening of a QC inspector. In one instance, a general foreman and an inspector argued about procedural requirements and the general foreman shook his finger in the inspector's face. The mechanical QA supervisor contacted the assistant general superintendent and told him that the activity was unacceptable and had to stop. The inspector was transferred out of that area at his request to eliminate any further personality conflicts. The craft foreman was counseled on his behavior and received a written warning. Brandt tr. 45,064.

522. Another incident brought to Brandt's attention involved a coatings inspector, Lanette Adams, and a coatings superintendent, Junior Haley. Haley followed Adams throughout a building on site to find out the results of an inspection. Adams complained to Brandt about being followed. Brandt talked to Haley about the matter and was assured that he only wanted to find out some inspection results. Brandt told Haley that he must

go through Adams' supervisor in order to learn such results. Brandt thereafter assured Adams that the alleged incident would not happen again. Brandt. tr. 45,179.

523. A third incident concerned a misunderstanding among a pipe hanger superintendent, a general foreman and a hanger inspector. All of those involved in the misunderstanding sat down with Brandt and the matter was satisfactorily resolved. Brandt tr. 45,179.

524. The final incident of which Brandt is aware involved a letter written by the night shift general superintendent to the general civil superintendent, both of whom were craft, questioning the certification and ability of the night shift QC supervisor, Mike Foote. The letter was apparently written when construction personnel, who disagreed with the results of an inspection Foote performed, attempted to find his certification record in the vault. Brandt was concerned about the letter because other QCIs on the night shift had become aware of it and because it could have had a negative impact on those persons working for the night shift QC supervisor. Even though this incident did not involve anything remotely approaching harassment or intimidation, Brandt went to the construction personnel involved and told them that he would be happy to discuss the certifications of his personnel with them, but that there was no need to get into a letter writing mode. Brandt explained Foote's

certification and his explanation satisfied craft. Foote was at this meeting and informed those inspectors working for him of the results of the meeting. Brandt tr. 45,180-183.

525. Purdy was also aware of two incidents. Early in 1982, one of Purdy's supervisors came to his office and indicated that a QC inspector, Melinda Holder, was upset because she had been yelled at by a craft employee, Frank Zaffel. Purdy brought Holder to his office and concluded that she was upset as a result of the way she had been treated. Purdy contacted Zaffel's craft superintendent, Carl Fann, and requested that he and Zaffel come to Purdy's office. Once there, Zaffel admitted that he had behaved unprofessionally and requested an opportunity to apologize to Holder. Purdy arranged the meeting at which Zaffel did apologize. Purdy notified him that if the behavior were repeated, Purdy would ensure that he was removed from the project immediately. Holder was satisfied and the situation was never repeated. Purdy tr. 41,369-70.

526. When Purdy became aware of allegations, including harassment, made in a limited appearance statement by Robert Bronson before the Licensing Board, he immediately conducted an investigation regarding Bronson's allegations. His investigation of those allegations led him to conclude that they were unfounded. Purdy tr. 41,379-82.

527. Other matters have been brought to the attention of Applicants either through the hotline or through the QAI program. With respect to the hotline, eleven telephone inquiries have been received. Two allegations received in May 1984, and two allegations received in March 1984, involved claims of intimidation. The investigations into these allegations are currently underway. Clements ex. 3, pp. 4-10.

528. Of the QAIs filed, seven have involved allegations involving the relationship between craft and QC. The first was QAI file 0002, which involved a complaint made by a QC inspector, Perlaki. During the course of an inspection, several craftspersons in the vicinity of an inspection that Perlaki was performing offered comments regarding the item of work that he was inspecting. Perlaki accepted the items, reconsidered his decision the next day, and decided that what he had accepted was rejectable. He explained the situation to his supervisor. His supervisor, Fred Dunham, made it clear to Perlaki that only he could determine what was acceptable, and that discussions held in his presence should have no bearing on the acceptability or rejectability of an item. Perlaki acknowledged Dunham's instruction and indicated that it would not happen again. As a result of Dunham's reporting the incident to QA managemet, Tolson counseled the craftsmen as to what is appropriate to discuss in the presence of QC inspectors. This matter was handled properly. Vega tr. 36,688.

529. QAI-0012 involved a complaint by a quality control inspector, Winkel, relating to a discussion with a craft employee over the need for an inspection. The discussion allegedly became heated, and the craft employee raised his voice. There was some confusion on Winkel's part regarding the relevant inspection procedure, so he walked away and reported the matter to his supervisor. As a result of the investigation, the craft employee was counseled and told that his behavior was unprofessional and unacceptable. In addition, Winkel was reminded that he had the authority to reject any item and insist on inspections that he believes are required. Winkel was satisfied with the disposition of this matter, and Vega considers the disposition appropriate. This matter primarily involved a difference of opinion over interpreting a procedure. Vega tr. 36,691.

530. QAI-0015 was initiated as a result of a complaint by a QC inspector named Perry. The building manager in the area where Perry was working, Powers, believed that an engineering drawing required a certain condition which was impractical. Perry examined the item in accordance with the drawing, even though he agreed that the drawing needed revision. Powers described what was on the drawing as "asinine" and Perry expressed displeasure with his statement. Powers subsequently came to Vega's office to make sure that Vega understood that he was not referring to the inspector, but rather to what was on the drawing (Vega tr. 36,692).

531. Powers was counseled by his supervisor, John Merritt, and by Vega that communications with inspectors must be professional. Perry was complimented for the way he conducted his examination in strict compliance with the drawing, even though the drawing was later revised. This was another example of a difference of opinion and demonstrates that inspectors are encouraged to do their inspections in full compliance with engineering drawings. Vega tr. 36,692-94.

532. QAI-0016 involved a complaint raised by a QC inspector, Eddie Niedecken, who was asked by a building manager to stop one inspection and complete another. Neidecken felt that this request was not appropriate, and Vega concurred. Vega conveyed to Merritt the correct manner to communicate with QC inspectors and asked him to so advise his building managers. Merritt did so. Grier visited with Neidecken to explain the results of the investigation and the corrective action taken. Neidecken stated that he was satisfied. Vega tr. 36,695-96.

533. QAI-0018 involved a complaint by a QC inspector, Finn, who, while in the men's rest room, was asked by a building manager whether he had inspected enough hangers to be there. Finn initially thought it was funny, but soon wondered whether anything had been meant by it. He expressed his concern to Grier. When Vega learned of the situation he discussed it with the building manager and was assured that the statement was made in jest. Vega indicated to the building manager that his

comment, while meant as a joke, might not be taken as such by an inspector. The building manager indicated that he thought the world of Finn to whom the remark had been directed, and really meant it as nothing more than a joke. The results were communicated to the inspector and he was satisfied. Vega tr. 26,697-98.

534. QAI-0019 was initiated as a result of a complaint lodged by a QC inspector, Hundley, when several construction personnel near the area in which he was working commented as to the acceptability of some items which he was rejecting. Hundley reported these comments to his supervisor. Vega spoke with both the inspector and construction personnel. The construction personnel expressed a feeling of surprise that Hundley had felt uncomfortable because the comments were made among the construction people. Vega and Clements also advised them that this kind of communication was unacceptable and was not to be done in the future. In addition, Vega spoke with Joe George about the incident, who assured Vega that he would personally communicate Vega's instruction to the people involved. Hundley was satisfied with this result. Vega tr. 36,699-700.

535. Each of the incidents involved in QAI-0016, 0018 and 0019 occurred within the period of a week. As a result, Vega sent a memo to the project manager indicating that while he believed in the effectiveness and desirability of the building management concept, instances of the type indicated in these

three files would cause him not to support that concept in the future (Vega tr. 36,700). Vega subsequently evaluated the practice of assigning QC personnel to the building task forces and concluded that it did not in any way compromise the independence of QA/QC. However, he emphasized to Merritt that work schedules and assignments would come from QA/QC management and that any comments, requests or concerns should be communicated through QA/QC management, and not to the inspectors directly. Vega tr. 36,701; Vega ex. 4.

536. Vega also advised Merritt that recurrence of any incident such as that described in QAI-0016, 0018 or 0019 would result in an immediate stop work, and that he would pull the QC inspectors out of the building involved until appropriate corrective action was taken (Vega tr. 36,701). Vega has authority to issue such a stop work order and need not consult with anyone before doing so (Vega tr. 36,701-02).

537. In addition, Vega sent a memo to every QA/QC person on the site reemphasizing that QA/QC does not report to the building managers or any other person in that organization; that their supervision is from within the QA/QC organization; and that their work schedules are set by the QA/QC organization. He also asked that they convey any concerns they have about these policies to their supervisor so that it would be brought to his attention. Vega tr. 36,702. Vega did not believe that the independence of QA/QC had been compromised in any way (Vega tr. 36,702-03).

D. As A Result Of Applicants' Commitment To Quality And To An Effective QA/QC Program, Inspectors Have No Hesitancy Identifying Nonconforming Conditions

538. Applicants presented the testimony of eight QC inspectors regarding their work at Comanche Peak. The identities, length of service, job positions and disciplines of each are, as follows:

Curtis Biggs - mechanical quality engineer; lead inspector for two years; line inspector three years (Biggs/Fanning/Whitman/Uehlein tr. 71,505; 514; 515);

Gregg Fanning - mechanical QC lead inspector; lead inspector for two years; line inspector for five and a half years (Biggs/Fanning/Whitman/Uehlein tr. 71,505; 514; 515);

Randy Whitman - electrical QC lead inspector; lead inspector for five years; line inspector for two and a half years (Biggs/Fanning/Whitman/Uehlein tr. 71,505; 514; 515);

James Uehlein - protective coatings lead; lead inspector for seven months; line inspector for six months (Biggs/Fanning/Whitman/Uehlein tr. 71,503; 514; 515);

Michael L. Rhodes - QC lead; lead inspector for nine months; line inspector for one year (Rhodes/Sims/Todd/Burns tr. 72,004; 72,014);

William T. Sims - engineer QC lead; lead inspector for four years; line inspector for four years (Rhodes, Sims, Todd, Burns Panel tr. 72,005; 72,014);

Melvin R. Todd - engineer QC lead; lead inspector for five and one half years; line inspector for three years (Rhodes/Sims/Todd/Burns tr. 72,005; 72,015);

Sherry Burns - electrical QC lead; lead inspector six months; line inspector for two years (Rhodes/Sims/Todd/Burns tr. 72,005; 72,015).

In total, these eight inspectors have worked approximately twenty years at Comanche Peak as lead QC inspectors and twenty years as line QC inspectors.

539. The largest collective number of QCIs supervised by these eight leads is 126; the smallest is 41. At the time when all eight inspectors were last serving as leads, they were supervising a total of 64 inspectors. Rhodes/Sims/Todd/Burns tr. 72,017, 019; Biggs/Fanning/Whitman/Uehlein tr. 71,516, 519.

540. None of these inspectors has ever been the subject of any harassment, intimidation or threats (Rhodes/Sims/Todd/Burns tr. 72,020; Biggs/Fanning/Whitman/Uehlein tr. 71,519-20). None of them has ever threatened, intimidated or harassed any of their inspectors in the performance of their duties (Rhodes/Sims/Todd/Burns tr. 72,020; Biggs/Fanning/Whitman/Uehlein tr. 71,520-21). Since these inspectors have become leads, none of them has ever witnessed the harassment, intimidation or threatening of any QC inspector they supervise (Rhodes/Sims/Todd/Burns tr. 72,021; Biggs/Fanning/Whitman/Uehlein tr. 71,251).

541. During the period in which these inspectors were serving as leads, four of them were able to recall occasions where an inspector they were supervising was involved in an incident involving craft. The first of these incidents occurred about two years ago and involved Kye Marley, who worked for Biggs. Marley told Biggs that he walked up to a craftsman who was damaging a pipe and told him to stop. The craftsman

responded with some type of threat. Marley went to the craft foreman, who was nearby, and explained to him what happened. By the time this information reached Biggs, craft supervision had already fired the craftsman. Marley spoke with Biggs about the matter and expressed satisfaction with the matter's resolution. Biggs/Fanning/Whitman/Uehlein tr. 71,251.

542. Uehlein also testified that one of the inspectors he supervised claimed that he was involved in an incident with craft. The inspector, Eddie Neidecken, was performing coatings inspections at Uehlein's direction in a specified area. Billy Ward, Ronnie Johnson and Bob Murray were all at the same location and needed a QC inspector to inspect other work. Johnson turned to Neidecken allegedly asking him to look at this work. Uehlein asked Neidecken to survey what inspections were needed and to complete the inspections he had started. Uehlein then went to his office to get a tool. Biggs/Fanning/Whitman/Uehlein tr. 71,524-25.

543. When Uehlein returned, Neidecken was quite agitated. He told Uehlein that one of the craftsmen had pulled him aside, stating that he was tired of what he perceived to be a lack of cooperation. The craftsman also expressed dissatisfaction with Neidecken's behavior. Uehlein told Neidecken to write down in his own words what occurred. Later that day, QC management sent them to Grier to discuss the matter. TUGCO management also subsequently met and instructed the craftsmen not to have

personal involvement with first-line QC inspectors. Neidecken was pleased with this action. Biggs/Fanning/Whitman/Uehlein tr. 71,524-27.

544. In addition, as a result of this incident, Ronnie Johnson met with Grier. He also met with Frankum, who went over site policies prohibiting craft from telling QCs what to inspect and requiring craft to request QC inspectors only through QC leads. This incident took place in March or April of 1984. Liford, Johnson, Calicutt Panel tr. 62-67.

545. Burns recounted the third incident. As she remembered, a craftsman had called one of her inspectors, David Fredericks, a "four-eyed mother fucker" (Rhodes/Sims/Todd/Burns tr. 72,022). Although Fredericks though it was funny, Burns did not, and told her supervisor. The QC supervisor in turn informed the craft general foreman. The craftsman subsequently apologized to Fredericks. No one involved in this incident considered the craftsman's profanity to amount to harassment, intimidation or threat. Rhodes/Sims/Todd/Burns tr. 72,022-23.

546. The only other incident that the QC leads could recall concerned Jeff Staublin, whom Burns supervised. Burns learned that Staublin was having problems with a particular craftsman. As it turned out, the craftsman was Staublin's ex-father-in-law. To solve what obviously was a personal problem, Burns rearranged the work schedules so they did not have to work together. Rhodes/Sims/Todd/Burns tr. 72,024.

547. None of the eight inspectors has ever been directed or pressured not to write an NCR when they believed one was warranted (Rhodes/Sims/Todd/Burns tr. 72,027; 028-29; Biggs/Fanning/Whitman/Uehlein tr. 71,528-29, 529-30). None of them has been directed or pressured not to write an unsatisfactory inspection report when they felt one was warranted (Rhodes/Sims/Todd/Burns tr. 72,027; Biggs/Fanning/Whitman/Uehlein tr. 71,529). Conversely, none of the lead QCIs has directed or pressured anyone not to write an NCR or unsatisfactory inspection report when that person thought one was warranted (Biggs/Fanning/Whitman/Uehlein tr. 71,530-33; Rhodes/Sims/Todd/Burns tr. 72,030-32).

548. All eight inspectors can recall having differences of opinion with craftsmen about the interpretation of procedures or about whether a particular matter is a nonconforming condition (Biggs/Fanning/Whitman/Uehlein tr. 71,533; Rhodes/Sims/Todd/Burns tr. 72,033-334). None of the leads considers such disagreeements as harassment, intimidation or threats (Biggs/Fanning/Whitman/Uehlein tr. 71,533; Rhodes/Sims/Todd/Burns tr. 72,034). These disagreements have been resolved either by reviewing the procedure in dispute or by going up the chain of command (Biggs/Fanning/Whitman/Uehlein tr. 71,534-35; Rhodes/Sims/Todd/Burns tr. 72,035-36). In all cases, management supported the inspectors in efforts to resolve these differences (Biggs/Fanning/Whitman/Uehlein tr. 71,538; Rhodes/Sims/Todd/Burns

tr. 72,035-37), and in all cases the leads were satisfied with the resolution of their differences (Biggs/Fanning/Whitman/Uehlein tr. 71,538-39; Rhodes/Sims/Todd/Burns tr. 72,037).

549. The leads identified a number of options available to them if for some reason they were unhappy with the disposition of their concerns. These options included going up their chain of command, writing an NCR, contacting Grier, calling the hotline, or calling the NRC (Biggs/Fanning/Whitman/Uehlein tr. 71,539-41; Rhodes/Sims/Todd/Burns tr. 72,039-40). Indeed, the leads have been encouraged to take advantage of these channels. QA/QC management has emphasized the availability of the hotline during training sessions, and through posters hanging up around the site. Biggs/Fanning/Whitman/Uehlein tr. 71,541-42; Rhodes/Sims/Todd/Burns tr. 72,042-44. In addition, during frequent meetings with their inspectors, management encourages them to bring up any concerns they may have (Biggs/Fanning/Whitman/Uehlein tr. 71,541-42; Rhodes/Sims/Todd/Burns tr. 73,044-45).

550. All of the leads recall having disagreements with their supervisors regarding the interpretation of a particular procedure or a particular item which they inspected (Biggs/Fanning/Whitman/Uehlein tr. 71,543; Rhodes/Sims/Todd/Burns tr. 73,046). In every case, the leads felt comfortable sitting down with their supervisors to resolve the matter, and in all

cases they were able to do so to their personal satisfaction. Usually, these disagreements were resolved by reviewing the procedure under which the question arose. Occasionally, a quality engineer was used as a referee. Biggs/Fanning/Whitman/Uehlein tr. 71,543-46; Rhodes/Sims/Todd/Burns tr. 73,046-51. In any event, the leads were satisfied that there were other avenues they could pursue to press their points (Rhodes/Sims/Todd/Burns tr. 73,050-52).

551. As leads, the inspectors all could remember incidents where they disagreed with one of their subordinates. These disagreements have been resolved in the same manner as disagreements between the leads and their supervisors. The lead and his inspector have reviewed the procedure. If they were unable to agree on what was required, they wrote an NCR seeking clarification. Alternatively, the inspector, if he desired, could have gone up the chain of command. Several of the leads have directed their inspectors to write NCRs to resolve the disagreements. Biggs/Fanning/Whitman/Uehlein tr. 71,597; Rhodes, Simms, Todd, Burns Panel tr. 73,061-62.

552. The leads all recall being asked by craft to write NCRs, and they have done so (Biggs/Fanning/Whitman/Uehlein tr. 71,549; Rhodes, Simms, Todd, Burns Panel tr. 73,062-63). In addition, inspectors, civil engineers, mechanical engineers and electrical engineers have requested that the leads write NCRs.

Whenever the leads were advised by these individuals of a nonconformance, they would write an NCR (Rhodes, Simms, Todd, Burns Panel tr. 73,065-68).

553. In accordance with corporate policy, the leads have regularly encouraged their inspectors to perform their jobs to the best of their ability. There are weekly and sometimes daily training sessions to keep inspectors current as to the latest changes in procedures. In addition, inspectors are encouraged to qualify for as many certifications as possible. Rhodes, Simms, Todd, Burns Panel tr. 73,068-71; Biggs/Fanning/Whitman/Uehlein tr. 71,550-51.

554. The leads themselves are also encouraged to ensure that there is a sound quality control program at Comanche Peak. They have been encouraged to write NCRs and IRs. In addition, supervision has been available to discuss problems. Finally, there are occasional group meetings with supervision which are "just an appreciation type get-together." Biggs/Fanning/Whitman/Uehlein tr. 71,551-52; Rhodes, Simms, Todd, Burns Panel tr. 73,071-73.

555. Based on the experience of the lead inspectors, there is not a climate or atmosphere of harassment, intimidation, or threats from any source against Quality Control inspectors at Comanche Peak (Biggs/Fanning/Whitman/Uehlein tr. 71,553).

556. Intervenor called four of Applicants' QC inspectors as witnesses. The first of these was Billy Rae Snellgrove, a QC level 2 lead hanger inspector (Snellgrove tr. 44,007). Snellgrove recognizes that the philosophy behind the QC program is to verify that the best possible plant is built (Snellgrove tr. 44,033). He has never heard of an inspector complaining that he was kept from doing his job because of intimidation or harassment, and has never kept an inspector from doing his job. Snellgrove tr. 44,039. Snellgrove is aware of both the hotline and the site ombudsman. He understands that the two programs were established to give employees direct access to management if they are not getting a proper response to a concern brought directly to the attention of their immediate supervisors. Snellgrove tr. 44,051.

557. Intervenor also called Wayne Mansfield, who has been a lead QC inspector since 1982. Mansfield joined Brown & Root in 1979 as a QC Level II QC inspector. Mansfield tr. 44,507. Mansfield stated that if he was harassed he would bring the matter to the attention of his supervisor. If he did not get any response, he would bring the matter to the attention of higher management (Mansfield tr. 44,518). If he was being harassed by his supervisor and could get no help from his employer, then he would go to the NRC (Mansfield tr. 44,518-19).

558. After the hotline was installed, Mansfield attended an orientation session where he was informed of the new program. There were about 30 or 40 people attending the orientation. They were told that the hotline was being installed because of the desire to build a quality plant. Mansfield believes that the meeting was also an opportunity for him to voice any concerns he had without any fear of harassment or intimidation. Mansfield tr. 44,530-32.

559. Mansfield does not believe his job would be on the line should he complain about harassment or intimidation were he to experience any. Mansfield has not witnessed inspectors being harassed or intimidated, nor has be been subjected to such conduct. None of Mansfield supervisors have attempted to influence him not to write NCRs or unsatisfactory inspection reports. Mansfield is unaware of any other instance where inspectors were harassed or intimidated, and no other inspector has ever told him that he was subject to such pressures. Mansfield tr. 44,532-34.

560. James Patton was the third QC inspector Intervenor called. Patton was first a QC inspector, after which he was promoted to QC lead. He then became a quality control superintendent. He worked for Brown & Root in these capacities for eight years. Patton tr. 37,571-72.

561. Patton believes that quality control inspectors have the utmost responsibility to assure that all applicable procedures, specifications and drawings are followed. To do this, Patton feels the inspectors must have the complete backing of management. He had this backing. Moreover, Patton was unaware of any case where a QC inspector was harassed or kept from reporting nonconforming conditions at Comanche Peak. Patton tr. 37,589-91.

562. The last inspector Intervenor called was Larry Wilkerson, who has been a lead QC inspector for about a year (Wilkerson tr. 37,506). Wilkerson understood that his job was to write a nonconformance report if he found a nonconforming item (Wilkerson tr. 37,520). Wilkerson feels that it is important for a quality control inspector to feel free to report whatever nonconforming items he finds without fear of reprisal (Wilkerson tr. 37,527). Wilkerson has typically observed a positive response when a QC inspector questions the work of craft (Wilkerson tr. 37,541). Wilkerson has never, in his nine years with Brown & Root, observed any attempt being made to prevent a QC inspector from writing an NCR report because a craft member was unhappy (Wilkerson tr. 37,544-45). Nor has he ever been dissuaded from initiating an NCR as a result of craft displeasure (Wilkerson tr. 37,553).

E. Intervenor Has Failed To Demonstrate A Breakdown Of Applicants' QA/QC Program

1. The Number Of Alleged Incidents Of Harassment, Intimidation And Threats Are Insignificant And Do Not Establish A Pervasive Breakdown Of Applicants' QA Program.

563. There are a number of situations where the potential for disagreement exists during construction. First, an employee may not agree with his boss; second, QC inspectors regularly pass judgment on work performed by craft; third QA auditors review the work of QC inspectors. Between 60,000 and 70,000 NCRs and unsatisfactory inspection reports, each one of which represents one person's rejection of another person's work, have been written at Comanche Peak. Chapman tr. 76,536.

564. Even one incident of intimidation at Comanche Peak is unacceptable to management. Nonetheless, given the vast universe of opportunities for conflict at the project, the actual number of incidents that have actually reached the confrontation stage is not significant. Chapman tr. 76,538.

565. The NRC has confirmed that Applicants' QA program has been operating as it should. The NRC concluded that, in the six-month period following Charles Atchison's termination, the number of NCRs written in the non-ASME area increased by 210% over the preceding six months, the number of ASME NCRs in this period increased by 170%. Construction activity remained at the

same level during the period examined. Chapman tr. 76,508-10; Chapman ex. 4, p. 4-5. Chapman independently verified this trend (Chapman tr. 76,508).

566. NRC interviewed sixty-two QC inspectors following the Atchison discharge. Sixty-one indicated that they did not feel harassed or intimidated in their jobs. The remaining inspector indicated that he felt somewhat uneasy, but had not failed to perform his job as a result (Chapman ex. 5).

567. In a more recent survey, NRC interviewed 28 QC inspectors at Comanche Peak in an effort to determine whether there is harassment or intimidation. The NRC concluded that there was no harassment or intimidation problem (Chapman tr. 76,519; Chapman ex. 6).

2. There Is No Basis To Conclude That Significant Hardware Deficiencies Resulted From Alleged Incidents Of Harassment, Intimidation or Threats

568. Intervenors have not identified hardware deficiencies alleged to have been caused by harassment or intimidation of QC inspectors. Even if such allegations were raised, the redundant nature of the inspection process forecloses the inference of such deficiencies.

569. One layer of this redundancy is afforded by the Authorized Nuclear Inspector, an independent inspector. The ANI performs inspections and verifications to certify that all ASME class 1, class 2 and class 3 equipment meets the ASME code requirements. The ANI performs in-process inspection of ASME

welding processes; in-process inspection of mechanical process; walkdowns of ASME components and systems-post installation; and a 100% review of ASME Code-related documentation. It also monitors the entry ASME QA program and organization. Coates tr. 2, 3-6.

570. Another layer of redundancy is the pre-service inspection program which is carried out for ASME piping, welds, hangers, and equipment. This program includes non-destructive examination of welds, hydrostatic testing of piping, valve examination and component support and attachment examination. All tests are observed by an Authorized Nuclear In-Service Inspector and by a TUGCO QA/QC observer. All test results are documented and will become part of the permanent plant records. Keller tr. 2-4.

571. A third layer of redundancy is the QC inspection program for non-ASME components at Comanche Peak. This program requires multiple inspections and verifications which provide assurance that construction deficiencies are identified by QC inspectors and corrected in a timely manner. Further inspections and tests are performed after installation of non-ASME components. These tests are in addition to multiple QC inspections, and investigations are conducted to assure QC program compliance and the acceptability of installed components and systems. Brandt Prefiled Testimony Regarding Inspection and Testing of Non-ASME Components and Systems.

572. Another layer of redundancy is provided by the inspection and verification for ASME components within the ASME organization. This program includes in-process inspections of welding processes; in-process inspections of mechanical processes; inspection of completed piping installations; inspection of completed component supports; reinspection of installed mechanical equipment; post-installation pressure testing; hot functional testing; and acceptance and preoperational testing of ASME components and systems. Purdy ex. 16.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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| In the Matter of | ) | |
| | ) | |
| TEXAS UTILITIES ELECTRIC COMPANY, et al. | ) | Docket Nos. 50-445-2 and 50-446-2 |
| | ) | |
| (Comanche Peak Steam Electric Station, Units 1 and 2) | ) | (Application for Operating Licenses) |

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Applicants' Prehearing Proposed Findings Of Fact Concerning Allegations of Harassment, Intimidation and Threats of Quality Control Inspectors at the Comanche Peak Steam Electric Station" in the above-captioned matter were served upon the following persons by hand-delivery,* overnight delivery,** or by deposit in the United States mail,*** first class, postage prepaid, this 4th day of September, 1984:

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