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'84 NOV 27 AM 1:13

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November 19, 1984

Peter B. Bloch, Chairman  
Atomic Safety and Licensing  
Board  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Herbert Grossman,  
Alternate Chairman  
Atomic Safety and Licensing  
Board  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Walter H. Jordan, Member  
Atomic Safety and Licensing  
Board  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Re: In the Matter of Texas Utilities Electric  
Company, et al. (Comanche Peak Steam  
Electric Station, Units 1 and 2), Docket  
Nos. 50-445-2 and 50-446-2, Application  
for Operating Licenses

Gentlemen:

On November 17, 1984, I prepared and served on the parties a motion addressed to the Appeal Board requesting a stay pending appeal of this Licensing Board's Order of November 16 requiring production of the materials as to which Mr. Lipinsky had asserted attorney-client privilege, namely Mr. Lipinsky's diary notes of November 30, December 1 and December 8, 1983, and Mr. Lipinsky's memorandum of January 9, 1984. In preparing that motion, I re-examined those materials with regard to the scope of the privilege asserted. I determined that my assertion of privilege on behalf of Mr. Lipinsky as to the entire diary entries of November 30 and December 1 had been overbroad in that only portions of those entries concerned conversations between Mr. Lipinsky and Mr. Reynolds. With respect to the memorandum, it was directed to O. B. Cannon's quality assurance files with copies to Messrs.

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PDR ADOCK 05000445  
G PDR

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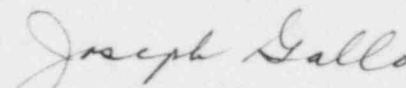
Letter to Licensing Board  
November 19, 1984  
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Roth, Trallo and Norris. Because I had determined that the representation by Messrs. Reynolds and Watkins did not extend to O. B. Cannon, an assumption I had made on October 18, 1984, I concluded that the attorney-client privilege, although valid in the first instance, was waived when the memorandum was distributed within the company. I provided the Appeal Board and the parties with the January 9 memorandum and with revised expurgated copies of the diary entries as an attachment to my motion.

On November 18, 1984, I met with Mr. Lipinsky and we discussed the Licensing Board's Order denying attorney-client privilege as to the remaining materials. Although we still believe that the privilege validly attaches to these materials, Mr. Lipinsky has decided to waive its further assertion. Accordingly, in compliance with his decision with the Order of November 16, I am attaching, with one exception, complete and unexpurgated copies of the three diary entries previously withheld, as well as the January 9 memorandum. A letter to the Appeal Board advising them of this action is attached as well as the Motion For A Stay Pending Appeal.

The exception stated above refers to a four-line note recording a health condition of Mr. Lipinsky. Mr. Lipinsky views disclosure of this matter as an invasion of privacy and does not wish its disclosure. In counsel's view, the item is beyond the purview of the Board's subpoenas and therefore not subject to production. Mr. Lipinsky has agreed to show the passage in camera to the Board if it is deemed necessary.

Sincerely,

  
Joseph Gallo

cy: Service List

November	October	November 1983	December
Wednesday	S M T W T F S	S M T W T F S	S M T W T F S
	1	1 2 3 4 5	1 2 3
	2 3 4 5 6 7 8	6 7 8 9 10 11 12	4 5 6 7 8 9 10
	9 10 11 12 13 14 15	13 14 15 16 17 18 19	11 12 13 14 15 16 17
	16 17 18 19 20 21 22	20 21 22 23 24 25 26	18 19 20 21 22 23 24
	23 24 25 26 27 28 29	27 28 29 30	25 26 27 28 29 30 31
	30 31		

30

~ 1520 HRS (EST) 11/30/83 T. CONN. w/  
 F. HAWKINS (NRC) JLL & NSR TO MEET F.H. IN  
 LOBBY OF HILTON @ 500PM ON 12/7/83 CHICAGO;  
 JLL WILL BE SWORN IN; CLAUDE JOHNSON (REGION 4)  
 & COURT REPORTER WILL BE PRESENT; F.H. HAS QUESTION  
 OR PROBLEM w/NSR - CONFLICT (OR IMPLIED CONFLICT)  
 OF INTEREST - FH ASKED WHO IS PAYING NSR; JLL  
 AGAIN STATED THAT JLL HAS NO INTEREST IN CP AND  
 WOULD PREFER NOT TO GIVE OPINIONS BUT HE WOULD  
 COOPERATE; JLL SUGGESTED THAT IT WOULD BE TO F.H.  
 BENEFIT IF F.H. TALKED w/ INSPECTOR FIRST HAND - ALSO  
 ASKED IF NRC REC'D COPY OF 11/10 & 11/83 MTR TRANSCRIPT  
 - F.H. SAID NOT YET (WOULD ASK AGAIN ON 12/1)

~ 1605 HRS (EST) 11/30/83 T. CONN. w/ NSR.  
 (ATTORNEY) WENT OVER T. CONN. w/ F.H. - NSR TO CALL  
 F.H. TO MAKE SURE THERE ARE NO PROBLEMS w/RE. TO  
 CONFLICT OF INTEREST; NSR ASSURED JLL THAT  
 AT THIS MTR. NSR REPRESENTS ONLY JLL INTERESTS;  
 JLL ASKED ABOUT NSR FEE - NSR INDICATED THAT IF  
 NECESSARY OBC COULD BE BILLED THEN OBC WOULD  
 BE REIMBURSED BY TUGCD; MISC. ON MS. ELLIS - MS. ELLIS  
 MAY HAVE FILED w/ AGLB TO HAVE JLL AS EITHER  
 CASE OR BOARD WITNESS; MISC.  
 TRIED TO UPDATE w/ JLN ON STATUS - LEFT  
 MESSAGE BUT JLN DID NOT RETURN CALL  
 GO OVER STATUS (FH & NSR T. CONN.) w/ RBR

January 1984

February

March

December

Thursday

S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S
1	2	3	4	5	6	7				1	2	3	4	4	5	6	7	8	9	10
8	9	10	11	12	13	14	5	6	7	8	9	10	11	11	12	13	14	15	16	17
15	16	17	18	19	20	21	12	13	14	15	16	17	18	18	19	20	21	22	23	24
22	23	24	25	26	27	28	19	20	21	22	23	24	25	25	26	27	28	29	30	31
29	30	31					26	27	28	29										

1

NOV 25 HRS. (EST) 12/1/83 1. COMM. w/ JLN

RE: JLN ACCOUNT MISG. T. EDW. w/ F.H. &

NSR FOR JLN - JLN STATED THAT K&R HAD RETAINED NSR - JLN ASKED IF JLN WAS COMFORTABLE w/ NSR JLN REPLIED YES PROVIDED NSR/TYGER WERE WORKING w/ OGC AND NOT SETTING OGC UP

NOV 24 HRS (EST) 12/1/83 T. EDW. w/ RBR DID NOT TELL JLN THAT NSR IS UNDER RETAINER BUT THAT TO AVOID CONFLICT MNY HAVE TO PUT NSR UNDER

RETRAINER

NOV 31 (EST) 12/1/83 T. EDW. w/ NSR - MOVE MTG. UP TO WED. 12/7/83 SAME TIME & PLACE - PH & NSR HAVE

SIGNMENTED OUT CONFLICT ISSUE - JLN & NSR HAVE A ATTORNEY/CLIENT RELATIONSHIP AT THIS MTG. - NSR WOULD EXCUSE HIMSELF IF A CONFLICT CAME UP

REARRANGE PHONE & HOTEL SCHEDULE - ADVISE RBL & RAT AND LEFT MESSAGE w/ JLN SECRETARY



February	March	April	December
S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29	S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30	Thursday

8

#144(OHFS) (EST) T. COLL. W/NSR.

① EXPLAINED THAT BECAUSE NRC HAD PROBLEM W/NSR REPRESENTING JIL THE CRT MTR. WAS CANCELLED. IF ANYONE STARTS TO QUESTION WHO IS PAYING FOR NSR - JIL TO RESPOND ATTORNEY-CLIENT PRIVILEGE. JIL WOULD LIKE NRC MTR. TO TAKE PLACE ASAP AND NSR AGREED. NSR WILL CONTACT NRC ATTORNEY NEXT DAY OR SO AND GET BACK TO JIL.

② JIL ASKED ABOUT NRC HEARING FORMAT.

NSR EXPLAINED SET UP. ALSO NSR SAID THEY COULDN'T HAVE JIL ASS TO JAIL W/O FURTHER PROCESSING. IF JIL DOESN'T WANT TO TALK ABOUT SOMETHING JIL SHOULD TELL NSR BEFORE HEARING & NOT SURPRISE NSR.

③ NSR ASKED IF JIL HAD HEARD FROM MS. ELLIS (EVIDENTLY MS. ELLIS FILED AMOTION PETITION W/ALB - NSR TO SEND JIL COPY). JIL SAID PRIOR TO TOGO REQUEST OBE WAS PREPARED TO GO AS BOARD WITNESS IF ASKED. JIL POINTED OUT THAT AT NO TIME DID JIL IMPLY TO MS. ELLIS THAT JIL OR OBE WANTED TO BE CASE WITNESS. NSR SAID THAT JIL SHOULD REMEMBER THAT MS. ELLIS WOULD LIE, CHEAT, STEAL TO STOP CP AND JIL WILL END UP IN TROUBLE IF JIL TALKED TO MS. ELLIS. (JIL WONDERED IF UTILITY WOULD LIE, CHEAT, STEAL TO BUILD CP BUT DIDN'T MENTION TO NSR)

④ NSR ASKED IF JIL HAD HEARD OF A MARY SINDERSOON. JIL SAID NO. WHY? NSR SAID M. SINDERSOON IS DUNHAMS' ATTORNEY. JIL ASKED WHY JIL WOULD HEAR FROM M. SINDERSOON? NSR SAID M. SINDERSOON MAY TRY TO HAVE JIL CONFIRM DUNHAMS STATEMENTS. NSR SAID JIL SHOULD DEFINITELY BE AT LUNCH IF M. SINDERSOON CALLS.

⑤ NSR & JIL SET TENTATIVE (SP?) APPT. IN NSR WASH. DC OFFICE ON 12/20/82 @ 0930 HRS

⑥ ASKED IF NSR WENT TO SKIPPER'S GALLEY REST. IN SEATTLE.

INFORMED RAT OF T. COLL. W/NSR (EXCEPT ITEM #6)

December

November

December 1983 January 1984

Wednesday

S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S
			1	2	3	4	5				1	2	3	1	2	3	4	5	6	7
6	7	8	9	10	11	12	4	5	6	7	8	9	10	8	9	10	11	12	13	14
13	14	15	16	17	18	19	11	12	13	14	15	16	17	15	16	17	18	19	20	21
20	21	22	23	24	25	26	18	19	20	21	22	23	24	22	23	24	25	26	27	28
27	28	29	30	31			25	26	27	28	29	30	31	29	30	31				

7 12/5/83

RBR CALLED JIL INTO RBR OFFICE & HAD JIL READ & COMMENT ON INFO. SENT TO OBC (JIL) BY NSR. ALSO RBR WENT OVER INFO. FOR JIL TO EMPHASIZE (SP?) WHEN W/NRC (RBR LATER TOLD JIL TO GIVE NSR THE ARTICLE) 12/5/83 T. CONVL. W/F.H. (NRC) O'HARE MILITARY RM 2115 5-9 PM (SHOULDN'T TAKE MORE THAN 1-2 HRS.) ASKED JIL TO CALL NSR

12/7/83 MESSAGE FROM MR. MORIS (202-857-9837) THAT THE MTG. IN CHICAGO WAS CANCELLED TRIED TO CALL & LEFT MESSAGE

12/7/83 100900 (EST) T. CONVL. W/F.H. (NRC) MTG. POSTPONED (NRC ATTORNEYS HAD PROBLEM W/NSR BEING @ MTG.)

12/7/83 100935 (EST) T. CONVL. W/WM. MORIS (202-857-9837) NRC HAS PROBLEM FROM A POLICY STANDPOINT W/ AN ATTORNEY BEING PRESENT DURING AN INTERVIEW

12/7/83 100940 (EST) LEFT MESSAGE (CHICAGO MTG. CANCELLED - NRC HAD PROBLEM W/ ATTORNEY BEING PRESENT) FOR JIL

12/7/83 INFORM RAT ON MTG. STATUS

12/7/83 ASKED TED TO RELAY MESSAGE TO RBR

12/8/83 T. CONVL. W/NSR CONTINUED

- ① JIL SAID APPEARS THAT WHEN JIL HAS AN OPINION THAT JIL HAS TO DEFEND AND/OR PROVE OPINION. WOULDN'T IT BE REASONABLE TO EXPECT THAT OPINIONS OPPOSITE JIL BE PROVEN. NSR AGREED. USE JIM AS EXAMPLE
- ② JIL POINTED OUT TO NSR (TO RELAY TO CHAYMAN) THAT IF PROCEDURES SATISFIED ALSO REQ. ON SPELLING OUT ACCEPTANCE CRITERIA HOW CAN DR BE SO SUBJECTIVE? JIL WOULDN'T BRING UP UNLESS ASKED BUT PARALLEL TO WHAT IS WORK QUALITY IF DR OVERLOOKED.