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TU ELECTRIC July 2, 1992

U. S. Nuclear Regulatory Commission
Attn: Document Control Desk
Washington, DC 20555

SUBJECT: COMANCHE PEAK STEAM ELECTRIC STATION (CPSES)
DOCKET NOS. 50-445 AND 50-446
10 CFR 2.206 PETITION SUBMITTED BY
KOHN, KOHN & COLAPINTO REGARDING
COMANCHE PEAK STEAM ELECTRIC STATION

Gentlemen:

On July 30, 1991, the law firm of Kohn, Kohn & Colapinto, P.C. (Petitioners) submitted a request under 10 CFR 2.206 alleging that Texas Utilities Electric Company (TU Electric) made material false statements regarding the design of pipe supports in the operating license proceeding for Comanche Peak Steam Electric Station (CPSES). The NRC published a notice of this petition in the Federal Register on September 5, 1991 (56 Federal Register 43946).

As requested by a member of your staff, TU Electric is submitting the enclosed copy of an internal evaluation of the Petitioners' allegations which the NRC reviewed during its investigations of the Petitioner's allegations. This evaluation is supported by an extensive number of references, most of which are already on the CPSES docket. The remaining references which have not been previously docketed, are identified in Attachment 1, and are also enclosed with this letter.

Sincerely,

Roger D. Walker
Manager of Regulatory Affairs for NEO

RDW/ds
Attachment with Enclosures (6)
Enclosure

c - Mr. R. D. Martin, Region IV
Dr. Thomas Murley, NRR
Resident Inspectors, CPSES (2)
Mr. T. A. Bergman, NRR
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LIST OF REFERENCES NOT PREVIOUSLY DOCUMENTED

<u>Enclosure</u>	<u>Document Description</u>
1.	<u>Hasan v. Nuclear Power Services, Inc.</u> , Case No. 86-ERA-24, "Recommended Decision and Order" (Oct. 21, 1987) and "Final Decision and Order" (June 26, 1987)
2.	Excerpt of DOL Proceeding Oral Deposition of David M. Rencher (May 29, 1987), pp. 120-121, 124-125, 260, 264, 270
3.	Comanche Peak Quality Assurance Plan, Section 3.0.2, 3.0.3
4.	Procedure CP-EP-4.6, "Field Design Change Control," Rev. 8, Section 3.1.1
5.	Procedure CP-EI-4.5-4, "Technical Services Engineering Instruction for Pipe Hanger Design Review and Certification," Rev. 4, Section 3.1.1
6.	Excerpt of DOL Proceeding Oral Deposition of George M. Chamberlin (June 2, 3, 1987), pp. 182-183

Enclosure 1 of Attachment to TXX-92305

Hasan v. Nuclear Power Services, Inc., Case No.
86-ERA-24, "Recommended Decision and Order"
(Oct. 21, 1987) and "Final Decision and Order"
(June 26, 1987)

U.S. Department of Labor

Office of Administrative Law Judges
211 Main Street - Suite 600
San Francisco, California 94105



(415) 974-0514
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DATE: 21 OCT 1987
CASE NO. 86-ERA-24

IN THE MATTER OF

S. M. A. HASAN

COMPLAINANT

v.

NUCLEAR POWER SERVICES, INC.,
STONE & WEBSTER ENGINEERING CORP.,
TEXAS UTILITIES ELECTRIC CO., INC.
RESPONDENTS

Appearances

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Michael D. Kohn, Attorney
Stephen M. Kohn, Attorney
Government Accountability Project
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For Complainant

Harvey J. Wolkoff, Attorney
Katrina Weinig, Attorney
Ropes & Gray
225 Franklin Street
Boston, MA 02110
For Respondents

BEFORE: ALFRED LINDEMAN,
Administrative Law Judge

RECOMMENDED DECISION AND ORDER

This is a proceeding under the Energy Reorganization Act of 1974 (the "Act"), 42 U.S.C. §5851, and the applicable regulations set forth at 29 C.F.R. Parts 18 and 24. After appropriate notice to interested parties, a hearing was held in Dallas, Texas, on June 22 and 23, 1987. Prior to the hearing, by Order Granting Partial Summary Judgment Dismissing Complaint, dated June 17, 1987, certain charges were dismissed as time-barred; specifically, allegations that respondents Texas Utilities Electric Co. and Nuclear Powers Systems, Inc. (hereinafter "Texas Utilities" and "NPSI" respectively) had violated the Act by terminating complainant in August and October of 1985 because of his having engaged in

protected "whistleblower" activities. The remaining issue presented for adjudication is whether the same alleged activities caused complainant to be "blacklisted" when respondent Stone & Webster Engineering Corp. (hereinafter "Stone & Webster") failed to hire him in January/February 1986.^{1/}

Findings of Fact

General Findings

Complainant was employed by NPSI as a civil structural engineer at Texas Utilities' Comanche Peak nuclear power plant between January 1982 and August 1985. Sometime before August of 1985, Texas Utilities determined to reorganize its pipe support group from one consisting of multiple contractors, of which NPSI was one, to a single, new contractor, Stone & Webster. Shortly before the time set for the reorganization, Texas Utilities' management personnel created a list of all the 110 engineers on the project with a recommendation indicating whether supervisors believed the individual was a candidate Stone & Webster should hire, consistent with the fact that the contract had a short completion deadline. The recommendation was reflected solely by a designation such as "yes," "hire," "no" or "maybe." Approximately 50 individuals were rated "yes" or "hire," 33 were rated "no," and 25 were rated "maybe." Complainant was rated as a "no." RX 68; TR 27-29, 35-38, 555-558.^{2/} In August 1985, after interviews with all the engineers who had been on the project, Stone & Webster decided to make job offers to about 79, of which complainant was not one. He was then released back to NPSI's New Jersey offices where he worked until laid off due to a reduction in force on or about October 17, 1985. Later, in January 1986 he attended a Stone & Webster hiring "open house," was interviewed again and advised in February 1986 that he was not to be hired.

Complainant then filed a series of charges with the Equal Employment Opportunity Commission, alleging that he had been discriminated against because of his religion and his age. He filed the instant complaint, denominated an "Amended Complaint," on February 18, 1986, alleging that he had "suffered a series of reprisals on the job," that "he was continually harassed while attempting to comply with NRC rules and regulations and internal implementing procedures," and that he was "not hired by Stone & Webster" because of "their knowledge and/or belief of his engagement in protected activities."

^{1/} In the absence of a determination that blacklisting occurred in January/February 1986, the charge that the Act was violated as a result of the alleged blacklisting of complainant when he was not hired by Stone & Webster in August 1985 would also be time-barred. See Egenreider v. Metropolitan Edison Company/G.P.U., 85-ERA-23 (Opinion of the Secretary of Labor, dated April 20, 1987).

^{2/} "RX" and "CX" refer to Respondents' and Complainant's Exhibits, respectively; "TR" or "T" refers to the transcript of the hearing or deposition cited.

As the main support for his complaint, complainant cited his frequent raising of "safety concerns" to management and his oft-repeated threat to "go to the NRC" unless his concerns were satisfied. He also claims he telephoned an employee of the NRC beginning in February of 1985 to convey these "safety concerns." Having considered the entire record in this case, including the relevant documents, the testimony of the witnesses who appeared before me, the videotaped testimony of the NRC employee and, in particular, claimant's demeanor at the hearing, I find that his version of events is simply not believable.

For example, the record is replete with evidence that both before and during his employment at Comanche Peak he had chronic "personality" problems with co-workers, mainly due to the fact that he is an Indian-born Moslem and he felt there was animosity between him and other engineers who are Hindus. As a consequence of such differences during the course of his 3-1/2 years at Comanche Peak, though he was considered a good engineer in terms of being a good "numbers cruncher," he was transferred at least twice. Another source of continuing disagreement between complainant, one supervisor, and his co-workers at Comanche Peak stemmed from the fact that his duties involved "checking" calculations of other engineers. There were multiple independent sets of design criteria, namely, those created by NPSI and those created by two other contractors. The fact that there was criticism of the use of different sets of criteria was well known, but it was the accepted practice at the time for each contractor's calculations to be checked according to that same contractor's set of criteria; complainant, however, would repeatedly "reject" calculations of other engineers because he checked them against another contractor's set of criteria. He also had a propensity for letting his co-workers know, in an abrasive manner, confirmed by his demeanor on cross-examination at the hearing, that he considered himself to be a superior engineer.

The record also discloses: 1) at no time prior to being informed he was not being hired by Stone & Webster in August 1985 did complainant ever see fit to convey his criticism about "inconsistent design criteria" or any other "concern" about safety to the on-site "Safeteam" unit, which was intended to receive any such concerns anonymously; 2) complainant did not communicate any of his concerns to an outside organization, "CASE," that was participating in an ongoing NRC proceeding involving the Comanche Peak project; 3) in numerous letters complainant directed to elected public officials from the President on down, as late as December 1985, he related his lack of employment to his being a member of an "utter minority" and did not mention anything about safety concerns.

With respect to the "threats" complainant made "to go to the NRC," I find that although he did make such statements and they were known to some of his co-workers, there is absolutely no evidence that such comments caused him to be sanctioned, reprimanded, warned or in any way reigned in during the remainder

of his tenure; indeed, the record indicates that he continued to receive raises even though his difficulty with co-workers continued unabated. Based on the totality of the record, therefore, I find that complainant's statements regarding the NRC had no effect at all on Texas Utilities' recommendation to Stone & Webster. As far as the content of the telephone calls to the NRC are concerned, Ahmed, the employee in question, testified emphatically and convincingly that complainant called him well in advance of the August 1985 reorganization in an attempt to locate future employment and safety concerns were never mentioned. Considering the obvious self-interest of complainant and the evident lack of bias on the part of Ahmed, I specifically reject complainant's account of those communications.

In summary, I find that Texas Utilities recommended that Stone & Webster not hire complainant in August of 1985 solely because of his history of personality problems with co-workers, which was deemed not to be conducive to working on an assignment with a short-term completion deadline. I also find no evidence that NPSI or Stone & Webster knew any specifics of complainant's past work record, his practice of rejecting co-workers' calculations or his statements regarding the NRC; nor is there any credible evidence that Stone & Webster treated complainant disparately from some 31 other engineers who were not offered jobs in August of 1985. As far as the record regarding the interview and re-evaluation of complainant in January 1986 is concerned, I am persuaded by the convincing testimony that the decision not to hire was made solely on the ground that "back in August we had made a decision not to hire Mr. Hasan, and I couldn't see any reason why in January or February we would change our mind to hire him" TR 568; also, that complainant was again treated in the same manner as another engineer who was also re-interviewed but not hired on the basis of the prior rejection.

Specific Findings

Having fully reviewed the proposed findings of fact filed by the parties, I find that with only a minor modification, Respondents' are consistent with my analysis of the documentary record and my observations of the testimony and demeanor of the witnesses. I therefore adopt and incorporate herein by reference Respondents' Proposed Findings of Fact Nos. 1 through 126, dated August 6, 1987, including the record citations in support thereof, with the modification that in Finding No. 66 the reference to Mrs. Hasan having been present in the courtroom on the first day of the hearing is stricken.

Conclusions of Law

Section 210 of the Act prohibits the discharge of, or other discrimination against, an employee because he or she engaged in or was about to engage in some activity protected by the Act. 42 U.S.C. §5851. Thus, the record in this case must establish: first, that complainant had engaged in some protected activity within the

meaning of the Act before Stone & Webster determined not to hire him; second, that the decision not to hire him was at least in part due to that activity.

No protected activity

It is essentially complainant's position that a prima facie case of protected activity is established by the evidence of his disputes with co-workers and one supervisor, which were manifestations of "safety concerns," coupled with the evidence that he either communicated those concerns to the NRC or at least expressed threats to do so. I must disagree for several reasons.

First, it must be observed that notwithstanding the obvious beneficent purposes of the Act and the concomitant need to weigh factual records liberally with a view toward furthering those purposes, I know of no authority that would allow a problem employee to insulate himself from unemployment by the mere making of comments about his work and threats to go to the NRC. In other words, given the self-evident fact that virtually anything an engineer on a nuclear power project says about his work can be construed to "relate to safety," an employee, such as complainant in this case, could guarantee his future continued employment by periodically repeating the phrase "I have a safety concern and I may go to the NRC." As the Fifth Circuit stated in a slightly different context, "section 210 does not sanction this type of abuse, and an employer need not tolerate it." Dunham v. Brock, 794 F.2d 1037 (5th Cir. 1986). Thus, where, as in this case, it is found that complainant himself never pursued those matters about which he had any "concerns" at the time they arose and that he did not begin to characterize those matters as safety complaints until long after his non-hiring by Stone & Webster in August 1985, I conclude that such comments as he made about his work during his tenure from 1982 through August 1985 were not protected activities within the meaning of the Act.

Moreover, even assuming for the sake of argument that complainant's comments and threats were intended by him and understood by his employer as being safety related, since this case arises in the Fifth Circuit they can be considered protected activities only if communicated to the NRC. As indicated above, however, it is found that complainant's comments and threats were not communicated to the NRC until long after both Texas Utilities' recommendation that he not be hired and Stone & Webster's decision not to hire him. It is also clear that he was not a quality control inspector. Accordingly, I conclude that the activity cannot be deemed protected. Brown & Root, Inc. v. Donovan, 747 F.2d 1029 (5th Cir. 1984); Mackowiak v. University Nuclear Systems, 735 F.2d 1159, 1163 (9th Cir. 1984).^{3/}

^{3/} The Secretary of Labor's recent "non-acquiescence" of Brown & Root in Willy v. The Coastal Corporation and Coastal States Management Corp., Case No. 85-CAA-1 (June 4, 1987), is noted. See, however, Hyatt v. Heckler, 807 F.2d 376 (4th Cir. 1986), and cases cited at n. 4, p. 379.

No discrimination

As indicated above, it is found that neither Texas Utilities' non-hiring recommendation regarding complainant nor Stone & Webster's decision not to hire him was based even in part on his prior comments or threats; that instead the recommendation by Texas Utilities was made solely on the basis of his history of not getting along with co-workers and the decision by Stone & Webster was made solely on the basis of that recommendation, their own interviews, and without knowledge of the specific reason for the recommendation. It has also been found that complainant's lay-off by NPSI in October of 1985 was unrelated to any of his comments or threats, and was instead a purely business determination, namely, lack of work in the industry. Under these circumstances, it is concluded there was neither blacklisting nor discrimination within the meaning of the Act. See Mackowiak v. University Nuclear Svstems, supra; Dunham v. Brock, supra; DeFord v. Secretary of Labor, 700 F.2d 281 (6th Cir. 1983).

Attorney's fees and costs

Both sides have asserted that their respective attorney's fees and costs be paid by the other. Since complainant has not prevailed, there is clearly no basis for his fees or costs being paid by respondents. Though I do believe complainant's counsel has pursued this action much further than warranted by the demonstrably weak facts of the case, I cannot say there has been such an abuse of the system as would require assessing respondents' fees and costs against complainant.

ORDER

It is therefore ordered that the complaint of S. M. A. Hasan be dismissed against all respondents.


ALFRED LINDEMAN
Administrative Law Judge

San Francisco, California

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86-ERA-24

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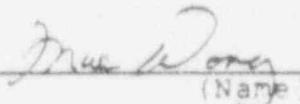
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DATE: June 26, 1991
CASE NO. 86-ERA-24

IN THE MATTER OF

S.M.A. HASAN,

COMPLAINANT,

v.

NUCLEAR POWER SERVICES, INC.,
STONE & WEBSTER ENGINEERING CORP.,
TEXAS UTILITIES ELECTRIC CO., INC.,

RESPONDENTS.

BEFORE: THE SECRETARY OF LABOR

FINAL DECISION AND ORDER

The Administrative Law Judge (ALJ) in this case arising under the Employee Protection Provision of the Energy Reorganization Act of 1974, as amended (ERA), 42 U.S.C. § 5851 (1988), submitted a Recommended Decision and Order (R. D. and O.) recommending that the complaint be dismissed. The facts are well summarized in the R. D. and O. at 2-4.

Briefly, Complainant was employed from January 1982 to August 1985 by Respondent Nuclear Power Services, Inc. (NPSI), as a civil structural engineer working on pipe supports at the Comanche Peak nuclear power plant owned by Respondent Texas Utilities Electric Company (TUEC). When the pipe support engineering effort was reorganized in the summer of 1985, one

contractor, Respondent, Stone & Webster Engineering Corp., took over the work of several contractors, including NPSI. TUEC evaluated all the engineers in the pipe support area and made recommendations to Stone & Webster on which engineers to hire. TUEC recommended not hiring a number of engineers, including Complainant, and Stone & Webster did not hire him.^{1/} In January 1986, Complainant applied for work with Stone & Webster at Comanche Peak but he was not hired. R. D. and O. at 2. Complainant alleged that the negative recommendation by TUEC in August 1985 and the refusal of Stone & Webster to hire him in January 1986 were motivated by his numerous safety and quality complaints to management and his threats to complain to the Nuclear Regulatory Commission during his tenure at Comanche Peak.^{2/}

^{1/} George Boerum, personnel manager for Stone & Webster, testified that Stone & Webster made employment offers to 79 of 110 engineers. T. 579-80.

^{2/} The ALJ dismissed the complaint against TUEC for terminating Complainant, and against Stone & Webster for refusing to hire him in August 1985, as untimely because Complainant did not file his complaint with the Department of Labor until February 18, 1986. ALJ Order Granting Partial Summary Judgment Dismissing Complaint, June 17, 1987. The hearing held by the ALJ was limited to whether TUEC and NPSI had blacklisted Complainant causing Stone & Webster not to hire him in January 1986. I agree with the ALJ's findings on timeliness. In addition, however, the findings of the ALJ discussed in the text, from which he concluded that the Respondents did not blacklist Complainant, apply as well to the questions of whether TUEC's negative recommendation and Stone & Webster's refusal to hire in August 1985 were motivated by an intent to retaliate against Complainant for protected activities. Indeed, the ALJ held that "there was neither blacklisting nor discrimination within the meaning of the Act." R. D. and O. at 6.

The ALJ found that the failure of TUEC to recommend that Stone & Webster hire Complainant was based on his "chronic 'personality' problems with co-workers," R. D. and O. at 3, and was not based "even in part" on his safety complaints or threats to go to the NRC. Id. at 6. Many of Complainant's problems stemmed from religious differences between Complainant, a Moslem, and some of his co-workers who were Hindus. Id. at 3. In addition, the ALJ found that Complainant had an abrasive, overbearing and superior manner harmful to good working relationships with the other engineers and supervisors. Id.^{2/} Finally, the ALJ held that Complainant's layoff by NPSI in October 1985 was not motivated by his internal complaints or threats to go to the NRC. Id. at 6.

DISPUTED SETTLEMENT AGREEMENT

On January 27, 1989, Complainant filed a Motion to Enforce

^{2/} The ALJ found that Complainant did not engage in protected activity because he did not pursue his technical concerns about construction of the Comanche Peak plant when he first made them, but only characterized them as safety concerns after Stone & Webster failed to hire him in August 1985. R. D. and O. at 5.

In addition, the ALJ found that Complainant's activities of making internal complaints and threatening to go to the NRC are not protected activities in the Fifth Circuit, where this case arises, under Brown & Root, Inc. v. Donovan, 747 F.2d 1029, 1036 (5th Cir. 1984). The Secretary has reiterated, in a number of cases, respectful disagreement with the holding in Brown & Root, and in cases arising within the Fifth Circuit has found internal complaints protected. Bivens v. Louisiana Power & Light, Case No. 89-ERA-30, Sec. Dec., June 4, 1991, slip op. at 4-5; Lopez v. West Texas Utilities, Case No. 86-ERA-25, Sec. Dec., July 26, 1988, slip op. at 5-6; Willy v. The Coastal Corporation, Case No. 85-CAA-1, Sec. Dec., June 4, 1987, slip op. at 3. Because I agree with the ALJ on the merits of this case, United States Postal Serv. Bd. of Governors v. Aiken, 460 U.S. 711, 715-16 (1983), I do not address here the internal complaints issue.

Settlement Agreement (Motion to Enforce), asserting that his attorney and an attorney for Respondent TUEC had entered into a settlement agreement. Complainant claimed that one of his former attorneys and an attorney for TUEC reached an oral agreement on June 27, 1988, and that the settlement was reduced to writing in a letter on June 28, 1988. Complainant S.M.A. Hasan's Statement of Facts and Law in Support of Motion to Enforce Settlement Agreement and for Attorneys's [sic] Fees (Statement in Support) at 17. Complainant also asserts that he accepted TUEC's settlement offer by a telegram of July 11, 1988, to Robert A. Wooldridge, a Dallas attorney representing TUEC. Statement in Support at 28-30. TUEC opposed the motion, asserting that no such settlement had been reached. The Secretary issued an Order to Show Cause (OSC) on March 21, 1991, directing the parties to show cause why the Secretary should not proceed to decide this case on the merits, and the parties have submitted responses to the OSC.

A careful review of the record shows that no settlement was entered into here. On June 28, 1988, TUEC attorney Wooldridge wrote to Billie Garde, an attorney with the Government Accountability Project (GAP)^{1/}, purporting to "confirm . . .

^{1/} Some of the ambiguity over the existence of a settlement may have been caused by confusion over who represented Complainant and who represented TUEC at the critical time at issue. Complainant was represented at the 1987 hearing before the ALJ by Michael D. Kohn and Stephen M. Kohn, attorneys who were at that time associated with GAP; attorneys Harvey J. Wolkoff and Katrina Weinig of Boston represented TUEC at the hearing. Ms. Garde and Mr. Wooldridge held settlement

[an] agreement" of several outstanding disputes between TUEC and several individuals and an organization represented by GAP. Complainant's ERA complaint was one of the matters included in the settlement proposal. TUEC offered to pay four complainants represented by GAP \$425,000, of which Complainant was to receive \$200,000. However, the Wooldridge letter stated that there were several "conditions upon which the settlement . . . will become effective," including release of all claims against TUEC and the other Respondents, and the settlement and dismissal of a proceeding before an Atomic Safety and Licensing Board (ASLB) of the Nuclear Regulatory Commission brought by Citizens Association for Sound Energy (CASE). GAP represented CASE in the licensing proceeding.

Mr. Wooldridge's letter does not constitute a binding agreement. "[W]hen an offer or a counteroffer is accepted subject to a condition or reservation, neither party is bound to an agreement until the condition or reservation has been withdrawn or satisfied." United States v. Newport News

2/ (...continued)

negotiations in June 1988. On July 5, 1988, Complainant issued a notice that Billie Garde no longer represented him and that his sole legal representative was Michael D. Kohn, who by that time had formed his own private firm with Stephen M. Kohn. Michael Kohn and Stephen Kohn made certain representations on Complainant's behalf with respect to settlement of this case which are described in the text *infra*. Among other things, Michael Kohn wrote a letter to another attorney, Jack R. Newman, who represents TUEC in the licensing proceedings on the Comanche Peak plant. In addition, Louis Clark and Richard Condit, attorneys with GAP, contacted Complainant by mail and by telephone in early July 1988 regarding a settlement offer by TUEC. Mr. Clark was under the impression that GAP still represented Complainant.

Shipbuilding & Drydock Co., 571 F.2d 1283, 1286 (4th Cir.) (quoting Orient Mid-East Great Lake Service v. International Export Lines, Inc., 315 F.2d 519, 522 (4th Cir. 1963)), cert. denied, 439 U.S. 875 (1978). Indeed, in his 1989 Statement in Support, Complainant argued that two settlement terms proposed by Mr. Wooldridge, one in the letter, and one revealed by Ms. Garde on July 5, 1988, as having been part of the oral negotiations, were against public policy and illegal. Complainant urged the Secretary to strike these terms and enforce the remainder of the settlement. Complainant later vehemently rejected Mr. Wooldridge's settlement offer because of these terms, among others. See infra. The United States Court of Appeals for the Fifth Circuit recently described the Secretary's authority under the ERA as either to consent or not to consent to a settlement as written by the parties. The court there found no authority "to strike certain terms, and enforce the remainder, of a settlement without the consent of both [parties]." Macktal v. Secretary of Labor, 923 F.2d 1150, 1154 (5th Cir. 1991).

On July 6, 1988, Michael Kohn wrote a letter on behalf of Complainant to Mr. Wolkoff, TUEC's hearing counsel, in response to notice Mr. Kohn had received of a "conditional" settlement extended to [Complainant] by . . . [TUEC]." (Emphasis added.) Mr. Kohn's letter indicated that \$200,000 was not a sufficient settlement offer. In addition, Mr. Kohn said "pre-conditioning [a settlement] on acceptance by the ASLB of the 'Joint Stipulation' [dismissing the ASLB proceeding] is completely

repugnant to [Complainant's] conscience." The letter further asserted that the settlement offer was tantamount to "'hush' money" to purchase Complainant's silence on safety problems at Comanche Peak.

Also on July 6, Mr. Kohn wrote TUEC's licensing attorney Jack Newman, stating that the terms of the TUEC settlement offer were "unconscionable," and that "a general release by [Complainant] is worth twice [the \$200,000 offer]." Mr. Kohn noted that the terms of a general release to be signed by Complainant had not been negotiated,^{2/} but that if the release included restrictions on Complainant's right to "intervene, oppose or interfere with the termination of the ASLB [licensing] proceeding . . . such terms are contrary to public policy and unenforceable." Mr. Kohn said that he was "willing to enter into settlement negotiations in an attempt to reach a compromise on various points," but that "absent a formal written settlement offer tendered to [Mr. Kohn], we must conclude that no good faith offer to settle [Complainant's] case is on the table."

Complainant thus emphatically rejected TUEC's settlement offer on July 6, 1988, and made a counter offer of some settlement terms which would be acceptable. See, e.g., In re

^{2/} Complainant contends that the "material terms of the Hazan settlement are identical" to two other cases settled and approved by the Secretary. Complainant's Response to OSC at 4-5. But both of those cases were submitted for review and approval with signed settlement agreements between the parties and signed releases from the respective complainants. Radulich v. Ebasco Services, Inc., Case No. 88-ERA-24, Sec. Order, Aug. 3, 1989; Goese v. Ebasco Services, Inc., Case No. 88-ERA-25, Sec. Order Dec. 8, 1988.

Pago Pago Aircrash of January 30, 1974, 637 F.2d 704, 706 (9th Cir. 1981). No representative of TUEC accepted those terms or made a counter offer between July 6, and July 11, 1988, when Complainant sent the telegram to Mr. Wooldridge which Complainant now asserts was his acceptance of TUEC's settlement offer.

I do not find the July 11 telegram to constitute an unequivocal agreement to settlement terms that are clearly and completely set forth in other documents in the record in this case. See OSC at 2-3. The thrust of Complainant's telegram is that he does not know with whom to deal in attempting to settle his ERA complaint. He said he:

demands whomever with authority to settle [this case] contact M. Kohn. No written or oral contact from TU[EC] ever received by [Complainant] or his legal rep[resentative]. Let the real agent of TU[EC] come forward and contact my sole legitimate representative, M. Kohn. . . . Tentative acceptance of \$200,000 acceptable upon receipt of papers [Complainant] must sign.

This is not the "unequivocal declaration by the parties that they have agreed to all the terms of a settlement . . . stating those terms clearly" required before the Secretary can approve a settlement. OSC at 2.

Furthermore, the considerable confusion over who represented Complainant and who represented TUEC, make virtually impossible any determination whether an agreement was reached here and what the terms were. See note 4 supra. Several communications from GAP attorneys and responses by the Kohns contributed to the confusion. On July 8, 1988, Louis Clark, Executive Director of GAP, wrote to Complainant asking whether Complainant had

terminated GAP as his legal representative and setting forth the terms of a settlement offer by TUEC which Mr. Clark, as Complainant's attorney, was transmitting to him. Apparently, Mr. Clark was not aware of Complainant's July 5 notice "To Whom It May Concern" that Michael Kohn was now his attorney. Nor is it clear whether the "offer" summarized in Mr. Clark's July 8 letter was the same as the offer in Mr. Wooldridge's letter of June 28 to Ms. Garde, or whether Mr. Clark was aware of the July 6 letters from Michael Kohn rejecting the June 28 offer. Mr. Clark's letter said Complainant must respond before close of business July 11 which may have given the Kohns the impression that TUEC's "offer" would be held open until that time.

In addition, Michael and Stephen Kohn apparently had the impression that Richard Condit, another attorney with GAP, was acting as TUEC's agent for purposes of settlement of Complainant's case. The Kohns wrote to Mr. Newman on July 10, 1988, stating that on that day they "informed your agent for purposes of settlement of the Hasan matter, Mr. Richard Condit of . . . GAP," of Complainant's willingness to negotiate settlement of the case. The letter set forth some of the terms Complainant would require, including \$500,000 to release his claims against all Respondents. The letter required submission to the Kohns of "the exact documents [Complainant] would be required to sign . . . [and]" continued: "given [TUEC's] complete silence regarding numerous settlement letters sent by Michael Kohn to

[TUEC's] counsel last week, we are forced to conclude that you have no intention of settling the Hasan matter"

Thus, the day before Complainant asserts he accepted TUEC's settlement offer, forming a binding contract which he urges me to approve, his attorney made a counteroffer involving substantially more money and bluntly stated that he believed TUEC had "no intention" of settling the case, and "[i]f we do not hear from your authorized agent before 12:00 midnight [July 10] we must conclude that the prior settlement offers transmitted by Mr. Louis Clark and Ms. Billie Garde of GAP were fraudulent and done with the intent to coerce and intimidate and possibly bribe [Complainant]." Letter of July 10, 1988, from Michael D. Kohn and Stephen M. Kohn to Jack R. Newman. Mr. Newman responded to the Kohns' July 10 letter on July 11 stating that "neither Mr. Condit nor [GAP] is the agent of our firm for any purpose whatsoever"

Michael Kohn and Mr. Wooldridge have submitted affidavits stating the facts of their telephone conversations on July 11 and 12, 1988. Their affidavits conflict on the crucial point whether they agreed in one conversation on July 11 that a settlement had been reached. Com. September 27, 1989, affidavit of Michael Kohn, ¶ 12, with May 4, 1989, affidavit of Robert Wooldridge, ¶ 4. In ¶ 13 of his affidavit, Michael Kohn states that after Mr. Wooldridge told Mr. Kohn an agreement had been reached, Mr. Kohn called Mr. Wooldridge back "to submit . . . some lessor [sic] terms of the settlement [Complainant] wished to include in

the text of a formal settlement document." The record does not contain this "formal settlement document", a draft of these additional terms, or any material specifying these terms, other than Mr. Kohn's affidavit, for the Secretary to review. Indeed, in § 13 of the affidavit, Mr. Kohn acknowledges that Mr. Wooldridge told him he [Mr. Wooldridge] would have to speak to TUEC before adding these terms. Cf. U.S. v. Newport News Shipbuilding, 571 F.2d at 1286-87. These are material terms of the settlement which the Secretary must have an opportunity to review before approving the entire agreement. See Macktal v. Secretary of Labor, 923 F.2d at 1155-56 and n.25. For all of the above reasons, I conclude that no settlement was reached here.

THE ALJ'S RECOMMENDED DECISION

The record in this case has been reviewed and I find that it fully supports the ALJ's factual findings set forth in his "Findings of Fact, General Findings," R.D. and O. at 2-4, and his conclusion that Respondents did not violate the ERA in their treatment of Complainant. Complainant has not proven that Respondent's reasons for their actions were pretextual or that the actions more likely were motivated by discrimination. Dartey v. Zack Company of Chicago, Case No. 82-ERA-2, Sec. Dec., Apr. 25, 1983, slip op. at 7-8, and cases cited therein. Accordingly, the complaint in this case is DISMISSED.

In the Motion to Enforce, Complainant moved alternatively to vacate the ALJ's decision and remand for a new hearing claiming that an individual who would have testified about one aspect of

this case was, at the time of the hearing, bound by a settlement agreement in another ERA case not to "induce any attorney, party, [or] administrative agency" to call that individual as a witness in other ERA cases. Motion to Enforce at 4, and brief of Complainant Joseph J. Macktal in Macktal v. Brown & Root, Inc., Case No. 86-ERA-23, at 14-17, referred to therein. Complainant asserts that Mr. Macktal would have testified that the SAFETEAM in-house safety organization at Comanche Peak could not be trusted to maintain the confidentiality of whistleblowers, which was the reason Complainant did not make complaints to SAFETEAM. Complaint moved, therefore, that the ALJ's findings about SAFETEAM, particularly his finding on Complainant's credibility in this regard, be reversed and a new hearing ordered.

This aspect of the Motion to Enforce is in the nature of a motion for a new trial under Rule 60(b) of the Federal Rules of Civil Procedure. The Fifth Circuit has held that "[a] motion for a new trial under Rule 60(b) is an extraordinary motion" which courts should be cautious in granting. Washington v. Patlis, 916 F.2d 1036, 1038 (1990). In addition, the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges, 29 C.F.R. Part 18, provide that "[o]nce the record is closed, no additional evidence shall be accepted into the record except upon a showing that new and material evidence has become available which was not readily

available prior to the closing of the record." 29 C.F.R.
§ 18.54(c) (1990).

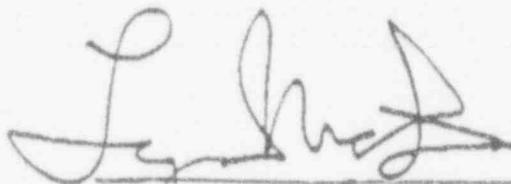
As noted above, the record has been reviewed and found to support the ALJ's factual findings in his "Findings of Fact, General Findings." My decision is not based on the Respondent's proposed findings of fact which the ALJ adopted in his Specific Findings, R.D. and O. at 4. The only reference to SAFETEAM in the ALJ's General Findings is the fact, which Complainant does not dispute, that Complainant did not make any safety complaints to SAFETEAM. Id. at 3. I have not based my conclusion that Complainant did not carry his burden of proof on any derogation of Complainant's credibility as to why he did not raise his complaints with SAFETEAM. As I pointed out in note 3 above, the ALJ's finding on Complainant's failure to raise his complaints with SAFETEAM goes only to whether Complainant engaged in protected activity under the ERA.

Complainant has submitted no supporting affidavits, nor otherwise offered any showing that Mr. Macktal's alleged testimony "would produce a different result." Washington v. Patlis, 916 F.2d at 1039. Neither has Complainant shown that Mr. Macktal's testimony was the only way to have proven Complainant's truthfulness when he testified that "SAFETEAM was discredited and could not be trusted," nor that this alleged fact about SAFETEAM is "new and material evidence" which only became available after the closing of the record. 29 C.F.R. § 18.54(c). Finally, Complainant's suggestion that Respondent engaged in

misconduct by entering into the settlement agreement with Mr. Macktal does not begin to meet his burden under Rule 60(b)(3) to "establish by clear and convincing evidence (1) that the other party engaged in fraud or other misconduct and (2) that this misconduct prevented the moving party from fully and fairly presenting his case." Washington v. Patlis, 916 F.2d at 1039, quoting Montgomery v. Hall, 592 F.2d 278, 278-79 (5th Cir. 1979). The motion to vacate the ALJ's R. D. and O. and remand for a new hearing is DENIED.

The parties' respective requests for attorney's fees also are denied. Section 210 of the ERA provides that if the Secretary finds that a violation has occurred and issues a remedial order, "the Secretary . . . shall assess against the person against whom the order is issued . . . costs and expenses (including attorneys' fees" 42 U.S.C. § 5851(b)(2)(B). Complainant is not entitled to attorney's fees because no order has been issued against Respondent. ERA Section 210 does not provide for an award of attorney's fees against a Complainant, and Respondent has not cited any other source of authority for doing so. All other pending motions are DENIED.

SO ORDERED.



 Secretary of Labor

Washington, D.C.

CERTIFICATE OF SERVICE

Case Name: S.M.A. Hasan v. Nuclear Power Services, Inc.,
Stone & Webster Engineering Corp., Texas Utilities
Electric Co., Inc.

Case No. : 86-ERA-24

Document : Final Decision and Order

A copy of the above-referenced document was sent to the following
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Enclosure 2 of Attachment to TXX-92305

Excerpt of DOL Proceeding Oral Deposition of
David M. Rencher (May 29, 1987), pp. 120-121,
124-125, 260, 264, 270

supervisory position. Those gentlemen, although they had not had much to do with each other in the past, formed a comradery of sorts. And I believe that after Mr. Walsh left the project, that Mr. Badheka may have been inclined to provide some information to him.

Q. Did Mr. Badheka get along with Mr. Hasan?

A. No, not really.

Q. And what -- do you remember the time frame in which Mr. Badheka was demoted?

A. I believe it was April, 1982.

Q. Did you believe that Mr. Badheka was a spie back as early as 1982?

MR. WOLKOFF: I object on the grounds that Mr. Rencher's beliefs are immaterial.

A. In April of '82, no.

Q. (BY MR. KOHN) In 1983?

A. I don't know when I would have started to begin to think that. I just don't remember.

Q. Who would know?

A. I don't know.

Q. Who did you tell in management concerning your belief that Mr. Badheka might be a spie?

MR. WOLKOFF: If anyone. I object to the grounds that this is totally immaterial to Mr.

1 Hasan's case.

2 A. If I recall correctly, I discussed it with
3 Harvey Harrison.

4 Q. (BY MR. KOHN) Do you remember the date of
5 that discussion?

6 A. No.

7 Q. Do you remember the year?

8 A. No.

9 Q. Who else did you discuss that with?

10 MR. WOLKOFF: Objection.

11 A. No one else that I remember.

12 Q. (BY MR. KOHN) Was Mr. Badheka laid off
13 in August of 1985?

14 A. Yes.

15 Q. Was he rehired?

16 A. To the best of my knowledge, no.

17 Q. Did Mr. Badheka work for NPS?

18 A. Yes, he did.

19 Q. Do you know whether or not the decision to
20 hire or not hire Mr. Badheka after he was laid off in
21 any way related to your concern or anyone else's
22 concern that Mr. Badheka was a spie?

23 A. No, I don't know that.

24 Q. Who else besides the individual you have
25 already identified did you discuss Mr. Badheka being

1 Q. Did you tell Mr. Harrison that you
2 believed spies existed on the site?

3 A. Yes.

4 Q. Did you tell Mr. Merrit that you believed
5 spies existed on the site?

6 A. I don't think so, no.

7 Q. Did you tell Mr. Popplewell that you
8 believed spies existed on the site?

9 A. I don't believe so, no.

10 Q. Did Mr. Pinneran agree with your
11 assessment that spies existed on the site?

12 A. Yes, I believe he did.

13 Q. Did Mr. Harrison agree with your
14 assessment that spies existed on the site.

15 A. Yes.

16 Q. Did you discuss the existence of spies on
17 the Comanche Peak site with a Mr. Ruimeren,
18 R-u-i-m-e-r-m-e-n?

19 A. I don't remember.

20 Q. Did you discuss the existence of spies
21 with a Mr. Shaney, S-n-a-n-e-y?

22 A. I don't remember.

23 Q. Did you discuss the existence of spies
24 with Herman D'Errico?

25 A. I might have, yes.

1 Q. Did Mr. Chamberlain agree with you?

2 A. Yes, he did.

3 Q. Did you ever tell Mr. McBay that you
4 believed spies existed on the site?

5 A. I don't believe I told him directly, no.

6 Q. Do you believe he learned indirectly?

7 MR. WOLKOFF: Objection.

8 A. I don't know whether he learned that at
9 all.

10 (Conference off the record.)

11 MR. KOHN: Would you like to restate
12 that for the record, please?

13 MR. WOLKOFF: Mr. Kohn, ask your next
14 question instead of playing games.

15 MR. KOHN: For the record, Mr.
16 Wolkoff stated that he likes to put statements on the
17 record that he believes I don't understand to rile me,
18 or something of that nature.

19 MR. WOLKOFF: No, I didn't say to
20 rile you. In my judgement, you don't understand much
21 of what is going on. Do you have any more questions
22 of Mr. Rencher?

23 Q. (BY MR. KOHN) Did you ever tell Mr.
24 Finneran that you believed spies existed on the site?

25 A. Yes.

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engineering group and the pipe support group in the administrative building?

A. They switched basic responsibilities in October of 1981.

Q. Why?

A. I don't know.

Q. Was there any basic difference in the technical criteria between the PSE groups and the pipe support engineering groups in the administrative building?

A. Yes.

Q. Could you describe that, please?

A. The pipe support groups in the administration building at the time were ITT and WPSI, and they used those respective criteria. The PSE group not in the administration building used the PSE design guidelines.

Q. What was the reason for using the different criteria for the same technical problems?

MR. WOLKOFF: We've already been through all of this ad nauseam. You know that, Mr. Kohn.

A. Each company used the design criteria for which they were responsible that was generated and dictated by their respective companies.

1 MR. WOLKOFF: We'll be back.

2 MR. KOHN: Oh, no. Back on the
3 record. This I believe is a crucial question.
4 Should he confer with his witness on this question, I
5 want that on the record.

6 MR. WOLKOFF: He can answer the
7 question.

8 Go ahead and read it back to him, and then
9 we'll take a 45-minute lunch break.

10 (Question read back.)

11 A. Yes.

12 Q. (BY MR. KOHN) Why? What did they tell
13 you?

14 A. They told me that different criteria
15 existed because each company was responsible for
16 developing their own criteria and for using that
17 criteria in the qualification of supports within
18 their scope of responsibility.

19 MR. WOLKOFF: Let's take a break,
20 please.

21 MR. KOHN: I'd like to finish this
22 line of questioning. This is a very crucial line of
23 questioning.

24 MR. WOLKOFF: You've already asked
25 him this line of questioning, Mr. Kohn.

1 A. It wasn't so much as why different
2 criteria was being used. It was an explanation on
3 their part explaining that this is their criteria as
4 directed by their home office, and this is the
5 criteria they used in their design efforts. And it
6 was quite obvious it differed between the two
7 companies.

8 Q. Did you believe that was an impermissible
9 engineering practice?

10 A. No, not at all.

11 Q. Did you ever learn that using inconsistent
12 criteria during the construction of a nuclear power
13 plant is an impermissible practice?

14 A. I don't believe it is an impermissible
15 practice, no.

16 Q. And after you brought -- after
17 inconsistent criteria was brought to your attention,
18 what answer was given you as to why it was different
19 criteria was being used?

20 MR. WOLKOFF: He's already answered
21 that no fewer than three times that I can recollect.

22 A. Because each company had a developed
23 criteria that they used, and that they had established,
24 and that they were to supply to the supports within
25 their scope of responsibility.

Enclosure 3 of Attachment to TXX-92305

Comanche Peak Quality Assurance Plan, Section
3.0.2, 3.0.3

Transmittal 84-01

TUGCO/TUSI
CPSES QUALITY ASSURANCE PLAN
APPROVAL AND INSTRUCTIONS

Approved DN Chalmers
Manager, Quality Assurance

Date: 1/26/84
Page: 1 of 1

REMOVE AND DESTROY

Approval and Instructions
dated 11/18/83
List of Effective pages, Rev. 11

Section 1.1

Page 2 of 3, Rev. 6

INSERT IN MANUAL

Approval and Instructions
dated 1/26/84
List of Effective Pages, Rev. 12

Section 1.1

Page 2 of 3, Rev. 7

Enclosure 4 of Attachment to TXX-92305

Procedure CP-EP-4.6, "Field Design Change Control,"
Rev. 8, Section 3.1.1

COMANCHE PEAK STEAM ELECTRIC STATION

	QUALITY ASSURANCE PLAN	SECTION: 3.0
	Design Control	DATE: 6/18/79 REVISION: 2 PAGE 1 OF 1

3.0 Design Control

The design control process for CPSES begins with Gibbs & Hill, as Architect - Engineer, Westinghouse, as NSSS supplier and TUSI as Texas Utilities Company's engineering service organization. Overall responsibility for construction however, remains with TUGCO/TUSI. The design control process is an ongoing function which includes design criteria, design review, and design change. This process is carried out in accordance with established procedures.

3.0.1 Design Criteria

The preparation, review, approval, and certification of design specifications are normally contracted to Gibbs & Hill and Westinghouse. TUSI performs design and design verification activities on selected contracts. To the extent applicable, the design criteria will be consistent with that specified in the license application and will utilize the requirements of recognized codes, standards, and practices. The responsible design organization translates these design specifications into appropriate instructions, procedures, drawings, or specifications. This function includes design interface control as well as the generation, review, checking, approval and revision of design and construction specifications, and design drawings.

3.0.2 Design Review

The responsible design organization reviews respective designs for conformance to design concepts, licensing design criteria, and regulatory criteria. The design reviews are performed by individuals or groups other than those who performed the original design. Changes to design specifications or documents are reviewed and approved by the same individual or group responsible for original review and approval.

3.0.3 Design Change

Changes to the design are documented, reviewed, and approved by the original designers commensurate with the controls applied to the original design. These controls extend to the disposition of field changes and nonconformances. Approved changes are incorporated into or identified on the original design document.

The TUGCO QA Division assures that the design process including design changes is performed in accordance with approved procedures. Gibbs & Hill and Westinghouse quality assurance organizations audit their respective design organizations to ensure compliance to approved procedures and instructions.

TEXAS UTILITIES SERVICES INC.	PROCEDURE	REVISION	ISSUE DATE	PAGE
	CP-EP-4.6	8	9-22-83	5 of 15

3.2.2 Review and Approval

Field originated design changes/deviations shall be approved by the original designer's designated site representative unless otherwise stated in formal engineering instructions supplementing this procedure. The Engineering Manager shall maintain written authorization of personnel designated as a "G&S Design Representative" or design representative of any other vendor. Clarifications or design changes properly approved and issued by the original design organization require only the signature of the originating engineer/technician. Such clarifications or design changes shall be referenced or attached. Design changes/deviations documented as described herein are approved for fabrication and construction only. In addition, these measures may be used to communicate or identify to construction changes/deviations originated/approved by the original design organization.

Subsequent review and approval by the original design organization shall be accomplished per the provisions of Reference 1-C and 1-D or TNE.

3.2.3 Distribution

Distribution of field change/deviation documents shall be accomplished as required to fulfill the requirements of this procedure and to satisfy basic document control requirements of interfacing organizations such as the design and construction groups. The provisions of Reference 1-E shall also be considered when establishing distribution.

3.2.4 Revisions

Revisions to DCA/OMC Forms shall be accomplished as described in Attachments 1 and 2 and shall be reviewed and approved as prescribed in Section 3.2.2.

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COPY
 PPRV

TEXAS UTILITIES SERVICES INC.	PROCEDURE	REVISION	ISSUE DATE	PAGE
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3.2.5 Design Verification

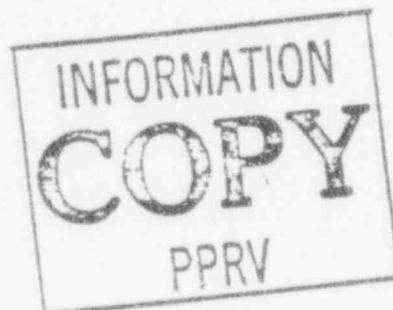
Design changes/deviations shall be verified either prior to, or after implementation by authorized personnel, to confirm or substantiate that the change is acceptable from an engineering standpoint and consistent with the design basis (or input), PSAR commitments and applicable codes and standards. This verification shall normally be accomplished by the original design organization in accordance with established procedures although the provisions of Reference 1-P may be utilized at the discretion of the Assistant Project General Manager.

In the event the design verification activities indicate the change/deviation is unacceptable, the reviewing agency shall notify the originating organization who may, on the area in question, place a "Hold" or rescind and re-issue the change/deviation. Any physical corrective action required in problem areas shall be evaluated and formulated on a case by case basis.

3.2.6 Interface Control

Significant changes/deviations to engineered items involving A/E and vendor interfaces for equipment foundation details shall be reviewed with both the A/E and the vendor for compliance with design requirements, prior to approval for fabrication or construction.

Formal documentation where vendor or A/E approval is required shall be accomplished in accordance with Reference 1-C and 1-D.



TEXAS UTILITIES SERVICES INC.	INSTRUCTION	REVISION	ISSUE DATE	PAGE
CONTROLLED COPY NO. <u>04</u>	CP-EI-4.5-4	4	2/17/83	1 of 3
TECHNICAL SERVICES ENGINEERING INSTRUCTION FOR PIPE HANGER DESIGN REVIEW AND CERTIFICATION	PREPARED BY <u>B. D. [Signature]</u> APPROVED BY <u>J. [Signature] 2-16-83</u>			

GENERAL REVISION, REVISION BARS NOT INCLUDED

1.0 REFERENCES

- 1-A CP-EP-4.5 Design Verification
 1-B CP-EI-4.5-1 General Program for As-built Piping Verification

2.0 GENERAL**FOR INFORMATION ONLY**2.1 PURPOSE

To establish a program for design review and vendor certification for large bore pipe supports.

2.2 SCOPE

This instruction shall apply to design changes generated on site for ITT Grinnell and NPSI designed pipe supports only.

2.3 DEFINITIONS

TSDRE - Technical Services Design Review Engineering

TSFC - Technical Services File Clerk

PSE - Pipe Support Engineering

TSMD - Technical Services Mechanical Drafting Department

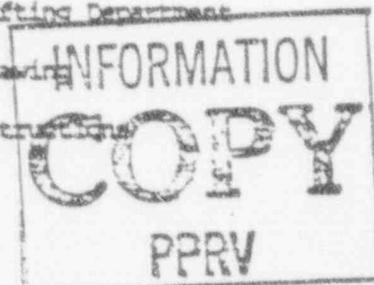
BRE - Brown & Root Controlled Hanger Drawing

VCHI - Vendor Certification Drafting Instructions

DCC - Document Control Center

2.4 RESPONSIBILITIES

The CPP Mechanical Engineer (who reports to the Engineering Manager) is responsible for providing technical direction and administrative guidance to the CPP Mechanical Engineering organization of which the Technical Services Group is a part.



TEXAS UTILITIES SERVICES, INC.	INSTRUCTION	REVISION	ISSUE DATE	PAGE
	CP-EI-4.5-4	4	2/17/83	2 of 3

The Technical Services Group Supervisor is responsible for assuring that activities within the purpose and scope of this instruction are completed in accordance with the measures described herein.

The TSDRE Supervisor is responsible for implementation of this instruction. The TSDRE Supervisor shall coordinate work flow through the group, interface activities, and maintain adequate tracking mechanisms to assure positive control of activities addressed in this instruction in accordance with Reference 1-A.

3.0 INSTRUCTION

3.1 DESIGN REVIEW

3.1.1 General

Site generated design changes to vendor supplied pipe supports shall be reviewed for structural acceptability and compliance with applicable code requirements. Review shall be performed by representatives of the original design organizations in accordance with their respective engineering programs. Design review may be done on-site or off-site at the pipe support vendor's home office.

3.1.2 Design Change Acceptable

Design change documents found to be acceptable shall be listed on the design review cover sheet for input into the tracking system. Cover sheets shall be stamped "Design Reviewed", signed and dated by the cognizant engineer. Completed review packages shall be returned to the TSFC for logging and storage.

3.1.3 Design Change Unacceptable

PSE shall be notified by three part memo of design changes found to be unacceptable. Memos shall be logged and tracked by TSFC. Engineering resolution by PSE shall be in accordance with the appropriate engineering procedure/instruction.

3.2 VENDOR CERTIFICATION (Non-Class 1 Supports)

3.2.1 General

Upon completion of as-built stress analysis, ~~non-class 1 pipe~~ supports within as-built scope, as defined in Reference 1-B, shall be reviewed to assure compatibility between final stress analysis and final support design. Supports shall then undergo a final check to assure overall compliance with applicable codes, site, and vendor engineering requirements.

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TEXAS UTILITIES SERVICES INC.	INSTRUCTION	REVISION	ISSUE DATE	PAGE
	CP-EI-4.5-4	4	2/17/83	3 of 3

3.2.2 Final Design Acceptable

Acceptable hanger packages shall be transmitted to TSMO to assure applicable as-built information, as listed on the VCDI, may be incorporated into the final BRH. The BRH shall be stamped "Vendor Certified" and, upon return to TSDRE, signed by the designated vendor engineering representative.

Certified hanger packages shall be forwarded to TSPC for disposition. Hanger drawings shall be issued for distribution by DCC and certified calculation packages shall be stored in fire-proof cabinets or vaults.

3.2.3 Final Design Unacceptable

Unacceptable hanger packages shall be dispositioned as outlined in Section 3.1.3.

3.3 VENDOR CERTIFICATION (Class 1 Supports)

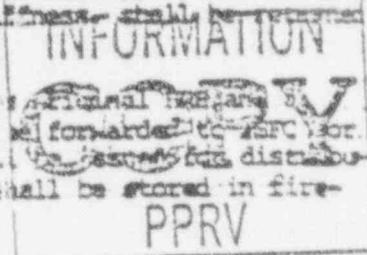
3.3.1 General

Upon completion of as-built stress analysis, Class 1 pipe supports shall be reviewed at NPSI's home office to assure compatibility between final stress analysis and final support design. Class 1 supports shall undergo a final check to assure overall compliance with applicable codes, site, and vendor engineering requirements. A stress report shall be prepared for each Class 1 support.

3.3.2 Final Design Acceptable

VCDI's for acceptable hanger packages shall be transmitted from the NPSI home office to site. The hanger package shall be transmitted to TSMO to assure all applicable as-built information, as listed on the VCDI, is incorporated into the final BRH. The BRH shall be stamped "Vendor Certified" and, upon return to TSDRE, signed by the designated NPSI representative. A copy of the vendor certified BRH is returned to the NPSI home office. Upon receipt of the certified BRH, the NPSI home office PE shall complete his review and certify the hanger stress report. A copy of the certified hanger stress report, showing as-built stiffness, shall be returned to the site.

Certified Class 1 hanger packages including a copy of the certified stress report shall be forwarded to TSPC for disposition. Class 1 hanger drawings shall be issued for distribution by DCC and certified stress reports shall be stored in fire-proof cabinets or vaults.



3.3.3 Final Design Unacceptable

Unacceptable Class 1 hanger packages shall be dispositioned as outlined in Section 3.1.3.

Enclosure 6 of Attachment to TXX-92305

Excerpt of DOL Proceeding Oral Deposition of
George M. Chamberlin (June 2, 3, 1987), pp. 182-183

1 Q. Do you know if the site engineering group
was going to make the determination about the
3 different criteria as referenced in Item 23?

4 A. He doesn't reference any specific criter
5 in Item 23.

6 Q. In Item 23, do you have any knowledge
7 whether or not Mr. Hasan spoke with Mr. Hemrajani o
8 Mr. Savalia, S-a-v-a-l-i-a, about this item?

9 A. About the fact that there was different
10 criteria in the various guidelines or --

11 MS. WEINIG: Object to that. How is
12 he supposed to know that? Over what period? Mr.
13 Chamberlain, I would like to point out, was not even
14 Mr. Hasan's supervisor at the time that Hasan worked
15 with Hemrajani or Savalia.

16 A. Savalia was in my group, not Ram. I don't
17 know why he talked to them at the same time. He
18 didn't work with them at the same time.

19 Q. (BY MR. KOHN) Do you remember site
20 engineering groups changing the scope of the work on
21 Richmond inserts?

22 A. Yes. As I stated yesterday, ITT Grinnell
23 did not have design criteria for Richmond inserts
24 used in conjunction with tube steel; and, therefore,
any supports that had been redesigned in using that

1 type of connection by the field engineering group in
2 the course of construction had to be transferred over
3 to the site group because they did have criteria for
4 it, addressing it.

5 Q. And because Mr. Hasan worked in two
6 different groups, he would have known that also?

7 MS. WEINIG: Objection.

8 Q. (BY MR. KOHN) If anyone worked in two
9 different groups, would that be common knowledge?

10 MS. WEINIG: Objection. How is he
11 supposed to know if it's common knowledge? You're
12 asking for speculation.

13 A. Since most of the engineers also probably
14 did some assistance in field problems, I would say
15 that generally most of them were aware of the
16 different organizations' design criteria, because
17 they would want to make sure that any design changes
18 that they were initiating would in the end meet that
19 particular organization's design guidelines. Each
20 organization had to certify their own hangers to
21 their own guidelines.

22 Q. (BY MR. KOHN) And when NPS hangers --
23 when NPS Richmond inserts were failing, then they
24 would also, like everything else, be sent to the site
engineering group?

11/25/91

FACTS RELATED TO THE KOHN, KOHN &
CALAPINTO 2.206 PETITION

On July 30, 1991, the law firm of Kohn, Kohn & Calapinto, P.C. (Petitioners) filed a petition under 10 CFR § 2.206 on behalf of the National Whistleblower Center and "certain confidential allegers." The Petition alleges that TU Electric made material false statements before the Atomic Safety and Licensing Board (ASLB) in the operating licensing (OL) proceeding for the Comanche Peak Steam Electric Station (CPSSES) Units 1 and 2. In particular, the Petitioners allege that "the testimony TUEC had repeatedly presented to the ASLB that pipe supports [1] were not being transferred between the various pipe support groups and [2] were not being certified using multiple sets of design criteria constitute material false statements." 1/ Based upon these allegations, the Petitioners request that the NRC hold licensing hearings to determine whether TU Electric has the requisite character and competence to operate a nuclear plant, that TU Electric be fined, and that the TU Electric managers in question be banned from licensed nuclear facilities.

The remainder of this paper is divided into the following three sections:

- ° Section 1 provides a summary of the Petitioners' allegations and TU Electric's position regarding these allegations.

1/ Petition, p. 9

- ° Section 2 provides Background information related to the Petitioners' allegations, including a discussion of the evolution of the responsibility for the design of pipe supports at CPSES, and a discussion of the disposition of past allegations that were similar to those now being raised by the Petitioners.

- ° Section 3 provides information related to the specific allegations raised by the Petitioners, including the safety significance of the allegations and a discussion of the testimony and affidavits presented to the ASLB in the CPSES OL proceeding.

Pertinent backup documentation will be maintained at the site for review.

1. SUMMARY

Petitioners allege that TU Electric submitted material false statements to the ASLB from 1982 to 1984, because 1) different or multiple sets of design criteria were used to certify individual pipe supports subject to field changes, and 2) the responsibility for the design of field changes for pipe supports was transferred from one pipe support design group to another group.

The NRC Staff previously investigated similar allegations, including allegations by clients of the Petitioners. The Staff concluded that the allegations had no safety significance because the design of the CPSES pipe supports was being validated as part of the Corrective Action Program (CAP). The ASLB was aware of these allegations and the results of the Staff's investigations when it decided to approve the settlement of the CPSES OL proceeding.

Initially, there was only a single pipe support design group at CPSES. In order to maintain schedule, TU Electric decided to utilize two additional pipe support design groups and to divide the design responsibility for pipe supports among the groups. As a result, during the early 1980's, there were three separate pipe support design groups at CPSES. Each group was responsible for certifying the design of particular supports. Additionally, the pipe support design group that performed the original design would, in general, review and certify field changes to its designs. In a relatively few cases, design responsibility for a pipe support was transferred from one design group to another group, which then became responsible for performing the calculations for and certifying the design of the entire support. However, at any particular time (including final certification), only one group had responsibility for certifying the design of any individual support (including the review of its field changes).

Contrary to the Petitioners' first allegation, different or multiple sets of design criteria were not used to certify an individual pipe support. Each group was required to comply with the governing provisions of the American Society of Mechanical Engineers (ASME) Code and Project Specification MS-46A, but was permitted to achieve compliance with these provisions by using its own methodology (which some witnesses called "design criteria," and still other witnesses and the ASLB called "design approaches"). Therefore, even though the design methodologies differed from group to group, only the methodology of the responsible design group was used in certifying an individual support. The ASLB in the CPSES OL proceeding acknowledged this situation and found it to be acceptable, and there is nothing in the quotations cited by the Petitioners which is inconsistent with the ASLB's findings.

Petitioners' second allegation, related to the transfer of design responsibility, is similarly misplaced. Such transfers were explicitly authorized by 10 CFR Part 50, Appendix B, Criterion III and ANSI N45.2.11. In particular, Appendix B states that "[d]esign changes, including field changes, shall be subject to design control measures commensurate with those applied to the original design and be approved by the organization that performed the original design unless the applicant designates another responsible organization."

(Emphasis added).

Some passages in TU Electric's testimony and affidavits stated that the review and certification of field changes would be performed by the "original design organization;" other passages stated that the review and certification would be performed by the "responsible design organization." Petitioners argue that the use of the term "original design organization" is inconsistent with the fact that design responsibility for the entire support was on occasion transferred from one design group to another. However, the subject and purpose of the testimony was to clarify that field design changes were always approved by the design organization responsible for the entire design. There was no statement or indication that design responsibility had not been or was forever prohibited from being transferred from one design group to another. Thus, the Petitioners clearly take testimony out of context and improperly claim that TU Electric witnesses were addressing subjects that were not even at issue at the time the statements were made.

The issues before the ASLB primarily involved the adequacy of the iterative design process for pipe supports. In this particular instance, the ASLB was concerned with whether changes authorized by field engineering (which was not a design organization) were subject to review and certification by a responsible pipe support design group to ensure that any deficiencies introduced by the field changes would be identified and corrected. To address this issue, TU Electric presented testimony and affidavits which stated that field changes would be

reviewed and approved by the responsible design group. It was in this context that TU Electric witnesses stated that changes authorized by field engineers were subject to review and certification by the original design organization. These statements paraphrased the language in Appendix B, ANSI N45.2.11, and the CPSES design control procedures, and they accurately reflected that design groups (and not field engineers) were being used for certification of pipe supports at CPSES. Furthermore, TU Electric witnesses were never asked to discuss matters related to the transfer of design responsibility of individual supports, and never claimed that transfers of design responsibility had not occurred. Thus, there was no reason to discuss particular instances of such transfers since the ASLB was aware that the general scope of responsibility of the three design groups had changed over time.

Therefore, TU Electric's statements were entirely appropriate and directed to the issue in question before the ASLB. The transfer of design responsibility from one design group to another design group was not the issue, or material to the issue, being decided by the ASLB. Thus, Petitioners' allegations that TU Electric submitted "material false statements" are clearly in error.

2. BACKGROUND

This section is divided into the following two subsections: Section 2.1 discusses the evolution of design

responsibility for CPSES pipe supports, and Section 2.2 discusses previous allegations regarding design responsibility for CPSES pipe supports.

2.1 EVOLUTION OF DESIGN RESPONSIBILITY FOR CPSES PIPE SUPPORTS

The responsibility for the design of pipe supports at CPSES has evolved over time.

Initially, Gibbs & Hill was the architect-engineer for CPSES and Westinghouse was the Nuclear Steam Supply System vendor. Gibbs & Hill was responsible for the design of CPSES piping (design responsibility for piping designated as Class 1 under the ASME Code was eventually assigned to Westinghouse).

TU Electric decided to contract out the responsibility for the design of CPSES pipe supports to a company who was in the business of designing and fabricating pipe supports components. TU Electric selected ITT-Grinnell to perform this task, who initially had total responsibility for the design of CPSES pipe supports. In designing the CPSES pipe supports, ITT-Grinnell was required to comply with the ASME Code and Gibbs & Hill Project Design Specification MS-46A. ITT-Grinnell was responsible for developing a methodology for ensuring compliance with these requirements.

After several years, it became apparent that ITT-Grinnell was not able to maintain the schedule for the design of the CPSES pipe supports. As a result, TU Electric contracted

with an additional company, Nuclear Power Services, Inc. (NPSI), and divided the responsibility for the design of large bore pipe supports between ITT-Grinnell and NPSI. Additionally, TU Electric established the Pipe Support Engineering (PSE) organization and assigned it responsibility for the design of CPSES small bore pipe supports and some large bore pipe supports. NPSI and PSE were required to comply with the ASME Code and Gibbs & Hill Project Specification MS-46A, and each was required to develop a methodology for ensuring compliance with these requirements. 2/

As a result of these changes, there were three pipe support design groups for CPSES during the early 1980s. Each group was assigned responsibility for the design of specifically-designated pipe supports, and at any particular time only one group was responsible for the design of a specific pipe support. A computerized list (Hanger Installation Tracking System (HITS)) was maintained that identified which group was responsible for which pipe support. Regardless of which group was responsible for a particular support, the group was required to comply with the ASME Code and Gibbs & Hill Project Specification MS-46A in

2/ This evolution in design responsibility is discussed in NRC Staff Exhibit 207 (NRC Inspection Report 50-445/82-26, 50-446/82-14), pp. 12-13; Affidavit of D.N. Chapman, J.C. Finneran, Jr., D.E. Powers, R.P. Deubler, R.E. Ballard, Jr., and A.T. Parker Regarding Quality Assurance Program for Design of Piping and Pipe Support for Comanche Peak Steam Electric Station (July 3, 1984), pp. 11-13; CPSES OL Proceeding Tr. 5277-78.

designing and certifying the support. However, each group would utilize its own methodology for achieving such compliance.

When pipe support designs were issued to the field for construction, field engineering would often authorize field changes in the pipe supports, subject to later review and approval by the group responsible for design of the pipe support. In many cases, the field changes were implemented prior to review and approval by the responsible design group. Such a change was subject to being scrapped or reworked if the change was not approved by the responsible design group. The entire process of issuance of a design, field changes to the design, and subsequent design review of the field changes is standard industry practice, and it forms one part of an overall process known as the "iterative design process."

Sometimes, a field design change for a pipe support would be transmitted to the responsible design group for review and approval, and that group would not approve of the change. In most of these cases, the as-built support would be subject to rework by the constructor and subsequent review and approval by the responsible design group. In a small fraction of the cases, the responsible design group did not have an established methodology for analyzing the acceptability of the field change, and responsibility for the design of the entire support in question was transferred to another design group which did have an applicable methodology. Similarly, in a few cases, the field change was not acceptable using the methodology of the

responsible design group but was acceptable using the more refined methodology of another design group, and responsibility for the design of the entire support in question was transferred to the other design group. Following such transfers the new design group was responsible for evaluating the acceptability of the design of the entire support. Thus, at any particular time (including final certification), only one group had responsibility for certifying the design of any individual support.

In the latter half of the 1980s, TU Electric decided to validate the design of all safety-related and Seismic Category II pipe supports at CPSES. This validation effort was performed by Stone & Webster Engineering Corporation (SWEC) and later became part of the CPSES Corrective Action Program. As a result, the three pipe support design groups were released, and SWEC became the responsible organization for design of the pipe supports at CPSES. 2/

2.2 **PREVIOUS ALLEGATIONS REGARDING DESIGN
RESPONSIBILITY FOR CPSES PIPE SUPPORTS**

Allegations similar to those raised by the Petitioners have been submitted to the NRC in various contexts during the past eight years by clients of the Petitioners and other

2/ CAP was performed for CPSES Unit 1 and Common areas, and TU Electric eventually assumed some of the responsibility for validation of the pipe support designs. Similar validation efforts are being performed by other engineering contractors for CPSES Unit 2.

individuals. As discussed below, in each case, the NRC concluded that the allegation did not indicate any deficiency in the design of CPSES, or the allegation was withdrawn.

On February 27, 1978, TU Electric filed with the NRC an application for an operating license for Comanche Peak. Three organizations, including Citizens Association for Sound Energy (CASE), requested a hearing and were admitted as intervenors in the CPSES OL proceeding. Eventually, only one intervenor, CASE, and one contention, contesting the adequacy of quality assurance (QA) and quality control (QC) for CPSES, remained in the proceeding.

Extensive hearings were held on the QA/QC contention. CASE presented testimony by Mark Walsh and Jack Doyle, who raised many issues regarding the adequacy of the design and quality assurance for CPSES piping and pipe supports. Many of their issues related to the "iterative design process." Additionally, one of their issues pertained to the adequacy of the organizational and design interfaces among the three groups that then had responsibility for the design of CPSES pipe supports. Among other things, Messrs. Walsh and Doyle were concerned that the three pipe support design groups were using different design approaches, and therefore were violating NRC and industry quality requirements for design.

In December of 1983, the ASLB in the Comanche Peak OL proceeding issued a partial initial decision, which questioned the adequacy of design quality for CPSES, including the design

quality of CPSES piping and pipe supports. In particular, the ASLB concluded that the "iterative design process" did not satisfy the requirements in 10 CFR Part 50 Appendix B for prompt identification and correction of design deficiencies. However, the ASLB also concluded that the organizational and design interfaces for CPSES pipe supports were adequate. In particular, the ASLB concluded that the three pipe support design groups were each using the ASME Code and Specification MS-46A, that differences occurred in the design approaches of the groups, and that it was possible to use different approaches to satisfy the ASME Code and Specification MS-46A. The ASLB also concluded that the use of different approaches by the different groups did not present a safety concern or violate NRC requirements because each group had its own scope of responsibility for a specific group of pipe supports and there was no need for cross communication between the groups since they did not share common in-line design responsibility. 4/

As part of TU Electric's plan to address the concerns raised by the ASLB regarding design quality, TU Electric filed a number of motions for summary disposition and accompanying affidavits in 1984. The ASLB ruled on only one of those motions

4/ Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-83-81, 18 NRC 1410, 1428-29, 1450-52 (1983). As the ASLB found, "Since neither the [s]pecification . . . nor the ASME Code dictate in detail the means by which an engineer is to satisfy the design criteria, differences in engineering approaches occurred between the three parallel pipe support groups." LBP-83-81 18 NRC 1451.

(related to welding issues). 5/ In June 1985, TU Electric told the ASLB that it planned to resolve all remaining issues before the ASLB through the Comanche Peak Response Team (CPRT) and to withdraw the motions for summary disposition. 6/ In addition to the CPRT review, TU Electric conducted a far-ranging and unprecedented Corrective Action Program (CAP) at Comanche Peak. The CAP included a comprehensive design and hardware validation to ensure that Comanche Peak satisfied all regulatory requirements and could be operated safely. Under the CAP program, SWEC performed a revalidation of pipe supports.

In early 1986, S.M.A. Hasan brought a number of concerns to the NRC, with CASE's assistance. Mr. Hasan was a former employee of NPSI and had been laid-off by NPSI after SWEC assumed responsibility for the design of CPSES pipe supports. Mr. Hasan was represented by the Government Accountability Project (GAP), which was also the representative of CASE. Some of the individuals who currently comprise the Petitioners were then employed by GAP and were counsel to Mr. Hasan. In general, Mr. Hasan's technical concerns were similar to the pipe support design (Walsh/Doyle) issues raised by CASE in the operating license proceeding. In particular, Mr. Hasan alleged that pipe support design packages were being transferred from one pipe

5/ Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-84-25, 19 NRC 1589 (1984).

6/ "Applicants' Current Management Views and Management Plan for Resolution of All Issues" (June 28, 1985).

support design group to another group, which would utilize design criteria that were different from the criteria used by the first group. On May 28, 1987, the NRC requested that TU Electric review these allegations. 1/ TU Electric responded on July 2, 1987. 2/ On January 6, 1988, the NRC provided to Mr. Hasan not only TU Electric's response but also the Staff's evaluation of Mr. Hasan's pipe support allegations. The NRC Staff found that "the allegations, both individually and collectively, have been adequately addressed." 3/ In regard to Mr. Hasan's concerns that inconsistent design criteria were being used in the certification of pipe support design, the NRC Staff found:

When the SWEC piping and pipe support requalification program [in the CAP program] was initiated, the design of pipe supports became the responsibility of a single design organization (SWEC). Only one design criteria document (CPPP-7) is being used for the requalification of all ASME code Class 1, 2, and 3 pipe supports at CPSES. Any identified deficiencies which might have resulted from the use of inconsistent design criteria will be corrected. Thus, the staff finds that the collective allegation associated with the use of inconsistent pipe support design criteria by the previous

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- 1/ Letter from C. J. Grimes (NRC Office of Special Projects) to W.G. Council (TU Electric) (May 28, 1987).
- 2/ Letter from W.G. Council (TU Electric) to U. S. Nuclear Regulatory Commission (July 2, 1987) (No. TXX-6535).
- 3/ Letter from Phillip F. McKee (NRC Office of Special Projects) to Mr. S.M.A. Hasan (Jan. 6, 1988).

design groups has been adequately resolved. 10/

In various letters in 1987 and 1988, CASE provided the ASLB with copies of Mr. Hasan's allegations, TU Electric's response to the allegations, and the NRC's disposition of the allegations. 11/ Therefore, the ASLB was fully aware of Mr. Hasan's allegations and their resolutions when, as discussed below, it decided to approve the settlement of the CPSES OL proceeding.

In early 1986, Mr. Hasan also filed a complaint with the Department of Labor (DOL) under the whistleblower provisions of Section 210 of the Energy Reorganization Act. Mr. Hasan, alleged that he was laid-off and blacklisted because of the allegations he had made, including allegations regarding use of inconsistent design criteria by different pipe support design groups at CPSES. In October 1987, the Administrative Law Judge in the DOL proceeding issued a recommended decision and order dismissing the proceeding, finding that Mr. Hasan's "version of events is simply not believable." 12/ Mr. Hasan was

10/ Letter from Phillip F. McKee (NRC Office of Special Projects) to Mr. S.M.A. Hasan, Enclosure 1, p. 3 (Jan. 6, 1988).

11/ CASE letters to the ASLB dated July 8, 1987, and May 17, 1988.

12/ Hasan v. Nuclear Power Services, Inc., Case. No. 86-ERA-24, "Recommended Decision and Order" (Oct. 21, 1987), p. 3. This order was affirmed by the Secretary of Labor in a "Final Decision and Order" (June 26, 1991). The Secretary's decision has been appealed to the U.S. Court of Appeals.

represented in the DOL proceeding by GAP, and in particular by some of the members who currently comprise the Petitioners.

In late June of 1988, CASE, TU Electric, and the NRC Staff agreed to a settlement of the CPSES OL proceeding. Subsequently, on July 13, 1988, the ASLB issued an order approving the settlement and dismissing the OL proceeding. ^{13/}

At the time the ASLB approved of the settlement, a number of individuals and groups attempted to overturn the settlement. For example, one of the Petitioners' "confidential" clients, an individual designated as "John Doe", submitted a letter to the Chairman of the Commission on July 10, 1988, with copies to the ASLB. He alleged that the NRC had not properly investigated the concerns he had submitted several years earlier, and that TU Electric had committed perjury. Similarly, Lon Burnam made a limited appearance statement before the ASLB also claiming that TU Electric had committed perjury. ^{14/} Neither of these allegations contained any basis, and neither affected the ASLB's decision to accept the settlement agreement in the CPSES OL proceeding. Additionally, in July 1989, Mr. Burnam submitted a motion to reopen the record in the CPSES OL proceeding, alleging, among other things, that TU Electric had

^{13/} Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-88-18B, 28 NRC 103 (1988).

^{14/} Tr. 25230-32. Mr. Burnam was a member of the Greater Fort Worth Sierra Club. The Petitioners filed a motion for leave to intervene in the CPSES OL proceeding on behalf of the Greater Fort Worth Sierra Club on July 11, 1988.

committed perjury in testifying that the pipe design groups had separate responsibilities for designing pipe supports. However, Mr. Burnam withdrew his motion before the NRC could rule on it.

3. INFORMATION RELATED TO THE SPECIFIC ALLEGATIONS RAISED BY THE PETITIONERS

The Petitioners allege that "senior managers" for TU Electric submitted material false statements before the ASLB from 1982 to 1984 regarding the three organizations which were, at that time, involved with the design of pipe supports for Comanche Peak. ^{15/} Specifically, the Petitioners claim that TU Electric personnel made material false statements in a September 15 1982 hearing before the ASLB and in two affidavits submitted with summary disposition motions in June and July of 1984. ^{16/} Petitioners refer to testimony and affidavits presented by TU Electric, which indicated that each of the three pipe support design organizations had "separate and distinct" design responsibilities and that design changes necessary to reconcile field modifications would be reviewed and certified by the "original design organization." Based on testimony presented in a proceeding initiated by a Mr. Hasan before the DOL, the Petitioners argue that, because "pipe supports were routinely transferred between the various pipe support groups and were routinely certified using more than one set of design criteria,"

^{15/} Petition, p. 4.

^{16/} Petition, pp. 4, 6-7.

the "interfaces between the various pipe support groups were not separate and distinct ..." as stated by TU Electric. 17/

3.1 SAFETY SIGNIFICANCE OF PETITIONERS' ALLEGATIONS

The Petitioners' allegations regarding the interface between the three design organizations is essentially identical to the allegations which Mr. Hasan submitted to the NRC in 1986. These allegations have no safety significance with respect to the current design of CPSES pipe supports. In 1988, the NRC found that the requalification of pipe supports by SWEC would ensure the adequacy of the pipe support designs. Therefore, the NRC concluded that "the collective allegation associated with the use of inconsistent pipe support design criteria by the previous design groups has been resolved." 18/

3.2 VALIDITY OF PETITIONERS' ALLEGATIONS

The Petitioners' allegation essentially has two parts. First, Petitioners allege that different or multiple design criteria were utilized to certify a pipe support. Second, Petitioners allege that responsibility for the design of pipe supports was transferred from one group to another, contrary to TU Electric testimony that the original design organization would

17/ Petition, p. 10.

18/ Letter from Phillip K. McKee (NRC Office of Special Projects) to Mr. S.M.A. Hasan (Jan. 6, 1988), Enclosure 1, p. 3.

review and certify design changes to pipe supports. Each of these parts is discussed separately below.

3.2.1 PETITIONERS' ALLEGATIONS RELATED TO USE OF DIFFERENT OR MULTIPLE DESIGN CRITERIA TO CERTIFY A PIPE SUPPORT DESIGN

The Petitioners allege that "different" or "multiple sets" of design criteria were used to certify the design of a pipe support, and that TU Electric's testimony to the contrary constitutes a material false statement. ^{19/}

This allegation is erroneous. Different or multiple sets of design criteria were not used to certify an individual pipe support. As explained in the CPSES OL Proceeding, each pipe support group was required to comply with the governing provisions of the American Society of Mechanical Engineers (ASME) Code and Project Specification MS-46A. ^{20/} However, each group was permitted to achieve compliance with these provisions by using its own methodology (which some witnesses called "design criteria," and still other witnesses and the ASLB called "design approaches"). ^{21/} Although the design methodologies differed

^{19/} Petition, pp. 9, 11.

^{20/} Applicants' Exhibit 142, p. 9; Staff Exhibit 207, pp. 12-13; Tr. 5014, 5279.

^{21/} There is no universally-accepted definition of the term "design criteria." Witnesses in both the ASLB proceeding and the DOL proceeding sometimes used the term "design criteria" interchangeably with the term "design approaches." For example, TU Electric testified in the CPSES OL proceeding that each pipe

(continued...)

from group to group, only the methodology of the responsible design group was used in certifying an individual support. 22/ The ASLB in the CPSES OL proceeding acknowledged this situation and found it to be acceptable 23/, and there is nothing in the quotations cited by the Petitioners 24/ which is inconsistent with the ASLB's findings.

21/ (...continued)

support group utilized the same "project specifications and ASME Code requirements" to design pipe supports, and that each group employed "design criteria which comply with those specifications." Applicants' Exhibit 142, p. 9. Similarly, the NRC Staff submitted an NRC inspection report into evidence before the ASLB which stated that each of the three pipe support design groups utilized the ASME Code and Specification MS-46A (which the inspection report refers to as "design criteria"), and that "differences in engineering approaches occurred between the three parallel pipe support groups." Staff Exhibit 207, pp.12-13. Citing both TU Electric's and the NRC Staff's exhibits, the ASLB concluded that the ASME Code and Specification MS-46A provided the "design criteria" for the three pipe support design groups and that differences occurred in the design approaches utilized by the groups to satisfy these design criteria. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-83-81, 18 NRC 1410, 1440-51 (1983). Thus, although the terminology before the ASLB (and the DOL) was not consistent, the substance of the testimony was consistent.

22/ Applicants' Exhibit 142, p. 9; Staff Exhibit 207, pp. 12-13. Similar statements appear in the Oral Deposition of David M. Rencher (May 29, 1987) pp. 260, 264, 270, in the DOL Proceeding.

23/ Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-83-81, 18 NRC 1410, 1428-29 (1983).

24/ Petition, pp. 9-11.

As a basis for their allegation that individual pipe supports were sometimes certified using multiple sets of "design criteria" (or "design approaches" in the lexicon of the ASLB), Petitioners refer to statements made in Mr. Hasan's DOL proceeding by TU Electric employers. These individuals stated that pipe support design packages were sometimes "rejected" from one design group to another group, which would then certify the pipe support designs using different criteria than the first group. 25/

The testimony in the DOL proceeding cited by Petitioners does not indicate that "multiple" or "different" design criteria or approaches were utilized in the certification of a design of a single pipe support. Instead, this testimony stated that the responsibility for the design of a pipe support was transferred from one design group to another group, which then certified the design package for the support using its methodology rather than the methodology of the first group. For example, the Petitioners cite the deposition of George Chamberlain in the DOL proceeding. 26/ In pages 182-183 of his deposition, Mr. Chamberlain testified as follows:

Q. (BY MR. KOHN) Do you remember site engineering groups changing the scope of the work on Richmond inserts?

25/ Petition, pp. 9-11.

26/ Petition, p. 11 fn. 9.

A. Yes. As I stated yesterday, ITT Grinnell did not have design criteria for Richmond inserts used in conjunction with tube steel; and, therefore, any supports that had been redesigned in using that type of connection by the field engineering group in the course of construction had to be transferred over to the site group because they did have criteria for it, addressing it.

* * *

Q. (BY MR. KOHN) If anyone worked in two different groups, would that be common knowledge?

* * *

A. Since most of the engineers also probably did some assistance in field problems, I would say that generally most of them were aware of the different organizations' design criteria, because they would want to make sure that any design changes that they were initiating would in the end meet that particular organization's design guidelines. Each organization had to certify their own hangers to their own guidelines.

The Petitioners also cite pages 120-121 of the testimony of David Rencher in the DOL proceeding 27/ for the proposition that pipe supports were being transferred from one design group to another. However, immediately following this testimony, at pages 124-125 of the transcript, Mr. Rencher testified as follows:

BY MR. WOLKOFF:

Q. During the time period that Mr. Hasan worked under your supervision at Comanche Peak, how many different sets of design criteria were in place?

A. There were three.

Q. What were they?

A. ITT Grenelle [sic], NPSI, and the PSE design guidelines.

Q. And did they differ one to another in certain respects?

A. Yes, they did.

Q. But I take it each pipe that was qualified had to be qualified under one of the three different sets of criteria. Right?

A. That is correct.

Thus, the testimony and deposition in the DOL proceeding cited by the Petitioners clearly states that, even though transfers of responsibility of the design of pipe supports did occur, only one set of design criteria or approaches would be used to certify any particular pipe support.

In summary, each of the three pipe support design groups utilized the ASME Code and Specification MS-46A (which the ASLB referred to as "design criteria") in certifying the design of pipe supports. Thus, even after design responsibility for a pipe support was transferred from one group to another, the support was still required to comply with the ASME Code and Specification MS-46A. The transfer of design responsibility from one group to another did result in the application of a methodology (which the ASLB referred to as "design approaches" and various other individuals referred to as "design criteria") by the second group that was not the same as would have been applied by the first group. However, the second group had the responsibility for certifying the design of the entire support, and only its "design approaches" or "design criteria" (and not those of the first group) were utilized in performing the

certification. Thus, "different" or "multiple" criteria or approaches were not utilized in certifying an individual support.

3.2.3 PETITIONERS' ALLEGATIONS RELATED TO THE TRANSFER OF DESIGN RESPONSIBILITY FROM ONE GROUP TO ANOTHER GROUP

The Petitioners cite three statements by a TU Electric manager which they claim are false. 28/ In particular, the Petitioners allege that each of the following statements constitute material false statements:

- 1) ". . . The changes made [to the pipe support designs] will go to the original design organization and they will review it and make their own calculations for that change . . . I might point out that after the final review of these drawings, they are stamped and signed by an engineer with the original design organization . . . After all the field changes are incorporated in the drawing and the drawing goes through final review from the as-built loading, the drawing will be stamped and signed certified by the original design organization . . . [E]ach organization that designs supports will be responsible for certifying that the support is good for the as-built loads . . . [These organizations] would be ITT Grinnell, NPSI . . . and my organization, Pipe Support Engineering." ASLB Tr. 4971, 4985-4986, 5013 (emphasis added [by the Petitioners]).

28/ The Petitioners also quote two statements by the ASLB, and they argue that these statements are additional examples of material false statements by TU Electric. Petition, pp. 4-5, 5-6. Obviously, TU Electric cannot be held responsible for statements made by the ASLB. In any event, as is clear from reading the entire passage (the Petitioners have excised many relevant passages), the first statement quoted by the Petitioners on pages 4-5 of their petition was based upon statements made by the NRC Staff in the Special Inspection Team (SIT) Inspection Report, not upon statements made by TU Electric. Similarly, the second statement quoted by the Petitioners on pages 5-6 of their petition was also based largely on the SIT Inspection Report; it also referenced TU Electric prepared testimony for the proposition that each pipe support design group had its own scope of responsibility (which clearly was correct).

- 2) "As I previously testified . . . design changes are subject to review by the responsible design organizations. (Tr. 4970-71)." See Affidavit of John C. Finneran, Jr. regarding Stability of Pipe Supports and Piping Systems, dated June 17, 1984 at p. 14 (emphasis added [by the Petitioners]).
- 3) . . . three organizations (NPSI, ITT-Grinnell, and PSE) had "separate and distinct responsibilities for the design of pipe supports" and all design changes are "returned to the original designer for correction and rechecking . . ." See Affidavit of D.N. Chapman, J.C. Finneran, Jr., D.E. Powers, R.P. Deubler, Jr., and A.T. Parker regarding Quality Assurance Program for Design of Piping and Pipe Supports for Comanche Peak Steam Electric Station, stated [sic] July 3, 1984, at pp. 13, 36.

The Petitioners allege that these statements are false because pipe support design packages were transferred from one design group to another group for certification. 29/

Petitioners' allegation is misplaced. The transfer of design packages was explicitly authorized by 10 CFR Part 50, Appendix B, Criterion III and ANSI N45.2.11-1974. In particular, Appendix B states that:

[d]esign changes, including field changes, shall be subject to design control measures commensurate with those applied to the original design and be approved by the organization that performed the original design unless the applicant designates another responsible organization. [Emphasis Added]

Similarly, ANSI N45.2.11-1974 30/ states that:

[w]here an organization which originally was responsible for approving a particular design document

29/ Petition, p. 9.

30/ For construction, TU Electric has been committed to Draft 2, Rev. 2 of ANSI N45.2.11 (May 1973), which contains an identical statement.

is no longer responsible, the plant owner shall designate the new responsible organization

In addition, the statements cited by Petitioners track very closely the language that is contained in the design control procedures then in existence. For example:

- o The CPSES Quality Assurance Plan, Section 3.0.2, stated that "[c]hanges to design specifications or documents are reviewed and approved by the same individual or group responsible for original review and approval."
- o The CPSES Quality Assurance Plan, Section 3.0.3, stated that "[c]hanges to the design are documented, reviewed, and approved by the original designers commensurate with the controls applied to the original design."
- o Procedure CP-EP-4.6, "Field Design Change Control," Rev. 8, Section 3.2.2, stated that "[f]ield originated design changes/deviations shall be approved by the original designer's designated site representative"
- o Procedure CP-EI-4.5-4, "Technical Services Engineering Instruction for Pipe Hanger Design Review and Certification," Rev. 4, Section 3.1.1, stated that "[s]ite generated design changes to vendor supplied pipe supports shall be reviewed for structural acceptability and compliance with applicable code requirements . . . by representatives of the original design organizations in accordance with their respective engineering programs."

Thus, the language quoted by Petitioners is consistent with Appendix B, ANSI N45.2.11 and the design control procedures used at CPSES.

Petitioners have selectively quoted from the transcript and affidavits. For example, the first statement quoted by Petitioners employs ellipses to omit 42 pages of transcript, and the third statement quoted by Petitioners omits 23 pages of the cited affidavit. More importantly, the Petitioners have

selectively excised statements from their quotations which are inconsistent with their argument. For example, with respect to their third statement quoted above, the Petitioners imply that TU Electric did not inform the ASLB that design responsibility for pipe supports was transferred from one group to another. However, TU Electric did discuss in general how responsibilities for pipe supports had evolved over time. That discussion occurred on the very page cited by the Petitioners (i.e., page 13 of the affidavit in question). Furthermore, during the hearings, TU Electric explicitly stated that "[t]here were changes in scope, in some of the work." Tr. 5048. 31/

Petitioners have also lifted TU Electric's statements out of their context. The Petitioners cite passages in TU Electric's testimony and affidavits which stated that the review and certification of field changes would be performed by the "original design organization." Petitioners argue that the use of the term "original design organization" is inconsistent with the fact that design responsibility for the entire support was on occasion transferred from one design group to another. However, the subject and purpose of the testimony was to clarify that field design changes were always approved by the design

31/ The Petitioners also assert that page 36 of the affidavit in question states that "all design changes are 'returned to the original designer for correction and rechecking. . .'" In actuality, this portion of the affidavit was not referring to review of field design changes. Instead, as is clearly stated on pages 35 and 36 of the affidavit, the statements in question pertained to design verification of "initial support design."

organization responsible for the entire design. There was no statement or indication that design responsibility had not been or was forever prohibited from being transferred from one design group to another. In fact, other passages in TU Electric's testimony before the ASLB stated that the review and certification would be performed by the "responsible design organization." 32/ For example, at pages 4957 to 4958 of the transcript of the CPSES OL proceeding, the TU Electric witness testified as follows:

JUDGE McCOLLOM: Did the field engineers decide what the change was going to be?

WITNESS FINNERAN: Yes, they do.

JUDGE MILLER: They did. We're talking about a specific area now.

WITNESS FINNERAN: Yeah.

JUDGE MILLER: Okay.

JUDGE McCOLLOM: All right, and yet they are not responsible for determining whether it's stable or not?

WITNESS FINNERAN: No. They just document what they have done, and that documentation will go on to the responsible design organization for the support,

32/ Applicants' Exhibit 142, pp. 34-35; Tr. 4954, 4957-58; Affidavit of John C. Finneran, Jr., Regarding Stability of Pipe Supports and Piping Systems (June 17, 1984) pp. 14, 23; Affidavit of D.N. Chapman, J.C. Finneran, Jr., D.E. Powers, R.P. Deubler, R.E. Ballard, Jr., and A.T. Parker Regarding Quality Assurance Program for Design of Piping and Pipe Supports for Comanche Peak Steam Electric Station (July 3, 1984), p. 51. Additionally, in other cases, TU Electric stated that the review of field changes would be performed by the "proper design organization." Tr. 5184, 5185-86.

and they will review what the field engineers have done.

JUDGE McCOLLOM: The responsible design organization is the one that designed the original one?

WITNESS FINNERAN: Yes. In the particular case of the support I'm alluding to in March, I think the original design organization was ITT.

I think there's some confusion as to how the field group operates. They have no design responsibility.

All they do is interface with the craft and make changes, document those changes; and that change will then be reviewed by the responsible design organization.

If the responsible design organization decides that the change that the field made is not appropriate, then we will modify the support in accordance with their request.

The subject raised by the Petitioners (transfer of design responsibility) was not even at issue at the time the statements were made.

The quotations cited by the Petitioners were made in response to questions related to the "iterative design process." The iterative design process was a major factor associated with the Walsh/Doyle issues in the CPSES OL proceeding. One of the concerns involving the iterative design process dealt with whether changes authorized by field engineering (which did not have design responsibility) were subject to review and certification by a responsible design organization to ensure that any deficiencies introduced by the field changes would be identified and corrected.

The NRC established a Special Inspection Team (SIT) to investigate the Walsh/Doyle issues, including the issues related to the iterative design process. The SIT concluded that each of

the alleged design deficiencies identified by Walsh/Doyle pertained to designs that had not yet completed the iterative design process. The SIT also concluded that TU Electric had appropriate procedures governing the iterative design process, and that these procedures would ensure correction of the identified deficiencies. In particular, the NRC Staff found that field changes authorized by field engineers were subject to review by the "responsible pipe support design group" to ensure that the stresses on the supports would be acceptable. ^{13/} The NRC Staff offered the SIT inspection report into evidence in the CPSES OL proceeding to address this issue before the ASLB. Similarly, TU Electric presented testimony and affidavits on this issue in the CPSES OL proceeding. Each of the quotations cited by Petitioners was made in the context of a discussion of the iterative design process. In particular, the quotations addressed whether field changes authorized by field engineering would be subject to review and approval by a responsible pipe support design group.

It was in this context that TU Electric witnesses sometimes stated that changes authorized by field engineers were subject to review and certification by the original design organization. These statements paraphrased the language in Appendix B, ANSI N45.2.11, and the CPSES design control procedures. Additionally, these statements accurately reflected

^{13/} NRC Staff Exhibit 207, pp. 13-16.

that design groups (and not field engineers) were utilized for certification of pipe supports at CPSES. TU Electric witnesses were never asked to discuss matters related to the transfer of design responsibility of individual supports, and never claimed that transfers of design responsibility had not occurred. Furthermore, transfer of responsibility for individual pipe supports was not at issue before the ASLB, and there was no reason to discuss particular instances of such transfers since the ASLB was admittedly aware that the scope of responsibility of the three design groups had changed over time.

Therefore, TU Electric's statements were entirely appropriate and directed to the issue in question before the ASLB. The transfer of design responsibility from one group to another was not the issue, or material to the issue, being decided by the ASLB. Thus, allegations that TU Electric made "material false statements" are clearly in error.

4. CONCLUSIONS

During the last eight years, the Petitioners, their clients (including Mr. Hasan), and others have raised allegations regarding the transfer of pipe support design packages among design organizations and the use of different design criteria or approaches. These allegations have repeatedly been determined to have no safety significance.

Having failed to prevail on behalf of Mr. Hasan in other forums, the Petitioners now appear to be taking a new

tactic by raising allegations that TU Electric has committed material false statements. These allegations are nothing more than a rehash of old allegations in a new form. The TU Electric statements cited by the Petitioners accurately reflected that field changes were reviewed by design groups. Furthermore, the Petitioners have misinterpreted and mischaracterized these statements, have selectively quoted from the testimony and affidavits of TU Electric, and have taken statements out of context. In short, the statements do not say what the Petitioners purport that they state.

(related to welding issues). 5/ In June 1985, TU Electric told the ASLB that it planned to resolve all remaining issues before the ASLB through the Comanche Peak Response Team (CPRT) and to withdraw the motions for summary disposition. 6/ In addition to the CPRT review, TU Electric conducted a far-ranging and unprecedented Corrective Action Program (CAP) at Comanche Peak. The CAP included a comprehensive design and hardware validation to ensure that Comanche Peak satisfied all regulatory requirements and could be operated safely. Under the CAP program, SWEC performed a revalidation of pipe supports.

In early 1986, S.M.A. Hasan brought a number of concerns to the NRC, with CASE's assistance. Mr. Hasan was a former employee of NPSI and had been laid-off by NPSI after SWEC assumed responsibility for the design of CPSES pipe supports. Mr. Hasan was represented by the Government Accountability Project (GAP), which was also the representative of CASE. Some of the individuals who currently comprise the Petitioners were then employed by GAP and were counsel to Mr. Hasan. In general, Mr. Hasan's technical concerns were similar to the pipe support design (Walsh/Doyle) issues raised by CASE in the operating license proceeding. In particular, Mr. Hasan alleged that pipe support design packages were being transferred from one pipe

5/ Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-84-25, 19 NRC 1589 (1984).

6/ "Applicants' Current Management Views and Management Plan for Resolution of All Issues" (June 28, 1985).

support design group to another group, which would utilize design criteria that were different from the criteria used by the first group. On May 28, 1987, the NRC requested that TU Electric review these allegations. 7/ TU Electric responded on July 2, 1987. 8/ On January 6, 1988, the NRC provided to Mr. Hasan not only TU Electric's response but also the Staff's evaluation of Mr. Hasan's pipe support allegations. The NRC Staff found that "the allegations, both individually and collectively, have been adequately addressed." 9/ In regard to Mr. Hasan's concerns that inconsistent design criteria were being used in the certification of pipe support design, the NRC Staff found:

When the SWEC piping and pipe support requalification program [in the CAP program] was initiated, the design of pipe supports became the responsibility of a single design organization (SWEC). Only one design criteria document (CPPP-7) is being used for the requalification of all ASME code Class 1, 2, and 3 pipe supports at CPSES. Any identified deficiencies which might have resulted from the use of inconsistent design criteria will be corrected. Thus, the staff finds that the collective allegation associated with the use of inconsistent pipe support design criteria by the previous

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- 7/ Letter from C.I. Grimes (NRC Office of Special Projects) to W.G. Council (TU Electric) (May 28, 1987).
- 8/ Letter from W.G. Council (TU Electric) to U. S. Nuclear Regulatory Commission (July 2, 1987) (No. TXX-6535).
- 9/ Letter from Phillip F. McKee (NRC Office of Special Projects) to Mr. S.M.A. Hasan (Jan. 6, 1988).

design groups has been adequately resolved. 10/

In various letters in 1987 and 1988, CASE provided the ASLB with copies of Mr. Hasan's allegations, TU Electric's response to the allegations, and the NRC's disposition of the allegations. 11/ Therefore, the ASLB was fully aware of Mr. Hasan's allegations and their resolutions when, as discussed below, it decided to approve the settlement of the CPSES OL proceeding.

In early 1986, Mr. Hasan also filed a complaint with the Department of Labor (DOL) under the whistleblower provisions of Section 210 of the Energy Reorganization Act. Mr. Hasan, alleged that he was laid-off and blacklisted because of the allegations he had made, including allegations regarding use of inconsistent design criteria by different pipe support design groups at CPSES. In October 1987, the Administrative Law Judge in the DOL proceeding issued a recommended decision and order dismissing the proceeding, finding that Mr. Hasan's "version of events is simply not believable." 12/ Mr. Hasan was

10/ Letter from Phillip F. McKee (NRC Office of Special Projects) to Mr. S.M.A. Hasan, Enclosure 1, p. 3 (Jan. 6, 1988).

11/ CASE letters to the ASLB dated July 8, 1987, and May 17, 1988.

12/ Hasan v. Nuclear Power Services, Inc., Case. No. 86-ERA-24, "Recommended Decision and Order" (Oct. 21, 1987), p. 3. This order was affirmed by the Secretary of Labor in a "Final Decision and Order" (June 26, 1991). The Secretary's decision has been appealed to the U.S. Court of Appeals.

represented in the DOL proceeding by GAP, and in particular by some of the members who currently comprise the Petitioners.

In late June of 1988, CASE, TU Electric, and the NRC Staff agreed to a settlement of the CPSES OL proceeding. Subsequently, on July 13, 1988, the ASLB issued an order approving the settlement and dismissing the OL proceeding. ^{13/}

At the time the ASLB approved of the settlement, a number of individuals and groups attempted to overturn the settlement. For example, one of the Petitioners' "confidential" clients, an individual designated as "John Doe", submitted a letter to the Chairman of the Commission on July 10, 1988, with copies to the ASLB. He alleged that the NRC had not properly investigated the concerns he had submitted several years earlier, and that TU Electric had committed perjury. Similarly, Lon Burnam made a limited appearance statement before the ASLB also claiming that TU Electric had committed perjury. ^{14/} Neither of these allegations contained any basis, and neither affected the ASLB's decision to accept the settlement agreement in the CPSES OL proceeding. Additionally, in July 1989, Mr. Burnam submitted a motion to reopen the record in the CPSES OL proceeding, alleging, among other things, that TU Electric had

^{13/} Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LEP-88-18B, 28 NRC 103 (1988).

^{14/} Tr. 25230-32. Mr. Burnam was a member of the Greater Fort Worth Sierra Club. The Petitioners filed a motion for leave to intervene in the CPSES OL proceeding on behalf of the Greater Fort Worth Sierra Club on July 11, 1988.

committed perjury in testifying that the pipe design groups had separate responsibilities for designing pipe supports. However, Mr. Burnam withdrew his motion before the NRC could rule on it.

3. INFORMATION RELATED TO THE SPECIFIC ALLEGATIONS RAISED BY THE PETITIONERS

The Petitioners allege that "senior managers" for TU Electric submitted material false statements before the ASLB from 1982 to 1984 regarding the three organizations which were, at that time, involved with the design of pipe supports for Comanche Peak. ^{15/} Specifically, the Petitioners claim that TU Electric personnel made material false statements in a September 15, 1982 hearing before the ASLB and in two affidavits submitted with summary disposition motions in June and July of 1984. ^{16/} Petitioners refer to testimony and affidavits presented by TU Electric, which indicated that each of the three pipe support design organizations had "separate and distinct" design responsibilities and that design changes necessary to reconcile field modifications would be reviewed and certified by the "original design organization." Based on testimony presented in a proceeding initiated by a Mr. Hasan before the DOL, the Petitioners argue that, because "pipe supports were routinely transferred between the various pipe support groups and were routinely certified using more than one set of design criteria,"

^{15/} Petition, p. 4.

^{16/} Petition, pp. 4, 6-7.

the "interfaces between the various pipe support groups were not separate and distinct ..." as stated by TU Electric. 17/

3.1 SAFETY SIGNIFICANCE OF PETITIONERS' ALLEGATIONS

The Petitioners' allegations regarding the interface between the three design organizations is essentially identical to the allegations which Mr. Hasan submitted to the NRC in 1986. These allegations have no safety significance with respect to the current design of CPSES pipe supports. In 1988, the NRC found that the requalification of pipe supports by SWEC would ensure the adequacy of the pipe support designs. Therefore, the NRC concluded that "the collective allegation associated with the use of inconsistent pipe support design criteria by the previous design groups has been resolved." 18/

3.2 VALIDITY OF PETITIONERS' ALLEGATIONS

The Petitioners' allegation essentially has two parts. First, Petitioners allege that different or multiple design criteria were utilized to certify a pipe support. Second, Petitioners allege that responsibility for the design of pipe supports was transferred from one group to another, contrary to TU Electric testimony that the original design organization would

17/ Petition, p. 10.

18/ Letter from Phillip K. McKee (NRC Office of Special Projects) to Mr. S.M.A. Hasan (Jan. 6, 1988), Enclosure 1, p. 3.

review and certify design changes to pipe supports. Each of these parts is discussed separately below.

3.2.1 PETITIONERS' ALLEGATIONS RELATED TO USE OF DIFFERENT OR MULTIPLE DESIGN CRITERIA TO CERTIFY A PIPE SUPPORT DESIGN

The Petitioners allege that "different" or "multiple sets" of design criteria were used to certify the design of a pipe support, and that TU Electric's testimony to the contrary constitutes a material false statement. 19/

This allegation is erroneous. Different or multiple sets of design criteria were not used to certify an individual pipe support. As explained in the CPSES OL Proceeding, each pipe support group was required to comply with the governing provisions of the American Society of Mechanical Engineers (ASME) Code and Project Specification MS-46A. 20/ However, each group was permitted to achieve compliance with these provisions by using its own methodology (which some witnesses called "design criteria," and still other witnesses and the ASLB called "design approaches"). 21/ Although the design methodologies differed

19/ Petition, pp. 9, 11.

20/ Applicants' Exhibit 142, p. 9; Staff Exhibit 207, pp. 12-13; Tr. 5014, 5279.

21/ There is no universally-accepted definition of the term "design criteria." Witnesses in both the ASLB proceeding and the DOL proceeding sometimes used the term "design criteria" interchangeably with the term "design approaches." For example, TU Electric testified in the CPSES OL proceeding that each pipe

(continued...)

from group to group, only the methodology of the responsible design group was used in certifying an individual support. 22/ The ASLB in the CPSES OL proceeding acknowledged this situation and found it to be acceptable 23/, and there is nothing in the quotations cited by the Petitioners 24/ which is inconsistent with the ASLB's findings.

21/ (...continued)

support group utilized the same "project specifications and ASME Code requirements" to design pipe supports, and that each group employed "design criteria which comply with those specifications." Applicants' Exhibit 142, p. 9. Similarly, the NRC Staff submitted an NRC inspection report into evidence before the ASLB which stated that each of the three pipe support design groups utilized the ASME Code and Specification MS-46A (which the inspection report refers to as "design criteria"), and that "differences in engineering approaches occurred between the three parallel pipe support groups." Staff Exhibit 207, pp.12-13. Citing both TU Electric's and the NRC Staff's exhibits, the ASLB concluded that the ASME Code and Specification MS-46A provided the "design criteria" for the three pipe support design groups and that differences occurred in the design approaches utilized by the groups to satisfy these design criteria. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-83-81, 18 NRC 1410, 1440-51 (1983). Thus, although the terminology before the ASLB (and the DOL) was not consistent, the substance of the testimony was consistent.

22/ Applicants' Exhibit 142, p. 9; Staff Exhibit 207, pp. 12-13. Similar statements appear in the Oral Deposition of David M. Rencher (May 29, 1987) pp. 260, 264, 270, in the DOL Proceeding.

23/ Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-83-81, 18 NRC 1410, 1428-29 (1983).

24/ Petition, pp. 9-11.

As a basis for their allegation that individual pipe supports were sometimes certified using multiple sets of "design criteria" (or "design approaches" in the lexicon of the ASLB), Petitioners refer to statements made in Mr. Hasan's DOL proceeding by TU Electric employees. These individuals stated that pipe support design packages were sometimes "rejected" from one design group to another group, which would then certify the pipe support designs using different criteria than the first group. 25/

The testimony in the DOL proceeding cited by Petitioners does not indicate that "multiple" or "different" design criteria or approaches were utilized in the certification of a design of a single pipe support. Instead, this testimony stated that the responsibility for the design of a pipe support was transferred from one design group to another group, which then certified the design package for the support using its methodology rather than the methodology of the first group. For example, the Petitioners cite the deposition of George Chamberlain in the DOL proceeding. 26/ In pages 182-183 of his Deposition, Mr. Chamberlain testified as follows:

Q. (BY MR. KOHN) Do you remember site engineering groups changing the scope of the work on Richmond inserts?

25/ Petition, pp. 9-11.

26/ Petition, p. 11 fn. 9.

A. Yes. As I stated yesterday, ITT Grinnell did not have design criteria for Richmond inserts used in conjunction with tube steel; and, therefore, any supports that had been redesigned in using that type of connection by the field engineering group in the course of construction had to be transferred over to the site group because they did have criteria for it, addressing it.

* * *

Q. (BY MR. KOHN) If anyone worked in two different groups, would that be common knowledge?

* * *

A. Since most of the engineers also probably did some assistance in field problems, I would say that generally most of them were aware of the different organizations' design criteria, because they would want to make sure that any design changes that they were initiating would in the end meet that particular organization's design guidelines. Each organization had to certify their own hangers to their own guidelines.

The Petitioners also cite pages 120-121 of the testimony of David Rencher in the DOL proceeding 27/ for the proposition that pipe supports were being transferred from one design group to another. However, immediately following this testimony, at pages 124-125 of the transcript, Mr. Rencher testified as follows:

BY MR. WOLKOFF:

Q. During the time period that Mr. [redacted] worked under your supervision at Comanche Peak, how many different sets of design criteria were in place?

A. There were three.

Q. What were they?

A. ITT Grenelle [sic], NPSI, and the PSE design guidelines.

27/ Petition, pp. 11-12.

Q. And did they differ one to another in certain respects?

A. Yes, they did.

Q. But I take it each pipe that was qualified had to be qualified under one of the three different sets of criteria. Right?

A. That is correct.

Thus, the testimony and deposition in the DOL proceeding cited by the Petitioners clearly states that, even though transfers of responsibility of the design of pipe supports did occur, only one set of design criteria or approaches would be used to certify any particular pipe support.

In summary, each of the three pipe support design groups utilized the ASME Code and Specification MS-46A (which the ASLB referred to as "design criteria") in certifying the design of pipe supports. Thus, even after design responsibility for a pipe support was transferred from one group to another, the support was still required to comply with the ASME Code and Specification MS-46A. The transfer of design responsibility from one group to another did result in the application of a methodology (which the ASLB referred to as "design approaches" and various other individuals referred to as "design criteria") by the second group that was not the same as would have been applied by the first group. However, the second group had the responsibility for certifying the design of the entire support, and only its "design approaches" or "design criteria" (and not those of the first group) were utilized in performing the

certification. Thus, "different" or "multiple" criteria or approaches were not utilized in certifying an individual support.

3.2.3 PETITIONERS' ALLEGATIONS RELATED TO THE TRANSFER OF DESIGN RESPONSIBILITY FROM ONE GROUP TO ANOTHER GROUP

The Petitioners cite three statements by a TU Electric manager which they claim are false. 28/ In particular, the Petitioners allege that each of the following statements constitute material false statements:

- 1) ". . . The changes made [to the pipe support designs] will go to the original design organization and they will review it and make their own calculations for that change . . . I might point out that after the final review of these drawings, they are stamped and signed by an engineer with the original design organization . . . After all the field changes are incorporated in the drawing and the drawing goes through final review from the as-built loading, the drawing will be stamped and signed certified by the original design organization . . . [E]ach organization that designs supports will be responsible for certifying that the support is good for the as-built loads . . . [These organizations] would be ITT Grinnell, NPSI . . . and my organization, Pipe Support Engineering." ASLB Tr. 4971, 4985-4986, 5013 (emphasis added [by the Petitioners]).

28/ The Petitioners also quote two statements by the ASLB, and they argue that these statements are additional examples of material false statements by TU Electric. Petition, pp. 4-5, 5-6. Obviously, TU Electric cannot be held responsible for statements made by the ASLB. In any event, as is clear from reading the entire passage (the Petitioners have excised many relevant passages), the first statement quoted by the Petitioners on pages 4-5 of their petition was based upon statements made by the NRC Staff in the Special Inspection Team (SIT) Inspection Report, not upon statements made by TU Electric. Similarly, the second statement quoted by the Petitioners on pages 5-6 of their petition was also based largely on the SIT Inspection Report; it also referenced TU Electric prepared testimony for the proposition that each pipe support design group had its own scope of responsibility (which clearly was correct).

- 2) "As I previously testified . . . design changes are subject to review by the responsible design organizations. (Tr. 4970-71)." See Affidavit of John C. Finneran, Jr. regarding Stability of Pipe Supports and Piping Systems, dated June 17, 1984 at p. 14 (emphasis added [by the Petitioners]).
- 3) . . . three organizations (NPSI, ITT-Grinnell, and PSE) had "separate and distinct responsibilities for the design of pipe supports" and all design changes are "returned to the original designer for correction and rechecking . . ." See Affidavit of D.N. Chapman, J.C. Finneran, Jr., D.E. Powers, R.P. Deubler, Jr., and A.T. Parker regarding Quality Assurance Program for Design of Piping and Pipe Supports for Comanche Peak Steam Electric Station, stated [sic] July 3, 1984, at pp. 13, 36.

The Petitioners allege that these statements are false because pipe support design packages were transferred from one design group to another group for certification. 29/

Petitioners' allegation is misplaced. The transfer of design packages was explicitly authorized by 10 CFR Part 50, Appendix B, Criterion III and ANSI N45.2.11-1974. In particular, Appendix B states that:

[d]esign changes, including field changes, shall be subject to design control measures commensurate with those applied to the original design and be approved by the organization that performed the original design unless the applicant designates another responsible organization. [Emphasis Added]

Similarly, ANSI N45.2.11-1974 30/ states that:

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29/ Petition, p. 9.

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is no longer responsible, the plant owner shall designate the new responsible organization

In addition, the statements cited by Petitioners track very closely the language that is contained in the design control procedures then in existence. For example:

- o The CPSES Quality Assurance Plan, Section 3.0.2, stated that "[c]hanges to design specifications or documents are reviewed and approved by the same individual or group responsible for original review and approval."
- o The CPSES Quality Assurance Plan, Section 3.0.3, stated that "[c]hanges to the design are documented, reviewed, and approved by the original designers commensurate with the controls applied to the original design."
- o Procedure CP-EP-4.6, "Field Design Change Control," Rev. 8, Section 3.2.2, stated that "[f]ield originated design changes/deviations shall be approved by the original designer's designated site representative"
- o Procedure CP-EI-4.5-4, "Technical Services Engineering Instruction for Pipe Hanger Design Review and Certification," Rev. 4, Section 3.1.1, stated that "[s]ite generated design changes to vendor supplied pipe supports shall be reviewed for structural acceptability and compliance with applicable code requirements . . . by representatives of the original design organizations in accordance with their respective engineering programs."

Thus, the language quoted by Petitioners is consistent with Appendix B, ANSI N45.2.11 and the design control procedures used at CPSES.

Petitioners have selectively quoted from the transcript and affidavits. For example, the first statement quoted by Petitioners employs ellipses to omit 42 pages of transcript, and the third statement quoted by Petitioners omits 23 pages of the cited affidavit. More importantly, the Petitioners have

selectively excised statements from their quotations which are inconsistent with their argument. For example, with respect to their third statement quoted above, the Petitioners imply that TU Electric did not inform the ASLB that design responsibility for pipe supports was transferred from one group to another. However, TU Electric did discuss in general how responsibilities for pipe supports had evolved over time. That discussion occurred on the very page cited by the Petitioners (i.e., page 13 of the affidavit in question). Furthermore, during the hearings, TU Electric explicitly stated that "[t]here were changes in scope, in some of the work." Tr. 5048. 31/

Petitioners have also lifted TU Electric's statements out of their context. The Petitioners cite passages in TU Electric's testimony and affidavits which stated that the review and certification of field changes would be performed by the "original design organization." Petitioners argue that the use of the term "original design organization" is inconsistent with the fact that design responsibility for the entire support was on occasion transferred from one design group to another. However, the subject and purpose of the testimony was to clarify that field design changes were always approved by the design

31/ The Petitioners also assert that page 36 of the affidavit in question states that "all design changes are 'returned to the original designer for correction and rechecking. . .'" In actuality, this portion of the affidavit was not referring to review of field design changes. Instead, as is clearly stated on pages 35 and 36 of the affidavit, the statements in question pertained to design verification of "initial support design."

organization responsible for the entire design. There was no statement or indication that design responsibility had not been or was forever prohibited from being transferred from one design group to another. In fact, other passages in TU Electric's testimony before the ASLB stated that the review and certification would be performed by the "responsible design organization." ^{32/} For example, at pages 4957 to 4958 of the transcript of the CPSES OL proceeding, the TU Electric witness testified as follows:

JUDGE McCOLLOM: Did the field engineers decide what the change was going to be?

WITNESS FINNERAN: Yes, they do.

JUDGE MILLER: They did. We're talking about a specific area now.

WITNESS FINNERAN: Yeah.

JUDGE MILLER: Okay.

JUDGE McCOLLOM: All right, and yet they are not responsible for determining whether it's stable or not?

WITNESS FINNERAN: No. They just document what they have done, and that documentation will go on to the responsible design organization for the support,

^{32/} Applicants' Exhibit 142, pp. 34-35; Tr. 4954, 4957-58; Affidavit of John C. Finneran, Jr., Regarding Stability of Pipe Supports and Piping Systems (June 17, 1984) pp. 14, 23; Affidavit of D.N. Chapman, J.C. Finneran, Jr., D.E. Powers, R.P. Deubler, R.E. Ballard, Jr., and A.T. Parker Regarding Quality Assurance Program for Design of Piping and Pipe Supports for Comanche Peak Steam Electric Station (July 3, 1984), p. 51. Additionally, in other cases, TU Electric stated that the review of field changes would be performed by the "proper design organization." Tr. 5184, 5185-86.

and they will review what the field engineers have done.

JUDGE McCOLLOM: The responsible design organization is the one that designed the original one?

WITNESS FINNERAN: Yes. In the particular case of the support I'm alluding to in March, I think the original design organization was ITT.

I think there's some confusion as to how the field group operates. They have no design responsibility.

All they do is interface with the craft and make changes, document those changes; and that change will then be reviewed by the responsible design organization.

If the responsible design organization decides that the change that the field made is not appropriate, then we will modify the support in accordance with their request.

The subject raised by the Petitioners (transfer of design responsibility) was not even at issue at the time the statements were made.

The quotations cited by the Petitioners were made in response to questions related to the "iterative design process." The iterative design process was a major factor associated with the Walsh/Doyle issues in the CPSES OL proceeding. One of the concerns involving the iterative design process dealt with whether changes authorized by field engineering (which did not have design responsibility) were subject to review and certification by a responsible design organization to ensure that any deficiencies introduced by the field changes would be identified and corrected.

The NRC established a Special Inspection Team (SIT) to investigate the Walsh/Doyle issues, including the issues related to the iterative design process. The SIT concluded that each of

the alleged design deficiencies identified by Walsh/Doyle pertained to designs that had not yet completed the iterative design process. The SIT also concluded that TU Electric had appropriate procedures governing the iterative design process, and that these procedures would ensure correction of the identified deficiencies. In particular, the NRC Staff found that field changes authorized by field engineers were subject to review by the "responsible pipe support design group" to ensure that the stresses on the supports would be acceptable. ^{33/} The NRC Staff offered the SIT inspection report into evidence in the CPSES OL proceeding to address this issue before the ASLB. Similarly, TU Electric presented testimony and affidavits on this issue in the CPSES OL proceeding. Each of the quotations cited by Petitioners was made in the context of a discussion of the iterative design process. In particular, the quotations addressed whether field changes authorized by field engineering would be subject to review and approval by a responsible pipe support design group.

It was in this context that TU Electric witnesses sometimes stated that changes authorized by field engineers were subject to review and certification by the original design organization. These statements paraphrased the language in Appendix B, ANSI N45.2.11, and the CPSES design control procedures. Additionally, these statements accurately reflected

^{33/} NRC Staff Exhibit 207, pp. 13-16.

that design groups (and not field engineers) were utilized for certification of pipe supports at CPSES. TU Electric witnesses were never asked to discuss matters related to the transfer of design responsibility of individual supports, and never claimed that transfers of design responsibility had not occurred. Furthermore, transfer of responsibility for individual pipe supports was not at issue before the ASLB, and there was no reason to discuss particular instances of such transfers since the ASLB was admittedly aware that the scope of responsibility of the three design groups had changed over time.

Therefore, TU Electric's statements were entirely appropriate and directed to the issue in question before the ASLB. The transfer of design responsibility from one group to another was not the issue, or material to the issue, being decided by the ASLB. Thus, allegations that TU Electric made "material false statements" are clearly in error.

4. CONCLUSIONS

During the last eight years, the Petitioners, their clients (including Mr. Hasan), and others have raised allegations regarding the transfer of pipe support design packages among design organizations and the use of different design criteria or approaches. These allegations have repeatedly been determined to have no safety significance.

Having failed to prevail on behalf of Mr. Hasan in other forums, the Petitioners now appear to be taking a new

tactic by raising allegations that TU Electric has committed material false statements. These allegations are nothing more than a rehash of old allegations in a new form. The TU Electric statements cited by the Petitioners accurately reflected that field changes were reviewed by design groups. Furthermore, the Petitioners have misinterpreted and mischaracterized these statements, have selectively quoted from the testimony and affidavits of TU Electric, and have taken statements out of context. In short, the statements do not say what the Petitioners purport that they state.