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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'92 OCT -8 P4:10

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Morton B. Margulies, Chairman
Dr. James H. Carpenter
Dr. Peter S. Lam

In the Matter of	:	Docket No. 50-446-CPA
Texas Utilities Electric Company	:	ASLBP No. 92-668-01-CPA
	:	(Construction Permit Amendment,
	:	
(Comanche Peak Steam Electric Station, Unit 2)	:	October 8, 1992

OPPOSITION OF TU ELECTRIC TO
MOTION FOR EXTENSION OF TIME TO FILE BRIEF
BY SANDRA LONG DOW dba DISPOSABLE WORKERS
OF COMANCHE PEAK STEAM ELECTRIC STATION AND R. MICKY DOW

Introduction

On July 28, 1992, Sandra Long Dow and R. Micky Dow filed a motion to intervene and request for a hearing in this docket claiming that the construction permit extension sought by TU Electric should not be granted. The Dows' request failed to establish standing or any legally cognizable basis for granting their motion. On September 11, 1992, the Atomic Safety and Licensing Board ("ASLB") accorded the Dows' the opportunity to cure their deficient motion by filing an amendment on or before October 5, 1992.

JS03

Rather than adhere to that schedule, on October 5, 1992, the Dows' filed a motion requesting the ASLB to extend the time for filing an amendment on the ground that on September 3, 1992, ... Ricky Dow had been arrested on unspecified criminal charges and placed in jail in Colorado for a period of time in excess of thirty days. The Dows' motion goes on to make the incredible assertion that Mr. Dow's arrest was the result of improper actions taken by the federal government and TU Electric to "prevent [Mr. Dow] from making a timely filing". 1/ The Dows' motion also implies that Region IV of the NRC somehow caused Mr. Dow's computer and workpapers to be confiscated in Colorado, removed to the State of Kansas "and secreted there" again in order to preclude Mr. Dow from making a timely filing.

The Dows' motion must be rejected. It is simply inconceivable that any federal agency or any court would find good cause for a time extension based on the bald assertion that the moving party was arrested on criminal charges and placed in jail. 2/ It is similarly inconceivable that any agency or court would tolerate much less credit as good cause the Dows'

1/ The Dows' motion, p.2, states that "the suspect conditions of the Dow apprehension are clearly indicative of interference by both the utility and agencies of the United States Government."

2/ Mr. Dow's criminal activities are well documented. Mr. Dow was previously convicted of felonies in the State of Texas. He subsequently fled the state in order to avoid additional pending criminal charges. There are outstanding warrants for his arrest in the State of Texas. See "TU Electric's Answer to the Petition for Intervention and Request for Hearings by the Dows" (Aug. 14, 1992).

reckless and irresponsible allegations of improper conduct on the part of TU Electric, the NRC, or the federal government.

Apart from the fact that the Dows' motion fails to establish good cause, there is an additional ground for denying the Dows' request. Nothing in the Dow's motion suggests that Sandra Long Dow was somehow incapable of filing an amendment to the Dows' intervention and hearing request as required by the Board's September 11, 1992 order.

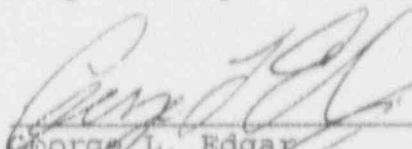
At the time the Dows' filed their intervention motion, they jointly asserted that they had some specified bases for their intervention and hearing request. If that assertion is to be believed, Ms. Dow as a moving party is equally responsible for providing those bases in the form of an amendment to the joint intervention request as required by the Board order. Nothing in the Dows' motion for an extension of time provides any ground for relieving Ms. Dow of the obligation of complying with the Board's September 11, 1992 order. ^{2/} The Dows' motion for an extension of time, as well as their intervention request should therefore be denied on that basis as well.

Finally, we would point out that the Dows' reprehensible attack on the integrity of TU Electric and the NRC

^{2/} The unsubstantiated statement in the Dows' motion that Mr. Dow's computer and workpapers were confiscated does not relieve Ms. Dow of fulfilling her joint responsibility to comply with the Board's order. Ms. Dow was a joint signatory of the Dows' intervention request and thus must be presumed to know the bases for the assertions made therein. See 10 C.F.R. § 2.708(c).

is simply one further example of the Dows' repeated abuse of the process of this Commission. By their actions in this and numerous other proceedings, the Dows have demonstrated that they are incapable of conducting themselves within the bounds of acceptable behavior. 4/ The time has clearly come to call a halt to the Dows' misconduct and their abuse of process. Their request for an extension of time and their request to become a party to this proceeding should be summarily rejected. 5/

Respectfully submitted,



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October 8, 1992

4/ TU Electric has presently pending before the Commission a motion requesting sanctions against the Dow's. That motion details the Dows' pattern of misconduct over the past two years. See "TU Electric's Answer to the Petition to Intervene and Motion and Supplemental Motion to Reopen by Micky Dow and Sandra Long Dow and TU Electric's Request for Admonition of the Dows" (March 16, 1992).

5/ Most recently, a Department of Labor Administrative Law Judge disqualified Micky Dow as a representative of a party, finding that he lacked the requisite character and integrity to appear before the DOL. See attached Order.

U.S. Department of Labor

Office of Administrative Law Judges
Heritage Plaza, Suite 530
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CASE NO. 92-ERA-16

YVONNE WILKINSON
Complainant

V.

TEXAS UTILITIES
Respondent

In Re: Richard Emery Dow, Jr. (a.k.a. R. Mickey Dow)

ORDER DISQUALIFYING COMPLAINANT'S REPRESENTATIVE

On March 6, 1992, an Order was entered denying Respondent's motion to disqualify Complainant's lay representative. In view of events occurring since that date and other circumstances, including the representative's failure to appear at the August 4, 1992 hearing, the Court has reconsidered that Order pursuant to 29 C.F.R. § 18.34(g)(2).¹

The privilege of appearing as a lay representative may be revoked if the Court finds that Mr. Richard Emery Dow, Jr. (a.k.a. R. Mickey Dow):

does not possess the requisite qualifications to represent others; or is lacking in character or integrity; has engaged in unethical or improper professional conduct; or has engaged in an act involving moral turpitude.

29 C.F.R. § 18.34(g)(3).²

In the present case, Mr. Dow has repeatedly demonstrated his deficient qualifications in the representation of Complainant, Mrs. Yvonne Wilkinson. Further, he has abused the initial consideration afforded him by this Court on March 6, 1992. As such, the Court finds that Mr. Dow is unqualified to represent Complainant in this claim. This decision is in furtherance of the discussion placed on

¹ Section 18.34(g)(2) states in part: "The administrative law judge may, at any time, inquire as to the qualification or ability of such person to render legal assistance."

² The Court finds that Mr. Dow had ample notice and opportunity to be heard prior to the entry of this Order.

the record August 4, 1992, and is additionally supported by the following reasons:

1. Mr. Dow failed to appear at the August 4, 1992 hearing of this matter, thus rendering Complainant without effective representation. Such failure to appear impaired the prosecution of Complainant's case and denied her the assistance upon which she relied. Mr. Dow has refused to appear at a hearing in Texas, even though both of the parties and the witnesses reside in that state. See Order Denying Motion to Change the Location of Trial, entered July 24, 1992.

2. Mr. Dow failed to comply with this Court's June 11, 1992 Pre-Trial Order. This Order directed Mr. Dow to exchange proposed exhibits and a witness list with Respondent, with a copy to the Court. Mr. Dow has asserted that he is in possession of Complainant's primary exhibits.

3. Mr. Dow has repeatedly demonstrated dilatory tactics in prosecuting this claim, including, but not limited to, the following: seeking to change the location of the August 4, 1992 hearing two weeks prior to the hearing, after he was notified of the date, place and time of the hearing by an Order entered on June 11, 1992; failing to timely notify the Court of his medical excuse for failing to appear at the March 10, 1992 hearing, instead responding after the issuance of an Order to Show Cause; submitting overly broad discovery requests after failing to appear at the original March 10, 1992 hearing (see Order Denying Motion to Compel and Granting Motion to Stay Discovery, issued May 20, 1992); and failure to allow Complainant's deposition due to his alleged inability to attend after this Court ordered him to do so (see Mr. Dow's letter to Respondent's attorney, dated February, 25, 1992³).

4. Mr. Dow has exhibited a lack of knowledge regarding the applicable procedure before this Court, including, but not limited to, the following: several ex parte attempts to communicate with the Court; requests for a hearing on the merits via telephone conference (see letter from Judge Jennings to Mr. Dow denying request for telephone conference, dated February 10, 1992; Order Denying Motion for Reconsideration of Order Denying Telephone Hearing, issued February 21, 1992); an attempted erroneous interlocutory appeal; and the lack of a legal basis for changing the place of the August 4, 1992 hearing.

³ In his letter, Mr. Dow discussed his interlocutory appeal and other motions he had filed, "so [he did] not see March 10 as remaining a viable hearing date." He also urged Respondent to settle this claim in that letter.

5. Mr. Dow's relocation to Canada and several locations in Pennsylvania during the pendency of this case has made it difficult for the Court and Respondent to communicate with or to serve him.

6. Mr. Dow's character and integrity have been placed in question by an outstanding warrant for his arrest currently existing in Criminal District Court #1, Tarrant County, Texas, on the charge of felony theft by check, and an outstanding warrant for his arrest currently existing in the County Court of Erath County, Texas, on the charge of theft \$200.00 to \$750.00.⁴ See Respondent's Request For an Examination of the Qualification of Complainant's Representative, dated February 28, 1992. Mr. Dow has not denied the validity of these warrants.

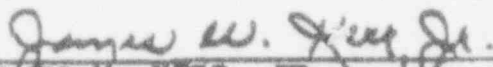
7. Mr. Dow has engaged in acts involving moral turpitude, as demonstrated by his 1979 felony convictions for theft by check and breaking and entering of postal vehicles, and his 1978 felony conviction for burglary. See Respondent's Request For an Examination of the Qualification of Complainant's Representative, dated February 28, 1992. Mr. Dow has not contested the evidence establishing these convictions.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that, based on the discussion placed on the record on August 4, 1992, the foregoing reasons and the totality of his conduct, Mr. Richard Emery Dow, Jr. (a.k.a. R. Mickey Dow) is hereby disqualified to serve as a lay representative in this case.

It is further ORDERED that Mr. Dow's name is hereby stricken from the service list and no party is obligated to include service to him.

Entered this 19th day of August, 1992, at Metairie, Louisiana.



JAMES W. KERR, JR.
Administrative Law Judge

JWK:jim

⁴ These warrants may be the actual basis for Mr. Dow's refusal to participate in a trial conducted in Texas.

SERVICE SHEET

Case Name: YVONNE WILKINSON

Case No.: 92-ERA-16

Title of Document:

ORDER DISQUALIFYING COMPLAINANT'S REPRESENTATIVE

A copy of the above document was sent to the following:

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Terri C. DiCarlo

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Legal Technician
Dated: August 19, 1992

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

DOCKETED
USNRC

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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)

TEXAS UTILITIES ELECTRIC)
COMPANY)

(Comanche Peak Steam Electric)
Station, Unit 2))

Docket No. 50-446-CPA
ASLBP No. 92-668-01-CPA

(Construction Permit
Amendment)

CERTIFICATE OF SERVICE

I hereby certify that copies of OPPOSITION OF TU
ELECTRIC TO MOTION FOR EXTENSION OF TIME TO FILE BRIEF BY SANDRA
LONG DOW dba DISPOSABLE WORKERS OF COMANCHE PEAK STEAM ELECTRIC
STATION AND R. MICKY DOW were served upon the following persons
by deposit in the United States mail (except as indicated below),
postage prepaid and properly addressed, on the date shown below:

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board
Adjudicatory File
Washington, D.C. 20555
(Two Copies)

Office of the Secretary*
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Chief, Docketing
and Service Section
(Original Plus Two Copies)

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Washington, D.C. 20555

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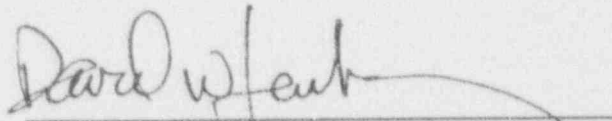
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Dated this 8th day of October, 1992.



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