



this information in a second telephone call on May 30, 1985. <sup>1/</sup> CASE also represents that:

[n]o indication was provided whether this destruction occurred before or after the FOIA request, or whether it represented Mr. Stello's standard procedures with documents generated or received by him in the normal course of his employment.

CASE Request, p. 1. However, neither CASE's Request or the Garde Affidavit make clear whether GAP or Ms. Garde inquired into the circumstances and timing of the alleged destruction of documents, during the two telephone calls with the FOIA office. CASE then makes several assertions regarding Mr. Stello's involvement in the CPSES decision-making process. CASE contends that Mr. Stello participated in a "public press briefing on the status of the plant," that he has been "directly involved" in communicating with the Contention 5 panel, and that Mr. Stello has been "playing a role in the development of this case." CASE's Request, pp. 1-2. Accordingly, CASE requests that a restraining order be issued against the Staff directing the Staff not to destroy documents relevant to CPSES. <sup>2/</sup> CASE's Request, pp. 3-4.

For the reasons set forth below, the NRC Staff ("Staff") opposes CASE's Request.

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<sup>1/</sup> CASE's Request does not precisely indicate whether Ms. Garde made the second confirming phone call; the Garde Affidavit does not even mention the second call.

<sup>2/</sup> The Staff notes that CASE's Request is founded upon the Staff response to a FOIA request by the Government Accountability Project ("GAP"), an organization which is not a party to this proceeding. CASE's interest in this matter apparently is to preserve documents for possible future discovery in this proceeding. See CASE's Request, p. 3.

## II. BACKGROUND

Following the filing of CASE's Request, a telephone conference call was held among Administrative Judges Bloch and Grossman, and counsel for the parties in this docket. Also participating in the telephone conference call were Joseph M. Felton, Director of the Commission's Division of Rule and Records in the Office of Administration, and Edward Shomaker, Senior Information Law Attorney in the Office of the Executive Legal Director. During the telephone conference, Messrs. Felton and Shomaker agreed to gather certain information and file a partial response to GAP's FOIA request; Mr. Treby, counsel to the Staff, agreed to look into the matter of a press conference allegedly held by Mr. Stello during May 20-22, 1985.

On June 4, 1985, Mr. Treby filed a letter with the Board and parties setting forth information made known to him regarding the alleged press conference. Attached to Mr. Treby's letter were copies of several newspaper articles which were referred to in the letter. Also on June 4, 1985, Mr. Felton transmitted a partial response to GAP regarding its FOIA request ("Felton Letter"). A copy of the Felton Letter was attached to Mr. Treby's letter to the Board and parties.

## III. DISCUSSION

The Staff opposes CASE's Request for a restraining order against the Staff. CASE has made no showing that the Staff is improperly discarding or destroying documents. Rather, CASE's Request appears to be based on misunderstandings by CASE concerning Mr. Stello's routine

handling of documents, and his role in the Staff's decision-making process for CPSES. First, Mr. Stello has not improperly discarded or destroyed documents relating to CPSES. Indeed, Mr. Stello has never destroyed any documents after receiving a FOIA request. Felton Letter, p. 1. Mr. Stello, as the Deputy Executive Director for Operations and Generic Requirements, reviews hundreds of pages of documentation which are routed to him each week. After he notes them, and possibly discuss them with the Staff, he routinely discards ("destroys") the documents unless they concern matters which he is directly responsible for or is working on at that time. Felton Letter, p. 1. This brings us to CASE's second misunderstanding, regarding Mr. Stello's involvement in the NRC's decision-making process for CPSES.

Mr. Stello is not in the direct decision-making process for CPSES. Felton Letter, p. 1. As the Board parties are aware, a Comanche Peak Task Force has been established to coordinate all Staff actions necessary to support the operating license and hearing processes. See March 12, 1984 Memorandum from William J. Dircks establishing Comanche Peak Task Force; <sup>3/</sup> Board Notification 85-046 (April 23, 1985) (transmitting a Comanche Peak Task Force schedule and organizational chart). These referenced documents clearly indicate that Mr. Vincent Noonan, the Director of the Comanche Peak Task Force, is the Staff individual who is directly responsible for Staff decisions on CPSES. Mr. Stello is not referenced, by name or by title, in any of these documents. Since

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<sup>3/</sup> Attachment 3 to "NRC Staff Report to the Licensing Board on Status and Schedule for Addressing Hearing Issues" (October 19, 1984).

Mr. Stello plays no direct decision-making role for CPSES, he has neither maintained a file on CPSES nor retained any documents relating to CPSES, with the exception of several documents relating to two subpoenas. See June 10, 1985 letter from J. M. Felton to GAP (2nd Felton Letter). <sup>4/</sup> The documents relating to the subpoenas require further explanation, since they were not mentioned in Mr. Felton's June 4, 1985 letter. <sup>5/</sup>

As set forth in the 2nd Felton Letter, prior to sending out the June 4, 1985 letter, Mr. Stello's office checked with members of the Staff to see if they could recall sending documents on CPSES to Mr. Stello. When that survey turned up negative, Mr. Felton sent his June 4, 1985 response. Subsequently, one of the Staff individuals contacted by Mr. Stello's office remembered the proposed issuance of subpoenas to two individuals. Mr. Stello's subpoenas file was checked, which resulted in the identification of the documents attached as Appendix A to the 2nd Felton Letter.

In sum, Mr. Stello has not improperly destroyed any CPSES documents subject to GAP's FOIA request. Thus, CASE's concern in its Request is

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<sup>4/</sup> A copy of the 2nd Felton Letter is attached to this pleading. The documents relating to the two subpoenas are enclosed in Appendix A to the 2nd Felton Letter.

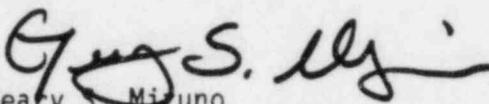
<sup>5/</sup> The June 4, 1985 Felton Letter indicated that Mr. Stello's telephone log and appointment calendar may be responsive to GAP's FOIA request, and that they were currently undergoing Staff review to determine if they were agency records. As indicated in Mr. Felton's June 10, 1985 letter to GAP, that review is completed. Based upon a review of the documents, the NRC's FOIA office has determined that the telephone log and appointment calendar do not contain information relevant to CPSES, and in any case are not agency records subject to disclosure under FOIA.

unfounded. In any event, the requested order is unnecessary. Specifically, in this case, members of the TRT were instructed from the beginning of their involvement to maintain all documents related to the TRT's inspection efforts. Subsequently, they have been instructed to produce these documents to the NRC's FOIA office in response to GAP's numerous FOIA requests.

IV. CONCLUSION

The Board should deny CASE's Request in its entirety.

Respectfully submitted,

  
Geary S. Mizuno  
Counsel for NRC Staff

Dated in Bethesda, Maryland  
this 10th day of June, 1985



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D. C. 20555  
JUN 10 1985

Ms. Billie Pirner Garde  
Director, Citizens Clinic  
Government Accountability Project  
1555 Connecticut Avenue, Suite 202  
Washington, DC 20036

IN RESPONSE REFER  
TO FOIA-85-351

Dear Ms. Garde:

This is in further response to your Freedom of Information Act request of May 13, 1985. In that request you asked for any and all agency records "relevant to and/or generated in connection with all communications generated or received by Victor Stello regarding the Comanche Peak nuclear power plant, including internal correspondence."

In my letter dated June 4, 1985 I indicated that Mr. Stello did not recall ever having received Comanche Peak documents addressed exclusively to him in his present position, nor did he recall ever having prepared such documents. In our telephone conversation last week, I also indicated that Mr. Stello's office was checking with members of the staff to see if they could recall sending documents directly to Mr. Stello. When that survey turned up negative, I signed and mailed the letter. Subsequently, one of the persons contacted remembered the proposed issuance of a subpoena to two individuals. Mr. Stello subpoena file was checked, and the enclosed documents referring to Comanche Peak, as listed in Appendix A, were found.

With respect to Mr. Stello's telephone logs and appointment calendars, I have personally reviewed these records for 1984 and 1985, and there is no substantive information pertaining to Comanche Peak in the records. The records, which are maintained by Mr. Stello's personal secretary, contain both business and personal information. The records are not circulated to any other member of the staff, are not required to be maintained by NRC policy or procedures, are prepared for Mr. Stello's personal convenience, and are retained or discarded at Mr. Stello's sole discretion. Hence, the records are the personal property of Mr. Stello and are not agency records subject to disclosure under the FOIA. (See Porter County Chapter Isaak Walton League v. AEC, 380 F. Supp 630 (1974) and The Bureau of National Affairs, Inc. v. U.S. Department of Justice and Environmental Defense Fund v. Office of Management and Budget, 742 F.2d 1484 (1984)). Further, the interrelationship of Mr. Stello and his confidential secretary does not waive the protection normally accorded this type of personal information.

This completes action on your request.

Sincerely,

A handwritten signature in black ink, appearing to read "J. M. Felton".

J. M. Felton, Director  
Division of Rules and Records  
Office of Administration

Enclosures: As stated

## Appendix A

1. 07/27/82 Memo to Regional Administrators from W. Dircks re: Delegation of Subpoena Authority (1 page).
2. 12/08/83 Memo to V. Stello from J. Collins re: Recommended Issuance of Subpoena for Interview of Thomas Brandt (1 page).
3. 12/13/83 Memo to Chairman and Commissioners from W. Dircks re: Issuance of Subpoena in Aid of Comanche Peak Investigation (1 page).
4. 12/20/84 A Subpoena from the NRC to Thomas Brandt re: Texas Utilities Generating Company (1 page).
5. 12/20/83 Memo to multiple people from W. Brown re: Subpoena for Interview of Thomas Brandt (1 page).
6. 09/07/84 Memo to V. Stello from J. Collins re: Issuance of Subpoena for Testimony of an Allegor (Comanche Peak) (2 pages).
7. 09/13/84 Memo to V. Stello from T. Ippolito re: Subpoena for Mr. Charles Atchison (1 page).
8. 10/25/84 Note to T. Ippolito from V. Stello re: 10/25/85 conversation (1 page).
9. Undated Subpoena from the NRC to Charles Atchison re: Texas Utilities Generating Company (Comanche Peak Steam Electric Station, Units 1 and 2) (1 page) (Draft).
10. Undated Memo to Chairman and Commissioners from W. Dircks re: Issuance of Subpoena for Testimony of an Allegor (Comanche Peak ) (2 pages) (Draft).

July 27, 1982

MEMORANDUM FOR: Ronald C. Haynes, Regional Administrator, Region I  
James P. O'Reilly, Regional Administrator, Region II  
James G. Keppler, Regional Administrator, Region III  
John T. Collins, Regional Administrator, Region IV  
Robert H. Engelken, Regional Administrator, Region V

FROM: William J. Dircks  
Executive Director for Operations

SUBJECT: DELEGATION OF SUBPOENA AUTHORITY

Effective this date, I am redelegating to you the authority given to me on July 20, 1982 by the Commission to issue subpoenas during the course of investigations or inspections. This authority is automatically redelegated to whomever you may designate as acting in your authorized absence. In the event you wish to exercise this authority, you must advise me of your intent, and the rationale thereof, through DEDROGR, a minimum of three days in advance of use. DEDROGR, in turn, will acquire ELD concurrence. Emergency situations demanding less notice will be dealt with as necessary.

This delegation is limited by the requirement that during an initial trial period of about 10 cases I must advise the Commission in advance of the exercise of this authority. During this trial period, DEDROGR will keep track of requests, assure that the Commission is informed, and request elimination of the restriction when the trial case limit has been reached.

(Signed) William J. Dircks

William J. Dircks  
Executive Director  
for Operations

cc: V. Stello, DEDROGR  
G. Cunningham, ELD  
R. DeYoung, IE  
J. Fitzgerald, OI

FOIA-85-351

(AI)



5B

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION IV  
611 RYAN PLAZA DRIVE, SUITE 1000  
ARLINGTON, TEXAS 76011

December 8, 1983

MEMORANDUM FOR: V. Stello, Jr., Deputy Executive Director for  
Regional Operations & Generic Requirements, OEDO

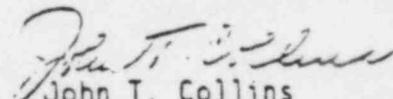
FROM: John T. Collins, Regional Administrator, Region IV

SUBJECT: RECOMMENDED ISSUANCE OF SUBPOENA FOR INTERVIEW OF  
THOMAS BRANDT

Pursuant to the Executive Director for Operations' (EDO) Delegation of Subpoena Authority dated July 27, 1982, I am advising the EDO, through you, of my intent to issue the attached subpoena to Thomas Brandt commanding his appearance for the purpose of having him testify before Nuclear Regulatory Commission (NRC) investigative personnel to provide information concerning the alleged improper termination of William Dunham's employment from Brown & Root, Inc. (B&R) and the possible intimidation of QA/QC coatings inspectors as a result thereof.

Mr. Brandt stated that he would respond to questioning regarding the subject issue only pursuant to a lawful subpoena.

It is my understanding that the EDO must advise the Commission in advance of the exercise of this authority.

  
John T. Collins  
Regional Administrator

Attachment:  
As stated

cc: w/att  
~~S. Lieberman, OELD~~  
P. Check, RIV  
W. Brown, RIV  
T. Westerman, RIV  
R. Herr, OI-RIV

FOIA-85-351

(A2)

DEC 13 1983

Distribution: <sup>316</sup> ~~MA83-77~~  
Dircks  
Roe  
Rhem  
EDO r/f  
Stelio  
DeYoung  
Collins, RIV  
Lieberman, ELD  
Cunningham, ELD  
*Send memo*  
*12/13/83*

MEMORANDUM FOR: Chairman Palladino  
Commissioner Gilinsky  
Commissioner Roberts  
Commissioner Asselstine  
Commissioner Bernthal

FROM: William J. Dircks  
Executive Director for Operations

SUBJECT: ISSUANCE OF SUBPOENA IN AID OF COMANCHE PEAK  
INVESTIGATION

In accordance with the delegation of authority to issue subpoenas dated July 20, 1982, this is to advise you that the Administrator of NRC Region IV intends to issue a subpoena to compel the testimony of Thomas Brandt, a quality assurance supervisor employed by the Texas Utilities Generating Company, which is licensed to construct the Comanche Peak Steam Electric Station. The supervisor's testimony is sought in connection with an ongoing investigation of the allegedly improper termination of William Dunham, a Brown and Root employee and the possible intimidation of QA/QC coatings inspectors resulting therefrom.

Mr. Brandt has stated that he would respond to questioning regarding these matters only pursuant to a subpoena. Mr. Brandt may have information relevant to the investigation because, by virtue of his position, he may have knowledge of the circumstances surrounding Mr. Dunham's discharge.

The Office of Investigations supports the issuance of the subpoena. Unless otherwise directed by the Commission, the proposed subpoena will be issued if no comments are received from the Commission by C.O.B. December 19, 1983.

(Signed) William J. Dircks

William J. Dircks  
Executive Director for Operations

cc: SECY  
OGC  
OI

FOIA-85-351

A3

\*SEE PREVIOUS CONCURRENCE  
REVISED IN EDO OFFICE 12/12/83

:OELD*	: Reg. IV	: EDO	:	:	:
:JLieberman:sf	: JCollins	: WJDircks	:	:	:
:12/9/83	: 12/11/83	: 12/13/83	:	:	:

# United States of America

## NUCLEAR REGULATORY COMMISSION

In the matter of. Texas Utilities Generating Company

DOCKET NO. 50-445  
50-446

TO Thomas Brandt  
c/o Texas Utilities Generating Company  
P. O. Box 1002  
Glen Rose, Texas 76043

YOU ARE HEREBY COMMANDED to appear at Suite 835, 611 Ryan Plaza Drive,  
U.S. Nuclear Regulatory Commission, Region IV, Office of Investigations Field Office,  
in the city of Arlington, Texas  
on the 3rd day of January 1984 at 9:00 o'clock A. M.  
to continue as necessary for the purpose of testifying before NRC investigative  
personnel to provide information concerning the alleged improper termination of  
William Dunham's employment from Brown & Root, Inc., and the possible  
intimidation of QA/QC coatings inspectors as a result thereof.

*John T. Collins*

John T. Collins, Regional Administrator, Region IV

ATTORNEY FOR Region IV  
U.S. Nuclear Regulatory Commission  
William L. Brown

TELEPHONE (817) 860-8271

December 20 1983

FOIA-85-351

A4

On motion made promptly, and in any event at or before the time specified in the subpoena for compliance by the person to whom the subpoena is directed, and on notice to the party at whose instance the subpoena was issued, the Commission may (1) quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion on just and reasonable terms. Such motion should be directed to the Secretary of the Commission, Washington, D. C. 20555.

December 20, 1983

MEMORANDUM FOR: J. T. Collins  
P. S. Check  
J. E. Gagliardo  
E. H. Johnson  
D. M. Hunnicutt  
T. F. Westerman  
R. K. Herr  
D. D. Driskill

FROM: William L. Brown, Regional Counsel

SUBJECT: SUBPOENA FOR INTERVIEW OF THOMAS BRANDT

Attached is a subpoena to Thomas Brandt which John Collins has signed and sent out today.

Mr. Brandt is a QA supervisor employed by TUGCO. His testimony is sought in connection with an ongoing investigation of the allegedly improper termination of William Dunham, a Brown & Root employee, and the possible intimidation of QA/QC coatings inspectors resulting therefrom.

Mr. Brandt has stated that he would respond to questioning regarding these matters only pursuant to a subpoena. Mr. Brandt may have information relevant to the investigation because, by virtue of his position, he may have knowledge of the circumstances surrounding Mr. Dunham's discharge.

The Commission was notified of the Regional Administrator's intent to issue the subpoena and I was informed by DELD today that no objections or comments were received from the Commission.

It was previously intended to issue the subpoena requiring appearance on December 16, 1983. However, because of the time needed for a meaningful notification to the Commission, the date had to be changed to January 3, 1984. Therefore, please destroy all copies of the subpoena you may have which contains the December 16 date in order to avoid any future confusion.

William L. Brown  
Regional Counsel

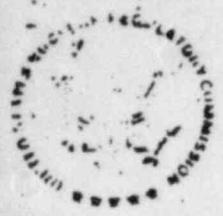
Attachment: As stated

RC  
WLBrown:mj  
12/ /83

FOIA-85-351

A5

READING FILE 001



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

*Collins*

*RF*

SEP 07 1984

SEP 13 1984

MEMORANDUM FOR: Victor Stello, Jr., Deputy Executive Director  
for Regional Operations and Generic Requirements

FROM: John T. Collins, Regional Administrator  
Region IV

SUBJECT: ISSUANCE OF SUBPOENA FOR TESTIMONY OF AN ALLEGER  
(COMANCHE PEAK)

Under NRC Manual Chapter 01303 and the April 13, 1984, "Delegation of Subpoena Authority," I propose to issue the attached subpoena at the request of Thomas A. Ippolito, Comanche Peak Project Director, for the testimony of Mr. Charles Atchison and documents held by Mr. Atchison concerning the adequacy of construction of the Comanche Peak Steam Electric Station.

The April 13, 1984, Delegation requires that I advise the EDO, through you, a minimum of three days in advance, of the proposed issuance of a subpoena. The Delegation provides that you will acquire ELD's concurrence and to expedite this process; I am transmitting a copy of this memorandum directly to Mr. Cunningham. Additionally, for a trial period of about ten cases, the Delegation indicates that the Commission will be advised in advance of the EDO's authorization of issuance of a subpoena by a Regional Administrator. Accordingly, I am requesting that you acquire the concurrences and undertake the required consultations.

The circumstances surrounding the proposed issuance of a subpoena to Mr. Atchison have been discussed between my Regional Counsel, William Brown; the Comanche Peak Project Director, Thomas A. Ippolito; and James Lieberman, ELD; and are discussed in the attached draft memorandum for the Commissioners.

The Comanche Peak Technical Review Team considers this subpoena essential to the proper disposition of allegations and concerns regarding the adequacy of construction of the Comanche Peak facility. Mr. Atchison has stated to the staff that he has approximately 1000 previously unidentified concerns regarding this facility. Mr. Atchison has refused to make the substance of these concerns known, in spite of repeated requests by the staff, and consequently, the issuance of a subpoena is appropriate.

**FOIA-85-351**

**(A6)**

*IVC*

SEP 07 1984

Victor Stello, Jr.

- 2 -

Your prompt concurrence will be appreciated.

151

John T. Collins, Regional Administrator  
Region IV

Enclosures:  
As stated

cc w/enclosures:  
HDenton, NRR  
ECase, NRR  
RDeYoung, IE  
GCunningham, ELD  
JScinto, ELD  
STreby, ELD  
JLieberman, ELD  
Tippolito, NRR  
DEisenhut, NRR

bcc w/enclosures:  
PDR  
RF  
SF  
Tippolito  
RWessman  
DEisenhut rf  
JCollins  
JCollins rf

TO	NRR	<del>R/D/NRR</del>	<del>ELD</del>	RIV		
FROM	Tippolito/Pab	<del>DEisenhut</del>	<del>GCunningham</del>	JCollins		
DATE	09/7/84	09/7/84	09/7/84	09/7/84		

OFFICIAL RECORD COPY



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION IV  
811 RYAN PLAZA DRIVE, SUITE 1000  
ARLINGTON, TEXAS 76011

*SB*  
*DH* *JH*  
FILE \_\_\_\_\_

September 13, 1984

MEMORANDUM FOR: Victor Stello, Jr., Deputy Executive Director For  
Regional Operations and Generic Requirements  
Office Of The Executive Director For Operations

FROM: Thomas A. Ippolito, Project Director  
Comanche Peak Technical Review Team

SUBJECT: SUBPOENA FOR MR. CHARLES ATCHISON

In our telephone conversation of yesterday (September 12, 1984) you requested that we make an additional effort to contact Mr. Charles Atchison and request that he release to me the approximately 1000 concerns he claims to have in his possession.

We have contacted Mr. Atchison and he has agreed to meet with the TRT staff this evening (September 13, 1984) and has indicated that he will provide us with the concerns.

Please withhold action on the subpoena request of John Collins, dated September 7, 1984, until we have met with Mr. Atchison and have received the concerns he has promised to deliver.

We will advise you of the results of our meeting with Mr. Atchison.

Thomas A. Ippolito, Project Director  
Comanche Peak Technical Review Team

cc: H. R. Denton, NRR  
D. G. Eisenhut, NRR  
G. H. Cunningham, ELD  
R. C. DeYoung, IE  
J. T. Collins, RIV

FOIA-85-351

(A7)



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555

Deputy Executive Director For  
Regional Operations & Generic Requirements

October 25, 1984

Thomas A. Ippolito, Project Director  
Comanche Peak Technical Review Team

Per our conversation of October 25, 1984,  
attached is the correspondence related to  
the proposed subpoena related to Comanche  
Peak.

I understand that at the moment, subpoenas  
are not required and you will pass this on  
to Vince Noonan for future reference.

*Vic*

Vic Stello, Jr.

Enclosure:

Subpoena for Mr. Charles Atchison  
MF Stello fm Ippolito 9/13/84  
Proposed Memo to Comm fm Dircks  
MF VS fm Collins R-IV, 9/7/84  
Original Subpoena 50-445&446

FOIA-85-351

(A8)



# United States of America

## NUCLEAR REGULATORY COMMISSION

### SUBPOENA AD TESTIFICANDUM AND DUCES TECUM

In the matter of:

Texas Utilities Generating Company  
(Comanche Peak Steam Electric  
Station, Units 1 and 2)

DOCKET NO.s 50-445  
50-446

TO

Charles Atchison  
P. O. Box 901  
Azle, Texas 76020

(By Registered Mail.. Return Receipt Requested)

**YOU ARE HEREBY COMMANDED** to appear at NRC, Region IV, Parkway  
Central Plaza Building, 611 Ryan Plaza Drive, Suite 1000  
in the city of Arlington, Texas 76011  
on the 20th day of September 1984 at 1:00 o'clock p.m.

to provide NRC Comanche Peak Technical Review Team with sworn testimony  
before a Court Reporter regarding the adequacy of the construction of  
the Comanche Peak Steam Electric Station and to bring with you and make  
available for inspection and copying any and all records in your possession,  
including but not limited to documents and logs, concerning the adequacy of  
such construction.

For the Nuclear Regulatory Commission

John T. Collins, Regional Administrator

ATTORNEY FOR Region IV  
U.S. Nuclear Regulatory Commission  
William I. Brown

TELEPHONE (817) 860-8271

FOIA-85-351

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On motion made promptly, and in any event at or before the time specified in the subpoena  
for compliance by the person to whom the subpoena is directed, and on notice to the party  
at whose instance the subpoena was issued, the Commission may (1) quash or modify the  
subpoena if it is unreasonable or requires evidence not relevant to any matter in issue,  
or (2) condition denial of the motion on just and reasonable terms. Such motion should  
be directed to the Secretary of the Commission, Washington, D.C. 20555.

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

DRAFT 1

MEMORANDUM FOR: Chairman Palladino  
Commissioner Roberts  
Commissioner Asselstine  
Commissioner Bernthal  
Commissioner Zech

FROM: William J. Dircks  
Executive Director for Operations

SUBJECT: ISSUANCE OF SUBPOENA FOR TESTIMONY OF AN ALLEGER  
(COMANCHE PEAK)

John T. Collins, Regional Administrator, Region IV, has requested my authorization to issue a subpoena for testimony and documents held by an alleged, at the Comanche Peak Steam Electric Station. This material concerns the construction adequacy of the Comanche Peak facility.

The circumstances concerning the issuance of the subpoena are as follows.

Since July 8, 1984, the NRC has had an extensive staff of personnel at the Comanche Peak site to evaluate various technical issues, allegations, and concerns regarding the construction of this facility. As part of this evaluation, the staff has interviewed individuals who have raised allegations regarding Comanche Peak. In the course of these interviews, additional allegations or concerns were, in some cases, revealed. These additional matters have been included in the onsite staff review.

On August 2, 1984, the staff interviewed Mr. Charles Atchison, a former Comanche Peak employee, to clarify technical aspects of allegations he previously had provided to the NRC. In the course of that interview.

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Mr. Atchison provided a list of approximately 80 concerns. Also, he stated that he had approximately 1000 additional concerns regarding the construction of Comanche Peak which had not previously been revealed to the staff. Mr. Atchison declined to provide the substance of these concerns, but stated he held documents and logs regarding the concerns.

The staff has repeatedly sought the release of this material from Mr. Atchison, but he has continued to decline to provide the material. It is believed that the material may have the potential to identify new concerns as well as be relevant to other allegations being evaluated at Comanche Peak. The staff desires to complete its evaluation of the Comanche Peak allegations (currently numbering about 500) in a timely manner to support a licensing decision on the facility and to avoid the potential situation of additional allegations surfacing at the last minute. The applicants state that they would be ready to load fuel in early October 1984.

Therefore, unless otherwise directed by the Commission, the proposed subpoena will be issued by Mr. Collins on September 12, 1984.

William J. Dircks  
Executive Director for Operations

cc: SEUY  
OGC  
OPE  
ELD

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )

TEXAS UTILITIES ELECTRIC COMPANY, )  
et al. )

(Comanche Peak Steam Electric )  
Station, Units 1 and 2) )

Docket Nos. 50-445/2  
50-446/2

DOCKETED  
USNRC

'85 JUN 13 P4:50

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO CASE REQUEST FOR IMMEDIATE ORDER DIRECTING STAFF TO PRESERVE DOCUMENTS" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 10th day of June, 1985:

Peter B. Bloch, Esq., Chairman\*  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Herbert Grossman, Alternate Chairman\*  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Dr. Walter H. Jordan  
Administrative Judge  
881 W. Outer Drive  
Oak Ridge, TN 37830

Dr. Kenneth A. McCollom  
Administrative Judge  
Dena, Division of Engineering,  
Architecture and Technology  
Oklahoma State University  
Stillwater, OK 74078

Mrs. Juanita Ellis  
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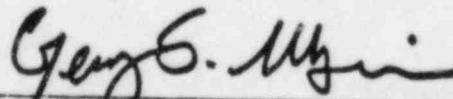
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