

UNITED STATES NUCLEAR REGULATORY COMMISSION  
DOCKET NO. 50-445  
TEXAS UTILITIES ELECTRIC COMPANY  
COMANCHE PEAK STEAM ELECTRIC STATION, UNIT 1  
ISSUANCE OF DIRECTOR'S DECISION UNDER 10 CFR § 2.206

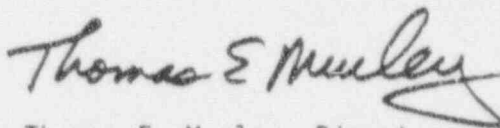
Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has taken action with regard to a Petition for action under 10 CFR § 2.206 referred to the staff by the Nuclear Regulatory Commission (NRC) by Memorandum and Order dated January 17, 1992 (CLI-92-01). The Petition concerns allegations contained in a Motion to Reopen the Record (Motion) filed by Sandra Long Dow and Richard E. Dow (Petitioners) concerning the pipe support design process at the Comanche Peak Steam Electric Station Unit 1. Petitioners asserted as a basis for their Motion that Texas Utilities Electric Company's (TUEC or Licensee) witnesses repeatedly made false and misleading statements to the Atomic Safety and Licensing Board between 1982 and 1985.

The Director of the Office of Nuclear Reactor Regulation has determined to deny the Petition. The reasons for this denial are explained in the "Director's Decision Under 10 CFR § 2.206" (DD-93-02), which is available for public inspection at the Commission's Public Document Room, the Geiman Building, 2120 L Street, N.W., Washington, D.C. 20555, and at the Local Public Document Room for the Comanche Peak Steam Electric Station, at the University of Texas at Arlington Library, Government Publication/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019. A copy of the decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR

§ 2.206(c) of the Commission's regulations. As provided by this regulation, the decision will constitute the final action of the Commission 25 days after the date of issuance of the decision unless the Commission on its own motion institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 15th day of January 1993.

FOR THE NUCLEAR REGULATORY COMMISSION

A handwritten signature in cursive script that reads "Thomas E. Murley". The signature is written in dark ink and is positioned above the printed name and title.

Thomas E. Murley, Director  
Office of Nuclear Reactor Regulation

UNITED STATES OF AMERICA  
 NUCLEAR REGULATORY COMMISSION  
 OFFICE OF NUCLEAR REACTOR REGULATION

Thomas E. Murley, Director

In the Matter of	)	
	)	
TU ELECTRIC COMPANY	)	Docket Nos. 50-445 and 50-446
	)	10 CFR § 2.206
(Comanche Peak Steam Electric	)	
Station, Units 1 and 2)	)	

DIRECTOR'S DECISION UNDER 10 CFR § 2.206

I. INTRODUCTION

On July 30, 1991, Michael D. Kohn submitted a request (Petition) addressed to the Chairman and to the Executive Director for Operations of the Nuclear Regulatory Commission (NRC) on behalf of the National Whistleblowers Center and certain confidential allegers (Petitioners) to take action with regard to the TU Electric Company's (TUEC or the Licensee) Comanche Peak Steam Electric Station (CPSES). Petitioners request that the NRC provide the following relief: (1) hold licensing hearings to determine, in view of TUEC's having made material false statements to the NRC, whether the Licensee has the requisite character and competence to operate a nuclear power facility; (2) fine and otherwise penalize TUEC for making material false statements to the NRC; (3) investigate whether the NRC staff knew of TUEC's alleged material false statements and failed to act on such knowledge;<sup>1</sup> and (4) determine which high-level managers were responsible for TUEC's making false material statements, and ban such persons from all licensed nuclear facilities.

<sup>1</sup> As noted in my letter of August 28, 1991, to Petitioners, a copy of the Petition was forwarded to the NRC Office of Inspector General. This Director's Decision does not address allegations of NRC staff misconduct.

~~9301270029~~

Petitioners assert as bases for their requests that (1) TUEC made material false statements before the Atomic Safety and Licensing Board (ASLB) during hearings on TUEC's application for an operating license<sup>2</sup> to conceal significant safety flaws in the design of CPSES pipe support systems; namely, in violation of 10 CFR Part 50, Appendix B, TUEC transferred pipe support packages for review and certification between pipe support design groups that used different, multiple design criteria; (2) TUEC's material false statements delayed construction of CPSES Unit 1 and thus were germane to a contention in a related proceeding<sup>3</sup> that TUEC had intentionally delayed construction of CPSES Unit 1; (3) TUEC, Citizens Association for Sound Energy (CASE), and the NRC staff deliberately withheld information from the ASLB about the transfer of pipe support reviews between pipe support design groups; and (4) TUEC employees responsible for making material false statements to the NRC continue to perform critical engineering and quality assurance tasks at CPSES.

The Licensee responded to the Petition by letter dated July 2, 1992. (Hereinafter, "Response")<sup>4</sup>

I have now completed my evaluation of the Petition and have determined, for the reasons set forth below, that no adequate basis exists to take action against the Licensee. Accordingly, the Petition is denied.

---

<sup>2</sup> NRC Docket Nos. 50-445 and 50-446. Texas Utilities Generating Company (Comanche Peak Steam Electric Station, Units 1 and 2).

<sup>3</sup> The January 20, 1986, application of TUEC to extend its construction permit was the subject of a related NRC licensing proceeding, NRC Docket No. 50-445-CPA. See Texas Utilities Electric Company, 25 NRC 912 (1987).

<sup>4</sup> The response was titled "10 CFR 2.206 Petition Submitted by Kohn, Kohn & Colapinto Regarding Comanche Peak Steam Electric Station."

## II. DISCUSSION

### A. Pipe Support Certification Process at CPSES

Petitioners assert that TUEC certified individual pipe supports in violation of 10 CFR Part 50, Appendix B, because, after field engineers made design changes to pipe supports during construction, TUEC routinely transferred responsibility for review of the field changes from the pipe support design group that originally designed the pipe support to another pipe support design group that used different design criteria. Petitioners contend that, as a result, the Licensee applied "multiple design criteria" to individual pipe supports.<sup>5</sup>

#### 1. Description of the Pipe Support Design Review and Certification Process

A summary of TUEC's pipe support design review and certification process, and its evaluation by the NRC staff and by the ASLB in the Comanche Peak licensing proceeding provides a frame of reference for evaluating Petitioners' contentions.

---

<sup>5</sup> This same claim was made to the NRC staff as one of more than 60 allegations by S.M.A. Hasan in January 1986. Resolution of those allegations was transmitted to Mr. Hasan by a letter dated January 6, 1988, and signed by Philip F. McKee, Deputy Director, Comanche Peak Project Division, Office of Special Projects. The staff concluded that, because the Stone & Webster Engineering Corporation (SWEC) pipe support requalification program would use one engineering approach, "[a]ny identified deficiencies which might have resulted from the use of inconsistent design criteria will be corrected", and the "allegation associated with the use of inconsistent pipe support design criteria by the previous design groups has been adequately resolved." (Enclosure 1, p. 2)

TUEC originally contracted the responsibility for pipe support design at CPSES to ITT-Grinnell. After it became apparent that ITT-Grinnell could not handle all the pipe support design work, TUEC contracted with an additional company, Nuclear Power Services, Inc. (NPSI), and established its own pipe support design group, Pipe Support Engineering (PSE).

All three pipe support design groups were required to comply with design criteria contained in the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code hereafter referred to as the "ASME Code" and in Gibbs and Hill Project Specification MS-46A. Because neither the ASME Code nor Specification MS-46A dictates in detail the means by which an engineer is to satisfy the design criteria, differences in engineering methodologies or design approaches to achieve compliance with the design criteria occurred between the three parallel pipe support groups.

After a pipe support design group completed a pipe support design, it was released to the field for construction. If, during construction, the field engineering organization determined that changes were necessary to the design of a pipe support, TUEC authorized implementation of the change before review and approval by the design organization. Changes by the field organization, as a result, were subject to possible disapproval by the design organization and a requirement to rework the pipe support in question.

In response to the Petition, the Licensee described its review of field engineering changes to pipe support design at CPSES. In most cases, the group that created the original pipe support design would also review field engineering changes to that design. In a few cases, however, the pipe support design group that originally designed the support did not have an established methodology for analyzing the acceptability of the field engineering changes

under the ASME Code and Project Specification MS-46A or could not approve the changes using its established methodologies. In such cases, TUEC transferred responsibility for review and certification of the entire pipe support design to another pipe support design group, and the review and certification was performed on the entire pipe support design, not just the field changes in isolation. For example, ITT-Grinnell did not have a design approach for Richmond inserts used in conjunction with tube steel. If the field organization modified a pipe support originally designed by ITT-Grinnell to include Richmond inserts in conjunction with tube steel, then ITT-Grinnell would be unable to analyze the modified design. Therefore, responsibility for review and certification of the entire pipe support design would have been transferred to the PSE group, which did have the capability to analyze such a change.

During the CPSES licensing proceedings, Messrs. Mark Walsh and Jack Doyle raised 19 broad concerns about the pipe support engineering program at CPSES, including technical issues, organizational issues, and design interface issues (an interface is the communication path and the coordination of the design process between various groups or organizations). The NRC staff conducted a comprehensive special inspection that consumed 1322 inspector-hours. The NRC staff evaluated each of the Walsh and Doyle concerns, inspected the design procedures and practices of the pipe support design organizations, and inspected a sample of 100 pipe support designs that had gone through the entire design review process.<sup>6</sup>

---

<sup>6</sup> See Special Inspection Team Report 50-445/82-26 and 50-446/82-14, February 15, 1987.

The three pipe support design groups were all required to comply with the design criteria contained in ASME Code and Project Specification MS-46A. Based in part on the NRC staff analysis of the Walsh and Doyle concerns about the pipe support engineering program, the ASLB found that the differences among the three pipe support design groups in "design approach" and "engineering approach", or in application of and interpretation of the ASME Code and Project Specification MS-46A design criteria, did not create a safety concern or violate NRC requirements because each group had a specific scope of responsibility for a specific group of pipe supports, and the three design groups did not share common in-line design responsibility for any individual pipe support.<sup>7</sup>

Nonetheless, the ASLB found that TUEC failed to demonstrate that design deficiencies were being promptly corrected and failed to satisfactorily resolve several design questions. The ASLB required TUEC to file a plan to resolve the Board's doubts.<sup>8</sup> In June 1985, TUEC notified the ASLB that TUEC would resolve all remaining issues through the Comanche Peak Response Team (CPRT). TUEC also developed a Corrective Action Program (CAP) that resulted in the validation of the design of all safety-related and seismic Category II pipe supports at CPSES. As part of the CAP, SWEC became solely responsible for the design of pipe supports at CPSES and the three pipe support design groups were released. SWEC revalidated all pipe supports to ensure that the pipe supports complied with the ASME Code and Project Specification MS-46A, and in doing so, used a single engineering approach. In Supplement 14 to the

---

<sup>7</sup> Texas Utilities Generating Company (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-83-81, 18 NRC 1410, at 1450-1451 (1983).

<sup>8</sup> 18 NRC at 1452-1456.



Safety Evaluation Report (March 1988), the NRC staff concluded that CAP provided a comprehensive program for resolving technical concerns identified by the ASLB, CASE, NRC staff, and CPRT, and that the CAP ensured that the design of pipe supports at CPSES satisfied applicable requirements of 10 CFR Part 50. (NUREG-0797, SSER 14, p. iii)

## 2. Multiple Design Criteria

In evaluating the Walsh and Doyle concerns, which included possible use of multiple design criteria, the ASLB found that all three pipe support design groups used the same design criteria, the ASME Code and Project Specification M46-A, but applied different "engineering approaches" or "design approaches", and that this arrangement was in compliance with 10 CFR Part 50.<sup>9</sup>

TUEC agrees that the three pipe support design groups interpreted and applied the design criteria of the ASME Code and of Project Specification MS-46A with different design approaches. TUEC denies, however, that multiple design criteria were used for any individual pipe support.

TUEC states in its Response that when responsibility for review and certification of field changes to pipe support design was transferred from the original pipe support design group to another pipe support design group, responsibility for review and certification of the entire pipe support design, rather than just the field engineering change, was also transferred. The Licensee also asserts that only one pipe support group had responsibility for any individual pipe support design at one time. (Response, p. 3) Petitioners provide no facts to contradict this description of the review and

---

<sup>9</sup> 18 NRC 1410, at 1450-1451.

certification process. Moreover, it would not be possible, as an engineering matter, to review a field change in isolation from the entire pipe support design. The pipe support design group that reviewed the field change would necessarily have reviewed the entire pipe support design with the same design criteria used by all three groups, albeit with its own design approach.

Since the three pipe support design groups used the same design criteria but different design approaches, transfers of responsibility for review of field changes could have resulted in application of multiple design approaches to an individual pipe support. However, because only one group was responsible for an individual pipe support design at any one time and because such transfers resulted in a review of the entire pipe support design by the responsible group, rather than the field change in isolation, the transfers did not result in application of different design approaches to any individual pipe support. Not only were the same design criteria applied to all pipe supports, but individual pipe supports were reviewed and certified with a single design approach.

Accordingly, I conclude that Petitioners have not demonstrated that TUEC used multiple design criteria for any pipe supports; nor did they show that multiple design approaches were applied to any individual pipe support. Petitioners provide no basis to disturb the findings of the ASLB that the use of three different design approaches by the three pipe support design groups did not present a safety concern and did not violate 10 CFR Part 50.

3. Transfer of Design Review Responsibility  
Between Pipe Support Design Groups

Petitioners contend that the Licensee's transfer of responsibility for review of field changes from one pipe support design group to another was in violation of NRC requirements. To the contrary, NRC requirements explicitly permit such transfers:

...Design 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 organization.<sup>10</sup>

10 CFR Part 50, Appendix B, Criterion III

Moreover, since the transfers of design review responsibility between the three pipe support design groups did not result in the application of multiple design criteria to any individual pipe support, but rather in application of a uniform engineering approach or design approach to the required design criteria for individual pipe supports, no safety concern was raised by the transfers.

Accordingly, I conclude that there is no basis to conclude that the transfer of responsibility for review and certification of field changes to pipe support designs either violated NRC requirements or raised a safety concern.

---

<sup>10</sup> Additionally, as the Licensee notes, ANSI N45.2.11-1974 also permits such transfers: "Normally, the procedures for effecting design changes shall require that changes be reviewed and approved by the same groups or organizations which reviewed and approved the original design documents. Where an organization which originally was responsible for approving a particular design document is no longer responsible, the plant owner shall designate the new responsible organization...."

## 2. Material False Statements

Petitioners identify the Licensee's alleged material false statements as follows: statements made in testimony and affidavits by TUEC managers and employees, between 1982 and 1985, during the NRC hearing on TUEC's application for an operating license for CPSES. Specifically, Petitioners cite:

1. Testimony of John C. Finneran, Jr., Manager of Civil Engineering, that field changes to a pipe support design went to the original design organization for review and certification.<sup>11</sup>
2. An affidavit of Mr. Finneran and others that states that changes made by Structural Engineers to an original design were reviewed by the original designers before the design was sent to the field for construction, and that each organization and group had separate and distinct responsibilities for the design of pipe supports.<sup>12</sup>
3. An affidavit by Mr. Finneran that design changes created by CMC's were reviewed by the "responsible design organization" for certification.<sup>13</sup>

Petitioners contend that not only did TUEC deliberately introduce false evidence that design changes were reviewed by the "original" design organization, but that TUEC also repeatedly made material false statements that pipe supports "were not being transferred between various pipe support groups" and were "not being certified using multiple sets of design criteria"<sup>14</sup> (Petition, p. 8), and that TUEC never revealed the transfers to

---

<sup>11</sup> Tr. 4971, 4985-4986, and 5013. See, Petition, p. 4.

<sup>12</sup> Affidavit of D.N. Chapman, J.C. Finneran, Jr., D.E. Powers, R.P. Deubler, R.E. Ballard, Jr., and A.T. Parker, dated July 3, 1984, pp. 13, 36. See, Petition, pp. 6-7.

<sup>13</sup> Affidavit of John C. Finneran, Jr., dated June 17, 1984, p. 4. See, Petition, p. 6.

<sup>14</sup> Since the Licensee was not, in fact, using multiple design criteria (See, Section II.A, *supra*), any statement by the Licensee that it was not using multiple design criteria cannot be considered false.

the ASLB, despite Orders and requests of the ASLB to be kept informed of potentially significant developments. Petitioners also allege that the Licensee falsely testified before the ASLB that interfaces between the three pipe support design groups were "separate" and "distinct."

The NRC may revoke a license because of material false statements made to the NRC:

Any license may be revoked for any material false statement in the application or any statement of fact required under section 182....

Atomic Energy Act, Section 186a, 42 USC § 2236.

At the time of the alleged material false statements, a material false statement within the meaning of Section 186 of the Atomic Energy Act was a false statement, or omission of information, that was material. A material statement is one that is capable of influencing the agency decision maker.<sup>15</sup> Petitioners contend that in this case the alleged material false statements were made with the intent to deceive the NRC about serious safety flaws in pipe support design, namely that multiple design criteria were applied to pipe supports.<sup>16</sup>

---

<sup>15</sup> Virginia Electric and Power Co. (North Anna Power Station, Units 1 & 2), CLI-76-22, 4 NRC 480, 487 (1976), *aff'd sub nom. Virginia Electric and Power Co. v. NRC*, 571 F.2d 1289, 1291 (4th Cir. 1978); U.S. v. Weinstock, 231 F.2d 699, 701 (D.C.Cir. 1956); United States v. Diaz, 690 F.2d 1352, 1357-58 (11th Cir. 1982).

<sup>16</sup> In 1987, some two to five years after the alleged material false statements, the NRC adopted new rules implementing Section 186 of the Atomic Energy Act. Those rules require that any information submitted by licensees to the NRC must be complete and accurate in all material respects. See 10 CFR § 50.9(a). The Commission decided to exercise its discretion in the application of the term "material false statement" by limiting the use of the term to egregious situations where there is an element of intent to mislead. Statements of Consideration, "Completeness and Accuracy of Information", 52 FR 49362, 49367 (December 31, 1987).

Petitioners have not demonstrated that the Licensee made any false statements to the NRC. First, Petitioners assert that the Licensee "repeatedly" gave testimony before the ASLB that TUEC "pipe supports were not being transferred between the various pipe support groups and were not being certified using multiple sets of design criteria." (Petition, p. 9. Emphasis added.) Petitioners, however, provide no record citation to demonstrate that the Licensee either explicitly made such a statement or made any statement that could be interpreted in that manner. Second, in the context of the questions asked and answers given in the testimony cited by Petitioners, it cannot be concluded that the Licensee provided testimony to the effect that review of field changes or other changes to a pipe support design was always performed by the original pipe support design group, or was never performed by any other of the three pipe support design groups. The testimony cited by Petitioners, that review of changes was done by the original pipe support design group, was given in response to questions seeking to determine whether changes were reviewed by a pipe support design organization at all. The testimony was not elicited in response to inquiries whether the original, as opposed to another, pipe support design group conducted reviews of design changes made by the field engineers or other engineers. If any such inquiries were made, Petitioners cite none. Moreover, as Petitioners note, Mr. Finneran also testified that review of changes to pipe support designs were performed by the "responsible" pipe support design group. As TUEC stated in its Response, responsibility for review of each pipe support was assigned to only one group at any time; following any transfer, the new design group, or "responsible design group," evaluated the design of the entire support. (Response, pp. 3, 9-10)

Petitioners claim that testimony of TUEC managers and employees in a complaint proceeding before the Department of Labor (DOL)<sup>17</sup> demonstrates that TUEC had attempted to conceal the transfers between pipe support design groups and the use of multiple design criteria from the ASLB during the earlier NRC operating license proceeding. Petitioners argue that this testimony shows that interfaces between the three pipe support groups were not "separate" and "distinct" as represented by TUEC, but instead that the three pipe support groups routinely transmitted pipe support packages "back and forth" among themselves (Petition, pp. 9-12), presumably to mean that the groups in fact shared common design responsibility for individual pipe supports.

Petitioners' assertion that multiple design criteria were used for individual pipe supports rests upon a confounding of "design criteria" with interpretation and application of design criteria (i.e., "design approach" and "engineering approach"). As the Licensee explains, this confusion was created when Licensee employees in their testimony before the ASLB and before the DOL used the term "design criteria" interchangeably with the terms "design approach" and "engineering approach". (Response, pp. 19-24)

Petitioners do not dispute that all three groups were required to comply with and did apply the requirements of the ASME Code and Project Specification MS-46A. The testimony upon which Petitioners rely, when read in context, was that each group interpreted and applied those requirements with its own

---

<sup>17</sup> Hasan v. Nuclear Power Services, Inc. et al, DOL Case No. 86 ERA-24. Mr. S.M.A. Hasan charged that he had been terminated and blacklisted for raising safety concerns about pipe support design at CPSES, in violation of Section 210 of the Energy Reorganization Act. Mr. Hasan's complaint was denied after hearing before an Administrative Law Judge. See Recommended Decision and Order, October 21, 1987. The Secretary of Labor affirmed the denial. See Final Decision and Order, June 26, 1992.

guidelines, design approach, or engineering approach. The testimony of the Licensee's managers before the DOL, upon which Petitioners rely, was to the effect that review of field changes was sometimes transferred to another pipe support design group if the original design group could not certify the changes, either because it did not have the analytical capability or because the design change could not be certified under the original design group's methodology.<sup>18</sup> As the Licensee explained, Mr. Rencher, upon whom Petitioners rely, also testified that each of the three pipe support groups had its own "design guidelines," which differed in some respects, but that each pipe had to be qualified under one of these three design guidelines. (Response, pp. 22-23) The ASLB found that, by whatever name, the different interpretations by the three pipe support groups of the ASME Code and Project Specification MS-46A did not violate NRC requirements.<sup>19</sup> Petitioners incorrectly assume that because transfers took place, there must have been a common or shared design responsibility between the three pipe support design groups, which necessarily resulted in the application of multiple design criteria to individual pipe supports. Because the pipe support design group that assumed responsibility after a transfer reviewed and certified the entire pipe support, there was, in fact, no common or shared design responsibility between the three pipe support design groups. (Section II.A, *supra*)

By letter dated July 8, 1987, CASE suggested to the ASLB that the Licensee should provide the ASLB with all documents from the DOL proceeding because some unidentified testimony was of potential significance to the

---

<sup>18</sup> See Petition, p. 10-11, and p. 12, n. 9.

<sup>19</sup> 18 NRC 1410, at 1450-1451.



Comanche Peak licensing proceedings. However, CASE did not disclose the nature or significance of that testimony, and Petitioners fail to demonstrate that the matter was either pursued by CASE or taken up by the ASLB. There is no basis to conclude, as Petitioners contend, that the Licensee's failure to disclose the transfers during the CPSES operating license proceeding violated any ASLB order or constituted withholding of evidence from the ASLB. Because the transfers neither constituted a safety concern nor violated NRC requirements, it cannot be concluded that the Licensee had an obligation to inform the ASLB of the transfers. Moreover, on May 17, 1988, CASE provided the ASLB with the January 6, 1988, NRC staff resolution of Mr. Hasan's 65 allegations, including allegations about multiple or inconsistent design criteria, because CASE considered the information to be potentially significant.<sup>20</sup> Since the Comanche Peak operating license proceeding was dismissed on July 5, 1988, based on a settlement and joint stipulation of the parties, without mention of that information<sup>21</sup>, it cannot be concluded that the ASLB necessarily considered the fact of the transfers to be a potentially significant development.

In support of their allegation of intentional withholding of evidence from the ASLB, Petitioners also rely on and request consideration of a letter dated October 5, 1990, sent to NRC Region IV Office of Investigations. Petitioners request that the identity of the alleged named in the letter and the contents of that letter remain confidential. (Petition, p. 14) That

---

<sup>20</sup> See, n. 5, *supra*.

<sup>21</sup> Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-88-18B, 28 NRC 103 (1988).

letter does not recite any factual information beyond that contained in the Petition, and does not provide any information not provided in similar allegations, which were found to be without merit.

Accordingly, I find that the Licensee's statements cited by Petitioners, when evaluated in the context of their utterance, were not false. I also find that Petitioners have not demonstrated that the Licensee was obligated to inform the ASLB of the transfers of review responsibility between pipe support design groups. Because the Licensee made no false statements, and because the transfers neither resulted in the application of multiple design criteria nor raised safety concerns, it cannot be concluded that the Licensee intended to deceive the NRC about the transfers in order to conceal safety concerns. Therefore I find that there is no basis to conclude that the Licensee made material false statements to the NRC or to the ASLB.

C. Delay of Construction Because of Alleged Material False Statements

Petitioners contend that TUEC's material false statements in the operating license proceeding delayed construction of CPSES Unit 1. (Petition, p.8, n.4) However, Petitioners have not demonstrated that the Licensee made the alleged material false statements, and Petitioners have not explained how the alleged material false statements could have delayed, or did in fact delay, construction of Unit 1. Accordingly, there is no basis to conclude that the construction of CPSES Unit 1 was delayed by any statements of the Licensee in the operating license proceeding.

Petitioners also contend that the Licensee's testimony in Mr. Hasan's complaint proceeding before the DOL, regarding the transfer of review responsibility between pipe support design groups, shows that the Licensee

deliberately misled the ASLB in the construction license amendment proceeding before the NRC, regarding the Licensee's intentional delay of the construction of CPSES Unit 1. (Petition, p.2) Petitioners have not explained, nor is it apparent, how transfers of responsibility between pipe support design groups for review and certification of pipe support design could have delayed, or in fact did delay, construction of CPSES. It is just as likely that transfers of review and certification responsibility from a pipe support design group without the capability to analyze or certify a field design change, to a pipe support design group with the capability to analyze or certify a field design change, would speed construction. Even if such transfers had delayed construction, there is no basis to conclude that any delay was deliberate.

For the reasons given above, I conclude that Petitioners have provided no basis to conclude that the Licensee deliberately delayed the construction of CPSES or that the Licensee misled the ASLB regarding any delay in construction of CPSES.

### III. CONCLUSION

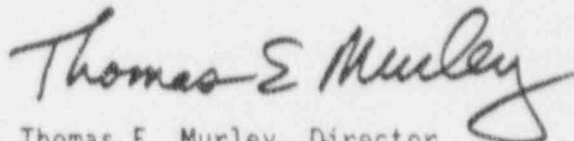
The institution of proceedings pursuant to 10 CFR § 2.202 is appropriate only where substantial health and safety issues have been raised. See, Consolidated Edison Company of New York (Indian Point, Units 1, 2 and 3), CLI-75-8, 2 NRC 173, 175-176 (1975); Washington Public Power Supply System (WPPSS Nuclear Project No. 2), DD-84-7, 19 NRC 899, 923 (1984). This is the standard that I have applied to determine whether the action requested by Petitioners, or other enforcement action, is warranted.

For the reasons discussed above, there is no basis for taking the actions requested by the Petitioners. The NRC staff has carefully reviewed the Petition, assessed the specific references and citations in the Petition, and reviewed additional documents regarding Petitioners' allegations. Petitioners have not demonstrated that the Licensee, in violation of NRC requirements, transferred responsibility for review of field changes to pipe support designs or that multiple pipe support design criteria were applied to any individual pipe support. Petitioners have presented no basis to conclude that any such transfers raised safety concerns. Petitioners have not demonstrated that the Licensee deliberately delayed construction of CPSES Unit 1. Finally, Petitioners have not demonstrated that the Licensee made any material false statements to the NRC or the ASLB, violated any orders of the ASLB, or withheld evidence from the NRC or the ASLB.

Accordingly, Petitioners' requests for hearings to determine whether the Licensee has the requisite character and competence to operate a nuclear power facility, for imposition of a fine or other penalties on the Licensee, and to ban certain of the Licensee's managers from all licensed nuclear facilities for making material false statements to the NRC are denied.

As provided by 10 CFR § 2.206(c), a copy of this Decision will be filed with the Secretary of the Commission for the Commission's review.

FOR THE NUCLEAR REGULATORY COMMISSION



Thomas E. Murley, Director  
Office of Nuclear Reactor Regulation

Dated at Rockville, Maryland  
this 15th day of January 1993