

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

DOCKETED
D-11-10

'88 SEP 19 P3:02

In the Matter of	\$	Docket Nos. 50-445-OL
	\$	50-446-OL
TEXAS UTILITIES ELECTRIC	\$	(Application for an
COMPANY, et. al.	\$	Operating License)
	\$	
(Comanche Peak Steam Electric	\$	Docket No. 50-445-CPA
Station, Units 1 and 2)	\$	(Construction Permit
	\$	Amendment)
	\$	

CFUR's FIRST SUPPLEMENT TO ITS
AUGUST 11, 1988 REQUEST FOR HEARING
AND PETITION FOR LEAVE TO INTERVENE

On September 10, 1988 Citizens for Fair Utility Regulation (CFUR) was able to obtain and examine pleadings filed before the United States Department of Labor on behalf of Joseph J. Macktal, a former electrical foreman employed at the Comanche Peak Nuclear Construction site. On the basis of these pleadings CFUR files this supplement to its August 11, 1988 Request for Hearing and Petition for Leave to Intervene.

FACTS

CFUR hereby incorporates the entire contents of the August 31, 1988 Affidavit of Joseph J. Macktal, Jr. (See, Attachment). This affidavit raises extremely significant unresolved safety issues.

Mr. Macktal's allegations can be divided into three areas. The first area concerns the safety issues that Mr. Macktal directly raised with the NRC staff, but which Mr. Macktal believes were inadequately addressed by the staff; they include:

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a) contamination of stainless steel conduit; b) falsification of training sheets and travelers; c) improper accounting of documents and material; d) improper design, manufacture, and installation of electrical conduits, and safety related circuits; and e) improper site modification of vendor supplied equipment. Affidavit, paragraphs 3-4.

The second area consists of safety issues Mr. Macktal was unable to raise to the NRC due to a restrictive settlement agreement imposed on behalf of the Utility. These unreported safety issues include: a) the use of Kapton wiring and termination kits; b) the ultra-vulnerability of key safety systems; c) design problems related to back-up safety systems; d) improper attempts to silence witnesses and suppress information before the NRC; and e) SAFETEAM's participation in and cover-up of safety concerns. Affidavit, paragraph 5.

The third area concerns the issues Mr. Macktal raises with the U.S. Department of Labor. See, Request to the Secretary of Labor Not to Approve the Settlement and for Remand, filed September 9, 1988, attached.

The most startling revelation found in the attached affidavit is the fact that Mr. Macktal was prohibited from bringing safety allegations before the ASLB by a secret settlement agreement entered into between Brown & Root, Inc. and attorneys for CASE (Ms. Billie Garde and Mr. Tony Roisman), who at the time were representing Mr. Macktal. Specifically, Mr.

Macktal alleges that many of his "concerns were not raised with the NRC staff or Licensing Board due to the restrictive terms of a secret settlement agreement entered into between Texas Utilities and my attorneys Billie Garde and Tony Roisman." Affidavit, paragraphs 5 and 26.

This allegation is verifiable on the face of the actual "Settlement Agreement" (attached hereto as exhibit 2 of the affidavit) signed by representatives of Brown & Root and by Mr. Roisman and Ms. Garde. The Settlement Agreement explicitly prohibits Mr. Macktal from voluntarily contacting the NRC or the ASLB with unresolved safety allegations. Paragraph 3 of the Settlement Agreement states that Mr. Macktal "will not voluntarily appear as a witness or a party in any such proceeding..." including "any administrative or judicial proceeding in which either Mr. Roisman, Ms. Garde, Trial Lawyers for Public Justice (TLPJ) or the Government Accountability Project (GAP), or any combination of them are now, or in the future may be, counsel or parties opposing any of the Comanche Peak companies, organization, programs or individuals...." The Settlement Agreement defines "Comanche Peak Companies" to include all companies, employees or attorneys that are in any way involved with the construction of the Comanche Peak facility. (See, Third "whereas" in the Settlement Agreement). Because Ms. Garde, Mr. Roisman, TLPJ and GAP represented the intervenor Citizens Association for Sound Energy (CASE) and most, if not

all, Comanche Peak whistleblowers before the Atomic Safety and Licensing Board (ASLB), NRC staff and 2.206 proceedings, the scope of the gag order is all-encompassing.

Not only was Mr. Macktal prohibited from voluntarily appearing as a witness before on-going NRC licensing hearings and on-going NRC staff investigations into Comanche Peak. If subpoenaed to testify, Mr. Macktal would be obligated to work with Brown & Root's attorneys to "resist" compulsory process. Likewise, Mr. Roisman, Ms. Garde, GAP and TLPJ were prohibited from ever "inducing" or "suggesting" to the NRC, ASLB or other parties that Mr. Macktal be called as a witness. As such, paragraph 3 of the settlement created actual and potential conflicts of interests between Ms. Garde, Mr. Roisman, and their clients, including CASE and other individual Section 210 complainants.

In short, the Settlement Agreement was designed to guarantee that Mr. Macktal would never testify before the NRC about problems he observed at Comanche Peak, including numerous unresolved safety concerns he had not yet had an opportunity to raise with the NRC staff or the ASLB. See, Affidavit, paragraphs 3-5. It also prohibited Ms. Garde and Mr. Roisman from advising CASE, which they also represented, of Mr. Macktal's testimony, and prohibited their advising CASE to produce him before the ASLB, even if it were in CASE's interest to do so.

The settlement agreement threatened the safety of the facility by covering up Mr. Macktal's safety allegations, as well as covering up the arrangement to pay Mr. Macktal money in exchange for silence. This raises serious questions about the character of Texas Utilities and its contractors.

ARGUMENT

I. The Macktal Affidavit Significantly Strengthens CFUR's August 11, 1988 Request

In or about early July, 1988 the ASLB learned that the Utility was about to pay \$10 million to former opponents of Comanche Peak in exchange for the dissolution of the ASLB. Immediately following the announcement of the settlement, allegations of "payoffs" and "hush money" were publicly aired.

The Macktal Affidavit is the first sworn testimony that a whistleblower witness was paid money to keep unresolved safety concerns from the NRC. The Macktal allegations not only implicate Texas Utilities and Brown & Root, but also implicate the conduct of the attorneys who represent CASE. Specifically, Mr. Macktal alleges that he was pressured into settling his case against his will.

CFUR had no knowledge of the facts herein alleged until September 10, 1988, when they received and reviewed a copy of the September 9, 1988 Macktal affidavit. Because CFUR just learned of the Macktal allegations, CFUR has good cause for late filing. 10 C.F.R. 2.714(a)(1)(i). Additionally, it is the intentional conduct of Texas Utilities, Brown & Root, and attorneys

representing CASE who overtly kept Mr. Macktal's allegations from the ASLB. (Note: Mr. Roisman and Ms. Garde represented both Mr. Macktal and CASE. There is no evidence presently on the record to indicate that CASE knew of or participated in the "settlement" of Mr. Macktal's claims.)

Furthermore, good cause pursuant to 10 C.F.R. 2.712(a)(1)(i) exists for CFUR to be joined as a party to raise the Macktal allegations because all of the existing parties (CASE, the Utility and NRC staff) are incapable of representing Mr. Macktal in this matter. In this regard both the Utility and attorneys who represent CASE are implicated in the Macktal allegations, and the NRC staff is alleged to have failed in its investigation of the allegations Mr. Macktal brought to the staff's attention in 1986. See, Affidavit, paragraph 4.

Mr. Macktal's allegations will not "broaden the issues" or "delay" the licensing hearings. 10 C.F.R. 2.714(a)(1)(v). All of Mr. Macktal's allegations are covered under the former CASE contentions, which prior to July 13, 1988 would have been fully adjudicated by the ASLB.

Essentially, CFUR and its representatives are taking over the role formerly occupied by CASE and its representatives. CFUR is able to work constructively with new whistleblowers at Comanche Peak and as such CFUR's role in the ASLB proceeding is essential for the creation of a "sound record." 10 C.F.R. 2.714(a)(1)(i). Many whistleblowers still exist and are still

coming forward with serious unresolved safety allegations. All of these whistleblowers are potential ASLB witnesses and some, like Mr. Macktal, will voluntarily come before the ASLB despite "settlement agreements" which prohibit such conduct. Some, of course, will not be so courageous in risking civil liability by calling attention to such illegal restrictions and will refuse to testify about unresolved safety problems at Comanche Peak.

II. The Public Interest Requires Public Hearings on the Macktal Allegations

A cloud hangs over the Comanche Peak power plant. The method and manner used by Texas Utilities employees to "settle" the licensing hearings resulted in an erosion of public confidence about the safety of Comanche Peak and the regulatory ability of the NRC. The Macktal allegations heighten this atmosphere of mistrust. Mr. Macktal exposed what the critics of the CASE settlement feared--that money has been exchanged for silence. Only the reactivation of licensing hearings will alleviate this cloud.

Additionally, the public health and safety cannot be assured so long as outstanding safety issues remain unaddressed. The ASLB is the only forum where citizens can, through the adversary process, hold the management of Comanche Peak accountable for the serious safety allegations which are still being raised by whistleblowers. It would be irresponsible to deny citizens their only opportunity to present evidence regarding plant safety in

light of the serious allegations which have been raised since the dissolution of the Board.

III. The Reactivation of Licensing Hearings Will Not Disrupt the CASE-Texas Utilities Settlement

For whatever reasons, CASE decided to accept a large unprecedented monetary sum for withdrawing its participation in the licensing hearings. CASE's withdrawal, however, did not in fact resolve the contested issues which remained to be adjudicated.

If new hearings are ordered the CASE-Texas Utilities settlement will still be effective. Whatever public benefit may have been achieved by this deal will still be realized regardless of whether CFUR's request for intervention is now granted. Under the terms of the ASLB settlement, CASE has essentially become part of Texas Utilities' management team. This did not resolve any of the contested safety issues and it certainly did not touch or concern the new allegations raised by Mr. Macktal (and the other whistleblower allegations that CFUR is currently preparing for submission).

The Macktal affidavit highlights the obvious fact that there exist serious unresolved safety issues at Comanche Peak. It also highlights the inherent problems which arise when money is offered in exchange for a promise not to participate voluntarily before an NRC licensing proceeding.

IV. Hearings Before an ALSB Must Inquire Into Other Whistleblower Settlements

The Macktal settlement raises a reasonable inference that

other potential CASE witnesses or whistleblowers with unresolved safety concerns may have signed similar agreements. Even if such agreements were not actually signed, these employees may have been led to believe, through direct or indirect means, that they could be sued or otherwise held liable if they contacted the NRC or the ASLB with safety concerns. An ALSB is needed to inquire into the terms of all such settlements and to ascertain the harm such settlements have inflicted on the integrity of the fact-finding process. An ALSB should also consider the possible effects of such agreements in hindering the resolution of safety matters that arise in the future.

Such contracts, settlements, or other understandings violate public policy and NRC regulations. For example, the NRC rule regarding "Protection of Employees Who Provide Information" stated that the "Commission will not permit any interference with communication between the Commission representative and employees...." Vol. 47 Federal Register No. 135 at page 30453 (July 14, 1982) (emphasis added).

Unquestionably, paying an employee money in exchange for not providing information to the NRC violates this rule. Rectification of the problems caused by such arrangements requires an ALSB. All whistleblowers or other witnesses known to CASE or the Utility should be questioned, under oath, before the ALSB to determine whether they have unresolved safety concerns and, if so, exactly what the unresolved safety concerns are.