

7174

DUPLICATE ORIGINAL

'88 SEP 29 P4:09

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION

OFFICE OF SECRETARY
DOCKETING SERVICE
BRANCH

In the Matter of)

) Docket Nos. 50-445 OL
) 50-446 OL

) TEXAS UTILITIES ELECTRIC
) COMPANY et al.
)

) (Application for an
) Operating License)

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

) and

) Docket No. 50-445 CPA

) (Construction Permit
) Amendment)

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

Introduction

Citizens for Fair Utility Regulation's (CFUR's) supplemental petition represents the third attempt to intervene by CFUR in the space of only two months. CFUR's first petition, which was filed after the parties to the proceedings had arrived at a settlement, was withdrawn. Its second petition, filed on August 11, 1988, was shown to be wholly without merit by both the NRC Staff and the Applicants. It now asks the Commission to

8810030339 880928
PDR ADOCK 05000445
G PDR

D503

consider a third meritless petition (with the apparent prospect of additional supplements in the future) in the hope of somehow curing the defects in its second petition.

The Supplemental Petition is based on allegations that were long ago addressed by the NRC Staff on the public record, and on CFUR's misreading of a settlement agreement in a proceeding before the Department of Labor. These allegations do not raise significant safety issues and do not constitute good cause for CFUR's late filing. CFUR bears a heavy burden to demonstrate that its late petition should be granted, and that the Commission should undo a settlement agreement that was the product of an extensive corrective action program, detailed reviews of that program by the former intervenors and the NRC Staff, and complex negotiations. CFUR has not met that burden, and its petition should be denied.

Background

On July 8, 1988, CFUR filed with the Atomic Safety and Licensing Board (Board) a petition to intervene in the then ongoing Construction Permit Amendment (CPA) and Operating License (OL) proceedings. Applicants responded on July 12, 1988, and requested that the petition be denied. CFUR filed this Petition approximately nine years late and after the parties had entered into a joint stipulation calling for the dismissal of the proceedings. At the time it filed this petition, CFUR had not been a party for over six years. After reviewing CFUR's

petition, the Board advised CFUR that its petition did not meet the requirements of 10 C.F.R. § 2.714 and permitted CFUR to withdraw its petition voluntarily. Tr. 25,204-08. The Board thereafter dismissed the CPA and OL proceedings. 1/

Subsequently, on August 11, 1988, CFUR filed a request for hearing and leave to intervene in the operating license dockets (hereinafter licensing proceedings). 2/ Applicants answered CFUR's Petition demonstrating that CFUR's extremely tardy intervention failed to satisfy the requirements of 10 C.F.R. § 2.714(a)(1) for a late filed petition and that based on a balancing of the five factors identified by § 2.714(a)(1), the Petition should be rejected. 3/ The NRC Staff opposed CFUR's Petition for substantially the same reasons. 4/

1/ See Memorandum and Order (Dismissing Proceedings), slip op. (July 13, 1988).

2/ Request For Hearing And Petition For Leave To Intervene By Citizens For Fair Utility Regulation (Aug. 11, 1988) (Petition). As noted in Applicants' answer to CFUR's Petition, CFUR raises no issue and makes no argument that it should be permitted to intervene in the now-dismissed CPA proceeding. The contention it seeks to litigate is Contention 5 which was withdrawn by Citizens Association for Sound Energy (CASE) from the OL proceeding. As with its original petition, CFUR's supplement does not contend that it has any issue relevant to the CPA docket. Furthermore, CFUR's Petition as supplemented does not attempt to address the requirements for a late filed petition in the CPA proceeding.

3/ Applicants' Answer To The Request For Hearing And Petition For Leave To Intervene By Citizens For Fair Utility Regulation (Aug. 26, 1988) (Applicants' Answer).

4/ NRC Staff's Response In Opposition To Request For Hearing and Petition For Leave To Intervene By Citizens For Fair Utility Regulation (Aug. 31, 1988).

CFUR has now filed its "first supplement" to its Petition to intervene in the licensing proceedings. 5/ CFUR's Supplemental Petition is based on certain allegations which were fully addressed by the NRC Staff in 1986 and on arguments now being raised before the United States Department of Labor (DOL) by Mr. Joseph J. Macktal, Jr., a former Comanche Peak employee, in connection with the January 2, 1987 settlement of his complaint against Brown & Root, Inc. (Brown & Root) before the DOL. As shown below, none of these allegations raises a significant safety issue.

ARGUMENT

CFUR'S PETITION AS SUPPLEMENTED DOES NOT SATISFY THE REQUIREMENTS OF 10 C.F.R. § 2.714(a)(1)

Applicants' Answer to CFUR's Petition demonstrated that CFUR had failed to meet its burden on the factors set forth in 10 C.F.R. § 2.714(a)(1). 6/ CFUR did not demonstrate good cause for

5/ CFUR's First Supplement To Its August 11, 1988 Request For Hearing And Petition For Leave To Intervene (dated Sept. 12, 1988 but served on Sept. 13, 1988) (Supplemental Petition).

6/ Under 10 C.F.R. § 2.714(a)(1) a late filed petition may only be granted upon a balancing of the following factors:

- (i) Good cause, if any, for failure to file on time.
- (ii) The availability of other means whereby the petitioner's interest will be protected.
- (iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (iv) The extent to which the petitioner's interest will be represented by existing parties.

the extreme tardiness of its Petition, and did not make the compelling showing required on the remaining factors in order to justify its Petition. To the contrary, CFUR's Petition demonstrated that it had no substantial safety issue, had no understanding of the Comanche Peak corrective action programs and thus could not contribute to the development of a sound record. Additionally, as Applicants and the NRC Staff noted, admission of CFUR as an intervenor would substantially broaden the issues and delay the proceedings. CFUR's Supplemental Petition has not cured these defects.

Apart from its continued failure to demonstrate good cause, CFUR, in its Supplemental Petition, has failed once again to demonstrate any understanding of the Applicants' corrective action programs and the efforts taken to resolve all outstanding safety concerns. In light of those programs, it is not enough merely to raise allegations which, if they ever had merit, have been or are being corrected. Rather, CFUR must show with particularity why the corrective actions are insufficient to resolve the allegations. See Union Electric Co. (Callaway Plant, Unit 1), ALAB-740, 18 NRC 343, 346, petition to reopen the record denied, ALAB-750, 16 NRC 1205, modified in part, ALAB-750A, 18 NRC 1218 (1983). Similarly, the bare restatement of old allegations previously brought to the attention of and compre-

(footnote continued from previous page)

- (v) The extent to which the petitioner's participation will broaden the issues and delay the proceeding.

10 C.F.R. § 2.714(a)(1)(1988).

hensively resolved by the NRC Staff provides no justification for a petition which is nine years late. At a minimum, the petition must demonstrate with particularity that the Staff's resolution was somehow incorrect and that a significant issue still remains.

CFUR's Petition, as supplemented by its September 12, 1988 filing, still fails to satisfy the heavy burden placed on a petitioner who files so many years late. CFUR's Petition as supplemented should be denied.

A. The Macktal Settlement Agreement Is Of No Relevance To CFUR's Right To Intervene

The CFUR Supplemental Petition is founded on the allegations of a former Comanche Peak employee, Mr. Joseph J. Macktal, Jr., and Mr. Macktal's and CFUR's misreading of the terms of the settlement of Mr. Macktal's complaint against his former employer, Brown & Root, one of the construction contractors at Comanche Peak. Although CFUR claims that this settlement prohibited Mr. Macktal from communicating safety concerns to the NRC, it does no such thing.

The background of the settlement, as shown by Mr. Macktal's affidavit, which was submitted as an attachment to CFUR's Supplemental Petition, is that in February 1986 Mr. Macktal filed a complaint against Brown & Root under Section 210 of the Energy Reorganization Act of 1974 (42 U.S.C. § 5851 (1982)) ^{1/} with the DOL. In Mr. Macktal's Section 210 complaint,

^{1/} Texas Utilities Company, the parent of Texas Utilities Electric Company (TU Electric), one of the Applicants in this proceeding, was also originally named as a respondent

he alleged that he had reported safety concerns to TU Electric Company's SAFETEAM, was going to seek an NRC investigation of his concerns, and in retaliation had been subjected to adverse actions by his employer, Brown & Root.

Brown & Root opposed the complaint and denied that it had retaliated against Mr. Macktal. In January 1987 and after substantial prehearing discovery, Mr. Macktal and Brown & Root agreed to a settlement which provided that 1) neither party made any concession regarding the merits of the complaint, 8/ 2) Brown & Root would pay \$35,000 to Mr. Macktal and his attorney, 9/ 3) Mr. Macktal agreed to move for dismissal of his complaint with prejudice 10/ and 4) Mr. Macktal would not voluntarily appear as a witness or party in an administrative or judicial proceeding opposing Brown & Root or the other companies involved in the Comanche Peak project. 11/ As CFUR acknowledges

(Footnote continued from previous page)

in the complaint. However, Texas Utilities was subsequently dismissed from the proceeding because none of the Texas Utility Companies was properly made a party to the proceeding or at "any time manifested the attributes of an employer with respect to complainant" Macktal v. Brown & Root, slip op. 1-2, 86 ERA 23 (Aug. 7, 1986).

8/ Settlement Agreement (Macktal v. Brown & Root, Case No. 86 ERA 23) at 2 (Jan. 2, 1987).

9/ Id. at 4.

10/ Id.

11/ Id. at 3.

in its Supplemental Petition, CASE neither knew of nor participated in Mr. Macktal's settlement. Supplemental Petition at 6. 12/

Although CFUR characterizes the last provision described above as a bar against Mr. Macktal communicating safety concerns to the NRC (Supplemental Petition at 4-5, 9), the provision does no such thing. Mr. Macktal's January 1987 settlement agreement with Brown & Root does not affect his communications with the NRC Staff. There has never been any limitation on Mr. Macktal's ability to communicate any of his concerns to the NRC or to the public in general. Nor is there any limitation on the NRC's (or CFUR's) ability to obtain information from him.

Mr. Macktal's primary complaint appears to be that he is dissatisfied with the NRC Staff's review of his safety allegations and that he desires to testify before a licensing board on these concerns. The CFUR petition seems nothing more than an attempt to accord Mr. Macktal his request. CFUR thus requests the Commission to take the extraordinary step of convening a licensing board for the purpose of hearing Mr. Macktal's testimony. Supplemental Petition at 1-2, 7. Under Commission regulations and policy, the NRC Staff has the primary role in dealing with allegations like those advanced by Mr. Macktal. Cincinnati Elec. Co., et al. (Wm. H. Zimmer Nuclear

12/ CASE was not party to or involved in the settlement entered into between Brown & Root and Mr. Macktal. Accordingly, CASE had no knowledge of any of the provisions of the Macktal settlement including the provisions discussed above.

Power Station, Unit No. 1), CLI-82-20, 19 NRC 109, 114 (1982) (Ahearne and Roberts, Comm'rs, concurring), as clarified, CLI-83-4, 17 NRC 75 (1983).

Additionally, CFUR's Supplemental Petition appears to suggest that the June 1988 settlement agreement between TU Electric and CASE somehow precludes former or present workers from bringing safety concerns to the attention of the NRC. Supplemental Petition at 5, 7-9. The June 1988 settlement agreement between TU Electric and CASE does not contain any provision which would preclude anyone from raising a safety issue or any other issue with either the NRC Staff or Applicants. In the June 1988 agreement, TU Electric agreed to negotiate in good faith with workers who have claims against TU Electric or its contractors at Comanche Peak. Former Comanche Peak workers who have settled claims under the June 1988 settlement agreement were not precluded in any way from contacting the NRC Staff or participating in an NRC licensing proceeding. Tr. 25,257-58; 25,268-70.

In reality, CFUR (on behalf of Mr. Macktal) is attempting belatedly to interject extraneous issues into NRC proceedings as a lever to assist in his attempts to overturn his settlement agreement with Brown & Root. Since that issue relates to the validity of a settlement agreement in a DOL proceeding, and Mr. Macktal is seeking to raise the issue before the Secretary of Labor at this time, it should not be considered by the NRC. Where, as here, there is entirely no justification for

the acceptance of a late filed contention and initiation of a new proceeding, the Commission should act promptly to deny the petition. Mr. Macktal, of course, is free to pursue the real remedy he seeks before DOL.

In summary, the settlement agreement between Mr. Macktal and Brown & Root has no relevance to any issue properly before the Commission. What is before the Commission is the question whether CFUR may intervene without making even a facial showing that its Petition meets the requirements of 10 C.F.R. § 2.714. As to that issue, the law and the facts demand that CFUR's petition be promptly dismissed.

B. CFUR Has Not Demonstrated Good Cause For Failure To File A Timely Petition

As demonstrated by Applicants' Answer and the authorities cited therein, CFUR's claim of reliance on the Citizens Associations for Sound Energy (CASE) to litigate its interests does not constitute good cause for CFUR's lateness. See Applicants' Answer at 9-11. In its Supplemental Petition, CFUR asserts that it has good cause for its late petition because it had no knowledge of Mr. Macktal's alleged safety concerns or his settlement with Brown & Root until it received a copy of Mr. Macktal's September 9, 1988 affidavit. Supplemental Petition at 5. CFUR also argues that the "intentional conduct of Texas Utilities, Brown & Root" and CASE's attorneys kept Mr. Macktal's

allegations from the Board and constitute good cause for lateness. Id. at 5-6. None of the excuses proffered by CFUR constitutes good cause for this extremely late petition.

Any individual "who invokes the right to participate in an NRC proceeding also voluntarily accepts the obligations attendant upon such participation." Duke Power Co., et al. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1048 (1983). In meeting that obligation, a petitioner is required to uncover and to apply all publicly available information. Where the basis for a late filed petition was publicly available at an earlier date, a claim that the information was newly acquired will not provide good cause for an untimely petition. Kansas Gas & Elec. Co., et al. (Wolf Creek Generating Station, Unit No. 1), LBP-84-17, 19 NRC 878, 886-7 (1984); see Catawba, 17 NRC at 1048. Information concerning Mr. Macktal and his allegations has been publicly available since early 1986. CFUR cannot be allowed to ignore these allegations for over two years and then assert that it only recently learned of Mr. Macktal's concerns.

Mr. Macktal resigned his position with Brown & Root in January 1986 and filed his DOL complaint in February 1986. His resignation from his position as an electrician at Comanche Peak and his allegations of "serious safety deficiencies in electrical work" were publicized in the Texas newspapers. ^{13/} As admitted

^{13/} See Millar, Comanche Peak examining ex-foreman's allegations, Fort Worth Star-Telegram, Jan. 23, 1986; Millar, N-plant checking resignation claim, Fort Worth

by CFUR in its Supplemental Petition, Mr. Macktal's allegations were provided to and investigated by the NRC Staff in 1986. Supplemental Petition at 1. The Staff published the results of its investigation in an inspection report in December 1986. ^{14/} From February to May 1987 the Applicants notified the NRC Staff of the actions taken to resolve the Staff's concerns about these issues. ^{15/} By October 1987, the Staff had closed all but one of the concerns it had received from Mr. Macktal. ^{16/} Thus, the information regarding Mr. Macktal and his allegations have long been in the public domain and CFUR cannot assert as the basis for good cause that it recently learned of such information.

To the extent that CFUR refers to additional allegations which Mr. Macktal claims never to have raised with the NRC Staff (see Supplemental Petition at 2), these also fail to

(footnote continued from previous page)

Star-Telegram, Jan. 23, 1986, at 27A; Mullen, Ex-Comanche Peak worker claims harassment, demotion, Nov. 19, 1986, at B-2.

^{14/} NRC Inspection Report 50-445/86-13, 50-446/86-12 (Dec. 22, 1986).

^{15/} Letters to the NRC from W.G. Council, TU Electric, dated Feb. 2, 1987 (TXX-6250) and May 22, 1987 (TXX-6466).

^{16/} NRC Inspection Report 50-445/87-13, 50-446/87-10 (Oct. 7, 1987). Mr. Macktal's single concern which has not been closed out by the NRC Staff, involves the substitution of electrical covers in certain electrical enclosures. TU Electric is reinspecting those enclosures and making any modifications necessary to comply with applicable design criteria. Furthermore, engineering and construction personnel are undergoing additional training to emphasize compliance with the design change process. See *infra*, section C.1.e, pp. 21-22. CFUR not only fails to challenge these corrective actions but it does not even suggest that they are somehow inadequate.

provide good cause for CFUR's belated petition. As discussed at pages 22-23, infra, there is no indication that these broad and vague allegations involve any significant safety or environmental issues, and there is every reason to believe that they do not. During the year after Mr. Macktal left Comanche Peak, he was interviewed by the NRC Staff. I had ample opportunity to state all of his safety concerns. There was no reason for him to withhold any such allegations during those interviews. Apparently, in or about December 1986 the NRC Staff provided Mr. Macktal with the report of its investigation of his allegations. NRC Inspection Report 50-445/86-15, 50-446/86-12, app. C at 6 (Dec. 22, 1986). Mr. Macktal had the opportunity to identify any concerns with the investigation results or other safety concerns at that time. Indeed, there never has been anything preventing him from raising his concerns with the NRC Staff at any time, or even to seek a more formal review of them, and there is nothing to prevent him from doing so now. 17/

In summary, Mr. Macktal has not been precluded from raising any concerns before the NRC Staff. Nor as shown below, are Mr. Macktal's allegations are of any safety or environmental significance. Furthermore, the allegations made by Mr. Macktal were publicly available more than two years before CFUR sought to intervene. Under these circumstances, CFUR cannot demonstrate

17/ We note, however, that since Mr. Macktal has now been away from Comanche Peak for over two and a half years, it is unlikely that he has new information beyond what he previously disclosed to the NRC Staff.

good cause for its untimely petition to intervene as required by 10 C.F.R. § 2.714(a)(1)(i). Moreover, as Applicants will demonstrate, CFUR has not made a compelling showing on the remaining factors of § 2.714(a)(1).

C. CFUR Has Not Demonstrated That It Can Contribute To The Development Of A Sound Record

As shown in Applicants' Answer and the precedent cited therein, CFUR's Petition was patently defective and failed to demonstrate that CFUR could contribute to the development of a sound record. See Applicants' Answer at 12-18. Not only does CFUR's Supplemental Petition fail to cure the deficiencies of its initial Petition, but it further demonstrates that CFUR could not contribute to the development of a sound record on the matters that it seeks to raise.

A potential intervenor has no absolute right to be a party. See Catawba, 17 NRC at 1045. A late petitioner has an especially heavy burden to meet before it may be permitted to reenter the proceeding and an obligation to define its issues with particularity at the outset. "When a petitioner addresses [its ability to assist in developing a sound record] it should set out with as much particularity as possible the precise issues it plans to cover, identify its prospective witnesses, and

18/ As Applicants previously noted, the factors set forth at 10 C.F.R. § 2.714(a)(1)(ii) and (iv) are of "relatively minor importance." Kansas Gas & Elec. Co., et al. (Wolf Creek Generating Station, Unit No. 1), LBP-84-17, 19 NRC 878, 887 (1984) These two factors are addressed in Applicants' Answer, and accordingly, they are not discussed here.

summarize their proposed testimony." Mississippi Power & Light Co., et al., (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982) (citations omitted). Even as amended by the Supplemental Petition, CFUR's Petition to intervene does not explain with any degree of specificity the matters it proposes to raise or their basis, or summarize any evidence that Mr. Macktal or other, as yet unidentified, witnesses might give. The allegations that CFUR raises in the Supplemental Petition continue to be vague and undefined and fail to indicate any "substantial safety or environmental issue." See Washington Public Power Supply System et al. (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167, 1180-81 (1983). Moreover, CFUR has yet to demonstrate any special expertise on any of the ill-defined issues that it seeks to raise, (See Commonwealth Edison Co. (Braidwood Nuclear Station, Units 1 and 2), CLI-86-8, 23 NRC 246 (1986)) and thus has failed to make any showing, much less the requisite compelling showing, that it is able to make a substantial contribution to the record.

The Supplemental Petition does no more than simply mention Mr. Macktal's concerns in the most general terms. As discussed in detail below, with respect to Mr. Macktal's previously raised issues, CFUR fails to demonstrate any knowledge of the comprehensive review documented by the staff or the actions taken by Applicant to address those concerns. Despite the fact that all of this information is a matter of the public record. More importantly, the Supplemental Petition does not in

any way reflect any inadequacy in the action taken by Applicants or the NRC Staff regarding those allegations or demonstrate that any significant safety or environmental issues exist.

With regard to the "new" allegations, no information is provided which defines these allegations or demonstrates the existence of any significant safety or environmental issues. Nor does CFUR attempt to explain how these issues relate to the contention on quality assurance and quality control (QA/QC) which CFUR is trying to resurrect. 19/

Standing alone, CFUR's bare recital of these allegations demonstrates that CFUR could not contribute to the development of a sound record. Moreover, as to each such concern, CFUR has failed to demonstrate any knowledge of the specific nature of the allegation, the result of the NRC investigation or the ultimate resolution. Similarly, CFUR has failed to provide any description of the testimony it would offer as to these issues or make any showing that the issues relate to the QA/QC contention it seeks to resurrect. Thus, there is no reason to believe that CFUR could make a substantial contribution on any of these issues.

19/ Contention 5, the single contention remaining in the Operating License docket when the proceedings were dismissed related to Applicants' quality assurance and quality control practices in the construction of Comanche Peak. See Applicants' Answer at n.6. The Board has interpreted this contention to include allegations concerning Applicants' quality assurance and quality control in the design of Comanche Peak. See Texas Utilities Generating Co., et al. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-83-81, 18 NRC 1410 (1983).

1. None Of The Allegations Contained in CFUI's Supplemental Petition Raise a Significant Safety or Environmental Concern

NRC Inspection Report 50-445/86-15, 50-446/86-12 (Dec. 22, 1986) details the results of the NRC Staff's investigation of allegations related to Comanche Peak received from Mr. Macktal. ^{20/} The allegations described in this inspection report encompass CFUR's "first area" of concern. CFUR's "second area" of concern consists of several vague and conclusory allegations. As is demonstrated below, none of these allegations raise a significant safety or environmental concern.

a. Alleged Contamination of Stainless Steel Conduit

The first Macktal allegation is "contamination of stainless steel conduit." Supplemental Petition at 2. In Inspection Report 50-445/86-15, 50-446/86-12, the NRC Staff reported the results of its investigation of an allegation that stainless steel conduit had been contaminated by cutting it with a blade that had been used to cut galvanized or carbon steel. NRC Inspection Report 50-445/86-15, 50-446/86-12, app. C at 12 (Dec. 22, 1986). The NRC Staff found this practice to be a violation of project procedures. Id. Subsequently, the NRC Staff found acceptable TU Electric's response to the Notice of

^{20/} The NRC inspection report does not disclose the identity of the allexer. However, in the course of discovery in Mr. Macktal's claim before the DOL Mr. Macktal identified concerns that were essentially identical to the allegations identified at pages 6 to 18 of Inspection Report 50-445/86-15, 50-446/86-12.

Violation, which demonstrated that no harmful effects would result from the practice because no pressure retaining function is served by the conduit. NRC Inspection Report 50-445/87-13, 50-446/87-10, app. B at 9 (Oct. 7, 1987). Project procedures were revised to eliminate this unnecessary requirement. Id.

b. Alleged Falsification of Training Sheets and Travelers.

The second allegation cited by CFUR is "falsification of training sheets and travelers." Supplemental Petition at 2. Inspection Report 50-445/86-15, 50-446/86-12 addresses this as two separate allegations. With respect to training sheets, the allegation was that the training sheets for new personnel were signed by a foreman without verifying that the assigned reading material had in fact been read. NRC Inspection Report 50-445/86-15, 50-446/86-12, app. B at 13 (Dec. 22, 1986). The NRC Staff review of the allegation concluded that although the practice of unproctored reading and signing of training records was weak, no incidents of falsification of training records were identified. At the time of the NRC inspection, an employee's foreman had the responsibility under the Brown & Root procedures to insure compliance with the training requirements. The reading of procedures is now proctored, and foremen no longer sign the training record forms. Id. at 13.

With respect to travelers, the allegation was that operation travelers for conduit and junction box supports were signed by people who did not actually perform the work because

the travelers were not signed off until an entire conduit run was completed. Id. at 6-7. The NRC Staff concluded that this practice violated the intent of a project procedure. Id. In response, the Applicants revised the procedure to allow craft to sign a traveler after the completion of work on a conduit run rather than the completion of each work step when post construction verification is possible. NRC Inspection Report 50-445/87-13, 50-446/87-10, app. B at 9 (Oct. 7, 1987). The NRC found this response acceptable and closed this concern. Id.

c. Alleged Improper Accounting of Documents and Material

The third allegation cited by CFUR is "improper accounting of documents and material." Supplemental Petition at 2. Inspection Report 50-445/86-15, 50-446/86-12 addresses this as an allegation about the traceability of material used for mounting terminal blocks. The NRC Staff concluded that there is no requirement that the mounting material be traceable. NRC Inspection Report 50-445/86-15, 50-446/86-12, app. B at 10 (Dec. 22, 1986).

d. Alleged Improper Design, Manufacture and Installation of Electrical Conduits and Safety Related Circuits

The fourth allegation cited by CFUR is "improper design, manufacture, and installation of electrical conduits, and safety related circuits." Supplemental Petition at 2. Inspection Report 50-445/86-15, 50-446/86-12 addresses several

allegations within this general scope, including use of torque wrenches for installation of Hilti bolts (pages 8-9), installation of Hilti bolts in contact with rebar (page 9), construction drawing use in conduit routing (pages 12-13), departure from design drawings in the installation of conduit supports (page 15-18) and electrical separation (page 18). The allegation regarding use of torque wrenches and the allegation regarding installation of conduit supports were substantiated and resulted in issuance of Notices of Violation. NRC Inspection Report 50-445/86-15, 50-446/86-12, app. A at 1-2, 3 (Dec. 22, 1986). The other allegations were either not substantiated or found not to present a safety concern.

The two violations were subsequently resolved. With respect to the violation related to use of torque wrenches, the NRC Staff found that this had no impact on the adequacy of existing installations and that retraining of personnel in the procedure requirements adequately resolved that concern. NRC Inspection Report 50-445/87-13, 50-446/87-10, app. B at 9-10 (Oct. 7, 1987). With respect to the violation related to installation of conduit supports, the NRC Staff found that the as-installed support configurations had been subsequently approved by engineering, and were therefore acceptable, and that retraining of electrical personnel on the requirement to obtain prior engineering approval adequately resolved this concern.

Id. 21/

21/ CFUR has not demonstrated any knowledge regarding the substantial review and correction of the design and

e. Alleged Improper Site Modification of Vendor Supplied Equipment

The fifth allegation cited by CFUR, and the last said to have been provided to the NRC Staff, is "improper site modification of vendor supplied equipment." Supplemental Petition at 2. The NRC Staff investigated and substantiated an allegation that certain electrical enclosures were installed without covers and the covers subsequently lost. The covers which were substituted for the manufacturer's original equipment did not meet the applicable requirements. NRC Inspection Report 50-445/86-15, 50-446/86-12, app. B at 11-12 (Dec. 22, 1986). In response to the Notice of Violation, TU Electric stated that the electrical enclosures would be reinspected, any discrepancies would be modified where necessary to comply with applicable design criteria and engineering and construction personnel would be retrained to emphasize the necessity for using the design change process. Letters to NRC from W.G. Council, TU Electric, dated Feb. 2, 1987 (TXX-6250) and May 22, 1987 (TXX-6466). The reinspection for Unit 1 is being performed as one aspect of the

(footnote continued from previous page)

installation of electrical conduits and safety-related electrical circuits. See CPSES, Project Status Report, "Electrical" Rev. 0 (Jan. 15, 1988); CPSES, Project Status Report, "Conduit Supports Trains A & B, and Train C Larger than 2 Inch Diameter" Rev. 0 (Nov. 18, 1987); CPSES, Project Status Report, "Conduit Supports Train C, 2 Inch Diameter and Less" Rev. 0 (Nov. 11, 1987); Results Reports, ISAP I.a.1 to I.a.5, I.b.1 to I.b.4 and VII.C Appendix 1-7; see also NUREG 0797, Supplement No. 7 (Jan. 1985) (Safety Evaluation Report).

Post Construction Hardware Validation Program portion of the Comanche Peak Corrective Action Program. See Letter to NRC from W.G. Council, TU Electric, dated Mar. 1, 1988 (TXX-88263).

- f. The Allegations within CFUR's Second "Area Of Concern" also Demonstrate that CFUR Cannot Contribute to the Record

CFUR's second category of "safety concerns" consists of several broad and vague allegations. These allegations are:

- 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) SAFETEA's participation in and cover-up of safety concerns.

Supplemental Petition at 2.

These vague and conclusory allegations plainly are insufficient to raise any safety issues, much less demonstrate that CFUR has any expertise in these areas. Apart from the bare statement of the allegations, CFUR provides no explanation of the substance of these allegations and no basis for which the Commission could reasonably conclude that a significant issue exists. CFUR fails to describe any testimony it might proffer as to these matters and fails to demonstrate that it has any expertise of any kind in regard to those issues. Moreover, based

on CFUR's pleading, it is difficult to discern how any of these matters have any relationship to the QA/QC contention CFUR is attempting to litigate. CFUR's patently defective Supplemental Petition once again demonstrates that CFUR cannot contribute to the record or satisfy the requirements of 10 C.F.R. § 2.714(a)(1)(iii).

2. CFUR's Claim That It Can Contribute To The Record Is Meritless

In arguing that it will contribute to the development of the record, CFUR claims that it "is able to work constructively with new whistleblowers. . . . [many of which] still exist and are still coming forward with . . . unresolved safety allegations. All of these whistleblowers are potential ASLB witnesses...." Supplemental Petition at 6-7. CFUR also suggests that "[a]ll whistleblowers or other witnesses known to CASE or the Utility" should be questioned before the Licensing Board to determine if they have unresolved safety concerns. *Id.* at 9. CFUR's apparent view that an operating license hearing is an open-ended process for addressing an ever-expanding and undefined series of allegations further demonstrates that CFUR has no expertise in NRC proceedings and is unlikely to be of assistance in the development of a sound record on any issue. 22/

22/ The Commission's regulations provide that in the case of an application for an operating license, the licensing board will conduct adjudicatory hearings to consider "any matters in controversy among the parties" or raised by the licensing board on its own motion. 10 C.F.R. § 2.104(c) (1988). It is, of course, the role of the NRC Staff, not the licensing boards, to conduct investigations and to perform inspec-

In summary, CFUR's Supplemental Petition succumbs to the same defects as its Petition. CFUR fails to adequately explain the matters it proposes to raise, identify its prospective witnesses or summarize what testimony they might give. CFUR identifies no substantial safety issue or special expertise on the issues that it seeks to raise. CFUR's Supplemental Petition demonstrates that CFUR fails to understand the issues it raises, the Applicants' corrective programs, or even the adjudicatory process it seeks to invoke. CFUR's Supplemental Petition clearly demonstrates that it cannot contribute to the development of a sound record as required by 10 C.F.R. § 2.714 (a)(1)(iii).

D. CFUR's Supplemental Petition Will Further Delay The Proceedings And Broaden The Issues

CFUR claims that "Mr. Macktal's allegations will not 'broaden the issues' or 'delay' the hearings. 10 C.F.R. § 2.714 (a)(1)(v). All of Mr. Macktal's allegations are covered under the former CASE contentions...." Supplemental Petition at 6. In fact, however, CFUR's Supplemental Petition, demonstrates that granting CFUR's Petition would serve only to broaden the issues and delay the proceedings. As Applicants noted in their answer to CFUR's Petition, in considering the issue of delay, the relevant inquiry is "whether the proceeding -- not license issuance or plant operation -- will be delayed." Philadelphia

(footnote continued from previous page)
tions. Cf. 10 C.F.R. § 1.47 (1988).

Elec. Co. (Limerick Generating Station, Units 1 and 2), ALAB-828 23 NRC 13, 23 (1986). Here, CFUR ignores the fact that these proceedings have been dismissed. Thus, each CFUR allegation constitutes a new issue and would necessarily broaden the issues and result in significant delays.

E. Public Policy Demands Settlement
Of This Licensing Proceeding

In Sections II and III of CFUR's Supplemental Petition, CFUR argues that public policy requires that hearings be held on Mr. Macktal's allegations and that "reactivation" of the licensing proceedings will not disrupt the settlement between CASE and Applicants. To the contrary, public policy demands that the settlement between CASE and Applicants, entered into after nine years of litigation, be upheld against CFUR's patently defective Petition.

In promulgating 10 C.F.R. § 2.759, the regulation governing settlement in initial licensing proceedings:

The Commission [was] concerned not only with its obligation to the segment of the public participating in licensing proceedings but also with its responsibility to the general public - a responsibility to arrive at sound decisions, whether favorable or unfavorable to any particular party, in a timely fashion. The Commission expressly recognize[d] the positive necessity for expediting the decisionmaking process and avoiding undue delays.

37 Fed. Reg. 15127 (July 28, 1972). Thus, the Commission encourages "the fair and reasonable settlement of contested

initial licensing proceedings" and "expect[s] that the presiding officer and all of the parties . . . will take appropriate steps to carry out this purpose." 10 C.F.R. § 2.759 (1988).

Applicants and CASE, after nine years of protracted litigation, the development of an extensive Corrective Action Program and through complex negotiation, have reached a fair and reasonable settlement. As was indicated in Applicants' Answer, CASE received unprecedented access to Applicants' facility and sufficient resources to investigate any concerns that it might identify. Applicants' Answer at 5-6. As evidenced by the Commission's regulations, long-standing Commission policy strongly supports this settlement as an appropriate means to resolve any outstanding issues, expedite the decision making process, and prevent further unnecessary delay.

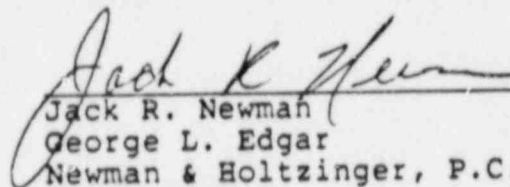
CFUR's claim that the public benefits of the settlement between CASE and Applicants will somehow be unaffected if CFUR were admitted as a party is plainly false. Applicants have made unprecedented compromises in order to settle with CASE. If CFUR's request for hearing is granted and CFUR is permitted to intervene, the benefits accruing to both the public and Applicants from the timely termination of licensing proceedings and the avoidance of undue delay would be lost. Such a result would vitiate the primary benefit that accrues to the public from settlements and substantially lessen the prospects of future settlements of NRC proceedings.

Conclusion

Accordingly, for the foregoing reasons as well as those set forth in its initial answer, Applicants respectfully request that CFUR's Petition be denied.

Respectfully submitted,

Texas Utilities Electric Company
for the Owners of the CPSES



Jack R. Newman
George L. Edgar
Newman & Holtzinger, P.C.
Suite 1000
1615 L Street, N.W.
Washington, D.C. 20036
(202) 955-6600
Attorneys for Texas Utilities
Electric Company

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION

DOCKETED
USNRC

'88 SEP 29 P4:09

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

OFFICE OF SERVICE
DOCKETING & SERVICE
BRANCH

CERTIFICATE OF SERVICE

I, Thomas A. Schmutz, hereby certify that the foregoing Applicants' Reply to CFUR's First Supplement to its August 11, 1988 Request for Hearing and Petition for Leave to Intervene was served this 28th day of September, 1988, by mailing copies thereof (unless otherwise indicated), first class mail, postage prepaid to:

*Lando W. Zech, Jr.
Chairman
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

*Thomas M. Roberts
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

*Kenneth M. Carr
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

*Kenneth C. Rogers
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

*Indicates delivery by overnight courier.

*Peter B. Bloch, Esquire
Chairman
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

*Adjudicatory File
Atomic Safety and Licensing
Board Panel Docket
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

*Alan S. Rosenthal, Esq.
Chairman
Atomic Safety and Licensing
Appeal Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Assistant Director for
Inspection Programs
Comanche Peak Project Division
U.S. Nuclear Regulatory
Commission
P.O. Box 1029
Granbury, Texas 76048

*Juanita Ellis
President, CASE
1426 South Polk Street
Dallas, TX 75224

William R. Burchette, Esquire
Heron, Burchette, Ruckert,
& Rothwell
Suite 700
1025 Thomas Jefferson St., N.W.
Washington, D.C. 20007

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

*Billie Pirner Garde
Government Accountability
Project
Midwest Office
104 E. Wisconsin Avenue - B
Appleton, WI 54911-4897

Susan M. Theisen, Esquire
Assistant Attorney General
Attorney General of Texas
Environmental Protection
Division
P.O. Box 12548
Austin, Texas 78711-1548

Robert A. Jablon, Esquire
Spiegel & McDiarmid
1350 New York Avenue, N.W.
Washington, D.C. 20005-4798

* Elizabeth B. Johnson
Oak Ridge National Laboratory
P.O. Box X Building 3500
Oak Ridge, Tennessee 37830

* Dr. Walter H. Jordan
881 West Outer Drive
Oak Ridge, Tennessee 37830

Robert D. Martin
Regional Administrator,
Region IV
U.S. Nuclear Regulatory
Commission
611 Ryan Plaza Drive
Suite 1000
Arlington, Texas 76011

*Dr. Kenneth A. McCollom
Administrative Judge
1107 West Knapp
Stillwater, Oklahoma 74075

Joseph Gallo, Esquire
Hopkins & Sutter
Suite 1250
1050 Connecticut Ave., N.W.
Washington, D.C. 20036

*Janice E. Moore, Esquire
Office of the General Counsel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

*Anthony Roisman, Esquire
1401 New York Avenue, N.W.
Suite 600
Washington, D.C. 20005

Lanny A. Sinkin
Christic Institute
1324 North Capitol Street
Washington, D.C. 20002

Nancy Williams
CYGNA Energy Services, Inc.
2121 N. California Blvd.
Suite 390
Walnut Creek, CA 94596

David R. Pigott
Orrick, Herrington & Sutcliffe
600 Montgomery Street
San Francisco, CA 94111

*Robert A. Wooldridge, Esquire
Worsham, Forsythe, Sampels &
Wooldridge
2001 Bryan Tower, Suite 3200
Dallas, Texas 75201

*W. G. Council
Executive Vice President
Texas Utilities Electric Company
Generating Division
400 N. Olive, L.B. 81
Dallas, Texas 75201

Jim Bailey, Esquire
Texas Municipal Power Agency
P.O. Box 7000
Bryan, Texas 77805

Richard L. Griffin, Esquire
600 North Main
Fort Worth, Texas 76106


Thomas A. Schmutz

Dated: September 28, 1988