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USNRC

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

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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)

REQUEST FOR HEARING
AND PETITION FOR LEAVE TO INTERVENE
BY CITIZENS FOR FAIR UTILITY REGULATION

Introduction

On July 13, 1988 intervenor Citizens Association for Sound Energy (CASE) withdrew from the above referenced docket in an unprecedented agreement with TU Electric. Citizens for Fair Utility Regulation now files this petition to intervene in the licensing proceedings for the Comanche Peak Steam Electric Station (CPSES)

Citizens for Fair Utility Regulation (CFUR) was granted intervenor status in the operating license proceedings for the Comanche Peak Steam Electric Station on June 27, 1979, along with Citizens Association for Sound Energy (CASE) and ACORN. CFUR participated individually and separately from the other intervenors. Following preliminary proceedings and initial hearings on substantive issues, CFUR and ACORN withdrew from the proceedings in 1982. The three parties agreed at the time of the CFUR and ACORN withdrawal that the resources of each group were

being seriously taxed by the proceedings, and that the groups were competing for the same resources. It was agreed that CASE would remain in the proceedings as the sole intervenor with nine of CFUR's original contentions admitted in dockets 50-445 and 50-446 remaining as part of the twenty-four contentions to be resolved. Contention 5 (the 'Quality Assurance/Quality control content') became a joint contention of CFUR, CASE, and ACORN and was still outstanding at the time of the settlement between CASE and Texas Utilities. CFUR and its members remained involved in the OL proceedings as discussed below.

Description of the Petitioner

CFUR is a citizens organization founded in 1976 for the purpose of challenging electric utility rate hikes. On several occasions CFUR intervened before the Texas Utility Commission to protect residential ratepayers. CFUR's work also includes education, research, advocacy, and assistance to public officials on energy issues.

Interest and Standing of the Petitioner

The interests of CFUR are predicated in large part on the interests of its members. Four of CFUR's members have authorized the filing of this petition to intervene on their behalf. Kendall McCook and his wife Virginia live on eight acres of land within three miles of the plant in Tolar, Hood County, Texas. Priscilla Reznikoff, who resides at 6001 Forest Hill Drive, Fort Worth, Texas 76119 (approximately forty-five miles from the

plant) authorized the original CFUR petition to intervene in 1979. Betty Brink, who resides at 7600 Anglin Drive, Fort Worth, Texas 76119 (approximately forty-five miles from the plant) is a spokesperson for CFUR and has authorized this petition on behalf of the organization. Mr. and Mrs. McCook, Mrs. Reznikoff and Mrs. Brink live, work, recreate, and travel in the environs of Comanche Peak and eat food produced in an area that would be adversely affected by normal and accidental releases of radioactive materials from the plant. Their affidavits demonstrate interests in the proceeding and its outcome and how those interests may be affected. (Affidavits are attachments A B and C.)

Kendall and Virginia McCook and their two children live at Rt. 1, Box 70, Tolar, Texas 76476, within three miles of the plant. The railroad track which will carry radioactive waste from the plant and nuclear fuel into the plant borders their property. There are no barriers or warning signs on the road which the tracks cross near their home. The McCooks not only have their home on their land, they own a milk cow, horses, and other farm animals; they grow food on their land which they depend on for themselves and their children.

They have a well on their property which is their only source of water for themselves, their children, and their farm animals. The McCooks use their land and the recreational sites in the nearby Glen Rose area for horseback riding and hiking.

They swim and fish in the Paluxy River, two favorite river sports for generations of residents and visitors to the area. Their children attend local schools.

The McCooks are concerned for the risk to the health and safety of themselves, their children, and animals posed by the normal operations of Comanche Peak as well as the severity of the losses of life, health, and property they might suffer in the event of an accident at the plant or along the railroad tracks which will be transporting nuclear materials. Those losses could, and probably would, include their deaths and the deaths of their children because of the close proximity of their home to the plant.

Mrs. Reznikoff and her husband and two children use the area within fifty miles of the plant for outdoor activities including canoeing, camping, and hiking. They visit the recreational areas in Dinosaur Park and a nearby wildlife park. The Reznikoffs are concerned for the risk to their health and safety and that of their children posed by the normal operations of Comanche Peak and possible accidents there.

Mrs. Brink, her husband and grandchildren use the area within fifty miles of the plant for many recreational activities including canoeing in the Brazos River. The area within five miles of the plant is a favorite camping site and is used for summertime hiking and fishing by the Brink family. Mrs. Brink also frequents the restored town of Granbury, a local tourist

attraction, that is within twelve miles of the plant. Mrs. Brink lives on and owns property within the fifty mile radius that has been in the family for fifty-seven years. Mrs. Brink is concerned that operation of the plant will cause loss of health to herself and her family and that safety problems at the plant will jeopardize her life and her property.

How Petitioner's Interests May Be Affected

The operation of the Comanche Peak plant will endanger the health and safety of the petitioner's members due to routine and/or accidental releases of ionizing radiation which will contaminate the air, food, and water upon which members rely. The OL proceeding is the petitioner's only avenue to improve the safety of the plant, or deny it an operating license if it has not met the regulatory requirements as set forth in 10 CFR Part 50, as petitioner fears. The outcome of the proceeding will have a direct impact on the safety of the petitioner's members and their property. Recreation may be jeopardized by the project's impact on the local rivers, recreation, and camping sites. A nuclear accident at the project will affect the lives and property of the petitioner's members, their children and grandchildren. As the affidavits show, the affiants believe that their individual health and safety are at risk by operation of Comanche Peak.

Specific Aspects of the Subject Matter

Petitioner raises one contention, Contention No. 1 which was formerly No. 5 from docket nos. 50-445-OL, 50-446-02:

The applicant's failure to adhere to the quality assurance/quality control provisions required by the construction permits for Comanche Peak, Units 1 and 2, and the requirements of Appendix B of 10 CFR Part 50, and the construction practices employed, specifically in regard to concrete work, mortar blocks, steel, fracture toughness testing, expansion joints, placement of the reactor vessel for Unit 2, welding, inspection and testing, materials used, craft labor qualifications and working conditions (as they may affect QA/QC), and training and organization of adequacy of the construction of the facility. As a result the Commission cannot make the findings required 10 CFR §50.57(a) necessary for issuance of an operating license for Comanche Peak. (CFUR 4A-ACORN 14-CASE 19 Joint Contention.)

CFUR believes that current NRC inspection reports outlined in this petition will show that serious QA/QC deficiencies still exist.

Ironically, while the NRC's Comanche Peak Review Team (CPRT) concludes, in the joint stipulation that "the current programs for design, construction, assurance of quality, and testing of CPSES are adequate," NRC inspectors, in two lengthy reports attached to this petition and summarized in section 3, show just the opposite.

Factors Governing Late-Filed Petitions

Section 2.714(a) (1) of the regulations provides that nontimely filings will not be entertained absent a determination by the licensing board that the petition should be granted based upon a balancing of the following five 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; and
- (v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

1. Good Cause

CFUR has good cause for filing this petition late. CASE, as part of a remarkable and unprecedented secret agreement with the applicant has withdrawn from the proceeding. In exchange for its withdrawal, CASE has or will soon receive 4.5 million dollars from the applicant. The applicant will also pay 5.5 million dollars to settle claims of CASE witnesses. In exchange for the 5.5 million dollars, the witnesses have agreed to withdrawal of claims. They also agreed to dismiss with prejudice, any legal proceedings either in court or administrative forum that they are currently a party to. This has resulted in the dismissal of the adjudicatory proceedings by the ASLB. (See attachments D and E.)

This agreement has only recently been announced and brought to the attention of petitioner and the secret nature of portions of the agreement have only become known to petitioner within the last weeks. The terms of the agreement that have been released were only available to petitioner after the Board ruling accepting the agreement and dismissing the proceedings.

It appears that attorneys for CASE and an attorney who is a board member of CASE represent witnesses who stand to gain from

this agreement. The secrecy surrounding the exact nature and extent of the full agreement, when coupled with the conflict of interests between the public represented by CASE and the individuals who have pursued claims against the applicant, clearly raises a serious question as to whether the action by CASE was consistent with its role as intervenor, or whether that role has been compromised. The witnesses would not have received their large settlements unless CASE withdrew from the proceeding.

New information which has just become known to CFUR (see Attachment F) raises serious questions as to CASE's intent to implement the provisions of the agreement which would allow Mrs. Ellis or her designee a place on the utility's Operation Review Committee for Comanche Peak a position which she and other CASE Board members have used to assure the public that CASE would continue to monitor the plant's construction and, if licensed, its operation, and to report to the NRC any problems uncovered by CASE. In a letter of resignation, CASE board members Barbara and David Boltz, 2012 South Polk, Dallas, Texas 75224, who have had a close working relationship with Mrs. Ellis for eight years and who have participated in all the hearings on Comanche Peak, voiced deep concerns about CASE's commitment to implement its rights under the agreement, other than the acceptance of the \$4.5 million.

This new development, coming as it has within days of the settlement, emphasizes the urgent need for other citizen

participation and public scrutiny, independent and without strings. Because of the apparent breakdown on the CASE board and the lack of timely decision making, much harm can be done at the plant without public knowledge because the advocate CASE is simply not there. There is also no independent citizens group now with standing which could be available to hear whistleblowers and protect their confidentiality. Because CASE has lost its independent status, whistleblowers, given TU's past history of harassment and intimidation documented through dozens of DOL and NRC proceedings, will be reluctant to come forward.

At the time CFUR withdrew from the proceedings the intervenors had discussed the need to consolidate resources and to have a lead intervenor. As stated earlier, resources were hard to come by and competition between the intervenors for funding was detracting from their collective ability to participate in the proceeding. Based on discussions with CASE, CFUR and ACORN withdrew. Subsequent events continued to indicate that CFUR's reliance on CASE was properly placed. CFUR perceived that CASE was dedicated to the intervention and was doing an excellent job. The most graphic example of CASE's publicly stated dedication can be found in the September 1987 CASE newsletter (Attachment G) announcing its annual meeting for members. CASE reported on the status of the intervention and made an urgent call for financial help to continue the fight:

TUEC's current strategy appears to be to get an operating license based on the results of a newly revised reinspection/redesign/reconstruction plan which is being done under their control...

Most important, the effort is not being done on the whole plant--it is not a 100% redesign/reinspection effort...which CASE believes is essential. Nor is it being done by an impartial third party. CASE believes the effort is too little too late...

We fear that we will never know if the problems brought forward by our witnesses were really solved, or if the plant has been properly fixed and is able to be operated safely. Nor will the NRC, which has admitted that their earlier inspections were inadequate and cannot now be relied upon to assure the plant's safety. But the NRC Staff now appears ready to conclude that it doesn't matter--that they may be willing to rely on the results of the most recent utility--drafted, utility-audited reinspection/corrective action program. Right now, CASE does not even know all the details of this latest plan. But we are not willing to rely on the utility's team (many of whom are the same people who created the problems in the first place) to find and fix them properly.

CASE does not believe that anyone can ever identify, much less correct, all of the many problems at Comanche Peak, and we therefore believe that it should never receive an operating license...even with the bad economic times in Texas now, think how much worse it would be if we had a Chernobyl or worse only 45 to 80 miles away.

Approximately two months ago, at the time CASE withdrew its opposition to the new pipe support design, CFUR representatives asked CASE if it intended to continue the intervention. CASE replied that it had no intention to withdraw from the proceedings and moreover that it saw the pipe support design issue as only a partial agreement (because it did not include the installation of the pipe supports), and that it was CASE's view that there were many other serious safety issues still outstanding under Contention No. 5.

The settlement among CASE, its whistleblower witnesses, and the applicant is unprecedented. Neither CFUR nor any other concerned organization or individual could have foreseen such a turn in the proceedings. The inability to predict this extreme change in the plans of the sole intervenor should not be charged as delay against the petitioner. The NRC would hardly want to encourage every concerned citizen to intervene in proceedings on the offchance that the lead intervenor would completely withdraw from the proceedings.

2. Other Means to Protect Interests

There are no other means for the petitioner to protect their interests or the interests of their members especially in light of the resignation of CASE Board members outlined above. Adjudication of the operating license amendment is the last available NRC forum prior to plant operation. Other methods of giving input into the licensing process might include commenting on the SER and DEIS, making a limited appearance statement or filing a petition pursuant to 10 CFR 2.206. The ability to comment on the SER and DEIS would not permit the petitioner to develop fully before the NRC the areas in which they have an interest. The right to participate, including the right to present evidence and cross-examine witnesses, is not available as part of the opportunity to comment. A limited appearance statement, which is not evidence, is also no substitute.

The opportunity to file a §2.206 petition does not represent a means whereby the petitioner can protect their interests

because these petitions relate to enforcement matters, not the significant interests of the petitioner who are concerned with the licensing for operation of the plant.

3. Contribution to the Record

Petitioners has important contributions to make to the record. There is one witness who has significant contributions to be made to the record, known only to petitioner as John Doe at this time, whom petitioner can produce as a witness and whose testimony will make a significant contribution to the record. John Doe, a former employee at Comanche Peak, has made allegations that the applicant knows of perjury which has been committed by the applicant's employees or agents, that the applicant knows that there are perjured statements in the existing record before the Board, and the applicant has taken no steps to correct the record. This is a remarkable statement and Mr. Doe should be presented to the Board as a witness to substantiate his claim and his further allegations that the applicant has falsified documents, falsified engineering calculations, and knowingly failed to perform necessary engineering calculations, and that there are now existing life-threatening safety flaws at the Comanche Peak site. Petitioner can produce Mr. Doe as a witness if they are allowed to intervene.

John Doe's allegations, many of which have been validated by the NRC, were to have been heard by the ASLB when the now

dismissed hearings were scheduled to reopen in the late fall of 1988. He was to have been a witness for CASE substantiating a breakdown in QA/QC under Contention 5. John Doe believes that there are still outstanding safety issues which will not be corrected or even identified without the continued process of the operating license proceedings in an adjudicatory forum with sworn testimony. He refused a substantial monetary settlement offered by Texas Utilities because he would have had to sign an agreement which would have prohibited his right to go before the ASLB. Mr. Doe is an engineer with outstanding qualifications and years of experience in the nuclear engineering field. His testimony is critical and should not be left out of the record which will be the only record the NRC commissioners will have to rely on. Mr. Doe's affidavit detailing his allegations will be added to this petition as an amendment within the next 30-60 days.

CFUR was only yesterday approached by another former 10 year employee of Brown & Root at CPSES with allegations of mismanagement. CFUR believes the allegor to be credible. He worked at the site for 10 years, six years in Quality Control, with electrical and mechanical certifications, and he states that Kapton insulation material has been used throughout the plant. Kapton has been proven to be a dangerous material which can cause fires in and around electrical wiring systems. In addition, there are at least two 1988 whistleblowers whose concerns were

dismissed by the agreement, but whose allegations of safety problems were never made public. These allegations also must be brought forth if the Commission is to be fully informed.

There is current documented evidence that a breakdown in the Applicant's QA/QC program is still--and will continue to be--an ongoing problem at Comanche Peak. Recent NRC I&E reports 88-24, 88-21, 88-34 and 88-30 (attached) show a breakdown in and lack of QA/QC controls in several critical and one essential area all of which are direct concerns of Contention 5. I&E reports 88-24 and 88-21 are notices of NRC violations of NRC and ASME codes and significant unresolved safety issues. The most significant violation concerns the cold hydrostatic pressure testing of the Unit 1 primary system based on inspections by the NRC and the Texas Department of Labor Standards. An allegation questioning the validity of the hydrostatic testing was made to the NRC by a former NRC CPSCS inspector a year ago and again on or about July 10, 1983 to CFUR. The 88-24 and 88-21 I&E report confirms the alleged's accusations that the cold hydrostatic test performed on July 31, 1982 did not meet NRC or ASME requirements and was not reported to nor found by the NRC for six years. CFUR believes this to be a clear violation of the law as stated in 10 CFR part 50, Appendix B, requiring prompt corrections of QA/QC violations. Incredibly the utility has lost "most" records which might have confirmed its examinations of field welds, vendor welds, base metal repairs, and other high stress areas during the hydrostatic

test of the Unit 1 primary coolant system. The inspectors were asked to rely on the "historical memories" of engineering and QC personnel who were called upon to recall accurately the details of the test conducted six years ago. CFUR believes this to be an impossible task and an unfair burden on the personnel. The former NRC inspector who called attention to the failed QA/QC during the testing, called the hydro test and the records detailing its results the "birth certificate" of the plant. The inspector, Jim Sutton of Sun Lake, Arizona has told CFUR that the test must be redone. The test is not a simple affair. CFUR has been told by Mr. Sutton that it will take months or years to retest all the systems necessary to prove the plant can be operated safely. At this late date, six years after the initial test in 1982 failed, the utility still has no credible answers for its failure to meet NRC QA/QC regulations. CFUR believes this to be a clear violation of 10 CFR part 50, appendix B, sections XI, XVI, and XVII.

Further, I&E reports 88-30 and 88-34 found unresolved and open safety items involving a lack of QA/QC controls, with respect to defective service water piping coating dating back to 1980, masonry wall design, defective diesel generator push rods, and incomplete reports dating from 1977 through 1986, among other things. (Please see paragraph six pages 6 through 13 detailing potential hazards from poor quality pipe coating.)

Because of the continuing breakdown in QA/QC still being found in critical safety areas by NRC inspections, CFUR believes that a pattern of QA/QC deficiencies can be shown to exist dating from the early 1970s to the present. In a 1984 Board order, the judges said that such a pattern would be more significant than the individual deficiencies.

Further, CFUR believes that long known information regarding the integrity of the welds in the Spent Fuel pool liner has not been fully addressed or resolved. CFUR is aware of and has had extensive interviews with a former CPSES welder who worked on the liner, and who has publicly stated that due to unclean working conditions many of the welds in the liner are defective and will corrode and leak over time. The former welder believes that a number of the welds are inaccessible for either testing or repair. Also, CFUR is aware of and has had extensive interviews with a former CPSES QA/QC inspector who was a witness for CASE who has stated that she was forced to falsify inspection reports. Those reports showed that she inspected and approved welds in the liner, as well as other areas, which she had never seen and which were made before she was an employee. Conditions have changed since the fuel building was designed and built regarding the on-site storage of spent fuel, therefore, CFUR believes the dependability and integrity of the welds in the liner are of even greater concern than in the initial construction phase.

At Comanche Peak, the spent fuel pool was originally designed to hold spent fuel from seven years of operation. At that time, it was expected that a high level depository would be available and the fuel would be removed every seven years to a permanent storage site. The spent fuel will now probably remain on site for the life time of the plant. This issue takes on added significance given the latest study for the NRC from the Brookhaven National Laboratory dated February 5, 1987. The study evaluates the risks of larger inventories of spent fuel now being stored on-site, and shows that for some plants the estimated risk results could be comparable to the risks posed by severe core damage accidents in the reactor and warrants "further attention."

In addition, CFUR has experience in participating before administrative agencies and in other legal forum on matters relating to the issues before the board. Before CFUR withdrew as an intervenor it participated in all prehearing conferences from 1979 through 1982 as well as the first round of hearings before the ASLB. CFUR was an active participant in the numerous conferences which refined the final wording of Contention 5. CFUR has already made contributions to the record regarding the batch release of radioactive effluents. TU agreed that such batch releases would be made only after certain stringent meteorologic and demographic conditions had been met to protect populations outside the exclusion boundary. Also, CFUR required

the utility to consider the effect of the drawdown of ground water in the area. The utility agreed to a reverse osmosis system which would allow them to use water from Squaw Creek rather than precious ground water. Further CFUR did much of the early research, developed contacts with, and interviewed many of the whistleblowers whose initial concerns led to Contention 5. After CFUR withdrew as an intervenor, it continued to remain involved in the proceedings by working with CASE and by providing supporting education and political work. For example, Richard Fouke, of Arlington, now deceased, an original member of CFUR and a founding member of CASE, worked as a consultant to CASE on engineering issues. In the CASE October 1987 Newsletter, CASE praised Mr. Fouke who had just died that September as "a long time CASE member who worked quietly in the background dealing with engineering and other technical issues so important to plant safety." Mrs. Brink and other CFUR members gave financial, research, and public relations support to CASE, in addition to providing transportation, food, and lodging for witnesses and lawyers involved in the proceedings. CASE provided documents to CFUR for examination and analysis. CFUR has a long standing interest in the case and is quite familiar with the voluminous record, and is thus in a good position to make contributions to the record if allowed to intervene.

4. Representation by Other Parties

This factor must be decided in petitioner's favor. The only intervenor has dismissed the proceedings and withdrawn from the

case. In the last days, before the agreement was approved by the ASLB, Mrs. Brink conferred with Juanita Ellis, CASE, Billie Garde, attorney for CASE, Marshall Gilmore, attorney and member of CASE Board, and Charles Atchison, whistleblower witness for CASE, all of whom are involved in CASE and all of whom support the joint stipulation entered into by CASE, and each of them, though supporting the settlement, has advised Mrs. Brink that the plant at Comanche Peak is not safe. Furthermore, Mrs. Ellis remarked that the plant could never be made safe. CASE cannot at this point represent petitioner's interests. (Further proof of this is found in the Attachment regarding Board resignations.)

Although the staff might represent the petitioner insofar as they are members of the general public which the staff is charged to represent, there is no indication of compatibility on the issues. The burden is on the staff to show that its position is that of the petitioner on the issues. The staff's duty to represent the public interest in the enforcement of the Atomic Energy Act does not mean that its view will be identical with all individuals or groups. In this case, the petitioner does not believe that the staff's position on issues, its technical qualifications, or its presumably unbiased perspective will represent their positions fairly.

Delay of Proceedings


The petitioner is fully prepared to take the proceedings as they currently exist. Thus, no delay in the proceedings can

be attributed to them save the approximately thirty to sixty days which petitioner is requesting to prepare their case and to amend this petition. Prior to the withdrawal of CASE, the remaining QA/QC issues in the case were considered to have substantial merit. If these issues do not have merit or can be resolved without a hearing the applicant or the staff can and will use summary judgment to dispose of them. Otherwise, the outstanding issues, deemed as they have been to involve matters of public health and safety relating to the operation of the plant, should be resolved. The applicant has been on notice for many years that QA/QC issues would be the subject of these proceedings and the staff likewise has been prepared to apply its resources to their resolution in this proceeding.

Conclusion

The petitioner, having shown herein that it has the requisite interest to establish standing and having shown that a balancing of the factors required by 10 CFR 2.714 for late-filing weigh in favor of granting this petition for leave to intervene, pray for an order granting leave to intervene, reopening the proceedings, making the petitioner a party, and conducting a hearing.

Respectfully submitted,


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