

4690

UNITED STATES NUCLEAR REGULATORY COMMISSION
Before the Atomic Safety and Licensing Board

DOCKETED
USNRC

87 OCT 27 P4:01

In the Matter of)

TEXAS UTILITIES ELECTRIC COMPANY,
et al.,)

(Comanche Peak Steam Electric Station
Unit 1))

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Dkt. No. 50-445-CPA

MOTION FOR RECONSIDERATION

Request is made for the Board to reconsider and reverse the following portions of its Memorandum and Order of October 15, 1987:¹

page 2: "While it was acceptable to laud a dead client, it was not acceptable to take the occasion to make accusations against others."

page 3: "That former counsel for Meddie Gregory shall refrain from unnecessary or irrelevant allegations against the character of others in filings in this docket or the related operating license docket. The allegations made about Brown & Root in the motion [sic] to withdraw shall be considered stricken."

The error of the decision is, we submit, the assumption that how Meddie Gregory was treated during her life was irrelevant, in this case, after her death. As alleged in the original pleading and fully substantiated by the attached affidavit of counsel for Ms. Gregory in the Department of Labor (DOL) proceeding, Ms.

¹ We do not seek reconsideration of the language of the Memorandum and Order itself, including the word "indiscretion," which we believe is inappropriate, nor of the propriety of the Board accepting the pleading of a non-party filed by counsel who have withdrawn their appearance in this case.

DS03

Gregory was in fact forced to choose between two alternatives: either to pursue all her rights or to accept a meager settlement (a pro forma reinstatement without pay and the right to receive and later apply for insurance that former employees are entitled to receive, a \$1,140 loan, and help in obtaining forgiveness of an electric bill) that would enable her to pay for cancer treatment. As the General Release makes clear, a condition of the settlement was that Ms. Gregory had to forego pursuing her substantial claims of illegal discharge against Brown & Root and all the owners of Comanche Peak (the latter were not even parties to the DOL case) in all other fora, e.g., she could not become a co-plaintiff in Atchison, et al. v. Brown & Root, et al. (S.D. Texas, No. H-85-3568).² General Release, p. 2. As the attached affidavit makes clear, it was at the insistence of Brown & Root that the agreement to extend insurance coverage to enable Ms. Gregory to be treated for cancer, sought from Brown & Root as a last resort when all else had failed, was available if and only if she agreed to release not only Brown & Root but TUEC, the minority owners, and all their attorneys, officers, directors, managers, agents, and employees.

These coercive actions of Brown & Root, pursued on behalf of numerous non-parties to the DOL case, are extremely relevant to this proceeding and were not raised earlier only because, as the attached affidavit makes clear, had Ms. Gregory done anything

² Contrary to the argument of Brown & Root, it was this prohibition on Ms. Gregory's right to pursue her own claims in other fora to which the Notice of Withdrawal refers.

that was arguably in violation of the release, she would have faced almost certain suspension of her rights pending resolution of the dispute. It was her status as a "leave of absence" employee, a status controlled by Brown & Root, that entitled her to health insurance.³ One central issue in both the CPA and OL proceedings is whether TUEC and its contractors engaged in coercive actions against employees like Ms. Gregory who insisted on pursuing safety concerns and reporting to the NRC. If, as we have alleged, Ms. Gregory was forced, due to her health crisis, to forego her right to pursue her claims against Brown & Root, TUEC, and the other owners in exchange for a woefully inadequate settlement, then another vital piece of evidence is added to the record of harassment and intimidation of the safety conscious workforce and the generic implications of such conduct on the safety of the plant are expanded. Ms. Gregory's experience is a vital piece of evidence both to establish the retaliation of Brown & Root toward whistleblowers and to establish the state of

³ For instance, the release of TUEC and the minority owners was obtained without adequate consideration to Ms. Gregory and is probably unenforceable. Ms. Gregory, however, could not run the risk of pressing this legal argument because to do so would endanger the financial support for her cancer treatment. It was Brown & Root's unilateral ability to alter her post-employment status, thus disqualifying her for medical insurance, that forced her to accept the settlement and to avoid any confrontation over interpretation of its restrictions after she had accepted it. Even if Brown & Root acted unlawfully, it would take weeks or months to correct the error, during which time Ms. Gregory would be unable to pay for cancer treatment. Past conduct of Brown & Root in other labor cases and in this case certainly was sufficient basis to inhibit Ms. Gregory in exercising her rights when faced with the essentially irreversible cut-off of cancer treatment funding.

mind of Brown & Root and the owners, which goes to whether they did in fact deliberately attempt to evade NRC safety requirements. Protestations of innocent mistakes and a desire to pursue safety are severely challenged, if not totally rebutted, by the actions taken against Ms. Gregory. The Gregory incidents go to the credibility of the corporation in much the same way as TUSA has claimed that the military or criminal record of CASE witnesses is relevant to their credibility.

In its Memorandum and Order the Board purports to ignore the truth of the allegations contained in the Notice of Withdrawal, but, with all due respect, it is obvious that the Board believed Brown & Root's representations regarding the propriety of the settlement. There is no other explanation for its rapid action and its conclusion that the issues are "so very clear cut." We believe the attached affidavit amply demonstrates the following evidence contrary to Brown & Root's assertions:

- 1) The amount of the settlement for a whistleblower who had already obtained a preliminary DOI ruling in her favor was woefully inadequate. This will also be

Contrary to the assertion in the Brown & Root response (p. 1), and to the assumption of the Board Memorandum and Order (p. 2), there is nothing in the original notice, or here, that purports to attack any individual or law firm. The focus was and is on the conduct of certain corporations who are owners and builders of Comanche Peak. As noted in the attached affidavit, Brown & Root's counsel went beyond the terms of the settlement their client agreed to and provided some additional benefits to Ms. Gregory. Counsel for Brown & Root have taken offense when none was given or intended. Unfortunately, the Board has uncritically accepted counsel's mischaracterization of the original notice.

established by introduction of the Section 210 hearing record in this proceeding, which reveals the pretextual and/or disparate bases offered by Brown & Root for Ms. Gregory's termination.

- 2) Brown & Root had no compunction about exploiting Ms. Gregory's serious health problems.
- 3) Ms. Gregory in fact believed that she was being coerced to forego her rights before the DOL and other fora.
- 4) During the last months of her life Ms. Gregory was cut off from her health coverage and forced to end her life in a welfare hospital.

Perhaps this is not sufficient to persuade the Board that the allegations contained in the Notice of Withdrawal are correct, but surely they demonstrate that the allegations are prima facie supportable.

The Board concluded that the Notice of Withdrawal was not the appropriate place for raising the issue at all. We believe it was totally appropriate. First, it was Ms. Gregory's wish that on the occasion of her death the truth be told. Second, at TUEC's request the Board has indefinitely suspended the hearings on the root causes and breadth of the breakdown of quality assurance, thus leaving no current evidentiary proceeding in which to pursue this issue.⁵ Third, the present controversy,

⁵ The Board has countenanced the raising of issues in many unconventional ways in this case, including letters and phone calls, and has itself followed the unconventional path of calling its own witnesses. In each instance, substance, not form, has been the key. As demonstrated above, the substantive relevance

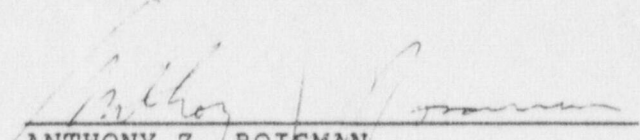
created by Brown & Root's compulsion to respond to the Notice of Withdrawal, has assured that the issue of the mistreatment of Meddie Gregory by Brown & Root and the CPSES owners has unique status in this proceeding, a fitting living memorial to a woman who herself had unique status as a whistleblower, as a confidant of numerous other whistleblowers and would-be whistleblowers, and as a consulting expert to CASE. Far from being the wrong occasion for raising these issues, the Notice of Withdrawal was the best and the only current occasion to raise them at all.

We respectfully request that the Board reconsider its Memorandum and Order and correct its conclusions by recognizing the Notice of Withdrawal as an acceptable place for raising (admittedly not resolving) the issue of the post-employment mistreatment of Ms. Gregory, delete the admonition to avoid certain conduct directed against former counsel for Ms. Gregory, and refrain from striking any portion of the Notice of Withdrawal.⁶

of the events that befell Ms. Gregory are indisputable. It would appear that the Board is bothered by the emotional nature of the charges, not where they were made. Frankly, it is too late to remove emotion from this case. What is involved here is the life and death of four corporations and their biggest asset, the livelihood and lives of former workers, and the potential life and death of persons living in the vicinity of the plant. These are and should be emotional issues, and the only admonition from this Board should be to fit the emotions to the facts, not to turn legitimate emotional issues into dry legal rhetoric.

⁶ If Brown & Root seeks to file a response to this pleading, and the Board allows a response, we urge the Board to compel Brown & Root to establish a legal status in this proceeding and its counsel to enter an appearance so that the provisions of the Rules of Practice will be fully applicable to them.

Respectfully submitted,



ANTHONY Z. ROISMAN

Suite 600
1401 New York Ave., NW
Washington, DC 20005
202/628-3500

Former Counsel for Meddie Gregory

Dated: October 23, 1987

UNITED STATES NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

Before the Atomic Safety and Licensing Board '87 OCT 27 P4:01

In the Matter of)

TEXAS UTILITIES ELECTRIC COMPANY,)
et al.,)

(Comanche Peak Steam Electric Station)
Unit 1))

Dkt. No. 50-445-CPA

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

CERTIFICATE OF SERVICE

I hereby certify that MOTION FOR RECONSIDERATION was served today, October 23, 1987, upon the following by first class mail, postage prepaid, or by hand where marked with an asterisk (*), or by Federal Express where marked by two asterisks (**).

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

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

Fredrick M. Bernthal, Commissioner
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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

Alan S. Rosenthal, Chairman
Atomic Safety & Licensing
Appeal Board
US Nuclear Regulatory Commission
Washington, DC 20555

Howard A. Wilber
Administrative Judge
Atomic Safety & Licensing
Appeal Board
US Nuclear Regulatory Commission
Washington, DC 20555

Thomas S. Moore
Administrative Judge
Atomic Safety & Licensing
Appeal Board
US Nuclear Regulatory Commission
Washington, DC 20555

Peter B. Bloch
Administrative Judge
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Kenneth A. McCollom
1107 West Knapp
Stillwater, OK 74075

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

Elizabeth B. Johnson
Oak Ridge National Laboratory
P.O. Box, Building 3500
Oak Ridge, TN 37830

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Geary S. Mizuno, Esq.
Office of Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Thomas G. Dignan, Jr.
Ropes & Gray
225 Franklin Street
Boston, MA 02110

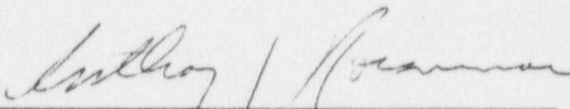
Juanita Ellis, President
Citizens Association for
Sound Energy
1426 South Polk
Dallas, TX 75224

Billie P. Garde
Government Accountability
Project - Midwest Office
104 East Wisconsin Avenue
Appleton, WI 54911

William Burchette
Foster DeReitzes
Heron, Burchette, Ruckert & Rothwell
1025 Jefferson Street, NW
Suite 700
Washington, DC 20007

Robert A. Jablon
Spiegel & McDiarmid
1350 New York Ave., NW
Suite 1100
Washington, DC 20005

William W. Vernon
Blake Tarrt
Fulbright & Jaworski
1301 McKinney Street
Houston, TX 77010



Anthony Z. Roisman

AFFIDAVIT OF BILLIE PIRNER GARDE
IN SUPPORT OF MOTION FOR RECONSIDERATION

The following information is true and correct to the best of my knowledge and belief. The information contained in this affidavit is being provided without threat or coercion, and free from any promise or reward.

1. In February 1984, I met Meddie Gregory. At that time Meddie was employed by Brown & Root at the Comanche Peak site, working with the control^{of B&R} quality documents.

2. At the occasion of our first meeting, Ms. Gregory informed me that she was aware of certain practices at the site which she believed to be violations of site quality control procedures, falsification of documents, harassment and intimidation of quality control inspectors, and other specific incidents in which Brown & Root management had acted in a manner that prevented quality control inspectors from identifying problems.

3. She informed me that she wished to provide the information that she had to the NRC for their investigation, but that she could not risk the loss of her job.

4. She told me that she was the sole supporter of an invalid sister, who was dying of emphysema, and of her sister's minor son, who was handicapped.

5. Ms. Gregory from March to June 1984 provided information to the NRC on a number of occasions, under a grant of confidentiality.

6. On July 13, 1984, Ms. Gregory was laid-off from her

employment with Brown & Root.

7. On August 10, 1987, Ms. Gregory filed a Section 210 complaint against Brown & Root alleging that her discharge had been orchestrated by Brown & Root officials who had learned her identity from indiscriminate disclosures by the NRC of information uniquely tied to her area of job responsibility.

8. The Department of Labor Wage & Hour Division, following a preliminary investigation, reached a determination that Ms. Gregory had lost her job as a result of engaging in protected activity and ordered her reinstated with full payment of back pay and restoration of benefits. That determination is contained in a September 26, 1984 letter to Brown & Root from Curtis Poer, Wage & Hour Division Area Director.

9. I, under the direction and control of an attorney, represented Ms. Gregory in her Section 210 complaint.

10. Brown & Root appealed the Department of Labor's initial determination, discovery was conducted by both parties into the basis for Ms. Gregory's discharge, and a full evidentiary hearing was held on November 13, 1984.

11. During this time period, Ms. Gregory was unable to find further work in or around the Glen Rose, Texas, area to which she was tied because of the responsibilities of her sister and her nephew.

12. Ms. Gregory's unemployment compensation was not enough to pay the house payment, and the exorbitant electric bills that resulted from her sister's 24-hour medical equipment needs.

13. Shortly after the conclusion of Ms. Gregory's

Department of Labor hearing, her sister died.

14. Within two weeks Ms. Gregory was diagnosed as having terminal cancer.

15. I was contacted by the business office of the Hugley Medical Hospital at Fort Worth, Texas, on the day that Ms. Gregory was diagnosed and taken to immediate surgery.

16. I was informed that Ms. Gregory would not be operated on without some insurance coverage or the assurance that her expenses would be paid.

17. The business office informed me that if I was able to produce some assurance that she would receive medical coverage that they would admit her to surgery and treatment.

18. I was informed by both the business office and their social services representative that Ms. Gregory was ineligible for Medicare because she was too young and because she had worked for the bulk of her career for the City of Fort Worth, which did not participate in Medicare payments so that she did not have the requisite age or years of employment to qualify her for any of the exemptions.

19. Knowing that Ms. Gregory had served several years in the U.S. Navy, I then contacted the Veterans Administration to see if she would be eligible for hospitalization, treatment and surgery for cancer if no one else would provide those services for her.

20. I was informed by the Veterans Administration in Washington that Ms. Gregory would not be eligible for such services for a variety of reasons, including the reason that she

did not have a service related disability connected to the disease, and that the waiting list and priorities for treatment and provision of services prohibited her being eligible for such veterans benefits.

21. I then contacted a local banker in Glen Rose and attempted to secure a loan in her name using either myself or someone acceptable to the bank as a co-signer for the purpose of giving the hospital a cash deposit so they would do the surgery.

22. I could not secure such a loan.

23. Following my unsuccessful efforts to find Ms. Gregory any other relief acceptable to the hospital, I advised Ms. Gregory that, in my opinion, based not on the merits of the case, but solely on Ms. Gregory's critical health condition, that we contact Brown & Root and attempt to get them to reinstate her insurance pending the resolution of the Department of Labor matter.

24. I obtained Ms. Gregory's permission to contact Brown & Root and take whatever actions they demanded necessary to obtain reinstatement of her medical insurance so that the hospital would perform the surgery.

25. I then contacted Bruce Downey of Brown & Root, apprised him of Ms. Gregory's medical and financial dilemma.

26. My notes indicate that during the first conversation the only proposal I raised was the reinstatement of Ms. Gregory's health insurance benefits pending the outcome of the DOL claim.

27. My notes of my conversation with Mr. Downey indicate that Mr. Downey informed me that he would contact Brown & Root

for their position but that he was confident that the only way Brown & Root would consider reinstating her health insurance was in exchange for a full and complete release on all Ms. Gregory's potential causes of action stemming from her employment at Brown & Root.

28. My notes next indicate that Mr. Downey returned my call and informed me that it was Brown & Root's position that if Ms. Gregory would agree to that condition, he would call the hospital and give them his personal assurance on behalf of Brown & Root that the medical benefits would be reinstated retroactively to cover the cost of her hospitalization.

29. My notes and my memory indicate that I then called Ms. Gregory at the hospital to discuss with her the sweeping settlement agreement which Brown & Root was proposing.

30. Ms. Gregory instructed me to attempt to obtain enough cash to pay two back house payments, and her electric bill, both of which had accumulated over the past several months.

31. She told me that her home was being foreclosed and that the electricity was about to be shut off, leaving her nephew homeless.

32. Given these instructions, I then contacted Mr. Downey and informed him that if he could come up with the money to meet those needs, that Ms. Gregory had authorized me to settle her claims.

33. It was and is my opinion that this agreement was substantially below any fair resolution of Ms. Gregory's claim and that the only reason Ms. Gregory agreed to it, or I

recommended it, was that Brown & Root gave her no choice in the face of Ms. Gregory's health emergency.

34. Based on my professional opinion and experience in Department of Labor cases with similar facts and circumstances, i.e., a Wage & Hour Division holding in favor of the complainant, and a strong evidentiary record, a fair settlement of this matter would have included back pay, reinstatement of benefits, attorneys fees and expenses, with some movement on rehire versus a lump sum settlement.

35. Based on that agreement, it is my understanding and belief that Mr. Downey called the hospital and informed them of Brown & Root's commitment.

36. Ms. Gregory was then operated on, a five-inch tumor was removed, and she began extensive chemotherapy and radiation treatment with a very poor prognosis.

37. Mr. Downey arranged for a loan from the Brown & Root credit union for Ms. Gregory to deal with the back house payments, for which it was used, and gave his personal assurance that no actions would be made to collect the loan or the interest.

38. Mr. Downey also resolved the outstanding electric bill in some manner apart from Ms. Gregory.

39. Brown & Root did not give Ms. Gregory any cash.

40. Based on my recollection, sometime in the Summer of 1985 the medical benefits were discontinued. Unbeknownst to me at the time Ms. Gregory then personally contacted Bruce Downey about the discontinuance and he took some sort of personal action

to restore these benefits for some time period. As I was on vacation at the time, Mr. Downey contacted my office to inform them of the contact by my client and later told me that he had personally taken care of the problem and restored Ms. Gregory's benefits for a limited period of time.

41. From January 1985 until the time of her death, Ms. Gregory continued a noble and valiant struggle against cancer.

42. She also maintained her home and saw to it that her nephew finished vocational training and received a job.

43. Several months before her death, when almost completely disabled, Ms. Gregory finally lost her house and was displaced to a small travel trailer outside of Glen Rose, Texas.

44. During the past three to five months of her life, Ms. Gregory was gravely ill. She did not inform me, and I do not believe she was ever apprised of the fact that her health insurance benefits would lapse or that they had lapsed ^{until 8/26} ~~while~~ she was refused further hospitalization on that basis at the very end of her life. Further, that even if she had been so informed that her financial and health limitations were such that she was incapable of taking action to resolve the matter.

45. Subsequent to her death, I learned from Ms. Gregory's sister the following:

"For the last seven months in her life [Brown & Root] did not pay anything at all on her medical expenses, and for the six months before that she had a hassle with every claim they filed and had to wait and wait for them to decide to pay them." (Letter of Vyla Henderson to Anthony Roisman,

dated September 19, 1987).

46. During my last visit with Ms. Gregory on July 29, 1987, she instructed me that after her death I was to ensure that the Atomic Safety and Licensing Board was made aware of the reasons that she settled her harassment and discrimination claims, and the facts as developed in the Section 210 proceeding. (At an appropriate future time in the hearing, CASE will introduce into evidence the record of the Section 210 proceedings from which this Board will be able to conclude that Ms. Gregory was terminated solely because she reported safety concerns to the NRC and Brown & Root believed she had done so.)

47. I have read Brown & Root's filing in this matter regarding Ms. Gregory. I state that I unequivocally believed that Ms. Gregory's settlement with Brown & Root precluded her from filing any actions stemming from her wrongful discharge, and I repeatedly advised Ms. Gregory not to file a tort suit against her former employer or take any other action which Brown & Root could construe as a violation of the settlement agreement for fear that Brown & Root would initiate a breach of contract action against Ms. Gregory, or at a minimum, discontinue the benefits they had made available to her. The implication that Ms. Gregory was free to file suit without fear of her health insurance benefits being cut off is beyond comprehension to me.

48. It is my personal opinion and belief that Mr. Downey's actions in this settlement were a sincere reflection of his meeting the demands of his client, while personally insuring to the extent it was within his power to do so -- that Ms. Gregory

was treated fairly.

49. As the original filing made clear, it was the actions of Brown & Root, and presumably Texas Utilities, toward Ms. Gregory that are at issue in this case. In taking advantage of my client's misfortune to insure that no finding of harassment and intimidation was issued by the DOL, and that Ms. Gregory would not pursue her claim of illegal termination in any other forum, Brown & Root and all of the other beneficiaries profited from Ms. Gregory's personal catastrophe.

50. I am mindful that Brown & Root^{et.al. B&R} were legally within their bounds when they negotiated the settlement, and that Bruce Downey personally went beyond the actions required of him to meet the professional obligations of his clients to assist Ms. Gregory, and I am not unappreciative of that reality. Nonetheless, I believe that but for Ms. Gregory's intolerable choice she would have prevailed on the merits of her claim, and that the consequences for those workers who do challenge Brown & Root are graphically demonstrated by this example.

Billie Pinner Garde
BILLIE PIRNER GARDE

Subscribed and sworn to me this 23rd day of October,
1987.

Barbara Gregory
Notary Public, LA

My Commission Expires May 10, 1988