



## **POLICY ISSUE**

### **(Information)**

May 23, 1990

SECY-90-188

For: The Commissioners

From: James M. Taylor  
Executive Director for Operations

Subject: COMPLETED OI INVESTIGATION REGARDING ALLEGED IMPROPRIETIES  
BY BROWN & ROOT IN DEALING WITH JOSEPH MACKTAL

Purpose: To inform the Commission of the results of the recently  
completed OI investigation.

Background: In January 1987, Joseph Macktal and Brown & Root (B&R) entered  
into a settlement of Mr. Macktal's Department of Labor (DOL)  
case. As part of the settlement agreement, Mr. Macktal agreed  
that he would not voluntarily appear as a witness or a party  
to proceedings before the Atomic Safety Licensing Board (ASLB).  
Should Mr. Macktal be served with compulsory process to  
appear, he further agreed to immediately notify B&R and to  
take all reasonable steps to avoid testifying as suggested by  
B&R representatives.

In a separate matter, the Citizens Associated for Sound Energy  
(CASE) and Texas Utilities Electric Company (TU Electric)  
entered into a settlement agreement in June 1988 which provided,  
in part, that TU Electric would make good-faith efforts to  
settle whistleblower claims with an aggregate compensation  
of up to \$5.5 million. Shortly after this agreement became  
public knowledge, Mr. Macktal was interviewed by newspaper  
reporters and claimed that he had been coerced into signing  
his settlement agreement with B&R in January 1987. He further  
stated that a condition of that settlement agreement was that  
he not testify before the NRC or the ASLB. As a result, he  
claimed he had additional safety concerns about Comanche Peak  
that he had never raised with the proper regulatory authorities.

On August 11, 1988, Citizens for Fair Utility Regulation  
(CFUR) filed a petition for late intervention in the Comanche  
Peak operating license proceedings. On September 11, 1988,  
CFUR filed its first supplement to its petition. This supple-  
ment included an affidavit of Mr. Macktal. In his affidavit,  
Mr. Macktal provided a chronology regarding his actions before

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and following execution of his January 1987 settlement agreement. In a second affidavit, dated December 27, 1988, Mr. Macktal presented additional details on his interactions with the NRC, attorneys representing him in the DOL proceeding, and representatives of B&R. Mr. Macktal alleged that in late 1986 he met with the president of B&R (Mr. Lewis Austin) and a lawyer from B&R, for several hours in a Stephenville, Texas, motel. He further alleged that following the meeting Mr. Austin telephoned him and offered to settle with him if Mr. Macktal "was willing to completely forget everything to do with Comanche Peak and move to Arizona." Mr. Macktal also alleged in his second affidavit that he was presented with a settlement agreement that, in effect, required his future silence. This statement implied participation by TU Electric in the settlement process.

In April 1989, the Executive Director for Operations (EDO) requested an investigation into these allegations. On May 1, 1989, the Commission directed the Office of Investigations to initiate, as soon as possible, an inquiry into the alleged motel meeting between Mr. Macktal and Mr. Lewis Austin as well as the alleged telephone call from Mr. Austin to Mr. Macktal. The EDO requested that the investigation be completed in 90 days or less.

Discussion:

Subsequent to the Commission's directive, OI had several conversations with Mr. Macktal's attorneys, Michael and Stephen Kohn, in an attempt to interview Mr. Macktal regarding his allegations of meetings between himself and Mr. Austin. Following failure of these conversations to set a mutually agreeable time and place for an interview, Mr. Macktal was served with a subpoena on June 5, 1989, to testify in the NRC Region IV offices on June 15, 1989. The Kohns notified the NRC that Mr. Macktal would not respond to the subpoena and would not be present to provide testimony to the NRC. The Kohns stated that Mr. Macktal would provide testimony to the NRC only under three conditions: (1) the interview must be conducted in Washington, D.C., (2) the interview must be conducted under a grant of confidentiality, and (3) both Mr. Macktal and his attorneys must be given 30 days notice prior to the interview date. On June 22, 1989, an NRC Order was issued in response to Mr. Macktal's motion to quash the NRC's subpoena. The Order denied Mr. Macktal's motions and ordered him to appear before NRC Region IV staff on July 5, 1989. A copy of this Order was delivered to Mr. Macktal on June 26, 1989. Mr. Macktal did not appear in response to this Order. Consequently, both the Department of Justice (DOJ) and the NRC's Office of the General Counsel (OGC) began efforts to secure a Federal court order directing Mr. Macktal's compliance with the NRC subpoena. The U.S. District Court issued an Order

to Show Cause why the subpoena issued to Mr. Macktal should not be enforced and ordered Mr. Macktal to appear before the U.S. District Court on August 18, 1989. This Order was served on Mr. Macktal on August 3, 1989. On August 18, 1989, Mr. Macktal appeared in the District Court without counsel and requested a postponement of the hearing on the grounds that his attorneys would be in Dallas, Texas, on an unrelated matter in September 1989 and could appear with Mr. Macktal on September 11, 1989. The District Court granted a postponement and set a new hearing date of September 11, 1989.

On September 11, 1989, Mr. Macktal appeared again without counsel. The District Court ordered Mr. Macktal to appear at the NRC Region IV offices on September 18, 1989, to testify and produce all documentation required by the subpoena. Mr. Macktal appeared on September 18, 1989, with one of his attorneys, Mr. Michael Kohn, and was interviewed by the NRC.

As a result of the interviews with Mr. Macktal, Mr. Lewis Austin (former President and current Chairman of the Board for B&R), Mr. Glen Magnuson, Jr. (former Associate General Counsel, B&R), Ms. Billie Garde (Macktal's former attorney) and Mr. Dan Berkovitz (Assistant Counsel to the Committee on Environment and Public Works, U.S. Senate), OI concluded that the evidence developed failed to disclose any illegal activity on the part of Mr. Austin or B&R regarding Mr. Austin's meetings with Mr. Macktal. Mr. Macktal initiated contact with Mr. Austin and Mr. Austin agreed to meet with the former B&R employee. Further, the investigation did not develop any documentation or information to indicate that the offer made by Mr. Austin was other than a simple offer made to settle Mr. Macktal's DOL case.

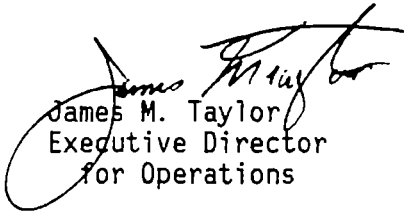
Mr. Macktal was interviewed at the same time by the NRC technical staff. He did not raise any new safety issues. His safety concerns involved either elaboration on his previous allegations or allegations raised by others. All of these concerns were issues the staff was already aware of.

This paper contains sensitive information and should not be released to the public.

Conclusion: The staff concludes that no further NRC action on this matter is warranted. OGC has no legal objection to this paper.

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