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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION

In the Matter of TEXAS UTILITIES ELECTRIC COMPANY (Comanche Peak Steam Electric Station, Unit 2)	Docket No. 50-446-CPA (Construction Permit Amendment)

TEXAS UTILITIES ELECTRIC COMPANY'S
RESPONSE TO PETITIONERS' MOTION TO STAY
ISSUANCE OF FULL POWER LICENSE

INTRODUCTION

On March 15, 1993, B. Irene Orr and D.I. Orr (Petitioners) submitted a motion to stay the issuance of a full power operating license for Texas Utilities Electric Company's (TU Electric) Comanche Peak Steam Electric Station (CPSES), Unit 2. See Petitioners' Motion to Stay Issuance of Full Power License (Motion) at 11. In accordance with the Nuclear Regulatory Commission's (NRC or Commission) March 17, 1993 order, TU Electric hereby files its response to Petitioners' Motion. 1/

1/ Given the confused nature and number of issues raised in Petitioners' Motion, the limited time afforded TU Electric by the Commission to file a response (three days instead of the normal ten-day period under the regulations), and in order to clearly present the relevant issues in this case to

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For the reasons more fully set forth below, Petitioners' Motion suffers procedural and substantive deficiencies, either of which requires its denial. As a threshold matter, Petitioners were not parties to the Unit 2 operating license proceeding and, therefore, cannot now seek a stay of the Unit 2 full power operating license. Moreover, Petitioners fail to satisfy any of the requirements of 10 C.F.R. § 2.788 for the issuance of a stay. TU Electric, therefore, urges the Commission (1) to promptly reject Petitioners' Motion and (2) to deny, on the merits, Petitioners' appeal of the Licensing Board's Order of December 15, 1992.

BACKGROUND

On February 5, 1979, the NRC published a Federal Register notice on TU Electric's request for an operating license for both CPSES Units 1 and 2. See 44 Fed. Reg. 6995 (Feb. 5, 1979). On June 27, 1979, the Licensing Board issued an order granting several petitions to intervene in the proceeding. See Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-79-18, 9 NRC 728 (1979). After years of hearings on the license application, the parties reached a settlement agreement dismissing both the construction permit

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1/(...continued)
the Commission, TU Electric was forced to exceed the page limit requirement set forth in 10 C.F.R. § 2.788(d). TU Electric requests the Commission's indulgence with respect to this matter.

amendment proceeding -- Docket No. 50-445-CPA -- and the Unit 1 and Unit 2 operating license proceedings -- Docket Nos. 50-445-OL and 50-446-OL. See Texas Utilities Electric Co. Comanche Peak Steam Electric Station, Units 1 and 2), LBP-88-18A, NRC 101 (1988); LBP-88-18B, 28 NRC 103 (1988). On April 7, 1990, the NRC issued a full power operating license for CPSES Unit 1. Petitioners never participated in the Unit 1 or Unit 2 operating license proceedings.

On February 3, 1992, TU Electric timely requested an extension of the CPSES Unit 2 construction permit. 2/ On July 27, 1992, Petitioners and two other individuals petitioned to intervene and requested a hearing regarding TU Electric's construction permit extension application. 3/ Both TU Electric and the NRC Staff opposed the petition. The Licensing Board subsequently issued a Memorandum and Order (LBP-92-37) on December 15, 1992, which denied Petitioners' intervention request and terminated the CPSES Unit 2 construction permit extension proceeding. 4/ On December 28, 1992, the Petitioners in the present case petitioned for Commission review of LBP-92-37. This appeal is currently pending before the Commission.

2/ TXX-92041, Letter to NRC from W.J. Cahill, Jr. (TU Electric) dated Feb. 3, 1992.

3/ On October 5, 1992, Petitioners filed a supplement to their July 27 request.

4/ Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, slip op. at 51 (Dec. 15, 1992) (hereinafter "Licensing Board Order").

On February 2, 1993, prior to issuance of the low power operating license, Petitioners filed a request to stay the issuance of the low power operating license. The Commission denied Petitioners' stay request because Petitioners were not parties to the CPSES Unit 2 operating license proceeding. 5/

On February 2, 1993, the NRC found that the construction of CPSES Unit 2 was substantially completed, and issued the CPSES low power operating license authorizing fuel loading and operation up to five percent of full power.

As shown above, Petitioners have made absolutely no attempt to participate in the CPSES Unit 2 operating license proceeding. Instead, their participation has been limited to an attempted intervention in the construction permit extension proceeding.

ARGUMENT

I. PETITIONERS WERE NOT PARTIES TO THE PROCEEDINGS BELOW AND, THEREFORE, CANNOT NOW SEEK A STAY

Petitioners were not parties to the adjudicatory proceeding held by the NRC to consider whether an operating license should be issued for CPSES Unit 2. Petitioners, therefore, cannot now seek a stay of the issuance of the Unit 2 full power operating license. As the Commission stated in rejecting Petitioners' February 2, 1993 request to stay issuance

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5/ Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 2), CLI-93-02, 37 NRC __ (Feb. 3, 1993).

of the Unit 2 low power operating license, the regulation governing stays

> provides only for stays of decisions or actions in the proceeding under review -- in this case the CPA. However, petitioners do not relate their request to any action in the CPA. Therefore, the request for stay is beyond the scope of section 2.788 and is more properly a petition for immediate enforcement action under 10 C.F.R. § 2.206.

Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 2), CLI-93-02, slip op. at 3 (Feb. 3, 1993).

In the instant case, Petitioners make no attempt to even remotely "relate their request" for a stay of the full power operating license to the construction permit extension proceeding. Petitioners' Motion simply constitutes a thinly-veiled attempt to avoid the Commission's order in CLI-93-02. Petitioners' motion should, therefore, be rejected on these grounds alone.

II. PETITIONERS HAVE FAILED TO SATISFY ANY OF THE REQUIREMENTS IN 10 C.F.R. § 2.788 FOR THE ISSUANCE OF A STAY

Petitioners have failed to satisfy any of the requirements set forth in 10 C.F.R. § 2.788(e) necessary for the issuance of a stay. 6/ 10 C.F.R. § 2.788(e) requires the

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6/ Petitioners also fail to meet the procedural requirements for a stay in section 2.788(a) and (b). First, section 2.788(a) requires a stay application to be filed within ten (10) days after service of a decision or action of a presiding officer . . . ." Here, the only decision or

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Commission, in determining whether to grant or deny an application for a stay, to consider

> (1) Whether the moving party has made a strong showing that it is likely to prevail on the merits;
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> (2) Whether the party will be irreparably injured unless a stay is granted;
>
> (3) Whether the granting of a stay would harm other parties; and
>
> (4) Where the public interest lies.

Under section 2.788(e), no single factor is necessarily dispositive. Rather, the strength or weakness of the movant's showing on a particular factor will determine how strong his showing on the other factors must be in order to justify the relief he seeks. See, e.g., Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-338, 4 NRC 10 (1976). Petitioners fail to carry their burden on any of the four factors.

6/(...continued)
action of a presiding officer from which Petitioners could seek a stay is the December 15, 1992 Licensing Board Order denying Petitioners' intervention request in the construction permit amendment proceeding. Second, Petitioners fail to meet the requirements of section 2.788(b)(3), which provides that "[t]o the extent that an application for a stay relies on facts subject to dispute, [the stay application must contain] appropriate references to the record or affidavits by knowledgeable persons." Petitioners' Motion contains a statement by Ronald J. Jones which is neither notarized or otherwise legally sworn to. Moreover, Petitioners present no evidence as to how Mr. Jones, employed nearly a decade ago at CPSES, is at all knowledgeable concerning current matters at Unit 2.

A. Petitioners Will Not Suffer Irreparable Injury As A Result Of Issuance Of The Full Power Operating License For CPSES Unit 2

While Petitioners shoulder the burden of making a compelling showing on each of the four factors, the factor which has proved most crucial is the question of irreparable injury to the movants if the stay is not granted. Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2), CLI-81-27, 14 NRC 795 (1981). Petitioners apparently argue that they will suffer irreparable harm because of the increased risk to their health and safety if a full power operating license is issued. (Motion at 8.) Further, Petitioners claim that "issuance of a full power license prior to resolution of Petitioners' CPA appeal . . . will deprive Petitioners of their right to due process" and thereby cause them irreparable injury. (Id. at 9.) Not only are Petitioners' arguments totally unsupported by any sound information or sworn affidavits, but none of these arguments establish irreparable injury to Petitioners. Petitioners simply have raised no issue, nor made any legally cognizable showing as to significant or imminent harm. 7/

A party must reasonably demonstrate, and not merely allege, irreparable harm. See Philadelphia Electric Co.

7/ Remarkably, Petitioners point to no evidence of record and present no factual affidavits showing any possibility of injury to them. All that is presented to the Commission is a lawyer's unsupported arguments and a single attachment which are responded to herein, but which in no way demonstrate irreparable injury to Petitioners.

(Limerick Generating Station, Units 1 and 2), ALAB-814, 22 NRC 191 (1985). Similarly, vague and speculative risks of future harm do not constitute irreparable injury. See, e.g., Wisconsin Gas Co. v. FERC, 758 F.2d 669, 674 (D.C. Cir. 1985) (injury must be "both certain and great; it must be actual and not theoretical," and "[b]are allegations of what is likely to occur are of no value since the court must decide whether the harm will in fact occur." (emphasis in original)); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-89-8, 29 NRC 399, 409-10 (1989) (intervenor must "do more than recite claims of risk of some future harm, witho t discussing the likelihood or degree of any such risk."). Petitioners have failed to demonstrate that the concerns it raises have any safety significance or imminence or that they will suffer any cognizable irreparable injury.

Moreover, Petitioners' claims of due process deprivation, resulting from the potential mooting of their construction permit amendment appeal, do not constitute irreparable injury. It is settled that "the potential mooting of an appeal does not per se constitute irreparable injury; it also must be established that the activity that will take place in the absence of a stay will bring about concrete harm." Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-810, 21 NRC 1616, 1620 (1985); see also Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-794, 20 NRC 1630, 1635

(1984). Here, in the absence of the slightest showing of any harm, Petitioners' due process claim must be rejected as a basis for a stay.

In short, Petitioners failed to establish even a colorable argument for irreparable injury.

B. Petitioners Have Not Demonstrated Any Likelihood Of Success On The Merits

As TU Electric has already demonstrated, Petitioners will not suffer irreparable injury as a result of the Commission's authorization of CPSES Unit 2 full power operation. Pursuant to the Commission's holding in Kerr-McGee Chemical Corp. (West Chicago Rare Earths Facility), ALAB-928, 31 NRC 263, 269 (1990), Petitioners therefore have the extraordinarily heavy burden of demonstrating "that a reversal of the decision under attack is not merely likely, but a virtual certainty." 8/

In what follows, TU Electric will show that Petitioners have not, and cannot, meet this burden for three reasons. First, with the issuance of the CPSES Unit 2 low power operating license, all challenges to the construction permit extension application became moot. Second, in reference to the Licensing Board Order, which is the subject matter of their appeal, Petitioners have utterly failed to demonstrate in any way that

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8/ See also Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2), ALAB-404, 5 NRC 1185, 1189 (1977) ("[in] the absence of irreparable injury, it would take an overwhelming showing of likelihood of success on the merits for the intervenors to obtain an immediate stay.")

the Board Order is somehow erroneous, much less demonstrate that its reversal is a virtual certainty. And third, the "new" information Petitioners provide in their Motion is not relevant to the construction permit extension for CPSES Unit 2.

1. **The Conversion Of The CPSES Unit 2 Construction Permit Has Mooted Petitioners' Appeal Foreclosing Any Possibility Of Success On The Merits**

It is well established that a case is moot, and hence not justiciable, if it has lost "its character as a present, live controversy of the kind that must exist if [the Court is] to avoid advisory opinions on abstract propositions of law." Hall v. Beals, 396 U.S. 45, 48 (1969) (per curiam); see also Powell v. McCormack, 395 U.S. 486, 496 (1969). The Commission observes the mootness standards developed in the federal court system. Kerr-McGee Chemical Corp. (West Chicago Rare Earths Facility), ALAB-944, 33 NRC 81, 102 (1991), citing Powell, 395 U.S. at 496, and County of Los Angeles v. Davis, 440 U.S. 625, 632-33 (1979).

Petitioners' appeal of the December 15, 1992 Licensing Board Order is moot because the Unit 2 construction permit no longer exists. On February 2, 1993, pursuant to 10 C.F.R. §§ 50.23 and 50.56, the NRC converted the CPSES Unit 2 construction permit into the Unit 2 low power operating license. As a result, the Unit 2 construction permit was extinguished and, thus, there is no case or controversy for the Commission to

adjudicate. In a nearly identical situation, the Federal Communications Commission (FCC) reached precisely this conclusion. Sunbury Broadcasting Corp., (Radio Station WKOK, Sunbury, Pa.), BMP-12870, 23 FCC.2d 598 (1970). 9/ There, the FCC held that completion of construction of a radio facility during the pendency of a construction permit extension application and the issuance of an operating license moots all outstanding challenges to the extension. Thus, by all measures, Petitioners' appeal is moot.

Petitioners fare no better with their claim that "until such time as Petitioners exhaust their right to a hearing, TUEC may not legally continue to engage in construction, testing and operational activities with respect to Unit 2." (Motion at 2.) Commission regulations as well as the Administrative Procedure Act, clearly provide that upon timely application for an extension of a license, including a construction permit 10/, "the existing license will not be deemed to have expired until the application has been finally determined." 10 C.F.R. § 2.109; 5 U.S.C. § 558. Thus, a party seeking an extension of a

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9/ FCC case law is particularly relevant because "the Federal Communications Act . . . served as the model for the 1954 Atomic Energy Act . . . ." Virginia Electric & Power Co. (North Anna Power Station, Unit 2), CLI-80-29, 12 NRC 137, 144 n.7 (1980).

10/ 10 C.F.R. § 2.4 provides that a "license means a license, including a renewed license, or construction permit issued by the Commission."

construction permit is entitled to continue construction during the pendency of its application.

On February 3, 1992, TU Electric submitted a timely application for a three-year extension of the latest completion date under the CPSES Unit 2 construction permit. 11/ In accordance with 10 C.F.R. § 2.109 and 5 U.S.C. § 558, TU Electric was authorized to continue construction of Unit 2. In short, Petitioners' argument that all construction was required to be halted during the pendency of their appeal is simply wrong.

2. Petitioners Have Failed To Demonstrate That The Licensing Board's Order Is Erroneous In Any Respect

The substantive issue presented by the Petitioners' Motion is a very narrow one. Petitioners must convincingly demonstrate that there is virtually no doubt that the Licensing Board's Order rejecting their intervention petition will be reversed. Petitioners have clearly failed to make such a showing.

As TU Electric demonstrated in its brief opposing Petitioners' appeal, the Licensing Board's Order faithfully adhered to the legal standards prescribed by the Commission. 12/ The Board carefully considered the bases

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11/ TXX-92041, letter from William J. Cahill, Jr. (TU Electric) to NRC, dated Feb. 3, 1992.

12/ See "TU Electric's Brief In Opposition To Petitioners' Appeal Of Atomic Safety And Licensing Board Memorandum And Order," Jan. 19, 1993.

offered by Petitioners, and correctly concluded that Petitioners failed to meet the requirements of 10 C.F.R. § 2.714, thus mandating that their contention be rejected and their petition to intervene be denied.

Nothing Petitioners have offered in their Motion demonstrates that the Licensing Board abused its discretion in rejecting Petitioners' proposed contention. Throughout their Motion, as they had done in their Appeal Brief, Petitioners make conclusory and unsubstantiated assertions without discussion, analysis, or citation to any legal authority. Further, the substantive grounds offered in support of their Motion fail to even address let alone discuss the Licensing Board's Order, or the issue of good cause for the CPSES Unit 2 construction delay. 13/

Petitioners' Motion simply fails to make any showing that the Licensing Board's decision was erroneous in any respect. Accordingly, Petitioners have not met their burden of demonstrating any likelihood of success on the merits and their Motion should therefore be denied.

13/ For example, Petitioners "incorporate by reference, the briefs Petitioners have filed with the Commission," as the sole basis of their claim that they "are likely to obtain a hearing on whether TUEC has good cause for the delay in construction." (Motion at 2.) Other than this reference, Petitioners wholly fail to address the merits of the Licensing Board Order.

3. The "New" Material Proffered By Petitioners Is Not Relevant To The Merits Of The Construction Permit Extension For Unit 2

Petitioners claim that TU Electric, through the use of settlement agreements, has somehow forced individuals with safety concerns to remain silent. However, none of the material provided by Petitioners in support of this allegation relates to the extension of the construction permit for Unit 2, and therefore does not provide any basis for a claim of likelihood of success on the merits. For example, Petitioners reassert the allegation that settlement agreements entered into between TU Electric and CPSES former minority owners led to the "secreting" of information from the NRC. The Commission found a similar allegation to be unsubstantiated when it denied Petitioners' attempt to stay issuance of the Unit 2 low power operating license, CLI-93-02 at 4, and Petitioners have not provided any evidence that information has been "secreted" from the NRC. 14/ In any event, these allegations were also previously addressed by the Licensing Board which determined that

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14/ In fact, all three of the former minority owners have informed the NRC that their employees and representatives have been advised that they are in no way prohibited by the terms of the agreements from communicating safety concerns to the NRC. See letter, E.L. Wagoner (TMPA) to T.E. Murley (NRC) dated Feb. 9, 1993; letter, R.E. McCaskill (Brazos) to T.E. Murley (NRC) dated Feb. 10, 1993; letter, J.H. Butts (Tex-La) to T.E. Murley (NRC) dated Feb. 10, 1993.

the agreements were not relevant to the construction permit extension for CPSES Unit 2. LBP-92-37, slip op. at 20-22. 15/

Petitioners also claim that the statement of Ron Jones, a former QA inspector at the CPSES site, contains allegations that demonstrate "how the secreting of safety information has and will continue to directly impact on the safe operation of the CPSES." (Motion at 6.) As a preliminary matter, Mr. Jones has not been employed at the CPSES site for nearly a decade. Moreover, the Jones statement deals almost entirely with allegations of safety problems occurring in the mid-1980s during

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15/ Petitioners also assert that settlement agreements between TU Electric and a number of former whistleblowers, including Ron Jones, resulted in the "secreting" of safety information from the NRC. The Licensing Board also found those settlement agreements to be irrelevant to the construction permit extension for Unit 2. LBP-92-37, slip op. at 22-23 and 26-27. In any event, Petitioners are wrong in the merits of their claims. Ron Jones was a member of a group of former CPSES workers known as the "Atchison plaintiffs," who settled with TU Electric after filing an action in the Texas state courts. The NRC found that:

> the [NRC] Office of General Counsel reviewed all of the releases signed by the Atchison plaintiffs in settlement of their lawsuit ... [and] indicated that none of these settlement agreements and releases involve[d] restrictive clauses. ... In addition, the Atchison plaintiffs were informed by their counsel of their continuing ability to bring their safety concerns to the NRC.

Letter from James E. Lyons (NRC) to Betty Brink (Citizens for Fair Utility Regulation) dated Jan. 30, 1990 (hereinafter Lyons letter), attachment at 12.

construction of CPSES Unit 1. 16/ The statement is therefore irrelevant to Unit 2 in general, and to the extension of the Unit 2 construction permit in particular. Mr. Jones' statement also ignores the fact that Unit 1 underwent a massive corrective action program that included a comprehensive hardware validation program to identify and correct the type of nonconformances alleged by Mr. Jones.

Furthermore, the Jones statement is only marginally understandable. TU Electric assumes that the "events in 1992 [recounted by Mr. Jones] which almost resulted in a serious accident" (Motion at 5), refers to the CPSES spent fuel pool cooling incident which was the subject of a 1992 enforcement action. After a special inspection, the NRC concluded that the incident was the result of human error (not wiring defects or valve malfunctions as claimed by the Petitioners) and at no time was plant safety or the public health ever threatened. 17/ Hence, the assertion that this incident resulted from wiring

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16/ Mr. Jones states that he wrote "over 300" nonconformance reports. However, as he admits, these reports only addressed conditions at CPSES Unit 1.

17/ See Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 and 2), DD-92-06, slip op. (Nov. 19, 1992) pp. 15-18; Letter from James Milhoan (NRC) to W.J. Cahill, Jr. (TU Electric) dated July 23, 1992 (notifying TU Electric of violation and proposed imposition of civil penalty); Letter from A. Bill Breach (NRC) to W.J. Cahill, Jr. (TU Electric) dated June 9, 1992 (discussing inspection reports 50-445/92-20; 50-446/92-20).

defects discovered by Mr. Jones almost a decade ago is simply wrong.

Finally, Mr. Jones claims that because of the 1988 settlement agreement between TU Electric and the group Citizens Association For Safe Energy (CASE) he was somehow precluded from testifying before the NRC. As a result, Petitioners assert "that TUEC has managed to secret through the payment of hush money significant safety-related information." (Motion at 8.) However, the CASE settlement agreement was reviewed, approved, and made public by the Licensing Board; there was nothing "secret" about this agreement at all. In any event, the CASE settlement agreement is not relevant to the construction permit extension for Unit 2.

In conclusion, nothing Petitioners have provided to the Commission in their Motion addresses the merits of the Licensing Board Order, nor demonstrates in any way that Petitioners have a substantial likelihood, let alone a virtual certainty, of succeeding on the merits. Consequently, the Commission should dismiss Petitioners' Motion To Stay, and affirm the Licensing Board's December 15, 1992 Order on the merits. 18/

18/ In their Motion, Petitioners continue their practice of making unfounded and reckless allegations of willful and illegal misconduct by TU Electric and its counsel. See Motion at 3-4, 4 n.3 and n.4, 8, 10-11. Those kinds of allegations are plainly improper and have no place in pleadings filed with this Commission. See Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1, ALAB-204, 7 AEC 835 (1974); Wisconsin Electric Power Co.

(continued...)

C. **TU Electric And Its Customers Will Suffer Substantial Economic Harm If The Stay Is Granted**

Under the third prerequisite for a stay, the Commission must consider the "harm" to opposing parties if a stay is granted. 19/ In doing so, the Commission may consider the potential economic harm to an applicant caused by a stay of the applicant's operating license. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-808, 21 NRC 1595, 1602-03.

Should this Court stay the issuance of a full power operating license for CPSES Unit 2, TU Electric and its customers will clearly incur substantial economic harm. Until the plant is placed in commercial operation, the costs of the plant continue to be capitalized (i.e., they are not included in TU Electric's costs for the purpose of calculating its rates). The costs associated with Unit 2 include carrying costs and direct operating costs (i.e., items such as insurance, ad valorem taxes and other administrative and general expenses). These costs amount to millions of dollars each month.

18/(...continued)
(Point Beach Nuclear Plant, Units 1 and 2), LBP-82-5A, 15 NRC 216 (1982).

19/ If, however, the movant fails to meet its burden on the first two factors, it is unnecessary for the Commission to "dwell long on whether a stay would cause serious injury to the applicant" or to "delve deeply into public interest considerations." Catawba, ALAB-794, 20 NRC at 1635.

Thus, the cost to TU Electric and its customers from a delay in a full power operating license for CPSES Unit 2 is substantial. It is therefore clear that this hardship to TU Electric and its customers overwhelms any speculative injury to Petitioners. Consequently, the Commission should deny Petitioners' motion for a stay.

D. The Denial Of A Stay For CPSES Unit 2 Is Clearly In The Public Interest

Petitioners have also failed to demonstrate that a stay of the Commission's authority to issue a full power operating license is in the public interest.

The public has a compelling interest in the prompt generation of power by CPSES Unit 2. Each day of additional delay in the issuance of a full power operating license for CPSES Unit 2 postpones the full power operation of CPSES Unit 2 and the reliability benefits it would provide. It would therefore turn the public interest on its head to postpone the availability of a power resource like CPSES Unit 2, when Petitioners have made no serious showing of any likelihood of success on the merits or irreparable injury.

CONCLUSION

For the reasons discussed above, Petitioners' motion for a stay should be denied.

Respectfully submitted,

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March 19, 1993

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NUCLEAR REGULATORY COMMISSION
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TEXAS UTILITIES ELECTRIC COMPANY	)	
(Comanche Peak Steam Electric Station, Unit 2)	)	Docket No. 50-446-CPA (Construction Permit Amendment)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Texas Utilities Electric Company's Response to Petitioners' Motion to Stay Issuance of Full Power License were served on March 19, 1993, by hand, unless otherwise indicated below, on each of the following:

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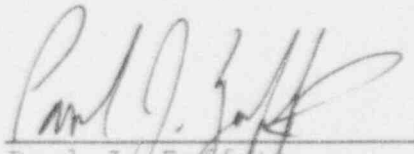

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