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

'91 NOV 22 A11:47

In the Matter of:

TEXAS UTILITIES ELECTRIC COMPANY, ET AL.,

Comanche Peak Steam Electric Station, Units 1 & 2

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

COPY

MOTION TO REOPEN THE RECORD

Pursuant to 10 C.F.R. Section 2.734, petitioners Sandra Long Dow dba Disposable Workers of Comanche Peak Steam Electric Station, and R. Nicky Dow, request this tribunal to both re-open the record of the above-styled and numbered proceedings, and thereafter grant petitioners leave to file their motion for intervention.

The Rules of Practice, 29 C.F.R. Part 18, grant to an Administrative Law Judge the authority to "where applicable, take any appropriate action authorized by the Rules of Civil Procedure for the United States District Courts." 29 C.F.R. §18.29(8). Accordingly, the Rules of Practice adopt, where applicable, the Federal Rules of Civil Procedure and grant to the Administrative Law Judge, where appropriate, the power to take action authorized by the Federal Rules of Civil Procedure.

RULE 60, FEDERAL RULES OF CIVIL PROCEDURE

"Rule 60. Relief From Judgment or Order", has direct application in the motion petitioners' now bring before this board.

It states, in part "On motion and upon such terms as are just, the [board] may relieve a party from [an] . . . order, or proceeding for the following reasons: . . . (2) newly discovered evidence which

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by due diligence could not have been discovered in time . . . (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct or an adverse party. . . .". Although the rule states that the motion shall be made within a reasonable time, usually meaning within one year of the order, it goes on to state, in part "This rule does not limit the power of a court to entertain an independent action to relieve a party from [an] . . . order, or proceeding, . . . or to set aside [an order] for fraud upon the court."

CASE BACKROUND

There is no need to remind the members of this tribunal of the difficulties of the past. This entire issue, in its length, mountains of documentary evidence, switching of witnesses, and finally the sudden withdrawl of the only viable intervenor, we are sure, still bring shudders to the minds of the members. What petitioners believe is important to remind this board of, are the continual exposures of material false statements and misrepresentations, by all parties, and the need to continually re-examine facts, data, and testimony. When the Citizens Association For Sound Energy withdrew as Intervenors, this board was left, with but a single choice, to grant the license

It is also important for the board to remember that there was a previous motion, much like this, filed by one Lon Burnam, and then suddenly withdrawn, and petitioners would aver to the board that this motion, as well, was withdrawn, under the same suspect conditions as those of the Intervenor C.A.S.E., and petitioners can support their averment with documentary evidence. This in itself, is sufficient enough reason to consider petitioners' motion as being timely. But in the alternative, because some of the evidence, of the greatest ma-

terial value to this board, has only come to light within the last thirty (30) days.

1. 10 C.F.R. §2.734(a)(1).

Petitioners satisfy 10 C.F.R. §2.734(a)(1) for the following reasons, and in the following respects:

1) Although this motion is brought more than one year after the close of the record in this matter, Rule 60 F.R.Civ.P. provides the board with the power to entertain an independent action.

2) New evidence regarding the payment of "hush" money to whistleblowers, not to testify before this Board sufaced for the first time after the record was closed; and, new evidence concerning the payment of "hush" money to the intervenor C.A.S.E., has only, now, surfaced.

3) Evidence now exists to show that the intevenor C.A.S.E. and members of the Government Accountability Project conspired to keep the evidence of the whistleblowers from ever reaching the Board.

4) Evidence now exists to show that there was a duplicity between members of the Nuclear Regulatory Commission and members of the upper management of the applicant, to secure the license.

2. 10 C.F.R. §2.734(a)(3).

Petitioners satisfy section 2.734(a)(3) for the following reasons:

1) As evidenced in Petitioners' Exhibit A (excerpts from two secret settlement agreements), money had been paid to potential witnesses, not to testify before this board. As evidenced in Exhibit B (affidavit of Joseph Macktal), a potential witness was coerced into accepting money, not to testify before this board by the attorneys from the Government Accountability Project, representing C.A.S.E., namely one Billie Priner Garde. Petitioners' Exhibit C shows that the organization GAP routinely led whistleblowers to believe they would be given a chance

to testify in proceedings, and receive protection, when in fact their cases would be so utterly mismanaged that they never went to trial. Petitioners' Exhibit D is the handwritten note from one ALJ to another, for the Department of Labor, showing clearly that they were not fooled by these tactics, and what their opinion of them was.

2) Petitioners allege that false and misleading statements were repeatedly made to this tribunal between 1982 and 1985 by Texas Utilities witnesses and that these false and misleading statements resulted in this Board's reliance on, and adoption of, either false or misleading facts when issuing its December 28, 1983 Memorandum and Order in the matter of Texas Utilities, et al., Docket Nos. 50-445, and 50-446. As memorialized in that order, the ASLB relied on testimony provided by Mr. Finneran and others, as well as false or materially misleading facts contained in a NRC staff Special Inspection Team (SIT) report to answer the following fundamental question:

> "[A]lthough differences in engineering approaches occurred between the three parallel pipe support groups (ITT-G, NPSI and PSE) . . . the fundamental issue for this Board to resolve is whether these differences in engineering approaches represents a safety or engineering concern . . . (by assuring) that each design organization has a clear, documented scope of responsibility. . . ."

A copy of the relevant portion of the December 28, 1983 ASLB Memorandum and Order is attached hereto as Petitioners' Exhibit E.

As a result of false information presented to the ASLB and/or NRC staff, the ASLB was led to believe that:

> The evidence establishes that each of the three pipe support design organizations has its own specific scope of responsibility for a specific group of supports. There is no need for cross communication between the three groups since they share no common, in-line design responsibility . . . The Board concludes that the Applicants have adequately defined and documented the

> responsibility and paths of communication between . . . the pipe support design groups. No NRC regulation has been violated.

After the issuance of the ASLB's December 28, 1983 Memorandum and Order, counsel for Texas Utilities attorneys filed a series of motions for summary disposition, together with affidavits (primarily from Mr. Finneran). During the course of submitting these various affidavits, Mr. Finneran and other affiants, again, materially misled the ASLB by stating that each of the three design organizations, ITT-G, PSE, and NPSI, had "separate and distinct responsibilities for the design of pipe supports" and all design changes during construction are "returned to the original designer for correction and rechecking. . . ." See Affidavit of D.N. Champman, J.C. Finneran, Jr., D.E. Powers, R.P. Duebler, R.E. Ballard, Jr., and A.T. Parker Regarding Quality Assurance Program for Design of Piping and Pipe Supports for Comanche Peak Steam Electric Station, dated July 3, 1984, at pp. 13 and 36. At the time the affidavit was sworn, Mr. Finneran and others knew that the statements contained in the affidavit were false.

3) As detailed in the briefs appended hereto as Petitioners' Exhibits F and G (briefs filed by S.M.A. Hasan before the Secretary of Labor), false and perjurous statements made by Texas Utilities witnesses during the course of a Section 210 proceeding threaten the safety of the Comanche Peak facility by calling into question the integrity and competence of Texas Utilities management.

In Exhibits F and G, Mr. Hasan charged Texas Utilities and Brown & Root management with employing a fraudulent scheme to certify the pipe support system at Comanche Peak with multiple sets of design criteria. As detailed therein, the three pipe support design organiza-

tions then employed on site (ITT Grinnell or "ITT-G", NPS Industries or "NPSI", and Pipe Support Engineering or "PSE") engaged in open and notorious violations of 10 C.F.R. Part 50, Appendix B.

3. 10 C.F.R. §2.734(a)(3).

Petitioners satisfy 10 C.F.R. §2.734(a)(3) for the following reasons:

1) Had these petitioners presented the material herein contained, when the record was still open, they would, in all reasonable probability, been granted leave to intervene.

2) Had this tribunal known of the payment of money to witnesses not to testify before this board and the payment of money to C.A.S.E. ant to their counsel not to raise certain issues before this board; this board, these petitioners would have been allowed to intervene.

3) This board would have, in all probability, granted these petitioners' motion to intervene, and would have, in all certainly granted same to the aforementioned Lon Burnam, had the facts concerning the alleged perjury set out in detail in Exhibits F and G been revealed to the Board at the time of Mr. Burnam's hearing on July 13, 1988.

These facts, not known to these petitioners, at that time, were known to some, if not all, of the parties appearing before the Board on July 13, 1988. Counsel for NRC staff, for example, knowingly remained silent rather than reveal to this ASLB that NRC staff had counsel appearing before the ASLB on July 13, 1988, and had knowledge of the perjury allegations contained in Exhibits F and G. To-wit, NRC staff was in possession of Exhibits F and G by April, 1988.

Counsel for C.A.S.E., likewise, failed to inform the Board of this information. Both the NRC staff's and C.A.S.E.'s failure to inform the Board was inviolation of long-standing Board orders to keep the Board informed of any relevant information. Counsel for Tex-

as Utilities took an even more aggressive role in misleading this Board about the existence of perjury allegations (Exhibit F served on Texas Utilities counsel in February and Exhibit G in April, 1988).

In the words of counsel for Texas Utilities:

> "[We] have, as stated on the record today, a suspicion of perjury. We know of no such evidence. We strongly deny any circumstances, and we will ask for accountability outside the confines of these proceedings."

Hearing Transcript at p. 25247 (emphasis added).

Beyond the perjury allegations contained in Exhibits F and G, C.A.S.E. had, itself, alleged that Texas Utilities and its attorneys regularly submitted "material false statements" to this ASLB. See e.g. CASE's Supplementary Response to Applicant's Interrogatories to "Consolidated Intervenors', dated July 6, 1987, at pp. 3-4. Petitioners hereby attach, marked Exhibit H, the same. C.A.S.E.'s allegations regarding the regular submission of "material false statements" consittutes allegations of perjury, in that many of the statements were made under oath. A review of this C.A.S.E. pleading indicates that C.A.S.E. had identified to additional false statements made by Texas Utilities in connection with the Hasan v. NPSI, et al., 86-ERA-24 case. Id., at p. 12.

Furthermore, C.A.S.E. alleged in a July 8, 1987 pleading filed with this Board that facts surfacing during the hearing of the Hasan case were:

> ". . . of such potential significance to both the operating license proceedings and the construction permit proceedings that Applicants should voluntarily provide copies of all pleadings, documents, etc., in that case to the Licensing and CPA Boards. Applicants' failure to do so . . . is considered in the O.L. and the CPA hearings. . . ."

> ". . . CASE also believes that Applicants should now voluntarily provide copies of all pleadings, documents, etc., . . . regarding matters such as this which are so obviously covered by the Board's oft-repeated and numerous Orders that Applicants are to keep the Board informed of potential significant information." July 8, 1987 letter from CASE to the ASLB, at pp. 2-3.

A copy of this letter is attached hereto marked Exhibit I.

In light of the NRC staff's, Texas Utilities' and CASE's failure to notify the Board of the Hasan allegations raised in Exhibit F and G, and given the "Board's oft-repeated Orders that Applicants are to keep the Board informed of potentially significant information," petitioners would, and should be granted leave to reopen the record and to intervene, so as to keep the Board informed of the perjury and other allegations raised in the Hasan proceeding in light of the fact that all of the previously admitted parties could not be relied upon to do so and actually went so far as to cover-up during those hearings and the July 13, 1988 hearing of Mr. Burnam. Petitioners submit, as further evidence of the unreliability of the intervenor CASE, marked Exhibit J, the Secret Settlement Agreement between CASE and the Applicant, as well as an affidavit from a former board member of CASE.

All of petitioners' exhibits are attached hereto, incorporated by reference, the same as if fully copied and set forth at length.

WHEREFORE, PREMISES CONSIDERED, petitioners hereby request that this Board re-open the record and grant them leave to file their Motion To Intervene, granting them status as the same.

Further, petitioners will file, within 45 days, all necessary affidavits and other documentation, including lists of potential witnesses, concerning the above innumerated as well as additional safety allegations they intend to rely on before this tribunal.

Respectfully submitted,

Sandra Long Dow

SANDRA LONG DOW, dba DISPOSABLE
WORKERS OF COMANCHE PEAK STEAM
ELECTRIC STATION, pro se
1078 Wellington, #135
Ottawa, Ontario K1Y-2Y3
Petitioner

R. Micky Dow

R. MICKY DOW, pro se
1078 Wellington, #135
Ottawa, Ontario K1Y-2Y3
Petitioner

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Motion To Reopen The Record was sent to all parties to the original proceeding, by Federal Express courier, at the last known addresses for each on this the 20th day of November, 1991.

R. Micky Dow

Affiant

Our file
(marked
confidential
for Atar
only)

Plaintiffs'
Exhibit A

STRICTLY CONFIDENTIAL

UNITED STATES OF AMERICA
BEFORE THE U.S. DEPARTMENT OF LABOR

JOSEPH MACKTAL, Complainant, v. BROWN & ROOT, INC., Respondent.	Case No. 86-ERA-23

SETTLEMENT AGREEMENT

WHEREAS Mr. Macktal's employment with Brown & Root, Inc. ("Brown & Root") terminated on January 2, 19 6;

WHEREAS Mr. Macktal has instituted the above-captioned action against Brown & Root before the United States Department of Labor alleging that his termination violated Section 210 of the Energy Reorganization Act of 1974, 42 U.S.C. § 5851 ("Section 210");

WHEREAS the dispute between Mr. Macktal and Brown & Root has been amicably resolved and Mr. Macktal now desires to withdraw his complaint against Brown & Root, without admission of liability by Brown & Root, Texas Utilities Company and/or the other owners of Comanche Peak Steam Electric Station ("Comanche Peak"), or the SAFETEAM program, or the attorneys, related

Plaintiffs'
Exhibit 33

companies, successors, assigns, officers, directors, managers, agents, and employees of the aforementioned companies, organizations and programs (all of which entities and individuals are hereinafter collectively referred to as "the Comanche Peak companies, organizations, programs and individuals");

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

1) This Settlement Agreement does not amount to, and shall not be construed as, an admission of liability or wrongdoing on the part of any of the Comanche Peak companies, organizations, programs or individuals as defined above. Moreover, this Settlement Agreement does not amount to, and shall not be construed as, an admission by Mr. Macktal concerning the merits of this action.

2) Mr. Macktal shall execute a general release (attached hereto as Exhibit A) of all the Comanche Peak companies, organizations, programs and individuals as defined above from any and all liability arising out of or relating to Mr. Macktal's employment with Brown & Root, the termination of his employment on January 2, 1986, or his resignation from his position with Brown & Root.

3) Mr. Macktal's representatives in the above-captioned action, Mr. Anthony Z. Roisman and Ms. Billie P. Garde (including Trial Lawyers for Public Justice and the Govern-

Plaintiffs' Exhibit A

STRICTLY C..FIDENTIAL

ment Accountability Project, the organizations of which Mr. Roisman and Ms. Garde, respectively, are a part and through which they came to represent Mr. Macktal), hereby agree that they will not call Mr. Macktal as a witness or join Mr. Macktal as a party in any administrative or judicial proceeding in which either Mr. Roisman, Ms. Garde, Trial Lawyers for Public Justice or the Government Accountability Project, or any combination of them are now, or in the future may be, counsel or parties opposing any of the Comanche Peak companies, organizations, programs or individuals as defined above; nor will Mr. Roisman, Ms. Garde or their respective organizations do anything to suggest or otherwise to induce any other attorney, party, administrative agency, or administrative or judicial tribunal to call Mr. Macktal as a witness or to join Mr. Macktal as a party in such a proceeding. Further, Mr. Macktal hereby agrees that he will not voluntarily appear as a witness or a party in any such proceeding; and Mr. Macktal further agrees that if served with compulsory process seeking to compel his appearance or joinder in such a proceeding, he will immediately notify the undersigned representative of Brown & Root, or his successor, in writing and thereafter take all reasonable steps, including any such reasonable steps as may be suggested by the representatives of Brown & Root, to resist such compulsory process.

Plaintiffs' Exhibit A

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The foregoing provides the entire AGREEMENT between the parties and this AGREEMENT cannot be modified except by written stipulation signed by each of the parties hereto.

Billie Pirner Garde

Billie Pirner Garde for
Joseph Macktal, the
Government Accountability
Project, and herself

Anthony J. Roisman for
Joseph Macktal, Trial Lawyers
for Public Justice, and
himself

Richard K. Walker for
Brown and Root, Inc.

This 2nd day of January, 1987.

Plaintiffs'
Exhibit A

Plaintiffs' Exhibit A

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT dated as of ~~May~~ June 23, 1988 is by and between LORENZO MARIO POLIZZI (hereinafter "Polizzi"), MAURINE ELLEN POLIZZI, his wife and NATALIE POLIZZI, his minor daughter, by Maurine Ellen Polizzi, her mother and legal guardian (hereinafter "Co-Plaintiffs") and GIBBS & HILL, INC. (hereinafter "Gibbs & Hill").

WHEREAS:

A. On or about May 12, 1987, Polizzi filed a complaint with the U.S. Department of Labor, Employment Standards Administration Wage & Hour Division, alleging that Gibbs & Hill engaged in discriminatory employment practices in violation of the Energy Reorganization Act, 42 U.S.C. § 5851 (Case No. 87-ERA-38) (hereinafter the "DOL Proceeding").

B. The U.S. Department of Labor, Employment Standards Administration Wage & Hour Division conducted an investigation and concluded, based upon said investigation, that there was probable cause to believe that Polizzi was discriminated against in violation of the Energy Reorganization Act.

C. Gibbs & Hill filed a timely request for a hearing with the Chief Administrative Law Judge, United States

Plaintiffs' Exhibit A

settlement of the claims of Natalie Polizzi, a minor, as set forth herein.

7. Polizzi agrees that he will not voluntarily cooperate with or testify on behalf of any entity or individual who has or may file charges of discrimination or wrongful employment practices against Gibbs & Hill or TUGCO, or their respective parents, affiliates, subsidiaries, successors or assigns, under the Energy Reorganization Act, the Atomic Energy Act of 1954, as amended, or any other federal or state law, rule, regulation or theory, nor will he voluntarily testify in or otherwise participate in any proceeding or investigation involving the Comanche Peak Steam Electric Station, before any state or federal court or administrative agency, including, but not limited to, licensing or safety proceedings or investigations before the Nuclear Regulatory Commission and/or regulatory or rate proceedings or investigations before the Public Utility Commission of the State of Texas, except as required by lawful subpoena; provided, however, that nothing in the foregoing paragraph shall in any manner be interpreted to prevent Polizzi from informing the Nuclear Regulatory Commission of any and all safety concerns he may have relating to the Comanche Peak Steam Electric Station.

8. Gibbs & Hill's personnel policy applicable to all employees, present and former, provides that it shall release no information requested by a prospective employer without a

15. Gibbs & Hill shall undertake to obtain the execution by TUGCO of a General Release in substantially the form attached hereto as Exhibit C. Said General Release shall not be deemed effective unless and until (a) the conditions set forth in paragraphs 5 and 6 hereof are fulfilled and (b) the General Release of Polizzi and Co-Plaintiffs referred to in paragraph 13 herein is delivered to TUGCO.

Plaintiffs' Exhibit

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on this 23rd day of ~~May~~ June 1988.

LORENZO MARIO POLIZZI

Maurine Ellen Polizzi
MAURINE ELLEN POLIZZI

Maurine Ellen Polizzi
NATALIE POLIZZI, a minor, by Maurine Ellen Polizzi, her mother and legal guardian

GIBBS & HILL, INC.

By:

Plaintiffs' Exhibit

Plaintiffs'
Exhibit B

JJM

AFFIDAVIT OF
Joseph J. Macktal, Jr.

Under the pains and penalties of perjury, I Joseph J. Macktal, hereby affirm that the following is true and correct:

1) My name is Joseph J. Macktal, Jr.

2) Between January 31, 1985 and January 2, 1986 I was employed as an Electrician and Electrical Foreman at the Comanche Peak Nuclear Construction site in Glenrose, Texas by Brown & Root, Inc. On January 2, 1986 I delivered to a Brown & Root general foreman, J. Rinddell. A true and correct copy is attached hereto as Exhibit 1. In retaliation for delivering this letter, my employment with Brown & Root was terminated.

3) While working at the Comanche Peak site I developed concerns about the following problems which I believe threatened the quality of the plant's construction, violated Nuclear Regulatory Commission (NRC) regulations, and/or threatened the public health and safety:

a) Contamination of stainless steel conduit.

b) Falsification of training sheets and travelers;

c) Improper accounting of documents and material;

d) Improper design, manufacture, and installation of electrical coduits, and safety related circuits (including Hilti bolts, and pipe supports);

e) Improper site modification of vendor supplied equipment.

4) I personally brought all of the above listed

Plaintiffs'
Exhibit B

allegations to the NRC Staff during a transcribed confidential conference and during a confidential on-site inspection of the Comanche Peak site. Nonetheless, the NRC failed to adequately address these concerns. I therefore believe that these concerns continue to pose an unnecessary health and safety risk.

5) In addition, I have concerns that were not raised with the NRC staff or Licensing Board due to the restrictive terms of a secret settlement agreement entered into between Texas Utilities and my attorneys, Billie Garde and Tony Roisman. These concerns include:

a) The use of Kapton wiring and termination kits (including the design and installation of electrical penetrations);

b) SAFETEAM's identification of confidential whistleblowers and the harassment and intimidation of employees who brought safety concerns to management and/or SAFETEAM;

c) The ultra-vulnerability of key safety systems;

d) Design problems related to back-up safety systems;

e) Improper attempts to silence witnesses and surpress information before the NRC;

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

6) After bringing safety concerns to SAFETEAM, I was demoted and continually harassed and intimidated by

Plaintiffs'
Exhibit 8

Plaintiffs'
Exhibit B

management, culminating in a constructive discharge on January 2, 1986.

7) On Febuary 3, 1986 I filed a complaint under Section 210 of the Energy Reorganization Act against Brown & Root and Texas Utilities with the Department of Labor, known as 86-ERA-23. I was represented in 86-ERA-23 by Billie P. Garde, Anthony Z. Roisman, Government Accountability Project (GAP) and Trial Lawyers for Public Justice (TLPJ). They also stated to me that they would be representing me before the NRC Licensing Board in matters related to Comanche Peak and before the Texas Employment Commission (TEC) hearing regarding unemployment compensation (upon information and belief this agreement is contained in a signed representation agreement). In violation of their express agreement to represent me before the TEC, both Mr. Roisman and Ms. Garde failed to prepare for and attend the hearing.

8) In early February, 1986, I was told by Ms. Garde and Mrs. Ellis on a number of occasions that I would be called as a CASE witness before the ASLB.

9) In 1986 I made a series of confidential transcribed safety disclosures to members of the NRC staff. I did not feel that the NRC staff properly addressed the safety concerns I raised at that time and felt that they would not do so anytime thereafter. I wanted to testify before the ASLB about my safety concerns because I came to believe that I had to bypass the NRC Staff bureaucracy and go directly to the ASLB if my concerns were to be adequately resolved.

10) In 1986 I made a series of transcribed confidential safety disclosures to NRC Staff. I believe that NRC Staff

Plaintiffs'
Exhibit B

Plaintiffs' Exhibit B

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failed to properly address the concerns I raised at that time nor any time thereafter.

11) I was told by CASE and its attorneys that if my concerns were to be adequately resolved they would have to be raised before the ASLB.

12) On November 18, 1986 I was in Dallas Texas to participate in the Department of Labor hearing on my case. Two attorneys were present to represent me, Anthony Roisman, and Billie Garde.

13) On this day my attorneys, along with legal representatives of Brown & Root and the DOL Administrative Law Judge Vivian Murray met for a pre-hearing conference.

14) During the pre-trial conference which was held in chambers outside of my presence, I felt as though my case was being tried in a back room without the testimony of witnesses or myself. On several occasions both sides came out of conference to obtain documents and evidence and then return to the back room. This back room "conference" continued throughout the entire day. When I stated that I wanted to attend the "conference," Ms. Garde vehemently objected and flatly refused to allow me to attend.

15) During the course of the conference both Billie Garde and Tony Roisman indicated to me that:

a) Brown & Root's final settlement offer was $95,000.00;

b) If I did not accept the settlement offer of $95,000.00, I would have to pay GAP $12,000.00 before they could proceed with the hearing; and

Plaintiffs' Exhibit B

Plaintiffs' Exhibit B

c) If I did not accept the settlement and I did not come up with the $12,000, they would withdraw as counsel (as they had already done in my unemployment hearing). At that time both Ms. Garde and Mr. Roisman knew I was unemployed and indigent. To the best of my recollection, the terms of representation expressly stated that expenses were not due and payable until after the case was settled. Yet, Billie Garde and Tony Roisman were demanding money to continue with my case. GAP, TLPC, Billie Garde, and Tony Roisman agreed to represent me knowing that I was unemployed and unable to afford an attorney.

16) After considerable pressure I agreed to settle my case for $35,000. I understood that the $35,000 settlement offer to be two separate agreements between Brown & Root and myself. The first settlement would be for $15,000 to be paid to me, and that a second settlement would be paid to GAP in the amount of $20,000.00 to cover "expenses" after the case was resolved.

17) I was informed by my attorneys that the Judge had ordered the parties to execute the settlement within 30 days.

18) Brown & Root's attorneys did not attempt to execute the settlement within 30 days. On or about December 26, 1986, I informed Billie Garde that I no longer wished to settle my case and that I wanted to proceed with the trial.

19) On or about December 26th and 29th, 1986, I was:

a) informed by my attorneys for a second time I had to pay $12,000.00 if I did not accept a settlement

Plaintiffs' Exhibit B

Ms. Garde and Mr. Roisman were negotiating;

b) told that if I did not accept the terms of the settlement (which I had not even seen) I would be sued for breach of contract, would face serious financial burdens for the rest of my life, and that I would be billed by GAP for $12,000.00. Ms. Garde and Mr. Roisman also warned that Brown & Root would sue me for refusing to sign the settlement and that they would not represent me if such a suit occurred.

20) Nonetheless, I directed my attorneys to stop further settlement negotiations and prepare for trial. My attorneys refused to follow this instruction.

21) On December 26, 1986, I spoke over the telephone with Billie Garde. The following are verifiable exerpts of a telephone conversation between Ms. garde and myself:

Joseph J. Macktal: I am not committed to any kind of a settlement whatsoever...I'm going to the papers Tuesday (and) blowing this whole thing wide open...There is no settlement...

Billie P. Garde: You don't have that option anymore. There is a settlement.

Macktal: No there isn't. I ain't signing...I don't want a settlement...I don't want you to sign any kind of a settlement agreement.

Garde: Then you better be prepared to pay GAP the expense of...,

Macktal: Whatever it takes...I'm not settling with them...I'm gonna expose the whole thing in the paper.

Plaintiffs'
Exhibit B

Garde: And that's worth $15,000.00?

Macktal: Yep, that's worth it.

Garde: I think you're making an absolutely insane decision...[T]hey're gonna sue you for breach of settlement...and that'll mean you're gonna have to get lawyers.

Macktal: Let them sue me...

* * *

Macktal: I'm not breaching the settlement agreement. There was no settlement agreement...They did not complete the 30 day period...it's moot, its moot, it no longer exists.

Garde: You don't have that option.

* * *

Garde: I'm your lawyer, I know what I'm talking about. You can not do this. You don't have the financial ability to do this because you don't have the ability to pay us.... I'm going to have to have Tony call you...

Macktal: I don't care.

Garde: We've invested the expense of $12,000.00 (and) that's a lot to us. We couldn't meet pay role last week. Everything is waiting to get this settlement money in order to make bill payments...You can't afford to absorb that kind of a bill...This is $12,000.00.

* * *

Macktal: I have made arrangments to pick up the transcript (of my confidential deposition I gave to the NRC) from the NRC. The papers can't publish anything until the trail but the transcript (I can make) public information

Plaintiffs' Exhibit B

Plaintiffs' Exhibit B

now --

Garde: (Interrupting) You're not going to have any lawyers.

* * *

Macktal: They breached the contract; I don't want, the deals off. I'm going through with it because they breached the contract and as far as I'm concerned I want to go to trial. If they don't want to go to trial --

Garde: (Interrupting) There isn't going to be a trial.

* * *

Macktal: The settlement agreement as far as I'm concerned is dead. Nothing happened and its over...

* * *

22) On December 29, 1986, I received a call from Tony Roisman. At that time I told Mr. Roisman that I wanted to go forward with the trial and terminate settlement negotiations. I stated to Mr. Roisman that: "At this point I'm not agreeing to any kind of settlement. Bring it back to where it was. I want to go to trial."

23) During this December 29th conversation with Mr. Roisman I told him that I had contacted some reporters and that I chose to expose the entire situation to the press. Mr. Roisman then told me that I did not need to tell the press anything now because "the reporters who are covering the licensing hearings" would also "cover the same issues" when my information was reported to the Licensing board, and that my case was not "a speech issue."

Plaintiffs' Exhibit B

Plaintiffs' Exhibit B

jjm

24) During this December 29th conversation I was also told if I did not sign the settlement and chose to expose the situation then the following would occur:

"You realize that will put you in a deep financial bind...they'll hold a judgment over you, they will pursue you to the ends of the earth and if you are successful in smearing them in the press as you would like to do, they will pursue you to the ends of the earth. So wherever you go to work they'll have a judgment against you of $15,000, $20,000, $30,000 or $100,000 and they'll garnish your wages on earth any place you get a job. They'll destroy your credit...and at some point you'll have to pay a lot of money at the end they will have won even bigger than today...because they're bigger they can beat up on you and because your smaller your not able to fight back..."

25) I then stated to Mr. Roisman that I still wanted to "go to trial." I emphatically ended the conversation with Mr. Roisman stating that the settlement was off and that I decided and demanded to go to trial.

26) I was misled and signed the settlement under duress. I did not want to settle the case, but I thought I had no option. A copy of the "Settlement Agreement" and a signed general release is attached hereto as Exhibit 2. Paragraph 3 of the Settlement Agreement prohibited me from voluntarily appearing as a witness before the Atomic Safety and Licensing Board or the NRC. It also prohibited attorneys for CASE (GAP, TLPJ, Ms. Garde and Mr. Roisman) from calling me as a witness for CASE or otherwise inducing

Plaintiffs' Exhibit B

any other attorney, party, agency or tribunal to call me as a witness. It also required me to take all "reasonable" steps which Brown & Root instructed me to take so that I cannot appear as a compulsory witness. Essentially the settlement agreement silenced me from appearing before the NRC with additional safety concerns.

27) On May 11, 1987, the Secretary of Labor issued an Order in case 86-ERA-23 requiring the parties to submit a copy of the confidential settlement agreement. (A true and exact copy of this Order is attached as Exhibit J).

28) Evidently my copy of the Order was mailed to me c/o Ms. Garde and GAP. See a copy of a signed return-receipt included in Exhibit J. A copy of the Order was never forwarded to me and I did not learn that such an order was issued until August of 1988. I was unaware that the Secretary had requested me to provide a copy of the settlement agreement to the Secretary or that I was in breach of the Secretary's Order.

29) In or about June, 1987, I called Billie Garde to obtain documents. At that time she told me that my settlement was pending before the Secretary of Labor and that the Secretary had requested some more information about the settlement. I was not informed that the Secretary had issued an Order and requested to see a copy of the settlement agreement itself.

30) After speaking with Ms. Garde, but not knowing that the Secretary had requested to see a copy of the settlement, I sent by first class mail a pro se motion to

Plaintiffs'
Exhibit B

Plaintiffs' Exhibit B

the Secretary requesting that the settlement be set aside. (A true and correct copy of this motion is attached as Exhibit 4).

11) I wrote the attached motion out of desperation because I had been forced into signing the settlement against my will. I mailed the motion in an attempt to gain justice and expose additional safety concerns that I was prohibited from exposing under the terms of the secret settlement agreement.

12) I mailed the attached motion without the advice of Mr Roisman and Ms. Garde or any other counsel. I did so because I believed that Ms. Garde and Mr. Roisman would not act to overturn the oppressive terms of the settlement agreement and I sent the motion so I could be allowed to contact intervenors and the NRC with additional safety concerns.

This affidavit, consists of eleven pages and is hereby executed by my hand this

9 day of Sept, 1988.

Joseph J. Macktal Jr.
Joseph J. Macktal, Jr.

04/MAX

Plaintiffs' Exhibit B

Plaintiffs' Exhibit C

U.S. Department of Labor
(415) 974-0514
FTS 8-454-0514

Office of Administrative Law Judges
211 Main Street - Suite 600
San Francisco, California 94105

In the Matter of

JOHN C. REX
Complainant

v.

EBASCO SERVICES, INCORPORATED
Respondent

CASE NOS: 87-ERA-6
87-ERA-40

Billie Pirner Garde, Esquire
Government Accountability Project, WI
104 E. Wisconsin Avenue
Appleton, WI 54911-4897
For The Complainant

Robert Guild, Esquire
Government Accountability Project, SC
314 Pall Mall
Columbia, S.C. 29201
For The Complainant

Lawrence B. Funderburk, Esquire
Scot Chase, Esquire
Firm of Funderburk and Funderburk
1080 Riviana Building
2777 Allen Parkway
Houston, TX 77019
For The Respondent

Samuel E. Hooper, Esquire
Raymond L. Kalmans, Esquire
Joseph G. Galagaza, Esquire
Firm of Neel Hooper and Kalmans
777 Post Oak Boulevard - Suite 332
Houston, TX 77056
For The Respondent

BEFORE: ROBERT L. RAMSEY
Administrative Law Judge

RECOMMENDED DECISION AND ORDER

Plaintiffs' Exhibit C

BACKGROUND

This proceeding commenced when counsel for complainant, John Rex, mailed a complaint to the Area Director, U.S. Department of Labor, Wage and Hour Division, 2320 LaBranch, Room 2101, Houston,

Texas. In that complaint, Rex alleged that Ebasco Constructors, Inc. ("Ebasco") had discriminated against him in violation of Section 210 of the Energy Reorganization Act, 42 U.S.C. §5851 ("Section 210" or ERA) by terminating his employment as a Heating, Ventilation and Air Conditioning ("HVAC") craft supervisor at the South Texas Nuclear Power Plant ("STP") in Bay City, Texas. Though the termination was effective September 12, 1986, the complaint alleged that Rex did not receive notice of his termination until September 21, 1986. As the envelope which forwarded his complaint was postmarked October 22, 1986, the Area Director determined that the complaint had not been filed within thirty (30) days of the alleged discriminatory event, as required by Section 210(b)(1), and, accordingly, concluded that he did not have jurisdiction to conduct an investigation of the complaint. The Area Director notified Rex's counsel of his determination by letter dated November 7, 1986.

Complainant timely requested a hearing on the complaint to review the determination of the Area Director regarding the timeliness of the complaint and that request for hearing, Case No. 87-ERA-6, was assigned to Administrative Law Judge Joel R. Williams. Judge Williams issued a Preliminary Decision and Order on Timeliness of Complaint in which he recommended that Rex's complaint be deemed timely filed and that the merits of the complaint be investigated by the Area Director. On April 13, 1987, the Secretary of Labor ("Secretary") adopted the findings and conclusions of Judge Williams and issued his Decision and Order of Remand to the Wage and Hour Administrator, directing the Wage and Hour Administrator to conduct an investigation of the merits of Rex's complaint.

Counsel for Rex filed an amended complaint with the Area Director and Chief Administrative Law Judge in which Rex alleged that after being reinstated by Respondent at another facility, he had again been laid off from Ebasco on March 3, 1987 in retaliation for having filed his original Section 210 complaint. In accord with the Secretary's order and the appropriate regulation, 29 C.F.R. §24.4, the Area Director conducted an investigation into the merits of Rex's original and amended complaints. Upon completion of the investigation, the Area Director issued his determination letter dated July 7, 1987 in which he concluded that Rex's termination by Ebasco from the STP was not due to Rex's involvement in Safeteam Concern No. 11028, nor had Rex been "blacklisted" by Ebasco for having filed a Section 210 complaint.

Complainant timely requested a formal hearing on the merits of his complaint and the matter was assigned to Administrative Law Judge James J. Butler who scheduled the matter for hearing on September 18, 1987, in Seattle, Washington. On Motion by Complainant, the trial setting was continued and the site for conducting the hearing moved to Houston, Texas. Thereafter, counsel for Complainant undertook extensive discovery, commencing with Complainant's First Set of Interrogatories and Request for Document Production which contained some 45 Interrogatories, most with multiple sub-parts and a request for voluminous documents.

Plaintiffs'
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Interrogatory No. 31 inquired into matters involving William "Billy" Rester unrelated to Complainant's termination of employment from Respondent and to which Respondent objected to providing an answer. Rester had been Ebasco's HVAC manager at the STP and was the individual who had made the selection of Rex to be laid off in a reduction of force at the STP. However, Interrogatory No. 31 was directed at Rester's personal business activities in catering management lunches for Ebasco and in catering an Ebasco company party.

Complainant continued his discovery t[illegible]ving depositions of Joseph Taylor, Ebasco's former site mat[illegible]he STP; Donald Dismukes, Ebasco's HVAC Superintendent at t[illegible], William Urell, Ebasco's site personnel manager at the STP; [illegible] James Blackwood, Ebasco's former mechanical manager and Unit 2 superintendent at the STP. Complainant also noticed for deposition William Rester, however Rester reportly did not appear to be deposed at the time and place set out in the notice. According to Respondent's counsel, in those depositions, counsel for Complainant not only inquired into Rester's catering activities but also inquired into Rester's activities while he was assigned to a construction project in Washington State, including rumors of Rester having arranged "sex parties" and rumors of Rester having been involved in illegal drugs, none of which appear to have any relationship to the charges against the Respondent contained in the complaint or amended complaint.

Complainant also sought to compel Respondent to provide documents relating to investigations conducted regarding Rester's catering activities and allegations that Rester had misappropriated materials from the STP. Respondent objected to providing such documents as they were not relevant to Complainant's Section 210 allegations and were, in the opinion of Respondent, being sought for the purpose of harassing Respondent. Complainant continued to assert that such documents were relevant to his case and Judge Butler ordered Respondent to provide those documents. In complying with Judge Butler's discovery order, Respondent provided Complainant with a copy of a Safeteam Report on Concern No. 11089 which involved an investigation into allegations of improprieties of Rester at the STP.

Complainant also noticed for deposition James Geiger, an employee of Houston Light and Power Company, for January 14, 1988, and included a subpoena duces tecum for Geiger to bring to the deposition all documents, including Safeteam reports, involving either Complainant or Rester. Complainant cancelled the scheduled deposition for Geiger and never sought to reschedule that deposition or significantly, to subpoena or otherwise obtain the records sought from Houston Lighting and Power Company upon which Complainant later allegedly determined he had no provable case.

Complainant also sought to depose the president of Ebasco, Robert Marshall, and the financial officer of Ebasco, Lynn Pett. Respondent moved to quash those notices on the grounds that neither Marshall nor Pett were involved in the layoffs of Rex nor did

Plaintiffs'
Exhibit C

Plaintiffs'
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either have any knowledge regarding the layoff of Rex. Counsel for Rex reportedly asserted that both Marshall and Pett had knowledge of Rester's catering activities and that Marshall had knowledge of Rester's activities at the project in the State of Washington, neither of which subjects were pertinent under the ERA. While Respondent contended that such information would not be relevant to Rex's Section 210 action, counsel for Rex still sought to compel those depositions be taken and Judge Butler, in his discretion, refused to quash the deposition notices.

Respondent sought to depose Complainant on three separate occasions, however, each time that Respondent noticed Rex for deposition he reportedly was not available to be deposed, allegedly due to business travel commitments. Thereafter, Judge Butler indefinitely postponed the hearing until such time as Rex submitted to being deposed. Following the cancellation of the March 22, 1988 hearing date, neither Complainant nor Respondent undertook further discovery. However, in September, 1988, Rex instituted a Texas state civil action against Respondent for wrongful termination.

Once the instant Section 210 case was assigned to Administrative Law Judge Robert L. Ramsey and a hearing was scheduled to be held on April 5, 1989, Respondent again noticed Rex for deposition and scheduled that deposition for Houston. Counsel for Rex announced that Rex would not go to Houston to be deposed unless Ebasco paid his expenses to travel to Houston. Respondent then sought and obtained an order from the presiding judge compelling Rex to attend the noticed deposition. On the day of Rex's deposition, counsel for Rex, though notified that the deposition was to proceed day to day until completed, announced that she was unable to stay for the completion of Rex's deposition, whereupon the taking of Rex's deposition was suspended. Thereafter, Complainant resisted Respondent's Notice of Continuation of Deposition and moved to quash the Notice.

In this regard, in her oral motion to quash notice of continuation of Complainant's deposition, counsel for Complainant alleged it was necessary for her to leave the original deposition prior to its completion because she had an appointment about sixty miles from Dallas, Texas early the following morning, and the only flight she could catch from Houston to Dallas was at approximately 5:30 p.m. A review of the Official Airline Guide indicates, however, that there were 29 flights from Houston to Dallas (225 air miles apart) that evening between 5:30 and 10:30 p.m.

At the hearing held on April 5, 1989, when the availability of numerous flights between Houston and Dallas was pointed out, Mr. Guild, co-counsel for complainant advised that he had been advised by co-counsel (Ms. Garde) that during the evening and morning following Rex's deposition, the weather "was extremely hazardous, that there was ice and snow on the roads between Dallas and Glenrose, Texas . . . and that it took her several hours to travel late at night and shedidn't arrive until 1:30 [a.m.]". (TR 42,43). Counsel also advised that "there had been a closure of the airport previously that day which backed flights up . . ." According to

Plaintiffs'
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the best information available, none of those 29 scheduled flights was cancelled due to weather conditions. According to official U.S. Government aviation weather records for the area, attached hereto, the weather at and between Houston and Dallas between 12:46 a.m. and 11:57 p.m. March 6, 1989 was well above the minimus for airline operations, that the area was covered by high pressure, there was no precipitation, cloud cover varied from broken to clear, visibility averaged 15 miles and the wind averaged approximately 10 kts (approximately 11.5 mph) with the highest recorded wind at Houston Hobby Airport of 20 kts gusting to 26 kts at 2:50 p.m. Temperature varied from 20° to 47° F over the area during that 24 hour period.

These official weather observations are at variance with counsels statements.

In the interim, counsel for Rex sought to depose three other individuals reportedly for the purpose of making an inquiry as to job availabilities for which Rex might have been qualified following his layoff from Ebasco. In that connection, Respondent made the following individuals available to Complainant's counsel; Doug Barrett, Ebasco's corporate personnel manager; Mike Strehlow, the manager of HVAC engineering for Ebasco Services, Inc. at the Comanche Peak Nuclear Power Project; and Howard Hildebrandt, the site personnel manager for Ebasco Services, Inc. at the Comanche Peak project.

As Complainant had not continued to seek to depose James Geiger, nor obtain all Safeteam reports involving Rex, Respondent noticed Geiger to be deposed on April 3, 1989, and subpoenaed Geiger to bring Safeteam reports relating to Rex. However, as Houston Lighting and Power Company agreed to provide both Respondent and Complainant with copies of the Safeteam files and did so on April 3, 1989, the deposition of Geiger was cancelled.

On April 5, 1989, this matter was called for hearing by Judge Ramsey at Houston, Texas. At that time, counsel for Complainant sought leave to file his Second Amended Complaint. Complainant's announced purpose in seeking leave to file the Second Amended Complaint was that the Second Amended Complaint would deprive the Department of jurisdiction over this action because that complaint did not allege any activity protected by Section 210. After hearing argument of counsel, Judge Ramsey, over Respondent's objection, granted Complainant's motion for leave to file his Second Amended Complaint, but ruled that the Second Amended Complaint did not deprive the Department of jurisdiction to hear the matter. Judge Ramsey then ordered Complainant to go forward with his proof, whereupon Complainant requested a continuance. This request was denied and Complainant was ordered to put on his proof. Without offering any evidence or calling a single witness to testify, Complainant's counsel announced that they could not prove the charges of discrimination against Respondent, nor could the Complainant offer any evidence in support of those charges. The Complainant then rested his case. Respondent moved for judgment and for leave to file a motion to recover its attorney's

Plaintiffs'
Exhibit C

fees and costs incurred in being required to defend this matter. The motion for judgment was taken under advisement and leave to file a motion to recover costs and attorneys fees was GRANTED.

Because Complainant, though given the opportunity to do so, failed to offer either testimony or evidence in support of his claim of discrimination against Respondent, he has failed to make out a prima facie case and, in fact, failed to produce any evidence whatsoever tending to show a violation of the ERA, and Respondent is entitled to judgment in its favor, which is hereby GRANTED.

SANCTIONS

Under date of April 14, 1989, counsel for Respondent filed a motion and memorandum in support of his motion for award of costs and attorneys fees. Under date of April 27, 1989, Complainant's counsel pursuant to leave granted filed a response in opposition to respondents motion. In this response, Complainant's counsel requested a hearing on the issue of imposition of costs and fees. I am of the opinion that counsel's response adequately addressed Respondent's motion and that a hearing on the issue is not necessary, but would merely cause additional delay and expense. The Complainant's request for a hearing is hereby DENIED.

In addition to setting forth protected activities, Section 210 of the Energy Reorganization Act, 42 U.S.C. §5851, charges the Secretary of Labor with the duty to investigate charges of discrimination under Section 210 and to issue an order either providing relief or denying the complaint. The Secretary's order can only be issued "on the record after notice and opportunity for public hearing." In accordance with the mandate of Section 210, the Secretary has promulgated regulations establishing procedures for the handling of discrimination complaints under federal employee protection statutes. See 29 C.F.R. Part 24. Those regulations provide for an investigation to be conducted by the Administrator of Wage and Hour Division, and the right of a party dissatisfied with the determination of the Administrator to request a hearing on the record before an Administrative Law Judge ("ALJ"). While Part 24 sets forth time constraints and the situs for such hearing, Part 24 does not provide for any discovery or delineate any of the powers of the ALJ, other than the power to dismiss the complaint or render a recommended decision. It thus appears that Congress intended these "whistleblower" cases to be speedily investigated and disposed of with a minimum of legal maneuvering with its consequent delays. In actual practice, however, a complainant who desires discovery may waive the speedy disposition requirement and undertake discovery to the extent authorized by the administrative law judge. The power of the ALJ to compel discovery and oversee the proceedings is established by the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges promulgated by the Secretary, at 29 C.F.R. Part 18 (hereinafter "Rules of Practice").

The Rules of Practice set forth rules generally applicable to proceedings conducted before Administrative Law Judges. Among

other matters, the Rules of Practice set forth the qualifications for attorneys to practice before an Administrative Law Judge, 29 C.F.R. §18.34(g)(1), and sets forth standards of conduct for parties and their representatives, 29 C.F.R. §18.36. The Rules of Practice plainly grant the Administrative Law Judge the power to suspend or bar a party or attorney from the proceedings. See §18.36. It is beyond question that administrative agencies, including the Department of Labor, have the authority to promulgate rules for admission and practice before the agency and the power to sanction attorney's for violation of those rules. Touche Ross & Co. v. SEC, 609 F.2d 570 (2nd Cir. 1979); see, generally, J. Stein, G. Mitchell and B. Mezines, Administrative Law, vol. 5, §42.02, et seq.

The Rules of Practice do not specifically provide for the award of attorney's fees and costs incurred by a party in defending a frivilous suit or vexatious conduct of the opposing party or counsel. The Rules of Practice do provide, however, that the Rules of Civil Procedure for the District Courts of the United States "shall be applied in any situation not provided for or controlled by these rules, or by any statute, executive order or regulation." 29 C.F.R. §18.1. The Rules of Practice further grant to an Administrative Law Judge the authority to "where applicable, take any appropriate action authorized by the Rules of Civil Procedure for the United States District Courts." 29 C.F.R. §18.29(8). Accordingly, the Rules of Practice adopt, where applicable, the Federal Rules of Civil Procedure and grant to the Administrative Law Judge, where appropriate, the power to take action authorized by the Federal Rules of Civil Procedure.

The Federal Rules of Civil Procedure are applicable to the instant situation because the Rules of Practice do not speak to the issue of sanctioning parties and their counsel for vexatiously pursuing a groundless Section 210 action. It is certainly appropriate for the Administrative Law Judge to take action authorized by Rule 11 of the Federal Rules of Civil Procedure in the instant case due to the Complainant's and his counsel's abuse of the judicial process in an action which they now agree has no basis in fact. Accordingly, it is appropriate that Respondent recover its costs and attorney's fees incurred in defending this action, responding to irrelevant discovery and preparing for the trial of the matter for the reasons discussed below.

RULE 11 FEDERAL RULES OF CIVIL PROCEDURE

Federal Rules of Civil Procedure, Rule 11, was originally enacted in 1937 and amended in 1983. The current version of the Rule provides as follows:

> Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated . . . The signature of an attorney or party

> constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation . . . If a pleading, motion or other paper is signed in violation of this Rule, the Court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee. Federal Rules of Civil Procedure, Rule 11, 28 U.S.C.A.

The amended Rule imposes stringent obligations upon litigants and their counsel. In Hale v. Harney, 786 F.2d 688, 692 (5th Cir. 1986), Judge Gee succinctly stated: "The day is passed when our notice pleading practice - circumscribed only by a requirement of a subjective good faith on the pleader's part - plus liberal discovery rules invited the federal practitioner to file suit first and find out later whether he had a case or not."

Prior to the 1983 amendment, Rule 11 required only a subjective, good faith belief that there was good ground to support a pleading. Davis v. Vaslan Enterprises, 765 F.2d 494, 497 n.4 (5th Cir. 1985). Rule 11 compliance is now measured by an objective, not subjective, standard of reasonableness under the circumstances. Thomas v. Capital Security Services, Inc., 836 F.2d 866, 873 (5th Cir. 1988). Rule 11 imposes the following affirmative duties with which an attorney or litigant certifies he has complied by signing a pleading, motion or other document:

> (1) That the attorney has conducted a reasonable inquiry into the facts which support the document;
>
> (2) That the attorney has conducted a reasonable inquiry into the law such that the document embodies existing legal principles or a good faith argument "for the extension, modification, or reversal of existing laws; and

Plaintiffs'
Exhibit C

Plaintiffs'
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It is patently obvious from the documents which were available to Complainant and his counsel both prior to and immediately following the filing of the Complaint, that there was no reasonable factual basis to support the claims. Despite this, Complainant's counsel undertook massive discovery, taking no less than nine depositions over a fifteen month period and required Respondent to produce a massive amount of documents. On April 5, 1989, a hearing was held before Judge Robert L. Ramsey. At this hearing, counsel for Complainant sought and received leave to file a Second Amended Complaint and represented in open court that Complainant had not engaged in any "protected activity", and that the filing of this Second Amended Complaint was for the sole purpose of depriving the Agency (Department of Labor) of jurisdiction. Counsel for Complainant attempted to explain their position by stating that they had just received a series of Safeteam documents from Houston Lighting and Power Company including Safeteam Report Concern No. 11028 which convinced them that their client had not, in fact, engaged in "protected activity". As noted above, Safeteam Report Concern No. 11028 was relied upon by the Department of Labor's investigator in coming to the conclusion that there was no violation of any protected activity, and the existence of which report was made known to Complainant not later than July 7, 1987. Had counsel looked at Safeteam Report Concern 11028 at that time, it would have been apparent that the complaint was ill-founded.

Counsel for Complainant engaged in conduct which Rule 11 is specifically designed to prevent. It is clear that counsel for Complainant did not conduct a reasonable inquiry into the facts which allegedly supported the Complaint. A reasonable inquiry could not have led counsel to believe that the Complaint was well grounded in fact. Even a cursory investigation into the facts at hand as early as July 7, 1987 would have educated counsel for the Complainant as to the obvious lack of merit for the Complaint.

It is further clear by the nature and extent of discovery engaged in by counsel for Complainant that the Complaint was filed for an improper purpose. Specifically, Complainant's discovery appears to have been brought solely for the purposes of harassment of Respondent, Ebasco Constructors, Inc. or for the purposes of a civil suit wherein damages not allowable in this action could be recovered. Rather than seeking to use discovery to develop the factual circumstances underlying the claim that Complainant had been terminated for engaging in protected activity, counsel for the Complainant instead chose to depose many representatives of Respondent who had little or no knowledge as to the facts of the Complaint. During the course of several of the depositions, counsel for Complainant sought confidential information which was damaging, embarrassing and confidential to Respondent and its witnesses and bore no rational relationship whatsoever to the facts sought to be proved in the Complainant's Section 210 action. These specific tactics were set forth in detail in Respondent's Motion for Entry of Protective Order which was filed in this proceeding on or about February 23, 1988. The scope of Complainant's discovery is reflected in Respondent's incurring travel expenses of $4,869.05 (mainly for representing the person being deposed) and deposition

Plaintiffs'
Exhibit C

Plaintiffs'
Exhibit C

transcript costs of $4,084.00. In addition, in responding to interrogatories and subpoena Duces Tecum, Respondent spent literally hundreds of man-hours and thousands of dollars compiling the documents sought by these discovery devices.

That the Complaint was prosecuted in bad faith and for the purposes of harassment or a civil suit is even more evident when one looks at the conduct of Complainant's counsel when the case was called for hearing. Despite the fact that the case had been on file for over two and one-half years and extensive discovery had been completed, counsel for Complainant when forced to proceed, moved for a continuance because her witnesses were not present. Counsel knew that the judge assigned to the case was based in San Francisco and would have to travel to Houston to hear this case. Though counsel claimed to have learned of the lack of merit of their case on April 3, 1989, they did not advise the judge that they would not proceed to a hearing in the two days April 3, 4, 1989, prior to the hearing. This in spite of the fact that all parties were advised that the judge had set aside three days, April 5, 6, and 7, for the hearing. This shows nothing but utter disrespect for the judges' and opposing counsel's time, convenience and expenses. When the motion for continuance was denied, counsel for Complainant failed to call any witness and did not present one piece of evidence in an attempt to pursue their client's claim. Instead, counsel for Complainant announced in open court that they could not prove a discriminatory termination, alleging that the information had only become available on April 3, 1989.

Rule 11 of the Federal Rules of Civil Procedure places an affirmative duty on counsel to conduct a reasonable inquiry into the facts which support the documents that they file. Had counsel for Complainant conducted such a reasonable inquiry into the facts of this case, prior to or shortly after filing of the Complaint, Respondent would have been spared the enormous time and expense to which it has been subjected over the past two and one-half years. This is precisely what Rule 11 was designed to protect against and, in accordance with the amended Rule, the Court is required to impose Rule 11 sanctions upon the finding that Rule 11 has been violated.

The Affidavits of Samuel E. Hooper and Larry B. Funderburk filed pursuant to leave granted set forth that Respondent, Ebasco Constructors, Inc., has been required to incur attorney's fees and expenses in the amount of $77,468.53 in defending the claim which was brought and pursued by Complainant, John Rex. By signing the original First Amended Complaint, Billie Pirner Garde and by signing the Second Amended Complaint, Billie Pirner Garde and Robert Guild, as counsel for Complainant, John Rex, had the affirmative duty to conduct a reasonable inquiry into the facts supporting the claim, not go on an unlimited fishing expedition in hopes that something might turn up. The conduct of Complainant and his counsel can only lead to one conclusion; that the Complaint herein was without foundation and was pursued without justification. Respondent, Ebasco Constructors, Inc., but for the conduct of Complainant and his attorneys, would not have incurred

Plaintiffs'
Exhibit C

Plaintiffs'
Exhibit C

attorney's fees and expenses in the amount of $77,468.53, and Respondent is, under Rule 11 Federal Rules of Civil Procedure, entitled to recover said amount jointly and severally from John Rex, Government Accountability Project, and its attorneys Billie Pirner Garde and Robert Guild as sanctions for their baseless and willful conduct in this case which amounted to an abuse of the administrative process.

Recognizing that the imposition of sanctions is unusual, the tendency is to attribute counsels' actions to inexperience, zeal or simply enthusiastic representation. Such is not, however, possible here. The Government Accountability Project has much experience in cases of this type and, in fact, its very name suggests it exists for the purpose of prosecuting "whistleblower" cases such as this. Complainants lead counsel, Ms. Garde, has been involved in cases such as this in the past and has been criticised by trial judges for the manner in which she has pursued cases. See Recommended Supplemental Decision and Order in Goldstein v. Ebasco Constructors 86-ERA-36, and Recommended Decision and Order in Hasan v. Nuclear Power Services, Inc., 86-ERA-24.

Though Mr. Guild became associated with this case only shortly before trial, he had an obligation to fully examine the file and all evidence before agreeing to become involved. Had he done so, the weakness of Complainant's case should have been evident.

I thus cannot attribute to counsels inexperience, zeal or simple enthusiasm, pursuit of this case beyond a point when reasonable investigation would have indicated no violation of any protected activity. Information from which such a conclusion was evident was available in the Safeteam reports about which counsel was well aware, and by the investigative report of the Department of Labor. To continue to "beat a dead horse" in the manner here subjects counsel to the sanctions of F.R.C.P. Rule 11.

ORDER

1) The complaint herein is DISMISSED with prejudice.

2) Complainant John C. Rex, Government Accountability Project, and attorneys Billie Pirner Garde and Robert Guild, are jointly and severally ordered to reimburse the Respondent herein the sum of $77,468.53 representing costs and attorney fees incurred by Respondent in defending this groundless action.

ROBERT L. RAMSEY
Administrative Law Judge

Dated: MAY 12 1989

San Francisco, California

RLR:bjh

Plaintiffs'
Exhibit C

Plaintiffs'
Exhibit D

4-26

Bob:

I have "Tight" copy of your Rest D.+O.

Here is my Supple. D.+O. on Atty's FEES on the same Billie Grade. I hope your sanctions hold up. She'll remember.

This woman is a menace. She doesn't practice law; she practices Deceit. She is not a trial lawyer, she is a trial! She is a hindrance to plaintiffs and an unworthy opponent to the Defense

Bob B.

Plaintiffs'
Exhibit D

Plaintiffs'
Exhibit E

LBP-83-

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before Administrative Judges:

Peter B. Bloch, Chairman
Dr. Kenneth A. McCollom
Dr. Walter H. Jordan

Docket Nos. 50-445
50-446

In the Matter of

TEXAS UTILITIES GENERATING COMPANY, et al. (Application for Operating License)

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

December 28, 1983

MEMORANDUM AND ORDER
(Quality Assurance for Design)

[The parties are prohibited from informing anyone about the existence or content of this Memorandum and Order prior to 12 noon Eastern Daylight Savings Time, December 28.]

The record before us casts doubt on the design quality of the Comanche Peak Steam Electric Station (Comanche Peak), both because the Texas Utilities Generating Company, et al. (applicant) has not demonstrated the existence of a system that promptly corrects design deficiencies and because our record is devoid of a satisfactory explanation for several design questions raised by the Citizens Association for Safe Energy (CASE). We suggest that there is a need for an independent design review and we require applicant to file a plan that may help to resolve our doubts.

Plaintiffs'
Exhibit E

frictional loads between pipes and supports (CASE Exhibit 659H, p. 5). Messrs. Doyle and Walsh seem to feel that had the design basis inputs and interfaces been adequate, these differences would not have occurred. They further state that since such differences have occurred, the Applicants have violated NRC regulations, as well as standards endorsed by the NRC, including ANSI N45.2, "Quality Assurance Program Requirements for Nuclear Power Plants." (See, e.g., Tr. 2973, 3706, 3852, 3864, 3925, 6984-85). Messrs. Walsh and Doyle also stated that they believed that internal interfaces within the SSAG [Site Stress Analysis Group] were inadequate, since there was no clearly delineated line of communication and responsibility in the Applicants' engineering guidelines, in violation of ANSI N45.2.11 (Tr. 6984-87, 6989).

The Board disagrees with Messrs. Doyle's and Walsh's conclusions about the Applicants' organizational and design interfaces in the pipe support design area. It is true that there are differences in design approaches between the Applicants' three pipe support design organizations. These differences appear to be the outgrowth of the Applicants' utilization of three separate pipe support design organizations.[169] An early decision was made by the Applicants that pipe support designs would be contracted out to companies who are in the business of designing and fabricating pipe support components. In order to satisfy ASME Code requirements and to set a basis for competitive bidding between the companies, it was necessary to provide them with the overall design criteria to be met. The Gibbs and Hill document which accomplishes this objective was Specification MS-46A. Contracts for the design of pipe supports at CPSES [Comanche Peak] were awarded to ITT-Grinnell & NPSI. In addition, Applicants created what became the PS&, which also utilized Specification MS-46A. Since neither Specification MS-46A nor the ASME Code dictate in detail the means by which an engineer is to satisfy the design criteria, differences in engineering approaches occurred between the three parallel pipe support groups. (Staff Exhibit 207 [SIT Report], p. 12; Applicants' Exhibit 142, p. 9).

The fundamental issue for this Board to resolve is whether these differences in design approaches represent a

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169 [Footnote 18 in original:] The Applicants also employ a fourth organization for the design of structural supports for cable trays and conduits (NRC Staff Exhibit 207, p. 12).

safety or engineering concern, or if they violate any NRC regulations, Staff guidance or other NRC-endorsed standard. The Board believes that ANSI N45.2, and N45.2.11 in particular are relevant in resolving this issue. The overall purpose of ANSI N45.2.11 is to assure that each design organization has a clear, documented scope of responsibility and that there are documented paths for communication when the responsibility shifts from one organization to the other or is shared by both. N45.2 is a general requirement document essentially equivalent to Appendix B of 10 CFR 50 while N45.2.11 is specific to those[170] design controls requirements contained in Criterion III of Appendix B and N45.2. The NRC has endorsed N45.2 via Regulatory Guide 1.28, and endorsed N45.2.11 via Regulatory Guide 1.64. (Staff Exhibit 207, p. 12).

The evidence establishes that each of the three pipe support design organizations has its own specific scope of responsibility since each has been assigned the responsibility for a specific group of supports. (Staff Exhibit 207, p. 13; Applicants' Exhibit 142, p. 9). There is no need for cross communication between the three groups since they share no common, in-line design responsibility. Furthermore, the lines of communication between the Applicants, Gibbs and Hill, and each pipe support design organization are clear and documented. (Id.) There is also no need for internal interfaces within a design or support organization, under ANSI N45.2.11. (See, e.g., Tr. 6987-89). Even if we believed that interfaces between the SSAG, and the STRUDL subgroup were necessary under ANSI requirements, we seriously doubt whether there would be any safety significance with regard to CPSES, in ligrt of the clear evidence that the pipe support design groups are well aware that they are ultimately responsible for assuring that pipe supports meet all applicable NRC and ASME Code requirements (Tr. 6989-92).

The Board concludes that the Applicants have acequately defined and documented the responsibilities and paths of communications between Gibbs & Hill and the pipe support design groups. No NRC regulation has been violated, and the programmatic objectives of Subsection NA of the ASME Code, N45.2 and N45.2.11 have been satisfied. (Staff Exhibit 207, p. 13.)

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170 The Board changed this word in the staff document because of our belief that Criterion III is not the only design control requirement found in Appendix B.

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THE UNITED STATES OF AMERICA
BEFORE THE SECRETARY OF LABOR

In the Matter of	)	
	)	
S.M.A. HASAN,	)	
	)	
Complainant	)	
	)	
v.	)	Case No. 86-ERA-24
	)	
NUCLEAR POWER SERVICES, INC. STONE & WEBSTER ENGINEERING CORP., TEXAS UTILITIES ELECTRIC CO., INC.,	)	
	)	
Respondents.	)	

BRIEF TO THE SECRETARY OF LABOR

I. The Record and Pleadings Before the Administrative Law Judge Demonstrate that Mr. Hasan Must Prevail

Complainant filed findings of facts and conclusions of law in this case before the Administrative Law Judge (ALJ). These pleadings carefully cited to the record and conclusively demonstrated the following:

(1) Mr. Hasan put forth a prima facie case;

(2) Mr. Hasan engaged in protected activity;

(3) Respondents failed to demonstrate that the actions taken by Mr. Hasan, independent of protected activity, would have resulted in discipline.

This case can be resolved on very narrow and straightforward grounds.

The sequence of events leading up to Stone & Webster's

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refusal to hire Mr. Hasan at Comanche Peak is uncontested. To summarize the post-trial pleadings:

(1) On the basis of an initial interview and his work record, Mr. Hasan was approved for hire by Stone & Webster. Tr. 576-577.

(2) That Stone & Webster asked a manager of Texas Utilities (John Finneran) for his comments about those employees approved for rehire. Tr. 576-77.

(3) That a John Finneran, a manager with Texas Utilities advised Stone & Webster not to rehire Mr. Hasan. Tr. 27.

(4) Acting on the advice of Mr. Finneran, Stone & Webster did not hire Mr. Hasan. Tr. 576-77.

(5) But for Mr. Finneran's negative assessment, Mr. Hasan would have been hired by Stone & Webster. Tr. 576-77.

(6) That Mr. Finneran based his decision not to recommend Mr. Hasan for rehire upon the advice of a Mr. Jay Ryan, another manager with Texas Utilities. Tr. 28, 35, 533.

(7) That Mr. Ryan stated, in sworn testimony, that he based this negative assessment on Mr. Hasan's internal complaints regarding poor engineering practices and on an argument that Mr. Hasan had with a Mr. Barry Hill. Tr. 538-39.

(8) The Hill-Hasan disagreement referred to above was based on a quality control problem and that during this disagreement Mr. Hasan threatened to report the disputed engineering problems to the NRC if Mr. Hill did not fix them. Tr. 273, 538, 532.

This is the case in a nutshell. The undisputed record demonstrates that the sole motivating factor in Texas Utilities'

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recommending Stone & Webster not hire Mr. Hasan was based on Mr. Hasan's internal whistleblowing activities and a threat to take the internal matter to the NRC if Texas Utilities did not properly resolve the contro[illegible]

The case is simple. On[illegible] Hasan's internal complaints are viewed as protected activity Mr. Hasan must win his case. The Secretary of Labor should carefully review these pleadings and issue a decision in support of Mr. Hasan and remand the case for a decision on damages.

II. Mr. Hasan was Retaliated Against Because of His Whistleblowing Activities

1. Introduction.

Knowledge on the part of TUGCO's management that Mr. Hasan was rejecting pipe support engineering packages due to safety-related design deficiencies is the cornerstone of Mr. Hasan's case.

Knowledge on the part of Mr. Jay Ryan (Lead Engineer for the Large Bore Pipe Support Engineering Group, Tr. 532) and Mr. John Finneran (TUGCO's chief pipe support engineer for the entire plant, to whom Mr. Ryan reported, Tr. 18) is critical because it is uncontested that Mr. Ryan and Mr. Finneran jointly made the decision to ban Mr. Hasan from the site. Respondents' Finding of Facts (hereinafter "Respondents' FOF") Nos. 33-36.

Mr. Ryan and Mr. Finneran chose to ban Mr. Hasan from the site because they did not intend to adequately evaluate the

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safety concerns Mr. Hasan had raised over the years. This resulted in a great deal of animus toward Mr. Hasan on the part of Messrs. Finneran and Ryan. For example, Mr. Hasan rejected more PSE design packages due to safety-related design deficiencies than anyone else and his rejection of pipe supports cause considerable delay of the certification of the pipe support design. Also, Mr. Hasan detected design deficiencies in both NPS and PSE design criteria, problems which no other line engineer on site detected or called to management's attention. Mr. Hasan's expertise and dedication as an engineer led to the uncovering of numerous safety defects in the design of the plant.

Respondents, on the other hand, deny that Mr. Hasan detected any design deficiencies or that he ever rejected a pipe support because of a design deficiency in the criteria. See Respondents' FOF 54, 70, 72, 74, 87, and 88. As such, Respondents argue that Mr. Ryan and other members of management could not have had, and in fact did not have, any knowledge of Mr. Hasan's rejection of packages due to improper design.

Below Complainant will demonstrate the Respondents' case is based on false statements and apparently perjured testimony; and that Respondents' counsel apparently relied on perjured testimony to prove its case. The record will bare that Complainant constantly raised design deficiencies to management and likewise rejected to management pipe support packages due to safety-related design deficiencies and that as a result of this Mr. Hasan was banished from the Comancne Peak site and blacklisted in the nuclear industry.

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2. Respondents Covered-Up Safety Concerns.

From January 1982 to August 1985, Hasan brought many safety concerns to his superiors at the Comanche Peak site including, Ram Hemrajani, Dave Rencher, Michael Chamberlain, Harvey Harrison, John Finneran, and Mike McBay. Tr. 230. These safety concerns are now characterized by the NRC as 65 quality assurance allegations about Comanche Peak. CX 14.

It is beyond question that Mr. Hasan constantly raised safety concerns of immense magnitude. In addition to stiffness values of class 1 pipe supports (Tr. 117-118, 148-149, 234-237, 285-286, 393), they included: punching shear (Tr. 230-234); negligent design review (Tr. 75, 365); Richmond Inserts (Tr. 238-240); Cross-over of PSE design packages to NPS (Tr. 72-75, 240-241, 120-121); Minimum Weld Requirements (Tr. 168, 190), and numerous others safety concerns identified in CX 14. For a more detailed account of Mr. Hasan's whistle-blowing activity, see Complainant's Proposed Findings of Fact at pp. 13-19, 28-35.

Nonetheless, Respondents falsely assert that Mr. Hasan "did not have any 'safety concerns' about the site" Respondents' FOF 54, that "he never claimed that the presence of different or 'inconsistent' design criteria in any way affected safety at Comanche Peak," Respondents' FOF 70, that the "technical points be raised did not rise to the level of safety concerns"

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Respondents' FOF 71, that "Texas Utilities [did not] have any information that Mr. Hasan had safety concerns about Comanche Peak," Respondents' FOF 87, that Mr. Hasan had not "expressed any safety concerns to Texas Utilities management," Respondents' FOF 88, and that "Texas Utilities management was always responsive to any concerns raised by engineers" and "encouraged engineers to bring such concerns to management's attention." Respondents' FOF 72.

These findings of fact by Respondent are erroneous, and in violation of FRCP 11. For example, Respondents assert that they "encouraged" engineers to bring safety concerns to management's attention, Respondents' FOF 72. The supporting citation [Tr. 122 (Rencher)] does not support the proposition it is sited for. Rather Mr. Rencher's testimony concerns management's attempt to intimidate line engineers from going to the CASE or the NRC with safety concerns. In particular the testimony concerns Mr. Rencher's intimidation tactics used to halt the flow in information to CASE (the citizen intervenor organization) and the NRC. It is uncontested that Mr. Rencher began accusing line engineers in his group as being "spies" for CASE, with the intent of stopping them form contacting CASE with safety concerns. But beyond taking Mr. Rencher's testimony out of context, Respondents' assertion flies in the face of the unrefuted testimony that Mr. Hill personally singled out Mr. Hasan as a"spy" for CASE and intimidated by management after he was

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identified as a "spy". Tr. 270./1

Respondents paranoia of engineers going to the NRC or CASE so frightened Texas Utilities that managers were allowed to openly intimidate employees attempting to make such contact. Indeed, Respondents' paranoia is so complete that Respondents concluded in their Reply Brief that "in fact it is clear that, at least in [the case of Messrs. Walsh and Doyle], CASE had covertly employed" spies to "collect information" while working at the site (Walsh and Doyle are the two leading ex-employee engineer-whistleblowers at Commanche Peak). Reply Brief at p.10, FN 11. Beyond the fact that this allegation was not raised anywhere in the record, it is patently untrue and false, and was made with the malicious intent to mislead the tribunal. This knowingly false statement will be the subject of a motion for FRCP Rule 11 sanctions.

1/ Because Mr. Hasan's testimony was unrefuted, an adverse inference that Mr. Hill made the assertion is appropriate. Furthermore, Respondents, in their reply brief, knowingly mislead the court by asserting that Complainant's failure to call Mr. Hill to the stand to corroborate Mr. Hasan's testimony is indicative of the fact that Mr. Hasan's assertion was false. Respondents then assert that Mr. Hasan's "uncorroborated oral testimony about his purported utterance to Mr. Hill could [not] be believed." Reply Brief at 4. This is an out-and-out misrepresentation of the facts. The truth is that Respondents' own witness, Mr. Chamberlain, corroborate Mr. Hasan's testimony that he told Mr. Hill that he would go to the NRC [Tr. 192]. Furthermore, Mr. Rencher testified that he spoke to Mr. Hill about "spies" and that Mr. Hill agreed with Mr. Rencher that "spies" for CASE were on site [Tr. 116]. Respondents' false assertion is sanctionable conduct pursuant to FRCP Rule 11.

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Respondents define Mr. Hasan's "disruption" as a personal problem. In so doing they confuse Mr. Hasan's telling management that he was about to "go to the NRC" as "people problems." Blowing the whistle on errors in the design of a nuclear power plant is not a "people problem," it is protected activity. Mr. Hasan was cognizant of the fact that management had ordered the engineers to use false values in computing stiffness as well as numerous other safety concerns. Mr. Hasan fought long and hard to correct those and other problems. The more Mr. Hasan protested the more management openly intimidated Mr. Hasan from contacting the intervenor and the NRC. When it came time to correct the problems (i.e. when Stone and Webster arrived on site), Mr. Hasan was banished from the plant so management could continue to deceive the NRC as to the actual extent of re-work need to correct the errors in the plant's pipe support design (which Stone & Webster had been brought on site to correct).

III. Jay Ryan Submitted Perjured Testimony Concerning Mr. Hasan's Rejection of PSE Pipe Support Packages Between 1982 and 1985.

In an attempt to prove their theory of the case, Respondents' counsel apparently allowed their star witness, Jay Ryan, to commit perjury. Mr. Ryan apparently perjured himself when he testified under oath that Mr. Hasan, from January 25, 1982 until May 1984 (the time frame Mr. Hasan worked under Mr.

Rencher in the NPS group), never rejected a single PSE-designed pipe support package. The truth is that Mr. Hasan rejected scores of PSE design packages during this time and Mr. Ryan knew of this and discriminated against Mr. Hasan because of it.

The rejection of pipe supports is a major key to the proper understanding of this case. Unfortunately, the ALJ's Recommended Decision and Order is wholly defective on this account, and as such it is evident that the ALJ failed to understand the very premise of Complainant's case.2/

While in the NPS group, Mr. Hasan rejected numerous PSE packages to Mr. Ryan by attaching a memo directed to Mr. Ryan personally. Nonetheless, Mr. Pyan denied that Mr. Hasan rejected a single such package. To demonstrate that Mr. Hasan was telling the truth and that Mr. Ryan is lying will require some additional background.

2/ The ALJ found that Mr. Hasan "would repeatedly 'reject' calculations of other engineers because he checked them against another contractor's set of criteria," and that: "It was the accepted practice at the time for each contractor's calculations to be checked according to that same contractor's set of criteria," but that Mr. Hasan chose to "repeatedly 'reject' calculations of other engineers because he checked them against another contractor's set of criteria." The ALJ concludes that because he chose to apply the wrong set of criteria (which is not true) Mr. Hasan's rejection of his fellow engineers' work became a source "continuing disagreement" with the predictable end result of "personality" clashes with his co-workers.

The ALJ's finding are factually at error with the record because Mr. Hasan never applied the wrong criteria to a pipe support package; rather he only applied the criteria he was instructed to apply. There is no testimony any where on the record that Mr. Hasan ever applied the wrong criteria to a fellow engineer's work. Rather, Mr. Hasan was discriminated against because he constantly identified design deficiencies in the design criteria itself and rather than because he applied the wrong set of criteria to his collegues' work.

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1. Background

The entire time Mr. Hasan worked at the Comanche Peak site, the pipe supports were being designed and constructed by three separate groups. Each group had established its own design guidelines, known as design criteria, and every pipe support design originating out of a given group could only be checked against that group's design criteria. The three design groups on site responsible for the design and review of pipe supports were (1) NPS (or NPSI) Unit 1 group, (2) ITT-Grinnell group, and (3) the PSE (or Pipe Support Engineering) group.

Thus, the NPS group was only to review NPS-designed pipe supports using the NPS design criteria. Likewise, PSE group could only review PSE-designed supports against PSE criteria, and ITT-Grinnell was to evaluate ITT-Grinnell designed supports using only ITT-Grinnell criteria. Respondents' FOF No. 69. It is thus axiomatic that NPSI, PSE, and ITT-Grinnell were not to transfer pipe support packages between themselves for certification and under no circumstance were pipe supports to be qualified under two sets of design criteria.

As even Mr. Ryan admits, if NPS reviewed PSE pipe supports, then "something would be wrong." Tr. 550.

The PSE group was under the watchful eye of Jay Ryan, whereas the NPS group was supervised by David Rencher. When Mr. Hasan arrived at Comanche Peak, he was assigned to the NPS group and was placed under Mr. Rencher's supervision. Mr. Hasan was

assigned to the NPS Unit 1 group from January 25, 1982 until mid-May 1984.

During this time Jay Ryan and John Finneran, in order to meet production schedules, engaged in a scheme. They regularly sent certain PSE design packages to NPS for certification.

Soon after his arrival, Mr. Hasan began to raise as a concern to Mr. Rencher the fact that different criteria were being applied to the same pipe supports. As early as 1982, Mr. Hasan complained to management that NPSI was reviewing PSE-designed pipe supports and applying NPS criteria to those supports. Tr. 238-240 (Hasan).

Mr. Hasan's chief concern was that PSE and NPS used different design criteria to analyze Richmond Inserts (steel rods embedded into concrete to which pipe supports are anchored). The result of this was that the Richmond Inserts designed under PSE guidelines would come into the NPS group for certification and during the certification process would fail under the NPS criteria. These pipe supports were then rejected back to PSE with a memo attached to the packages explaining why the support failed. These memos were addressed directly to Jay Ryan.3/

3/. One of these memos is attached here to as Exhibit 1. It is the only such memorandum in Complainant's possession and was found by chance after Mr. Hasan located it stuck between the pages of a book he removed from the site. Prior to that Mr. Ryan searched all of Mr. Hasan's material leaving the site and removed all other copies of similar speed memos. The facts surrounding this memo will be the subject of a forthcoming Rule 11 motion.

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Once the rejected pipe support package was back in Ryan's hands, the package would often be certified in the PSE group without solving the problem raised by NPSI line engineers. Tr. 241 (also see Rencher Depo Tr. at pp. 251-252 wherein Mr. Rencher testified that minimum weld requirement violations also resulted in the rejection of PSE packages by NPS back to the PSE group).

As Mr. Rencher openly admitted during his deposition:

Q: [By Mr. Kohn] ... Do you know if Mr. Hasan could not certify NPS Richmond insert [design] criteria on some of the [PSE] packages he as checking [while in NPS]?

A: [By Mr. Rencher] He could not certify some of the packages because of the NPS criteria on Richmond Inserts, yes.

Q: Did you take those packages to the PSE group for certification? * * *

A: Well [Mr. Hasan would] attach [to rejected PSE packages] a memo [e.g., see Exhibit 1 attached hereto] to [Mr. Ryan stating that] the supports were rejected for the following reasons, or something of that nature, and explained what the problems were . . .

Q: And would the PSE group then certify the packages?

A: . . . Yes.

Q: Would they often certify the package without making any changes?

MR. WOLKOFF: If he knows.

A: . . . yes.

[Rencher Deposition Tr. at pp. 96-97, emphasis added]

Plaintiffs' Exhibit F

Q: Are you aware Mr. Hasan could not certify NPS Richmond insert criteria on some packages?

A: I'm aware that he could not certify some of the supports because of the Richmond insert criteria, yes.

Q: Did you take these packages to the PSE group for certification?

A: Those packages were rejected from the NPS group to the PSE group. [Rencher Deposition Tr., at p. 167, emphsis added]

Mr. Hasan continually rejected PSE pipe supports because of the inconsistent criteria concerning Richmond inserts. He would reject these packages directly to Mr. Ryan or Mr. Rencher (not line engineers).

Mr. Hasan's chief concern was that since Richmond Inserts were being analyzed under different design criteria, a "progressive failure of the piping system" (i.e., domino effect) could occur. Mr. Hasan fear was well grounded because if a progressive failure of the Richmond inserts ever occurred, a melt down could easily follow.

2. Perjury.

Rather than confront the reality that Mr. Hasan was rejecting more PSE pipe supports than any other engineer in NPS, Mr. Ryan was allowed to testify that Mr. Hasan had never rejected a single PSE pipe support while in NPS.

Mr. Ryan testified that NPS never certified or rejected a

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PSE pipe support. More specifically, Mr. Ryan testified that Mr. Hasan never reviewed a PSE pipe support while assigned to the NPS group. As the transcript reflects:

Q: [By Mr. Mack] And were they ever reviewed by anyone at NPS?

A: [By Mr. Ryan] No...NPS would have reviewed their original designs. Personnel in PSE would have reviewed PSE designs.

Q: Well, what if, in fact, what occurred was something came out of PSE and it was being reviewed by NPS? Would that create a problem?

A: It wouldn't happen.

Q: It would never happen?

A: No.

* * *

Q: Okay. So that while [Mr. Hasan] worked [in the NPS group] no package designed in your group [PSE] would ever be reviewed by Mr. Hasan.

A: That is correct.

Tr. 540-541.

Q: Are you certain that none of your [PSE] packages were ever reviewed by Mr. Rencher's [NPS] group during the time...Mr. Hasan was working there?

A: There were separate contracts. The original PSE designs were reviewed by PSE. The original NPSI designs were reviewed by NPSI.

Tr. 549-550.

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Mr. Ryan's testimony was clear and unequivocal -- that Mr. Hasan never reviewed a PSE pipe support while working in the NPS group. This testimony is consistent with his sworn and signed deposition testimony which reads:

Q: [By Mr. Kohn] Did you know that Mr. Hasan was rejecting packages from your group?

A: [Mr Ryan] No. Why would he be?

* * *

Q: Did Mr. Hasan reject PSE packages due to inconsistent criteria [between] NPS guidelines [and PSE guidelines]?

A: He didn't review any PSE packages.

* * *

Q: ...your testimony is that Mr. Hasan reviewed no PSE packages?

(footnote con't)

A: [Hasan] only reviewed NPSI packages when he was in the NPSI group.

* * *

Q: [D]id Mr. Hasan ever reject a PSE package that had already been certified because it did not meet NPS guidelines?

A: You can't cross guidelines...you don't cross design guidelines to review packages.

Plaintiffs' Exhibit F

Mr. Ryan's testimony was knowingly false when made. This tribunal need not look any farther than the hearing testimony of Mr. Rencher to support this proposition:

> Q: [By Mr. Mack] ...[W]ere you aware whether or not Mr. Hasan was rejecting Mr. Ryan's pipe support engineering group [PSE] pipe supports while working in your group [NPS]?
>
> A: [Mr. Rencher] There were pipe supports that were rejected out of my group, and I am certain Mr. Hasan had reviewed some of those.
>
> Q: And were they coming from Mr. Ryan's group [PSE]?
>
> A: Yes, they were.
>
> Q: And when Mr. Hasan rejected Ryan's pipe support packages... would Hasan attach a memo to those packages?
>
> A: Yes....
>
> Q: And [Hasan] would sign those memos rejecting [Mr. Ryan's PSE packages]A: Yes.

Tr. 120-121 (emphasis added).

Beyond the testimony of Mr. Rencher, Messrs. Ravada and Hasan confirm the fact that it was common practice for Mr. Ryan to send PSE packages to NPS for certification. Mr. Ryan's unyielding denial, compared to the complete contradiction by Messrs. Rencher, Ravada, and Hasan [Tr. 88, 120-121, 125, 130, 239, 275] makes it impossible to conclude anything but that Mr. Ryan repeatedly and knowingly lied under oath.

The perjured testimony of Mr. Ryan was expressly called to the attention of the ALJ. See, Complainant's Proposed Finding of Fact at 33-35, 52. The ALJ, evidently misled by false statements made in Respondents' counsel's Reply Brief, failed to address this glaring contradiction when rendering his Recommended Decision and Order.4/

4/ Respondent's Reply Brief contains dozens of false statements, some of which are as follows:

1. P. 2, FN 2. States that Mr. Hasan's counsel submitted the Mr. Hasan's 65 concerns to the NRC in May 1987. There is not one shred of evidence on the record to support that statement. Rather, the statement is contrary to the established record that Mr. Hasan's concerns were given to the NRC in January, 1986.

2. P. 4, para 2. Claims that Mr. Hasan's testimony was "uncorroborated" concerning his "purported utterance to Mr. Hill" that he would go to the NRC. This is an outrageous statement given that Respondents' own witness, Mr. Chamberlain, testified that Mr. Hasan would have constant "outbursts' in Mr. Hill's group stating that he was about to "go to the NRC." Tr. 192.

3. P. 7. Mr. Wolkoff apparently relies on his own false or uncooperated statements to impeach Mr. Hasan. In in effect Mr. Wolkoff testified that Mr. Ravada had contradicted himself on the stand because he had told "the opposite of what he had informed Respondents' counsel prior to the trial." This statement constitutes an unethically questionable practice of law. See Jackson v. United States, 297 F.2d 193, 198 (D.C. Cir. 1961 (concurring opinion).

4. P. 7, FN 7. Mr. Hasan had "a bad employment record." Respondents were forced to stipulate that Mr. Hasan had a better than average employment record. Tr. ____.

(Footnote Con't on next page)

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(Footnote 4 Con't)

5. P. 8, FN 9. Respondents counsel asserts that Mr. Hasan did not raise improper stiffness values during the August 19th meeting.

7. P. 10, cont. of FN 11. "CASE had covertly employed two persons at the site to collect information." An absolute falsehood with no basis in fact.

8. P. 11, FN 14. Mr. Hasan's "inconsistent criteria peeve was by that time entirely moot." An absolute misstatement. See letter from Mr. Counsil admitting that Mr. Hasan's concern over stiffness values was a reportable violation of 10 CFR 50.55(e).

9. P. 12. Mr. Hasan only rejected packages to line engineers. False. Mr. Hasan rejected PSE pipe supports directly to Mr. Ryan himself. See, Supplemental Response to Discovery, August 13, 1985, a copy of which is attached hereto as Exhibit 1. This document is a copy of one of dozens of memos Mr. Hasan sent directly to Mr. Ryan. There is no truth to the allegation that Mr. Hasan only rejected packages back to line engineers.

10. P. 13, FN 16. Same as p. 12.

11. P. 14, cont. FN 16. Technical issues had "long ago been resolved" when in fact management was actively covering up the concerns Mr. Hasan raised years after he first identified the problem to management, and years after Mr. Hasan left the site.

13. Respondents conclude that the NRC had determined that Hasan's concerns about "STRUDL" were not safety-related. This is contrary to the NRC letter to Respondents, dated January 6, 1988, stating that Mr. Hasan's allegations were substantially correct. This letter is attached hereto as Exhibit 2.

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3. Respondent's Counsel Made False and Misleading Statements to Defend Against Complainant's Attack on the Credibility of Mr. Ryan and These False Statements Misled the ALJ

In response to Complainant's Finding of Facts (wherein the problems with Mr. Ryan's testimony were pointed out, see Complainant's FOF at pp. 33-35, 52), Respondents' counsel explained to the Court that Complainant's attorneys had mislead the tribunal with "ambiguous" phraseology and that any contradiction elicited between Mr. Ryan's and Mr. Rencher's testimony was due to "Complainant's counsel's inartful phraseology" at trial -- not because Mr. Ryan lied.

Respondent's counsel went on to assure the Court that there was "absolutely no discrepancy" between Mr. Rencher's and Mr. Ryan's testimony. Respondents' Reply Brief at 16.

Respondents' counsel argues that Mr. Rencher "interpreted PSE group to mean PSE field group" and therefore Mr. Ryan correctly testified that "design packages" did not necessarily pass from group to group -- rather, that field packages were the only type of packages passed between groups. A plausible argument -- that Complainant's counsel "inartfully" assumed Mr. Rencher was testifying about design packages when he really meant field packages; that Complainant's counsel was simply caught up in "confusion", "inartful phraseology", "misunderstanding", and "ambiguity". Respondents' Reply Brief at 14-16.

There was no "misunderstanding", no "inartful phraseology,"no "confusion," and absolutely no ambiguity associated with Mr. Rencher's testimony.

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First, and foremost, Respondents absolutely failed to make a record to substantiate this alleged distinction.

Second, regardless of Respondents failure to make a record, the distinction between "field" and "Design" groups itself is utterly false. Respondents' counsel knew or should have know that this distinction was false before submitting this alleged distinction into the record.

There is no escaping the fact that Respondents' counsel misrepresented the fact that Mr. Rencher meant field and not design packages when he gave testimony that NPS was rejecting PSE packages. The absolute proof of Respondents' folly is contained in testimony Mr. Rencher gave during his pre-hearing deposition. His testimony demonstrates that Mr. Rencher meant design an not field packages when he testified at the hearing. According to his deposition transcript:

Q: [By Mr. Kohn] ...[W]ere you aware that the NPS group was rejecting PSE supports during the certification process?

A: [Mr. Rencher] Yes, I was aware of that.

Q: Were you aware of that in 1983?

A: Yes.

Q: Were you aware of that in 1984?

A: Yes, sir.

Q: Were you aware of that in 1985?

A: Yes.

Rencher Deposition at 78-79, emphasis added.

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* * *

Q: The NPS group was rejecting PSE packages during the certification process, right?

A: Yes.

Q: Of those that were being rejected, were they ever then recalculated under different criteria?

A: Yes.

Q: And then they were certified after they were recalculated under different criteria?

A: Yes.

Rencher Deposition at 81, emphasis added.

Mr. Rencher goes on to testify that he personally had conversations about NPS's rejection of PSE-designed packages with Mr. Ryan.

Q: [By Mr. Kohn] Did you ever have any conversations with Mr. Ryan concerning Mr. Hasan's rejection of pipe supports?

A: I had conversations with Mr. Ryan about rejections of pipe supports out of my group [NPS]...

Q: What was the sum and substance of those conversations?

A: Mr. Ryan asked if we might try to qualify the support as it was to avoid rework...

Rencher Deposition Tr. at p. 67, emphasis added.

Indeed, Mr. Hasan testified that Mr. Rencher had complained to his group that he was "being pressured" by Mr. Ryan to stop rejecting PSE pipe supports and that Mr. Ryan was "not happy" because NPS was rejecting, according to Mr. rencher's deposition

Plaintiffs'
Exhibit F

(1) That the packages Mr. Hasan rejected as a "checker" were rejected back to line engineers and not management, and therefore management did not even have the requisite knowledge that disputes associated with Mr. Hasan's rejection of pipe support packages was even remotely associated with whistleblowing but rather was only associated with egregious personality clashes Mr. Hasan continually had with fellow line engineers.5/FN

(2) That Mr Hasan was a "checker" and a "checker's" job is to find errors in packages, and therefore the mere fact that Mr Hasan found errors (i.e. was essentially doing his job), does not constitute protected activity. FOF No. 69. As such, disruption caused by a "checker's" personality problems is not protected activity -- it is merely the type of improper employee conduct management does not have to tolerate.

5/ Respondents' theory that somehow Mr. Hasan bickering with his collegues was caused by prejudice on the part of Mr. Hasan is ludicrous. Respondents can not corroborate its theory of the case with the testimony of a single line engineer even though every crucial line engineer who could have testified about Mr. Hasan's "people problems" were re-hired by Stone & Webster or Texas Utilities and, according to answers to interrogatories, were still employed on site. Indeed, outside of Mr Hasan, only one line engineer testify, Mr. Ravada, and he testified that it was his fellow Hindu (Mr. Ravada is Hindu whereas Mr. Hasan is Muslim) engineers who were treating Mr. Hasan unfairly. Respondents did not, because they could not, find a single line engineer willing to testify against Mr. Hasan.

In Respondents' own words:

> "The 'fundamental error' in Complainant's position is that he incorrectly equates the rejection of design review packages back to his fellow line engineers with the concept of raising safety concerns to management. . [And that the] critical point concerning Mr. Hasan's rejection of packages is that he did not reject them for safety-related reasons, nor did he reject them to management." [emphasis added] Respondents' Reply Brief at 11-12.

Obviously, the first is soundly defeated by Mr. Ryan's cover-up of the illegal passing of packages between the different groups. The second is fundamentally flawed because the heart of Mr. Hasan's whistleblowing is that the criteria differentiation caused drastic and complex engineering design deficiencies in the very design of the plant. Only one line engineer, Mr. Hasan, was able to find (due to his extreme engineering skill), or at a minimum was the only line engineer brave enough to bring the design errors to management's attention, risking, and in fact loosing, his job.

The facts are clear: during the certification process Mr. Hasan continually brought to management's attention the fact that the criterion itself contained errors of immense proportion that jeopardized the safety of the entire facility. That is, Mr. Hasan called into question the validity of the very certification process itself and that the pipe supports line engineers had certified contained engineering errors of immense proportions.

Mr. Hasan began informing management of his concerns in 1982. Management responded by telling Mr. Hasan that it was none of his business as management alone had the responsibility to

Plaintiffs'
Exhibit F

decide what criteria to apply and Mr. Hasan was to apply that criteria without question. Mr. Hasan complied with management in that he applied the criteria he was told to apply, but all along he continually informed management that the criteria he had been ordered to apply would result in an unsafe design. Mr. Hasan had an institutionalized knowledge of problems in the design of the plant and he would continually raise these problems to management.

At the core of Mr. Hasan's internal whistleblowing disclosures was that management was jeopardize the safety of the plant (e.g. such as SWEC's not using the correct stiffness values in its initial requalification effort). Both Messrs. Finneran and Ryan knew that many of Mr. Hasan's internal whistleblowing disclosures had not been reported to the NRC or CASE. If Mr. Hasan remained there was no stopping Mr. Hasan from continuing his internal whistleblowing to SWEC. Once SWEC officially was informed of the error by Mr. Hasan, their requalificaition effort would have been exposed, making it just about impossible for Texas Utilities and SWEC to cover-up the truth any further.

1. Mr. Finneran Apparently Testified Falsely.

At the hearing Mr. Finneran apparently chose to perjure himself rather than admit that Mr. Hasan had begged him to recall certain packages so he could demonstrate that Westinghouse was about to (had) calculate the stiffness of the class 1 piping system using the wrong values. These stiffness values were made

part of the heart of SWEC's initial requalification effort (SWEC was supposed to requalify the pipe supports in 6 months. Years later, thanks to Mr. Hasan's and Messrs. Walsh and Doyle's disclosures, SWEC has still not qualified the Class 1 piping system directly attributable to the unsafe design criteria Mr. Hasan continually blew the whistle about to management between 1982-1985).

Mr. Finneran's denial that Mr. Hasan did not raise the issue of the Westinghouse analysis of the Class 1 pipe supports repeatedly during the course of the August 19th meeting is not only thoroughly discredited by Mr. Hasan's testimony, it is thoroughly contradicted and discredited by the testimony of Respondents' own witness, Mr. Rencher.

Mr. Rencher's testimony is unequivocal, not only did Mr. Hasan raise the issue, but also that Mr. Finneran understood the significance of what Mr. Hasan had brought to his attention. According to the testimony of Mr. Rencher:

Q [By Mr. Mack] In that [August 19th] meeting in your presence, did Mr. Hasan raise a concern over the stiffness of Class 1 pipe supports?

A [By Mr. Rencher] Yes. he did.

Q In the presence of Mr. Finneran?

A Yes.

Q Did the two of them [Messrs. Hasan and Finneran] hold a discussion about that?

A it was discussed in that meeting, yes.

Q And Mr Finneran was a participant in that discussion.

A Yes, sir.

Plaintiffs'
Exhibit F

* * *

Q Do you recall whether Mr. Hasan in that meeting was concerned that the stiffness values of the hardware had not been calculated for NPS Class 1 pipe supports?

A Yes.

Q And did he express that concern to Mr. Finneran?

* * *

A Yes, he did.

Q And Mr. Finneran understood the concern?

A Yes, he did.

[Tr. 117-118]

There is no room for doubt that Mr. Finneran's failure to recall certain packages Mr. Hasan brought to his attention in order to verify what he already knew (Mr. Hasan had first identified the problem to management back in 1982) that the calculation of the stiffness values for the entire Class 1 piping system contained gross engineering errors. Not only did Mr. Finneran refuse to recall the packages, he knowingly prepared memoranda falsely stating that Mr. Hasan had absolutely no safety concerns. These memoranda (RX 45, 31; CX 7) would become the center piece of Respondents' case.

In effect, Mr. Finneran (and others) engaged in an active cover-up of engineering flaws Mr. Hasan had first brought to management's attention back in 1982. Four years later, after SWEC began its initial requalification effort of the class 1 piping system, Texas Utilities admitted for the first time that SWEC had used incorrect pipe support stiffness values and that this error was so egregious that a violation of 10 CFR 50.55(e)

Plaintiffs' Exhibit F

had occurred and had Mr. Hasan's allegation of incorrect stiffness values gone undetected, "the integrity of the Class 1 piping and supports could not be assured during normal operating or accident conditions" and at least 30% of the pipe supports SWEC had considered "qualified" as of April, 1986, were in fact inadequately designed due to the incorporation of incorrect stiffness values that a melt down could likely occurred if Mr. Hasan's concern had gone undetected. See Letter for Texas Utilites Executive Vice President, William Counsil to the NRC (Exhibt 4 to Complainant's Second Motion for Default Judgment or in the Alternative for Disqualification, hereinafter cited as "Default/Disqualification"). 6/

Finneran testified that the ten technical items he listed in the two page cover letter to his ten page August 19th memorandum incorporated every technical point Mr. Hasan mentioned during their August 19th meeting. According to Mr. Finneran's two page memorandum, Mr. Hasan "did not have any concerns which he felt were important to safety at the plant." CX 7; RX 31.

To be sure the words "stiffness' and the term "Clasr 1" are not found anywhere in these two documents. CX7; RX 31, RX 45.

6/ Mr. Chamberlain admitted that the difficiency identified by Mr. Counsil in his letter to the NRC corresponds to the improper stiffness values sent to Westinghouse that Mr. Hasan pleaded with Mr. Finneran to correct during their August 19th meeting together. As Mr. Chamberlain's deposition testimony reveals, Mr. Hasan's concern over the: "Class 1 supports which Westinghouse analyzed" is the same concern addressed in the "SDAR" Mr. Counsil's letter to the NRC referenced. Chamberlain Depo. at p. 238.

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Finneran's outright denial that Hasan raised stiffness of Class 1 piping during their August 19th meeting [Tr. 21] is contradicted by Messrs. Hasan's and Rencher's detailed testimony that such a discussion did occur on August 19th.

Mr. Finneran's failure to inform the NRC of Mr. Hasan's concern that the incorrect stifness valuse has been used to claculate the stiffness of the Class 1 piping system is, evidently, a civil and criminal violation pursuant to 50 C.F.R. 55(e). See Footnote 6, infra. According to Mr. Rencher's testimony:

Q [By Mr. Mack] In that meeting [August 19th] in your presence, did Mr. Hasan raise concern over the stiffness of Class 1 pipe supports?

A [By Mr. Rencher] Yes, he did.

Q In the presence of Mr. Finneran?

A Yes.

Q Did the two of them [Hasan and Finneran] hold a discussion about that?

A It was discussed in tht meeting, yes.

Q And Mr. Finneran was a participant in that discussion.

A Yes, sir.

* * *

Q Do you recall whether Mr. Hasan in that meeting was concerned that the stiffness values of the hardware ha not been calculated for NPS Class 1 pipe supports?

A Yes.

Q And did he express that concern to Mr. Finneran

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* * *

A Yes, he did.

Q And Mr. Finneran understood the concern?

A Yes, he did.

[Tr. 117-118]

Mr. Rencher's testimony confirms Mr. Hasan's detailed account of the August 19th meeting. Both testified that Hasan raised stiffness of Class 1 pipe supports as a paramount safety concern of Mr. Hasan's during the August 19th meeting.

Mr. Hasan likewise testified that he pleaded and begged Mr. Finneran to recall certain pipe support packages so he could personal prove to Mr. Finneran that the improper stiffness values had been transmitted to Westinghouse. As Mr. Hasan testified:

> Q [By Mr. Mack] And what is it that you said [to Mr. Finneran conceerning stiffness values of Class 1 pipe supports]?
>
> A I explained to him at length -- at tremendous length tht what happened in that period when Rencher told me or told us not to include that stiffness of the hardwares for computing the stiffness of the Class 1 piping system.
>
> And after listening to all this -- and than I told him that, why don't you recall those particular packages to look for yourself . . . .

[Tr. 286]

* * *

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A . . . I was bringing very, very serious concerns to [Mr. Finneran] right from the morning to the end [of our August 19th meeting] and I was literally, virtually, you know, pleading or begging him that, You have got those packages; please bring it to here; I will show it to you, what was the problems . . . .

[Tr. 484, emphsis added]

* * *

A -- I pleaded with him that, Please recall those packages so that I can show where the mistakes are being made, and he refused to recall those packages . . . .

[Tr. 389 emphsis added]

Mr. Finneran's failure to investigate and thereafter include Mr. Hasan's pleas to recall packages in his August 19th memoranda was intentional. He knew that if Mr. Hasan's disclosure concerning incorrect stiffness values was contained in his August 19th exit interview memoranda, management would have to reported Mr. Hasan's disclosure to the NRC.

Obviously, Mr. Hasan had been continually alerted management about this concern since early 1982, why should Mr. Finneran correct it in 1985?

Indeed, management was engaged in a cover-up of design flaws. No doubt, it was Mr. Hasan's institutionalized knowledge of design flaws that necessitated Messrs. Ryan and Finneran's decision to remove Mr. Hasan from the site. If Mr. Hasan remained on site, he would have obviously brought this and other design deficiencies to SWEC's attention the moment SWEC provided

Plaintiffs' Exhibit F

him with the revised criteria. Obviously, that possibility made the decision to banish Mr. Hasan from the site inevitability.

V. Mr. Hasan's Wrongful Termination Complaints Against Texas Utilities and NPSI Are Not Time Barred.

Mr. Hasan, acting pro-se, filed timely wrongful discharge actions against NPSI and Texas Utilities. Although not represented by an attorney and although he was unfamiliar with the operations of whistleblower discrimination law, Mr. Hasan contacted the U.S. Department of Labor (DOL) and alleged that he had been wrongfully discharged well within the statutes of limitations for both his August removal from the Comanche Peak site by Texas Utilities and his October 1985 layoff by NPSI.

According to a letter from H. Jack Bluestein, Director, Division of Program Operations, Office of Federal Contract Compliance Programs, U.S. Department of Labor, the DOL acknowledges that Mr. Hasan filed a complaint with the U.S. DOL prior to October 16, 1985. CX. 16.

On the face of the Bluestein letter it is indisputable that, at least as of October 16, 1985, Mr. Hasan had filed a complaint with the DOL and that the DOL had not yet categorized Mr. Hasan's action as one covered under Section 210. But the critical evidentiary impact of the Bluestein letter is that it constitutes direct evidence that Mr. Hasan timely filed actions against for his October termination from NPSI. Furthermore, this circumstantial evidence is corroborated by Mr. Hasan's hearing testimony that in August, 1985 he filed charges with the DOL

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concerning his removal from the Comanche Peak site within the 30 day statute of limitations period. Tr. 462. Although the exact dates of these contacts are unknown at this time, contact with the DOL in August would be timely for the purpose of filing a complaint for events which occurred in August. Mr. Hasan's testimony that he attempted to file charges with the DOL in August 1985 is further verified by two NRC internal memoranda. In a September 6, 1985 memorandum, NRC Program Coordinator Chet Poslusny memorialized the fact that Mr. Hasan called him on August 28, 1985 to raise safety allegations about Comanche Peak and allegations that he was discriminated against. Mr. Posluny made note that he told Mr. Hasan to contact the DOL within 30 days regarding his discrimination complaint. CX 26.

In a follow-up memo dated October 8, 1985, Mr. Poslusny again memorializes a September 20, 1985 conversation he had with Mr. Hasan, stating that Mr. Hasan had in fact informed him that he had made contact with the DOL concerning his removal from Comanche Peak but that he was nonetheless informed that "the DOL would not handle his case until the EEOC was finished with theirs." CX. 17.

During this time period Mr. Hasan, who is a foreign-born American citizen, who had much difficulty with the English language, and is wholly unfamiliar with the operation of the legal system, petitioned the DOL and EEOC as a pro-se litigant. Unfortunately, Mr. Hasan failed to retain copies of his correspondence with the DOL. Nonetheless, the record

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is clear -- soon after his removal from Comanche Peak, and within the 30-day statutory time period Mr. Hasan contacted the DOL and attempted to file a Section 210 complaint. There was unfortunately confusion within the DOL offices Mr. Hasan communicated with, and his complaint was not initially classified as a Section 210 complaint. But Mr. Hasan did file his charges concerning the improper removal from the Comanche Peak site by Texas Utilities and the improper layoff by NPSI within the statutory time restrictions.

On June 17, 1987, the ALJ issued an order on the timeliness issue. The ALJ ignored the importance of the Bluestein letter which confirmed that Mr. Hasan had in fact filed timely charges with DOL. Instead the ALJ focused upon the fact that Mr. Hasan was unable to produce a copy of the original complaints filed. But the Bluestein letter confirms the fact that Mr. Hasan did file a complaint with the Secretary of Labor (SOL). Unfortunately, Mr. Hasan did not keep a copy of the original letter he sent to the SOL on or about September 20, 1985. But a complaint cannot be dismissed as untimely just because a pro-se litigant does not keep a copy of the complaint he originally files.

The case, as tried before the ALJ, was limited to Mr. Hasan's blacklisting complaint against Stone & Webster and Texas Utilities. No proper record was created concerning the decision to remove Mr. Hasan from the Comanche Peak site and the decision by NPSI to lay-off Mr. Hasan. Regardless of the Secretary's opinion concerning blacklisting, the August 1985 removal and the

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Exhibit F

October 1985 layoff must be properly adjudicated. This case should be remanded for a full evidentiary hearing on those two additional causes of action.

VI. The Administrative Law Judge Erred in Not Finding Protected Activity

As the ALJ did not issue a direct order in support of Mr. Hasan, this case must be immediately remanded, with instructions that the ALJ issue a new recommended order rigorously following the line of cases in which internal complaints to management are considered protected activity. He should be instructed to meticulously apply the following line of cases to an analysis of the record: Philips v. Interim Board of Min. Op. App., 500 F.2d 772 (D.C. Cir. 1974); Baker v. U.S. Dept. In Bd. of Min. Op. App., 595 F.2d 746 (D.C. Cir. 1978); Mackowiak v. University Nuclear Systems, 735 F.2d 1159, 1163 (9th Cir. 1984); Kansas Gas & Electric v. Brock, 780 bF.2d 1505 (10th Cir. 1985); Poulos v. Ambassador Fuel Oil Co., Inc., 86-CAA-1, Dec. of SOL (April 27, 1987); Willy v. Coastal Corp., 85-CAA-1, Dec. of SOL (June 4, 1987).

The ALJ erred as a matter of law when he ignored this line of cases and applied the Brown & Root v. Donnovan case.

VII. The Administrative Law Judge Failed To Apply the Dual Motive Test

The ALJ was required to apply the dual motive teset. See, e.g., Mackowiak v. University Nuclear Systems, 735 F.2d 1159,

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1164 (9th Cir. 1984); Consolidated Edison v. Donovan, 673 F.2d 61, 62 (2nd Cir. 1982). Unfortunately, the ALJ apparently did not understand this test. In his recommended decision the ALJ concluded that protecting internal whistleblowing activity such as Mr. Hasan engaged in would somehow make it impossible to terminate an employee: "...an employee, such as complainant in this case, could guarantee his future continued employment by periodically repeating the phrase, 'I have a safety concern and I may go to the NRC.'" RD&O at page 5.

This reasoning highlights the defective legal reasoning employed by the ALJ. Regardless of whether a whistleblower engages in protected activity, a whistleblower can always be fired. The ALJ erred as a matter of law when he concluded that a finding that Mr. Hasan engaged in protected activity can somehow insulate him from termination.

The dual motive test holds that even if an employee engages in protected activity, he or she can still be fired -- as long as management can demonstrate that the employee who engaged in protected activity was not disciplined more harshly than employees who committed the same offense. Mt. Healthy City School Dist. v. Doyle, 429 U.S. 274, 287 (1977); Ashcraft v. University of Cincinnati, 83-ERA-7, slip op. of SOL at 13 (Nov. 1, 1984). For example, under the NLRA a union organizer could not be fired for drinking on the job when the company also caught an employee uninvolved in union activity drinking on the job but did not fire that employee. NLRB v. Faulkner Hospital, 691 F.2d 51, 56 (1st Cir. 1982).

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If Mr. Hasan violated a workplace rule (including "not getting along with co-workers"), Respondents could have fired him -- or not recommended him for rehire. The fact that Mr. Hasan engaged in protected activity has nothing to do with somehow "guarantee[ing]" his "future continued employment." The ALJ simply failed to apply the dual motive test. When it came time for Respondents to demonstrate that other employees who had similar alleged personality problems were terminated, they failed to produced a single shred of evidence. More significantly, a number of employees with lower overall job ratings were recommended for rehire and in fact were rehired by Stone & Webster.

Significantly, thirteen engineers were recommended for hire by Texas Utilities and offered jobs with Stone & Webster who had lower job ratings than Mr. Hasan. CX 5 and 6. Of 28 NPSI engineers offered jobs by Stone & Webster, only 15 were rated equal to or better than the "good" rating received by Mr. Hasan. Thirteen had lower ratings, including ratings such as "fair," "satisfactory", or "average." CX 5 and 6; Complainant's findings of fact, page 47. This is the critical fact that the ALJ failed to analyze -- why were employees with lower job ratings rehired?

If Mr. Hasan's personality problems resulted in low job ratings -- or job ratings equal to or lower than the ratings other employees had who were also not retained on site, the Mr. Hasan should lose his case.

Plaintiffs'
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EXHIBIT ONE

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it contained findings ignored by Respondents.

On its face the ALJ's decision fails "to reflect a considered response to the evidence and contentions of the losing party." Harborlite Corp. v. I.C.C., 613 F.2d 1088, 1092 (D.C.Cir. 1979). An ALJ must analyze the evidence the losing party puts forward. See, e.g., Stewart v. Secretary of HEW, 714 F.2d 287, 290 (3rd Cir. 1983). The ALJ simply ignored the evidence which contradicted Respondents' case. He issued a terse six-page decision, of which only three pages are dedicated to explaining the facts. In juxtaposition to this, Complainant's findings of fact consisted of 52 pages and Respondent's findings of fact went on for 57 pages. Rather then explain where and why Complainant's detailed accounting of the record was in error (which it is not), the ALJ adoped Respondents' findings of fact without consideration to the numerous contradictions in Respondents' witnesses' testimony. See Footnote 2, infra.

The ALJ erred as a matter of law by failing to review and analyze the record when he wrote his decision. The case should be remanded on this ground, with instructions for the ALJ to fully analyze the record and issue a recommended decision which is capable of proper review by Complainant and the SOL.

XI. Conclusion

The SOL should issue an order in support of Mr. Hasan. This can be accomplished in the following manner:

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Exhibit F

But the facts are just the opposite. Employees with "fair" and "average" classifications were rehired, but Mr. Hasan, with a job rating of "good," was not. Regardless of who has the burden of proving disparate treatment, the undisputed factual record shows that (1) no other employee was not rehired due to so-called personality problems, and (2) the objective job rating system unquestionably demonstrated disparate treatment.

Just like the union organizer who was caught drinking on the job, Mr. Hasan could not be fired due to disparate treatment. No one, in the abstract, could question management's right to fire an employee for drinking on the job. But such an abstract right is subject to a critical review under the Mt. Healthy test -- a review to ensure that whistleblowers -- even if they are not complete angels -- that they are not subjected to more harsh punishment than non-whistleblowers.

Unfortunately, the ALJ neither understood nor applied the proper test when analyzing the appropriate disciplinary action management could have taken against Mr. Hasan, even if Mr. Hasan was guilty as charged. If the SOL does not issue an order for Mr. Hasan, the case should be remanded with instructions to the ALJ to properly apply the dual motive test.

VIII. The ALJ's Adoption of Respondents' Findings of Fact 1-128 (with one modification) Was Improper

The ALJ failed to properly analyze the record in this case. The ALJ simply ignored Complainant's findings of fact in those instances where it contradicted Respondent's findings, or where

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1. Complainant's post-trial Findings of Fact and Conclusions of Law adequately addresses every issue and supports a ruling for Mr. Hasan.

2. The ALJ's fatal error concerning: First, the definition of protected activity, and second, the credibility of Mr. Ryan and Mr. Finneran can be corrected by the SOL. See, e.g. Universal Camera Corp. v. NLRB, 340 U.S. 474, 402-97 (1951); NLRB v. Interboro Contractors, Inc., 388 F.2d 495, 499 (2nd Cir. 1967); NLRB v. Miller Redword Corp., 407 F.2d 1366, 1369 (9th Cir. 1969).

In the alternative, Complainant requests a remand to an ALJ with explicit instructions on how to proceed at remand.

Respectfully submitted,

Michael D. Kohn
Stephen M. Kohn

Attorneys for Mr. Hasan

Dated: February 16, 1988

032AA05

Plaintiffs'
Exhibit F

Plaintiffs'
Exhibit F

Exhibits

1) Speed Memo by Mr. Hasan to Jay Ryan, dated 1/17/83.

2) Letter from NRC to Texas Utilities, dated January 6, 1988.

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Exhibit F

To: A. Nyun — From: Technical Services

Plaintiffs' Exhibit F

Subj: MK. # FW-1-100-007-C52K { CMC # 74681, Rev. 2 / CMC # 46761, Rev. 1 } /

MESSAGE

Date 1-17- 19 8:

As per problem # AB-1-153/Rev. 0 [GTN # 62384], two inserts and Snubber FAIL. Please see the attached sheet for the procedure to be used in designing the INSERTS Snubber fails in the faulted condition (10268# > 8450# per NPSI CDRS # SMX, Rev. 2, p. 6 of 9)

Please re-design and issue the necessary CMC so that the certification process may be completed.

Thank you.

(D-31)

Signed S. Hasan.

REPLY

Date 19

Hasan Depo Ex 4

Plaintiffs'

Signed

Ben Jones Company

RECIPIENT—RETAIN WHITE COPY, RETURN PINK COPY

Plaintiffs'
Exhibit G

UNITED STATES OF AMERICA
BEFORE THE SECRETARY OF LABOR

M.A. HASAN, Complainant, v. NUCLEAR POWER SERVICES, INC., STONE AND WEBSTER ENGINEERING CORP., TEXAS UTILITIES ELECTRIC CO., INC., Respondents.	No. 86-ERA-24

COMPLAINANT'S RESPONSE TO
RESPONDENTS' BRIEF TO THE SECRETARY OF LABOR

I. OVERVIEW AND PERSPECTIVE

Remove the obvious falsehoods from this proceeding and a very straightforward case of retaliation by Respondents against Mr. Hasan emerges.[1]

Mr. Hasan is and was an exceptional structural engineer, who constantly detected complex and simple design errors during the certification process of the Comanche Peak facility that either

1. The false statements made in the briefs filed by Respondents' counsel were so gross and outrageous that Mr. William Counsil, Texas Utilities Executive Vice President, was forced to send a sincere appology to the Intervenor, Citizens Associated for Safe Energy (CASE -- who is a party in the ongoing licensing hearings before the Atomic Safety Licensing Board) for the false and malicious made-up story that CASE had employed spies on site.

Plaintiffs'
Exhibit G

no other engineers on site detected or bothered to report to management.

Sixty-five of the concerns Mr. Hasan raised to management during his tenure at Comanche Peak are set forth in a May 28, 1987 letter from the NRC to Texas Utilities. This list was introduced at trial as Complainant's Exhibit 14.[2] In a January 6, 1988 correspondence, the NRC recently informed Mr. Hasan that his 65 allegations set forth in the May 28th letter to Texas Utilities had been "substantiated."[3]

Beyond merely raising safety concerns to management, Mr. Hasan's concerns were sound, valid and true. The NRC so found.

One of the numerous and more notorious falsehoods Respondents' counsel raises in every post-hearing filing is the assertion that Mr. Hasan never raised a single safety concern to a single manager throughout his tenure at the Comanche Peak site. The most recent episode in which Respondents' counsel claims that "Texas Utilitites was not aware of Mr. Hasan's having raised any safety concerns," is contained in Respondents' Brief in Support of the RD&O, at p. 4. Similarly, on page 5 of this pleading Respondents likewise state that "Mr. Hasan in fact did not raise any safety concerns while at Comanche Peak."

---

2. Hereinafter Complainant's exhibits introduced at the hearing are referred to as "CX" and Respondents' Exhibits at "RX." Cites to the Hearing transcript are indicated by a "Tr." followed by the page number.

3. Complainant has filed together with this pleading a Motion to Augument the Record with a copy of the January 6, 1988 NRC correspondence to Mr. Hasan.

Plaintiffs'
Exhibit G

Later still in this pleading they again claim t

> none of [Mr. Hasan's] superiors at Comanche Peak had any information or belief that Mr. Hasan had any safety concerns about Comanche Peak. . . .
> Id. at p. 13, Fn. 6.

A more false assertion is hard to phathom. Respondents are well aware that Mr. Hasan continually blew the whistle about dozens of safety concerns. How can Respondents' counsel make such a statement in good faith when its own witnesses admitted at their depositions that Mr. Hasan had raised dozens of safety concerns to them while employed on site. 4/

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4. Complainant cites to the Depositions of Messrs. Chamberlain Rencher, Finreran and Ryan in this and in its earlier filed pleading eventhough these despositions were not formally introduced into the record during the hearing. Complainant has been forced to rely on these depositions soley to refute obvious false statements made by Respondents' counsel, or to demonstrate beyond a reasonable doubt that Respondents' counsel relied on perjurous testimony. Complainant had no idea that Respondents would regularly resort to making false statements or that they would resort to using perjured testimony even after the perjurous nature of the testimony was identified to Respondents and to the ALJ. Thus, had it not been for the gross and outrageous conduct of Respondents' counsel, Complainant would not now need to rely on the desposition testimony of Messrs. Rencher and Chamberlain. Unfortunately, it was not possible to predict that Respondents' counsel would go to the extremes they have in order to prevail before the ALJ. Given the unforseen circumstance that Respondents' counsel would regularly present falsehoods to this tribunal, Complainant formally submits a Motion to Augment the record with the Transcripts of Messrs. Rencher, Chamberlain Finneran and Ryan, filed under separate cover.

Mr. Rencher testified that of the 65 concerns enumerated in the May 28th letter from the NRC to Texas Utilities (CX 14), he remembered Mr. Hasan bringing to his atention concerns Nos. 8, 11, 13, 14, 23, 24, 36, 57, 61, and 65. Rencher Depsotion Tr., at pp. 241 to 252. Similarly, Mr. Chamberlain testified at his deposition that Mr. Hasan had raised with him concerns nos. 1, 3, 5, 7, 8, 9, 11, 12, 13, 15, 16, 19, 21, 23, 24, 26, 28, 30, 32, 34, 35, 36, 37, 39, 41, 47, 48, 58 and 65. Chamberlain Depsition Tr. at pp. 60-164. Indeed, Respondents go as far as to asse.t that the "evidence was totally without contradiction" that Mr. Hasan never raised a single safety concern to any of his supervisors. Respondents' Brief in Support of the RD&O, at p. 13, Fn. 6. The obvious truth is that Mr. Hasan continually raised to his supervisors dozens of safety concerns.

Far from being "without contradiction," the record establishes exactly the opposite. The hearing transcript demonstrates that Mr. Hasan raised: incorrect calculations of the Stiffness values of the Class 1 pipe support system (Tr. pp. 117-118, 148-149, 235, 237, 285-289;; Richmond Inserts (Tr. 239-241, 245, 247-248); incorrect calculations of punching shear (Tr. 75, 231-233, 264-266); Inconsistent criteria used to calculate the same pipe supports (Tr. 272); Minimium weld violations (Tr. 168, 190, 542); improper STRUDL input (Tr. 260, 273, 378, 443-444); use of improper earthquake loads when calculating pipe supports (Tr. 261); incorrect minimium frequency criteria/base plate thickness (Tr. 281); incorrect allowable loads of Hilti bolts (Tr. 243), just to name a few.

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It is nothing less than sanctionable conduct for Respondents' counsel to state that the evidence was "without contradiction" that Mr. Hasan never raised a single safety concern to his supervisors when in fact the record was just the opposite.

The record is without contradiction that Mr. Hasan's supervisor, Mr. Rencher, testified quite clearly and convincingly that Mr. Hasan repeatedly blew the whistle to him about the stiffness values of the Class 1 piping system, and when asked if that concern was "safety-related," Mr. Rencher replied "I would say so. Yes." Tr. 118.

Complainant's counsel is left with the impression (indeed the reality) that Respondents' counsel is incapable of submitting a post-hearing brief that does not contain numerous gross and outrageous falsehoods.

The undeniable truth is that Mr. Hasan found himself surrounded by incompetence, managers and line engineers alike.

One particular disclosure Mr. Hasan made was that his line supervisor, Mr. Hemrajani, would place a stack of pipe support packages before him and sign off on the designs without checking them. Mr. Hasan sat next to Mr. Hemrajani and observed this happening on a daily basis. He could not believe that managers themselves would sign off on documents without doing the required checking of the documents. Production over safety was business as usual in the Comanche Peak pipe support groups.

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Day in and day out, Mr. Hasan sat and watched an engineering nightmare. He would find egregious errors. When he brought his concerns to management, he was told to ignore them.

Beyond the gross incompetence of management, Mr. Hasan became alarmed over the fact that the pipe support design was being performed by different organizations using different design criteria to construct the pipe support system of the Comanche Peak facility.

Mr. Hasan soon realized that pipe supports designed by one organization were being transferred into his organization for certification with criteria other than what it had been designed with. This meant that the same pipe support was being designed and certified using at least two different sets of criteria.

Mr. Hasan next realized that after he rejected a pipe support, in particular when the pipe support's Richmond Insert design failed, the rejected pipe support was taken out of his group and transferred into another group where it was certified often <u>without modification</u>. Mr. Hasan could not phathom how the same pipe support could be considered defectively designed by one group, only later to be certified by another group without undergoing any type of modification.

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After observing the method used by management to certify pipe supports, Mr. Hasan came to the correct conclusion that the safety of the Comanche Peak facility was in jeopardy unless management implemented a uniform set of criteria, at least with respect to the Richmond Insert design.

As time passed, Mr. Hasan, conscience-struck over design and engineering problems in the pipe support design of the Comanche Peak facility, became more and more determined to resolve the engineering nightmare he had uncovered. He engaged in a steady stream of internal whistleblowing to Messrs. Finneran, Chamberlain, Rencher, Hemrajani, Sherrer, Hill and others. Indeed, Mr. Ravada, when asked if he ever "told Mr. Sherrer that Mr. Hasan might go to the NRC," stated "...Yes." Tr. 71.

To stop Mr. Hasan from escalating his whistleblowing from internal disclosures to contact with the NRC, management fostered an atmosphere of intimidation and retaliation. Line supervisors would walk up to Mr. Hasan and to his face accuse him of being a whistleblower and spy for CASE. These same managers (Hemrajani, Rencher, Hill) encouraged line engineers to harass Mr. Hasan. This harassment often surfaced as religious discrimination (an easily provoked response as Mr Hasan was a religious minority of one Muslim in a group supervised and dominated by members of the Hindu faith) -- to the point where open religious discrimination (name-calling, etc.) was practiced in the NPS group, by his supervisor, Mr. Hemrajani, and line engineers alike.

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When Mr. Hasan went to management for help, he was told that no intimidation or discrimination existed on site. The problem of retaliation and harassment-- like the engineering design flaws he also brought to management's attention -- were all just figments of Mr. Hasan's imagination.

The more management refused to correct the problems Mr. Hasan encountered, the more open and flagrant the harassment and discrimination became. For example, one line engineer, without provocation, behind Mr. Hasan's back pulled out a knife and dropped it behind his back onto the chair Mr. Hasan sat in, hard at work -- the often-mentioned but unexplained "knife incident." See, Respondents' Brief to SOL, at p. 8.

The fact that a line engineer was allowed to pull out a knife and drop it behind the back of Mr. Hasan in plain view of other engineers and make sick and demented religious slurs with the knowledge and complicity of management does not speak to Mr. Hasan's inability to get along with other line engineers. It merely defines the level of harassment and intimidation encouraged by management against Mr. Hasan in a vain attempt to control his whistleblowing. Labor case law is replete with examples of employers utilizing employees to harrass and discriminate against another employee for having engaged inprotected activity. There is no difference in the case of Mr. Hasan.

In spite of the increased intimidation and harassment, Mr. Hasan rejected more pipe supports than other engineers in every group to which he was ever assigned.

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II. MANAGEMENT'S KNOWLEDGE OF MR. HASAN'S WHISTLEBLOWING ACTIVITIES

Messrs. Ryan and Finneran were shown to have actual knowledge of Mr. Hasan's whistleblowing activity. But for Mr. Ryan's recommendation and Mr. Finneran's decision to remove Mr. Hasan from the Comanche Peak site, Mr. Hasan would have been offered a job by SWEC. This fact is not contested. What is contested is whether Messrs. Finneran or Ryan had any knowledge of any of Mr. Hasan's safety concerns. Respondents contend that they did not have knowledge of either Mr. Hasan's repeated threats to go to the NRC or even the fact that he had in fact ever raised a single safety concern while employed on site. Respondents' Brief in Support of the RD&O, at p. 4, 13. Respondents' assertion is both ludicrious and absolutely false.

As will be detailed later in this brief (See Sections VII and X, infra.), both Mr. Ryan and Mr. Finneran committed perjury in order to conceal knowledge of Mr. Hasan's whistleblowing activity.

Essentially, Mr. Ryan absolutely purjured himself when he denied that PSE pipe supports were being sent for certifiction to the NPS group. This transfer is believed to be highly illegal -- it no doubt resulted in the improper certification of an unsafe pipe support design. The significance of Mr. Ryan's knowledge of the fact that Mr. Hasan was rejecting PSE pipe supports while in NPS is that it proves first hand knowlege on the part of Mr. Ryan

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regarding the reasons Mr. Hasan rejected the supports. Attached to the pipe supports Mr. Hasan rejected were cover memos stating the reasons the supports had been rejected. These memos were issued directly to Mr. Ryan and prepared directly at his request. Thus, by reviewing these memos, Mr. Ryan had complete knowledege of all of the reasons Mr. Hasan rejected PSE pipe supports while he was stationed in the NPS group (1982 through 1984). As is explained in detail infra, not only did Mr. Ryan know all of the concerns Mr. Hasan raised between 1982 and 1984, he was the manager in charge of certifying all of the PSE pipe supports illegally sent to NPS for certification that Mr. Hasan rejected. Obviously, Mr. Ryan had complete knowlege of every concern Mr. Hasan raised over the use of inconsistent criteria when certifying pipe supports designed by other groups using different criteria.5/

After re-ecting a PSE pipe support due to differences in criteria, particularly in Richmond Insert design, Mr. Hasan would take the rejected pipe support package to Messrs. Rencher and Hemrajani. Mr. Hasan would show them the reason he was rejecting the package and plead with them to speak to Mr. Ryan about his concerns over certifying pipe supports with different sets of criteria. He particularly pleaded with them to explain to Mr.

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5. Respondents' claim that Mr. Hasan only rejected pipe support packages directly to line engineers, not to management, and that "none of his supervisors at Comanche Peak had any information or belief that Mr. Hasan had any safety concerns" Respondents' Brief in Support of the RD&O, at p. 13, is ridiculous on its face given Mr. Ryan's role in illegally certifying the very pipe supports that Mr. Hasan had rejected. For a more detailed account, see Section VI, infra.

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Ryan the need for a single set of criteria when certifying a Richmond Insert. Mr. Hasan's pleas were in vain. Every manager he spoke with uniformily came back to inform Mr. Hasan that Mr. Ryan had emphatically rejected his request. (Between January, 1982 and May, 1984, Mr. Hasan requested the following managers to discuss with Mr. Ryan his concern over the certification of Richmond Insert design using inconsistent criteria: Mr. Rencher, Mr. Hemrajani and Mr. Sherrer; in 1985 he requested the same of Mr. Chamberlain and Mr. Hill (Tr. 258, 264-266). Mr. Chamberlain testified that he brought Mr. Hasan's concerns directly to Mr. Ryan between February and August of 1985, Tr. 168, 190.

Well before Mr. Hasan was transferred out of NPS, Mr. Ryan's contempt over Mr. Hasan's rejection of pipe supports was so complete that he once made an obscene gesture at Mr. Hasan when he saw him in the hallway. Tr. 274-275.

After receiving a retaliatory transfer out of the NPS group (against his wishes), Mr. Hasan was assigned to work under Mr. Barry Hill. It is while stationed in Mr. Hill's group that Mr. Hasan would repeatedly threaten Mr. Hill that he was about to "go to the NRC," unless his safety concerns were adequately addressed. Tr. 273, 378, 443-444. On one of the more acrimonious occasions, Mr. Hasan shouted out loudly enough for the entire section to hear his threat to go to the NRC. As Mr. Hasan explained, ". . . they were forcing me to sign . . . wrong documents. . . therefore, trouble was the natural outcome of it." Tr. 378-379. Mr. Chamberlain corroborated the fact that he had

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been told by Mr. Hill that Mr. Hasan had threated to "go to the NRC." Tr. 192. Mr. Ryan was duly informed of the incident once he returned from vacation. Tr. 532, 538.

Indeed, from the moment Mr. Hasan stepped foot in Mr. Hill's group, he was subjected to extreme harassment. At least once a week Mr. Hill would approach Mr. Hasan and call him a "spy" or an "agent" for CASE or the NRC. Tr. 270. Notably, Respondents did not call Mr. Hill as a witness to refute Mr. Hasan's testimony, nor did Respondents notice Mr. Hill for deposition.

Knowledge of Mr. Hasan's safety concerns had to be known to both Mr. Ryan and Mr. Finneran due to their membership in the "Design Guidelines Committee." Tr. 21-22. The Committee had about 6 members in all, including Mr. Chamberlain. The Design Guidelines Committee was responsible for all changes made to the design criteria used by the Pipe Support Design Group (PSE) when qualifying pipe supports.

Often when Mr. Hasan would raise a safety concern he would refuse to sign-off on the paperwork unless he received in writing a memo from the Design Guidelines Committee stating that Mr. Hasan was to ignore a particular concern when certifying the design of a support. These memos came directly from the Design Guidelines Committee.

The memo writing function of the Design Guidelines Committee kept its members constantly appraised of every safety concern Mr. Hasan raised. Indeed, Mr. Chamberlaintestified that whenever Mr.

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Hasan raised a technical concern during the certification of a pipe support, he was forced to present Mr. Hasan with a memorandum before Mr. Hasan would release the package. Tr. 166.

Thus, as members of the Design Guidelines Committee, Messrs. Ryan and Finneran knew every package Mr. Hasan refused to sign off on and why.

Two memos from the Design Guidelines Committee addressing Mr. Hasan's concerns were turned over in discovery after they were altered by Mr. Chamberlain at the direction of Respondents' counsel. Chamberlain Deposition Tr. at p. 217. One altered memorandum concerned minimium weld violations (Concern No. 65 as identified in CX 14); the other, U-bolt stiffness (one of the concerns Mr. Hasan raised to Mr. Finneran on August 19, 1985). Both were submitted as exhibits to Complainant's Second Motion For Default Judgment or in the Alternative for Disqualification (Exhibits 7 and 8 thereto).6/

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6. In an apparent abuse of discretion, the ALJ denied Complainant's Second motion for Default/Disqualificaiton (dated June 16, 1987). The motion was based on the facts surrounding the alteration of two key and vital documents concerning Mr. Hasan's whistleblowing disclosures concerning miniminu weld violations (Exhibit 7) and U-Bolt stiffness (Exhibit 8). This motion upon receipt, was denied by the ALJ as being "inappropriate." See Order of Judge Lindeman, Dated June 17, 1987. Respondents were never required to respond and indeed they did not do so. Exhibit 7 constitutes one memo given to Mr. Hasan by Mr. Chamberlain on one pipe support package Mr. Hasan refused to certify until his concern over minimium weld requirements was addressed by the Design guidelines Committee. A second memo concerning weld requirements, CX 9, was also created by Mr. Chamberlain after Mr. Hasan again would not proceed to certify another pipe support.

Obviously, as members of the Design Guidelines Committee, Messrs. Rayan and Finneran had intimate knowledge of Mr. Hasan's safety concerns about every issue on which Mr. Hasan caused a memo to be drafted.

In addition to the above, Mr. Ravada testified at length that he had a three hour conversation with Mr. Finneran on August 16, 1985, of which one hour nothing but the subject of Mr. Hasan's safety concerns was discussed. Tr. 78; including Mr. Hasan's concern over punching shear and Richmond Inserts. Tr. 75. Mr. Ravada's testimony concerning his hour-long conversation with Mr. Finneran about Mr. Hasan's safety concerns was emphatic. Yet Mr. Finneran altogether denied the conversation ever took place. Indeed, not only did they discuss Mr. Hasan's concerns, Mr. Finneran asked Mr. Ravada if he knew whether or not Mr. Hasan had gone to the NRC with his concerns, and Mr. Ravada testified that he informed Mr. Finneran that Mr. Hasan may have already gone to the NRC. Tr. 75. Once again, Mr. Finneran's memmory failed; he denied the conversation ever took place. Tr. 26. Mr. Finneran's memmory also failed him when he could not recall conversations he had with Mr. Rencher about "spies" for CASE existing on site. Tr. 24. Mr. Rencher had no dificulty recalling these conversations. Tr. 116

Without question, the concerns Mr. Hasan raised when checking pipe support packages caused Mr. Ryan to fall behind schedule in his effort to certify the plant. Indeed, Mr. Ryan admitted that Mr. Hasan raised more technical concerns and

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rejected more PSE packages than anyone else. According to Mr. Ryan, Mr. Hasan's repeated rejection of pipe support packages caused "disruption" to his production schedule. Tr. 543-544.

III. MR. HASAN'S REJECTION OF MR. RYAN'S PIPE SUPPORTS

The simple reality is that but for Mr. Ryan's adverse recommendation, Mr. Hasan would have been hired by Stone & Webster. Mr. Ryan gave as his only alleged reason for not recommending Mr. Hasan the fact that Mr. Hasan's presence on site caused disruption during the certification process.

The disruption was caused due to horrendous design flaws Mr. Hasan uncovered while reviewing pipe support designs. The primary cause of the design flaws, as far as Mr. Hasan could tell, was due to the use of inconsistent design criteria when designing and constructing the plant.

The crux of the problem was that Texas Utilities had established three separate organizations to design and certify discrete portions of the Comanche Peak pipe support system. They were (1) the Nuclear Power Services, Inc. group (NPS or NPSI), a subcontractor of Texas Utilities; (2) the Pipe Support Engineering group (PSE), managed and staffed by Texas Utilities itself, and (3) the ITT-Grinnell group (ITT), also a subcontractor of Texas Utilities.

Each design group was responsible for developing its own design criteria and for certifying every pipe support within its scope.

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Thus NPS-designed pipe suppor s were to be reviewed and certified exclusively according to the NPS criteria. If a pipe support designed by NPS could not be qualified pursuant to NPS criteria, it was to be rejected and redesigned by NPS. The same was true for pipe supports designed by PSE and ITT. It is, and was, axiomatic that each pipe support was to be certified using only one set of criteria -- the criteria with which it had been designed. Indeed, pursuant to contract and NRC regulations, no pipe support was to be designed according to one group's criteria and certified under another group's criteria.

So much for t'eory. In practice, Texas Utilities was apparently engaged in a fraudulent scheme to certify the pipe support designs of the Comanche Peak plant arbitrarily changing the scope of pipe support and certifying it with criteria other than what it had been designed with.

Line engineers, including Mr. Hasan, were not aware that shifting pipe support packages from grou[illegible]roup during the certification process was illegal. Rat[illegible]. Hasan only knew that management's practices were contrar[illegible] standard engineering principles. What he had unwittingly uncovered was an apparently illegal shifting of pipe support packages between groups for certification. Mr. Hasan recognized that the only way to assure the integrity of the pipe support system was to institute a uniform set of design criteria for the supports being transferred between groups.

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Mr. Hasan's remedy to the design flaws he uncovered were simple: introduce a uniform design criteria. What Mr. Hasan didn't realize was that such a remedy would moot the reason that the pipe supports were being transferred between groups illegally in the first place.

The key concern Mr. Hasan had over the use of multiple sets of design criteria to certify the same single pipe support concerned the support's anchoring mechanism, known as a Richmond Insert. As Mr. Hasan reasoned, since there was no way of knowing in advance how the adjacent Richmond Insert had been designed (due to the transfer back and forth of pipe supports), then there was no way to predict how the different pipe support designs would interact should a pipe support fail. A brief layperson's definition of a Richmond Insert is necessary before the gravity of Mr. Hasan's concern can be appreciated.

A Richmond Insert is a steel structure, shaped like a pig's tail (helical spring) that is placed into the foundation at the time of concreting. Once the concrete foundation is cured, a steel rod is screwed into the portion of the Richmond Insert that is exposed at the surface of the foundation. Virtually, the entire support system for the Class 1 (safety-related) piping system is anchored to a Richmond Insert.

One concern Mr. Hasan had over using different sets of design criteria when certifying the Richmond Insert design of the plant was that a progressive failure of the Richmond Inserts could easily result because the engineering consequences of interchanging the different designs had not been worked out.

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In order to better understand Mr. Hasan's concern, Imagine a line of dominoes. The force necessary to knock down the entire line is only that needed to knock down a single domino. The same principle applies to Richmond Inserts -- if one fails, the load is transferred to the adjacent Richmond Insert, and if that insert was not designed to withstand the transferred load it too will fail; and so on and so on.

The problem uncovered and reported to management by Mr. Hasan was that the use of different criteria to qualify adjacent Richmond Inserts created the potential for a progressive failure of the entire pipe support system at Comanche Peak. In a nut shell, one of Mr. Hasan's concerns over the Richmond Insert design was that although each company created its particular design to assure that the transferred load of one Richmond Insert onto the adjacent pipe support would not result in a progressive failure, there was absolutely no way to determine what would happen if a Richmond Insert designed under one criteria failed and its load was transferred to an adjacent pipe support designed using a different criteria. If the load was transferred in such a way that it caused the adjacent pipe support's anchor to give way, a chain reaction resulting in the failure of all the pipe support could follow.

Thus if one Richmond Insert fails and takes its randomly certified neighboring pipe support with it, the combined force will cumulatively take out all the remaing pipe supports until the entire pipe support system collapses. The end result is a meltdown.

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Day in and day out, Mr. Hasan pleaded with management to correct this potentially catastrophic design deficiency. He demanded that a uniform design criteria be used in certifying Richmond Inserts, or at the very least that calculations and/or experiments be performed to determine the engineering consequences of using different criteria on the same pipe supports.

Indeed, Mr. Hasan was blowing the whistle on the consequence of a fradulent scheme Texas Utilities implemented to certify as safe an unsafe pipe support system. By using three separate sets of criteria, Texas Utilities had created a complex scheme where a rejected pipe support could be sent from group to group to find criteria that would allow that particular pipe support to be certified. As it would turn out, Mr. Ryan oversaw the transfer of pipe supports from group to group. In effect, he was one of the chief ringleaders behind the fraudulent certification process.

Obviously, Mr. Hasan's constant whistleblowing over the use of multiple sets of criteria to certify the same pipe support and his constant rejection of pipe supports due to the use of inconsistent criteria particularly vexed Mr. Ryan for at least two reasons: first, it exposed the illegal scheme to possible detection, and second, it slowed production, interfered with schedules and caused cost over runs.

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IV. THE FRAUDULENT CERTIFICATION PROCESS

Mr. Ryan, Mr. Finneran, and others were nothing less than criminal racketeers engaged in a scheme to certify as safe a defectively designed and constructed pipe support system.

The scheme was simple: if a modified pipe support could not be certified by one group, the "scope of responsibility" for the failing pipe support was transferred to another group in the hope of certifying it without any rework. Rencher Deposition Transcript at p. 264; Chamberlain Deposition Transcript at pp. 95, 186, 190.

In essence, the fraudulent scheme for certifying defective pipe supports with multiple sets of criteria was illegal and resulted in a knowingly unsafe design. But Texas Utilities management did not care because it saved them money and kept them on schedule.

Mr. Chamberlain refers to this illegal scheme as the "go-around." Chamberlain Deposition Transcript at p. 190. As the name implies, a pipe support design that could not be certified under its original criteria would go around from group to group in search of criteria that would allow certification.

This fraudulent scheme (hereinafter referred to as the "go-around scheme") was identified in the May 28, 1987 list of the 65 concerns Mr. Hasan originally identified in Cx 14.

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According to Concern No. 23:

> There is a concern that if supports did not meet the appropriate design criteria using the NPS design specification, the supports were sent to another pipe support design group, such as PSE, and would be considered acceptable using different design criteria. This condition indicates that different design criteria was used in the various pipe support design groups (NPS, ITT-G and PSE).

See Cx 14 at p. 3.

When Mr. Rencher, one of Respondents' own witnesses, was asked under oath during his deposition if Concern No. 23 were true, he answered with an absolutely unqualified "Yes." Rencher Deposition Transcript at p. 247. Mr. Rencher oversaw both the NPS and ITT groups. He had first hand knowledge of the practice. Whether or not he knew it was illegal is unknown.

Similarly, when Mr. Chamberlain was asked under oath during his deposition whether Concern No. 23 were true, he likewise testified unequivocally that it was common practice on site to "transfer responsibility" from group to group during the certification process. Chamberlain Deposition Transcript at p. 95. Mr. Chamberlain pointed out during his deposition that one of the reasons pipe support packages were shifted from group to group was that modified Richmond Insert designs on site could not be certified pursuant to their original design criteria. According to Mr. Chamberlain, if one group "did not have criteria addressing the Richmond Insert tube steel design...then we would transfer responsibility [from the group that originally designed the support] to the site engineering group [PSE]." Chamberlain Deposition Transcript at p. 95.

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The go-around scheme was brought expressly to the attention of the ALJ during the hearing and explicitly briefed in Complainant's post-hearing brief and reply brief. Prominently stated therein was the testimony of Mr. Rencher:

> Q. ...were you aware whether or not Mr. Hasan rejected Mr. Ryan's pipe support engineering group [PSE] pipe supports while working in your group [NPS]?
>
> A. There were pipe supports that were rejected out of my group, and I am certain Mr. Hasan had reviewed some of those.
>
> Q. And were they coming from Mr. Ryan's group?
>
> A. Yes, they were.
>
> Q. ...would Hasan attach a memo to [the PSE packages he was rejecting]?
>
> A. Yes....
>
> Q. And [Hasan] would sign those memos rejecting [Mr. Ryan's packages coming from PSE]?
>
> A. Yes.

Hearing Transcript, at pp. 120-121. Also see pp. 125, 130, 239, 275.

Undeniably, the pipe supports making the go-around between PSE and NPS were being sent in an effort to get them certified. According to Mr. Rencher's deposition testimony:

> Q. ...the NPS group was rejecting PSE supports during the certification process?
>
> A. Yes, I was aware of that.
>
> Q. Were you aware of that in 1983?
>
> A. Yes.
>
> Q. ...in 1984?
>
> A. Yes, sir.

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Q. ...in 1985?

A. Yes.

* * *

Q. The NPS group was rejecting PSE packages during the certification process, right?

A. Yes.

Q. Of those that were being rejected, were they ever then recalculated under different criteria?

A. Yes.

Q. And then they were certified after they were recalculated uder different criteria?

A. Yes.

Rencher Deposition Tr., pp. 78-81, (emphasis added).

Mr. Rencher went on to testify that he had had numerous conversations with Mr. Ryan about now to lower the rejection rate of the PSE packages going into NPS. Rencher Deposition Transcript at p. 67.

Indeed, during the hearing, Respondents' own counsel elicited testimony from Mr. Ravada to the effect that NPS rejected pipe supports from PSE. In the words of Mr Ravada: "Mr. Hasan's group [NPS] rejected some of the supports of our group [PSE] on the basis of the Richmond inserts failing...and [those] support[s] came to our group [after that for certification]." Hearing Transcript at p. 88.

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V. THE GO-AROUND SCHEME VIOLATED NRC REGULATIONS AND BREACHED CONTRACTUAL AGREEMENTS

The licensing of commercial nuclear power facilities is regulated by the Nuclear Regulatory Commission pursuant to the Energy Reorganization Act (ERA). The ERA gives the NRC the power to enact necessary regulations. Pursuant to 10 C.F.R. Part 50, Appendix B (Quality Assurance Criteria for Nuclear Power Plants), "Design changes, including field changes," shall conform to the "original design and be approved by the organization that performed the original design," and that "changes to documents shall be reviewed and approved by the same organizations that performed the original review and approval." 10 C.F.R. 50, App. B (I) and (VI) (Emphasis added). Appendix B establishes that under no circumstances are pipe supports to be transferred between groups during the design or field modification phases. Appendix B forbids the transfer of PSE-designed supports into NPS for certification. It likewise forbids the transfer out of NPS to the PSE group pipe supports that could not be certified under NPS criteria. Appendix B likewise establishes that field and design modifications have to be made by the organization which designed the pipe support.

The record establishes that Texas Utilities management (Messrs. Ryan, Chamberlain, and Finneran) instituted a scheme to transfer pipe supports from group to group during the certification process. Both Mr. Ryan and Mr. Finneran knew that this practice to be in violation of both NRC regulations and the contractual arrangements between NPS, ITT, and Texas Utilities.

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The testimony establishing that pipe supports were certified by organizations other than the organization certifying the original design is irrefutable. Mr. Rencher, without qualification, testified that the "NPS group was rejecting PSE packages during the certification process." Rencher Deposition Transcript at p. 81 (emphasis added). Mr. Rencher further testified that the PSE pipe supports transferred into NPS could not be qualified, and when that happened they were again transferred and qualified using still other criteria. Indeed, Mr. Rencher testified that a full "25 percent" of the PSE pipe supports transferred into NPS were rejected and returned to PSE and "recalculated under different criteria." Rencher Deposition Tr., at p. 81.

Obviously, Mr. Ryan knowingly violated 10 C.F.R. 50 App. B when he transferred the PSE pipe supports into NPS. He compounded the violation when he transferred the same pipe supports back out of NPS and into PSE whenever the support could not be certified by NPS.

Not only did the illegal transfer of pipe supports violate NRC regulations, it violated the contractual arrangements between Texas Utilities and its subcontractors, NPS and ITT. In perhaps the only truthful comment Mr. Ryan made during the hearing, he explained that

> There were separate contracts. The original PSE designs were [to be] reviewed by PSE. The original NPSI designs were [to be] reviewed by NPSI.

Hearing Transcript at p. 550.

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VI. MR. RYAN WAS MANAGEMENT'S POINT MAN DURING THE ILLEGAL GO-AROUND SCHEME AND AS SUCH DIRECTED IT

Every scheme needs a key player. In the case of the go-around scheme, it was none other than Mr. Jay Ryan. Mr. Ryan oversaw the transfer of pipe support packages from group to group and used the PSE group as the staging ground. All rejected pipe supports, it seems, either originated out of PSE or were transferred into PSE (and then apparently transferred elsewhere).

Just as the testimony of Messrs. Rencher, Kavada, and Hasan established the NPS-PSE transfer, Mr. Chamberlain's deposition established the ITT-PSE transfers. As Mr. Chamberlain testified:

> ...some companies did not have criteria addressing certain types of design. For example, ITT Grinnell did not have criteria addressing the Richmond insert tube steel design. If [a pipe support] got redesigned that way, then we would transfer responsibility for that hanger from [ITT-]Grinnell to the site engineering group [PSE].

Chamberlain Deposition Transcript, at p. 95 (emphasis added).

The process of transferring pipe supports back and forth between groups generated paperwork. The paperwork problem occurred after a pipe support was transferred and the second group still could not certify it. Only then would a line engineer fill out a three-part "speed memo" addressed directly to Mr. Ryan. These speed memos unrecorded anywhere on site, were used to explain to Mr. Ryan the reason a particular transferred pipe supports had been rejected.

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Mr. Rencher testified both during the deposition and at the hearing about the creation of these speed memos during the go-around scheme:

> Q. [W]hen Mr. Hasan rejected Ryan's pipe support packages [he would] attach a memo to those packages.
>
> A. Yes....the memo would be initiated in my group, yes.
>
> Q. And [Mr. Hasan] would sign those memos rejecting [the PSE-designed pipe supports that he could not certify using the NPS criteria]?
>
> A. Yes.

Tr. 120-121.

The speed memos attached to the rejected pipe supports were not logged or recorded on sight. They were simply cover memos directed to Mr. Ryan and, as such, Mr. Ryan was free to do with them as he chose. He threw them away, destroying the paper trail that would tell why the pipe support had been rejected. He was then free to get the pipe support certified elsewhere, albeit illegally. The fact that Mr. Hasan would reject pipe supports and attach a memo to the package addressed directly to Mr. Ryan, and that thereafter the very same pipe support would be certified in another group without modification is undeniable, as the following testimony of Mr. Rencher demonstrates:

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Q. [By Mr. Kohn] Are you aware whether or not Mr. Hasan could not certify...some of the packages he was checking?

A. [By Mr. Rencher] He could not certify some of the packages because of the NPS criteria on Richmond inserts, yes.

Q. Did you take those packages to the PSE group for certification?

A. Those supports were rejected to the PSE group.

Q. By "rejected to the PSE group," what do you mean?

A. Well, he attached a memo to it from my group to the PSE group saying the supports were rejected for the following reasons...

Q. And would the PSE group then certify the packages...

A. ...yes.

Q. (By Mr. Kohn) And they could do that because PSE was using different criteria than NPS?

A. Yes.

Rencher Deposition Tr., at pp. 96-97 (emphasis added).

On the memos were destroyed, no paper trail of the go-around scheme remained. Not only was the transfer of pipe supports illegal, but so was the destruction of the paperwork

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accompanying the rejected supports.[7]

To date, it would seem that [illegible] two [illegible] such cover memos escaped Mr. Ryan's watchful [illegible] [illegible]m is from a Mr. M.J. Kaplan to Mr. [illegible] (Exhibit 1). This speed memo clearly [illegible] due to problems Mr. Kaplan (who was [illegible] to his [illegible] rejection of pipe [illegible] Hemrajani found when attempting [illegible] signed pipe support with NPS criteria was [illegible] The speed memo clearly states that the pipe support package was being rejected during the certification process. Indeed, the reply portion of this memo is signed by Mr. Rencher, and states that the pipe support, as rejected by Mr. Kaplan, could nonetheless be "certified" under NPS criteria pursuant to authority from NPS's home office.

---

7. Indeed, a 10/18/84 ASLB Order demanded Texas Utilities to provide the Licensing Board with "...all relevant memoranda and deficiency paper that indicate directly or indirectly the awareness and resolution..." for every "unstable support" existing on site.

6. Mr. Kaplan was not identified in Respondents' answers to interrogatories requesting the identity of all of Mr. Hasan's supervisors. Indeed, when Complainant's counsel attempted to ask questions about Mr. Kaplan during depositions of Respondents' witnesses Respondents' counsel refused to allow the witness to answer the questions. Some of these questions were certified for the purpose of appeal.

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The fact that the NPS home office was involved in certifying PSE-designed pipe supports demonstrates that the NPS home office would have known of the illegal scheme. Respondents' claim that NPS had no knowledge of Mr. Hasan's whistleblowing activities is simply not credible, given the apparent complicity of NPS in the go-around scheme.

The arrogance and utter contempt for law on the part of Respondents is demonstrated in that after Messrs. Hasan, Rencher, and Kavada had testified at length about the go-around scheme, Respondents allowed (indeed encouraged) Mr. Ryan to lie straight-faced that the scheme never existed -- or that at least Mr. Ryan had no knowledge of it. Mr. Ryan's repeated denial of the fact that pipe supports were being transferred back and forth between groups is disgusting, immoral, unethical, and contemptuous. Simply stated, it is perjury.

Mr. Ryan chose to perjure himself rather than admit to the go-around scheme, when in fact he was the key player. His testimony was clear and unequivocal -- that Mr. Hasan never reviewed a PSE pipe support while working in the NPS group. This testimony is consistent with his sworn and signed deposition testimony, which reads:

> [By Mr. Kohn] Did you know that Mr. Hasan was rejecting packages from your group?
>
> A. [By Mr. Ryan] No. Why would he be?
>
> * * *]
>
> Q. Did Mr. Hasan reject PSE packages due to inconsistent criteria [between] NPS guidelines [and PSE guidelines]?
>
> A. He didn't review any PSE packages.

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* * *

Q. ...your testimony is that Mr. Hasan reviewed no PSE packages?

A. [Hasan] only reviewed NPSI packages when he was in the NPSI group.

* * *

Q. [D]id Mr. Hasan ever reject a PSE package that had already been certified because it did not meet NPS guidelines?

A. You can't cross guidelines.. you don't cross design guidelines to review packages.

Ryan Deposition Tr., at pp. 8-10.

Similarly, Mr. Ryan's hearing testimony states that while in the NPS gro p, Mr. Hasan never reviewed a PSE-designed pipe support package:

Q. [By Mr. Mack] And were [PSE-designed pipe supports] ever reviewed by anyone at NPS?

A. [By Mr. Ryan] No....NPS would have reviewed their original designs. Personnel in PSE would have reviewed PSE designs.

Q. Well, what if, in fact, what occurred was something came out of PSE and it was being reviewed by NPS? Would that create a problem?

A. It wouldn't happen.

It would never happen?

A. No.

* * *

Q. Okay. So that while [Mr. Hasan] worked [in the NPS group] no package designed in your group [PSE] would ever be reviewed by Mr. Hasan.

A. That is correct.

Tr. 540-541.

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Q. Are you certain that none of your [PSE] packages were ever reviewed by Mr. Rencher's group [NPS] during the time...Mr. Hasan was working there?

A. There were separate contracts. The original PSE designs were reviewed by PSE. The original NPSI designs were reviewed by NPSI.

Tr. 549-550.

VI. IN VIOLATION OF LAW AND LEGAL ETHICS, RESPONDENTS' COUNSEL ALLOWED MR. RYAN TO PERJURE HIMSELF

Respondents' counsel cannot in good faith deny knowledge that PSE-designed packages were being transferred into the NPS group and then certified with NPS criteria. The facts leading to this conclusion are inescapable.

First, Respondents' counsel was present during the deposition testimony of Mr. Rencher and Mr. Chamberlain. Indeed, when Mr. Rencher was questioned about the illegal transfer of pipe supports from PSE to NPS, Respondents' counsel interrupted the questioning to apparently correct Complainant's counsel's questions regarding the direction of the flow of packages between NPS and PSE:

Q. (BY MR. KOHN) The NPS group was rejecting PSE packages during the certification process, right?

A. Yes.

Q. Out of all the NPS packages going to PSE, what percentage were being rejected?

A. Of all the NPS packages going to PSE?

MR. WOLKOFF: You've got it reversed.

Rencher Deposition Tr., at p. 81.

Clearly, Respondents' counsel, Mr. Wolkoff, had a grasp of the apparently illegal transfer of pipe supports between PSE and NPS sufficient to allow him to interrupt Complainant's counsel's questioning to assert his knowledge of the direction of how the pipe supports flowed between PSE and NPS.

Similarly, at the hearing, Respondents' counsel, Mr. Wolkoff, subjected Mr. Rencher, under oath, to a series of leading questions that detailed the flow of pipe supports between PSE and NPS:

> BY MR. WOLKOFF [Cross-examination of Mr. Rencher]
>
> Q. During the time period that Mr. Hasan worked under your supervision at Comanche Peak, how many different sets of design criteria were in place?
>
> A. There were three...ITT Grenelle [sic], NPSI and the PSE design guidelines.
>
> Q. And did they differ one to another in certain respects?
>
> A. Yes, they did.
>
> Q, But I take it each pipe [support] that was qualified had to be qualified under one of the three different sets of criteria. Right?
>
> A. That is correct.
>
> Q. What set of criteria was employed in [the NPS] group?
>
> A. The time he [Mr. Hasan] was in my group, the NPSI criteria.
>
> Q. And what about this group with Mr. Ryan where the packages were coming from Mr. Ryan? What type of criteria were employed there?
>
> A. That was the PSE design guidelines.

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> Q. And Mr. Hasan's complained to you when he reviewed those packages [refering to Mr. Ryan's PSE packages] that the criteria that Mr. Ryan's group used were not the same as the criteria that he was using.
>
> A. Yes.

Hearing Transcript, at pp. 124-125 (emphasis added).

The fact that Respondents' counsel could lead Mr. Rencher by the nose detailing the transfer of pipe supports between PSE and NPS, establishes knowledge on the part of Respondents' counsel. As Mr Wolkoff's questioning of Mr. Rencher establishes, Respondents' counsel obviously had to know of the illegal transfer of pipe supports between groups. How else could he lead his own witness through the illegal transfer process in the first place.

It is Mr. Wolkoff himself who states on the record that pipe supports were "coming from Mr. Ryan['s group]" only to be "reviewed" by NPS and certified with different criteria than the criteria "Mr. Ryan's group used" to design the pipe support in the first place. The fact that the testimony Mr. Wolkoff provided when examining Mr. Rencher resulted in some of the strongest evidence demonstrating the fact that pipe supports were illegally being transferred between the different groups on site is the greatest indictment imaginable.

Given Mr. Wolkoff's questioning of Mr. Rencher during the hearing, coupled with his correction of Complainant's counsel during Mr. Rencher's deposition, demonstrater beyond any conceivable doubt that Respondents' counsel had actual knowledge

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of the fact that Mr. Ryan was sending PSE-designed pipe supports to NPS for qualification using NPS criteria.9/

The facts speak for itself: after correcting the record as to the direction of the flow of packages between NPS and PSE during Mr. Rencher's deposition, and after leading Mr. Rencher through the illegal transfer of pipe supports between NPS and PSE when he testified at the hearing, Respondents' counsel allowed Mr. Ryan to falsely testify that pipe support packages were not being transferred between PSE and NPS.10/

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9. Indeed, the Ropes & Gray law firm, who represents the Respondents, was lead counsel in the licensing hearings before the ASLB. Furthermore, Mr. Wolkoff submitted afidavits on the part of the entire Ropes & Gray law firm and therefore, the knowledge of the attorneys engaged in the licensing proceedings before the ASLB must be imputed to Mr. Wolkoff as well. Also, as detailed in Complainant's Second Motion for Default/Disqualificaiton, at p. 13, a co-counsel relationsnip between predecessor counsel, who witndrew pursuant to settlement for this proceeeding, and the Ropes & Gray firm exists (or existed when relevant to this case). Therefore, knowlege on the part of predecessor counsel is likewise imputed to the Ropes & Gray law firm concerning knowledge of the transfer between PSE and NPS pipe supports during the certification process.
Beyond knowlege on the part of Ropes & Gray over the issue of the apparently illegal transfer of pipe supports between the various groups on site, the fact remains that exhibits apparently originally altered by predecessor counsel during trial preparation were submitted onto the record of this proceeding by Mr. Wolkoff with the knowledge that said exhibits were altered.

10. As will also be demonstrated in Section VIII, infra., Respondents' counsel evdidently suborned perjury after Complainant initialy attempted to expose to the ALJ that Mr. Ryan had perjured himself at the hearing. In their Reply brief, Respondents' counsel defended Mr. Ryan's perjurous statements with false and misleading facts intending to, and in fact suceeding in, misleading the ALJ about the perjurous nature of Mr. Ryan's testimony.

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Regardless of when Respondents' counsel came to know of the illegal go-around scheme, he was under a legal and ethical duty to stop Mr. Ryan from perjuring himself at the hearing. If Respondents' counsel did indeed know that Mr. Ryan was about to perjure himself and failed to halt this travesty of justice, Respondents' counsel is utterly inconsistent with his duty as a court officer and warrants the imposition of harsh sanctions, as the case law below demonstrates. Following the case law on perjury and subornation of perjury, Complainant will demonstrate that not only did Respondents' counsel allow its witnesses to perjure themselves, but that counsel suborned the perjured statements as well.

Without question, "an adverse party's fraud or subornation of perjury permits relative free reopening of the judgment [in this case recommended decision] when the perjury goes to the heart of the issue." Metlyn Realty Corp. v. Esmark, Inc., 763 F.2d 826, 832 (7th Cir. 1985). Also see, McKinsick v. U.S., 379 F.2d 754 (5th Cir. 1967); Rosier v. Ford Motor Co., 573 F.2d 1332, 1339 (5th Cir. 1978); Harre v. A.H. Robins, 750 F.2d 1501, 1503 (11th Cir. 1985).

As an administrative agency, the Department of Labor has the "inherent" power to do what is reasonably necessary to prevent fraud, irrespective of statutory authority. Alberta Gas Chems., Ltd. v. Celanese Corp., 650 F.2d ___ at 12-13 (2nd Cir. 19__). There is "no right whatever -- constitutional or otherwise -- for a defendant to use false evidence." Nix v. Whiteside, 106 S.Ct.

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988, 998 (1986). Any attorney who even cooperates with a client's planned perjury risks "prosecution for suborning perjury, and disciplinary proceedings, including suspension or disbarment." Id. at 998. Also, any attorney "who aids false testimony by questioning a witness when perjured responses can be anticipated risks prosecution for subornation of perjury...." Id. at 996. Simply put, "under no circumstances may a lawyer either advocate or passively tolerate a client's giving false testimony." Id. at 996 (emphasis added). Even an attorney who attempts to remain willfully ignorant where known facts call for further investigation violates his professional and legal duty should he refuse to investigate the situation further. Florida Bar v. McLaghren, 131 So.2d 371, 372 (Fla. 1965) (suspension of attorney for failing to make reasonable inquiry); State v. Zwillman, 270 A.2d 284, 289 (N.J. 1970) (attorney has responsibility to inquiry into falsity of client's representations if he "should know or reasonably suspect that the client's representations are false.") Also see, United States ex rel. Wilcox v. Johnson, 555 F.2d 115, 122 n.13 (3d Cir. 1977) (DR4-101(C)(3) read to require disclosure); McKissick, 379 F.2d 754, 761-62 (5th Cir. 1967); United States v. Grasso, 413 F.Supp. 166, 171 (D.Conn. 1976) ("probable perjurious testimony must, of course, be immediately reported to the presiding judge in the interests of justice and to preserve the integrity of the judicial process"); In re Hoover, 46 Ariz. 24, 30, 46 P.2d 647, 649-50 (1935); Hinds v. State Bar, 19 Cal. 2d 87, 93, 119 P.2d

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134, 137 (1941); Thornton v. United States, 357 A.2d 429, 437-38 (D.C. 1976).

As the depositions and hearing testimony of the pertinent witnesses occurred exclusively in the state of Texas, it is axiomatic that the standards set forth under Texas state law are the minimum attorney standard of conduct counsel must adhere to.

Under Texas law, "a lawyer shall not[:]

* * *

(4) Knowingly use perjured testimony or false evidence.

(5) Knowingly make a false statement of law or fact.

(6) Participate in the creation or preservation of evidence when he knows or it is obvious that the evidence is false.

(7) Counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent.

(8) Knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule."

Texas Code of Prof. Resp. DR 7-102 (A)(4)-(8). Tex. Civ. Stat. Ann Tit. 14 app. Cit. 12 §8 (Vernon 1973). In addition,

> A lawyer who receives information clearly establishing that:
>
> (1) His client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon his client to rectify the same, and if his client refuses or is unable to do so he shall reveal the fraud to the affected person or tribunal.
>
> (2) A person other than his client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal

Id. at (B)(1) and (2).

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In Nix v. Whiteside, the Supreme Court points out that:

> The more recent Model Rules of Professional Conduct (1983) similarly admonish attorneys to obey all laws in the course of representing a client:
>
> "RULE 1.2 Scope of Representation
>
> * * *
>
> "(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent...."
>
> Both the Model Code of Professional Conduct and the Model Rules of Professional Conduct also adopt the specific exception from the attorney-client privilege for disclosure of perjury that his client intends to commit or has committed. DR 4-101(C)(3) (intention of client to commit a crime); Rule 3.3 (lawyer has duty to disclose falsity of evidence even if disclosure compromises client confidences). Indeed, both the Model Code and the Model Rules do not merely authorize disclosure by counsel of client perjury; they require such disclouse. See Rule 3.3(a)(4); DR 7-102(B)(1); Committee on Professional Ethics and Conduct of Iowa State Bar Association v. Crary, 245 N.W.2d 298 (Iowa 1976).
>
> These standards confirm that the legal profession has accepted that an attorney's ethical duty to advance the interests of his client is limited by an equally solemn duty to comply with the law and standards of professional conduct; it specifically ensures that the client may not use false evidence."

Id., 106 S.Ct. 988, 995 (1986)(footnote omitted, emphasis in original).

Unquestionably, the Fifth Circuit has always required mandatory disclosure by an attorney to the Court whenever fraud, including perjury, appears to be present. If any attorney fails to do so, the court states that the offending attorney should be

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> subject to discipline had he continued in the defense without making a report to the court. The attorney not only could, but was obligated to, make such disclosure to the court as necessary to withdraw the perjured testimony from the consideration of the jury. This was essential for good judicial administration and to protect the public.

McKissick, 379 F.2d 754, 761 (5th Cir. 1967).

VII. RESPONDENTS' COUNSEL IS GUILTY OF SUBORNATION OF PERJURY

Federal statute defines subornation of perjury as the procurement of perjury: "Whoever procures another to commit any perjury is guilty of subornation of perjury." 18 USC §1622. Perjury is defined as:

> The willful assertion as to a matter of fact, opinion, belief, or knowledge, made by a witness in a judicial proceeding as part of his evidence, either upon oath or in any form allowed by law to be substituted for an oath, whether such evidence is given in open court, or in an affidavit, or otherwise, such assertion being material to the issue or point of inquiry and known to such witness to be false.

Black's Law Dictionary, Revised 4th Edition.

Clearly, Mr. Ryan willfully asserted at a judicial proceeding under oath material false statements concerning the transfer of pipe supports between groups and the improper use of inappropriate design criteria.

Additionally, it would seem that Respondents' counsel allowed Mr. Ryan to make the perjured statements, knowing that Mr. Hasan's case rested on the premise that he blew the whistle on the use of multiple sets of criteria during the certification of the Comanche Peak pipe support system.

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The fact is that Respondents' counsel knew in advance that Mr. Ryan would perjure himself rather than admit that multiple sets of criteria were used to certify the same pipe support.

It would seem that Mr. Ryan's false testimony regarding the certification of PSE-designed pipe supports with NPS design criteria constitutes perjury, and that Respondents' counsel's allowing Mr. Ryan to testify falsely at his deposition and during the hearing (the same counsel is believed to have represented Mr. Ryan personally during this proceeeding) approached subornation of perjury. "Under no circumstances" is an attorney even allowed to "passively tolerate a client's giving false testimony," Nix v. Whiteside, 106 S.C. 988, 996 (1986) (emphasis added). If that attorney should in any way cooperate with a client's planned perjury or even "aids false testimony by questioning a witness when perjured responses can be anticipated risks prosecution for subornation of perjury "including suspension or disbarment." Id. at 996-998.

The Fifth Circuit held in McKissick, that any attorney who even attempts to remain willfully ignorant where known facts call for further investigation violates his professional and legal duty should he refuse to investigate the situation further. McKissick, 379 F.2d 754, 761-62 (5th Cir. 1967). Also see: Florida Bar v. McLaghren, supra; State v. Zwillman, supra; United States ex rel. Wilcox v. Johnson, supra,; United States v. Grasso, supra., In re Hoover, supra., Hinds v. State Bar, supra., Thornton v. United States, supra.

Respondents' counsel went well beyond turning their heads to perjury; they went so far as to cover-up Mr. Ryan's perjured testimony with a web of false statements -- unsupported by the established record and the truth. Such conduct, it would seem, constitutes subornation of perjury. Under Supreme Court and Fifth Circuit jurisprudence, counsel's tacit submission of Mr. Ryan's perjured testimony into the record, combined with Respondents' counsel's reliance on that testimony to establish its case, evidently constitutes the subornation of perjury.

The truth of the matter is that after the close of the hearing and after Complainant's counsel explicitly exposed Mr. Ryan as a perjuror, Respondents' counsel engaged in a pattern of conduct with the knowledge and intent of deceiving the court to the effect that Mr. Ryan's testimony was not perjured, knowing full well that it was.

VIII. RESPONDENTS' COUNSEL OVERTLY ENGAGED IN SUBORNATION OF PERJURY WHEN FILING RESPONDENTS' POST-TRIAL REPLY BRIEF TO THE ALJ

When Mr. Ryan's perjured testimony was explained to the ALJ in a brief filed by Complainant, Respondents' counsel invented a story that describes the transfer of pipe support packages from the PSE "field group" into the NPS group as "normal." In Respondents' counsel's own words: "In the normal course, NPSI packages flowed from the PSE field group to the NPSI unit." Respondents' counsel then asserts that only NPSI-designed packages were returned to the NPSI group whenever the PSE "field

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IX. RESPONDENTS' COUNSEL UNLAWFULLY ALLOWED OR ENCOURAGED JOHN FINNERAN TO SUBMIT PERJURED TESTIMONY AND Respondents' COUNSEL KNOWINGLY CONTINUES TO PARADE MR. FINNERAN'S PERJURED STATEMENTS BEFORE THE DOL AS IF THEY WERE TRUE.

Little background is needed to present the perjured testimony of Mr. Finneran. On August 19, 1985 Mr. Hasan met with Mr. Finneran for over eight hours. From the beginning of the meeting until its end, Mr. Hasan raised grave and serious safety concerns directly to Mr. Finneran. One such safety concern was that the stiffness of pipe support hardware was not included in the pipe support stiffness when calculating the overall pipe support stiffness sent to Westinghouse for the Class 1 piping analysis (hereinafter "improper stiffness"). The concern over improper stiffness was one of many safety concerns Mr. Hasan constantly brought to the attention of Management. Although Mr. Hasan first brought his concern of improper stiffness to the attention of management prior to the August 19, 1985 meeting with Mr. Finneran, the first time Mr. Hasan told Mr. Finneran of this concern occurred during their August 19, 1985 meeting.

Indeed, Mr. Hasan testified that he not only raised the issue of stiffness during the August 19th meeting, but that he begged and pleaded with Mr. Finneran to retrieve certain certified pipe support packages so Mr. Hasan could pinpoint exactly where and how incorrect stiffness values had been calculated and incorporated into the certified design of the Comanche Peak pipe support system. According to Mr. Hasan's

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testimony at the hearing:

Q. [By MR. MACK] And what is it that you said [to Mr. Finneran concerning improper stiffness of Class 1 pipe supports during the August 19th meeting]?

A. I explained to him at length -- at tremendous length that what happened in that period when Rencher told me or told us not to include that stiffness of the hardwares for computing the stiffness of the Class 1 piping system.

And after listening to all this -- and then I told him that, why don't you recall those particular packages to look for yourself....

Tr. 286, emphasis added.

* * *

A. ...I was bringing very, very serious concerns to [Mr. Finneran] right from the morning to the end [of our August 19th meeting] and I was literally, virtually, you know, pleading or begging him that, you have got those packages; please bring it to here; I will show it to you, what was the problems....

Tr. 484, emphasis added.

* * *

A. -- I pleaded with him that, please recall those packages so that I can show where the mistakes are being made, and he refused to recall those packages....

Tr. 382, emphasis added.

* * *

Q. You discussed specific packages with Mr. Finneran?

A. I was telling him to bring what I did discuss, the technical item, like, a stiffness value of Class 1 piping support... I wrote on some of the packages [that] those packages were being done incorrectly, and I was raising objections, at least on two of them, and at -- in one package, Mike Chamberlain just came and took away the package from me...

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Q. Excuse me. Did you tell Mr. Finneran to bring in packages or ask him?

A. I requested him to bring certain packages so that I can show it to him what was going on.

Q. To the meeting?

A. To the meeting. Right.

Q. ...Did he accede to your request?

A. He did not...

Tr. 484-485, emphasis added.

Besides Mr. Hasan and Mr. Finneran, Mr. Hasan's August 19th discussion of improper stiffness occurred in the presence of Mr. Rencher and Mr. Westbrook (Mr. Westbrook was not called as a witness for either side).

Mr. Rencher consistently testified, at his deposition and at the hearing, that not only did Mr. Hasan raise improper stiffness to Mr. Finnerar during the August 19th meeting, but that Mr. Finneran actually told Mr. Hasan that Stone and Webster already knew of the improper stiffness concern and was about to be corrected and that as such Mr. Hasan need not worry about it any further. According to Mr. Rencher's testimony: "Mr. Finneran and I...assured him that Stone and Webster was aware" of the concern and was currently developing new "design criteria" to "address" it. Rencher Deposition Transcript, at p. 161.

Mr. Hasan's concern over incorrect stiffness values sent to Westinghouse was that Westinghouse used the incorrect stiffness values to calculate the actual load each pipe support had been designed to withstand. The Westinghouse-calculated loads were

then used on site to certify the design of the Class 1 piping system. Hearing Transcript at pp. 235, 238, 263-264.

The August 19th meeting lasted for over eight hours. At the start of the meeting Mr. Finneran stated to Mr. Hasan that he was going to take notes of the meeting and he would ask Mr. Hasan to sign the notes at the conclusion. But each time Mr. Hasan would raise a technical issue, Mr. Finneran would not record it in his notes. Mr. Hasan was disturbed by this and at the end of the meeting he refused to sign. One of the technical concerns Mr. Hasan raised was improper stiffness.

After Mr. Hasan refused to sign, Mr. Finneran asked Mr. Hasan to leave the meeting. Mr. Hasan complied and thereafter was called back into the meeting room. The only one present at this point was Mr. Finneran. At that point in the meeting Mr. Finneran asked Mr. Hasan to list any technical inconsistencies he knew of so that Stone and Webster could see to it that those matters could also be resolved. Mr. Hasan then pulled a list of some technical concerns from his wallet and listed them for Mr. Finneran. The list was not retained by Mr. Hasan. Mr. Finneran then prepared a second memorandum allegedly listing all of the concerns Mr. Hasan raised to him on August 19th. Mr. Finneran listed exactly ten items; improper stiffness is not included. The ten inconsistencies are listed below as recorded by Mr. Finneran:

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1. Consistency should be achieved regarding the assessment of the weld between a baseplate and an embedded plate (plate and shell versus linear).

2. Plate and shell weld allowable should be listed in the guidelines.

3. Supports in containment should always use allowables at 300°.

4. 2" architectural concrete topping should always be considered for Hilti embedments.

5. In evaluation of Richmond Inserts, consideration of both rod and insert interactions should be documented.

6. Richmond Insert Bolt should be assessed for bending as well as shear and tension.

7. The weight of a constant support should always be considered in spring support design.

8. Each calculation sheet should be initialed.

9. Cinched U-bolt supports (class 5 and 6) inside stress problem boundaries should be assessed.

10. There should be a calculation qualifying the washer plates on tube steel supports.

A review of these alleged ten inconsistencies demonstrates that the words "stiffness," "Class 1," and "Westinghouse" are not mentioned anywhere in Mr. Finneran's August 19th memo [Cx. 7 and Rx 3].

Nonetheless, as the record establishes, Mr. Hasan repeatedly raised the issue of incorrect stiffness values of Classs 1 pipe supports to Mr. Finneran during the August 19th meeting. Mr. Finneran's assertion in his August 19th memo that Mr. Hasan "did not have any concerns which he felt were important to safety at the plant".

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Mr. Finneran expressly denied that Mr. Hasan raised stiffness values of the class 1 piping system to him on August 19th, as the following testimony depicts:

> Q. Do you know whether the subject matter of the stiffness values of the class 1 piping systems was among the either [sic] consistencies or concerns or any topic during that meeting [of August 19th].
>
> A. No. I don't believe so.

Tr. 21, emphasis added.

> Q. ...did the discussion of those [10] inconsistencies take up the bulk of the seven hours of the [August 19th] meeting?
>
> A. No. The ten items were -- as I said, it was the last --very last part of the meeting, and he related them to me, and I wrote them down, and that was about it. There wasn't any discussion that I recall between he and I on the items.

Tr. ___.

. . .

> Q. Fine. And on the second page [of CX 7] you list a series of items -- I am sorry. I don t remember how you characterized them.
>
> A. Inconsistencies, I believe.
>
> Q. Inconsistencies.
>
> A. Uh-huh.
>
> Q. Were those the only inconsistencies that Mr. Hasan brought to your attention in the course of that meeting?
>
> A. Of this [August 19th] meeting?
>
> Q. Yes, sir.
>
> A. Yes.

Tr. 31-32, emphasis added.

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A. Mr. Finneran Perjured Himself By Not Admitting that Mr. Hasan Raised Stiffness Values of Class 1 Pipe Supports During the August 19th Meeting

The testimony of three witnesses establishes the proposition that Mr. Finneran perjured himself. In addition to the testimony of Complainant, two adverse and hostile witnesses, Mr. Rencher and Mr. Chamberlain, testified under oath that stiffness was raised by Mr. Hasan to Mr. Finneran on August 19th. This testimony is set forth below.

1. Deposition testimony of Mr. Rencher

In no uncertain terms, the deposition testimony of Mr. Rencher completely contradicts Mr. Finneran's denial that Mr. Hasan raised stiffness of the class 1 pipe supports as a safety concern during the August 19th meeting. On no less than a dozen separate occasions Mr. Rencher testified that Mr. Hasan raised a concern over the method of calculating the stiffness values of the class 1 piping system.

Mr. Rencher had absolutely no self interest in giving testimony contrary to his boss, Mr. Finneran. Indeed, it is the rare individual who has the strength to testify against his superior.

The deposition testimony of Mr. Rencher is devastating:

> Q. [By Mr. Kohn] Did Mr. Hasan...on August 19, 1985 [bring to your attention] the fact that stiffness of Class 1 pipe support systems did not consider the stiffness of the hardware.
>
> A. [By Mr. Rencher] I believe he mentioned it in that meeting, yes.

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* * *

Q. Do you know if anyone followed up on that concern?

A. Yes.

Q. Who followed up on it?

A. I believe it would be John Finneran.

Q. Did you have any discussions with Mr. Finneran about how to proceed with Mr. Hasan's concern [over the fact that incorrect stiffness values had been sent to Westinghouse]?

A. Yes.

Q. And what is the sum and substance of those discussions?

A. When Mr. Finneran and I talked after that time about Stone & Webster developing criteria, we made sure that Mr. Finneran made aware to them that this is an item that needed to be considered in the development of their design criteria.

Rencher Deposition Tr. at 95-96, (emphasis added).

Mr. Rencher's testimony was clear: not only did Mr. Finneran and Mr. Hasan discuss the fact that incorrect stiffness values of Class 1 pipe support system had been sent to Westinghouse in the presence of Mr. Rencher, but that Mr. Finneran and Mr. Rencher continued discussing Mr. Hasan's concern after the meeting ended!

On June 2, 1987, the depostion of Mr. Rencher recommenced.11/

---

11. In violation of subpoena, Respondents' cousnel ordered Mr. Rencher to walk out of his May 29, 1987 deposition at 3:15 pm, evidently shortly after Respondents first received the letter from the NRC to Texas Utilities, dated May 28, 1987 (CX 14). Rencher Deposition at 144-145. Respondents' cousnel returned on June 2, 1987 only upon order of the ALJ. Respondents' conduct went unsantioned.

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At that time Mr. Rencher further testified:

Q. [BY MR. KOHN] Mr. Rencher, do you know about that Westinghouse letter concerning the stiffness of Class 1 pipe supports?
MR. WOLKOFF: Objection.

A. Calculated stiffnesses of Class 1 pipe supports were sent to Westinghouse.

Q. [BY MR. KOHN] All right. And what year were they sent?

A. 1982, 1983, 1984.

Q. And were you aware that that list did not consider the stiffness of the hardware for many of the Class 1 pipe supports contained in that list?

MR. WOLKOFF: Objection. You're testifying, Mr. Kohn.

A. No [Mr. Rencher's testimony diverges here from Mr. Hasan, who testified that he first raised this with Mr. Rencher and others in 1982; Mr. Chamberlain nonetheless testified at his deposition that management knew of this concern in 1985. See, Chamberlain Depo. at 96-97].

Q. [BY MR. KOHN] Did Mr. Hasan bring this to your attention on August 19th, 1985?

A. I believe he mentioned it [incorrect stiffness values] in the meeting that I participated in with John Finneran and him.

Q. Was anything done -- do you know if anything was done to check Mr. Hasan's concerns regarding not calculating stiffness of hardware sent to Westinghouse?

* * *

A. In sum and substance, Mr. Finneran and I discussed the concerns Mr. Hasan raised in that meeting [of August 19th] and assured him that Stone & Webster was aware of these concerns so that the Stone & Webster design criteria which was being developed would address his concerns.

Rencher Depo. Tr. at 164-165, emphasis added.

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Later during his deposition, Mr. Rencher once again confirmed that Mr. Hasan raised a concern over incorrect stiffness values to Mr. Finneran during their August 19th meeting:

> Q. Do you recall Mr. Hasan raising technical disagreements while you were present at the August 19, 1985 meeting?
>
> A. I remember one.
>
> Q. Which one was that?
>
> A. It concerned stiffnesses of Class 1 pipe supports.
>
> Q. Did Mr. Hasan complain that you refused to or did not write any memoranda concerning Mr. Hasan's problems that he had in the way the stiffness was being calculated?
>
> A. Beyond the fact that he mentioned it, I don't remember much else of what was said about it, specifically.
>
> * * *
>
> Q. The stiffness of Class 1 pipe supports that you remember Mr. Hasan raising during the August 19 meeting, when did Mr. Hasan first bring that to your attention?
>
> A. I don't recall. I think it was at that [August 19th] meeting.

Rencher Depo. Tr. at 237-238, emphasis added.

2. Hearing testimony of Mr. Rencher

On direct exam, Mr. Rencher's testimony was equally unequivocal: On August 19, 1985, in the presence of Mr. Rencher, Mr. Hasan raised told Mr. Finneran about his concern over the stiffness values sent to Westinghouse. Equally critical, was

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Mr. Rencher's testimony that not only was the concern raised, but that Mr. Finneran understood the significance of the concern as well.

> Q. [BY MR. MACK] In that [August 19th] meeting in your presence, did Mr. Hasan raise a concern over the stiffness of Class 1 pipe supports?
>
> A. [BY MR. RENCHER] Yes, he did.
>
> Q. In the presence of Mr. Finneran?
>
> A. Yes.
>
> Q. Did the two of them [Messrs. Hasan and Finneran] hold a discussion about that?
>
> A. It was discussed in that meeting, yes.
>
> Q. And Mr. Finneran was a participant in that discussion.
>
> A. Yes, sir.
>
> * * *
>
> Q. Do you recall whether Mr. Hasan in that meeting was concerned that the stiffness values of the hardware had not been calculated for NPS Class 1 pipe supports?
>
> A. Yes
>
> Q. And did he express that concern to Mr. Finneran?
>
> * * *
>
> A. Yes, he did.
>
> Q. And Mr. Finneran understood the concern?
>
> A. Yes, he did.

Tr. 117-118.

There is no room for doubt that Mr. Finneran's failure to recall certain packages Mr. Hasan brought to his attention in

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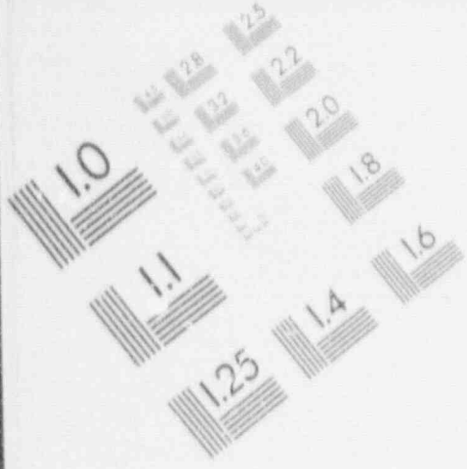
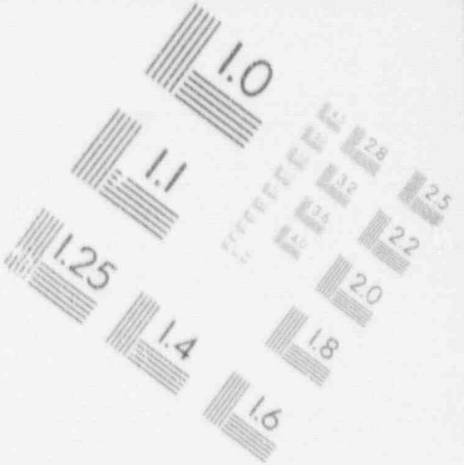
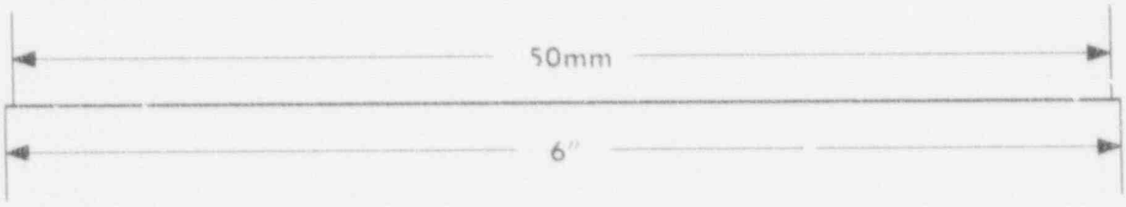
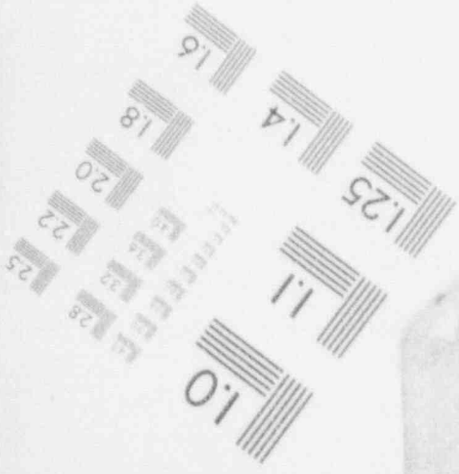
1

IMAGE EVALUATION TEST TARGET (MT-3)









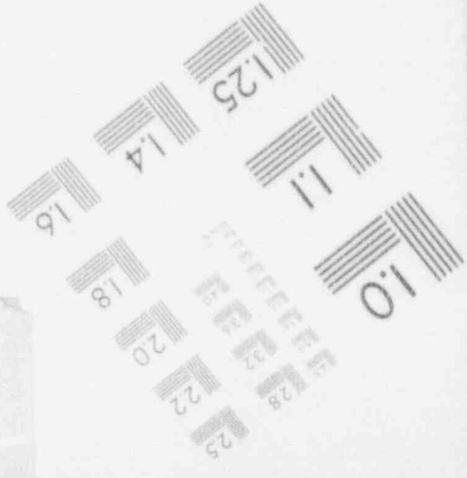


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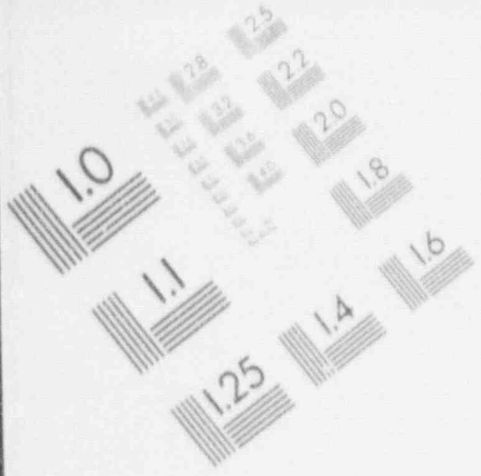
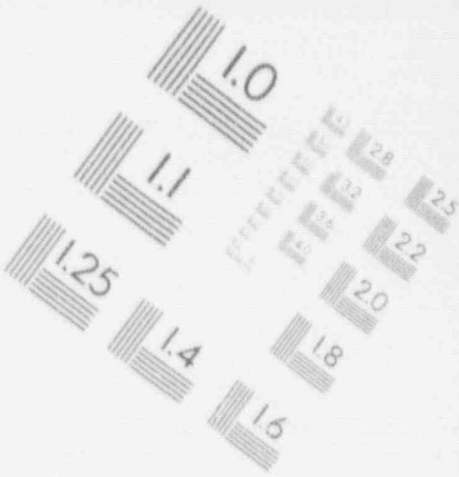
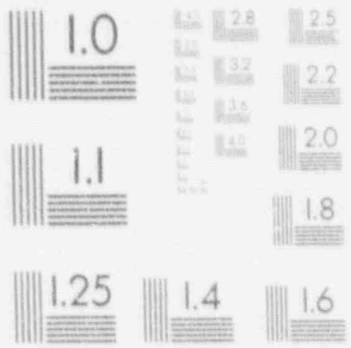
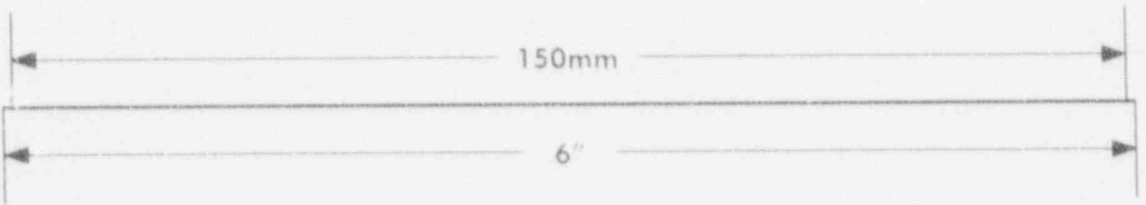
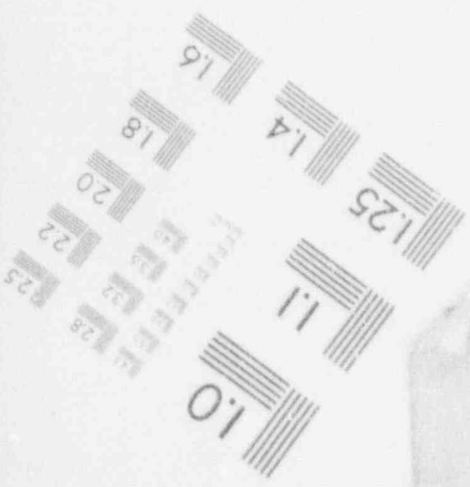
IMAGE EVALUATION
TEST TARGET (MT-3)











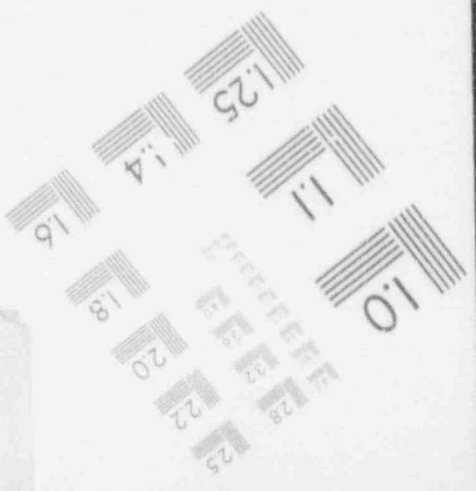


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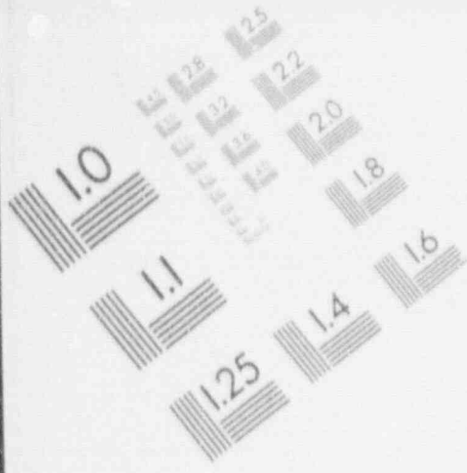
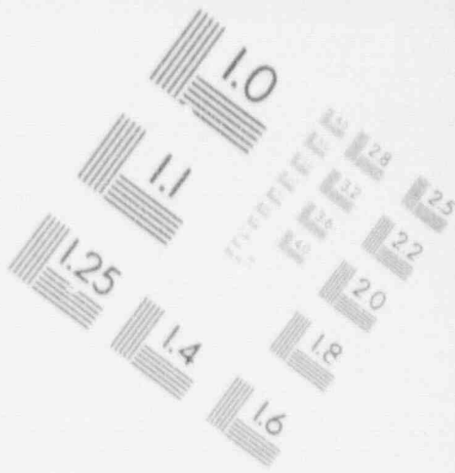
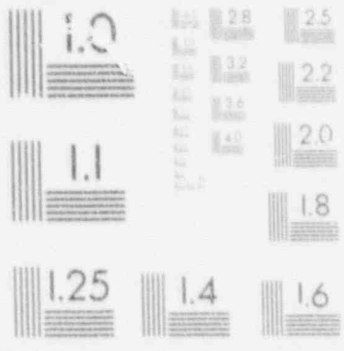
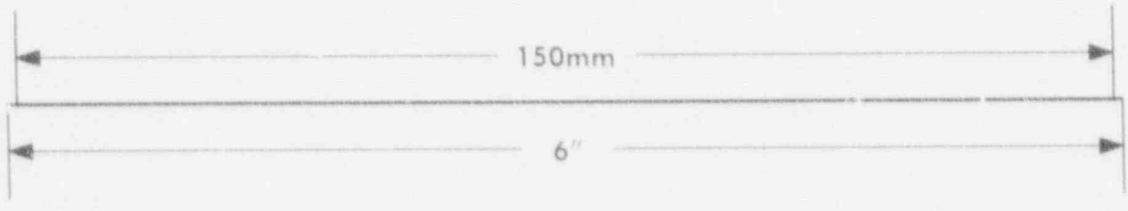
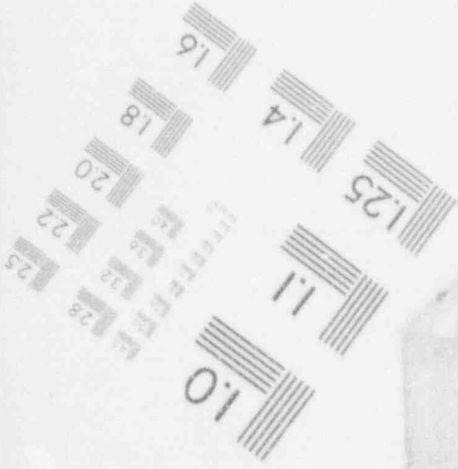
IMAGE EVALUATION TEST TARGET (MT-3)

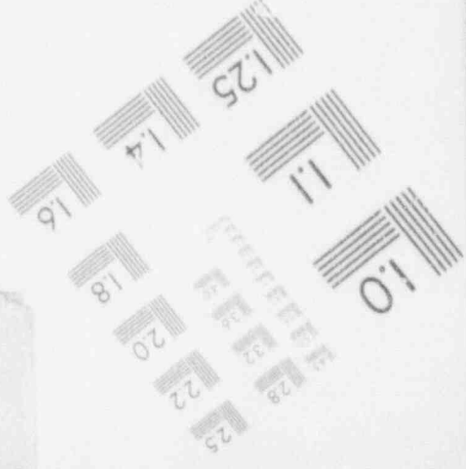












order to verify what he already knew (Mr. Hasan had first identified the problem to management back in 1982) that the calculation of the stiffness values for the entire Class 1 piping system contained gross engineering errors. Not only did Mr. Finneran refuse to recall the packages, he knowingly prepared memoranda falsely stating that Mr. Hasan had absolutely no safety concerns. These memoranda (RX 25, 31; CX 7) would become the centerpiece of Respondents' defense to Mr. Hasan's case. Mr. Rencher confirms the obvious: Mr. Hasan's concern over Class 1 stiffness values sent to Westinghouse is not mentioned in Mr. Finneran's memorandum:

> Q. [BY MR. MACK] This is Complainant's Exhibit 7, which has been characterized as Mr. Finneran's list of inconsistencies arising out of the August 19 meeting. Is the problem you mentioned that came up at that meeting about the calculations for stiffness of certain Class 1 U-bolts on the list?
>
> A. Let me check. (Perusing document.)
>
> Q. Let me get my phrase right -- stiffness values of the hardware for NPS Class 1 pipe support or stiffness of Class 1 pipe support. Is that on the list?
>
> A. I don't see it here. No

Tr. 144.

Respondents' examination of Mr. Rencher plainly demonstrates the total lack of concern for the truth. Respondents' counsel asked the witness excessively leading questions with false premises in an attempt to get Mr. Rencher to contradict both his hearing and deposition testimony. According to the transcript,

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Mr. Wolkoff asked Mr. Rencher:

> Q. Do you remember just reading about it [stiffness of Class 1 pipe supports] in Mr. Finneran's notes?
>
> A I have read about it in his notes. Yes.

Tr. 145.

The answer and question are perplexing. What notes did Mr. Wolkoff refer to? Unequivocally, no document of any kind was ever identified in discovery or during the hearing. Rather, according to to the answer to Complainant's Interrogatory 11, no such documents exist. In effect, either the August 19th notes tendered by Mr. Finneran and counsel are forgeries or Respondents' counsel asked leading questions based on made up testimony.

Mr. Wolkoff's bizarre examination of Mr. Rencher continues with the following:

> Q. Stiffness of Class 1 pipe supports, was that an issue that had been [known to (sic)] the NRC, do you know?
>
> A. No, it had not.
>
> Q. Was it an issue, however, that had been discussed amongst management?
>
> A. Yes.
>
> Q. So management was already aware of it before Mr. Hasan raised it.
>
> A. ...Yes.

Tr. 145.

The questions by Mr. Wolkoff and answers by Mr. Rencher are nothing less than shocking. Respondents' own counsel has

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elicited from its own witness that Mr. Hasan's concern of stiffness values of Class 1 pipe supports sent to Westinghouse had not been known to the NRC when Mr. Hasan raised it to Mr. Finneran on August 19, 1985. Mr. Rencher's further admission that management knew of the condition prior to the August 19th meeting corroborates Mr. Hasan's testimony that he had continually blown the whistle to management about this concern prior to the August 19th meeting. There is no room for doubt that Mr. Finneran in fact failed to recall certain packages that Mr. Hasan pleaded he recall to allow him to identify to Mr Finneran how the errors in calculating the stiffness of the Class 1 pipe supports occured.

Not only did Mr. Finneran refuse to recall the packages, he knowingly prepared and submitted into evidence memoranda he knew to contain absolute false statements to the effect that Mr. Hasan had no safety concerns. These memoranda (RX 45, RX 31) would also become the centerpiece of Respondents' attempt to deceive the NRC (via answers to interrogatory questions posed by the intervenor CASE) as well as the DOL through the submission of false testimony by Mr. Finneran.

3. Deposition testimony of Mr. Chamberlain

Mr. Chamberlain's deposition testimony further establishes that Mr. Hasan raised stiffness of class 1 pipe supports to Mr. Finneran on August 19th.

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Q. [BY MR. KOHN] Well, on August 19,. . . stiffness was raised in Mr. Hasan's last conversation with him; is that correct?

A. I believe it was one of the items that he discussed with Mr. Finneran in the exit interview.

* * *

Q. [BY MR. KOHN] Okay, on August 19, 1985, you discussed and Mr. Finneran discussed incorrect stiffness values on Class 1 piping stress analysis with Mr. Hasan.

A. ...I discussed it with Mr. Finneran after he talked with Mr. Hasan in the exit interview [when] he asked me about some of the items that Hasan had brought up...

Chamberlain Deposition. Tr. at 236, 244-245, (emphasis added).

B. Respondents Covered-up Mr. Hasan's Concern About Incorrect Stiffness Values Having Been Sent to Westinghouse Since 1982, and Respondents' Counsel Suborned Mr. Finneran's Perjurous Testimony By Allowing Him to Deny Under Oath that Mr. Hasan Had Ever Raised Incorrect Stiffness Values to Mr. Finneran On August 19, 1985

Mr. Finneran (and others) engaged in an active cover-up of Mr. Hasan's concern over the fact that incorrect stiffness values had been sent to Westinghouse. Tr. 17-118, 148-149, 235, 238, 263-264. Respondents have been covering up this concern of Mr. Hasan's since 1982, when Mr. Hasan raised the concern with Mr. Rencher, and thereafter when he raised the concern to Messrs. Hemrajani and Chamberlain. Tr. 264-266. To be sure, when SWEC began its requalification effort of the Class 1 piping system, they also used the Westinghouse analysis.

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If the truth was known about the incorrect stiffness values at the time SWEC began its requalification, it would have been apparent to all concerned, including the NRC and the ASLB, that the schedule SWEC and Texas Utilities submitted to its shareholders, the ASLB and the NRC were in fact fraudulent and impossible. Although Respondents' concede in their reply brief that Stone & Webster's "goals were high: to develop within seven months a single, uniform set of pipe support criteria...to requalify the pipe support work...and to conclude all remaining pipe support work," Respondents' Brief in Support of the RD&O, at p.12, what they ommit is that their goals were impossible and that Mr. Hasan knew it. Is it possible to conceive of any greater motive to discriminate against Mr. Hasan than his knowlege over the fact that SWEC's initial requalification schedule was fraudulent?

Indeed, Respondents did everything conceivable to disuade Mr. Hasan from raising his concerns to the NRC while he was employed on site. To stop him from going after he left, Mr. Finneran falsely asurred Mr. Hasan that all of his concerns, and in particular his concern over incorrect stiffness values, were already factored into SWEC requalification plan. Mr. Finneran repeatedly assured Mr. Hasan that there was no reason to show him where the errors had been made.

Respondents felt secure that their secret would remain undetected once Mr. Hasan was removed from the site, particularly after Mr. Hasan was asked to write a memo to NPS about the status of his concerns at Comanche Peak. RX 46. Indeed, as RX 46

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states, Mr. Hasan explained to Respondents that "it must be pointed out that any technical items, discussed below, are NOW MEANINGLESS as [Texas Utilities] senior representative John Finneran told me on August 19, 1985 "Stone & Webster Engineering Corporation shall do everything from the beginig!" RX 46 at p. 1 (empnasis and capitalization in original).

Unfortunately for Respondents, Mr. Hasan chose not to believe Mr. Finneran, and on January 10th and 30th, 1986, after contacting them back in August, 1985 (CX 15), Mr. Hasan was finally able to present to the NRC his concern over incorrect stiffness values (concern No. 26), as well as the 64 other concerns listed in the NRC 's May 28, 1987 letter to Texas Utilities. CX 14..

The significance of Mr. Hasan's disclosure over incorrect stiffness values sent to Westinghouse cannot be overlooked. Under 10 CFR 50.55(e) Texas Utilities had a legal duty to notify the NRC of the violation the moment they learned of it. The date the violation was first detected and reported to the NRC is documented pursuant to established NRC regulation. The date that Respondents first notified the NRC of the incorrect stiffness values undeniably occured on May 28, 1986 via letter from Texas Utilities executive vice president, Mr. Counsil.

This letter states:12/

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12. This letter was first brought to the ALJ's attention as an exhibit to Complainant's Second Motion for Default Judgment/Disqualification, filed on June 16, 1987.

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> On Apr l 29, 1986, we verbally notified your Mr. T.F. Westerman of a deficiency involving the use of incorrect pipe support stiffness values in the Unit 1 Class 1 pipe stress analysis. This is an interim report of a potentially reportable item under the provisions of 10CFR50.55(e). . . Westinghouse is reanalyzing these stress problems and issuing revised pipe support loads to SWEC for review . . SWEC has not yet started to assess the existing supports for adequacy due to load increases. . .

On October 17, 1986, Texas Utilities issued its final assessment of Mr. Hasan's concern over the use of incorrect stiffness values sent to Westinghouse. It states:13/

> On April 29, 1986, we verbally notified your Mr. T.F. Westerman of a deficiency involving the use of incorrect pipe support stiffness values in the Unit 1 Class 1 pipe stress analyses. . .We are reporting this issue under the provisions of 10 CFR 50.55(e) and the required information follows.
>
> DESCRIPTION
>
> As identified during the CPSES pipe support requalification effort, incorrect stiffness values were used in the Unit 1 Class 1 piping stress analyses.
>
> Review of the ongoing requalification program has indicated that approximately 30% of the existing pipe supports are overstressed or require modification primarily due to load increases... As a result of these conditions, all stress problems are currently scheduled for reanalysis...
>
> SAFETY IMPLICATIONS
>
> In the event the deficiency had remained undetected, the integrity of the Class 1 piping and supports could not be assured during normal operating or accident conditions.

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13. See Footnote 12, supra.

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This letter confirms that Mr. Counsil of Texas Utilites allegedly did not know of the incorrect stiffness values until after SWEC's requalification effort commenced. The utilities' highest ranking officer for nuclear matters unequivocally states that the "normal" operation of the nuclear plant was in jeopardy had Mr. Hasan's concern remained "undetected."

Mr. Finneran's failure to disclose Mr. Hasan's concern in his August 19th memoranda and in testimony was not because he did not understand Mr. Hasan's concern or that he did not perceive its significance -- indeed Mr. Finneran has a masters degree in engineering and is the Utility's chief pipe support engineer on site. Mr. Finneran's false testimony resulted simply because the Utility wanted to cover-up Mr. Hasan's safety concerns. Mr. Finneran sent Mr. Hasan packing, telling him he knew about the concern, that SWEC knew about it and that he should not worry becasue his concern was already moot. He then prepared memoranda stating that Mr. Hasan had not raised a single safety concern and that he gave Mr. Hasan a copy of the memoranda (which he did not). This was a premeditated act on the part of Texas Utilities to cover-up safety concerns at the site. Indeed, Mr. Hasan's concern over the use of incorrect stiffness values was not reported to the NRC until April 29, 1986, three months after Mr. Hasan provided the NRC with explicit testimony on this issue. See CX 14, Concern No. 26.

Beyond a shadow of a doubt, on August 19, 1985, Mr. Hasan "begged" and "pleaded" with Mr. Finneran to correct the stiffness

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values sent to Westinghouse. In this regard, Mr. Hasan pleaded with Mr. Finneran to retrieve certain pipe support packages so that Mr. Hasan could personally point out to Mr. Finneran during the August 19th meeting how the incorrect stiffness values had been sent to Westinghouse. At that point in the meeting, Mr. Finneran knowingly and purposefully misled Mr. Hasan with false statements when he told Mr. Hasan that the incorrect stiffness values had already been identified to SWEC and as such his disclosure was entirely moot. The obvious intent of Mr. Finneran's statements was to derail Mr. Hasan from further pursuing this concern with the NRC or CASE.

Clearly, the creation of the August 19th memoranda constitute premeditated acts on the part of Texas Utilities management in an ongoing cover-up of Mr. Hasan's concern over the use of false stiffness values during the requalification effort. Indeed, once Mr. Hasan was banished from the site, Texas Utilities was once again free to use the false stiffness values during SWEC's effort to requalify the Class 1 pipe support design of the Comanche Peak plant.

Respondents' counsel knowingly attempted to suborn perjury when Mr. Wolkoff posed the following leading que tions to Mr. Rencher:

> Q. ...I take it since you don t recollect being there when he raised it [stiffness of Class 1 pipe supports], you don't know what Mr. Hasan was talking about when he raised the point.
>
> A. That is correct.

Tr.___

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This question came after Mr. Rencher had testified that not only did Mr. Hasan raise the issue to Mr. Finneran, but that Mr. Finneran understood it and that they had discussed it even after Mr. Hasan left the meeting. Tr. 117-118.

On re-direct, when Complainant's counsel attempted to establish that Mr. Rencher's deposition testimony was consistent with his earlier testimony, namely that Mr. Hasan raised the issue of stiffness during the August 19th meeting, Mr. Wolkoff knowingly attempted to mislead the court when he stated:

> MR. WOLKOFF: Objection, Your Honor. [Mr. Rencher's testimony on cross] is not inconsistent with his testimony [at his deposition].
>
> JUDGE LINDEMAN: The record will speak for itself regarding consistency.

Tr. 149.

Indeed, the record establishes that the only time Mr. Rencher strayed from the truth was when his own counsel, Mr. Wolkoff, asked bizarre questions of the witness that have no basis in fact. The record establishes that Mr. Wolkoff attempted to suborn perjured statements from Mr. Rencher when he took the witness stand. Given the pressure Mr. Rencher had to overcome to testify against his superior and to testify truthfully when his employer's attorneys attempted to get Mr. Rencher to change his story before he entered the witness box, it is nothing less than astounding.

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Respondents assert that the ALJ "commented on . . . Mr. Hasan's total lack of credibility during his day-long testimony. Recommended Decision and Order at 6." See, Brief of Respondents at 29. While the ALJ did make limited credibility findings in the RD&O none appeared on page 6, and the ALJ never used the term "total lack of credibility" to describe Mr. Hasan's testimony. Respondents' mischaracterization of the RD&O is more than zealous advocacy -- it is downright malicious. Complainant regards Respondents' misrepresentation as sanctionable conduct under FRCP Rule 11.

The substance of Respondents' request for attorneys fees and costs is itself frivolous as Respondents' counsel could include not even a single legal authority to support his request. Complainant will not waste the Secretary of Labor's time addressing what amounts to Respondents' desire to be compensated for responding to Complainant's discovery requests.

CONCLUSION

It is disturbing that Respondents' counsel would engage in subornation of perjury and other sanctionable behavior in order to prevail before Administrative Law Judge Lindeman. The fact that some of the highest ranking officials at the Comanche Peak facility felt it necessary to perjure themselves rather than admit to the concerns Mr. Hasan had brought to their attention

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demonstatates fear on the part of Respondents, let alone mere knowlege, that Mr. Hasan had raised safety concerns of immense proportion. Indeed, Mr. Hasan's disclosures stood in the way of certifying the pipe support system of the Comanche Peak facility. Mr. Hasan was blacklisted from the site in order to assure the implementation of a patently false and impossible requalification schedule of the Comanche Peak pipe support system. Mr. Hasan was more than an internal whistleblower, he was a engineer whose career was seriously damaged simply because he refused to sign-off on improper design documents.

For all the of reasons set forth above, the Secretary of Labor must rule in favor of Mr. Hasan.

Respectfully Submitted,

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April 18, 1988

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EXHIBIT 1

Plaintiffs'
Exhibit G

Speed Letter. 44-912 | GrayLine | [illegible]

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Speed Letter.

J. RYAN

From M. J KAPLAN
TSORE (VENDOR CERTIFICATION)

ect MK# CC-1-191-012-CALR

Date 1-10 19 82

ESSAGE

PLEASE INITIATE ACTION TO PROVIDE E-W BRACING FOR CITED SUPPORT TO MEET REQTS OF SNT 4G/1& SECTION I OF THE STRUCT WELDG MANUAL GANG PAK NO. 605 PERTAINING TO RESTRAINTS CITED BELOW IS FURNISHED WITH THIS MEMO:

CC-191-005-CALR
CC-191-012-CALR

SIGNED [illegible]

DUE 25 Jan. 19 82

EPLY

Falcon stiffener fittings supplied do not meet requirements for out-of-plane bracing may be utilized if the additional loads due to frame acceleration is considered. Use 1g acceleration of frame, calculate [illegible] reactions at the knuckle & assure that weld welds are acceptable. Modifications to brace types of this type are extensive & expensive and should only be requested as a last resort.

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SIGNED [illegible]

CERTIFICATE OF SERVICE

I hereby certify that a copy of the aforegoing reply brief was hand-delivered on April 18, 1988 to:

Secretary of Labor
Office of Administrative Appeals
U.S. Department of Labor
200 Constitution Ave., N.W.
Washington, D.C. 20210

and I certify that a copy was sent on April 18, 1988 by first class mail, postage prepaid, to:

Mr. Harvey J. Wolkoff, Esq.

Ms. Katrina Weinig, Esq.

Ropes and Gray

225 Franklin Street

Boston, MA 02110

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UNITED STATES OF AMERICA
BEFORE THE SECRETARY OF LABOR

S.M.A. HASAN, Complainant, v. NUCLEAR POWER SERVICES, INC., STONE AND WEBSTER ENGINEERING CORP., TEXAS UTILITIES ELECTRIC CO., INC., Respondents.	No. 86-ERA-24

COMPLAINANT'S RESPONSE TO
RESPONDENTS' BRIEF TO THE SECRETARY OF LABOR

I. OVERVIEW AND PERSPECTIVE

Remove the obvious falsehoods from this proceeding and a very straightforward case of retaliation by Respondents against Mr. Hasan emerges.1/

Mr. Hasan is and was an exceptional structural engineer, who constantly detected complex and simple design errors during the certification process of the Comanche Peak facility that either

1. The false statements made in the briefs filed by Respondents' counsel were so gross and outrageous that Mr. William Counsil, Texas Utilities Executive Vice President, was forced to send a sincere appology to the Intervenor, Citizens Associated for Safe Energy (CASE -- who is a party in the ongoing licensing hearings before the Atomic Safety Licensing Board) for the false and malicious made-up story that CASE had employed spies on site.

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no other engineers on site detected or bothered to report to management.

Sixty-five of the concerns Mr. Hasan raised to management during his tenure at Comanche Peak are set forth in a May 28, 1987 letter from the NRC to Texas Utilities. This list was introduced at trial as Complainant's Exhibit 14.[2] In a January 6, 1988 correspondence, the NRC recently informed Mr. Hasan that his 65 allegations set forth in the May 28th letter to Texas Utilities had been "substantiated."[3]

Beyond merely raising safety concerns to management, Mr. Hasan's concerns were sound, valid and true. The NRC so found.

One of the numerous and more notorious falsehoods Respondents' counsel raises in every post-hearing filing is the assertion that Mr. Hasan never raised a single safety concern to a single manager throughout his tenure at the Comanche Peak site. The most recent episode in which Respondents' counsel claims that "Texas Utilitites was not aware of Mr. Hasan's having raised any safety concerns," is contained in Respondents' Brief in Support of the RD&O, at p. 4. Similarly, on page 5 of this pleading Respondents likewise state that "Mr. Hasan in fact did not raise any safety concerns while at Comanche Peak."

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2. Hereinafter Complainant's exhibits introduced at the hearing are refered to as "CX" and Respondents' Exhibits at "RX." Cites to the hearing transcript are indicated by a "Tr." followed by the page number.

3. Complainant has filed together with this pleading a Motion to Augument the Record with a copy of the January 6, 1988 NRC correspondence to Mr. Hasan.

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Later still in this pleading they again claim that:

> none of [Mr. Hasan's] superiors at Comanche Peak had any information or belief that Mr. Hasan had any safety concerns about Comanche Peak. . . Id. at p. 13, Fn. 6.

A more false assertion is hard to phathom. Respondents are well aware that Mr. Hasan continually blew the whistle about dozens of safety concerns. How can Respondents' counsel make such a statement in good faith when its own witnesses admitted at their depositions that Mr. Hasan had raised dozens of safety concerns to them while employed on site. 4/

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4. Complainant cites to the Depositions of Messrs. Chamberlain Rencher, Finneran and Ryan in this and in its earlier filed pleading eventhough these despositions were not formally introduced into the record during the hearing. Complainant has been forced to rely on these depositions soley to refute obvious false statements made by Respondents' counsel, or to demonstrate beyond a reasonable doubt that Respondents' counsel relied on perjurous testimony. Complainant had no idea that Respondents would regularly resort to making false statements or that they would resort to using perjured testimony even after the perjurous nature of the testimony was identified to Respondents and to the ALJ. Thus, had it not been for the gross and outrageous conduct of Respondents' counsel, Complainant would not now need to rely on the desposition testimony of Messrs. Rencher and Chamberlain. Unfortunately, it was not possible to predict that Respondents' counsel would go to the extremes they have in order to prevail before the ALJ. Given the unforseen circumstance that Respondents' counsel would regularly present falsehoods to this tribunal, Complainant formally submits a Motion to Augment the record with the Transcripts of Messrs. Rencher, Chamberlain Finneran and Ryan, filed under separate cover.

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Mr. Rencher testified that of the 65 concerns enumerated in the May 28th letter from the NRC to Texas Utilities (CX 14), he remembered Mr. Hasan bringing to his atention concerns Nos. 8, 11, 13, 14, 23, 24, 36, 57, 61, and 65. Rencher Depsotion Tr., at pp. 241 to 252. Similarly, Mr. Chamberlain testified at his deposition that Mr. Hasan had raised with him concerns nos. 1, 3, 5, 7, 8, 9, 11, 12, 13, 15, 16, 19, 21, 23, 24, 26, 28, 30, 32, 34, 35, 36, 37, 39, 41, 47, 48, 58 and 65. Chamberlain Deposition Tr. at pp. 60-164. Indeed Respondents go as far as to assert that the "evidence was totally without contradiction" that Mr. Hasan never raised a single safety concern to any of his supervisors. Respordents' Brief in Support of the RD&O, at p. 13, Fn. 6. The obvious truth is that Mr. Hasan continually raised to his supervisors dozens of safety concerns.

Far from being "without contradiction," the record establishes exactly the opposite. The hearing transcript demonstrates that Mr. Hasan raised: incorrect calculations of the Stiffness values of the Class 1 pipe support system (Tr. pp. 117-118, 148-149, 235, 237, 285-289); Richmond Inserts (Tr. 239-241, 246, 247-248); incorrect calculations of punching shear (Tr. 75, 231-233, 264-266); Inconsistent criteria used to calculate the same pipe supports (Tr. 272); Minimium weld violations (Tr. 168, 190, 542); improper STRUDL input (Tr. 260, 273, 378, 443-444); use of improper earthquake loads when calculating pipe supports (Tr. 261); incorrect minimium frequency criteria/base plate thickness (Tr. 281); incorrect allowable loads of Hilti bolts (Tr. 243), just to name a few.

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It is nothing less than sanctionable conduct for Respondents' counsel to state that the evidence was "without contradiction" that Mr. Hasan never raised a single safety concern to his supervisors when in fact the record was just the opposite.

The record is without contradiction that Mr. Hasan's supervisor, Mr. Rencher, testified quite clearly and convincingly that Mr. Hasan repeatedly blew the whistle to him about the stiffness values of the Class 1 piping system, and when asked if that concern was "safety-related," Mr. Rencher replied "I would say so. Yes." Tr. 118.

Complainant's counsel is left with the impression (indeed the reality) that Respondents' counsel is incapable of submitting a post-hearing brief that does not contain numerous gross and outrageous falsehoods.

The undeniable truth is that Mr. Hasan found himself surrounded by incompetence, managers and line engineers alike.

One particular disclosure Mr. Hasan made was that his line supervisor, Mr. Hemrajani, would place a stack of pipe support packages before him and sign off on the designs without checking them. Mr. Hasan sat next to Mr. Hemrajani and observed this happening on a daily basis. He could not believe that managers themselves would sign off on documents without doing the required checking of the documents. Production over safety was business as usual in the Comanche Peak pipe support groups.

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Day in and day out, Mr. Hasan sat and watched an engineering nightmare. He would find egregious errors. When he brought his concerns to management, he was told to ignore them.

Beyond the gross incompetence of management, Mr. Hasan became alarmed over the fact that the pipe support design was being performed by different organizations using different design criteria to construct the pipe support system of the Comanche Peak facility.

Mr. Hasan soon realized that pipe supports designed by one organization were being transferred into his organization for certification with criteria other than what it had been designed with. This meant that the same pipe support was being designed and certified using at least two different sets of criteria.

Mr. Hasan next realized that after he rejected a pipe support, in particular when the pipe support's Richmond Insert design failed, the rejected pipe support was taken out of his group and transferred into another group where it was certified often <u>without modification</u>. Mr. Hasan could not phathom how the same pipe support could be considered defectively designed by one group, only later to be certified by another group without undergoing any type of modification.

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After observing the method used by management to certify pipe supports, Mr. Hasan came to the correct conclusion that the safety of the Comanche Peak facility was in jeopardy unless management implemented a uniform set of criteria, at least with respect to the Richmond Insert design.

As time passed, Mr. Hasan, conscience-struck over design and engineering problems in the pipe support design of the Comanche Peak facility, became more and more determined to resolve the engineering nightmare he had uncovered. He engaged in a steady stream of internal whistleblowing to Messrs. Finneran, Chamberlain, Rencher, Hemrajani, Sherrer, Hill and others. Indeed, Mr. Ravada, when asked if he ever "told Mr. Sherrer that Mr. Hasan might go to the NRC," stated "...Yes." Tr. 71.

To stop Mr. Hasan from escalating his whistleblowing from internal disclosures to contact with the NRC, management fostered an atmosphere of intimidation and retaliation. Line supervisors would walk up to Mr. Hasan and to his face accuse him of being a whistleblower and spy for CASE. These same managers (Hemrajani, Rencher, Hill) encouraged line engineers to harass Mr. Hasan. This harassment often surfaced as religious discrimination (an easily provoked response as Mr Hasan was a religious minority of one Muslim in a group supervised and dominated by members of the Hindu faith) -- to the point where open religious discrimination (name-calling, etc.) was practiced in the NPS group, by his supervisor, Mr. Hemrajani, and line engineers alike.

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When Mr. Hasan went to management for help, he was told that no initimidation or discrimination existed on site. The problem of retaliation and harassment-- like the engineering design flaws he also brought to management's attention -- were all just figments of Mr. Hasan's imagination.

The more management refused to correct the problems Mr. Hasan encountered, the more open and flagrant the harassment and discrimination became. For example, one line engineer, without provocation, behind Mr. Hasan's back pulled out a knife and dropped it behind his back onto the chair Mr. Hasan sat in, hard at work -- the often-mentioned but unexplained "knife incident." See, Respondents' Brief to SOL, at p. 8.

The fact that a line engineer was allowed to pull out a knife and drop it behind the back of Mr. Hasan in plain view of other engineers and make sick and demented religious slurs with the knowledge and complicity of management does not speak to Mr. Hasan's inability to get along with other line engineers. It merely defines the level of harassment and intimidation encouraged by management against Mr. Hasan in a vain attempt to control his whistleblowing. Labor case law is replete with examples of employers utilizing employees to harrass and discriminate against another employee for having engaged inprotected activity. There is no difference in the case of Mr. Hasan.

In spite of the increased intimidation and harassment, Mr. Hasan rejected more pipe supports than other engineers in every group to which he was ever assigned.

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Plaintiffs'
Exhibit C

II. MANAGEMENT'S KNOWLEDGE OF MR. HASAN'S WHISTLEBLOWING ACTIVITIES

Messrs. Ryan and Finneran were shown to have actual knowledge of Mr. Hasan's whistleblowing activity. But for Mr. Ryan's recommendation and Mr. Finneran's decision to remove Mr. Hasan from the Comanche Peak site, Mr. Hasan would have been offered a job by SWEC. This fact is not contested. What is contested is whether Messrs. Finneran or Ryan had any knowledge of any of Mr. Hasan's safety concerns. Respondents contend that they did not have knowledge of either Mr. Hasan's repeated threats to go to the NRC or even the fact that he had in fact ever raised a single safety concern while employed on site. Respondents' Brief in Support of the RD&O, at p. 4, 13. Respondents' assertion is both ludicrious and absolutely false.

As will be detailed later in this brief (See Sections VII and X, infra.), both Mr. Ryan and Mr. Finneran committed perjury in order to conceal knowledge of Mr. Hasan's whistleblowing activity.

Essentially, Mr. Ryan absolutely purjured himself when he denied that PSE pipe supports were being sent for certifiction to the NPS group. This transfer is believed to be highly illegal -- it no doubt resulted in the improper certification of an unsafe pipe support design. The significance of Mr. Ryan's knowledge of the fact that Mr. Hasan was rejecting PSE pipe supports while in NPS is that it proves first hand knowlege on the part of Mr. Ryan

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regarding the reasons Mr. Hasan rejected the supports. Attached to the pipe supports Mr. Hasan rejected were cover memos stating the reasons the supports had been rejected. These memos were issued directly to Mr. Ryan and prepared directly at his request. Thus, by reviewing these memos, Mr. Ryan had complete knowledege of all of the reasons Mr. Hasan rejected PSE pipe supports while he was stationed in the NPS group (1982 through 1984). As is explained in detail infra, not only did Mr. Ryan know all of the concerns Mr. Hasan raised between 1982 and 1984, he was the manager in charge of certifying all of the PSE pipe supports illegally sent to NPS for certification that Mr. Hasan rejected. Obviously, Mr. Ryan had complete knowlege of every concern Mr. Hasan raised over the use of inconsistent criteria when certifying pipe supports designed by other groups using different criteria.5/

After rejecting a PSE pipe support due to differences in criteria, particularly in Richmond Insert design, Mr. Hasan would take the rejected pipe support package to Messrs. Rencher and Hemrajani. Mr. Hasan would show them the reason he was rejecting the package and plead with them to speak to Mr. Ryan about his concerns over certifying pipe supports with different sets of criteria. He particularly pleaded with them to explain to Mr.

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5. Respondents' claim that Mr. Hasan only rejected pipe support packages directly to line engineers, not to management, and that "none of his supervisors at Comanche Peak had any information or belief that Mr. Hasan had any safety concerns" Respondents' Brief in Support of the RD&O, at p. 13, is ridiculous on its face given Mr. Ryan's role in illegally certifying the very pipe supports that Mr. Hasan had rejected. For a more detailed account, see Section VI, infra.

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Ryan the need for a single set of criteria when certifying a Richmond Insert. Mr. Hasan's pleas were in vain. Every manager he spoke with uniformily came back to inform Mr. Hasan that Mr. Ryan had emphatically rejected his request. (Between January, 1982 and May, 1984, Mr. Hasan requested the following managers to discuss with Mr. Ryan his concern over the certification of Richmond Insert design using inconsistunt criteria: Mr. Rencher, Mr. Hemrajani and Mr. Sherrer; in 1985 he requested the same of Mr. Chamberlain and Mr. Hill (Tr. 258, 264-266). Mr. Chamberlain testified that he brought Mr. Hasan's concerns directly to Mr. Ryan between February and August of 1985, Tr. 168, 190.

Well before Mr. Hasan was transferred out of NPS, Mr. Ryan's contempt over Mr. Hasan's rejection of pipe supports was so complete that he once made an obscene gesture at Mr. Hasan when he saw him in the hallway. Tr. 274-275.

After receiving a retaliatory transfer out of the NPS group (against his wishes), Mr. Hasan was assigned to work under Mr. Barry Hill. It is while stationed in Mr. Hill's group that Mr. Hasan would repeatedly threaten Mr. Hill that he was about to "go to the NRC," unless his safety concerns were adequately addressed. Tr. 273, 378, 443-444. On one of the more acrimonious occasions, Mr. Hasan shouted out loudly enough for the entire section to hear his threat to go to the NRC. As Mr. Hasan explained, ". . . they were forcing me to sign . . . wrong documents. . . therefore, trouble was the natural outcome of it." Tr. 378-379. Mr. Chamberlain corroborated the fact that he had

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been told by Mr. Hill that Mr. Hasan had threated to "go to the NRC." Tr. 192. Mr. Ryan was duly informed of the incident once he returned from vacation. Tr. 532, 538.

Indeed, from the moment Mr. Hasan stepped foot in Mr. Hill's group, he was subjected to extreme harassment. At least once a week Mr. Hill would approach Mr. Hasan and call him a "spy" or an "agent" for CASE or the NRC. Tr. 270. Notably, Respondents did not call Mr. Hill as a witness to refute Mr. Hasan's testimony, nor did Respondents notice Mr. Hill for deposition.

Knowledge of Mr. Hasan's safety concerns had to be known to both Mr. Ryan and Mr. Finneran due to their membership in the "Design Guidelines Committee." Tr. 21-22. The Committee had about 6 members in all, including Mr. Chamberlain. The Design Guidelines Committee was responsible for all changes made to the design criteria used by the Pipe Support Design Group (PSE) when qualifying pipe supports.

Often when Mr. Hasan would raise a safety concern he would refuse to sign-off on the paperwork unless he received in writing a memo from the Design Guidelines Committee stating that Mr. Hasan was to ignore a particular concern when certifying the design of a support. These memos came directly from the Design Guidelines Committee.

The memo writing function of the Design Guidelines Committee kept its members constantly appraised of every safety concern Mr. Hasan raised. Indeed, Mr. Chamberlaintestified that whenever Mr.

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Exhibit G

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Hasan raised a technical concern during the certification of a pipe support, he was forced to present Mr. Hasan with a memorandum before Mr. Hasan would release the package. Tr. 166.

Thus, as members of the Design Guidelines Committee, Messrs. Ryan and Finneran knew every package Mr. Hasan refused to sign off on and why.

Two memos from the Design Guidelines Committee addressing Mr. Hasan's concerns were turned over in discovery after they were altered by Mr. Chamberlain at the direction of Respondents' counsel. Chamberlain Deposition Tr. at p. 217. One altered memorandum concerned minimium weld violations (Concern No. 65 as identified in CX 14); the other, U-bolt stiffness (one of the concerns Mr. Hasan raised to Mr. Finneran on August 19, 1985). Both were submitted as exhibits to Complainant's Second Motion for Default Judgment or in the Alternative for Disqualification (Exhibits 7 and 8 thereto).6/

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6. In an apparent abuse of discretion, the ALJ denied Complainant's Second motion for Default/Disqualificaiton (dated June 16, 1987). The motion was based on the facts surrounding the alteration of two key and vital documents concerning Mr. Hasan's whistleblowing disclosures concerning miniminu weld violations (Exhibit 7) and U-Bolt stiffness (Exhibit 8). This motion upon receipt, was denied by the ALJ as being "inappropriate." See Order of Judge Lindeman, Dated June 17, 1987. Respondents were never required to respond and indeed they did not do so. Exhibit 7 constitutes one memo given to Mr. Hasan by Mr. Chamberlain on one pipe support package Mr. Hasan refused to certify until his concern over minimium weld requirements was addressed by the Design guidelines Committee. A second memo concerning weld requirements, CX 9, was also created by Mr. Chamberlain after Mr. Hasan again would not proceed to certify another pipe support.

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Obviously, as members of the Design Guidelines Committee, Messrs. Rayan and Finneran had intimate knowledge of Mr. Hasan's safety concerns about every issue on which Mr. Hasan caused a memo to be drafted.

In addition to the above, Mr. Ravada testified at length that he had a three hour conversation with Mr. Finneran on August 16, 1985, of which one hour nothing but the subject of Mr. Hasan's safety concerns was discussed, Tr. 78; including Mr. Hasan's concern over punching shear and Richmond Inserts. Tr. 75. Mr. Ravada's testimony concerning his hour-long conversation with Mr. Finneran about Mr. Hasan's safety concerns was emphatic. Yet Mr. Finneran altogether denied the conversation ever took place. Indeed, not only did they discuss Mr. Hasan's concerns, Mr. Finneran asked Mr. Ravada if he knew whether or not Mr. Hasan had gone to the NRC with his concerns, and Mr. Ravada testified that he informed Mr. Finneran that Mr. Hasan may have already gone to the NRC. Tr. 75. Once again, Mr. Finneran's memmory failed; he denied the conversation ever took place. Tr. 26. Mr. Finneran's memmory also failed him when he could not recall conversations he had with Mr. Rencher about "spies" for CASE existing on site. Tr. 24. Mr. Rencher had no dificulty recalling these conversations. Tr. 116

Without question, the concerns Mr. Hasan raised when checking pipe support packages caused Mr. Ryan to fall behind schedule in his effort to certify the plant. Indeed, Mr. Ryan admitted that Mr. Hasan raised more technical concerns and

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rejected more PSE packages than anyone else. According to Mr. Ryan, Mr. Hasan's repeated rejection of pipe support packages caused "disruption" to his production schedule. Tr. 543-544.

III. MR. HASAN'S REJECTION OF MR. RYAN'S PIPE SUPPORTS

The simple reality is that but for Mr. Ryan's adverse recommendation, Mr. Hasan would have been hired by Stone & Webster. Mr. Ryan gave as his only alleged reason for not recommending Mr. Hasan the fact that Mr. Hasan's presence on site caused disruption during the certification process.

The disruption was caused due to horrendous design flaws Mr. Hasan uncovered while reviewing pipe support designs. The primary cause of the design flaws, as far as Mr. Hasan could tell, was due to the use of inconsistent design criteria when designing and constructing the plant.

The crux of the problem was that Texas Utilities had established three separate organizations to design and certify discrete portions of the Comanche Peak pipe support system. They were (1) the Nuclear Power Services, Inc. group (NPS or NPSI), a subcontractor of Texas Utilities; (2) the Pipe Support Engineering group (PSE), managed and staffed by Texas Utilities itself, and (3) the ITT-Grinnell group (ITT), also a subcontractor of Texas Utilities.

Each design group was responsible for developing its own design criteria and for certifying every pipe support within its scope.

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Thus NPS-designed pipe supports were to be reviewed and certified exclusively according to the NPS criteria. If a pipe support designed by NPS could not be qualified pursuant to NPS criteria, it was to be rejected and redesigned by NPS. The same was true for pipe supports designed by PSE and ITT. It is, and was, axiomatic that each pipe support was to be certified using only one set of criteria -- the criteria with which it had been designed. Indeed, pursuant to contract and NRC regulations, no pipe support was to be designed according to one group's criteria and certified under another group's criteria.

So much for theory. In practice, Texas Utilities was apparently engaged in a fraudulent scheme to certify the pipe support designs of the Comanche Peak plant arbitrarily changing the scope of pipe support and certifying it with criteria other than what it had been designed with.

Line engineers, including Mr. Hasan, were not aware that shifting pipe support packages from group to group during the certification process was illegal. Rather, Mr. Hasan only knew that management's practices were contrary to standard engineering principles. What he had unwittingly uncovered was an apparently illegal shifting of pipe support packages between groups for certification. Mr. Hasan recognized that the only way to assure the integrity of the pipe support system was to institute a uniform set of design criteria for the supports being transferred between groups.

Mr. Hasan's remedy to the design flaws he uncovered were simple: introduce a uniform design criteria. What Mr. Hasan didn't realize was that such a remedy would moot the reason that the pipe supports were being transferred between groups illegally in the first place.

The key concern Mr. Hasan had over the use of multiple sets of design criteria to certify the same single pipe support concerned the support's anchoring mechanism, known as a Richmond Insert. As Mr. Hasan reasoned, since there was no way of knowing in advance how the adjacent Richmond Insert had been designed (due to the transfer back and forth of pipe supports), then there was no way to predict how the different pipe support designs would interact should a pipe support fail. A brief layperson's definition of a Richmond Insert is necessary before the gravity of Mr. Hasan's concern can be appreciated.

A Richmond Insert is a steel structure, shaped like a pig's tail (helical spring) that is placed into the foundation at the time of concreting. Once the concrete foundation is cured, a steel rod is screwed into the portion of the Richmond Insert that is exposed at the surface of the foundation. Virtually, the entire support system for the Class 1 (safety-related) piping system is anchored to a Richmond Insert.

One concern Mr. Hasan had over using different sets of design criteria when certifying the Richmond Insert design of the plant was that a progressive failure of the Richmond Inserts could easily result because the engineering consequences of interchanging the different designs had not been worked out.

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In order to better understand Mr. Hasan's concern, imagine a line of dominoes. The force necessary to knock down the entire line is only that needed to knock down a single domino. The same principle applies to Richmond Inserts -- if one fails, the load is transferred to the adjacent Richmond Insert, and if that insert was not designed to withstand the transferred load it too will fail; and so on and so on.

The problem uncovered and reported to management by Mr. Hasan was that the use of different criteria to qualify adjacent Richmond Inserts created the potential for a progressive failure of the entire pipe support system at Comanche Peak. In a nut shell, one of Mr. Hasan's concerns over the Richmond Insert design was that although each company created its particular design to assure that the transferred load of one Richmond Insert onto the adjacent pipe support would not result in a progressive failure, there was absolutely no way to determine what would happen if a Richmond Insert designed under one criteria failed and its load was transferred to an adjacent pipe support designed using a different criteria. If the load was transferred in such a way that it caused the adjacent pipe support's anchor to give way, a chain reaction resulting in the failure of all the pipe support could follow.

Thus if one Richmond Insert fails and takes its randomly certified neighboring pipe support with it, the combined force will cumulatively take out all the remaing pipe supports until the entire pipe support system collapses. The end result is a meltdown.

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Day in and day out, Mr. Hasan pleaded with management to correct this potentially catastrophic design deficiency. He demanded that a uniform design criteria be used in certifying Richmond Inserts, or at the very least that calculations and/or experiments be performed to determine the engineering consequences of using different criteria on the same pipe supports.

Indeed, Mr. Hasan was blowing the whistle on the consequence of a fradulent scheme Texas Utilities implemented to certify as safe an unsafe pipe support system. By using three separate sets of criteria, Texas Utilities had created a complex scheme where a rejected pipe support could be sent from group to group to find criteria that would allow that particular pipe support to be certified. As it would turn out, Mr. Ryan oversaw the transfer of pipe supports from group to group. In effect, he was one of the chief ringleaders behind the fraudulent certification process.

Obviously, Mr. Hasan's constant whistleblowing over the use of multiple sets of criteria to certify the same pipe support and his constant rejection of pipe supports due to the use of inconsistent criteria particularly vexed Mr. Ryan for at least two reasons: first, it exposed the illegal scheme to possible detection, and second, it slowed production, interfered with schedules and caused cost over runs.

Plaintiffs'
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IV. THE FRAUDULENT CERTIFICATION PROCESS

Mr. Ryan, Mr. Finneran, and others were nothing less than criminal racketeers engaged in a scheme to certify as safe a defectively designed and constructed pipe support system.

The scheme was simple: if a modified pipe support could not be certified by one group, the "scope of responsibility" for the failing pipe support was transferred to another group in the hope of certifying it without any rework. Rencher Deposition Transcript at p. 264; Chamberlain Deposition Transcript at pp. 95, 186, 190.

In essence, the fraudulent scheme for certifying defective pipe supports with multiple sets of criteria was illegal and resulted in a knowingly unsafe design. But Texas Utilities management did not care because it saved them money and kept them on schedule.

Mr. Chamberlain refers to this illegal scheme as the "go-around." Chamberlain Deposition Transcript at p. 190. As the name implies, a pipe support design that could not be certified under its original criteria would go around from group to group in search of criteria that would allow certification.

This fraudulent scheme (hereinafter referred to as the "go-around scheme") was identified in the May 28, 1987 list of the 65 concerns Mr. Hasan originally identified in Cx 14.

Plaintiffs'
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Plaintiffs' Exhibit G

According to Concern No. 23:

> There is a concern that if supports did not meet the appropriate design criteria using the NPS design specification, the supports were sent to another pipe support design group, such as PSE, and would be considered acceptable using different design criteria. This condition indicates that different design criteria was used in the various pipe support design groups (NPS, ITT-G and PSE).

See Cx 14 at p. 3.

When Mr. Rencher, one of Respondents' own witnesses, was asked under oath during his deposition if Concern No. 23 were true, he answered with an absolutely unqualified "Yes." Rencher Deposition Transcript at p. 247. Mr. Rencher oversaw both the NPS and ITT groups. He had first hand knowledge of the practice. Whether or not he knew it was illegal is unknown.

Similarly, when Mr. Chamberlain was asked under oath during his deposition whether Concern No. 23 were true, he likewise testified unequivocally that it was common practice on site to "transfer responsibility" from group to group during the certification process. Chamberlain Deposition Transcript at p. 95. Mr. Chamberlain pointed out during his deposition that one of the reasons pipe support packages were shifted from group to group was that modified Richmond Insert designs on site could not be certified pursuant to their original design criteria. According to Mr. Chamberlain, if one group "did not have criteria addressing the Richmond Insert tube steel design...then we would transfer responsibility [from the group that originally designed the support] to the site engineering group [PSE]." Chamberlain Deposition Transcript at p. 95.

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The go-around scheme was brought expressly to the attention of the ALJ during the hearing and explicitly briefed in Complainant's post-hearing brief and reply brief. Prominently stated therein was the testimony of Mr. Rencher:

> Q. ...were you aware whether or not Mr. Hasan rejected Mr. Ryan's pipe support engineering group [PSE] pipe supports while working in your group [NPS]?
>
> A. There were pipe supports that were rejected out of my group, and I am certain Mr. Hasan had reviewed some of those.
>
> Q. And were they coming from Mr. Ryan's group?
>
> A. Yes, they were.
>
> Q. ...would Hasan attach a memo to [the PSE packages he was rejecting]?
>
> A. Yes....
>
> Q. And [Hasan] would sign those memos rejecting [Mr. Ryan's packages coming from PSE]?
>
> A. Yes.

Hearing Transcript, at pp. 120-121. Also see pp. 125, 130, 239, 275.

Undeniably, the pipe supports making the go-around between PSE and NPS were being sent in an effort to get them certified. According to Mr. Rencher's deposition testimony:

> Q. ...the NPS group was rejecting PSE supports during the certification process?
>
> A. Yes, I was aware of that.
>
> Q. Were you aware of that in 1983?
>
> A. Yes.
>
> Q. ...in 1984?
>
> A. Yes, sir.

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Q. ...in 1985?

A. Yes.

* * *

Q. The NPS group was rejecting PSE packages during the certification process, right?

A. Yes.

Q. Of those that were being rejected, were they ever then recalculated under different criteria?

A. Yes.

Q. And then they were certified after they were recalculated uder different criteria?

A. Yes.

Rencher Depositon Tr., pp. 78-81. (emphasis added).

Mr. Rencher went on to testify that he had had numerous conversations with Mr. Ryan about how to lower the rejection rate of the PSE packages going into NPS. Rencher Deposition Transcript at p. 67.

Indeed, during the hearing, Respondents' own counsel elicited testimony from Mr. Ravada to the effect that NPS rejected pipe supports from PSE. In the words of Mr Ravada: "Mr. Hasan's group [NPS] rejected some of the supports of our group [PSE] on the basis of the Richmond inserts failing...and [those] support[s] came to our group [after that for certification]." Hearing Transcript at p. 88.

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V. THE GO-AROUND SCHEME VIOLATED NRC REGULATIONS AND BREACHED CONTRACTUAL AGREEMENTS

The licensing of commercial nuclear power facilities is regulated by the Nuclear Regulatory Commission pursuant to the Energy Reorganization Act (ERA). The ERA gives the NRC the power to enact necessary regulations. Pursuant to 10 C.F.R. Part 50, Appendix B (Quality Assurance Criteria for Nuclear Power Plants), "Design changes, including field changes," shall conform to the "original design and be approved by the organization that performed the original design," and that "changes to documents shall be reviewed and approved by the same organizations that performed the original review and approval." 10 C.F.R. 50, App. B (I) and (VI) (Emphasis added). Appendix B establishes that under no circumstances are pipe supports to be transferred between groups during the design or field modification phases. Appendix B forbids the transfer of PSE-designed supports into NPS for certification. It likewise forbids the transfer out of NPS to the PSE group pipe supports that could not be certified under NPS criteria. Appendix B likewise establishes that field and design modifications have to be made by the organization which designed the pipe support.

The record establishes that Texas Utilities management (Messrs. Ryan, Chamberlain, and Finneran) instituted a scheme to transfer pipe supports from group to group during the certification process. Both Mr. Ryan and Mr. Finneran knew that this practice to be in violation of both NRC regulations and the contractual arrangements between NPS, ITT, and Texas Utilities.

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The testimony establishing that pipe supports were certified by organizations other than the organization certifying the original design is irrefutable. Mr. Rencher, without qualification, testified that the "NPS group was rejecting PSE packages during the certification process." Rencher Deposition Transcript at p. 81 (emphasis added). Mr. Rencher further testified that the PSE pipe supports transferred into NPS could not be qualified, and when that happened they were again transferred and qualified using still other criteria. Indeed, Mr. Rencher testified that a full "25 percent" of the PSE pipe supports transferred into NPS were rejected and returned to PSE and "recalculated under different criteria." Rencher Deposition Tr., at p. 81.

Obviously, Mr. Ryan knowingly violated 10 C.F.R. 50 App. B when he transferred the PSE pipe supports into NPS. He compounded the violation when he transferred the same pipe supports back out of NPS and into PSE whenever the support could not be certified by NPS.

Not only did the illegal transfer of pipe supports violate NRC regulations, it violated the contractual arrangements between Texas Utilities and its subcontractors, NPS and ITT. In perhaps the only truthful comment Mr. Ryan made during the hearing, he explained that

> There were separate contracts. The original PSE designs were [to be] reviewed by PSE. The original NPSI designs were [to be] reviewed by NPSI.

Hearing Transcript at p. 550.

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VI. MR. RYAN WAS MANAGEMENT'S POINT MAN DURING THE ILLEGAL GO-AROUND SCHEME AND AS SUCH DIRECTED IT

Every scheme needs a key player. In the case of the go-around scheme, it was none other than Mr. Jay Ryan. Mr. Ryan oversaw the transfer of pipe support packages from group to group and used the PSE group as the staging ground. All rejected pipe supports, it seems, either originated out of PSE or were transferred into PSE (and then apparently transferred elsewhere).

Just as the testimony of Messrs. Rencher, Ravada, and Hasan established the NPS-PSE transfer, Mr. Chamberlain's deposition established the ITT-PSE transfers. As Mr. Chamberlain testified:

> ...some companies did not have criteria addressing certain types of design. For example, ITT Grinnell did not have criteria addressing the Richmond insert tube steel design. If [a pipe support] got redesigned that way, then we would transfer responsibility for that hanger from [ITT-]Grinnell to the site engineering group [PSE].

Chamberlain Deposition Transcript, at p. 95 (emphasis added).

The process of transferring pipe supports back and forth between groups generated paperwork. The paperwork problem occurred after a pipe support was transferred and the second group still could not certify it. Only then would a line engineer fill out a three-part "speed memo" addressed directly to Mr. Ryan. These speed memos unrecorded anywhere on site, were used to explain to Mr. Ryan the reason a particular transferred pipe supports had been rejected.

Mr. Rencher testified both during the deposition and at the hearing about the creation of these speed memos during the go-around scheme:

> Q. [W]hen Mr. Hasan rejected Ryan's pipe support packages [he would] attach a memo to those packages.
>
> A. Yes....the memo would be initiated in my group, yes.
>
> Q. And [Mr. Hasan] would sign those memos rejecting [the PSE-designed pipe supports that he could not certify using the NPS criteria]?
>
> A. Yes.

Tr. 120-121.

The speed memos attached to the rejected pipe supports were not logged or recorded on site. They were simply cover memos directed to Mr. Ryan and, as such, Mr. Ryan was free to do with them as he chose. He threw them away, destroying the paper trail that would tell why the pipe support had been rejected. He was then free to get the pipe support certified elsewhere, albeit illegally. The fact that Mr. Hasan would reject pipe supports and attach a memo to the package addressed directly to Mr. Ryan, and that thereafter the very same pipe support would be certified in another group without modification is undeniable, as the following testimony of Mr. Rencher demonstrates:

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Q. [By Mr. Kohn] Are you aware whether or not Mr. Hasan could not certify...some of the packages he was checking?

A. [By Mr. Rencher] He could not certify some of the packages because of the NPS criteria on Richmond inserts, yes.

Q. Did you take those packages to the PSE group for certification?

A. Those supports were rejected to the PSE group.

Q. By "rejected to the PSE group," what do you mean?

A. Well, he attached a memo to it from my group to the PSE group saying the supports were rejected for the following reasons...

Q. And would the PSE group then certify the packages...

A. ...yes.

Q. (By Mr. Kohn) And they could do that because PSE was using different criteria than NPS?

A. Yes.

Rencher Deposition Tr., at pp. 96-97 (emphasis added).

On a the memos were destroyed, no paper trail of the go-around scheme remained. Not only was the transfer of pipe supports illegal, but so was the destruction of the paperwork

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accompanying the rejected supports.7/

To date, it would seem that only two copies of such cover memos escaped Mr. Ryan's watchful eye. One of them is from a Mr. M.J. Kaplan to Mr. Ryan (attached hereto as Exhibit 1). This speed memo clearly states that it is being issued due to problems Mr. Kaplan (who was removed from the site due to his repeated rejection of pipe supports and replaced by Mr. Hemrajani)8/ found when attempting to certify a PSE-designed pipe support with NPS criteria while working in the NPS group. The speed memo clearly states that the pipe support package was being rejected during the certification process. Indeed, the reply portion of this memo is signed by Mr. Rencher, and states that the pipe support, as rejected by Mr. Kaplan, could nonetheless be "certified" under NPS criteria pursuant to authority from NPS's home office.

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7. Indeed, a 10/18/84 ASLB Order demanded Texas Utilities to provide the Licensing Board with "...all relevant memoranda and deficiency paper that indicate directly or indirectly the awareness and resolution..." for every "unstable support" existing on site.

8. Mr. Kaplan was not identified in Respondents' answers to interrogatories requesting the identity of all of Mr. Hasan's supervisors. Indeed, when Complainant's counsel attempted to ask questions about Mr. Kaplan during depositions of Respondents' witnesses, Respondents' counsel refused to allow the witness to answer the questions. Some of these questions were certified for the purpose of appeal.

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The fact that the NPS home office was involved in certifying PSE-designed pipe supports demonstrates that the NPS home office would have known of the illegal scheme. Respondents' claim that NPS had no knowledge of Mr. Hasan's whistleblowing activities is simply not credible, given the apparent complicity of NPS in the go-around scheme.

The arrogance and utter contempt for law on the part of Respondents is demonstrated in that after Messrs. Hasan, Rencher, and Ravada had testified at length about the go-around scheme, Respondents allowed (indeed encouraged) Mr. Ryan to lie straight-faced that the scheme never existed -- or that at least Mr. Ryan had no knowledge of it. Mr. Ryan's repeated denial of the fact that pipe supports were being transferred back and forth between groups is disgusting, immoral, unethical, and contemptuous. Simply stated, it is perjury.

Mr. Ryan chose to perjure himself rather than admit to the go-around scheme, when in fact he was the key player. His testimony was clear and unequivocal -- that Mr. Hasan never reviewed a PSE pipe support while working in the NPS group. This testimony is consistent with his sworn and signed deposition testimony, which reads:

> Q. [By Mr. Kohn] Did you know that Mr. Hasan was rejecting packages from your group?
>
> A. [By Mr. Ryan] No. Why would he be?
>
> * * *]
>
> Q. Did Mr. Hasan reject PSE packages due to inconsistent criteria [between] NPS guidelines [and PSE guidelines]?
>
> A. He didn't review any PSE packages.

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* * *

Q. ...your testimony is that Mr. Hasan reviewed no PSE packages?

A. [Hasan] only reviewed NPSI packages when he was in the NPSI group.

* * *

Q. [D]id Mr. Hasan ever reject a PSE package that had already been certified because it did not meet NPS guidelines?

A. You can't cross guidelines...you don't cross design guidelines to review packages.

Ryan Deposition Tr., at pp. 8-10.

Similarly, Mr. Ryan's hearing testimony states that while in the NPS group, Mr. Hasan never reviewed a PSE-designed pipe support package:

Q. [By Mr. Mack] And were [PSE-designed pipe supports] ever reviewed by anyone at NPS?

A. [By Mr. Ryan] No....NPS would have reviewed their original designs. Personnel in PSE would have reviewed PSE designs.

Q. Well, what if, in fact, what occurred was something came out of PSE and it was being reviewed by NPS? Would that create a problem?

A. It wouldn't happen.

Q. It would never happen?

A. No.

* * *

Q. Okay. So that while [Mr. Hasan] worked [in the NPS group] no package designed in your group [PSE] would ever be reviewed by Mr. Hasan.

A. That is correct.

Tr. 540-541.

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Q. Are you certain that none of your [PSE] packages were ever reviewed by Mr. Rencher's group [NPS] during the time...Mr. Hasan was working there?

A. There were separate contracts. The original PSE designs were reviewed by PSE. The original NPSI designs were reviewed by NPSI.

Tr. 549-550.

VI. IN VIOLATION OF LAW AND LEGAL ETHICS, RESPONDENTS' COUNSEL ALLOWED MR. RYAN TO PERJURE HIMSELF

Respondents' counsel cannot in good faith deny knowledge that PSE-designed packages were being transferred into the NPS group and then certified with NPS criteria. The facts leading to this conclusion are inescapable.

First, Respondents' counsel was present during the deposition testimony of Mr. Rencher and Mr. Chamberlain. Indeed, when Mr. Rencher was questioned about the illegal transfer of pipe supports from PSE to NPS, Respondents' counsel interrupted the questioning to apparently correct Complainant's counsel's questions regarding the direction of the flow of packages between NPS and PSE:

Q. (BY MR. KOHN) The NPS group was rejecting PSE packages during the certification process, right?

A. Yes.

Q. Out of all the NPS packages going to PSE, what percentage were being rejected?

A. Of all the NPS packages going to PSE?

MR. WOLKOFF: You've got it reversed.

Rencher Deposition Tr., at p. 81.

Clearly, Respondents' counsel, Mr. Wolkoff, had a grasp of the apparently illegal transfer of pipe supports between PSE and NPS sufficient to allow him to interrupt Complainant's counsel's questioning to assert his knowledge of the direction of how the pipe supports flowed between PSE and NPS.

Similarly, at the hearing, Respondents' counsel, Mr. Wolkoff, subjected Mr. Rencher, under oath, to a series of leading questions that detailed the flow of pipe supports between PSE and NPS:

> BY MR. WOLKOFF [Cross-examination of Mr. Rencher]
>
> Q. During the time period that Mr. Hasan worked under your supervision at Comanche Peak, how many different sets of design criteria were in place?
>
> A. There were three...ITT Grenelle [sic], NPSI and the PSE design guidelines.
>
> Q. And did they differ one to another in certain respects?
>
> A. Yes, they did.
>
> Q. But I take it each pipe [support] that was qualified had to be qualified under one of the three different sets of criteria. Right?
>
> A. That is correct.
>
> Q. What set of criteria was employed in [the NPS] group?
>
> A. The time he [Mr. Hasan] was in my group, the NPSI criteria.
>
> Q. And what about this group with Mr. Ryan where the packages were coming from Mr. Ryan? What type of criteria were employed there?
>
> A. That was the PSE design guidelines.

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> Q. And Mr. Hasan's complained to you when he reviewed those packages [refering to Mr. Ryan's PSE packages] that the criteria that Mr. Ryan's group used were not the same as the criteria that he was using.
>
> A. Yes.

Hearing Transcript, at pp. 124-125 (emphasis added).

The fact that Respondents' counsel could lead Mr. Rencher by the nose detailing the transfer of pipe supports between PSE and NPS, establishes knowledge on the part of Respondents' counsel. As Mr. Wolkoff's questioning of Mr. Rencher establishes, Respondents' counsel obviously had to know of the illegal transfer of pipe supports between groups. How else could he lead his own witness through the illegal transfer process in the first place.

It is Mr. Wolkoff himself who states on the record that pipe supports were "coming from Mr. Ryan['s group]" only to be "reviewed" by NPS and certified with different criteria than the criteria "Mr. Ryan's group used" to design the pipe support in the first place. The fact that the testimony Mr. Wolkoff provided when examining Mr. Rencher resulted in some of the strongest evidence demonstrating the fact that pipe supports were illegally being transferred between the different groups on site is the greatest indictment imaginable.

Given Mr. Wolkoff's questioning of Mr. Rencher during the hearing, coupled with his correction of Complainant's counsel during Mr. Rencher's deposition, demonstrates beyond any conceivable doubt that Respondents' counsel had actual knowledge

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of the fact that Mr. Ryan was sending PSE-designed pipe supports to NPS for qualification using NPS criteria.9/

The facts speak for itself: after correcting the record as to the direction of the flow of packages between NPS and PSE during Mr. Rencher's deposition, and after leading Mr. Rencher through the illegal transfer of pipe supports between NPS and PSE when he testified at the hearing, Respondents' counsel allowed Mr. Ryan to falsely testify that pipe support packages were not being transferred between PSE and NPS.10/

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9. Indeed, the Ropes & Gray law firm, who represents the Respondents, was lead counsel in the licensing hearings before the ASLB. Furthermore, Mr. Wolkoff submitted afidavits on the part of the entire Ropes & Gray law firm and therefore, the knowledge of the attorneys engaged in the licensing proceedings before the ASLB must be imputed to Mr. Wolkoff as well. Also, as detailed in Complainant's Second Motion for Default/Disqualificaiton, at p. 13, a co-counsel relationship between predecessor counsel, who withdrew pursuant to settlement for this proceeeding, and the Ropes & Gray firm exists (or existed when relevant to this case). Therefore, knowlege on the part of predecessor counsel is likewise imputed to the Ropes & Gray law firm concerning knowledge of the transfer between PSE and NPS pipe supports during the certification process.

Beyond knowlege on the part of Ropes & Gray over the issue of the apparently illegal transfer of pipe supports between the various groups on site, the fact remains that exhibits apparently originally altered by predecessor counsel during trial preparation, were submitted onto the record of this proceeding by Mr. Wolkoff with the knowledge that said exhibits were altered.

10. As will also be demonstrated in Section VIII, infra., Respondents' counsel evdidently suborned perjury after Complainant initialy attempted to expose to the ALJ that Mr. Ryan had perjured himself at the hearing. In their Reply brief, Respondents' counsel defended Mr. Ryan's perjurous statements with false and misleading facts intending to, and in fact suceeding in, misleading the ALJ about the perjurous nature of Mr. Ryan's testimony.

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Regardless of when Respondents' counsel came to know of the illegal go-around scheme he was under a legal and ethical duty to stop Mr. Ryan from perjuring himself at the hearing. If Respondents' counsel did indeed know that Mr. Ryan was about to perjure himself and failed to halt this travesty of justice, Respondents' counsel is utterly inconsistent with his duty as a court officer and warrants the imposition of harsh sanctions, as the case law below demonstrates. Following the case law on perjury and subornation of perjury, Complainant will demonstrate that not only did Respondents' counsel allow its witnesses to perjure themselves, but that counsel suborned the perjured statements as well.

Without question, "an adverse party's fraud or subornation of perjury permits relative free reopening of the judgment [in this case recommended decision] when the perjury goes to the heart of the issue." Metlyn Realty Corp. v. Esmark, Inc., 763 F.2d 826, 832 (7th Cir. 1985). Also see, McKissick v. U.S., 379 F.2d 754 (5th Cir. 1967); Rosier v. Ford Motor Co., 573 F.2d 1332, 1339 (5th Cir. 1978); Harre v. A.H. Robins, 750 F.2d 1501, 1503 (11th Cir. 1985).

As an administrative agency, the Department of Labor has the "inherent" power to do what is reasonably necessary to prevent fraud, irrespective of statutory authority. Alberta Gas Chems., Ltd. v. Celanese Corp., 650 F.2d ___ at 12-13 (2nd Cir. 19__). There is "no right whatever -- constitutional or otherwise -- for a defendant to use false evidence." Nix v. Whiteside, 106 S.Ct.

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988, 998 (1986). Any attorney who even cooperates with a client's planned perjury risks "prosecution for suborning perjury, and disciplinary proceedings, including suspension or disbarment." Id. at 998. Also, any attorney "who aids false testimony by questioning a witness when perjured responses can be anticipated risks prosecution for subornation of perjury...." Id. at 996. Simply put, "under no circumstances may a lawyer either advocate or passively tolerate a client's giving false testimony." Id. at 996 (emphasis added). Even an attorney who attempts to remain willfully ignorant where known facts call for further investigation violates his professional and legal duty should he refuse to investigate the situation further. Florida Bar v. McLaghren, 131 So.2d 371, 372 (Fla. 1965) (suspension of attorney for failing to make reasonable inquiry); State v. Zwillman, 270 A.2d 284, 289 (N.J. 1970) (attorney has responsibility to inquiry into falsity of client's representations if he "should know or reasonably suspect that the client's representations are false.") Also see, United States ex rel. Wilcox v. Johnson, 555 F.2d 115, 122 n.13 (3d Cir. 1977) (DR4-101(C)(3) read to require disclosure); McKissick, 379 F.2d 754, 761-62 (5th Cir. 1967); United States v. Grasso, 413 F.Supp. 166, 171 (D.Conn. 1976) ("probable perjurious testimony must, of course, be immediately reported to the presiding judge in the interests of justice and to preserve the integrity of the judicial process"); In re Hoover, 46 Ariz. 24, 30, 46 P.2d 647, 649-50 (1935); Hinds v. State Bar, 19 Cal. 2d 87, 93, 119 P.2d

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134, 137 (1941); Thornton v. United States, 357 A.2d 425, 437-38 (D.C. 1976).

As the depositions and hearing testimony of the pertinent witnesses occurred exclusively in the state of Texas, it is axiomatic that the standards set forth under Texas state law are the minimum attorney standard of conduct counsel must adhere to.

Under Texas law, "a lawyer shall not[:]

* * *

(4) Knowingly use perjured testimony or false evidence.

(5) Knowingly make a false statement of law or fact.

(6) Participate in the creation or preservation of evidence when he knows or it is obvious that the evidence is false.

(7) Counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent.

(8) Knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule."

Texas Code of Prof. Resp. DR 7-102 (A)(4)-(8). Tex. Civ. Stat. Ann Tit. 14 app. Cit. 12 §8 (Vernon 1973). In addition,

A lawyer who receives information clearly establishing that:

(1) His client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon his client to rectify the same, and if his client refuses or is unable to do so he shall reveal the fraud to the affected person or tribunal.

(2) A person other than his client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

Id. at (B)(1) and (2).

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In Nix v. Whiteside, the Supreme Court points out that:

> The more recent Model Rules of Professional Conduct (1983) similarly admonish attorneys to obey all laws in the course of representing a client:
>
> "RULE 1.2 Scope of Representation
>
> * * *
>
> "(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent...."
>
> Both the Model Code of Professional Conduct and the Model Rules of Professional Conduct also adopt the specific exception from the attorney-client privilege for disclosure of perjury that his client intends to commit or has committed. DR 4-101(C)(3) (intention of client to commit a crime); Rule 3.3 (lawyer has duty to disclose falsity of evidence even if disclosure compromises client confidences). Indeed, both the Model Code and the Model Rules do not merely authorize disclosure by counsel of client perjury; they require such discloure. See Rule 3.3(a)(4); DR 7-102(B)(1); Committee on Professional Ethics and Conduct of Iowa State Bar Association v. Crary, 245 N.W.2d 298 (Iowa 1976).
>
> These standards confirm that the legal profession has accepted that an attorney's ethical duty to advance the interests of his client is limited by an equally solemn duty to comply with the law and standards of professional conduct; it specifically ensures that the client may not use false evidence."

Id., 106 S.Ct. 988, 995 (1986)(footnote omitted, emphasis in original).

Unquestionably, the Fifth Circuit has always required mandatory disclosure by an attorney to the Court whenever fraud, including perjury, appears to be present. If any attorney fails to do so, the court states that the offending attorney should be

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> subject to discipline had he continued in the defense without making a report to the court. The attorney not only could, but was obligated to, make such disclosure to the court as necessary to withdraw the perjured testimony from the consideration of the jury. This was essential for good judicial administration and to protect the public.

McKissick, 379 F.2d 754, 761 (5th Cir. 1967).

VII. RESPONDENTS' COUNSEL IS GUILTY OF SUBORNATION OF PERJURY

Federal statute defines subornation of perjury as the procurement of perjury: "Whoever procures another to commit any perjury is guilty of subornation of perjury." 18 USC §1622. Perjury is defined as:

> The willful assertion as to a matter of fact, opinion, belief, or knowledge, made by a witness in a judicial proceeding as part of his evidence, either upon oath or in any form allowed by law to be substituted for an oath, whether such evidence is given in open court, or in an affidavit, or otherwise, such assertion being material to the issue or point of inquiry and known to such witness to be false.

Black's Law Dictionary, Revised 4th Edition.

Clearly, Mr. Ryan willfully asserted at a judicial proceeding under oath material false statements concerning the transfer of pipe supports between groups and the improper use of inappropriate design criteria.

Additionally, it would seem that Respondents' counsel allowed Mr. Ryan to make the perjured statements, knowing that Mr. Hasan's case rested on the premise that he blew the whistle on the use of multiple sets of criteria during the certification of the Comanche Peak pipe support system.

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The fact is that Respondents' counsel knew in advance that Mr. Ryan would perjure himself rather than admit that multiple sets of criteria were used to certify the same pipe support.

It would seem that Mr. Ryan's false testimony regarding the certification of PSE-designed pipe supports with NPS design criteria constitutes perjury, and that Respondents' counsel's allowing Mr. Ryan to testify falsely at his deposition and during the hearing (the same counsel is believed to have represented Mr. Ryan personally during this proceeeding) approached subornation of perjury. "Under no circumstances" is an attorney even allowed to passively tolerate a client's giving false testimony," Nix v. Whiteside, 106 S.C. 988, 996 (1986) (emphasis added). If that attorney should in any way cooperate with a client's planned perjury or even "aids false testimony by questioning a witness when perjured responses can be anticipated risks prosecution for subornation of perjury "including suspension or disbarment." Id. at 996-998.

The Fifth Circuit held in McKissick, that any attorney who even attempts to remain willfully ignorant where known facts call for further investigation violates his professional and legal duty should he refuse to investigate the situation further. McKissick, 379 F.2d 754, 761-62 (5th Cir. 1967). Also see: Florida Bar v. McLaghren, supra; State v. Zwillman, supra; United States ex rel. Wilcox v. Johnson, supra,; United States v. Grasso, supra., In re Hoover, supra., Hinds v. State Bar, supra., Thornton v. United States, supra.

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Respondents' counsel went well beyond turning their heads to perjury; they went so far as to cover-up Mr. Ryan's perjured testimony with a web of false statements -- unsupported by the established record and the truth. Such conduct, it would seem, constitutes subornation of perjury. Under Supreme Court and Fifth Circuit jurisprudence, counsel's tacit submission of Mr. Ryan's perjured testimony into the record, combined with Respondents' counsel's reliance on that testimony to establish its case, evidently constitutes the subornation of perjury.

The truth of the matter is that after the close of the hearing and after Complainant's counsel explicitly exposed Mr. Ryan as a perjuror, Respondents' counsel engaged in a pattern of conduct with the knowledge and intent of deceiving the court to the effect that Mr. Ryan's testimony was not perjured, knowing full well that it was.

VIII. RESPONDENTS' COUNSEL OVERTLY ENGAGED IN SUBORNATION OF PERJURY WHEN FILING RESPONDENTS' POST-TRIAL REPLY BRIEF TO THE ALJ

When Mr. Ryan's perjured testimony was explained to the ALJ in a brief filed by Complainant, Respondents' counsel invented a story that describes the transfer of pipe support packages from the PSE "field group" into the NPS group as "normal." In Respondents' counsel's own words: "In the normal course, NPSI packages flowed from the PSE field group to the NPSI unit." Respondents' counsel then asserts that only NPSI-designed packages were returned to the NPSI group whenever the PSE "field

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IX. RESPONDENTS' COUNSEL UNLAWFULLY ALLOWED OR ENCOURAGED JOHN FINNERAN TO SUBMIT PERJURED TESTIMONY AND Respondents' COUNSEL KNOWINGLY CONTINUES TO PARADE MR. FINNERAN'S PERJURED STATEMENTS BEFORE THE DOL AS IF THEY WERE TRUE.

Little background is needed to present the perjured testimony of Mr. Finneran. On August 19, 1985 Mr. Hasan met with Mr. Finneran for over eight hours. From the beginning of the meeting until its end, Mr. Hasan raised grave and serious safety concerns directly to Mr. Finneran. One such safety concern was that the stiffness of pipe support hardware was not included in the pipe support stiffness when calculating the overall pipe support stiffness sent to Westinghouse for the Class 1 piping analysis (hereinafter "improper stiffness"). The concern over improper stiffness was one of many safety concerns Mr. Hasan constantly brought to the attention of Management. Although Mr. Hasan first brought his concern of improper stiffness to the attention of management prior to the August 19, 1985 meeting with Mr. Finneran, the first time Mr. Hasan told Mr. Finneran of this concern occurred during their August 19, 1985 meeting.

Indeed, Mr. Hasan testified that he not only raised the issue of stiffness during the August 19th meeting, but that he begged and pleaded with Mr. Finneran to retrieve certain certified pipe support packages so Mr. Hasan could pinpoint exactly where and how incorrect stiffness values had been calculated and incorporated into the certified design of the Comanche Peak pipe support system. According to Mr. Hasan's

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testimony at the hearing:

> Q. [By MR. MACK] And what is it that you said [to Mr. Finneran concerning improper stiffness of Class 1 pipe supports during the August 19th meeting]?
>
> A. I explained to him at length -- at tremendous length that what happened in that period when Rencher told me or told us not to include that stiffness of the hardwares for computing the stiffness of the Class 1 piping system. And after listening to all this -- and then I told him that, why don't you recall those particular packages to look for yourself....

Tr. 286, emphasis added.

* * *

> A. ...I was bringing very, very serious concerns to [Mr. Finneran] right from the morning to the end [of our August 19th meeting] and I was literally, virtually, you know, pleading or begging him that, you have got those packages; please bring it to here; I will show it to you, what was the problems....

Tr. 484, emphasis added.

* * *

> A. -- I pleaded with him that, please recall those packages so that I can show where the mistakes are being made, and he refused to recall those packages....

Tr. 389, emphasis added.

* * *

> Q. You discussed specific packages with Mr. Finneran?
>
> A. I was telling him to bring what I did discuss, the technical item, like, a stiffness value of Class 1 piping support... I wrote on some of the packages [that] those packages were being done incorrectly, and I was raising objections, at least on two of them, and at -- in one package, Mike Chamberlain just came and took away the package from me...

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Q. Excuse me. Did you tell Mr. Finneran to bring in packages or ask him?

A. I requested him to bring certain packages so that I can show it to him what was going on.

Q. To the meeting?

A. To the meeting. Right.

Q. ...Did he accede to your request?

A. He did not...

Tr. 484-485, emphasis added.

Besides Mr. Hasan and Mr. Finneran, Mr. Hasan's August 19th discussion of improper stiffness occurred in the presence of Mr. Rencher and Mr. Westbrook (Mr. Westbrook was not called as a witness for either side).

Mr. Rencher consistently testified, at his deposition and at the hearing, that not only did Mr. Hasan raise improper stiffness to Mr. Finneran during the August 19th meeting, but that Mr. Finneran actually told Mr. Hasan that Stone and Webster already knew of the improper stiffness concern and was about to be corrected and that as such Mr. Hasan need not worry about it any further. According to Mr. Rencher's testimony: "Mr. Finneran and I...assured him that Stone and Webster was aware" of the concern and was currently developing new "design criteria" to "address" it. Rencher Deposition Transcript, at p. 161.

Mr. Hasan's concern over incorrect stiffness values sent to Westinghouse was that Westinghouse used the incorrect stiffness values to calculate the actual load each pipe support had been designed to withstand. The Westinghouse-calculated loads were

then used on site to certify the design of the Class 1 piping system. Hearing Transcript at pp. 235, 238, 263-264.

The August 19th meeting lasted for over eight hours. At the start of the meeting Mr. Finneran stated to Mr. Hasan that he was going to take notes of the meeting and he would ask Mr. Hasan to sign the notes at the conclusion. But each time Mr. Hasan would raise a technical issue, Mr. Finneran would not record it in his notes. Mr. Hasan was disturbed by this and at the end of the meeting he refused to sign. One of the technical concerns Mr. Hasan raised was improper stiffness.

After Mr. Hasan refused to sign, Mr. Finneran asked Mr. Hasan to leave the meeting. Mr. Hasan complied and thereafter was called back into the meeting room. The only one present at this point was Mr. Finneran. At that point in the meeting Mr. Finneran asked Mr. Hasan to list any technical inconsistencies he knew of so that Stone and Webster could see to it that those matters could also be resolved. Mr. Hasan then pulled a list of some technical concerns from his wallet and listed them for Mr. Finneran. The list was not retained by Mr. Hasan. Mr. Finneran then prepared a second memorandum allegedly listing all of the concerns Mr. Hasan raised to him on August 19th. Mr. Finneran listed exactly ten items; improper stiffness is not included. The ten inconsistencies are listed below as recorded by Mr. Finneran:

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1. Consistency should be achieved regarding the assessment of the weld between a baseplate and an embedded plate (plate and shell versus linear).

2. Plate and shell weld allowable should be listed in the guidelines.

3. Supports in containment should always use allowables at 300°.

4. 2" architectural concrete topping should always be considered for Hilti embedments.

5. In evaluation of Richmond Inserts, consideration of both rod and insert interactions should be documented.

6. Richmond Insert Bolt should be assessed for bending as well as shear and tension.

7. The weight of a constant support should always be considered in spring support design.

8. Each calculation sheet should be initialed.

9. Cinched U-bolt supports (class 5 and 6) inside stress problem boundaries should be assessed.

10. There should be a calculation qualifying the washer plates on tube steel supports.

A review of these alleged ten inconsistencies demonstrates that the words "stiffness," "Class 1," and "Westinghouse" are not mentioned anywhere in Mr. Finneran's August 19th memo [Cx. 7 and Rx 3].

Nonetheless, as the record establishes, Mr. Hasan repeatedly raised the issue of incorrect stiffness values of Classs 1 pipe supports to Mr. Finneran during the August 19th meeting. Mr. Finneran's assertion in his August 19th memo that Mr. Hasan "did not have any concerns which he felt were important to safety at the plant".

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Mr. Finneran expressly denied that Mr. Hasan raised stiffness values of the class 1 piping system to him on August 19th, as the following testimony depicts:

> Q. Do you know whether the subject matter of the stiffness values of the class 1 piping systems was among the either [sic] consistencies or concerns or any topic during that meeting [of August 19th].
>
> A. No. I don't believe so.

Tr. 21, emphasis added.

> Q. ...did the discussion of those [10] inconsistencies take up the bulk of the seven hours of the [August 19th] meeting?
>
> A. No. The ten items were -- as I said, it was the last --very last part of the meeting, and he related them to me, and I wrote them down, and that was about it. There wasn't any discussion that I recall between he and I on the items.

Tr. ___

* * *

> Q. Fine. And on the second page [of CX 7] you list a series of items --I am sorry. I don't remember how you characterized them.
>
> A. Inconsistencies, I believe.
>
> Q. Inconsistencies.
>
> A. Uh-huh.
>
> Q. Were those the only inconsistencies that Mr. Hasan brought to your attention in the course of that meeting?
>
> A. Of this [August 19th] meeting?
>
> Q. Yes, sir.
>
> A. Yes.

Tr. 31-32, emphasis added.

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A. Mr. Finneran Perjured Himself By Not Admitting that Mr. Hasan Raised Stiffness Values of Class 1 Pipe Supports During the August 19th Meeting

The testimony of three witnesses establishes the proposition that Mr. Finneran perjured himself. In addition to the testimony of Complainant, two adverse and hostile witnesses, Mr. Rencher and Mr. Chamberlain, testified under oath that stiffness was raised by Mr. Hasan to Mr. Finneran on August 19th. This testimony is set forth below.

1. Deposition testimony of Mr. Rencher

In no uncertain terms, the deposition testimony of Mr. Rencher completely contradicts Mr. Finneran's denial that Mr. Hasan raised stiffness of the class 1 pipe supports as a safety concern during the August 19th meeting. On no less than a dozen separate occasions Mr. Rencher testified that Mr. Hasan raised a concern over the method of calculating the stiffness values of the class 1 piping system.

Mr. Rencher had absolutely no self interest in giving testimony contrary to his boss, Mr. Finneran. Indeed, it is the rare individual who has the strength to testify against his superior.

The deposition testimony of Mr. Rencher is devastating:

Q. [By Mr. Kohn] Did Mr. Hasan...on August 19, 1985 [bring to your attention] the fact that stiffness of Class 1 pipe support systems did not consider the stiffness of the hardware.

A. [By Mr. Rencher] I believe he mentioned it in that meeting, yes.

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. . .

Q. Do you know if anyone followed up on that concern?

A. Yes.

Q. Who followed up on it?

A. I believe it would be John Finneran.

Q. Did you have any discussions with Mr. Finneran about how to proceed with Mr. Hasan's concern [over the fact that incorrect stiffness values had been sent to Westinghouse]?

A. Yes.

Q. And what is the sum and substance of those discussions?

A. When Mr. Finneran and I talked after that time about Stone & Webster developing criteria, we made sure that Mr. Finneran made aware to them that this is an item that needed to be considered in the development of their design criteria.

Rencher Deposition Tr. at 95-96, (emphasis added).

Mr. Rencher's testimony was clear: not only did Mr. Finneran and Mr. Hasan discuss the fact that incorrect stiffness values of Class 1 pipe support system had been sent to Westinghouse in the presence of Mr. Rencher, but that Mr. Finneran and Mr. Rencher continued discussing Mr. Hasan's concern after the meeting ended!

On June 2, 1987, the depostion of Mr. Rencher recommenced.11/

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11. In violation of subpoena, Respondents' cousnel ordered Mr. Rencher to walk out of his May 29, 1987 deposition at 3:15 pm, evidently shortly after Respondents first received the letter from the NRC to Texas Utilities, dated May 28, 1987 (CX 14). Rencher Deposition at 144-145. Respondents' cousnel returned on June 2, 1987 only upon order of the ALJ. Respondents' conduct went unsantioned.

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At that time Mr. Rencher further testified:

Q. [BY MR. KOHN] Mr. Rencher, do you know about that Westinghouse letter concerning the stiffness of Class 1 pipe supports?
MR. WOLKOFF: Objection.

A. Calculated stiffnesses of Class 1 pipe supports were sent to Westinghouse.

Q. [BY MR. KOHN] All right. And what year were they sent?

A. 1982, 1983, 1984.

Q. And were you aware that that list did not consider the stiffness of the hardware for many of the Class 1 pipe supports contained in that list?

MR. WOLKOFF: Objection. You're testifying, Mr. Kohn.

A. No [Mr. Rencher's testimony diverges here from Mr. Hasan, who testified that he first raised this with Mr. Rencher and others in 1982; Mr. Chamberlain nonetheless testified at his deposition that management knew of this concern in 1985. See, Chamberlain Depo. at 96-97].

Q. [BY MR. KOHN] Did Mr. Hasan bring this to your attention on August 19th, 1985?

A. I believe he mentioned it [incorrect stiffness values] in the meeting that I participated in with John Finneran and him.

Q. Was anything done -- do you know if anything was done to check Mr. Hasan's concerns regarding not calculating stiffness of hardware sent to Westinghouse?

* * *

A. In sum and substance, Mr. Finneran and I discussed the concerns Mr. Hasan raised in that meeting [of August 19th] and assured him that Stone & Webster was aware of these concerns so that the Stone & Webster design criteria which was being developed would address his concerns.

Rencher Depo. Tr. at 164-165, emphasis added.

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Later during his deposition, Mr. Rencher once again confirmed that Mr. Hasan raised a concern over incorrect stiffness values to Mr. Finneran during their August 19th meeting:

> Q. Do you recall Mr. Hasan raising technical disagreements while you were present at the August 19, 1985 meeting?
>
> A. I remember one.
>
> Q. Which one was that?
>
> A. It concerned stiffnesses of Class 1 pipe supports.
>
> Q. Did Mr. Hasan complain that you refused to or did not write any memoranda concerning Mr. Hasan's problems that he had in the way the stiffness was being calculated?
>
> A. Beyond the fact that he mentioned it, I don't remember much else of what was said about it, specifically.
>
> * * *
>
> Q. The stiffness of Class 1 pipe supports that you remember Mr. Hasan raising during the August 19 meeting, when did Mr. Hasan first bring that to your attention?
>
> A. I don't recall. I think it was at that [August 19th] meeting.

Rencher Depo. Tr. at 237-238, emphasis added.

2. Hearing testimony of Mr. Rencher

On direct exam, Mr. Rencher's testimony was equally unequivocal: On August 19, 1985, in the presence of Mr. Rencher, Mr. Hasan raised told Mr. Finneran about his concern over the stiffness values sent to Westinghouse. Equally critical, was

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Mr. Rencher's testimony that not only was the concern raised, but that Mr. Finneran understood the significance of the concern as well.

> Q. [BY MR. MACK] In that [August 19th] meeting in your presence, did Mr. Hasan raise a concern over the stiffness of Class 1 pipe supports?
>
> A. [BY MR. RENCHER] Yes, he did.
>
> Q. In the presence of Mr. Finneran?
>
> A. Yes.
>
> Q. Did the two of them [Messrs. Hasan and Finneran] hold a discussion about that?
>
> A. It was discussed in that meeting, yes.
>
> Q. And Mr. Finneran was a participant in that discussion.
>
> A. Yes, sir.
>
> * * *
>
> Q. Do you recall whether Mr. Hasan in that meeting was concerned that the stiffness values of the hardware had not been calculated for NPS Class 1 pipe supports?
>
> A. Yes.
>
> Q. And did he express that concern to Mr. Finneran?
>
> * * *
>
> A. Yes, he did.
>
> Q. And Mr. Finneran understood the concern?
>
> A. Yes, he did.

Tr. 117-118.

There is no room for doubt that Mr. Finneran's failure to recall certain packages Mr. Hasan brought to his attention in

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order to verify what he already knew (Mr. Hasan had first identified the problem to management back in 1982) t the calculation of the stiffness values for the entire Class 1 piping system contained gross engineering errors. Not only did Mr. Finneran refuse to recall the packages, he knowingly prepared memoranda falsely stating that Mr. Hasan had absolutely no safety concerns. These memoranda (RX 45, 31; CX 7) would become the centerpiece of Respondents' defense to Mr. Hasan's case. Mr. Rencher confirms the obvious: Mr. Hasan's concern over Class 1 stiffness values sent to Westinghouse is not mentioned in Mr. Finneran's memorandum:

> Q. [BY MR. MACK] This is Complainant's Exhibit 7, which has been characterized as Mr. Finneran's list of inconsistencies arising out of the August 19 meeting. Is the problem you mentioned that came up at that meeting about the calculations for stiffness of certain Class 1 U-bolts on the list?
>
> A. Let me check. (Perusing document.)
>
> Q. Let me get my phrase right -- stiffness values of the hardware for NPS Class 1 pipe support or stiffness of Class 1 pipe support. Is that on the list?
>
> A. I don't see it here. No.

Tr. 144.

Respondents' examination of Mr. Rencher plainly demonstrates the total lack of concern for the truth. Respondents' counsel asked the witness excessively leading questions with false premises in an attempt to get Mr. Rencher to contradict both his hearing and deposition testimony. According to the transcript,

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Mr. Wolkoff asked Mr. Rencher:

> Q. Do you remember just reading about it [stiffness of Class 1 pipe supports] in Mr. Finneran's notes?
>
> A. I have read about it in his notes. Yes.

Tr. 145.

The answer and question are perplexing. What notes did Mr. Wolkoff refer to? Unequivocally, no document of any kind was ever identified in discovery or during the hearing. Rather, according to to the answer to Complainant's Interrogatory 11, no such documents exist In effect, either the August 19th notes tendered by Mr. Finneran and counsel are forgeries or Respondents' counsel asked leading questions based on made up testimony.

Mr. Wolkoff's bizarre examination of Mr. Rencher continues with the following:

> Q. Stiffness of Class 1 pipe supports, was that an issue that had been [known to (sic)] the NRC, do you know?
>
> A. No, it had not.
>
> Q. Was it an issue, however, that had been discussed amongst management?
>
> A. Yes.
>
> Q. So management was already aware of it before Mr. Hasan raised it.
>
> A. ...Yes.

Tr. 145.

The questions by Mr. Wolkoff and answers by Mr. Rencher are nothing less than shocking. Respondents' own counsel has

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elicited from its own witness that Mr. Hasan's concern of stiffness values of Class 1 pipe supports sent to Westinghouse had not been known to the NRC when Mr. Hasan raised it to Mr. Finneran on August 19, 1985. Mr. Rencher's further admission that management knew of the condition prior to the August 19th meeting corroborates Mr. Hasan's testimony that he had continually blown the whistle to management about this concern prior to the August 19th meeting. There is no room for doubt that Mr. Finneran in fact failed to recall certain packages that Mr. Hasan pleaded he recall to allow him to identify to Mr. Finneran how the errors in calculating the stiffness of the Class 1 pipe supports occured.

Not only did Mr. Finneran refuse to recall the packages, he knowingly prepared and submitted into evidence memoranda he krew to contain absolute false statements to the effect that Mr. Hasan had no safety concerns. These memoranda (RX 45, RX 31) would also become the centerpiece of Respondents' attempt to deceive the NRC (via answers to interrogatory questions posed by the intervenor CASE) as well as the DOL through the submission of false testimony by Mr. Finneran.

3. Deposition testimony of Mr. Chamberlain

Mr. Chamberlain's deposition testimony further establishes that Mr. Hasan raised stiffness of class 1 pipe supports to Mr. Finneran on August 19th.

Q. [BY MR. KOHN] Well, on August 19,. . . stiffness was raised in Mr. Hasan's last conversation with him; is that correct?

A. I believe it was one of the items that he discussed with Mr. Finneran in the exit interview.

* * *

Q. [BY MR. KOHN] Okay, on August 19, 1985, you discussed and Mr. Finneran discussed incorrect stiffness values on Class 1 piping stress analysis with Mr. Hasan.

A. ...I discussed it with Mr. Finneran after he talked with Mr. Hasan in the exit interview (when) he asked me about some of the items that Hasan had brought up...

Chamberlain Deposition. Tr. at 236, 244-245, (emphasis added).

B. Respondents Covered-up Mr. Hasan's Concern About Incorrect Stiffness Values Having Been Sent to Westinghouse Since 1982, and Respondents' Counsel Suborned Mr. Finneran's Perjurous Testimony By Allowing Him to Deny Under Oath that Mr. Hasan Had Ever Raised Incorrect Stiffness Values to Mr. Finneran On August 19, 1985

Mr. Finneran (and others) engaged in an active cover-up of Mr. Hasan's concern over the fact that incorrect stiffness values had been sent to Westinghouse. Tr. 17-118, 148-149, 235, 233, 263-264. Respondents have been covering up this concern of Mr. Hasan's since 1982, when Mr. Hasan raised the concern with Mr. Rencher, and thereafter when he raised the concern to Messrs. Hemrajani and Chamberlain. Tr. 264-266. To be sure, when SWEC began its requalification effort of the Class 1 piping system, they also used the Westinghouse analysis.

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If the truth was known about the incorrect stiffness values at the time SWEC began its requalification, it would have been apparent to all concerned, including the NRC and the ASLB, that the schedule SWEC and Texas Utilities submitted to its shareholders, the ASLB and the NRC were in fact fraudulent and impossible. Although Respondents' concede in their reply brief that Stone & Webster's "goals were high: to develop within seven months a single, uniform set of pipe support criteria...to requalify the pipe support work...and to conclude all remaining pipe support work," Respondents' Brief in Support of the RD&O, at p.12, what they ommit is that their goals were impossible and that Mr. Hasan knew it. Is it possible to conceive of any greater motive to discriminate against Mr. Hasan than his knowlege over the fact that SWEC's initial requalification schedule was fraudulent?

Indeed, Respondents did everything conceivable to disuade Mr. Hasan from raising his concerns to the NRC while he was employed on site. To stop him from going after he left, Mr. Finneran falsely asurred Mr. Hasan that all of his concerns, and in particular his concern over incorrect stiffness values, were already factored into SWEC requalification plan. Mr. Finneran repeatedly assured Mr. Hasan that there was no reason to show him where the errors had been made.

Respondents felt secure that their secret would remain undetected once Mr. Hasan was removed from the site, particularly after Mr. Hasan was asked to write a memo to NPS about the status of his concerns at Comanche Peak. RX 46. Indeed, as RX 46

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states, Mr. Hasan explained to Respondents that "it must be pointed out that any technical items, discussed below, are NOW MEANINGLESS as [Texas Utilities] senior representative John Finneran told me on August 19, 1985 "Stone & Webster Engineering Corporation shall do everything from the beginig!" RX 46 at p. 1 (empnasis and capitalization in original).

Unfortunately for Respondents, Mr. Hasan chose not to relieve Mr. Finneran, and on January 10th and 30th, 1986, after contacting them back in August, 1985 (CX 15), Mr. Hasan was finally able to present to the NRC his concern over incorrect stiffness values (concern No. 26), as well as the 64 other concerns listed in the NRC 's May 28, 1987 letter to Texas Utilities. CX 14..

The significance of Mr. Hasan's disclosure over incorrect stiffness values sent to Westinghouse cannot be overlooked. Under 10 CFR 50.55(e) Texas Utilities had a legal duty to notify the NRC of the violation the moment they learned of it. The date the violation was first detected and reported to the NRC is documented pursuant to established NRC regulation. The date that Respondents first notified the NRC of the incorrect stiffness values undeniably occured on May 28, 1986 via letter from Texas Utilities executive vice president, Mr. Counsil.

This letter states:12/

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12. This letter was first brought to the ALJ's attention as an exhibit to Complainant's Second Motion for Default Judgment/Disqualification, filed on June 16, 1987.

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> On April 29, 1986, we verbally notified your Mr. T.F. Westerman of a deficiency involving the use of incorrect pipe support stiffness values in the Unit 1 Class 1 pipe stress analysis. This is an interim report of a potentially reportable item under the provisions of 10CFR50.55(e). . . Westinghouse is reanalyzing these stress problems and issuing revised pipe support loads to SWEC for review. . . SWEC has not yet started to assess the existing supports for adequacy due to load increases. . .

On October 17, 1986, Texas Utilities issued its final assessment of Mr. Hasan's concern over the use of incorrect stiffness values sent to Westinghouse. It states:[13]/

> On April 29, 1986, we verbally notified your Mr. T.F. Westerman of a deficiency involving the use of incorrect pipe support stiffness values in the Unit 1 Class 1 pipe stress analyses. . .We are reporting this issue under the provisions of 10 CFR 50.55(e) and the required information follows.
>
> DESCRIPTION
>
> As identified during the CPSES pipe support requalification effort, incorrect stiffness values were used in the Unit 1 Class 1 piping stress analyses.
>
> Review of the ongoing requalification program has indicated that approximately 30% of the existing pipe supports are overstressed or require modification primarily due to load increases... As a result of these conditions, all stress problems are currently scheduled for reanalysis...
>
> SAFETY IMPLICATIONS
>
> In the event the deficiency had remained undetected, the integrity of the Class 1 piping and supports could not be assured during normal operating or accident conditions

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13. See Footnote 12, supra.

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This letter confirms that Mr. Counsil of Texas Utilites allegedly did not know of the incorrect stiffness values until after SWEC's requalification effort commenced. The utilties' highest ranking officer for nuclear matters unequivocally states that the "normal" operation of the nuclear plant was in jeopardy had Mr. Hasan's concern remained "undetected."

Mr. Finneran's failure to disclose Mr. Hasan's concern in his August 19th memoranda and in testimony was not because he did not understand Mr. Hasan's concern or that he did not perceive its significance -- indeed Mr. Finneran has a masters degree in engineering and is the Utility's chief pipe support engineer on site. Mr. Finneran's false testimony resulted simply because the Utility wanted to cover-up Mr. Hasan's safety concerns. Mr. Finneran sent Mr. Hasan packing, telling him he knew about the concern, that SWEC knew about it and that he should not worry becasue his concern was already moot. He then prepared memoranda stating that Mr. Hasan had not raised a single safety concern and that he gave Mr. Hasan a copy of the memoranda (which he did not). This was a premeditated act on the part of Texas Utilities to cover-up safety concerns at the site. Indeed, Mr. Hasan's concern over the use of incorrect stiffness values was not reported to the NRC until April 29, 1986, three months after Mr. Hasan provided the NRC with explicit testimony on this issue. See CX 14, Concern No. 26.

Beyond a shadow of a doubt, on August 19, 1985, Mr. Hasan "begged" and "pleaded" with Mr. Finneran to correct the stiffness

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values sent to Westinghouse. In this regard, Mr. Hasan pleaded with Mr. Finneran to retrieve certain pipe support packages so that Mr. Hasan could personally point out to Mr. Finneran during the August 19th meeting how the incorrect stiffness values had been sent to Westinghouse. At that point in the meeting, Mr. Finneran knowingly and purposefully misled Mr. Hasan with false statements when he told Mr. Hasan that the incorrect stiffness values had already been identified to SWEC and as such his disclosure was entirely moot. The obvious intent of Mr. Finneran's statements was to derail Mr. Hasan from further pursuing this concern with the NRC or CASE.

Clearly, the creation of the August 19th memoranda constitute premeditated acts on the part of Texas Utilities management in an ongoing cover-up of Mr. Hasan's concern over the use of false stiffness values during the requalification effort. Indeed, once Mr. Hasan was banished from the site, Texas Utilities was once again free to use the false stiffness values during SWEC's effort to requalify the Class 1 pipe support design of the Comanche Peak plant.

Respondents' counsel knowingly attempted to suborn perjury when Mr. Wolkoff posed the following leading questions to Mr. Rencher:

> Q. ...I take it since you don't recollect being there when he raised it [stiffness of Class 1 pipe supports], you don't know what Mr. Hasan was talking about when he raised the point.
>
> A. That is correct.

Tr.___

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This question came after Mr. Rencher had testified that not only did Mr. Hasan raise the issue to Mr. Finneran, but that Mr. Finneran understood it and that they had discussed it ever after Mr. Hasan left the meeting. Tr. 117-118.

On re-direct, when Complainant's counsel attempted to establish that Mr. Rencher's deposition testimony was consistent with his earlier testimony, namely that Mr. Hasan raised the issue of stiffness during the August 19th meeting, Mr. Wolkoff knowingly attempted to mislead the court when he stated:

> MR. WOLKOFF: Objection, Your Honor. [Mr. Rencher's testimony on cross] is not inconsistent with his testimony [at his deposition].
>
> JUDGE LINDEMAN: The record will speak for itself regarding consistency.

Tr. 149.

Indeed, the record establishes that the only time Mr. Rencher strayed from the truth was when his own counsel, Mr. Wolkoff, asked bizarre questions of the witness that have no basis in fact. The record establishes that Mr. Wolkoff attempted to suborn perjured statements from Mr. Rencher when he took the witness stand. Given the pressure Mr. Rencher had to overcome to testify against his superior and to testify truthfully when his employer's attorneys attempted to get Mr. Rencher to change his story before he entered the witness box, it is nothing less than astounding.

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Respondents assert that the ALJ "commented on . . . Mr. Hasan's total lack of credibility during his day-long testimony. Recommended Decision and Order at 6." See, Brief of Respondents at 29. While the ALJ did make limited credibility findings in the RD&O none appeared on page 6, and the ALJ never used the term "total lack of credibility" to describe Mr. Hasan's testimony. Respondents' mischaracterization of the RD&O is more than zealous advocacy -- it is downright malicious. Complainant regards Respondents' misrepresentation as sanctionable conduct under FRCP Rule 11.

The substance of Respondents' request for attorneys fees and costs is itself frivolous as Respondents' counsel could include not even a single legal authority to support his request. Complainant will not waste the Secretary of Labor's time addressing what amounts to Respondents' desire to be compensated for responding to Complainant's discovery requests.

CONCLUSION

It is disturbing that Respondents' counsel would engage in subornation of perjury and other sanctionable behavior in order to prevail before Administrative Law Judge Lindeman. The fact that some of the highest ranking officials at the Comanche Peak facility felt it necessary to perjure themselves rather than admit to the concerns Mr. Hasan had brought to their attention

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demonstatates fear on the part of Respondents, let alone mere knowlege, that Mr. Hasan had raised safety concerns of immense proportion. Indeed, Mr. Hasan's disclosures stood in the way of certifying the pipe support system of the Comanche Peak facility. Mr. Hasan was blacklisted from the site in order to assure the implementation of a patently false and impossible requalification schedule of the Comanche Peak pipe support system. Mr. Hasan was more than an internal whistleblower, he was a engineer whose career was seriously damaged simply because he refused to sign-off on improper design documents.

For all the of reasons set forth above, the Secretary of Labor must rule in favor of Mr. Hasan.

Respectfully Submitted,

MICHAEL D. KOHN, ESQ.
STEPHEN M. KOHN, ESQ.

Government Accountability Project
25 E Street, N.W. -- Suite 700
Washington, D.C. 20001
(202) 347-0460

Attorneys for Complainant

On Brief:
David K. Colapinto

April 18, 1988

/032/cc/007

Plaintiffs'
Exhibit G

Plaintiffs'
Exhibit G

EXHIBIT 1

Plaintiffs'
Exhibit G

Speed Letter. 44-5[illegible]

GrayLine [illegible]

Plaintiffs' Exhibit G

Speed Letter.

J. RYAN

From M. J. KAPLAN
TSORE (VENDOR CERTIFICATION)

ect MK# CC-1-191-012-C4ZR

Date 1-10 19 82

ESSAGE

PLEASE INITIATE ACTION TO PROVIDE E-W SCALING FOR CITED SUPPORT TO MEET REQTS OF SHT #6/12 SECTION I OF THE STRUCT DESIGN MANUAL GANG PAK NO. 005 PERTAINING TO RESTRAINTS. CITED BELOW IS FURNISHED WITH THIS MEMO:

CC-191-005-C4ZR
CC-191-012-C4ZR

Signed M J Kaplan

Date 25 Jan. 19 82

EPLY

In addition with H. Vessier Trans. supports which do not meet requirements for out-of-plane bracing may be retained if the additional loads due to frame acceleration is considered. Use 1g acceleration of frame, calculate the reactions at the knee plates & assure that bolts & welds are acceptable. Modifications to brace types of this type are extensive & expensive and should only be requested as a last resort.

Plaintiffs' Exhibit G

Signed [illegible]

CERTIFICATE OF SERVICE

I hereby certify that a copy of the aforegoing reply brief was hand-delivered on April 18, 1988 to:

Secretary of Labor
Office of Administrative Appeals
U.S. Department of Labor
200 Constitution Ave., N.W.
Washington, D.C. 20210

and I certify that a copy was sent on April 18, 1988 by first class mail, postage prepaid, to:

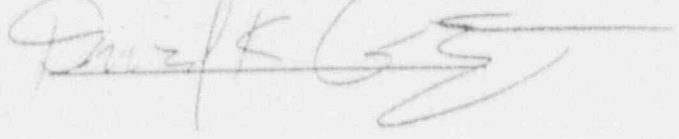
Mr. Harvey J. Wolkoff, Esq.

Ms. Katrina Weinig, Esq.

Ropes and Gray

225 Franklin Street

Boston, MA 02110



C A S E
(CITIZENS ASSN. FOR SOUND ENERGY)

1426 [illegible]
Dallas, Texas 75224
214/946-9446

Plaintiffs' Exhibit I

'87 JUL 10 P12:42

July 8, 1987

Administrative Judge Peter B. Bloch
U. S. Nuclear Regulatory Commission
Atomic Safety & Licensing Board
Washington, D. C. 20555

Dr. Kenneth A. McCollom
1107 West Knapp Street
Stillwater, Oklahoma 74075

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

Dear Administrative Judges:

Subject: In the Matter of
Texas Utilities Electric Company, et. al.
Application for an Operating License
Docket Nos. 50-445 and 50-446 -OL
and
Construction Permit Amendment
Docket No. 50-445-CPA
Comanche Peak Steam Electric Station
Units 1 and 2

Notification of Potentially Significant Information

This is to inform the board of potentially significant information in both the operating license proceedings and the construction permit proceedings.

As we have stated to Applicants at several points in CASE's 7/6/87 Supplementary Response to Applicants' Interrogatories to "Consolidated Intervenors" (Set No. 1987-1) and Motion for a Protective Order, we expect to rely upon information from the following (and any other related information, probably including Applicants' response to Mr. Grimes' 5/28/87 letter, although we have not yet reviewed it) to support our cases in both the operating license proceedings and the construction permit proceedings:

> "5/28/87 letter from Christopher I. Grimes, Director, NRC Comanche Peak Project Division, Office of Special Projects, to Applicants' Executive Vice President, William G. Counsil, under Subject of: Allegations of Design and Construction Deficiencies. The concerns listed in the Enclosure to that 5/28/87 letter were identified as being those of S. M. A. Hasan, a former engineer at Comanche Peak (see listing following regarding 6/22/87 and 6/23/87 Hasan DOL hearings and related proceedings)."

Plaintiffs' Exhibit I

Plaintiffs' Exhibit 1

It should be noted that the concerns were identified as being those of Mr. Hasan in the DOL proceedings (not in the 5/28/87 letter from Mr. Grimes).

"6/22/87 and 6/23/87 Hasan DOL hearings and related proceedings. CASE also expects that we will rely upon some information from the DOL proceedings of S. M. A. Hasan (hearings regarding which were held June 22 and 23, 1987, in Dallas, Texas, before the Honorable Alfred Lindeman, Administrative Law Judge, U. S. Department of Labor, in the matter of Case No. 86-ERA-24, S. M. A. Hasan, Complainant, v. Nuclear Power Services, Inc., Stone and Webster Engineering Co., Inc., and Texas Utilities Electric Co., Inc., Respondents).

"We do not yet know exactly what information will be relied upon. CASE does, however, consider some of the testimony in those proceedings of such potential significance to both the operating license proceedings and the construction permit proceedings that Applicants should voluntarily provide copies of all pleadings, documents, etc., in that case to the Licensing and CPA Boards. Applicants' failure to do so (and, indeed, the very fact of Applicants' failure to have already advised the Board regarding some of the matters involved) is considered by CASE to be further proof of CASE's contentions in the O.L. and the CPA proceedings."

As we have stated to Applicants, CASE believes that Applicants should have already informed the Board regarding some of the information from the DOL proceedings. Perhaps most immediately notable is Applicants' slowness regarding the fact that, although Applicants obviously knew that Stone & Webster had indeed turned right around and rehired many of the same engineering personnel who had formerly worked for ITT Grinnell, NPSI, Gibbs & Hill, and TU, it was not until 6/8/87 (coincidentally (?) shortly before Mr. Hasan's DOL hearing) that Applicants finally chose to supplement their responses to CASE's 6/30/86 interrogatories (see Applicants' 6/8/87 Supplemental Responses to CASE's 6/30/86 Interrogatories and Request for Documents, supplementary response to interrogatory number 32, attaching information requested regarding names, etc., of former employees of Gibbs & Hill, ITT Grinnell, NPSI, and Texas Utilities who were rehired by Stone & Webster Engineering Corporation). This is even more egregious in light of the discussion during the 8/18/86 Prehearing Conference (see transcript of 8/18/86 Prehearing Conference, Tr. pages 24493 through 24502 generally, and especially Ms. Billie Garde's comments at page 24498), where Applicants had an opportunity which they chose to ignore to be candid with the Board regarding this important matter.

CASE President Juanita Ellis attended the two days of Mr. Hasan's DOL hearings in Dallas on June 22 and 23, 1987, as part of her research in filing her 7/6/87 Supplementary Response in the CPA and in the operating license proceedings as well. Based on what transpired during those proceedings and related filings and documents, etc., CASE believes that some of the matters raised are of extreme importance to both the operating license proceedings and construction permit proceedings. CASE also believes that Applicants should now voluntarily provide copies of all pleadings,

Plaintiffs' Exhibit 1

Plaintiffs'
Exhibit I

documents, etc., in that case to the Licensing and CPA Boards (which are, of course, composed of the same three members). If Applicants do not voluntarily do so, CASE will seek such action through more formal means; it should not be CASE's burden to have to continue to go to the expense in time, money, and person resources to keep the Board informed and supply documents regarding matters such as this which are so obviously covered by the Board's oft-repeated and numerous Orders that Applicants are to keep the Board informed of potentially significant information.

There is also, of course, another even more disturbing aspect of this entire matter. The Board was advised by Ms. Garde at the 8/18/86 Prehearing Conference -- over ten months ago -- that she had reason to believe that Stone & Webster hsd rehired many of the same engineering personnel who had formerly worked at Comanche Peak. Applicants' attorneys and personnel who were in the audience (who included some of Applicants' new management personnel) sat right there and said nothing -- even though many of them obviously had to have known at that time that the issue raised by Ms. Garde was true. How can CASE (or the Board or anybody else, for that matter) now be expected to trust and rely upon those individuals -- for anything?

Respectfully submitted,

CASE (Citizens Association for Sound Energy)

Juanita Ellis

(Mrs.) Juanica Ellis
President

cc: Service List

Plaintiffs'
Exhibit I

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(CITIZENS ASSN. FOR SOUND ENERGY)

1420 [illegible]
Dallas, Texas 7522[illegible]
214/946-9446

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'87 JUL 10 P12:42

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U. S. Nuclear Regulatory Commission
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881 W. Outer Drive
Oak Ridge, Tennessee 37830

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Plaintiffs' Exhibit I

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Respectfully submitted,

CASE (Citizens Association for Sound Energy)

Juanita Ellis

(Mrs.) Juanita Ellis
President

cc: Service List

PRIVIL 3D AND CONFIDENTIAL

Plaintiffs' Exhibit J

SETTLEMENT AGREEMENT BETWEEN CASE, MRS. JUANITA ELLIS AND TEXAS UTILITIES ELECTRIC COMPANY

RECITALS

This Settlement Agreement is made and entered into this 28th day of June, 1988, between Texas Utilities Electric Company, separately and acting as the Project Manager under the Joint Ownership Agreement on behalf of all the owners of CPSES (hereinafter collectively referred to as "TU Electric"), Citizens Association for Sound Energy and Mrs. Juanita Ellis (hereinafter the use of the term "CASE" shall refer to Citizens Association for Sound Energy and Mrs. Juanita Ellis in her capacity as President of CASE. Provisions of this Agreement specifying Mrs. Juanita Ellis in any capacity other than as President of CASE shall refer specifically to Mrs. Juanita Ellis):

WHEREAS, TU Electric and Citizens Association for Sound Energy ("CASE") are parties to a number of proceedings before the Nuclear Regulatory Commission in connection with the licensing of Comanche Peak Steam Electric Station Units 1 and 2 ("CPSES") as more fully described in paragraph 1.1 of Article I of this Settlement Agreement ("Agreement"); and

WHEREAS, TU Electric and CASE have decided that those proceedings should be resolved in accordance with the terms of this Agreement;

THEREFORE, in consideration of these premises, the parties, intending to be legally bound, agree as follows:

OPERATIVE PROVISIONS

I. Resolution of All NRC Proceedings

1.1. TU Electric and CASE agree to execute and file with the Nuclear Regulatory Commission ("NRC") a Joint Stipulation and Joint Motion for Dismissal of NRC Proceedings, specifically Docket Nos. 50-445 OL, 50-446 OL and 50-445 CPA, in a form

Plaintiffs' Exhibit J

as set forth in Exhibits and B attached to this Agreen t, the terms of which are incorporated herein by reference for all purposes of this Agreement.

Plaintiffs' Exhibit J

1.2. TU Electric and CASE agree to prosecute diligently, in accordance with their respective charters, such Joint Stipulation and Joint Motion for Dismissal and to provide any additional information, file any additional pleadings, make such appearances, and provide such support before the NRC and any other body as may be necessary to effectuate the dismissal of the above-referenced NRC proceedings. In fulfilling their respective obligations under this paragraph, Mrs. Juanita Ellis or other representatives of CASE will not be required to undertake travel away from Dallas, Texas.

1.3. Upon the effective date of the Joint Stipulation, CASE and Mrs. Juanita Ellis agree that they will not contest before the NRC, any other regulatory body or any court the issuance of any operating license or any amendments to the construction permit for CPSES Units 1 and 2, including the issuance of any associated licenses or permits, except as expressly provided in the Joint Stipulation. This provision does not apply to any proceedings before the Texas Public Utilities Commission nor, notwithstanding Paragraphs 5.1 and 5.2, does it apply to any amendments to full power CPSES operating licenses. This agreement is based upon the understanding and trust by CASE that TU Electric has agreed to complete and carry through on its commitments as provided in the Joint Stipulation to ensure that the design and construction of CPSES Units 1 and 2 are accomplished correctly in a manner specified by TU Electric and approved by the NRC Staff.

II. Commitments of TU Electric

2.1. TU Electric agrees to comply with the Joint Stipulation when effective.

2.2. TU Electric agrees that William G. Counsil, Executive Vice President, Nuclear Engineering and Operations, will continue to serve as the primary point of contact for CASE within TU Electric for the period that a representative of CASE serves on the Operations Review Committee pursuant to the Joint Stipulation. TU Electric will take no action to prevent or lessen Mr. Counsil's accessibility to CASE while he is employed by

Plaintiffs' Exhibit J

TU Electric. Nor shall TU Electric terminate Mr. Counsil's employment for reasons inconsistent with this paragraph 2.2. In the event Mr. Counsil ceases to be employed by TU Electric, CASE may designate any then-current TU Electric nuclear officer[1] as the primary point of contact and may change such contact at CASE's discretion.

2.3. In recognition of CASE's concerns about workers formerly employed in connection with the construction of the CPSES, who may have employment discrimination claims against TU Electric or a contractor thereof, whether pending or anticipated, at the time of the signing of this Agreement, or who have assisted CASE in the CPSES licensing proceeding, TU Electric has also entered into good faith settlement negotiations which will resolve the disputes with the representatives of the former workers currently engaged in litigation if and when the Joint Stipulation becomes effective. Now and in the future, TU Electric agrees to make a good faith effort to investigate and resolve issues brought to CASE by CPSES workers or others.

2.4. Contingent upon the Joint Stipulation becoming effective, then upon either the issuance of a dismissal of Docket Nos. 50-445 OL, 50-446 OL and 50-445 CPA or the issuance of an operating license to operate CPSES Unit 1, whichever comes first, TU Electric will issue to the public and the news media the following statement and will file with the NRC the request[2] that it be made part of the record of the ASLB proceeding in the previously referenced OL and CPA dockets:

1/ As used herein, nuclear officer means the Executive Vice President of Nuclear Engineering and Operations, or any officer who reports directly to him.

2/ It is agreed that the parties will file within five (5) days after entry of an Order of Dismissal of said Dockets such statement as reflected in Exhibit C hereto together with any additional documents to be included in the ASLB record, providing the parties have mutually agreed in advance to the appropriateness of such additional inclusions in the record, provided, however, that all documents specifically identified in the Index of Exhibits to the Joint Stipulation shall be excepted from this provision. This Agreement will be contingent upon admission of the statement in the record of the proceedings.

Plaintiffs' Exhibit J

TU Electric recog[illegible]es that the Citizens Association [illegible] Sound Energy (CASE) and its President, Mrs. Juanita Ellis, have made a substantial, personal, and unselfish contribution to the regulatory process which assures that Comanche Peak Steam Electric Station ("Comanche Peak") will be a safer plant. Through the untiring efforts of CASE representatives, deficiencies which existed in the early 1980's have been revealed in the design of substantial portions of the plant which no one else, including TU Electric, the Nuclear Regulatory Commission (NRC), or other third-party experts had fully recognized or discovered. As a result, Comanche Peak is a better, safer plant than before and, through the reinspection and Corrective Action Program, has a greater assurance of safety and reliable generation. We commend CASE, together with its technical advisors, Jack Doyle and Mark Walsh, and other workers, public interest organizations, and supporters for their courage and devotion to CASE's goals of finding the facts and informing the public. Because of these activities, CASE's President, Mrs. Ellis, has been appointed to the Operations Review Committee ("ORC") at Comanche Peak, an unpaid but important position which will provide CASE with the opportunity to continue to play an active part in assuring itself that Comanche Peak is as safe a nuclear facility as possible.

The ORC is required by the Comanche Peak technical specifications and functions as an independent body assigned the responsibility for review of various safety related matters including nuclear power plant operations, nuclear engineering, radiological safety and quality assurance practices among others. Among its duties, the ORC will be responsible for independent review of proposed modifications to the Comanche Peak facilities or procedures, changes to the Technical Specifications and license amendments, any violations or deviations which are required to be reported to NRC and other safety related matters deemed appropriate by the ORC members. The ORC meets periodically to review and discuss various issues bearing on the safe operation of Comanche Peak and reports its findings and recommendations directly to the Executive Vice President, Nuclear Engineering and Operations.

TU Electric also recognizes its own shortcomings in assuring the NRC that they fulfilled NRC Regulations. We acknowledge that nuclear expertise did not exist to meet those demands and that its nuclear management did not have full sensitivity to the regulatory environment. CASE, Mrs. Ellis, and her colleagues played a substantial part in achieving our current level of awareness.

III. CPSES Operations Review Committee

3.1. As provided in the Joint Stipulation, CASE's designated representative, Mrs. Ellis, or its designated alternate, will serve, without salary reimbursement from TU Electric, as a member of the Operations Review Committee ("ORC"). In the event Mrs. Ellis resigns or is otherwise unable to serve, CASE may designate a representative.

3.2. TU Electric agrees that CASE's designated representative, Mrs. Ellis, or its alternate, in furtherance of his/her duties as a member of the ORC, may engage the

Plaintiffs' Exhibit J

services of one or more technical consultants[3/] at TU Electric's expense. Such consultant(s) shall be subject only to the qualification requirements of CASE and not those of TU Electric. The total fees and expenses of all such technical consultants shall not exceed $150,000.00 on an annual basis, such fees to be in addition to any amounts payable pursuant to paragraphs 4.1 and 6.1. Such payment shall continue during such period of service on ORC in accordance with paragraph A.8 of the Joint Stipulation.

3.3. In addition to the fees and expenses of technical consultants set forth in paragraph 3.2, TU Electric agrees to reimburse CASE's representative, Mrs. Ellis, or its alternate for any other reasonable costs and expenses he/she may incur in furtherance of his/her duties as a member of the ORC, in accordance with normal TU Electric company policy.

IV. Reimbursement of Licensing Costs and Expenses

4.1. In recognition of the significant contribution made by CASE and the tremendous cost and expenses incurred by CASE from 1979 through 1988 in the NRC licensing proceedings involving CPSES, including the separate, simultaneous dockets in 1984 and 1985, and the dockets relating to the construction permit extension requests and appeals therefrom to the NRC and the Federal Courts, TU Electric agrees to reimburse CASE the amount of $4,500,000 for all costs, expenses, attorneys fees, consultants fees, court costs, salaries and debts incurred by CASE in the past and pay for such costs and expenses which CASE will incur in closing out its participation in the NRC licensing proceedings and establishing its oversight role.

4.2. The payment specified in paragraph 4.1 will be made to CASE within thirty days of the date the Joint Stipulation becomes effective in the manner specified by CASE at that time.

3/ As used herein, "consultant" shall mean any individual hired by either CASE or TU Electric for the purpose of providing advice, recommendations, opinions, technical assistance, or special services, whether or not paid by salary, commission or any other form of reimbursement.

Plaintiffs' Exhibit 3

Plaintiffs' Exhibit J

4.3 Payment obligations hereunder shall not be subject to Arbitration.

Plaintiffs' Exhibit J

V. Mutual Releases

5.1. Upon the effective date of the Joint Stipulation, TU Electric agrees to release and discharge CASE and Mrs. Juanita Ellis, their successors, assigns, officers, Board of Directors, members, consultants and attorneys from any and all claims, demands, and causes of action that TU Electric may now have or that might subsequently accrue arising out of or connected in any way with the design, construction, operation or licensing of Comanche Peak Steam Electric Station.

5.2. Upon the effective date of the Joint Stipulation, CASE and Mrs. Juanita Ellis each agree to release and discharge TU Electric, its predecessors, successors, assigns and any of its parent or sister companies, officers, directors, managers, agents, employees, contractors,[4/] consultants and attorneys from any and all claims, demands, and causes of action that CASE or Juanita Ellis may now have or which might subsequently accrue arising out of or connected in any way with the design, construction, operation or licensing of Comanche Peak Steam Electric Station.

5.3. At the time of payment by TU Electric pursuant to paragraph 4.1 above, CASE shall deliver to TU Electric a General Release in substantially the form set forth in Exhibit D, attached, from Jack Doyle, Mark Walsh and any person, other than CASE or Mrs. Juanita Ellis, who is to receive reimbursement as a consultant to or an expert witness for CASE out of the amount specified in paragraph 4.1.

5.4. It is understood and agreed that the release granted in paragraph 5.2 and 5.3 shall have no effect on any claim which is otherwise within the terms or coverage of the Price-Anderson Act, 42 U.S.C. 2210. It is further agreed that the releases granted in

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[4/] As used herein, "contractors" shall mean any company or organization hired by either CASE or TU Electric for the purpose of providing advice, recommendations, opinions, technical assistance, or special services, whether or not paid by salary, commission or any other form of reimbursement.

Plaintiffs' Exhibit J

paragraphs 5.1, 5.2 and 5.3 shall not prevent the release party from asserting any defense or counterclaim with respect to claims which are the subject of such release asserted against the releasing party by any one not a party to this Agreement or by any owner of Comanche Peak other than TU Electric.

Plaintiff's Exhibit J

VI. Indemnification

6.1 Upon the effective date of the Joint Stipulation and subject to paragraphs 6.2 and 6.3 of this Agreement, TU Electric as defined in the first paragraph of the Recitals hereto, agrees to indemnify and defend CASE, and Mrs. Juanita Ellis, their successors, assigns, Board of Directors, members, consultants, and attorneys from any and all claims, demands and causes of action asserted or brought against them in violation of the release set forth in Article V, paragraphs 5.1 and 5.3. Such indemnification shall include all attorney's fees that CASE, or Mrs. Juanita Ellis may incur by reason of or in consequence of any such claim, demand or cause of action, provided however, that TU Electric's total liability under this paragraph 6.1 shall not exceed $4.5 million, which amount would be in addition to the sums paid in paragraphs 3.2 and 4.1.

6.2 CASE and Mrs. Juanita Ellis shall notify TU Electric of any such claim, demand or cause of action asserted or brought against them or any one of them and TU Electric will assume and defend, at its sole cost and expense, any and all such claims, demands or causes of action. TU Electric will, however, provide to CASE copies of all pleadings and briefs filed in the case.

6.3 The notice required by paragraph 6.2 shall be provided not later than fourteen days after CASE or Mrs. Juanita Ellis receive or obtain knowledge of any such claim, demand or cause of action. Notice shall be provided as specified in paragraph 10.5.

6.4 Notwithstanding the provisions of paragraph 10.1, TU Electric may, after prior notice to CASE, disclose this Agreement or the terms of this Agreement if, in TU Electric's sole discretion, such disclosure is necessary to the defense of any such claim, demand or cause of action.

Plaintiff's Exhibit J

Plaintiffs' Exhibit J

VII. Conditions of Settlement

7.1. This Agreement, the Joint Stipulation and the Joint Motion to Dismiss are null and void and of no legal effect if TU Electric, CASE and the NRC Staff fail to execute and jointly file the Joint Stipulation and Joint Motion for Dismissal.

7.2. In the event the Atomic Safety and Licensing Board ("ASLB") fails to either grant or deny the Joint Motion for Dismissal within 30 days of its filing, TU Electric may, in its sole discretion, terminate this Agreement, the Joint Stipulation and the Joint Motion for Dismissal by written notice to CASE made within 20 days after the expiration of the 30-day period following filing of the Joint Motion. If TU Electric fails to make written notice to terminate within the 30-day period, this Agreement shall remain in full force and effect and neither party shall be entitled to rescind this Agreement except as provided in paragraph 7.3 below. In the event that TU Electric elects to so terminate, the period for deferral of actions required under the hearing schedule, as specified in the Joint Motion, shall be extended for an additional period of time equal to the number of days between the end of the 30-day period following filing of the Joint Motion and the day on which the notice of termination is made.

7.3. At any time up to 30 days after the ASLB issues an order denying the Joint Motion for Dismissal, TU Electric may, in its sole discretion, by written notice to CASE, either:

(a) make the Joint Stipulation effective as to the rights and obligations of TU Electric and CASE thereunder, subject only to the concurrence of the NRC Staff as to the applicability of Section B thereof. Upon such concurrence by the NRC Staff, the Joint Stipulation shall be deemed effective as if the ASLB had accepted the Joint Stipulation and dismissed the proceedings; or

(b) after such denial, terminate this Agreement.

Plaintiffs' Exhibit J

This Agreement shall terminate upon the expiration of each 30 day period unless TU Electric exercises its rights under this Article.

Plaintiffs' Exhibit J

VIII. Arbitration

8.1. Except as provided in paragraphs 4.3 and 8.3 of this Agreement, all disputes regarding the meaning or interpretation of this Agreement or of paragraphs A.5, A.6, and A.8 of the Joint Stipulation, which the parties cannot resolve amicably shall be resolved in accordance with the rules of the American Arbitration Association ("AAA") except as modified by this Agreement. Arbitration will be commenced by the service of a written notice by the party seeking arbitration setting forth the matter in dispute and requesting a ruling pursuant to this Article.

8.2. The arbitration panel will be composed of three arbitrators, one appointed by TU Electric, one appointed by CASE, and the third arbitrator appointed by the two arbitrators named by the parties. If one party fails or refuses to appoint an arbitrator within thirty days of the commencement of arbitration, the arbitration will be conducted by the arbitrator appointed by the other party. If the two arbitrators are unable to reach agreement on a third arbitrator within thirty days of their appointment, the third arbitrator will be appointed by the AAA.

8.3. The arbitration panel shall issue a written decision declaring the rights and obligations of the parties under this Agreement, and shall have authority to issue an order requiring the parties or either of them to take or refrain from taking action; provided that the arbitration panel shall have no authority whatsoever to hear or decide any dispute falling within the terms of Section B of the Joint Stipulation attached. The decision of the arbitration panel will be final and binding on the parties.

8.4. The situs of the arbitration will be Dallas, Texas.

8.5. All costs of arbitration incurred by both parties, including but not limited to attorneys' fees, witness fees, and administrative costs, shall be borne as determined to be appropriate by the arbitration panel, pursuant to the rules of the AAA.

Plaintiffs' Exhibit J

8.6. In resolving any dispute between the parties pursuant to this Article, the arbitration panel shall apply the substantive law of the State of Texas excluding, however, the conflict of laws provisions of the State of Texas. In addition, Rule 11 of the Federal Rules of Civil Procedure shall apply to any and all claims made pursuant to Article VIII of this Agreement.

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IX. Resolutions and Legal Opinions

9.1 The parties agree to exchange copies of duly executed and approved resolutions of their respective Board of Directors in form and content set forth in Exhibits E and F attached. In addition, TU Electric shall deliver to CASE a legal opinion of the firm of Worsham, Forsythe, Sampels & Wooldridge in form and content set forth in Exhibit G attached.

X. Miscellaneous

10.1. Except for the information set forth on Exhibit H attached, which may be released to the public when the Joint Stipulation is filed, this Agreement shall be maintained in confidence by TU Electric, CASE and Mrs. Juanita Ellis and neither the Settlement Agreement nor the terms of this Agreement may be disclosed to any other person unless such further disclosure is required by law (after diligent attempt is made to prevent such disclosure) or is agreed to in writing by all parties. If any party to this Agreement is threatened or compelled by operation of law to disclose this Agreement or the terms of this Agreement, such party shall, prior to disclosure, immediately notify the other parties to this Agreement of such threatened or compelled disclosure in order that all parties may contest the disclosure. The obligation to maintain this Agreement in confidence shall survive the termination or cancellation of this Agreement. It is agreed that any public statements or press releases concerning the Agreement made by any party to the Agreement shall first be approved by the other parties hereto.

Plaintiffs' Exhibit J

10.2. This Agreem : will be binding upon and inure t e benefit of CASE, Juanita Ellis and TU Electric, their successor and assigns. This Agreement will not be assignable by any of the parties hereto without the written consent of the remaining parties.

10.3. This Agreement will become effective upon its execution by TU Electric, CASE and Juanita Ellis.

10.4. This Agreement constitutes the entire Agreement between the parties and supersedes all prior agreements, representations, statements, promises, and understandings, whether oral or written, express or implied. This Agreement may only be amended or modified by a writing signed by all parties. This Settlement Agreement and the Joint Stipulation will be construed in a consistent manner, taking into consideration the purpose of this Settlement Agreement. If any of the provisions are not consistent or are contradictory, CASE and TU Electric agree that the Settlement Agreement will govern.

10.5. Any communications or notices made or given by any party in connection with this Agreement shall be in writing, to the following:

If to TU Electric:

William G. Counsil
Executive Vice President, TU Electric
Skyway Tower
400 North Olive Street, L.B. 81
Dallas, Texas 75201

If to CASE:

Mrs. Juanita Ellis
President, CASE
1426 South Polk Street
Dallas, Texas 75224

With a copy to:

Billie Pirner Garde
Government Accountability Project
Midwest Office
104 East Wisconsin Avenue - B
Appleton, Wisconsin 54911-4897

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Written notices wi[illegible]e by certified mail, return receip[illegible]equested or hand delivered and will be deemed given on the date of mailing if mailed or delivery if hand delivered.

The undersigned warrant and represent that they have full and complete right, power, authority and capacity to execute this Agreement on behalf of the parties to this Agreement, due to Corporate Resolutions duly authorized.

Plaintiff's Exhibit J

For and On Behalf of Texas
Utilities Electric Company
Separately and Acting as
Project Manager under the Joint
Ownership Agreement on behalf of all
The Owners of CPSES

By: _____
William G. Counsil
Executive Vice President, Generating Division

CASE (Citizens Association For
Sound Energy)

By: _____
(Mrs.) Juanita Ellis
President

By: _____
(Mrs.) Juanita Ellis, Individually

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Plaintiffs'
Exhibit J

AFFIDAVIT
of
Barbara N. Boltz

STATE OF TEXAS)
COUNTY OF DALLAS)

Before me, the undersigned authority, on this day personally appeared Barbara N. Boltz, who first being sworn on her oath, states as follows:

"My name is Barbara N. Boltz. I reside at 2012 South Polk Street, Dallas, Texas. I am over the age of twenty-one (21) years and fully competent to make this affidavit.

"I first became aware of Citizens Association for Sound Energy (CASE) from a newspaper article sometime in 1979. (It is my understanding from conversations with Mrs. Ellis, as well as from CASE handouts, that the organization was formed on January 8, 1974, six days before the Dallas City Council held hearings on DP&L's request to participate in the Comanche Peak project.) After talking with CASE's President, Mrs. Ellis, about the group's concerns about the Comanche Peak nuclear power plant, my husband and I decided to become involved. We joined the organization at that time.

I worked closely with CASE from 1979 until my resignation from the Board on July 19, 1988. For much of this time, those of us who participated in the hearings were friends as well as co-workers.

This does not imply that we had no disagreements but that, despite our differences, I continued to work with CASE and remained on the Board. Everything changed in the spring of 1988, however, when a settlement in the operating license hearings was proposed between CASE, Mrs. Ellis, and Texas Utilities Electric Company (TUEC). My husband and I sought the advice of counsel and resigned from the Board on July 19, 1988, but remained CASE members.

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As I recall, I was elected a CASE boardmember and officer in 1981. From the time I joined CASE in 1979 I was an active member. I participated extensively in the operating license hearings on Comanche Peak, assisting in developing and implementing litigation strategy, writing discovery requests, participating in actual discovery, analyzing documents, assisting in the preparation of filings, and working closely with technical witnesses and assisting them in the preparation of their testimony--as well as assisting in the hearings themselves. CASE's purpose and virtually all of its activity concerned the Comanche Peak plant, its construction, licensing, and operation.

During this time period, I also attended prehearing conferences and technical meetings as one of CASE's representatives. After TUEC requested the suspension of the operating license hearings in January, 1985, I continued to participate in the intervention effort by assisting in the preparation of CASE filings and by continuing to request and analyze information on TUEC's various corrective action programs. As one of CASE's representatives, I also continued to attend numerous meetings and discussions of technical issues that were held between CASE witnesses and TUEC and Nuclear Regulatory Commission (NRC) staff and consultants.

Prior to 1982, I assisted in CASE's intervention before the Texas Public Utility Commission (PUC) in a rate case filed by Dallas Power and Light (DP&L). From 1983 through 1985, my husband and I were the CASE representatives who were responsible for CASE's Interventions in three rate cases regarding Comanche Peak. PUC Dockets 5256 (in 1983), 5640 (in 1984), and 6190 (in 1985). I assisted in the preparation of litigation strategy, prepared discovery requests, participated in actual discovery, wrote the motions, briefs and other filings, participated in prehearing conferences, and assisted in cross-examination.

I was also CASE's representative in several conferences and forums on issues associated with Comanche Peak. These meetings were variously sponsored by the National Association of

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Attorneys General, the PUC, the Office of Public Utility Counsel (OPUC), and various coalitions of citizens groups. I was also a member of the OPUC's Citizens Advisory Committee from 1983 to1986. In that capacity I worked closely with representatives from various governmental agencies as well as with the representatives of a number of citizens groups from across the state. I have also represented CASE on several television and radio programs and have been interviewed on various issues, as CASE's representative, by the media.

When I began to work with CASE in 1979, the group was drafting contentions for the upcoming operating license hearings on Comanche Peak. The organization's focus was on the problems associated with nuclear power as they related specifically to the Comanche Peak project: its design defects, construction flaws, and financial costs. CASE expressed those concerns in hearings before the Atomic Safety and Licensing Board (ASLB) and the PUC.

By early 1985, in its newsletters, informational handouts, and in media interviews of its President, CASE asserted that, because all of the problems could never be identifed, much less corrected, Comanche Peak should never be granted an operating license. In the same publications, CASE also declared that it was opposed to having the ratepayers pay for the cost-overruns of the project. CASE had intervened in every DP&L and TUEC rate case filed since 1974 and would participate in any rate base case on Comanche Peak.

CASE operated informally out of Mrs. Ellis' home. The highly technical nature of the proceedings, coupled with tight deadlines and CASE's lack of resources, made for a fast-paced environment. Numerous hearings were held from 1981 through 1985, most before the ASLB, some before the PUC.

Although the by-laws called for CASE to be run by a Board of Directors, in practice the President, not the Board, controlled CASE and assumed the responsibilities normally delegated to other officers, as well as her own. Two inactive boardmembers routinely gave her their proxies.

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Later, Mrs. Ellis controlled the information flow to and from the three out-of-state boardmembers. By 1982 or 1983, before our opinions were solicited on a matter put to the boardmembers separately for their consideration, she would routinely report that the other boardmembers had either agreed with her or had given her their proxies.)

In addition, to my knowledge, all of CASE's records were in her possession and under her control--not only all of the hearings-related documents, but all of the organizational information on membership, finances, and fundraising as well. She kept any minutes. She edited the newsletter. She was the only one who knew who all of the members or donors were.)

She also exercised a great deal of control over the group's finances. To my knowledge she never asked for Board approval of large expenditures, nor did she request Board approval for purportedly loaning CASE approximately $30,000 over the years. Whenever we were reimbursed for some CASE-related expenses we were always given a personal check by Mrs. Ellis. To my knowledge she paid all CASE expenses by personal check, never by checks drawn on a CASE account. I never saw a treasurer's report and I knew only what Mrs. Ellis told me from time to time about her assessment of the general state of CASE's financial condition.

As indicated in CASE newsletters, interested individuals could join CASE either by paying dues or by volunteering their time. (In theory, those who did not renew could be crossed off the membership roll, but I was never told that this was ever done. Nor, to my knowledge were volunteers' hours ever tracked to ensure that they worked the "required" number.) Instead, in practice, according Mrs. Ellis, CASE's membership consisted of all who agreed with CASE about the plant, no matter how much (or little) money or time they donated, or how often they did (or did not) do so.)

According to the by-laws, a person's application for membership was theoretically conditioned on Board acceptance. But from the day I joined CASE until the day I resigned from the

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Board, I was never told of anyone ever being turned down for membership, much less of anyone's application ever being brought before the Board for such consideration.

Membership in CASE did not preclude anyone from also being a member of another group that was concerned about Comanche Peak; nor did membership in another group preclude anyone from being a CASE member. While I worked with CASE I knew CASE members in good standing (including several individuals who are plaintiffs in this suit) who were members of other groups. I also recall that Mrs. Ellis said at the time that they were CASE members.

Members were entitled to work on CASE activities, receive the newsletter, attend an annual meeting, and vote for new boardmembers and officers in an annual election. In actuality, mostly only Dallas members were able to work extensively on the hearings, since the CASE office was in Mrs. Ellis' home in Oak Cliff. The newsletter came out sporadically, usually when Mrs. Ellis determined that funds were low. If the annual meeting was held, members were usually given very short notice. I recall only three or four annual member meetings from 1979 through July, 1988 and I do not believe that a quorum was present at any of them.

Elections were more votes of confidence than genuine elections since, according to the by-laws, once a member was elected to the Board, the position was essentially permanent. A boardmember could resign or be removed only by a vote of the Board, not of the membership. There was no term of office. In practice, all nominees to existing or newly-created Board seats were chosen by the Board, as were officers (who were always current boardmembers). Beginning with the 1982 election, the process was divorced from the annual meeting and elections were held by mail. To my knowledge, there are no records of the results of any election.

I recall that I came on the CASE board in 1981, and was elected Secretary the same year. (I also recall that my husband became a boardmember in 1980 and was named acting Vice President sometime prior to 1985, when he became Vice President.) When I was elected

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Secretary, I was told that the office was honorary; that I was being named to the position "for all my hard work", and that I would not have any official responsibilities in this capacity since the President wished to take the minutes of any meetings.

At the time I came on the Board, board meetings were held in Mrs. Ellis' living room. Meetings were informal, and occurred periodically, as I recall, until around the time of the June, 1982 hearing before the ASLB. After the hearing, a newsletter was mailed out, announcing that, for the first time, CASE's annual election was to be held by mail. A ballot was also enclosed.

At the next board meeting, held in August, 1982, it is my recollection that two new boardmembers (Mr. Ellis, Mrs. Ellis' husband, and Ms. Welch) were added to the Board, and that Mrs. Ellis was voted a salary by a majority of those present. (As I recall, we were told that it was merely a gesture of appreciation for all of her hard work; that she would probably never receive any money.) I also specifically recall that we did *not* vote with the majority to give her a salary. To my knowledge, the Board did not meet again until June 14, 1988, almost six years later, when it met to discuss and accept the settlement agreement with TUEC, which included an initial compensation package of at least $440,000.00 for Mrs. Ellis.

Between 1982 and 1988, two boardmembers moved out of state but remained on the Board (Mr. and Mrs. Wilmore). (To my knowledge, one boardmember's permanent residence was always out-of-state: Ms. Welch's. I recall that she was in Dallas only occasionally to assist in some of the operating license hearings.) In addition, two boardmembers who lived in Dallas (Mrs. Grey and Mrs. Altus) were inactive. As I recall, Mrs. Altus did not participate in the hearings or attend a board meeting, including the June, 1988 discussion of the proposed settlement, until July 14, 1988, when CASE received its portion of the settlement funds. As I recall, Mrs. Grey attended at least one board meeting prior to August, 1982, but did not participate in the hearings or attend the settlement discussion in June, 1988. (She did attend the July 14, 1988 meeting.)

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By 1982 or 1983, out of nine CASE boardmembers, only four boardmembers who were actively working on the operating license hearings lived in Dallas: my husband, myself and Mr. and Mrs. Ellis. Of those four boardmembers, only three (myself, my husband, and Mrs. Ellis) were doing legal work and technical analysis. (And only two boardmembers, myself and my husband, were working on the PUC rate cases and on rate issues associated with Comanche Peak.)

From 1982 or 1983 until June 14, 1988 Board business (to my knowledge, only matters which Mrs. Ellis decided to bring to the other boardmembers' attention) was conducted primarily by phone through Mrs. Ellis. First, she contacted the other boardmembers and obtained both Mr. Gilmore's and Ms. Welch's approval and Mrs. Ates' and Mrs. Grey's proxies. Then she summarized the issue, reported the "vote" tally, and asked if we concurred. To my knowledge, no minutes of these conversations or decisions were kept.

Occasionally during hearings, ad-hoc meetings were held in which decisions were made by the boardmembers (usually myself, Mrs. Ellis and Mr. Ellis, and sometimes Ms. Welch (if she was in town) and/or my husband as well) and associated counsel (e.g., Ms. Garde) who were actually present. Again, to my knowlege, no minutes of these meetings were kept.

The events that led up to our resignation from the CASE Board are as follows. In March, 1988, my husband went with a CASE engineering witness to tour the plant to check on a number of his concerns. When he returned from the tour he told me that the witness liked what he had seen. Since one of our main witnesses felt that some of his concerns were being satisfactorily addressed, my husband decided to recommend to Mrs. Ellis that CASE consider settling on those issues. Although he told me that he had spoken with her several times on this matter, he said that she did not appear to concur with his recommendation.

Sometime in early May, I believe, Mrs. Ellis announced that she, her husband, and Ms. Billie Garde (an attorney with the Government Accountability Project (GAP) who was assisting

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CASE in the operating license hearings) were holding settlement negotiations with TUEC. My husband told me that, as CASE's Vice President, he thought he should be on the negotiating committee. Later, he told me that he had asked to be included, but that his request was turned down; that he was not allowed to participate in the negotiations.

The draft agreement was completed swiftly, but before we could participate in the discussions on the proposal (or even read it) we each had to first sign a confidentiality agreement.

When we first read a copy of the draft of the proposed agreement, several items concerned us greatly. First, the settlement was to be made between CASE, Mrs. Ellis *as a separate party*, and TUEC. Second, acceptance of the agreement would result in the complete dismissal of the operating license hearings (instead of settling specific issues, while preserving CASE's right to litigate any remaining concerns before the ASLB). Third, it contained equivocal language that might jeopardize CASE's right to participate in a rate base case on Comanche Peak. Fourth, the settlement included cash payments to CASE and to Mrs. Ellis personally. Line items totalling $440,000.00 were specifically earmarked for Mrs. Ellis personally (not including any money that she might also receive for reimbursement of the loan she claimed she had made to CASE). CASE was to be given an unspecified amount for reimbursement of expenses incurred during the years of hearings, as well as a fixed amount for a number of years to enable CASE to hire a someone to monitor the company's completion of the implementation of its corrective action plan. (We were stunned. The thought of money being part of any settlement had never crossed our minds; much less the idea that anyone, especially a CASE boardmember and officer, should profit personally from it.) And fifth, according to provisions in the draft proposal, the settlement itself (including the details of the financial arrangements) would remain forever secret, even from CASE's members.

For the first time, we realized that we were isolated from Mrs. Ellis. Nor could we discuss our concerns with anyone who had not signed the confidentiality agreement; we had no way

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to contact boardmembers other than the Ellises (who had, of course, negotiated the draft agreement) and the attorneys whom we had worked with in the hearings were either participating in the actual negotiations (Ms. Gerue) or were advising Mrs. Ellis on it.

After conversations with Mrs. Ellis and with two of the attorneys, it became clear to us that the settlement would be approved essentially unchanged, and that it would be approved very quickly, without due consideration or sufficient review, and without satisfactorily addressing our concerns. When we first obtained a copy of the draft agreement shortly after it was completed on June 6, we had been aware of the existence of negotiations on a possible settlement for less than a month. Less than ten days later, on June 14, 1988, the Board met, for the first time in almost six years, to initially consider and ultimately approve the settlement.

The meeting itself was a charade. Instead of beginning at 9:00 a.m. as we had been led to believe, it did not begin until almost 6:00 p.m., and was still in progress when we left around 3:00 a.m. the following morning. (Neither Mrs. Altus nor Mrs. Grey were present. Mrs. Ellis claimed to have their signed proxies and conflict of interest waivers.)

At the outset, we were told that each of us, as well as each of the other boardmembers who were present, had to first sign a "waiver of conflict of interest" statement, and that we had to approve the minutes of the August, 1982 board meeting as presented by Mrs. Ellis *if we could not prove that they were wrong, even though our recollection of what had transpired differed from what was written in the minutes, which she had prepared.* We knew from the tension in the room, however, that if we did not agree to sign the waivers of conflict of interest and vote to approve the minutes as written, we would be asked to leave. We decided to stay.

As the evening went on, there was no satisfactory discussion of any of the concerns that we raised: (1) how CASE intended to fund its intervention in the rate base case (*See Note below*); (2) that the details of any monetary award that CASE or any individual received as part of the

settlement should be made public; and (3) that if anyone received payment from the settlement for past CASE work, that everyone should. (Our initial position, that no one should profit from the settlement, was dismissed out of hand.) We succeeded in making editorial changes that made it explicit that CASE would not be precluded from participating in a rate base case on Comanche Peak, but we were unsuccessful in getting the Board to decide how CASE would fund the intervention once the settlement was announced. Several hours into the meeting, after every concern that we raised was opposed, ridiculed, or ignored, we became silent and abstained from voting on any further motions.

Note: A "rate base case" is the case that an electric utility must file before the PUC to request that the cost of a construction project be allowed "into the rate base"--i.e., be included (for the 30 to 40 year estimated life of the plant) in the total value of the company's assets upon which the company is allowed to earn the rate of return granted to it by the PUC. According to PURA (Public Utility Regulatory Act) regulations, only the money that the utility proves that it spent prudently on the construction project is to be included in the rate base.

After midnight, the discussion turned to the topic of money and became surreal. By the time it was over, long after we had left, CASE had decided to ask TUEC for $10.0 million: $5.0 million that we were told would go to certain CASE witnesses ("the whistleblowers") and $5.0 million that would go to CASE. (CASE's portion, we were told, included all of the money that Mrs. Ellis was to get personally, including a substantial amount for "disability" or "retirement pension" or whatever term and whatever amount the rest of the Board settled on after we left, as well as reimbursement of the loan and payment for her past work with CASE.)

Before we left, estimates of boardmembers' salaries for past work (as well as estimates of other payments to be made to some of them); estimates of legal, consultant, and technical

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witnesses' fees, etc., and estimates of other reimbursements were made. The numbers were added together, and an equal amount was added in "for the whistleblowers". These estimates were then doubled. Next, the estimates of some of the boardmembers' salaries and other payments were increased *again and again*-- a few several times over.

We left sometime around 3:00 a.m. on June 15 while the meeting was still in progress. We had seen and heard enough.

Later that day, Mrs. Ellis called to tell us that, after the meeting was adjourned, someone noticed that they had forgotten to add in the estimated cost of the "other" expenses that CASE had incurred in the hearings. She said that the other boardmembers had all agreed to add in the amount, along with an additional amount that would bring CASE's total up to an even $5.0 million. She said that a similar upward revision in the amount requested for the whistleblowers had been approved by the other boardmembers as well. To the best of my knowledge, that is how CASE arrived at the $10.0 million that it requested and received from TUEC as part of the settlement. (Note: The split was later revised (we were told, in response to a request by Ms. Garde) so that the whistleblowers were to receive $5.5 million and CASE was to receive $4.5 million.)

For me, the last straw came on June 30, 1988, the day that Mrs. Ellis signed the settlement on CASE's behalf. When she gave me a copy of the press release that was to be released the following day that announced the now-completed settlement, along with a copy of the Joint Stipulation (the only portion of the agreement that was to be made public), she told me that CASE would not have to participate in the rate base case on Comanche Peak, because of a verbal promise that a TUEC executive had made to her.

I was stunned. Such an understanding (which I was being told about only after the ink was barely dry on the written settlement) was not only totally opposed to all of CASE's past assurances that it would intervene in the rate base case, but made a mockery of the changes that my husband

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and I had so carefully crafted in the written agreement at the June 14 board meeting to ensure that CASE *could* participate.

I knew that I could not continue to be involved any longer, but I did not know what to do, nor did my husband. We believed that we did not have the option to resign from the Board before the Atomic Safety and Licensing Board (ASLB) approved the settlement since, according to provisions of the confidentiality agreement which we had signed, any one of the signers whose actions could be construed as leading to the scuttling of the agreement would be sued by CASE and by TUEC. We felt certain that if we resigned at that time, we would be held liable if the settlement was not accepted by the ASLB.

With the hearing fast approaching at which the ASLB would decide whether or not to approve the settlement, my husband and I contacted an attorney. I made an appointment to discuss the situation with him in his office on July 11. After this meeting, we reiterated our concerns to the Board in writing and requested an immediate meeting to discuss them. I wrote up the draft of our proposed resolutions, which my husband then reviewed and approved. On July 12, I delivered copies of our proposed resolutions to Mrs. Ellis' home and requested that a meeting be called to discuss them before the hearing the following morning. I was promised a breakfast meeting at which our proposed resolutions would be discussed, but that discussion never took place.

The following day, after the ASLB had approved the settlement (ruling as well that the entire settlement agreement had to be released to the public) and had dismissed the operating license hearings, we and the other CASE boardmembers who were present, along with Ms. Garde, met briefly but, again, they would not discuss our concerns. On July 14, 1988, the day on which CASE actually received its portion of the settlement monies, the full Board (including Mrs. Gray and Mrs. Altus) met. Once again, our concerns were not addressed. Finally, after experiencing a

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great deal of ridicule and hostility, we walked out. At that point we both decided that we could no longer remain on the Board.

We then drafted our joint letter of resignation as officers and as boardmembers, dated July 19. I mailed copies to all of the boardmembers. CASE accepted our resignations in a letter dated July 29. We replied to that letter in our letter of August 1, in which we reminded Mrs. Ellis, that although we had resigned as boardmembers and as officers, *we were still CASE members*.

Following our resignations, we tried to get CASE to disclose its finances and activities to us before filing this lawsuit.

After reviewing our options with counsel, I drafted our letter of November 28, in which we asked CASE to provide us, in writing, the details of the process for filing requests for compensation or reimbursement which applied equally to anyone who had worked with CASE in the past.

Mrs. Ellis replied in her letter of December 16, that CASE was awaiting an IRS ruling on, no CASE could legally reimburse without allegedly jeopardizing its tax-exempt status. We were promised a reply as soon as they received the information. We are still waiting.

In our letter of January 5, 1989, I then requested written answers to a series of questions concerning the distribution of the settlement monies (e.g., how much had gone to whom, when, for what, and on what basis). I also noted that the IRS might never rule on CASE's request.

Ellis acknowledged receipt of our letter in a note dated January 13, and later, in a letter January 21, stated that CASE's CPA was preparing a summary of the information that we had requested which should be completed and forwarded to us by the end of the month.

We heard nothing until we received Mrs. Ellis' letter dated March 1, in which she stated that CASE was "nearing completion" of the proposed letter to the IRS and that CASE's CPA was also "nearing completion" of the summary of the information that we had been promised.

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The next letter that we received, dated March 31, 1989, came not from Mrs. Ellis but from CASE's attorneys. A computer printout was also enclosed. In the cover letter, the attorney said that the printout was "self explanatory". It showed that the original $4.5 million (CASE's portion of the settlement monies) deposited July 14, 1988 had almost doubled to $9,696,323.14 by December 30, 1988. Large amounts of money was coming in, much more than could be explained by interest alone--but there was no explanation of where it was coming from or why. There was also a printout listing disbursements from the funds for the same period which showed payments to CASE boardmembers for current, as well as for past, work with CASE.

After consulting with counsel, we requested that he reply on our behalf. He did so in his letter of April 25, in which he advised CASE's attorneys that he represented us in connection with our request for information from CASE, which included all financial information, as well as CASE's organizational records and information on its activities. He made it clear that we wanted to obtain copies of the information requested, not simply the opportunity to inspect it.

Our attorney did not receive a reply to his letter until almost three weeks later. In his letter of May 15, CASE's attorney said that the records would only be made available for inspection, not for copying. This was not acceptable to us.

In his reply dated May 19, our attorney repeated our desire to obtain, and our right to have, copies of all of the documents that we requested. He also countered CASE's attorney's claim that we would use this information improperly, and denied that we had done anything "inaccurate, incomplete, out of context or misleading" in regard to information that we already possessed. He reiterated our desire to insure that CASE is true to its charter and its expressed public purpose.

Before we (my husband and I, and our attorney) went to CASE's office on June 9, 1989 to review the documents, our attorney told us that CASE had finally agreed to let us have copies. We

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requested a copy of every document that we reviewed. Some of those documents included the following:

End of the month financial reports to the Board of Directors;

A cash journal (showing T-bills and T-bill interest);

An expense ledger for 1988 and 1989 showing payments to consultants and attorneys (including Mr. Gilmore, and payments for an unidentified "pilot project" (also to Mr. Gilmore);

Payroll records for 1988 and 1989 (showing payments to Mr. and Mrs. Ellis, and to Mrs. Grey);

A general ledger;

A book listing the dues-paying members from 1974 through June, 1989;

A single typed sheet which contained only six names: Mr. and Mrs. Ellis, Mr. and Mrs. Gilmore, Mrs. Grey and her son, which purported to be the list of all CASE members as of 6/7/89;

Recap sheets of various accounts;

Minutes of the 4/15-4/16/89 CASE Board of Directors meeting;

Minutes of the 3/29/89 CASE Board of Directors meeting;

Minutes of the February CASE Board of Directors' conference call (including recently amended and restated CASE By-Laws);

Minutes of the 1/31/89 CASE Board of Directors' conference call;

Minutes of an 8/15/88 CASE Board of Directors' conference call (including a document entitled "Unanimous Consent of the Board of Directors in Lieu of Meeting");

Minutes of the 6/14/88 CASE Board of Directors meeting; and

Minutes of the 8/4/82 CASE Board of Directors meeting (with attachments).

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We left the office with CASE's promise that we would receive the copies that we had requested shortly, but we never received them.

Instead, we received a note from Mrs. Ellis dated June 12, informing us that our check (which I had mailed earlier, following the surprising discovery on June 9 that we were no longer considered to be CASE members, apparently based on a revision of the by-laws by the Board in February, 1989 -- which we had not been informed about) would be returned to us uncashed, since our "request for membership" had been rejected. We were incensed. We had remained members of CASE when we resigned from the Board in July, as we had explictly told Mrs. Ellis in our letter of August 1, 1988. And we were upset that they would attempt to "count us out" by changing the rules without telling us.

In a letter dated two days later, June 14, CASE's attorney informed us that CASE had decided not to provide us with the copies that we had been promised. We were only offered copies of monthly summaries of financial information, not those of the documents that we had inspected. Nor were we offered copies of the minutes or other CASE records. In addition, our request for detailed information on CASE's monitoring activities at the plant was denied.

Our attorney continued to attempt to persuade CASE to release the copies of the information that we had requested, but he was unsuccessful. Then, on July 7, CASE's attorney sent our attorney two financial reports. In his cover letter, he accused us of releasing the computer printout to a U. S. Senate subcommittee (an allegation which was untrue).

Since CASE had persistently refused to release the information (and the copies) voluntarily, we decided to file suit to obtain them. Several other long-time CASE members joined our suit, which was filed by our attorney on July 18, 1989.

Two days later we received from an outside source a copy of a CASE newsletter dated July 19. In it we, and those who had joined our suit, were accused of conspiring to take over the

organization. And, although our membership renewal check had been refused, others were urged to send in their dues immediately.

It is now June, 1990, eighteen months after we first asked CASE for information, and over a year since our attorney requested that CASE provide us with copies of its financial records, organizational records, and information on its activities. Despite repeated attempts, we still have not received copies of all of the information to which we are legally entitled. We still want all of the information; not just what they want to release--and we still want copies of it all.

I firmly believe that we have not been given the information that we have repeatedly requested because of what we already know. The Board knows that we know what went on in the settlement discussions. They know that we asked questions that the other boardmembers did not wish to answer about CASE's responsibilities to its members and to the public. They know that we know who was supposed to get money, and how much they were supposed to get. And they know that we are the only ones, besides themselves, who know that--and more.

The operating license hearings were dismissed almost two years ago. PUC Docket 9300, the rate base case on Comanche Peak, is currently underway--and CASE is not an intervenor. We still do not know what CASE has actually done with the settlement money, or what the actual extent of its involvement is on the Operations Review Committee (ORC), or what its oversight role over TUEC's implementation of the corrective action program at Comanche Peak has involved, or anything else CASE may be doing or plans to do.

The CASE Board claims that we are no longer members; we emphatically disagree. We ask this Court to deny the CASE Board's apparent attempt to deny us access to information to which we are legally entitled by claiming that we are no longer part of the organization.

Plaintiffs'
Exhibit J

As CASE members, and as members of the public, we ask this Court to order CASE to immediately allow us to inspect and to copy all of the information and documentation to which we are legally entitled."

Further Affiant Sayeth Not.

Barbara N. Boltz

Barbara N. Boltz

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority on this the 22nd day of June, 1990.

Kathy L. Patrick

Notary Public for the
State of Texas

Printed Name of Notary Public:

KATHY L. PATRICK
Notary Public, State of Texas
My Commission Expires 4/30/92

My Commission Expires:

Plaintiffs'
Exhibit J