12620

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Ivan Selin, Chairman
Kenneth C. Rogers
James R. Curtiss
Forrest J. Remick
E. Gail de Planque

In The Matter of:	§	
TEXAS UTILITIES ELECTRIC COMPANY	§	Docket Nos. 50-445-OL 50-446-OL 50-445-CPA
(Comanche Peak Steam Electric Station, Units 1 and 2)	§	

MOTION TO REOPEN THE RECORD

Comes now, Sandra Long Dow dba Disposable Workers of Comanche Peak Steam Electric Station, and R. Micky Dow, hereinafter movants, and file this, their Motion To Reopen The Record, pursuant 10 C.F.R. §2.734(a), and §2.734(a)(1), and (a)(2), and for cause would show,

BACKROUND

This is the second such motion filed in an attempt to reopen the record with regard to the application for operation license filed by Texas Utilities Company of Dallas, Texas. The first motion was denied by this Commission as Movants lacked the requisite standing for filing of such a motion.

Movants have now filed a Petition For Leave To Intervene Out Of Time, and based on the assumed acceptance of said petition do hereby file their renewed motion to reopen the record in this matter.

For the sake of brevity, and to avoid the waste by needless repitition of their previous motion, movants do hereby incorporate the same by reference, the same as if fully copied and set forth at length herein.

DS03

ARGUMENTS

1. Motion To Reopen The Record Timely.

This motion is timely in its filing, as it is being filed 24 hours after the petition for late intervention, which if granted, gives these intervenors standing with which to bring this motion.

In the alternative 10 C.F.R §2.734(a)(1) states, in part ". . . except that an exceptionally grave issue may be considered in the discretion of the presiding officer **even if untimely presented.** (emphasis added)"

2. Significant Safety and Environmental Issues Part Of This Motion.

In addition to the safety and environmental issues already part of this motion, by way of the incorporation of the previous motion, movants now introduce the testimony of previous witnesses to the original licensing hearings. The testimony of Dobie Hatley and Ron Jones, who were signatories to the settlement agreement in July, 1998, which resulted in the Intervenor CASE dropping its allegations, and caused the hearings to be closed, granting the license to the applicant, was precluded from the record in that matter.

Dobie Hatley, who was in Document Control at CPSES was prepared to testify with regard to the alteration of engineering plans, design changes that were unauthorized and fraudulent, which she was ordered to perform by the applicant, in order that the applicant would pass an impending inspection by the NRC. Her testimony was of such import that she was granted immunity by the Department of Justice in order that she might testify without incriminating herself. She was never allowed to testify at those hearings, her concerns were never put on the record of this matter, and to the best of her knowledge and belief these errors were never addressed, nor corrected, nor identified.

Ron Jones was the Quality Assurance inspector for the Electrical Department at CPSES, and had lengthy testimony dealing with known drug sales, trafficking, and use, with particular use in the control room area, having found massive evidence of drugs, drug useage, and drug-related materials immediately beneath the main floor of the Central Control Room. Witness Jones found so many wiring violations in this area alone that he was forced to shut the control room down, and holds the record for most NCR's (Non-Conformance Reports) written in a single day (189). All of his concerns were never placed on the record, including evidence that all three of the main safety back-up systems do not, and cannot work in tandem, as designed, were never identified, and in his belief, most of which have never been addressed or corrected, as his testimony was never allowed by the intervenor CASE. Both Ron Jones and Dobie Hatley have expressed a willingness, and evidenced it by affidavit, to testify now, after a fear-induced four year silence on the subject. Both can, and will, give testimony of how they were intimidated, threatened, abused, and coerced, into agreeing, against their personal wishes, from testifying in these proceedings, and wish to do so now.

Attached, hereto, are nine separate NCR's from different elevations and locations of the Unit 1 reactor, at CPSES, which show significant errors in the seismic restraint compression fitting crimps, yet another issue which was never addressed with this finality in the previous hearings. These nine NCR's are examples of what was written in one single day, and because of the seriousness of their import require that they be addressed in far greater detail. Movant's will subpoena the authors of these NCR's who still hold a serious number of additonal NCR's which were never placed on the record or addressed.

Movant's are in the possession of all the personal papers, notes, design and engineering plans of Charles Atchison, including the original notebooks containing the remainder of the safety violations he refused to turn over to the NRC in 1988, which document close to 900 safety concerns, never placed on the record, at the time of the original hearings.

Movant's are prepared to proffer the testimony of Marla Yvonne Wilkinson, who was a supervisor in the Communications Department at CPSES, who can offer testimony of discrimination of both a sexual and racial import, as well as similar abuse. In addition Mrs. Wilkinson is prepared to introduce 16 reels of audion tape containing several hundred hours of conversation taken directly from the PBX at CPSES which contain conversations of duplicity between the license holder and members of Region IV of the NRC, to bypass, and cover-up and/or overlook various safety concerns, including the fire-watch violations of 1990 and 1991.

Movant's are prepared to proffer the testimony of Thayron Hatley, Jr., who will testify to the mismanagement, violations, and related coverup in the fire-watch and decon departments at CPSES, as well as his wrongful termination for reporting same to TU management and his threats to go to the NRC and the press if they were not addressed and corrected.

Movant Sandra Long Dow is prepared to testify about her discovery of both on-site and off-site waste dumps for both toxic and radiation contaminated materials, their illegal sale to the public, failure to properly gain repossession and/or properly dispose of these materials, to include 15-16 on-site dumps which the intervenor CASE, Government Accountability Project, and the Texas Water Commission has had full

knowledge of since August, 1990, and failed to act, and/or report the material to the proper authorities, as well as show that one Linda Porter who gained access to the materials held by Witness Sandra Dow and reported same to the EPA in Washington, who ruled the complaint as an emergency, but when they went to the home of Ms. Porter, she refused to release this information to them, stating she was under a confidentiality agreement with the Government Accountability Project and Intervenor CASE and could not release same pursuant that agreement. This was on not one, but two separate occasions.

Movant R. Micky Dow is prepared to testify on matters pertaining to the off-site dumps sites discovered by witness Sandra Dow, his penetration of said sites, the taking of samples from various locations thereon, and the fact that on two separate informal, but controlled testings, that these samples proved to be radioactive in nature. This witness is further able to testify that when he told an NRC inspector of his find and offered to turn the samples over to him, the individual ran to his car and sped off. This witness, although bringing this matter up on repeated occasions to Region IV of the NRC has never been questioned on the subject, nor an allegation placed in the file. This witness is prepared to testify how in the course of his investigation into this matter, he has been told, by every witness contacted, about their personal fear of retaliation, their intimidation, the coercion directed at them by CASE, GAP, and in particular, one Billie Pirner Garde, to prevent them from testifying at the hearings, and force them to sign the settlement agreement, even though they did not know the contents of this document, and were opposed to signing it. Some of these witnesses have only agreed to come forward if this movant certifies to them that their anonymity will be protected throughout the proceedings.

3. The Reopening Of The Record Will Result In Denial Of License.

The testimony, the documentary evidence, the investigations of these movants, any one portion of the same, had it been introduced at the time of the original licensing hearings, would have been sufficient at that time to deny the license to the applicant.

The revelation, at this time, of the evidence precluded from the Board at the original hearings, coupled with the new evidence uncovered in the past twenty-four months, through the investigations of these movants is conclusive that not only will the original license be denied, but will result in the immediate revocation of the same.

Proof that a deliberate conspiracy existed to preclude evidence from the original licensing board is attached hereto in the form of a motion for sanctions and default judgement filed by the firm of Kohn, Kohn and Calapinto, on behalf of one Joseph Macktal, to the Department of Labor, and is incorporated herein by reference the same as if fully copied and set forth at length.

REQUEST FOR PROTECTIVE ORDERS

Pursuant 10 C.F.R.§2.734(3)(c) protective orders are requested for the following, to-wit: MARLA YVONNE WILKINSON, DOBIE HATLEY, THAYRON HATLEY, JR., RON JONES, JOSEPH MACKTAL, SANDRA LONG DOW, RICHARD E. DOW, JR. aka R. MICKY DOW. In addition three (3) JOHN DOE, and three (3) JANE DOE protective orders are requested for individuals who will testify, but refused to be named, even in this pleading, without the safety afforded by protective orders.

REQUEST FOR SUSPENSION OF LICENSE PENDING DECISION

In view of the evidence attached to this motion, the evidence attached to the previous motion, incorporated herein, and the evidence

disclosed to Region IV of the NRC which show the pressure valves and limit switches in both Units 1 and 2 at CPSES to be either unlabeled, and/or incorrectly labeled, demonstrates a clear and definitive path of operation not consistant with a valid and capable license holder.

In view of the long list of violations, fines, Non-Conformance Reports, evidence of cover-up, material false statements made by the license holder, and specific design and construction violations disclosed with this pleading, there is sufficient cause to doubt the overall safety of this facility and/or its management by the current licnse holder. It is imperative that this Commission, in the interest of the safety and health of the general public, suspend the operation license for Unit 1 of the Comanche Peak Steam Electric Station, and suspend the construction permit for Unit 2 of the same, until such time as the record in this matter be reopened, all testimony be placed on the record, all evidence introduced, and a final decision reached on the propriety of reissuing this license to the applicant be determined.

CONCLUSIONS

Movants can aver, with a certain degree of comfort, and through their experiences with members of the Office of the Inspector General for the Nuclear Regulatory Commission, that this Commission has never, truly, been satisfied with the way the original hearings on this matter ended in 1988. They had no choice, with the advent of the controversial settlement agreement, but to grant the license, based on what was on the record at that time.

However, it is also apparent, at least to these movants, that this Commission is also equally prepared to reopen this record, if, and when, proper application is made to do so, and evidence is revealed with which they can support their vote to do so.

That evidence now exists, both in the contents of this, and the previous motion filed by these movants, and incorporated herein. This Commission has shown its dedication in doing the proper thing with its rejection of the licensee's assertion that the settlement agreement is a precluder to the introduction of the testimony of these whistleblowers, and the rejection of intervenor CASE's attempt to try other matters to this Commission which are irrelevant to the proceedings presently before it.

While it is true that the matter of Comanche Peak has gone on far too long, it is also true that this same matter has brought to the fore other matters which have never gone to the record in the past, such as the need, the protection, the intimidation, the abuse, and the discrediting of whistleblowers. It has also brought out the test of the viability, and the honesty of the intervention process, and of both citizens groups which are not composed of citizens at all, as well as purported legal protection groups that auction evidence back to violators, rather than put it on the record where it belongs.

This Commission has a unique opportunity, and also a grave responsibility before it, with this motion. This Commission can reopen the record, prove that the intervention process works, and allow the real story of the Comanche Peak Steam Electric Station to go on the record, as told by the people who were forced and threatened into altering the truth, forced by the applicant; and forced into not testifying about their activities, by groups who were ostensibly formed to prevent these things from happening, and sworn to protect those who would "blow the whistle". This Commission has the power to "go back", has the power to prevent what this, and yet to be introduced evidence, will show, conclusively, and irrefutably, will be a nuclear accident, of greater im-

pact, and import, than that which took place at Three-Mile Island, not long ago.

There is not, and never has been, anything, from the first line drawn on the engineer's board, through the first shovel of dirt taken from the ground at Glen Rose, Texas, ending, most certainly, with Texas Utilities Electric Company applying, and being granted an operating license for this facility, RIGHT, about this entire fiasco, and this Commission, clearly, has a duty to exercise its authority, and reopen the record of this affair, showing that it truly will REGULATE, this industry, setting a precedent which will make it possible for all whistleblowers, now, and in the future, to bring their concerns to the attention of this Commission, in order to affect their resolution.

WHEREFORE, PREMISES CONSIDERED, movants' respectfully request that their motion to reopen the record be GRANTED, and that their request that the operating license for Unit 1 and the construction permit for Unit 2 at the Comanche Peak Steam Electric Station, in Glen Rose, Texas be suspended, pending the reopening of the record, and final decision of this Commission regarding the continued licensing of this facility.

Movants further request the Commission GRANT the protective orders as requested hereinabove, and for such other and further relief, at law, or in equity, to which they may show themselves to be justly entitled.

DATED AND SIGNED this 21st day of February, 1992.

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
(613) 722-8716
Movant

R. Micky Dow

R. MICKY DOW, pro se
1078 Wellington, #135
Ottawa, Ontario K1Y-2Y3
(613) 722-8716
Movant

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Intervenors' Motion To Reopen The Record was sent to the parties listed below, by courier, on this the 21st day of February, 1992.

R. Micky Dow

Affiant

Janice Moore, Esquire
Office of the General Counsel
U.S. Nuclear Regulatory Commission
11555 Rock Pike
Rockville, Maryland 20852

George L. Edgar, Esquire
Newman & Holtzinger, P.C.
1615 L Street, N.W., Suite 1000
Washington, D.C. 20036

Juanita Ellis, President
Citizens Association for Safe Energy
1426 South Polk
Dallas, Texas 75224

Movants
Exhibit A

TEXAS UTILITIES GENERATING CO.

COMANCHE PEAK STEAM ELECTRIC STATION
NONCONFORMANCE REPORT (NCR)

NCR NO. [illegible]

UNIT	STRUCT./SEL SYSTEM	ITEM/COMPONENT (Identify Drawing Reference Component Tag, Spec Code)	TAG NO. NUMBER	LOCATION OR ELEVATION (Building Room)	AREA
1	SG	[illegible]	[illegible]	[illegible]	[illegible]

NONCONFORMING CONDITION

Condition of all seismic restraint connection welding clamps to indeterminate. DCA [illegible] defines the maximum width of gap type gauge required. After random check of gap type gauges of Electric G.C. in Safeguard I by Jordan Calibration Lab, several were found to exceed max. max allowable width. Example I: Dual "A" .047, Dual "B" .149, Dual "H" .353. Example II: Dual "H" .353, Dual "G" .047, Dual "B" .147. Example III: Dual "H" .353, Dual "G" .047, Dual "B" .149.

No knowledge exists of which gauges have been used in which locations in Safeguard II.

No hold tags applied.

REFERENCE DOCUMENT [illegible] REV. [illegible] PARA. [illegible]

REPORTED BY: [illegible] DATE [illegible]

QE REVIEW/APPROVAL DATE

ACTION ADDRESSEE DEPARTMENT

DISPOSITION: REWORK ____ REPAIR ____ USE AS IS ____ SCRAP ____

ENG. REVIEW/APPROVAL DATE

QE REVIEW APPROVAL DATE

DISPOSITION VERIFICATION & CLOSURE DATE

COMMENTS:

Movants
Exhibit A

Movant's
Exhibit A

TEXAS UTILITIES
GENERATING CO.

COMANCHE PEAK STEAM ELECTRIC STATION
NONCONFORMANCE REPORT (NCR)

NCR NO. 86-[illegible]

UNIT	STRUCTURE/SYSTEM	TEM COMPONENT	TAG/ID NUMBER	LOCATION OR ELEVATION	RIR NO.
1	SG		See below	890+	A

NONCONFORMING CONDITION

Contention of all seismic restraints in Impulse Chiller system is inadequate. D.C.A. 19419 defines maximum allowable of gasket gauge [illegible] above/below range of gasket gauges of equipment G.C. in Safeguard II on Jobs in Construction and Service Water. Found no allowable maximum allowable width. Example I: Oval [illegible], Oval [illegible], [illegible], Oval [illegible]. Example II: Oval [illegible], Oval [illegible], Oval [illegible]. Example III: Oval [illegible], Oval [illegible], Oval [illegible].

Do know exact extent of which gaskets have been used in which locations in Safeguard II.

No [illegible] applicable.

REFERENCE DOCUMENT: ES-00 REV: 2 PARA: 3.7

REPORTED BY: [illegible] DATE: [illegible]

QE REVIEW/APPROVAL: DATE:

ACTION ADDRESSEE: DEPARTMENT:

DISPOSITION: REWORK ____ REPAIR ____ USE AS IS ____ SCRAP ____

ENG. REVIEW/APPROVAL: DATE:

QE REVIEW APPROVAL: DATE:

DISPOSITION VERIFICATION & CLOSURE: DATE:

COMMENTS:

Movant's
Exhibit [illegible]

RECORDING PERSONNEL

QE

ACTION ADDRESSEE

QE

Movant's Exhibit A

TEXAS UTILITIES GENERATING CO.

COMANCHE PEAK STEAM ELECTRIC STATION
NONCONFORMANCE REPORT (NCR)

NCR NO. ES4-00779

UNIT	STRUCTURE/SYSTEM	ITEM/COMPONENT (Listing Seismic Restraint Compression Fitting)	TAG/ID NUMBER	LOCATION OR ELEVATION	RIR NO.
1	SG1		See Below	STE + Associated rooms	N/A

NONCONFORMING CONDITION

Condition of all seismic restraint compression fitting crimps is indeterminate.

DCA 1GA-9 defines maximum limits of go-type gauge grooves. After random check of go-type gauges of E Technical G.C. in Safeguard I by Jobsite Calibration Lab, several were found to exceed maximum allowable w/max. Example I: Oval "G" .267, Oval "BW" .148, Oval "M" .353. Example II: Oval "M" .353, Oval "G" .265, Oval "BW" .147. Example III: Oval "M" .354, Oval "G" .265, Oval "BW" .148.

No knowledge exists of which gauges have been used in which locations in Safeguard I.

No hold tags applied.

REFERENCE DOCUMENT ES-100 REV 2 PARA 2.5

REPORTED BY: Eddie Sanders / [illegible] DATE 2-22-84

QE REVIEW/APPROVAL DATE: / /

ACTION ADDRESSEE DEPARTMENT

DISPOSITION: REWORK ____ REPAIR ____ USE AS IS ____ SCRAP ____

ENG. REVIEW/APPROVAL DATE / /

QE REVIEW APPROVAL DATE / /

DISPOSITION VERIFICATION & CLOSURE DATE / /

COMMENTS:

Movant's Exhibit

McVant's
Exhibit A

TEXAS UTILITIES
GENERATING CO.

COMANCHE PEAK STEAM ELECTRIC STATION
NONCONFORMANCE REPORT (NCR)

NCR NO. E34-00 26

UNIT	STRUCTURE/SYSTEM	ITEM/COMPONENT (Lighting Seismic restraint Compression fitting)	TAG/ID NUMBER	LOCATION OR ELEVATION	P.O. NO.
1	SG1		See below	810' + associated rooms	N/A

NONCONFORMING CONDITION

Condition of all seismic restraint compression fitting crimps is inadequate. DCA 19919 defines maximum width of go-type gauge grooves. After random crimp of go-type gauges of Electrical Q.C. in Safeguard I by jobsite Calibration lab, several were found to exceed maximum allowable width. Example I: Oval "G" .267, Oval "34" .149, Oval "M" .353. Example II: Oval "M" .353, Oval "G" .265, Oval "34" .147. Example III: Oval "M" .354, Oval "G" .265, Oval "34" .148.

No knowledge exists of which gauges have been used in which localities in Safeguard I.

No hold tags applied.

REPORTING PERSONNEL

REFERENCE DOCUMENT ES-100 REV 2 PARA 2.7.1

REPORTED BY: [illegible] DATE 2-22-94

QE

QE REVIEW/APPROVAL — DATE: / /

ACTION ADDRESSEE — DEPARTMENT

ACTION ADDRESSEE

DISPOSITION:

REWORK ____ REPAIR ____ USE AS IS ____ SCRAP ____

ENG. REVIEW/APPROVAL — DATE: / /

QE

QE REVIEW APPROVAL — DATE: / /

DISPOSITION VERIFICATION & CLOSURE: — DATE: / /

COMMENTS:

McVant's
Exhibit A

Movant's
Exhibit A

TEXAS UTILITIES
GENERATING CO.

COMANCHE PEAK STEAM ELECTRIC STATION
NONCONFORMANCE REPORT (NCR)

NCR No. ES-006-21

UNIT	STRUCTURE/SYSTEM	ITEM/COMPONENT (Identify Specific Component)	TAG/ID NUMBER	LOCATION OR ELEVATION	RIR No.
1	SG1	Compression Fitting	See below	832+ (Associated room)	N/A

NONCONFORMING CONDITION

Condition of all seismic restraint compression fitting crimps is indeterminate. DCA 19914 defines maximum width of go-type gauge grooves. After random check of go-type gauges of Electrical Q.C. in Safeguard I Mobile Calibration Lab, several were found to exceed maximum allowable widths. Example I: Oval "G" .247, Oval "BW" .149, Oval "M" .353. Example II: Oval "M" .353, Oval "G" .245, Oval "BW" .107. Example III: Oval "M" .354, Oval "G" .245, Oval "BW" .13.

No knowledge exists of which gauges have been used in which locations in Safeguard I.

No hold tags applied.

REFERENCE DOCUMENT ES-100 REV 2 PARA 2.2.1

REPORTED BY: Eddie Sander / Warren Whitehead DATE: 2-22-84

QE REVIEW/APPROVAL DATE:

ACTION ADDRESSEE DEPARTMENT

DISPOSITION: REWORK ____ REPAIR ____ USE AS IS ____ SCRAP ____

ENG. REVIEW/APPROVAL DATE:

QE REVIEW APPROVAL DATE:

DISPOSITION VERIFICATION & CLOSURE DATE:

COMMENTS:

Movant's
Exhibit A

REPORTING PERSONNEL

QE

ACTION ADDRESSEE

QE

TEXAS UTILITIES GENERATING CO

COMANCHE PEAK STEAM ELECTRIC STATION
NONCONFORMANCE REPORT (NCR)

NCR NO. [illegible]

UNIT	STRUCTURE/SYSTEM	ITEM/COMPONENT	TAG/ID NUMBER	LOCATION OR ELEVATION	REV NO
1	SG	[illegible]	[illegible]	[illegible]	

NONCONFORMING CONDITION

Condition of all seismic restraint compression fitting crimps indeterminate. CAI9919 defines max. min. limit of go-type gauge gauges. After random check of bore gauges of electrodes in Safeguard I by NDE Inspection Laboratories were found to exceed maximum allowable width. Example I Oval "G" .267, Oval "D" .249, Oval "M" .353. Example II Oval "M" .353, Oval "G" .235, Oval "D" [illegible]. Example III Oval "M" .354, Oval "G" .265, Oval "D" [illegible]. No knowledge exists of which gauges have been used to verify acceptance in Safeguard I [illegible]

REFERENCE DOCUMENT [illegible] REV. 2 PARA [illegible]

REPORTED BY: [illegible] DATE: [illegible]

QC REVIEW APPROVAL: [illegible] DATE:

ACTION ADDRESSEE: DEPARTMENT:

DISPOSITION: REWORK ____ REPAIR ____ USE AS IS ____ SCRAP ____

ENG. REVIEW APPROVAL: DATE:

QC REVIEW APPROVAL: DATE:

DISPOSITION VERIFICATION & CLOSURE: DATE:

COMMENTS:

Movants Exhibit [illegible]

TEXAS UTILITIES GENERATING CO

COMANCHE PEAK STEAM ELECTRIC STATION
NONCONFORMANCE REPORT (NCR)

NCR NO.

UNIT	STRUCTURE/SYSTEM	ITEM/COMPONENT	TAG NO.	LOCATION OR FACILITY	REV NO
1	SG				

NONCONFORMING CONDITION

Condition of all seismic restraint compression plates is crimped to restraint nuts. CAL 14919 defines the maximum gap of gap-type gauges. After removal check of gap-type gauges of Electrical C.C. in Safeguards II by Jessica Co. inspection had. Several were found to exceed maximum allowable. Example I: Gap [illegible] Oval "B"-.149, Oval "H"-.153. Example II: Oval "H"-.353, Oval "G"-.242, Gap [illegible] Example III: Oval "H"-.354, Oval "G"-.201 Oval "B"-.148.

No knowledge exists of [illegible] have been used in [illegible] in Safeguard II

No hold points applied

REFERENCE DOCUMENT: ER-CC REV: A PAGE: [illegible]

REPORTED BY: [illegible] DATE: [illegible]

CE REVIEW/APPROVAL: DATE:

ACTION ADDRESSEE: DEPARTMENT:

DISPOSITION:

REWORK _____ REPAIR _____ USE AS IS _____ SCRAP _____

ENG. REVIEW/APPROVAL: DATE:

CE REVIEW APPROVAL: DATE:

DISPOSITION VERIFICATION & CLOSURE: DATE:

COMMENTS:

MOVE TO
EARLIER

MOTEETS

TEXAS UTILITIES GENERATING CO

COMANCHE PEAK STEAM ELECTRIC STATION
NONCONFORMANCE REPORT (NCR)

NCR NO. [illegible]

UNIT	STRUCTURE SYSTEM	TEMPORARY MODIFICATION / MODIFICATION NUMBER	TAG OR NUMBER	LOCATION OR ELEVATION	REF. DOC.
1	SG	[illegible]	See Below	775' Reactor Room	[illegible]

NONCONFORMING CONDITION

Construction of a seismic restraint comprised of flanges welded to a [illegible] pipe [illegible] the maximum width of portions [illegible] 2 Per random check of portions gauges of electrical GC in Entire Square, [illegible] in joints Calibration [illegible], several were found to exceed max. [illegible] allowable [illegible]. Example I: Gual 6.267, Gual 34.147, Gual [illegible]. Example II: Gual [illegible].353, Gual 6.265, Gual 34.147. Example III: Gual [illegible].304, Gual 6.265, Gual 34.147.

No known [illegible] of [illegible] in Entire Square II.

No [illegible] was [illegible]

REFERENCE DOCUMENT [illegible] REV [illegible] PAR. [illegible]

REPORTED BY: [illegible] DATE [illegible]

QC REVIEW APPROVAL: DATE:

ACTION ADDRESSEE: DEPARTMENT:

DISPOSITION:

REWORK _____ REPAIR _____ USE AS IS _____ SCRAP _____

ENG. REVIEW APPROVAL: DATE:

QC REVIEW APPROVAL: DATE:

DISPOSITION VERIFICATION & CLOSURE: DATE:

COMMENTS:

MOTEETS
EXHIBIT [illegible]

Movant's
Exhibit [illegible]

TEXAS UTILITIES
GENERATING CO

COMANCHE PEAK STEAM ELECTRIC STATION
NONCONFORMANCE REPORT (NCR)

NCR NO.
E84-[illegible]

UNIT	STRUCTURE/SYSTEM	ITEM/COMPONENT	I.D. NUMBER	LOCATION OR ELEVATION	[illegible]
1	Safeguards	Class 1 E Conduit	[illegible]	773 Rm 83	[illegible]

NONCONFORMING CONDITION

While conducting a Post Construction Verification and Separation Survey in Room 83, a separation violation was found between [illegible] conduit and [illegible] (Emergency light system) [illegible] with TUGCO [illegible] was being reported and assigned a Deviation Report number, it was [illegible] by bending [illegible] conduit by pulling it away from [illegible] with a [illegible] piece of Strut conduit. This was done by an Electrical Engineer who was [illegible] informed that this item was turned over to TUGCO. Also present was an area [illegible] Foreman. QI-QP-11.3-23 Rev. [illegible] para. 3.1 g. states: "Bends are [illegible] will be made with benders approved for this purpose."

NCR only applies to [illegible]

REFERENCE DOCUMENT QI-QP-11.3-23 REV [illegible] PARA 3.1 g

REPORTED BY: [illegible] DATE [illegible]

QE REVIEW/APPROVAL: [illegible] DATE [illegible]

ACTION ADDRESSEE DEPARTMENT

DISPOSITION:

REWORK ______ REPAIR ______ USE AS IS ______ SCRAP ______

ENG. REVIEW/APPROVAL DATE

QE REVIEW APPROVAL DATE

DISPOSITION VERIFICATION & CLOSURE: DATE

COMMENTS:

Movant's
Exhibit [illegible]

Movant's
Exhibit B

Feb.6,1992

I Ron Jones was an Electrical Quality Control Inspector at Comanche Peak Power Plant from approximately Feb. 1983 to approximately May 1984;during at which time I found numerous non conforming discrepancies thru out the Reactor 1. After reporting these I was harassed, bullied and eventually let go, because I would not ignore or pretend these problems did not exist.

At the first License hearing I was prepared to testify on the still existing problems, when a settlement and an agreement was made, I did not believe this settlement then and do not believe it now and I am still prepared to testify on the non conforming consistencies and harassment, bulling tactics that were perpetuated upon honest Whistle Blowers at Comanche Peak Power Plant.

Ron Jones

RON JONES

Movant's
Exhibit B

2-19-92

My name is Dolie Hatley, I was employed by Brown and Root at the Comanche Peak site in Glen Rose Texas from Feb 1979 to Feb 1984.

My job was at the time of my termination Document Control Satalite Supervisor. The purpose of the satalite system was to distribute all documentation for Construction from engineering to field.

During this time I was asked to falsify records and documents and drawing numbers etc in order to pass audits of the NRC.

When we were to be audited we recieved prenotifacation of what drawings would be investigated and had to do whatever was necessary to make it thru the Audit.

When fuel was to be loaded and corrections had not been made as I was told they would be I looked for some way to make the NRC aware of what had happened and thru Case The ASLB hearings I was to have a chance to voice my concerns. However since what I had done for my superiors was illegal I first had to get imunity from the Dept of Justice which I did and was scheduled to testify in 1988 when a settlement agreement was reached that stopped the hearings.

I still would like to testify and have my concerns in the record plus all I have learned about the way things are now. I do not think Comanche Peak should be operating.

Dolie Hatley

I understand that any false statements in this affidavit will subject me to penalty for Perjury. Dolie

witness Jerry Lee Adams witness Rosetta Martin

1-30-92

MICKY, SANDRA,

HERE IS SOME INFO HOPE IT HELPS.

WHERE: COMANCHE PEAK S.E.S.
WHEN: DURING LAST OUTAGE
WHAT: PERSONELL INJURY AND DAMAGE TO PIPING.
WHY: 100 MPH WINDS IN THROUGH UNIT I CONTAINMENT AIRLOCK BECAUSE OF A PRESSURE TEST/PURGE OF UNIT 1 CONTAINMENT.

EVENT REPORTED TO THE N.R.C.
WILL T.U. TELL US WHAT HAPPENED?
DOES THE PUBLIC KNOW? WE DO NOW!!!

* RICK HASELAWA - SUPERVISOR GUILTY OF PROCEDURE VIOLATION AND CONDONING FALSIFICATION OF FIREWATCH LOGS NOW WORKING AS A JUNIOR R.P. TECH FOR TEXAS UTILITIES

* TOM HOWARD SUPERVISOR GUILTY OF PROCEDURE VIOLATION, JEOPARDIZING PERSONELL SAFETY, AND HARRASMENT IS NOW WORING BACK AT C.P.S.E.S.

* ABOVE INFO VERIFIED BY SAFETEAM/CORP SECURITY.

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UNITED STATES DEPARTMENT OF LABOR
BEFORE THE SECRETARY OF LABOR

JOSEPH F. MACKTAL, JR., Complainant, v. BROWN & ROOT, INC. et al., Respondents.	86-ERA-23

MOTION FOR SANCTIONS AND DEFAULT JUDGMENT

Since September, 1988 when Mr. Macktal originally requested that the Secretary of Labor ("SOL") not dismiss his case, Mr. Macktal has obtained evidence documenting the fact that his so-called settlement was part of a conspiracy to hide information from the NRC's Atomic Safety and Licensing Board ("ASLB"). Furthermore the record now conclusively demonstrates that Brown & Root ("B&R") and its counsel have violated FRCP 11 and, as a matter of law, must be sanctioned.

As will be demonstrated below, B&R's abuse of process in this case was so severe that sanctions, including default judgment, are appropriate.

FACTS

In October, 1989 the Nuclear Regulatory Commission ("NRC") staff interviewed Mr. Macktal's former attorney Billie P. Garde concerning why Brown & Root ("B&R") inserted paragraph 2 into the Macktal settlement agreement. At the time of the interview, Garde

Movant's
Exhibit C

was highly critical of Mr. Macktal, especially in light of the fact that she had recently been sued for malpractice by Mr. Macktal, and Mr. Macktal had provided the U.S. Senate with information negative to Garde. Despite this hostility, Garde testified about B&R's explicit intent to suppress evidence before the NRC. On the strength of this testimony, there can be no question as to B&R's intent to abuse the administrative process.

In response to a question from an NRC investigator, Garde clarified B&R's intent in executing the Macktal settlement:

> [Judge Bloch in the licensing hearings frequently called witnesses on his own. Judge Bloch was the Chief NRC Administrative Law Judge adjudicating the licensing proceedings at Comanche Peak]. So that paragraph [paragraph 3] went to try to keep Macktal out of the licensing hearings. There is no question about that. They [B&R and TUEC] didn't want [Macktal] testifying in the licensing hearing. [A]

Ex. 1, Excerpts from Investigative Interview of Billie Pirner Garde, Tr. 70 (emphasis added).

Garde admits to discussing the Macktal settlement with the attorney for B&R who signed the settlement on behalf of B&R. She remembers that this B&R attorney stated that the reason behind the restrictive settlement clauses was to prevent B&R from "getting egg on [their] face in a licensing hearing." Ex. 1, Tr. 76. When further questioned as to why a traditional general release of all claims would not satisfy B&R, Garde again stated that it was B&R's desire to suppress Macktal's potential testimony:

> "B&R had signed other releases with clients represented by me or Tony [i.e. Anthony Joll Roisman] before, and then those clients ended up becoming part of the harassment and intimidation contention before the Licensing Board. So even though the whistleblowers

themselves stood to gain nothing by testifying in the licensing hearing on harassment and intimidation issues. Brown & Root lawyers and Texas Utilities lawyers had a lot to lose by the licensing hearings.

Ex. 1, Tr. 77.

Garde then explained in detail, the important place Mr. Macktal's potential testimony had in the licensing process. See generally, Ex. 1, Tr. 77-81. She explained how the issue of "harassment and intimidation" of Comanche Peak whistleblowers was a very significant issue before the ASLB. Tr. 78. She explained that there were "so many problems" with Comanche Peak's quality control program that there was no "reliability that the plant was safe," and that B&R and TUEC risked approximately 10 billion dollars in liability if they could not obtain a license for the plant. Tr. 79. She conceded that Mr. Macktal had raised "valid safety issues" and that B&R had "a lot to lose" by Macktal's testimony, and that they were "afraid" that some of these issues may be "bought up in front of the Licensing Board." Tr. 80 and 81.

On the basis of this unrefuted, sworn testimony, it is unquestionable that B&R executed the Macktal settlement with the intent to suppress Macktal's testimony before the ASLB.

Another illegal aspect of the Macktal settlement was to prevent his attorneys from utilizing his potential testimony on behalf of other whistleblowers and local citizen intervenors at Comanche Peak. B&R sought to suppress not only the testimony of Mr. Macktal, but the advocacy of attorneys who purportedly were representing parties which opposed Comanche Peak. In a most revealing letter written by Mr. Macktal's former attorney Anthony

Lelli Roisman to another Comanche Peak whistleblower, Roisman discussed part of B&R's and TUEC's motivation for entering into settlements at Comanche Peak.[1]

> "The reason for the settlement. In this case the prime motivation for TUEC to ever discuss settlement is that they want Billie and me to leave the NRC licensing hearing, where our efforts have been largely responsible for the delays and cost increases. They do not believe, rightly or wrongly, that the tort suit itself is much of a threat. If we settle the claims of the whistleblowers, TLPJ (Trial Lawyers for Public Justice) and GAP (Government Accountability Project) cannot allow us to continue in the NRC licensing hearings because our organizations focus on the whistleblower\safety connection and primarily on tort cases and would not handle NRC licensing hearings without a whistleblower protection justification."

Ex. 2, Roisman to Atchison (December 4, 1986), p. 3.[2]

In another settlement memorandum, Roisman concedes that he discussed problems with the "appearance of trading issues for cash" with counsel for TUEC. Ex. 1, Roisman to Files (February 11, 1987).

The record in this case demonstrates that B&R participated in a concerted effort to suppress information to the ASLB and subvert the Congressional protections mandated by Section 210. B&R's attempt to willfully suppress testimony, buy-off the advocacy of

---

1/ Significantly, this letter was written on December 4, 1986, at the very time Roisman was also discussing the Mackta settlement with B&R.

2/ Roisman actually bargained with counsel for TUEC concerning GAP and TLPJ's withdrawal from the licensing hearings. In one memorandum he even admits to telling TUEC's attorney that GAP and TLPJ "made a big difference in the licensing hearing" and suggested that TUEC pay money to and their "involvement" in the "licensing hearing." Ex. 1, Roisman (AZR) to Files, February 11, 1987.

supposedly opposing counsel and to withhold safety information from the NRC must be sanctioned in the strongest possible manner. This is not a case where B&R unintentionally included restrictive "boilerplate" type restrictions in a settlement. This is a case in which B&R carefully and consciously constructed a multi-part settlement (not just Paragraph 3) with the design and intent to subvert the administrative process.

ARGUMENT

I. BROWN & ROOT'S CONDUCT VIOLATED FRCP 11

In their most recent brief B&R has continued to make an assertion violative of FRCP 11. Specifically, FRCP 11 requires that all arguments raised with a tribunal be "will be grounded in fact." If a paper if filed with a tribunal in violation of this requirement, the court "shall" impose sanctions upon the abusive party. FRCP 11. The imposition of sanctions for FRCP 11 violations is non-discretionary. See e.g., Robinson v. National Cash Register Co., 808 F.2d 1119, 1130 (5th Cir. 1987).

In this case, B&R has continuously asserted that "the agreement between Macktal and PIP clearly is not one 'to suppress or withhold testimony.'" B&R Reply Brief, p. 10 (October 30, 1991) (emphasis added). This argument, which is blatantly false and misleading, laid at the premise of B&R's attempt to seek judicial and administrative enforcement of the settlement.

As is demonstrated above, their argument is a material false statement subject to sanction order FRCP 11. The testimony of Billie P. Garde, a witness hostile to Mr. Macktal, as to her

conversation with counsel for B&R and B&R's motive behind Paragraph 3, unquestionably demonstrates the illegal and sinister intent behind the settlement.

Given the severity of both the underlying misconduct and the FRCP 11 violation, the sanction of default judgment is appropriate for this misconduct.

II. B&R'S ABUSE OF PROCESS WARRANTS DEFAULT JUDGMENT

B&R used the legal process mandated by Congress to protect whistleblowers to subvert the purposes of that law. This abuse of process warrants the extreme sanction of default judgment.

Under common law, an abuse of process action required proof of the following elements:

> 1. that defendant made an illegal, improper, perverted use of the process, a use neither warranted nor authorized by the process, and
>
> 2. that the defendant had an ulterior motive or purpose in exercising such illegal, perverted, or improper use of process, and
>
> 3. that damage resulted to the plaintiff from the irregularity.

2 Am. Jur. 2nd, Abuse of Process ¶ 4 (1962).

In this case the record conclusively establishes that B&R is guilty of an abuse of process. First, B&R made an "improper" and "perverted" use of the Section 210 process. The Section 210 process was explicitly designed to permit and encourage, as a matter of law, the right of employees such as V. Macktal to "testify" in NRC "proceedings" such as an ASLB licensing hearing. 42 U.S.C. 5851(a). The law was unquestionably designed to "prevent" the NRC's "channels of information" from being "dried

-p." DeFord v. Secretary of Labor, 700 F.2d 281, 286 (6th Cir. 1983).

B&R abused the process by utilizing a Section 210 settlement to insure the confidentiality and suppression of an employee's concerns before the ASLB. Regardless of what B&R or the NRC Staff thought of those concerns, as a matter of federal law, the Section 210 process was designed to insure the unrestrained freedom of an employee to come forward and testify before bodies such as the ASLB.

The second element of the claim is also met. B&R had an "ulterior motive" for suppressing Mr. Macktal's testimony. As Garde admitted under NRC questioning, B&R was not satisfied merely with having Mr. Macktal's DOL complaint dismissed and preventing Mr. Macktal from filing additional suits against B&R. B&R explicitly desired to keep Mr. Macktal's allegations from the ASLB in order to facilitate the licensing of Comanche Peak.

Third, Mr. Macktal (and the general public) were damaged as a result of the illegal scheme. The ASLB dissolved in July, 1988 -- and Mr. Macktal's ability to testify before that body was forever lost. Additionally, other whistleblowers and citizen intervenors were denied access to his information and testimony. This is the precise harm Congress sought to prevent when they passed Section 210.

In short, B&R succeeded in using Section 210 to completely subvert and undermine the purpose of that law. They succeeded in completely suppressing Mr. Macktal's allegations from the ASLB from

January, 1997 until that Board was disbanded. This abuse of process warrants the extreme sanction of default judgment.

III. IF THE SOL DECLINES TO ISSUE SANCTIONS, THIS ISSUE MUST BE REMANDED TO AN ALJ FOR FULL ADJUDICATION

If the SOL finds that the current record is inconclusive concerning the insidious intent of B&R, discovery and/or a hearing on this matter should be granted.

Mr. Macktal has not had the opportunity to question any of the participants in the settlement process nor has he had the opportunity to conduct any discovery or review documents. Clearly, the SOL must give Mr. Macktal an opportunity to create a record concerning B&R's illegal activities prior to denying this request for sanctions and/or granting B&R any relief whatsoever.

An example of the types of documentation Mr. Macktal has not had the opportunity to even request, let alone review, are the notes taken during a meeting between Mr. Macktal and B&R's former president, T. Louis Austin. In his second affidavit, Mr. Macktal alleged that Mr. Austin had personally offered Mr. Macktal "hush money." During a subsequent OPC inquiry, B&R admitted that Macktal, Austin and a B&R attorney Glen G. Magnuson, Jr. meet with Macktal for 1 - 1 hours. Magnuson admitted that he "took extensive notes" during the meeting. Mr. Magnuson was present not only to represent B&R, but as a "'secretary' to record Macktal's statement." Ex. 4, Report of Interview with Glen G. Magnuson.

Not only did Magnuson prepare and circulate extensive notes about said meeting, he also prepared a memorandum for Nicolas Reynolds, who was a member of the lawfirm representing B&R before

the DOL and TVEC before the ASLB. The NRC requested but did not obtain access to the contents of these memorandum. Ex. 5. Regardless, Mr. Macktal has the clear right to obtain access to this and other relevant material.[1]

CONCLUSION

B&R abused the legal process in order to obtain the suppression of evidence. B&R must be severely sanctioned for this willful misconduct. In addition, B&R violated FRCP 11 in attempting to justify their illegal actions. Appropriate sanctions, included a default judgment, should be entered in this case.

Respectfully submitted,

Stephen M. Kohn

Kohn, Kohn & Colapinto, P.C.
517 Florida Avenue, N.W.
Washington, D.C. 20001
(202) 234-4663

December 13, 1991

1/ The Magnuson interview also demonstrates that B&R counsel engaged in gross ethical violations in regard to Mr. Macktal. Specifically, although clients may communicate with each other without the presence of counsel, B&R could not ethically have had an attorney present during the Austin-Macktal conversation. This unethical conduct should not go unsanctioned. See e.g., ABA Code of Professional Conduct.

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Exhibit C

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served on the following parties by first class mail, postage prepaid on this 13th day of December, 1991:

Richard K. Walker
Winston & Strawn
1400 L Street, N.W.
Washington, D.C. 20005

Billie P. Garde
Hardy, Milutin & Johns
800 Two Houston Center
909 Fannin at McKinney
Houston, TX 77010

Anthony D. Roisman
Cohen, Milstein & Hausfeld
1401 New York Avenue, N.W.
Washington, D.C. 20005

By: _____
Stephen M. Kohn

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ORIGINAL

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OFFICIAL TRANSCRIPT OF PROCEEDINGS

Agency: Nuclear Regulatory Commission

Title: Investigative Interview of
Billie Turner Garde

Docket No.

LOCATION: Arlington, Texas

DATE: Friday, October 27, 1989 PAGES: 1 - 91

[illegible] deleted
[illegible] of information
Act exemptions 6, 7C
FOIA 92-318

EXHIBIT 1
PAGE ___ OF ___

ANN RILEY & ASSOCIATES, LTD.
1512 K St. N.W., Suite 300
Washington, D.C. 20006
(202) 293-3950

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6, 7c portion

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BEFORE THE

U. S. NUCLEAR REGULATORY COMMISSION

Interview of BILLIE PIRNER GARDE conducted on Friday, October 27, 1989, in the 8th Floor Conference Room, 611 Ryan Plaza, Arlington, Texas, commencing at 3:00 p.m.

APPEARANCES:

On behalf of the U. S. Nuclear Regulatory Commission:

VIRGINIA VAN SLEAVE
611 Ryan Plaza
Arlington, Texas

On behalf of the Witness, BILLIE PIRNER GARDE:
(Mr. Johnson appearing telephonically)

VERNON JOHNSON, Attorney
Jackson and Campbell
Washington, D. C.

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CASE NO. 4-89-003

6-7A Hearing

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1 limited appearance statement which comes into the record but
2 has no evidentiary weight, or not walk up to some lawyer or
3 judge and say, "I want to be a witness."
4 He would have had to have been called as a
5 witness, just like in any other case.
6 But Judge Bloch in the licensing hearings
7 frequently called witnesses on his own. So that paragraph
8 went to try to keep Macktal out of the licensing hearings.
9 There's no question about that.
10 They didn't want him testifying in the licensing
11 hearings.
12 At the time, and in hindsight -- obviously,
13 everything looks a little different -- but in hindsight, at
14 the time we considered that we thought that was a plus
15 because it was both giving Macktal an ability to not have to
16 push his own credibility problems that he had -- that he was
17 carrying around with him. It protected him from that, and
18 it protected CASE from having to deal with those problems.
19 So it was not viewed by us as a negative at the
20 time.
21 Do you understand what I'm saying?
22 Q. It sounds to me like your main rationale then was
23 to keep Mr. Macktal from testifying because he might have
24 some negative effect on CASE's --
25 MR. JOHNSON: I'd object to that statement. I

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EXHIBIT 12
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CASE NO. 4-89-008 See PC previous

1 bring a civil tort lawsuit like the Atchison plaintiffs
2 that was settled for a large amount of money, by the time
3 the Comanche Peak settlement was reached.
4 Q. Do you know, do you have any idea why Brown &
5 Root's attorneys wished to put that language in the
6 settlement agreement regarding Macktal's testifying before
7 the ASLB?
8 A. All I can tell you is what Rick Walker said at
9 that meeting, which was that he had been trying -- that he
10 had lost a lot of credibility with his client of late
11 because every case he settled with Tony and I ended up
12 coming back to haunt him in some other forum, and that when
13 he went to the company and said, "Let's settle this case. I
14 think this is what we should do," that then the company was
15 turning around and saying "Why did we settle this case
16 because we're now having to relitigate the same case and get
17 egg on our face either in a licensing hearing or in another
18 lawsuit or in a state lawsuit," and they settled one claim.
19 And so the language that he was going to propose
20 was going to absolutely bar Brown & Root from having to deal
21 with Mr. Macktal and his claims anywhere at any time ever
22 again, so they thought.
23 Q. But wouldn't the release that Mr. Macktal signed
24 do that? Didn't it say that he releases Brown & Root from
25 --

A. But they had signed other releases with clients represented by me or Tony before, and then those clients ended up becoming part of the harassment and intimidation contention before the Licensing Board.

So even though the whistleblowers themselves stood to gain nothing by testifying in the licensing hearing on harassment and intimidation issues, Brown & Root lawyers and Texas Utilities lawyers had a lot to lose by the licensing hearings.

Do you follow what I'm saying?

Q. No. Maybe you could elaborate a little bit. What is "a lot to lose"? What do you mean by that?

A. Well, at the time that Macktal's case arose, if you know very much about the licensing hearing of Comanche Peak, Comanche Peak had an ongoing operating license in which there was one contention left for litigation. It was Contention 5.

The contention was that there had been a breakdown in the quality assurance/quality control program at Comanche Peak historically, such that there would be no reasonable assurance that the nuclear plant could ever -- was constructed or could ever operate without endangering public health and safety.

That contention was broken down into two dockets. One docket was the design modification/quality assurance

1 issues affecting the design of the plant. The other docket
2 was harassment and intimidation of quality control
3 inspectors and others -- but "others" wasn't litigated at
4 that point -- such that no matter what the written results
5 on paper were of the QA/QC program, that there was no
6 reasonable assurance that those results could be relied on
7 because there had been such an atmosphere of fear,
8 harassment and intimidation at Comanche Peak so that none of
9 the documentation was reliable, that the QC inspectors had
10 been forced to sign things off or didn't sign things off, or
11 that they were so afraid of their jobs that they didn't do
12 their job.
13 Tony and I were the lawyers on that docket.
14 During the summer of '84 and the fall of '84 and the very
15 early beginning of 1985, Trial Lawyers and GAP put on almost
16 a hundred witnesses, both our witnesses and TU witnesses, to
17 demonstrate that such an atmosphere existed and that there
18 was no assurance of the quality of the plant.
19 When the Board issued preliminary decisions on
20 those matters, it was clear that we had convinced the
21 Licensing Board that we were probably right.
22 At the same time the NRC's technical review team
23 issued a document called SSR-11 -- SSER-11, which included
24 an Appendix P, that there were so many problems with the
25 Comanche Peak quality assurance/quality control program that

1 there was no reliability that the plant was safe.

2 Those two things combined forced Texas Utilities

3 to have to go into the Licensing Board at a time when they

4 said that their plant was ready to load fuel and operate --

5 this was in the fall of 1984 -- when the plant cost $3.5

6 billion, that they were ready at that time.

7 When the Board issues its preliminary decisions

8 and orders and concluded that they were not ready, it forced

9 them to have to do a hundred percent reinspection and re-work

10 and design modification plan. The cost of the plant today

11 is about $10 billion.

12 They've spent 6 billion trying to figure out what

13 they did for the first five years out there. That's what

14 they had to lose.

15 If we successfully convinced the judge, which we

16 did, that the plant wasn't constructed and designed in

17 accordance with the regulations, what they had to lose was

18 getting approval for licensing the plant.

19 Now, that maybe won't run directly to Brown &

20 Root, but the other time that that happened in Region IV, if

21 you know anything about the history of that, is when Brown &

22 Root built the South Texas Nuclear Plant, the NRC came in

23 and said, "You didn't build it right," and Houston Light &

24 Power sued Brown & Root. It ended up in an out-of-court

25 settlement for billions and billions of dollars, in terms of

1 the work that was done on the project.

2 Individually, Mr. Mackta1 had nothing to gain one

3 way or another by being a witness in a Comanche Peak

4 licensing hearing. There was nothing to gain as a witness.

5 But TU had a lot to lose, and so did Brown & Root.

6 Q. But if Mr. Mackta1 had already told about his

7 concerns to the NRC, and according to your own testimony Mr.

8 Mackta1 in your belief had lost a great deal of credibility,

9 what could he tell the ASLB that could impact negatively on

10 Brown & Root?

11 A. Well, two things to answer your question. First

12 of all, he had told his safety concerns to the Nuclear

13 Regulatory Commission which was investigating those issues,

14 but had not yet issued its report.

15 My statements about his credibility in this

16 deposition did not go to whether or not I believed Mr.

17 Mackta1 had raised valid concerns. I think he raised some

18 valid safety issues. The NRC reports substantiate that.

19 I'm saying his credibility, looking at him as a

20 witness that I had to protect on the stand, could his

21 credibility -- [redacted] -- withstand cross-

22 examination. I concluded that it could not.

23 [redacted]

24

25 They just

6.7C redacted

1 cared whether or not he had safety concerns, and that's what
2 they wanted to know, and that's what they were pursuing.
3 But it's my belief that the reason that TU and
4 Brown & Root lawyers were so insistent on putting that
5 clause in about the licensing hearing was because Tony and I
6 had managed to do an extremely effective job of taking
7 selective whistleblowers and making them as examples of what
8 was the atmosphere on the whole plant.
9 And at this point, 1986, we were well into a $4
10 billion reinspection and reconstruction program, and Mr.
11 Wacktal's case didn't go to the past, '84, before -- they
12 already lost on that -- it went to the present.
13 He was testifying that at present that atmosphere
14 still existed. And at that point those issues were not in
15 front of the Licensing Board, and they were very afraid that
16 they were going to be brought up in front of the Licensing
17 Board.
18 Q. I still don't follow the rationale here. On the
19 one hand you say that you were, as an employee of GAP, did
20 not mind having that language in the settlement agreement;
21 and yet it seems to be on the other side you're saying it's
22 to the advantage of Brown & Root and TU Electric that Mr.
23 Wacktal not testify.
24 A. They certainly had something to gain by it. But
25 they didn't know and couldn't know our strategic (if you

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Movant's
Exhibit C

REPORTER'S CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission

in the matter of:

NAME OF PROCEEDING: Interview of BILLIE PIRNER GARDE

DOCKET NUMBER: None

PLACE OF PROCEEDING: Arlington, Texas

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.

Betty Morgan

BETTY MORGAN
Official Reporter
Ann Riley & Associates, Ltd.

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CASE NO. 4-89-003

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TRIAL LAWYERS FOR PUBLIC JUSTICE, P.C.
COUNSELORS AT LAW
SUITE [illegible]
2000 P STREET, N.W., SOUTHWEST
WASHINGTON, D.C. 20036
(202) 463-8600

December 4, 1986

Charles Atchison
P.O. Box 901
Azle, TX 76020

CONFIDENTIAL ATTORNEY-CLIENT CORRESPONDENCE

RE: Atchison v. Brown & Root

Dear Chuck:

I have waited to answer your recent letter until I hoped you would be home from the hospital and on your way to a full recovery. What a stressful and painful time this must be for you. Billie joins me in sending you and your family best wishes for a much better New Year.

I appreciate you getting back to me promptly with your thoughts about the approach to dividing any settlement money. In order to fully understand the rationale for the suggestion it is necessary to lay out some background on the law and the issues.

First, in a case like this one, alleging a tort of wrongful termination under Texas law, the only major recoverable damages are not going to be compensation damages but punitive damages -- the damages that Brown and Root and TUEC are forced to pay not just to compensate you or any of the other plaintiffs for your personal losses but to punish Brown and Root and TUEC for their conduct and to discourage them from doing it again.

Second, the amount of the punishment is not precisely calculated on some objective standard but is based on the jury's subjective sense of how badly Brown and Root and TUEC have acted.

Third, the jury's subjective sense of how badly the defendants have acted will be substantially influenced by how many people they wrongfully terminated and whether that wrongful termination was part of a plant-wide scheme to ignore safety problems and speed construction at all costs.

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With these thoughts in mind, we added several additional plaintiffs to the suit, each with their own story to tell of harassment and intimidation and each from a different piece of the QA/QC program, in order to substantially strengthen the argument that Brown and Root and TUEC were engaged in a massive scheme, deserving a massive punishment. Similarly, Billie and I have spent a substantial part of the last two years of our lives in the NRC hearings to develop evidence of a widespread breakdown in QA/QC (a large part of which was proven as a result of the investigation of many whistleblowers' allegations by the TRT as to which Billie played a major watchdog role), a widespread management attitude that discouraged reporting safety problems, and the need for a major reinspection to find all previously ignored safety problems. This effort has been extremely successful and will provide invaluable support for our arguments in the tort case.

Our NRC licensing effort would never have been undertaken if it were not part of a large project to protect and vindicate the rights of all Comanche Peak whistleblowers. Without the cooperation of all whistleblowers, as witnesses in the OLA Case depositions in the summer of 1984 and as alleyers who worked closely with the TRT under Billie's care and protection, we could not have exposed as much as we have at Comanche Peak and would not be in our current very strong position in the tort suit. In addition, neither TUEC nor DAP would have allowed Billie and me to spend almost half of our time for the last two years on this one case unless our efforts were for the benefit of the community of Comanche Peak whistleblowers and unless our efforts were likely to produce a tangible impact on the safety of Comanche Peak. Our tax status would not allow us to devote this much effort to a case for the benefit of only one individual.

Since this major effort to expose the full range of the QA/QC scandal at Comanche Peak could only occur because of the combined involvement of all whistleblowers and since the overwhelming portion of damages that could be recovered in the tort suit are punitive damages, which are greatly enhanced by this major effort and which do not represent compensation to or for any one person, we suggested before (and reiterated now) as one possible proposal an equal division of any settlement among all named plaintiffs in tort suits and a substantially lesser amount (but also equal and much smaller shares) to other whistleblowers like Meddie Gregory who, for one reason or another, could not be part of a tort suit. Obviously, if the amount of a settlement were quite small, then this proposal would not make sense, but since we would never recommend a settlement that was not substantial, we suggested an equal division as potentially the simplest and arguably the fairest.

Of course the final decision on how to divide any settlement must be made by all the parties to the settlement. If they are unable to agree among themselves, then each will have to hire a lawyer (neither Billie nor I could represent any plaintiff in a dispute among the plaintiffs) to represent him or her. The cost

of these other lawyers would be paid out of the plaintiffs' share of the settlement and would not reduce the lawyers' fees due to TLPJ per the retainer agreements. We hope for all your sakes that these extra costs will not be necessary, but the option is always available to the plaintiffs, although nothing can or should be done on it unless and until there is a concrete settlement proposal to consider. That is still a very remote event.

Some of the factors that enter into a decision on how to divide a proposed settlement include the following:

1. The actual provable damages of each plaintiff, including lost wages and benefits and the pain, suffering, and emotional distress directly attributable to the wrongful discharge. On a large dollar settlement the differences between these provable damages for each plaintiff would be a small percentage of the total recovery, including punitive damages, for each plaintiff.

2. The reason for the settlement. In this case the prime motivation for TUEC to even discuss settlement is that they want Billie and me to leave the NRC licensing hearing where our efforts have been largely responsible for the delays and cost increases. They do not believe, rightly or wrongly, that the tort suit itself is much of a threat. If we settle the claims of the whistleblowers, TLPJ and GAP cannot allow us to continue in the NRC licensing hearings because our organizations focus on the whistleblower/safety connection and primarily on tort cases and would not handle NRC licensing hearings without a whistleblower protection justification.

3. The difficulty of finding any solution to account for individual differences among plaintiffs. For instance, each plaintiff rightly believes that, as a result of their efforts to document safety problems at Comanche Peak, their careers were ruined, their lives shattered, and their health destroyed. Who has suffered more? Who is more deserving of compensation? Each one of you can forcefully argue for your own case and no <u>objective</u> standard exists to decide who is right. In such a case, a compromise where everyone in the lawsuit gets a lot of money but no one gets more than the others may have a lot of appeal.

What I propose is that, when and if there is a firm proposal of settlement from TUEC, and obviously before any formal response to the proposal is given, all the plaintiffs in the tort litigation meet in a mutually convenient place to discuss the settlement and the question of division of the settlement proceeds. At that time many things will be on the table, including a possible proposal from TLPJ regarding a reduction in the attorney fee to which it is entitled to provide some of the additional compensation to non-litigating whistleblowers to the extent a comparable percentage of the plaintiffs' share is made available to the non-litigating whistleblowers.

Finally, I have not sent your files back with this letter because of my concern that I may need them here to adequately represent you and also in the hope that you will reconsider your request. If you still want me to return the files you provided to us, I will have them boxed up and sent back right after you contact me.

I realize this has been a very trying time for you and hope your letter reflected that stress and not any dissatisfaction with the work we have been pursuing for you and the other whistleblowers.

I remember with great pleasure visiting you and enjoying a meal together. I am looking forward to our next meal --- maybe a victory celebration -- with BBQ ribs and all the trimmings (assuming your doctor approves) -- your place, my treat. I hope this finds all of you better and ready for a happy holiday season.

Sincerely,

Anthony T. Rolaman

ATR/ap

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Exhibit C

TRIAL LAWYERS FOR PUBLIC JUSTICE
A PROJECT OF THE CITIZENS LEGAL CLINIC
SUITE 611
2000 P STREET, NORTH-WEST
WASHINGTON, D.C. 20036
(202) 463-8600

C O N F I D E N T I A L

TO: Comanche Peak/Atchison Files

FROM: ATR

DATE: 2/11/87

RE: CPSES/Atchison Settlement Discussions: 2/10/87 phone conversation with Bob Weisfridge

Bob called on Tuesday, 2/10/87, regarding settlement discussions which began with BO, JE, and Counsil several months ago. Bob suggested we have a group meeting (all 5 of us) to discuss a possible package settlement of the entire case. I explained we were more comfortable with a bifurcated process where the tort suit and involvement by BO and me in the licensing hearing were in one discussion and the merits of the licensing hearing were in another. Bob indicated that they had little incentive to settle the tort suit and could offer the whistleblowers much more money if it were a package deal. I explained that BO and I made a big difference in the licensing hearing and would at least like to explore what they had in mind.

In the conversation Bob mentioned putting a pot of money on the table for CASE and any whistleblowers to divide up as we saw fit. I said that JE is uncomfortable with an appearance of trading issues for cash and that we had agreed to keep cash out of the substantive discussions. He indicated that he understood JE's concern with the trading problem.

Bob indicated that he would get back to Counsil and then back to me on a future meeting. I suggested one with just Bob, Billie, and me to talk money and the tort suit but said I would attend a broader meeting if they responded to our last proposal and we listened. He said the last proposal was too vague but would see if they could propose a process for resolution of the substantive issues.

The conversation lasted about 15 minutes.

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I called JE after the conversation and told her what transpired. She is reluctant to discuss any merits. I asked about a process for resolution with the NRC Hearing Board as the ultimate decider but with full CASE participation in all decision and the right to argue fully with TVEC on what should be done. JE was not encouraging on any process but agreed to think about it. I explained that money for Mark and Jack and other experts to work full time could be provided out of the settlement payment.

EXHIBIT 4

PAGE ___ OF ___

REPORT OF INTERVIEW
WITH
GLEN G. MAGNUSON, JR.

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MAGNUSON was interviewed on October 23, 1989, at his office at One Houston Place, Houston, Texas, telephone (713) 650-9371, by Nuclear Regulatory Commission (NRC) Investigator Virginia van Cleave. Also present during the interview was J. Patrick HICKEY, attorney for Shaw, Pittman, Potts, and Trowbridge, Washington, DC, representing Brown & Root (B&R).

INVESTIGATOR'S NOTE: According to T. Louis AUSTIN, Chairperson of B&R and former president of B&R, MAGNUSON was employed with the Office of the General Counsel at B&R for several years. [redacted]

MAGNUSON stated that he was employed as an associate general counsel for B&R from March 1980 until July 1985. He stated that, at that time, he left B&R's employment to accept another position, which he also subsequently left. He is now self-employed as an attorney. MAGNUSON recalled being present at a meeting with AUSTIN and a former B&R Comanche Peak Steam Electric Station (CPSES) employee, Joseph J. MACKTAL, Jr., sometime in the spring of 1985. MAGNUSON recalled that the meeting took place on a Saturday morning in a motel room somewhere in central Texas. He stated that he and AUSTIN specifically flew to the Cleburne airport on a B&R corporate plane to meet MACKTAL. He was unable to recall the name of the motel where the room was rented or the name of the town in which the motel was located. He said he was present at AUSTIN's request as B&R's counsel and as a "secretary" to record MACKTAL's statement because he had responsibility for nuclear matters at B&R. MAGNUSON stated that he took extensive notes during this meeting which he said he dated, but he left all notes and work products associated with B&R at the B&R offices when he left the company's employment.

MAGNUSON recalled that the meeting took approximately 2 to 3 hours and concerned MACKTAL's complaints regarding a series of occurrences or problems during his employment at CPSES. MACKTAL told AUSTIN he believed that B&R should look into the matter. MAGNUSON claimed he was unable to recall anything about MACKTAL's specific concerns without reviewing his notes. MAGNUSON stated he had so little recollection of the matter that he could not recall if MACKTAL was still employed at CPSES at the time of the interview. He said he had a vague recollection that MACKTAL was an electrician and believed that MACKTAL had filed a complaint with the Department of Labor (DOL), which led him to the conclusion that MACKTAL was no longer employed at CPSES, but that was speculation on his part.

MAGNUSON stated that this meeting was the only time he ever talked to MACKTAL or had any dealings with MACKTAL. He did not recall that MACKTAL utilized notes, and he believed that MACKTAL provided the information to AUSTIN from memory. To his knowledge, MACKTAL did not take notes or record the meeting. He said that MACKTAL said he had referred some of the matters to CPSES' safe team but had not referred all his concerns to them. MAGNUSON stated he could not recall what MACKTAL had or had not reported to safe team nor could he recall MACKTAL's stating why he did not report all his concerns to safe team. He did recall that AUSTIN questioned MACKTAL regarding his reporting to safe

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team and the resolution of his concerns. However, MAGNUSON stated he had no recollection of any resolution of MACKTAL's concerns. He stated that, at that time, he had already planned to leave B&R's employment, and in addition, he spent the month of June 1986 in Libya. Consequently, he had little or nothing to do with MACKTAL's concerns.

MAGNUSON remembered that MACKTAL had AUSTIN's home telephone number and had contacted AUSTIN at home and asked to meet with him. MAGNUSON stated that there was nothing unusual or clandestine about this meeting. He said that AUSTIN is a "direct, no nonsense, and hands-on" individual who often treated employees or former employees in this manner. AUSTIN's policy was to meet with any employee who wished to meet with him. MAGNUSON said AUSTIN was very concerned about the safety at CPSES and insisted that MACKTAL tell him about every problem or potential problem relating to safety at the plant so B&R could check into them. MAGNUSON did not believe there was any discussion in his presence about reinstatement of MACKTAL's position or front pay or back pay or any other payment to MACKTAL from B&R. During this meeting at the motel, MACKTAL and AUSTIN did not have private discussions without MAGNUSON's presence. MAGNUSON did not recall any discussion at this meeting regarding MACKTAL's DOL suit or any harassment and intimidation of MACKTAL while he was employed at CPSES.

MAGNUSON recalled that his usual contact at Texas Utilities (TU) was the TU licensing attorney, Nick REYNOLDS. Consequently, he believed he provided MACKTAL's information to REYNOLDS either by telephone or by memorandum. He said he could not recall whether he put MACKTAL's concerns in writing in this manner. He said that if there was such a memo, it would be present at the B&R offices. Additionally, MAGNUSON said he might have verbally discussed MACKTAL's concerns with B&R's CPSES project manager at the time, Doug FRANKUM. However, if he discussed them with FRANKUM, it would not have been in writing.

MAGNUSON reiterated that his recollection of the events over 3 1/2 years ago was very sketchy but since he took detailed notes, every subject discussed during the meeting would be reflected in those notes. He was unable to provide any additional information to the investigator regarding this matter.

> INVESTIGATOR'S NOTE: HICKEY stated B&R had located MAGNUSON's notes and had also located a memo from MAGNUSON to REYNOLDS regarding the meeting between AUSTIN and MACKTAL. However, HICKEY refused to let the investigator review these notes or the memo and stated that his position was that the notes and the memo between two attorneys were privileged on the basis of attorney/client privilege.

This report prepared from investigator's notes dated October 23, 1989.

Virginia Van Cleave

Virginia Van Cleave, Investigator
Office of Investigations Field Office, RIV

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF INVESTIGATIONS FIELD OFFICE, REGION IV
611 RYAN PLAZA DRIVE, SUITE 1000
ARLINGTON, TEXAS 76011

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Exhibit -

November 8, 1989

T. Louis Austin, Jr., Chairperson
Brown & Root, Inc.
P. O. Box 3
Houston, Texas 77001-0003

Dear Mr. Austin:

I am requesting that you waive the attorney-client privilege invoked by you on behalf of Brown & Root regarding any notes and/or other written communication prepared by Glenn Magnuson concerning your meetings or conversations with Joseph J. Macktal. I believe these notes are necessary in order for me to perform a thorough investigation of this matter due to your and Mr. Magnuson's admitted limited recollection of these events. Since you expressed a desire to settle this matter expeditiously at our meeting on October 23, 1989, I hope you will comply with my request.

Additionally, I have not yet heard from you or J. Patrick Hickey regarding my request for records, such as corporate jet logs, to clarify the number and dates of your meetings with Mr. Macktal. I also requested that you provide me with any documentation regarding job offers or back pay offers made to Mr. Macktal or any other records or personal notes you had regarding the meetings and or conversations with Mr. Macktal. Please let me know if any such records are in your or Brown & Root's possession and, if so, forward copies of them to me.

Thank you very much for your cooperation.

Sincerely,

Virginia Van Cleave

Virginia Van Cleave
Investigator

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Exhibit C

U.S. NRC
SHAW, PITTMAN, POTTS & TROWBRIDGE
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
1800 M STREET N.W.
WASHINGTON, D.C. 20037

1989 DEC 12 PM 4:48

TELEX CABLE
TELEPHONE
(202) 663-8000

VIRGINIA OFFICE
8001 FARM CREDIT DRIVE
MCLEAN, VIRGINIA 22102
(703) 790-7900

TELECOPIER
(202) 663-8007

December 1, 1989

Ms. Virginia Van Cleave
Office of Investigations Field
Office, Region IV
United States Nuclear Regulatory Commission
611 Ryan Plaza Drive, Suite 1000
Arlington, Texas 76011

Dear Ms. Van Cleave:

In accordance with our telephone conversation yesterday, I am enclosing copies of the Brown & Root Aircraft Use Report for the two trips in the first quarter of 1986 reflecting stops made by Mr. Austin at locations near the Comanche Peak plant. You will note that they reflect a March 31, 1986 stop by Mr. Austin at Cleburne, Texas, and an April 3, 1986 flight by Mr. Austin and Mr. Magnuson to Stephenville, Texas.

The company has been unable to locate any record reflecting Mr. Macktal's signing in on the building logs at the Houston office, so we cannot throw further light on Mr. Macktal's claim on that subject.

Finally, your letter to Mr. Austin requested a waiver of applicable privileges and production of documents related to Mr. Macktal's claims. As I explained, to the extent your area of interest is in determining whether Mr. Macktal's alleged concerns were investigated, you now have the benefit of your interview of Mr. Macktal, and presumably of his identification of the issues he claims to have raised. You can confirm with the Safeteam records at the site whether those items were addressed. However, as you are aware, there is presently litigation pending involving

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PAGE 1 OF 2 PAGE(S)

CASE NO. 4-89-008

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Ms. Virginia Van Cleave
December 8, 1989
Page Two

Mr. Macktal and his allegations, and the company cannot at this time agree to waive its privileges and protections concerning Mr. Macktal's meeting with Mr. Austin and Mr. Magnuson.

Sincerely,

J. Patrick Hickey
Counsel for Brown & Root, Inc.

Enclosures

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EXHIBIT 1
PAGE 2 OF 2 PAGES

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Exhibit D

for

E X H I B I T T H R E E
A F F I D A V I T O F
J o s e p h J. M a c k t a l, J r.

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. Riddell. 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

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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

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Movant's Exhibit E

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 I. 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

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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 NSLB.

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 $35,000.00;

b) If I did not accept the settlement offer of $35,000.00, I would have to pay GAP $12,000.00 before they could proceed with the hearing; and

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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, TLPJ, 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

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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.

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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

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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

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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."

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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

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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 3).

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 3. 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

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JJM

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

31) 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.

32) 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. Rosiman 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. Mockta Jr.
Joseph J. Mockta, Jr.

04/MAK

Movant's Exhibit D

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