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N.R.C. Bars Paying Whistle-Blowers for Silence

By MATTHEW L. WALD

An electrical foreman at a Texas nuclear plant was paid by his former employers in exchange for a promise not to tell Federal officials about what he says were safety problems there, even if subpoenaed.

The Nuclear Regulatory Commission, which did not intervene when it first learned of the agreement, has now told reactor operators that such settlements are forbidden.

The man, Joseph J. Macktal Jr. of Stephenville, Tex., said he lost his job in January 1986 after complaining about various electrical problems at the Comanche Peak plant in Glenrose, Tex. A

spokesman for the Nuclear Regulatory Commission said yesterday that Mr. Macktal's allegations had been fully explored at the time.

Mr. Macktal brought a complaint before the Department of Labor, because dismissing "whistle-blowers" is illegal under the Atomic Energy Act. In January 1987 he signed a settlement with his former employer, the construction company Brown & Root, in which he dropped the complaint and agreed not to "voluntarily appear as a witness or a party" in any proceeding against any company involved in Comanche Peak.

The settlement also provided that if he was "served with compulsory pro-

cess seeking to compel his appearance," he would "take all reasonable steps, including such reasonable steps as may be suggested by the representatives of Brown & Root, to resist." He says the agreement included a payment of \$15,000 for him and \$20,000 for his lawyers.

The Nuclear Regulatory Commission knew about this settlement when it voted unanimously in December to allow licensing to proceed for the Comanche Peak plant. It said then that there was nothing illegal in the agreement, but reversed itself late last month when a Senate subcommittee began an investigation.

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John Breaux, the Louisiana Democrat who heads a nuclear subcommittee of the Senate Committee on the Environment and Public Works, called the nuclear commission's actions "an incredibly weak response to an issue of major regulatory significance." He added that the commission showed an "astonishing inability to make decisions which send clear signals."

In a telephone interview yesterday, Mr. Macktal said that he was pressured into the agreement by his lawyers, who believed he could not pay their fee. He was represented by Billie Garde, of the anti-nuclear Government Accountability Project, who was instrumental in forcing the abandonment of the Zimmer reactor in Ohio because of safety problems, and Anthony T. Roisman, of Trial Lawyers for Public Justice.

Mr. Roisman, now with a private firm in Washington, was said by his secretary yesterday to be vacationing in France and unreachable. Ms. Garde's office in Appleton, Wis., said that she was in Washington and could not be reached.

Silence on the Bargaining Table

A spokesman for Brown & Root, Joe Stevens, said yesterday that the company was trying only to end litigation in the issues Mr. Macktal raised.

Mr. Macktal said that after he was dismissed, he learned that wiring of a type common in the plant had failed in aircraft and other uses in which it was exposed to harsh conditions of the kind it might face at Comanche Peak. But he said the agreement barred him from telling the commission about it.

The panel ruled in December that the

agreement was legal because it did not bar Mr. Macktal from bringing safety concerns "directly to the N.R.C." outside the context of a proceeding. But Mr. Macktal's new attorney, Stephen M. Kohn, argued that under Federal law, a "proceeding" is anything that could lead to a ruling by a Federal agency.

In a motion before the Department of Labor, Mr. Kohn said, "After a significant period of economic deprivation, the prospect of prolonged and costly litigation and the disruption of routine life, individual whistle-blowers often see no alternative but settlement on almost any terms. If an employer is allowed to place 'silence' on the bargaining table, the result is predictable; it is only a matter of time until an employee succumbs."