

05/06/81

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of

HOUSTON LIGHTING AND POWER COMPANY,
ET AL.

(South Texas Project, Units 1 & 2)

Docket Nos. 50-498
50-499

NRC STAFF MEMORANDUM ON STANDARDS FOR
EVALUATING MANAGERIAL COMPETENCE AND CORPORATE CHARACTER

I. STATEMENT OF THE CASE

By Commission Order, dated September 22, 1980, the Licensing Board was directed to consider Houston Lighting & Power's (HL&P) managerial competence and corporate character during an expedited hearing on quality assurance/quality control (QA/QC) issues and to render an early and separate decision relative to an operating license.^{1/} This accelerated hearing was first suggested by the Licensing Board in a Memorandum of March 10, 1980, responding to concerns generated by Intervenor's Contentions 1 and 2.^{2/}

^{1/} Houston Lighting & Power Company (South Texas Project, Units 1 & 2), CLI-80-32, 12 NRC 231, 291-92 (1980).

^{2/} See, Atomic Safety and Licensing Board, Memorandum, March 10, 1980, wherein it is suggested that an early hearing be held on issues relating to asserted construction and QA/QC deficiencies in the fall of 1980 or winter of 1980-81.

The Commission, due to certain findings reached in an NRC special inspection conducted between November 1979 and February 1980,^{3/} agreed with the Licensing Board that an expedited hearing should be held in this operating license proceeding on QA/QC related matters. In the Commission Order, the Board was further directed to look not only at the specific charges contained in the special NRC investigation and the Intervenor's contentions, but to look also at the broader ramifications of these charges in order to determine whether, if proven, they should result in the denial of an operating license.^{4/}

In an attempt to implement the Commission's general instructions, a prehearing conference was held November 19, 1980, to formulate the precise issues and contentions to be addressed during the expedited hearing. This prehearing conference resulted in a Board Order, dated December 2, 1980, wherein the issues of the expedited portion of the operating license proceeding were articulated.

As noted by the Commission, the issues of HL&P's competence and character permeate the Intervenor's pleadings, and deserve a full adjudicatory hearing.^{5/} Three issues adopted as a result of the

^{3/} See, Inspection and Enforcement Report 50-498/79-19, 50-499/79-19, dated April 30, 1980. This Report found, inter alia, HL&P abdicated too much responsibility for construction to its contractor, Brown and Root, and failed to keep itself knowledgeable about necessary construction activities.

^{4/} 12 NRC at 291-92.

^{5/} 12 NRC at 291.

November prehearing conference incorporate these concerns.^{6/} Board Issue A asks whether HL&P's record of compliance with NRC requirements, without regard to remedial steps taken as a result of NRC enforcement action, is sufficient to determine HL&P lacks the necessary managerial

6/ Board Issues A, B, and C state, in full:

Issue A. If viewed without regard to the remedial steps taken by HL&P, would the record of HL&P's compliance with NRC requirements, including:

- (1) the statements in the FSAR referred to in Section V.A.(10) of the Order to Show Cause;
- (2) the instances of non-compliance set forth in the Notice of Violation and the Order to Show Cause;
- (3) the extent to which HL&P abdicated responsibility for construction of the South Project (STP) to Brown & Root; and
- (4) the extent to which HL&P failed to keep itself knowledgeable about necessary construction activities at STP,

be sufficient to determine that HL&P does not have the necessary managerial competence or character to be granted licenses to operate the STP?

Issue B. Has HL&P taken sufficient remedial steps to provide assurance that it now has the managerial competence and character to operate STP safely?

Issue C. In light of (1) HL&P's planned organization for operation of the STP; and (2) the alleged deficiencies in HL&P's management of construction of the STP (including its past actions or lack of action, revised programs for monitoring the activities of its architect-engineer-constructor and those matters set out in Issues A and B), is there reasonable assurance that HL&P will have the managerial competence and commitment to safely operate the STP?

competence or corporate character to be granted a license to operate the South Texas Project. Board Issues B and C essentially ask whether HL&P has taken sufficient remedial steps to provide reasonable assurance that it now has the managerial competence and character to operate the South Texas Project safely.

The Board acknowledged during the second prehearing conference that such general and vague terms as managerial competence and corporate character are in need of more exacting definitions. (Tr. 309). To ask the question whether HL&P has sufficient managerial competence and corporate character to operate the South Texas Project simply begs a further question; what standards or criteria should be applied in evaluating HL&P's managerial competence and corporate character. At the second prehearing conference the Licensing Board advised all parties it would ask at a later date that trial briefs be submitted addressing the standards which should be applied in judging whether an applicant has the requisite competence and character to operate a nuclear power plant (Tr. 309). In its Third Prehearing Conference Order, dated April 1, 1981, (p. 7-8), the Board directed that briefs be filed concerning the standards which govern managerial competence and character. This Memorandum is the Staff's response to the Board's request for guidance in formulating standards for judging an applicant's managerial competence and corporate character.

II. DISCUSSION

A. INTRODUCTION

The Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2232a, states in relevant part:

"Each application for a license hereunder shall be in writing and shall specifically state such information as the Commission, by rule or regulation, may determine to be necessary to decide such of the technical and financial qualifications of the applicant, the character of the applicant, the citizenship of the applicant, or any other qualifications of the applicant as the Commission may deem appropriate for the license . . ." 7/

Specifically, this provision directs the applicant to provide the Commission inter alia, with sufficient information concerning its technical competence and character as the Commission may deem necessary

7/ 10 C.F.R. § 50.40 offers general guidance with respect to standards a licensing board should apply in evaluating whether or not to issue a construction permit or operating license. This section states:

In determining that a license will be issued to an applicant, the Commission will be guided by the following considerations:

(a) The processes to be performed, the operating procedures, the facility and equipment, the use of the facility, and other technical specifications, or the proposals, in regard to any of the foregoing collectively provide reasonable assurance that the applicant will comply with the regulations in this chapter, including the regulations in Part 20, and that the health and safety of the public will not be endangered.

(b) The applicant is technically and financially qualified to engage in the proposed activities in accordance with the regulations in this chapter.

(c) The issuance of a license to the applicant will not, in the opinion of the Commission, be inimical to the common defense and security or to the health and safety of the public.

In addition, after issuance any license is continually subject to revocation, suspension, modification or amendment for cause as provided in the act or regulations. 10 C.F.R. § 50.54(e).

to find that its utilization of special nuclear material will provide adequate protection to the health and safety of the public. This requirement is consistent with general Commission practice which imposes the ultimate burden of proof on the Applicant. 10 C.F.R. § 2.732; Virginia Electric and Power Company (North Anna Power Station, Units 1, 2, 3 and 4), -256, 1 NRC 10, 17 at n. 18 (1975).

This statutory language requires a licensing board to make a two-prong inquiry. First, the Licensing Board must assess the Applicant's technical competence, including the narrower issue of managerial competence. Next, the Licensing Board must satisfy itself that there is sufficient evidence in the record that there is reasonable assurance the Applicant has sufficient character to utilize its technical and managerial competence in a manner consistent with the public interest. See, Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-106, 6 , EC 182 (1973).

It should be stressed at the onset that it is the Staff's position that managerial competence and corporate character are not discreet attributes which can be isolated and examined. A corporate character stems from, and can be inferred from, the character of its management and that management team's competence in responsibly dealing with corporate affairs. In the present proceeding, if the Applicant appreciates the effort, discipline and aggressive

management required to design, build and operate a nuclear power plant in accordance with Commission regulations, and there is reasonable assurance on the record that the Applicant will design, build and operate the plant in accordance with Commission regulations, then it could be concluded that the Applicant has the requisite managerial competence and corporate character contemplated by the Act. See, Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), LBP-77-68, 6 NRC 1127, 1150-51 (1977).

The interdependence of competence and character is illustrated in Consumers Power Company, (Midland Plant, Units 1 & 2), ALAB-106, 6 AEC 182 (1973). In Midland the Licensing Board mistakenly held that its only function in a construction permit proceeding relative to quality assurance and quality control was to make a determination that the Applicant had adopted a program which, if implemented in accordance with the representations of the application, would satisfy the requirements of Appendix B, 10 C.F.R. Part 50. 6 AEC at 183. In effect, the Licensing Board reasoned it should judge the competence of the program, but not inquire into the character of the Applicant in meeting its responsibility to implement that program. It was the Licensing Board's position that the Director of Regulations, and not the Board, was responsible for assuring that the quality assurance program was in fact carried out as approved. The Licensing Board reasoned that it was beyond its ambit of responsibility to determine whether reasonable assurance existed on the

record that the quality assurance program would be implemented by Consumers' management. On appeal, Intervenor took exception to this Licensing Board position, contending that evidence of poor quality assurance practices in the past demonstrated that the Applicant is "incapable of, and cannot be relied upon to, perform adequate quality assurance and quality control." 6 AEC at 183. Further, the Intervenor contended that, as a matter of law, the Licensing Board must do more than merely find that the quality assurance program, as adopted, complies with Appendix B of 10 C.F.R. Part 50. It was asserted that additional facts must be established to show the workability of the plan and the probability that the Applicant and its contractors would follow the plan. The Intervenor's in Midland reasoned that regardless of the Applicant's technical expertise or competence in drafting the quality assurance plan, there was evidence the Licensing Board should have considered showing that the Applicant did not possess the requisite character or managerial attitude and could not be relied upon to implement such a plan. It was this second inquiry the Midland Licensing Board failed to make.

The Appeal Board agreed with the Intervenor that no quality assurance plan is self-executing. It reasoned that regardless of the adequacy of the quality control program on paper (an indication of the Applicant's managerial competence), the program would be essentially without value unless it is timely, continuously and properly implemented by the Applicant (an indication of the Applicant's corporate character). The Appeal Board went on to discuss the approach the Licensing Board should have taken:

The inquiry which the Board must make is not necessarily resolved by a determination of whether, in a broad sense, the applicant and its architect-engineer are "technically qualified." A demonstration that technical qualifications do exist does not necessarily provide reasonable assurance that the QA program described in the PSAR will be faithfully fulfilled. To the contrary, as important as qualifications may be, of no less significance is the fact of managerial attitude. Unless there is a willingness--indeed, desire--on the part of the responsible officials to carry out to the letter, no program is likely to be successful. 6 AEC at 184.

Thus in the instant case, regardless of any determination regarding the technical/managerial competence of HL&P, this Board must then determine if HL&P possesses the managerial attitude or corporate character required to implement the various programs necessary to ensure the safe operation of the South Texas Project. As in Midland, HL&P has the burden of showing that it possesses both the managerial competence to develop adequate programs and the character or willingness to implement those programs following licensing.^{8/} See 10 C.F.R. § 50.40(a). In accord, see Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), LBP-77-68, 6 NRC 1127 (1977).

Although it is the Staff's position that managerial competence and corporate character cannot be isolated and separately analyzed, instructive case law both within and outside the NRC has dealt solely

^{8/} It is interesting to note that the sanctions the Appeal Board levied in Midland due to Consumers' past construction difficulties were similar to the sanctions levied by the Staff in the instant case in its Show Cause Order. See 6 AEC at 186.

with the concept of character or has addressed managerial competence without expressly mentioning corporate character. A review of this case law may be helpful in understanding the interaction between the two concepts and will accordingly be discussed.

B. CHARACTER

The United States Supreme Court has discussed the problem of using character as a qualifying condition for a license in the context of attaining bar membership. Konigsberg v. State Bar, 353 U.S. 252 (1957). See generally, Schwartz v. Board of Bar Examiners, 353 U.S. 232 (1957). In Konigsberg, the Court explained:

The term "good moral character" has long been used as a qualification for membership in the bar and has served a useful purpose in this respect. However the term, by itself, is unusually ambiguous. It can be defined in an almost unlimited number of ways for any definition will necessarily reflect the attitudes, experiences, and prejudices of the definer. Such a vague qualification, which is easily adapted to fit personal views and predilections, can be a dangerous instrument for arbitrary and discriminatory denial of the right to practice law. 353 U.S. at 262-63.

Although, as Konigsberg points out, the term character is ambiguous, the Court indicated two approaches or standards which might be used in the course of an Applicant attempting to prove its good character. A board or court may require an applicant to set forth evidence showing an absence of proven conduct or acts which have been historically considered as manifestations of bad character or an applicant might be required to affirmatively set forth past acts demonstrating honesty, fairness and respect for the law. See, 353 U.S. at 263.

Of equal importance is the point that any qualification or requisite character trait for engaging in an activity must have a rational connection to that activity. Schwartz v. Board of Bar Examiners of New Mexico, 353 U.S. 232, 239 (1957). Thus, a state may require an attorney to be truthful, candid and honest because those character traits have a rational connection to the Applicant's fitness or capacity to practice law. So too, the NRC may require corporations desiring operating licenses to be of good character; however, the question then becomes what character traits have a rational connection with operating a nuclear power plant. Certainly, such traits as truthfulness, reliability, and a willingness and propensity to abide by Commission regulations have a rational connection to the Applicant's responsibility to safely design, construct and operate a nuclear power plant. The absence of any of these traits could seriously bring into question whether a license should be issued to an applicant.

1. It has been suggested truthfulness and candor are important standards by which an applicant's character should be evaluated. Nowhere is the importance of, and dependence upon, accurate and complete information from the Applicant greater than in the context of nuclear regulation. As stated by the Commission:

In order to fulfill its regulatory obligations, NRC is dependent upon all of its licensees for accurate and timely information. Since licensees are directly in control of plant design, construction, operation, and maintenance, they are the first line of defense to ensure the safety of the public. NRC's role is one primarily of review and audit of licensee activities, recognizing that limited resources preclude 100% inspection.

As the Commission has stated in the past:

Our inspection system is not designed to and cannot assume such tasks [to provide full inspection of construction activities].

Rather, we require that licensees themselves develop and implement reliable quality assurance programs which can assume the major burden of inspection. Consumers Power Company (Midland Plant, Units 1 & 2), CLI-74-3, 7 AEC 7, 11 (1974).

We require instead a regime in which applicants and licensees have every incentive to scrutinize their internal procedures to be as sure as they possibly can that all submissions to this Commission are accurate. Petition For Emergency And Remedial Action, CLI-78-6, 7 NRC 400, 418 (1978).

See also Virginia Electric & Power Company (North Anna Power Station), CLI-76-22, 4 NRC 480, 486-87 (1976); affirmed, Virginia Electric & Power Company v. U.S. Nuclear Regulatory Commission 571 F.2d 1289 (4th Cir. 1978).

If an applicant's truthfulness is called into question, the standard for what constitutes a material false statement may become relevant. In the instant case, the Commission has specifically directed this Board to inquire into alleged false statements in the FSAR. 12 NRC at 291. In Virginia Electric and Power Company (North Anna Power Station, Units 1 and 2), CLI-76-22, 4 NRC 480, 489 (1976), the Commission held a statement may be material within the meaning of section 186 (42 U.S.C. § 2236) if it has a natural tendency to influence the decision of the person to whom the statement was made, and further, that such a statement is false within section 186 even if it is made without knowledge of its falsity. 42 U.S.C. § 2236 essentially provides any license may be revoked for any material false statement in the application. The consequences for making a false statement could be as severe as license denial or revocation. In In the Matter of Hamlin Testing Laboratories Inc. 2 AEC 423, 428-9 (1964), the Atomic Energy Commission affirmed the denial of the renewal of a byproduct material

license due to false statements in the renewal application coupled with repeated violations of known obligations under the license.

See generally, In the Matter of Advance Industrial X-Ray Laboratories, 1 AEC 281, 284-5 (1960); In the Matter of X-Ray Engineering Company, 1 AEC 553, 555 (1960); In the Matter of Coastwise Marine Disposal Company, 1 AEC 581, (1960), affirmed, 1 AEC 619 (1961).

The Federal Communications Act is analogous to the Atomic Energy Act in that it also requires an inquiry into the character of an applicant.^{9/} It is clear that since the United States Supreme Court case of F.C.C. v. WOKO, Inc. 329 U.S. 223 (1946) the Federal Communications Commission, when balancing the public interest may refuse to renew a license where there has been a failure to follow regulations, misrepresentations or a lack of candor by a licensee or one of its agents in dealing with the Commission. The rationale for this position is that an agency must depend upon the representations made to it by its applicants and licensees, and accordingly, the fact of concealment is often more significant than the facts concealed. Leflore Broadcasting Company v. F.C.C., 636 F.2d 454, 461 (D.C. Cir. 1980), quoting F.C.C. v. WOKO, Inc. 329 U.S. at 227; Sea Island Broadcasting Co. v. F.C.C., 627 F.2d 240, 243 (D.C. Cir. 1980), cert. denied 101 Sup. Ct. 105 (1981); Lorain Journal Co. v. F.C.C., 351 F.2d 824, 830 (D.C. Cir. 1965), cert. denied sub nom, WW12 v. F.C.C., 383 U.S. 967 (1966); see Virginia Electric and Power Company (North Anna, Units 1 and 2), CLI-76-22, 4 NRC 480 (1976). Such a standard stems from the

^{9/} 47 U.S.C. § 308-409.

relationship the licensee bears to the public, that is, a trustee of a scarce public resource. Id.^{10/}

So too in the regulation of the nuclear industry, the NRC is dependent upon the applicant to provide thorough and accurate information, the fact any information would be concealed is far more significant than the specific nature of the facts concealed. See, Petition for Emergency and Remedial Action, supra; In the Matter of Hamlin Testing Laboratories, Inc., supra.

2. Past violations of law or regulations and a propensity not to follow such rules have also been weighed by this and other Commissions as

^{10/} In the F.C.C. cases, it does not matter that a false representation is made by an agent or an employee for his own purposes and not in furtherance of the licensee's interest. The representations and the concealment may make the issuance of the license contrary to the public interest. F.C.C. v. WOKO, Inc., supra; WADECO, Inc. v. F.C.C., 628 F.2d 122 (D.C. Cir. 1980); White Mountain Broadcasting Co. v. F.C.C., 598 F.2d 274 (D.C. Cir. 1979). Similarly the materiality of the representations to the grant of the license is not necessarily as important as the fact that they were made, since this indicates a lack of trustworthiness. F.C.C. v. WOKO, Inc., supra; Sea Island Broadcasting Co. v. F.C.C., supra; Independent Broadcasting Co. v. F.C.C., 193 F.2d 900, 902 (D.C. Cir. 1961); cert. denied 344 U.S. 837 (1962). The F.C.C. cases further indicate that misrepresentation, and a lack of trustworthiness can be inferred from an applicant's failure to carry out promises and representations made in the past. Immaculata Conception Church of Los Angeles v. F.C.C., 320 F.2d 795, 796 (D.C. Cir.), cert. denied, 375 U.S. 904 (1963); Laflora Broadcasting Co. v. F.C.C., supra; see also In the Matter of Hamlin Laboratories, supra.

Questions of character have also been looked at in Interstate Commerce Commission proceedings judging "fitness" of an applicant to receive a motor carrier certificate of public convenience and necessity under 49 U.S.C. § 302. See e.g.: Kobrin Refrigerated Xpress, Inc. v. United States, 197 F. Supp. 39, 46-47 (N.D. Iowa, 1961); North American Van Lines v. United States, 412 F. Supp. 782, 791-796 (N.D. Ind.); see also Barnes Freight Lines, Inc. v. I.C.C., 569 F.2d 912, reh. denied, 573 F.2d 85 (5th Cir. 1978).

an important indicator in determining whether an applicant has the necessary character to be awarded a license. Carolina Power and Light Company (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4), LBP-79-19, 10 NRC 37, 56-94 (1979); Aff'd and modified 11 NRC 18, ALAB-577; 11 NRC 514, CLI-80-12; Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), CLI-80-5, 11 NRC 403 (1980); Virginia Electric Power Company (North Anna Nuclear Station, Units 1 & 2), LBP-77-68, 6 NRC 1127 (1977); In the Matter of Hanlin Testing Laboratories Inc., supra; Mester v. U.S.; 70 F.Supp. 118 (E.D.N.Y.) Aff'd. per cur., 332 U.S. 749 (1947); United Broadcasting Co. v. F.C.C. 565 F.2d 699 (D.C. Cir. 1977); T.V., 9 Inc. v. F.C.C. 495 F.2d 929, 937-940 (D.C.Cir. 1973); Armored Carrier Corp. v. U.S. 260 F.Supp. 612, 615 (E.D.N.Y. 1966) aff'd, 386 U.S. 778 (1967).

In Sharon Harris, the Commission particularly remanded the proceeding for a further inquiry into the applicant's managerial capability as reflected in the applicant's compliance record with Commission regulations in constructing and operating nuclear facilities. 8 NRC 293. In Consumers Power Co., supra, it was the applicant's compliance with Commission regulations which was to be a principal source of evidence in determining whether the applicant had the character to receive a license. See also, In the Matter of Hanlin Testing Laboratories, Inc., supra. Unless the Commission believes that an applicant's management has a character which evidences a willingness and propensity to carry out regulations in order to protect the public health and safety, it may not issue a license.

3. Another indicator of corporate character is the extent to which HL&P's management abdicated responsibility for construction of the plant to the general contractor, Brown and Root,^{11/} and whether HL&P failed to keep itself informed of construction activity at the site. Either abdication of responsibility or failure to keep adequately informed would reflect negatively upon HL&P's character, as it would evidence a lack of understanding of the effort, discipline and aggressive management that is required to design, build and operate a power plant in accord with the high standards that must be applied to nuclear plants. See North Anna, supra, 6 NRC at 1150-51.

A case particularly instructive on this issue is Cosmopolitan Broadcasting Corp. v. F.C.C., 581 F.2d 917 (D.C. Cir. 1978); see also Continental Broadcasting v. F.C.C., 430 F.2d 580 (D.C. Cir. 1971). In Cosmopolitan, a broadcasting company appealed from an order denying renewal of a radio license because it abdicated its responsibility for programming and failed to keep itself informed concerning programming. Rather than being actively involved with programming, the Applicant in Cosmopolitan merely acted as a clearinghouse for the sale of program time for use or resale by others. This practice violated the basic premise of F.C.C. licensing, that a license holder is a trustee for the public and

^{11/} HL&P cannot avoid responsibility for violations because Brown and Root failed to comply with NRC regulations. In the Matter of Pittsburg-Des Moines Steel Company, ALJ-78-3, 8 NRC 649 (1978); Virginia Electric and Power Company (North Anna Power Station, Units 1 and 2), LBP-75-54, 2 NRC 498, 503 (1975) and ALAB-324, 3 NRC 347, 357 (1976).

must therefore assume primary responsibility for programming. The Court of Appeals held that, in light of that policy, a licensee's failure to retain responsibility for programming or keep informed of that programming could form a sufficient basis for license revocation. Similarly, HL&P is under a duty to construct the South Texas Project in a manner which will not adversely impact upon the public. To the extent this Board finds HL&P abdicated too much responsibility to Brown and Root in the construction of the plant or inadequately kept itself informed of construction activity at the site, such misconduct should be considered in determining whether to deny an operating license to HL&P upon the grounds that such abdication demonstrates a lack of character in responsibly discharging its duties under its construction permit. See, Houston Lighting and Power Company (South Texas Project, Units 1 and 2), CUI-80-32, 12 NRC 231, 291 (1980).

It is emphasized, however, that the fact of past misrepresentations, a failure to follow regulations or an abdication of responsibility mandated by a license is not a per se bar to a license. See e.g.: Cosmopolitan Broadcasting Co. v. F.C.C., supra at 928; Bray Lines, Inc. v. United States, 353 F. Supp. 1240, 1249, aff'd, 414 U.S. 802 (1973). These poor character traits are instead factors that must be considered in determining whether an applicant has the requisite character to be issued a license. See F.C.C. v. WOKO, Inc., supra at 229; WEBR v. F.C.C., 420 F.2d 153, 164 (D.C. Cir. 1969); Armored Carrier Corp. v. United States, supra. Similarly, any corrective actions taken by the Applicant after it learned of the violations must be considered. North Anna, supra, 6 NRC at 1150-51. It is the agency's duty to consider the Applicant's character in the context of the record as a whole, and

determine in its discretion whether a license should issue.

Cosmopolitan Broadcasting Co., supra; Kidd v. F.C.C., 302 F.2d 873 (D.C. Cir. 1973); Armored Carrier Corp. v. United States, supra. As stated in F.C.C. v. WOKO, Inc., supra at 229:

We cannot say that the Commission is required as a matter of law to grant a license on a deliberately false application even if the falsity were not of this duration and character, nor can we say that refusal to renew the license is arbitrary and capricious under such circumstances. It may very well be that this Station has established such a standard of public service that the Commission would be justified in considering that its deception was not a matter that affected its qualifications to serve the public. But it is the Commission, not the courts, which must be satisfied that the public interest will be served by renewing the license. And the fact that we might not have made the same determination on the same facts does not warrant a substitution of judicial for administrative discretion since Congress has confided the problem to the latter . . . cf. North Anna, supra, 6 NRC 1127.

B. COMPETENCE

The standards relative to judging managerial competence are far more straightforward than the standards employed in evaluating corporate character. See generally Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), CLI-80-5, 11 NRC 403 (1980); Virginia Electric & Power Company (North Anna Nuclear Power Station, Units 1 & 2), LBP-77-68, 6 NRC 1127 (1977); Carolina Power and Light Company (Sharon Harris Nuclear Power Plant, Units 1, 2, 3 and 4), LBP-79-19, 10 NRC 37 (1979); Guidelines for Utility Management Structure and Technical Resources, NUREG-0731. In the area of managerial competence, the Applicant's management is reviewed for adequacy of organization and technical ability, prior performance as evidenced by I&E Reports, management attitude, and the management team's response to or plans for technical

problems. Following a weighing and evaluation of all these factors, managerial competence is determined. In evaluating competence, management's overall performance is stressed.

North Anna, supra, is a good example of how a board evaluated the overall performance of corporate management. In North Anna, VEPCO's management conceded that it erred in the past, but believed substantial improvement had been made.^{12/} In light of management's development, responsiveness in correcting items of noncompliance and its current commitment to safe operation of the North Anna facility in compliance with all applicable requirements, the Licensing Board concluded VEPCO's management demonstrated its commitment and qualification to run the facility. 6 NRC at 1144. The North Anna Board did not feel VEPCO's past transgressions provided a basis for denying an operating license. In this connection, the North Anna Licensing Board concluded that although the record made clear VEPCO lagged in upgrading its management to provide the necessary leadership and control to ensure the proper operation of a nuclear power plant; nonetheless, the record made equally clear VEPCO's management improved as the regulatory requirements increased and in response to NRC Staff recommendations. Consideration of the entire record led the North Anna Licensing Board to find that VEPCO had the commitment necessary to operate North Anna in compliance with all radiological health and safety requirements. Inquiries into such vague areas as corporate "commitment" in North Anna, 6 NRC, supra; and "managerial attitude" in Midland,

^{12/} VEPCO also had been found to have made material false statements to the NRC. Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), CLI-76-22, 4 NRC 480 (1976).

supra, appears to be an effort by licensing boards to discharge their duty to obtain reasonable assurance the applicant has the requisite character to operate a nuclear power plant.

The Commission has provided detailed guidance to licensing boards in dealing with management competence issues. See generally, Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), CLI-80-5, 11 NRC 408 (1980). In determining whether Metropolitan Edison is capable of operating Unit 1 safely, the Commission in Three Mile Island directed the Licensing Board to look at three broad areas:

- (1) whether Metropolitan Edison's management is sufficiently staffed, has sufficient resources and is appropriately organized to operate Unit 1 safely;
- (2) whether facts revealed by the accident at Three Mile Island Unit 2 present questions concerning management competence which must be resolved before Metropolitan Edison can be found competent to operate Unit 1 safely; and
- (3) whether Metropolitan Edison is capable of operating Unit 1 safely while simultaneously conducting the clean-up operation at Unit 2. 11 NRC at 408.

In the course of examining these broad issues, the Commission directed the Licensing Board to examine certain more specific issues. Among the issues specified were the appropriateness of plant and corporate organization; staff technical qualifications; quality of corporate and plant management; past infractions by Metropolitan Edison in contrast to industry-wide statistics; and, inter alia, the interaction of site staff and corporate management. The Commission was quick to point out it was not providing standards by which to judge managerial competence but only

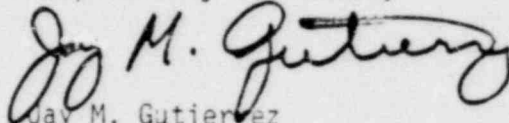
outlining questions it deems pertinent to the management issue. According to the Commission, the Board should apply its own judgment in forming its conclusions. 11 NRC at 410. Here again technical areas are identified as areas to examine for adequacy, but in the final analysis the Board is left with a standard of reasonableness to evaluate and weigh the various factors which in the aggregate constitute managerial competence.

This approach is currently followed by the Staff in evaluating managerial competence as evidenced by "Guidelines for Utility Management Structure and Technical Resources" NUREG-0731. (A copy of this NUREG is attached hereto.) This NUREG establishes guidelines for management organization and experience, plant staffing, training, as well as onsite and offsite resources for both routine and emergency conditions. The applicant's compliance with meeting these various guidelines is then weighed together with other relevant material in determining whether the applicant has the requisite managerial competence for a license. In short, if all technical areas are adequately addressed it can be inferred that the applicant's management appreciates the magnitude of the effort required to safely plan, construct and operate a nuclear power plant and is consequently making that effort.

As we have said this effort is relevant to any assessment of an applicant's corporate character. As in the case of evaluating an individual's competence or character, the managerial competence and character of a corporation can be inferred from past actions. Thus as set forth in North Anna, supra, 6 NRC at 1150-51, this Board must determine whether the Applicant appreciates the effort, discipline and aggressive management required to design, build and operate a nuclear

power plant in accordance with Commission regulations, in order to conclude that the Applicant has the requisite managerial competence and corporate character contemplated by the Act.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Jay M. Gutierrez". The signature is fluid and cursive, with the first name "Jay" being particularly prominent.

Jay M. Gutierrez
Counsel for NRC Staff

Dated at Bethesda, Maryland,
this 5th day of May, 1981.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
HOUSTON LIGHTING AND POWER COMPANY,)
ET AL.) Docket Nos. 50-498
(South Texas Project, Units 1 & 2)) 50-499

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF MEMORANDUM ON STANDARDS FOR EVALUATING MANAGERIAL COMPETENCE AND CORPORATE CHARACTER" in the above-captioned proceeding have been hand served on the following or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system or by Express Mail, this 6th day of May, 1981:

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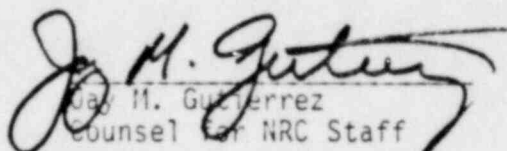
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Guidelines for Utility Management Structure and Technical Resources

Draft Report for Interim Use and Comment

Office of
Nuclear Reactor Regulation

U.S. Nuclear Regulatory
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