

August 29, 1983

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 RESPONSE TO CCANP MOTION  
TO REOPEN PHASE I RECORD

I. INTRODUCTION

On August 8, 1983, CCANP moved to reopen the Phase I record in this proceeding. Attached to the Motion were a number of documents, at least some of which CCANP would like to see admitted into the record.<sup>1/</sup> The Staff herein responds to CCANP's Motion.

II. DISCUSSION

A. Standard for Reopening

It is well established that a movant seeking to reopen an evidentiary record has a heavy burden. Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 338 (1978); Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-359, 4 NRC 619, 620

<sup>1/</sup> It is unclear from the Motion exactly which documents CCANP would like to see admitted. See p. 3, infra.

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(1976). The motion must show that the issues sought to be raised are of either environmental or safety significance and that if litigated they would lead to a different result in the proceeding. See Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-598, 11 NRC 876, 879 (1980); Wolf Creek, supra; Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-422, 6 NRC 33, 64 n.35 (1977); Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523 (1973), reconsid. den., ALAB-141, 6 AEC 576; Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), LBP-82-34A, 15 NRC 914, 915 (1982). Moreover, from the onset it is the burden of the movant to show from the material submitted in support of the motion to reopen that a different result would have been reached had such material initially been considered. Wolf Creek, supra; Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-227, 8 AEC 416, 418 (1974).<sup>2/</sup> These standards were reiterated in Public Service Company of Oklahoma, et al. (Black Fox Station, Units 1 and 2), ALAB-573, 10 NRC 775, 804 (1979), where, as here, the motion to reopen was filed after the record was closed but prior to issuance of a decision by the Licensing Board.

Accordingly, a decision on whether to reopen a record rests on the consideration of three factors: (1) Is the motion timely? (2) Does it address significant safety or environmental issues? (3) Would a

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<sup>2/</sup> It has been similarly stated that to justify the granting of a motion to reopen the record, the moving papers must be strong enough, in the light of any opposing filings, to avoid summary disposition. Vermont Yankee, supra at 523.

different result have been reached had the newly proffered material been considered initially? Diablo Canyon, supra; Three Mile Island, supra.

B. CCANP's Motion

CCANP's Motion appears to be centered on an investigation report prepared by the NRC's Office of Inspection and Auditor (OIA) dated October 10, 1980, entitled "South Texas Nuclear Project: (1) Alleged Intimidation of Quality Control Inspectors; and (2) Alleged Alteration or Falsification of Quality Control Documentation." Although CCANP appended a number of additional documents to its Motion, CCANP states that "[t]here are documents included in the package which CCANP will probably not seek to admit but which are included. . ." (Motion at 2) and asks the Board to accept into evidence only "the relevant and material portions of the documents" (Motion at 7). The Staff has no way of knowing which documents CCANP believes are "relevant or material" and seeks to have admitted. The only documents specifically referenced in CCANP's Motion are the OIA Report and certain letters from the Department of Justice to Houston Lighting and Power (HL&P) and Brown and Root (B&R). It is those documents that the Staff will address in this response.

At the outset, the Staff notes that of the three criteria that must be satisfied before a record can be reopened, the Staff does not oppose CCANP's Motion as untimely, nor does it challenge the significance of the issues involved. The sole focus of this pleading will be on the third criterion: whether the material involved might lead to a different result in the proceeding.

1. OIA Report

CCANP asserts that there are five "items of importance to the Board's decisions in Phase I" contained in the OIA Report. These items, according to CCANP, are:

1. an OIA conclusion that "a concerted effort by a team of investigators would uncover even more examples of records alternation/falsification." OIA Report at 2.
2. an OIA conclusion that the source of the intimidation and harrassment of QC inspectors was "a reluctance or failure of construction or craft personnel to follow procedures."
3. Interviews appearing to be with personnel not interviewed as part of 79-19 or including information not contained in 79-19. For example, the observation by one QC inspector that when he arrived on site, the "QC group appeared to be in 'near revolt.'" OIA at 15. A second QC inspector recounted that when he began QC inspection duties "construction personnel asked him why he was inspecting and not up in the office playing cards with the rest of the QC." OIA at 16.
4. OIA's conclusion that the "allegations and QC deficiencies" which produced the Order to Show Cause of April 1980 "were inherent conditions emerging repeatedly over an extended period of time."
5. Attachments 3F, Memo Hall to File, 3/14/79 and 3G, Memo Hall to File, 4/3/79 reveal "an altercation over quality between a QC Inspection [sic] and a Project Engineer." There is no evidence of this incident in the record. The NRC Staff apparently did not see fit to include these memos (which it should be noted are not I&E reports and therefore not public records) in their presentation to this Board even though intimidation and harassment of QC inspectors was clearly an issue in Phase I. This omission is perhaps explained by the incredible non-investigation of this event. Neither party to the fight was interviewed by NRC while the assessment of a third person, who was an employee at the plant, not NRC, was accepted as to the details of the event, the management response to the event, and the adequacy of the resolution for the quality problem. The Applicants also did not see fit to include this incident in their testimony even though it

appears to have eventually involved the Corporate QA Manager for Brown and Root.

Motion at 4-5. The Staff will address each item seriatim.

The first item is the statement in the Report that a concerted effort by investigators would uncover more examples of alteration or falsification of records. CCANP does not explain how or why this conclusory statement by OIA would be likely to change any of the results to be reached in Phase I of this proceeding. A look at the OIA Report (page 2) reveals that the factual basis for this conclusion were a 1979 FBI investigation and at least one NRC I&E investigation (the investigation culminating in I&E Report 79-19).<sup>3/</sup> The issue of record falsifications was raised by CCANP as Contention 2 and was thoroughly explored at the Phase I hearing. See generally, Staff Proposed Findings, p. 47 and ¶¶ 274-287. Numerous Staff investigators appeared as witnesses at the hearing. This item includes no new factual information for the Board to consider; it does nothing more than provide the Board with OIA's conclusion on the same information that was presented to the Board. Inasmuch as the item contains no new factual information, reopening of the record is not warranted. See Pacifi Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-644, 13 NRC 903, 994-995 (1981).

The second item consists of an OIA conclusion about the source of intimidation and harassment of quality control inspectors. This item is found at page 3 of the OIA Report. Allegations of intimidation and harassment of quality control inspectors were also fully explored below.

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<sup>3/</sup> It is difficult to tell from the OIA Report whether in this area the report relied on other I&E investigations as well as 79-19. It is clear, however, that other I&E investigations covering record alterations were documented in the record below.

See e.g., Contentions 1.7d and e; Staff Findings, pp. 45-46, ¶¶ 31-33, 89-90, 246-252. Again, the only "new information" is an OIA conclusion about an issue litigated before the Board based on the same facts presented to the Board. This does not meet the standard for reopening a record. See Diablo Canyon, supra.

The third item concerns certain interviews conducted by OIA. Here, instead of offering OIA's conclusions to the Board, CCANP identified two pieces of information: the observation by one interviewee that the quality control group appeared to be in "near revolt" and the statement by a second interviewee indicating that quality control inspectors played cards during the day. These pieces of information are already before the Board; testimony at the hearing covered both the general disaffection of the quality control group and the reports that inspectors played cards. See Staff Findings, ¶¶ 89, 249-252. CCANP here identified no new information that was not brought before the Board during Phase I. No new matter is presented. This item does not meet the standards for reopening a record.

The fourth item concerns another OIA conclusion, this one to the effect that the allegations and quality assurance deficiencies resulting in the Order to Show Cause of April 1980 were recurrent problems over an extended period of time. Once again, the Order to Show Cause and the events leading up to it were discussed extensively during Phase I. The Order to Show Cause was a result of I&E Report 79-19 (Staff Ex. 46); Report 79-19 was extensively discussed below. See Staff Findings, pp. 4-5, ¶¶ 29-39, 61-65. The questions of recurrent quality assurance problems can fairly be said to be one of the central issues of the whole Phase I proceeding. See Board Issues A through D. CCANP points to no facts to be considered



by the Board; it merely asks the Board to consider an OIA conclusion based on evidence that has already been put before the Board. Reopening the record for this item is warranted.

The fifth item involves a fight between a quality control inspector and a project engineer. This is the only instance in which CCANP assertedly points to new factual evidence not contained in the Phase I record. Contrary to this assertion, the fight between the inspector and the project engineer was included in the testimony below. Warnick, et al., ff. Tr. 8032, pp. 13-14, 33-34; Staff Ex. 20, I&E Report 79-04, p. 7. CCANP may have failed to remember this testimony, but again no new factual material is shown which was not before the Board. While CCANP points to something other than a conclusion here, the evidence it wishes the Board to put into the record is already there.

In sum, the five "important" items from the OIA Report identified by CCANP contain no new factual information at all. The factual information referenced in the Report was brought before the Board below, in a situation where all the parties and the Board had an opportunity to fully examine the witnesses. The Report adds nothing factual that is not cumulative or repetitive. As for the OIA conclusions, these conclusions are based on the same information that was discussed in Phase I. The factual record is complete; the Board must make its own decisions based on that record, and not on OIA's conclusions derived from essentially that same record.

## 2. Justice Department Letters

CCANP also has asked the Board to admit letters from the Department of Justice to HL&P and B&R. Motion at 4. According to CCANP, these letters "establish a level of seriousness in the Quality Assurance violations not

previously documented -- criminal violations. The Department of Justice letters also contain a judgement by the Department of clear relevance to the character issue . . . " Motion at 6. A look at the letters, however, reveals that they contain nothing but brief references to factual matters fully developed during Phase I.

The letters indicate that employees may have violated Section 1001 of Title 18 of the United States Code by circumventing reporting procedures and falsifying inspection reports. As mentioned earlier (p. 5, infra) this issue was covered extensively during Phase I. Referral of the false statements to the Department of Justice was part of the record. See Crossman, et al., ff. Tr. 10,010 at 15, 17; Tr. 10099-100. The only "new" piece of information added here is that the Department of Justice considered falsifying records, as set out in 18 U.S.C. § 1001, a federal crime. Moreover, in light of the gravity in which the NRC views document falsification (see, Staff Findings, pp. 17-20; CLI-80-32, 12 NRC at 291) this "new" information can hardly be considered important material that might change the result of the proceeding.

The only other "information" contained in the letters is the Department's view that there was an overall "pattern of neglect" by HL&P and B&R. It is fair to say that the whole Phase I proceeding dealt in one way or another with this issue. See generally, Board Issues A through E. Again CCANP is asking to reopen the record to admit a conclusory statement based on evidence already in the record. The Motion should be denied.



III. CONCLUSION

For the reasons presented above, the Staff submits that CCANP's Motion contains no new factual information and therefore does not satisfy the criterion for reopening a record.

Respectfully submitted,



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Dated at Bethesda, Maryland  
this 29th day of August, 1983

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO CCANP MOTION TO REOPEN PHASE I RECORD in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 29th day of August, 1983:

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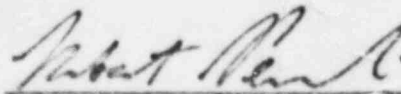
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