

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
HOUSTON LIGHTING & POWER)
COMPANY, ET AL.)
)
(South Texas Project,)
Units 1 and 2))

Docket Nos. 50-498 OL
50-499 OL

APPLICANTS' BRIEF IN OPPOSITION TO CEU
MOTION TO FILE ADDITIONAL CONTENTIONS

Statement

On September 10, 1981, CEU filed a motion for the admission of eight new contentions, all of them arising out of newspaper accounts of the program to inspect and repair welds in structural steel supplied to the South Texas Project by the American Bridge Division of the United States Steel Company. CEU asserts that the proposed contentions are relevant to the issues in this "expedited hearing" and that the hearing must be interrupted and further proceedings delayed until CEU completes discovery regarding its proposed contentions.

Applicants' position is that the motion is not timely and should be denied because no good cause has been shown for CEU's failure to file within a reasonable time of HL&P's February 6, 1981, written report to the NRC on this matter (see attachment 2 to this brief). Moreover, the proposed



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contentions are vague, overly broad and not supported by a statement of basis and thus do not satisfy the requirements of 10 CFR § 2.714(b). Accordingly even if CEU had not utterly failed to show good cause for its late filing, its contentions should be rejected. Furthermore, it is Applicants' position that CEU's proposed contentions relate to matters which are not within the scope of this "expedited hearing."

Finally, at the hearing on September 18, the Board addressed a number of questions to the parties regarding the American Bridge steel. Applicants responses to those questions are presented in attachment 1 to this brief.

Argument

I. CEU Has Failed To Show Good Cause For Its Late Filing And A Balancing Of The Factors Under 10 CFR § 2.714(a) (1) Weighs Against Admission Of The Proposed Contentions.

On January 8, 1981, HL&P telephoned NRC's Region IV office and reported that there were a number of noncompliances with the AWS welding code found in structural steel supplied by American Bridge. Pursuant to 10 CFR § 50.55(e) a written report on this matter was sent to the Region IV office on February 6, 1981. Copies were sent to the Board and the parties to this proceeding, including CEU. On February 20, 1981, the letter was placed in the NRC's Public Document Room in Washington, D.C.* This all occurred during

*/ See attachment 2, hereto, a certificate from the Assistant Secretary to the Commission that the document has been on file in the Public Document Room since February 20, 1981.

the discovery period for this hearing and prior to the pre-hearing conference held in Austin on March 17-18, 1981.

A second interim report was filed on June 1, 1981, and served on the Board and the parties (see attachment 3).*/

Some seven months after the filing of the first written report, on September 10, 1981, CEU filed its motion claiming that newspaper accounts of the very matters addressed in the two interim reports previously sent to CEU constituted "new information." No explanation was offered of why CEU considered the February 6 and June 1 letters inadequate notice and there was no explanation of why CEU waited seven months to file its motion.

The NRC regulations are clear. An intervenor is required by 10 CFR § 2.714(b) to file at least 15 days prior to the special prehearing conference or the first prehearing conference a list of the contentions sought to be litigated, setting forth "with reasonable specificity" the bases for each contention. Permission to file contentions later than 15 days before the prehearing conference "may be granted based upon a balancing of the factors in paragraph (a)(1) of this section."

10 CFR § 2.714(b) (1981); Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-5, 13 NRC 361 (1981). Other than incorrectly asserting that HL&P failed to file a report, CEU made no attempt to address

*/ A third interim report is due to be filed on October 1, 1981, and will be similarly served on the Board and the parties.

- 1 -

the five factors in Section 2.714(a)(1). "Late petitioners properly have a substantial burden in justifying their tardiness. And the burden of justifying intervention on the basis of the other factors in the rule is considerably greater where the latecomer has no good excuse." Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-73-4, 1 NRC 273, 275 (1975).

The burden is on the intervenor to address the substance of the five factors. Failure to address them can be fatally defective. Duke Power Company (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-615, 12 NRC 350 (1980); Cincinnati Gas and Electric Company (William H. Zimmer Nuclear Station), LBP-80-24, 12 NRC 231, 236 (1980).

The first of the five factors is whether there is good cause for failure to file on time. Here there has been no showing of such good cause. CEU waited seven months from the written report to file its motion.

The second factor is availability of other means whereby the Intervenor's interest will be protected. The matters at issue relate to compliance and are properly being addressed by Applicants under § 50.55(e) and are being reviewed by the NRC Staff. If the Intervenor can later demonstrate any deficiency in the Applicants' resolution of these matters and the NRC Staff's review and disposition thereof, their interests can be asserted and protected at that time.

The third factor is the extent to which Intervenor's participation may reasonably be expected to develop a sound

record. At this point Intervenor's have not filed any material that would indicate an ability to contribute on this issue.

The fourth factor is the extent to which the Intervenor's interest will be protected by other parties. Here the NRC Staff is responsible for reviewing § 50.55(e) reports and inspecting the implementation of corrective actions, so CEU's interests are amply protected by the NRC Staff. Cf. Zimmer, supra at 238.

The final factor is the extent to which Intervenor's motion will broaden the issues or delay the proceeding. CEU has clearly shown the extent of delay that would result by requesting a suspension of the hearing and extensive discovery. This factor should weigh particularly heavily against the admission of these contentions in this expedited proceeding since if CEU had raised these matters in timely fashion and if they were found to be within the proper scope of this proceeding, they could readily have been addressed by the many panels of HL&P and B&R witnesses who have already testified.

Thus, each of the five factors weighs against the admission of CEU's proposed contentions, and accordingly, the motion should be denied.

II. The Proposed CEU Contentions Are Neither Sufficiently Specific Nor Supported By A Statement Of Bases As Required By 10 CFR § 2.714(b).

The proposed contentions of CEU are phrased in the broadest scope imaginable, alleging noncompliance with criteria I, II, VII and X of Appendix B and with 10 CFR § 50.55(e). None of the contentions is sufficiently particularized to permit liti-

gation and no attempt has been made to state the bases for the several contentions other than a generalized reference to a collection of newspaper articles. The Rules of Practice require that contentions and the bases of contentions be set forth with "reasonable specificity." 10 CFR § 2.714(b) (1981). "[C]ontentions must serve the purpose of defining the 'concrete issues which are appropriate for adjudication in the proceeding.'" Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), LBP-80-30, 12 NRC 683, 689 (1980), quoting Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 769 (1977). Each of these proposed contentions fails that test.

Proposed contentions 1, 2, 3 and 4 allege violations of criteria I, II, VII and X of Appendix B, but the proposed contentions do not state which specific requirements of those criteria are said to be violated, nor do they identify which acts or omissions of HL&P, B&R or American Bridge constituted said violations. The reference to the newspaper articles does not provide a basis for the proposed contentions because those articles do not describe any violations of Appendix B. As a result of this lack of specificity, Applicants are left without a clear indication of the matters sought to be litigated.

Proposed contention 5 alleges a violation of 10 CFR § 50.55(e); however, the elements of such a charge are wholly absent. No facts are alleged which would be reportable under § 50.55(e), and in fact, no threat to the public health and safety has yet been found. Moreover, attachment 2 shows that

a report pursuant to § 50.55(e) has been duly submitted. A report by telephone was made on January 8, 1981. A written report was sent to this Board and the parties, including CEU on February 6, 1981, and has been in the NRC Public Document Room since February 20, 1981 (see attachment 2); a subsequent written report was submitted on June 1, 1981, and again copies were sent to the Board and the parties.

Proposed contention 6 alleges that STP procedures permit the acceptance of steel containing serious defects. It does not allege the nature of those "serious defects," nor is any basis for the contention supplied by the newspaper articles. Indeed, the articles properly reflect that the reexamination criteria were changed to focus on potentially significant defects and to minimize reinspection of cosmetic deviations. There is no suggestion in the newspaper articles that "serious defects" are being accepted.

Proposed contention 7 alleges that use of American Bridge steel would be a violation of "the Act" (presumably the Atomic Energy Act of 1954, as amended). This contention fails to state a litigable claim because HL&P has committed in its § 50.55(e) reports (attachments 2 and 3) to perform reinspection, evaluation and repair of the American Bridge welds. The proposed contention does not specify a single issue regarding the HL&P inspection and repair program, and thus, it fails to place an issue into controversy. Moreover, there is no basis stated for the proposition that this reinspection is required by the Act. Nowhere in the newspaper accounts or the written

reports is there an allegation that the welds would fail in service, and Applicants know of no basis for such an assertion. The weld evaluations performed to date have not revealed a single weld that would have failed in service had it not been corrected.

Similarly, proposed contention 8 is overly broad and without basis. It implicitly assumes a failure of the vendor surveillance with respect to American Bridge without stating the nature of the asserted failure. Moreover, on the strength of this one circumstance the proposed contention seeks to draw into question all of the materials that have been supplied to the project, without any identification of any defects in such other materials nor explanation of how the alleged cause of "failure" with respect to American Bridge would also have affected other vendors. This "grand leap" from American Bridge to all vendors is similar to CEU's misplaced reliance on a 10 month old inspection report regarding Comanche Peak. B&R is the constructor on Comanche Peak, not the Architect-Engineer, and B&R has had no responsibility for vendor surveillance for the Chicago Bridge and Iron materials that are addressed in the Comanche Peak I&E Report 80-23. Thus whatever the problems may have been at Comanche Peak, there is no basis to assert a connection with STP.

This failure to articulate a reasonably specific contention with a clear statement of the basis therefor requires that CEU's motion be denied with respect to each of its eight proposed contentions.

III. The Proposed Contentions Are Not Within The Scope Of This Expedited Hearing.

This expedited hearing involves certain previously filed Intervenor contentions and certain other issues which arose out of the decision of the Commission denying Intervenor's request for a hearing on the Show Cause Order. CLI-80-32. Those additional issues relate to matters drawn into question by the Show Cause Order, including the character and managerial competence of HL&P. Clearly not every act or omission of HL&P must be considered by the Board in reaching its judgment. The newspaper articles which CEU cites as the sole basis for its proposed contentions do not allege abdication of knowledge or responsibility by HL&P, nor do they allege any other facts which might lead a Licensing Board to conclude that HL&P lacks the resolve or ability to comply with NRC requirements during Plant operations. To the contrary, these articles state that at great expense and effort HL&P and B&R have undertaken to reexamine welds already inspected and found acceptable by their supplier, American Bridge. The decision to reexamine these welds was made without consultation with the NRC Staff. As the § 50.55(e) interim reports show, the reinspection to date of a substantial portion of the American Bridge steel has failed to uncover a single weld that would have failed in service. Moreover, the § 50.55(e) reports, the newspaper articles, and the NRC Staff's prefiled testimony^{*/}

^{*/} See Testimony of William A. Crossman, et al., Relative to the Inspection and Enforcement Activity Following the Show Cause Order of April 30, 1980, Appendix C, page 5, Item 51.

The CEU suggestion that these matters should be admitted as issues in this expedited hearing is thus wholly unwarranted. Rather, the matter should not be heard in this operating license hearing at all. Since the welds are being reviewed and repaired as necessary, the only possible issues are compliance issues which, if they had any substance, would more appropriately be reviewed after this § 50.55(e) matter has been fully addressed by Applicants and dispositioned by the NRC Staff.

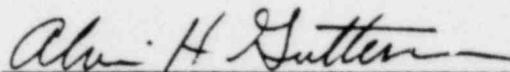
Conclusion

The foregoing discussion shows that the CEU Motion to add contentions is untimely in the extreme, that there is no good cause for this lateness and no justification for permitting CEU to raise these contentions at this late date. The proposed contentions are vague, overly broad and without any specified basis. Moreover, the proposed contentions are

not german to the issues in this expedited hearing.

Accordingly, CEU's motion should be denied.

Respectfully submitted,



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Dated: September 30, 1981

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ing herein on behalf of itself
and the other Applicants, THE
CITY OF SAN ANTONIO, TEXAS, act-
ing by and through the City
Public Service Board of the City
of San Antonio, CENTRAL POWER
AND LIGHT COMPANY and CITY OF
AUSTIN, TEXAS

Attachment 1

Response To The Board Questions Regarding
Steel Supplied By American Bridge

QUESTION 1: Has HL&P complied with all NRC reporting requirements with respect to the structural steel question?

ANSWER: Yes. On January 8, 1981, HL&P reported by telephone to the NRC Region IV office that non-conformances had been identified in welds in structural steel supplied by American Bridge. This fact is noted as Item 51 on page 5 of Appendix C to the NRC Staff's prefiled Testimony of William A. Crossman, et al., Relative to the Inspection and Enforcement Activity Following the Show Cause Order of April 30, 1980. In accordance with 10 CFR § 50.55(e) HL&P filed a 30 day written report on February 6, 1981, and a second interim report on June 1, 1981. Copies of the written reports (Attachments 2 and 3) were sent to the Board, CEU, CCANP, the State of Texas and counsel for the NRC Staff.

QUESTION 2: Was the NRC Staff and in particular Staff counsel aware of this QC problem prior to the newspaper articles submitted by CEU?

ANSWER: Yes. As discussed in answer to question 1, the NRC Staff counsel was sent copies of the written reports at the same time that they were sent to the Board and the other parties and the § 50.55(e) report to

NRC is referred to in the NRC Staff's prefiled testimony. The very newspaper articles submitted by CEU show that the NRC Staff was aware of the problem.

QUESTION 3: Have HL&P and B&R allowed use of defective structural steel in STP?

QUESTION 4: If so, is there any possibility that defective structural steel has been used in safety-related structures?

ANSWER: Although some of the steel has contained deviations from applicable welding code standards and project requirements, engineering evaluations to date indicate that none of the American Bridge steel received on-site contains weld defects which would cause a weld to fail in service. Thus, to our present knowledge, no "defective" steel has been used.

Structural steel has been procured from American Bridge under a contract that requires American Bridge to provide inspection of all welds in accordance with the AWS Code by qualified inspectors pursuant to an approved QA program prior to shipment to STP. Although there is no requirement that such steel be reinspected at STP, in the course of an audit to verify traceability of American Bridge steel a possible non-conformance was noted in November 1980. As a result, HL&P and B&R have been reinspecting welds in the steel that had already been received on-site. The reinspections have found a number of deviations from the quality and workmanship requirements of AWS Code D1.1 and from the STP specifica-

tions and drawings. The deviations are being documented on non-conformance reports (NCRs). Hundreds of NCRs have been written because it was decided to write a separate NCR on each steel member.

Of the first approximately 625 NCRs evaluated by Engineering, none of the welds would have failed in service, but about 10 percent were reworked to reestablish the safety margins provided in the original design. Substantially all of the rework conditions involved undercut or undersized welds, while the bulk of the other NCRs involved cosmetic deviations (such as arc strikes) which do not affect the adequacy of the steel for its intended purposes.

After a large number of NCRs were written welding consultants who were active AWS Code Committee members with extensive AWS Code experience, inspected the rejected welds and advised that the acceptance criteria being implemented on STP were more stringent than required by the AWS Code. Based on the type of steel involved, its intended purposes, as well as the foregoing results, an evaluation of the acceptance criteria was performed by B&R Engineering and a new procedure was adopted which focused the inspection effort on undercut and undersized welds.

The new procedure requires an NCR for welds that do not satisfy specified acceptance criteria for undercut and undersized weld conditions, or that contain cracks or lack of fusion. It also directs the inspectors

to note on a special form for evaluation by Quality Engineering "any other questionable discontinuities." Inspection of over 1000 additional steel members using the new procedure found over 85 percent acceptable.

All of this structural steel has been procured for use in safety related structures and a portion of it has already been installed. It is currently estimated that about four percent is inaccessible for reinspection. Based on the complete results of the reinspection performed on accessible on-site American Bridge steel, Engineering will decide whether it is necessary to take some further action with respect to the inaccessible steel. The results of the reinspections and the evaluation of uninspected steel will all be documented in future written reports pursuant to § 50.55(e). As with the previous reports, copies will be sent to the Board and the parties.

QUESTION 5: Is there any potential public health and safety threat which results from this situation?

ANSWER: No. The results of the reinspection and reevaluation performed to date have found no defects which, if they had gone uncorrected, would have constituted a threat to the public health and safety. It is often not possible to determine within the time limits of § 50.55(e) whether a defect constitutes a substantial safety hazard. If the determination cannot be made within the time limits then a report is filed,

even though it may later be found that the condition is not reportable. In this case the evaluation is still continuing but there has not yet been any indication that any defect exists which would constitute a threat to the public health and safety. In any event, the program HL&P has undertaken to reinspect, evaluate and repair, if necessary, the American Bridge welds provides ample assurance that the structural steel will not constitute such a threat.

QUESTION 6: Is it now possible to arrive at definitive answers to the three preceding questions? Has this been done?

ANSWER: No. The reinspection is continuing. Until the reinspection is completed definitive answers to questions 3, 4, and 5 are not possible.

QUESTION 7: What prompted the HL&P press release on the structural steel problem?

ANSWER: There was no HL&P press release. HL&P simply responded to a press inquiry.

QUESTION 10: What relationship, if any, exists between QC Surveillance activities for structural steel at the Comanche Peak Plant and STP?

ANSWER: None. B&R's responsibilities on Comanche Peak differ from its responsibilities on STP. B&R has no responsibility for vendor surveillance with respect to the Chicago Bridge and Iron materials covered by the Comanche Peak NRC I&E Report 80-23.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

AFFIDAVIT OF RALPH R. HERNANDEZ

STATE OF TEXAS
COUNTY OF HARRIS

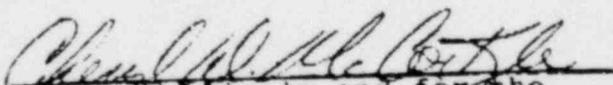
Ralph R. Hernandez, being first duly sworn, deposes and says: That he is employed by Houston Lighting and Power Company as a Supervising Engineer; that his professional qualifications are described in the record of this proceeding; that he participated in the preparation of the attached "Response to the Board Questions Regarding Steel Supplied by American Bridge" and is familiar with the contents thereof; that he has personal knowledge of or has made suitable inquiry concerning the facts contained in said response; and that facts contained in said response are true and correct to the best of his information, knowledge and belief.

DATED this 30th day of September, 1981.

SIGNED:


Ralph R. Hernandez

SUBSCRIBED AND SWORN TO before me this 30th day of
September, 1981.


Notary Public in and for the
County of Harris,
State of Texas

My Commission expires: January 16, 1985



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

OFFICE OF THE
SECRETARY

CERTIFICATION

I hereby certify that the attached 5 pages contain a true copy of the document entitled "Interim Report Concerning Vendor Fabricated Structural Steel" dated Feb 6, 1981 from G.W. Orosa, H&P to K Seybert, NRC, Region IV on file with the United States Nuclear Regulatory Commission's Public Document Room, 1717 "H" Street, N.W., Washington, D.C.

Date made publicly available in NRC PDR: Feb 20, 1981 4:58 pm

Sept 11, 1981
Date

Elizabeth C. Shelburne
Public Document Room
Office of the Secretary
of the Commission

I hereby certify that the person whose signature appears above is the official custodian of the records on file at the Public Document Room to which certification is made and was such official custodian at the time of executing the above certification.

(Seal)

[Signature]
Secretary of the United States
Nuclear Regulatory Commission

Sept 11, 1981
Date

The Light company

Houston Lighting & Power P.O. Box 1700 Houston, Texas 77001 (713) 228-9211

February 6, 1981
ST-HL-AE-617
SFN: V-0530

Mr. Karl Seyfrit
Director, Region IV
Nuclear Regulatory Commission
611 Ryan Plaza Drive, Suite 1000
Arlington, Texas 76012

Dear Mr. Seyfrit:

South Texas Project
Units 1&2
Docket Nos. STN 50-498, STN 50-499
Interim Report Concerning Vendor Fabricated
Structural Steel



Pursuant to 10CFR50.55(e), Houston Lighting & Power Company notified your office on January 8, 1981, of an item related to nonconformances of welds in vendor fabricated Category I structural steel. These welds were performed at the fabricator's facility and are not associated with the on-site welding program. The components involved have been received at the site and are applicable to safety-related structures of STPEGS, Units 1 and 2. The original observation was documented in an audit deficiency report (ADR). As a result of the ADR, a reinspection program was initiated for the Category I structural steel components. This program has resulted in the identification of numerous weld conditions which deviate from design drawings, specifications, and/or code (AWS D1.1).

As immediate response to this situation, Vendor Surveillance personnel were provided with verbal and written direction to ensure that equipment and documentation supplied by vendors are to be in strict accordance with the requirements of the respective procurement documents. Prior to any further shipment of Category I structural steel components, a surveillance inspection on 100% of all welded material will be performed consistent with the procurement document. These actions will serve to prevent a recurrence of nonconforming weld conditions.

An inspection program for the on-site structural steel is in progress. Nonconforming conditions are being documented on nonconformance reports (NCR's). These NCR's are being submitted for engineering evaluation of structural significance. Presently, forty (40) NCR's have been evaluated. These NCR's represent beams and columns in the Mechanical Electrical Auxiliary Building. Thirty-

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February 6, 1981

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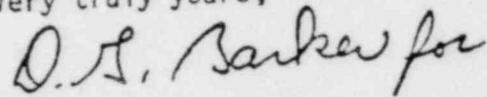
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one (31) of these components have been installed. The nonconformances documented are predominantly undersized welds and undercut. While the forty (40) NCR's document violations of design drawings and/or AWS D1.1 requirements, to date, no safety hazard has been identified relative to these nonconforming weld conditions.

We shall provide our next report on our ongoing activities on this matter by June 1, 1981.

Very truly yours,



G. W. Oprea, Jr.
Executive Vice President

JGW/nmf

February 6, 1981

S.-HL-AE-617

SFN: V-0530

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June 1, 1981
ST-HL-AE-672
SFN: V-0530

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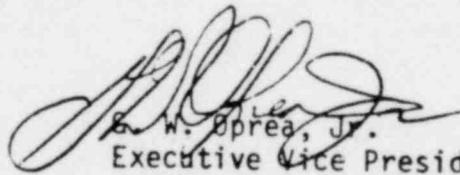
Dear Mr. Seyfrit:

South Texas Project
Units 1 & 2
Docket Nos. STN 50-498, STN 50-499
Second Interim Report Concerning
Vendor Fabricated Structural Steel

Please find attached our second interim report regarding nonconformances of welds in vendor fabricated Category I structural steel. This item was previously reported to your office under the requirements of 10CFR50.55(e) on January 8, 1981. The next interim report will be submitted to your office by October 1, 1981.

If you have any questions, please contact Mr. Michael E. Powell at (713) 676-8592.

Very truly yours,


E. W. Spréa, Jr.
Executive Vice President

RRH/amj
Attachments

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Second Interim Report Concerning
Vendor Fabricated Structural Steel

This second interim report provides a status update of activities undertaken to resolve the nonconforming weld conditions for Category I structural steel.

The program initiated to reinspect vendor supplied Category I structural steel is continuing. In accordance with project procedures, nonconformance reports have been written on each nonconforming condition identified to date. In general, the identified conditions have predominantly consisted of undersized welds and undercut. As the nonconformance reports are issued, they are forwarded for an Engineering evaluation. The Engineering evaluation is performed to assess the acceptability of the actual fabricated weld conditions relative to the applicable design loads. No nonconforming weld conditions have been identified as representing a failure condition (i.e. safety hazard) at this time. Some welds have been identified for rework in order to reestablish project design margins or to support the construction schedule.

Independent welding consultants with extensive AWS Code experience (including active Committee members) have inspected the welds identified as being in nonconformance with AWS D1.1. Their finding stated that the Quality Control acceptance criteria implemented on the South Texas Project was in fact, more stringent than those required by the AWS Code.

As a result of the consultants findings, the project interpretation of AWS Code requirements is being reevaluated in order to better define the scope and acceptance criteria for AWS welds.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of Applicants' Brief in Opposition to CEU Motion to File Additional Contentions dated September 30, 1981, have been served on the following individuals and entities by deposit in the United States mail, first class, postage prepaid on this 30th day of September, 1981.

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