

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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USNRC

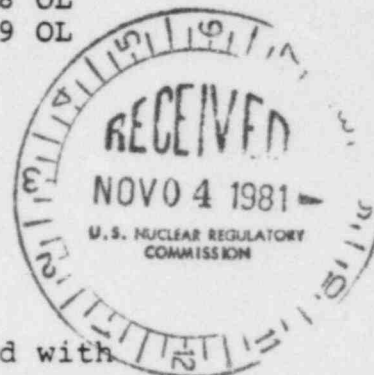
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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
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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))

Applicants' Response to CEU
Motion To Suspend Construction



Applicants submit this Response to a Motion filed with the Board by Citizers for Equitable Utilities (CEU) on October 28, 1981, requesting the Board to issue an order halting all construction at the STP site pending an independent review of plant design and "further adjudicatory hearings." CEU's Motion is based entirely upon arguments presented to the Commission in its "Petition To Suspend Construction" filed on the same day. Thus, CEU requests an Order from the Licensing Board in this operating license proceeding, suspending construction at the STP site, while it simultaneously awaits a ruling from the Commission on the same request.

This Licensing Board does not have jurisdiction to grant CEU's requested relief. The law is clear that licensing boards have only such jurisdiction and authority as is conferred upon them by the Commission, Public Service Company

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of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167 (1976), and this Board was established by the Commission for the sole and specific purpose of determining whether an operating license should be issued for the South Texas Project. (43 Fed. Reg. 33968 (1978)). The Board has no delegation to consider suspending the construction permit for this plant. (Id.)

CEU relies upon a statement in Houston Lighting & Power Co. (South Texas Project), CLI-80-32, 12 NRC 281, 291 (1980) as the basis for its request to the Board. CEU's reliance is misplaced, and its position is without merit. That statement,^{1/} cited out of context, neither implicitly nor explicitly supports CEU's assertion that "the Commission recognized that this Board might find it necessary not only to deny an operating license, but also to revoke the construction permit if justified by the evidence." The Commission expressed no such recognition.

In CLI-80-32, this Board was directed by the Commission to segregate a portion of its operating license review and to determine in an expedited hearing whether, in light of

^{1/} In the cited statement, the Commission noted that abdication of responsibility or knowledge could form a basis for revoking a license or denying a license application. Obviously, the statement was part of the Commission's direction to this Board as to the standards that might be applied in ruling upon the issuance of an operating license - in no way can it be read as an expansion of the scope of the Board's delegated authority.

certain specific QA/QC problems in construction, HL&P has the requisite "competence and character" to receive an operating license. Noting that this Board had already decided to expedite consideration of these matters, the Commission directed

. . . that the Licensing Board in the operating license proceeding should proceed with its expedited hearing on the quality control-related issues (including the allegations of false statements in the FSAR). As the Board has already determined to proceed in this manner, no formal order is necessary. However, we expect the Board to look at the broader ramifications of these charges in order to determine whether, if proved, they should result in denial of the operating license application. For this reason, we are ordering the Board to issue an early and separate decision on this aspect of the operating license proceeding.

(12 NRC at 291-92 (emphasis added).) In fact, the Commission explicitly denied the intervenors' assertion that a separate hearing to consider whether "early revocation of the construction permit" was necessary because of the limited relief available from the Board in an operating license proceeding. (12 NRC at 289).

The Commission's Order is consistent with NRC practice which contemplates that relief of the type now requested by CEU from this Board must be sought by petition addressed to the appropriate NRC official pursuant to 10 C.F.R. §2.206(b), for it is the

Staff's responsibility to oversee compliance with licenses once issued. Public Service Company of New Hampshire, (Seabrook Units 1 and 2), ALAB-513, 8 NRC 694, 696 (1978); Duquesne Light Company, (Beaver Valley Power Station, Unit 1), ALAB-408, 5 NRC 1383, 1386 and n.6 (1977); see also, Public Service Company of New Hampshire (Seabrook Units 1 and 2), ALAB-356, 4 NRC 525, 535-36 (1976).

Moreover, this same matter having been brought to the Commission, it should not be considered by the Board. It would be inappropriate for this Board to rule on a request where, as here, a ruling is likely to place the Board in direct conflict with the wishes of the Commission. Should the Commission deny the relief sought, a ruling by the Board to the contrary would be null and void. If on the other hand, notwithstanding Applicants' forthcoming response, the Commission grants CEU's petition, it is likely to do so for reasons and under conditions that it deems proper, and any similar ruling by this Board would be moot and of no consequence.

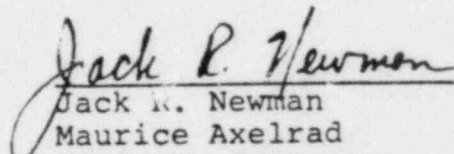
HL&P plans to submit a response to CEU's petition filed with the Commission in the near future. That response will include a discussion of the Quadrex Report, (the sole basis for the relief requested) placing its findings in appropriate perspective. In addition, HL&P will explain that an independent review of all STP engineering and design, including the matters addressed in the Quadrex Report, is already underway

and that the NRC Staff is considering the extent to which construction work should be permitted to proceed pending completion of the engineering and design review. For these reasons, we are confident that the Commission will reject CEU's petition.

CONCLUSION

For all of the foregoing reasons, this Board should reject CEU's motion; consideration of it would be inappropriate and would serve no useful purpose.

Respectfully submitted,



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Dated: October 30, 1981

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of San Antonio, CENTRAL POWER
AND LIGHT COMPANY and CITY OF
AUSTIN, TEXAS

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CERTIFICATE OF SERVICE

I hereby certify that copies of Applicants' Response to CEU Motion to Suspend Construction dated October 30, 1981, have been served on the following individuals and entities by deposit in the United States mail, first class, postage prepaid, or hand delivered as indicated by asterisk, on this 30th day of October, 1981.

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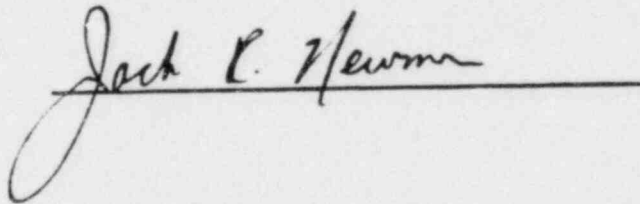
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A handwritten signature in cursive script, reading "Jack E. Newman", is written over a solid horizontal line.