

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
HOUSTON LIGHTING AND POWER COMPANY)	Docket No. 50-466
(Allens Creek Nuclear Generating Station, Unit 1))	

NRC STAFF RESPONSE TO INTERVENOR DOHERTY'S MOTION
FOR ADDITIONAL EVIDENCE ON TEXPIRG ADDITIONAL CONTENTION 31

INTRODUCTION

The NRC Staff opposes Mr. Doherty's October 15, 1981 motion to take additional evidence with regard to TexPirg Additional Contention 31.^{1/} Mr. Doherty requests that additional evidence be taken on this issue in light of the publication of the Quadrex Report, a document prepared by an independent consultant for the Applicant to detail the engineering status of the South Texas Project. Mr. Doherty requests that, in order that there be a "complete record with regard to the TexPirg 31 issue," the following specific relief be granted:

- (1) the Applicant be ordered to present additional testimony regarding (a) organizational charges it

^{1/} Evidence on this matter was heard on Oct. 7, 8 and 9, 1981. See Tr. 18053-18513.

made or will make as a result of the report
(b) how it will change the STP design to make it
licensable, and (c) what changes in the Allens
Creek organization will be made as a result of the
report.

(2) the Staff should be ordered to present
additional testimony regarding (a) its testimony
remains unchanged (b) whether the Applicant can
alter the STP design to make it licensable, and (c)
whether changes in the organizational structure and
QA/QC programs for Allens Creek are necessary.

DISCUSSION

In his pleading, Mr. Doherty has neglected an elementary principle of motion practice before administrative agencies or the courts; the moving party has the burden of demonstrating that its motion should be granted. Consolidated Edison Co. of New York Inc. (Indian Point Station, Units 1, 2 & 3), CLI-77-2, 5 NRC 13, 14 (1977). In terms of this motion and Mr. Doherty's requested relief, that elementary principle of law requires that Mr. Doherty do more than say the words "Quadrex Report" and demand additional testimony regarding TexPing Additional Contention 31. He is the moving party; it is, therefore, he who must demonstrate that the consideration of the Quadrex Report would affect the extensive testimony which this Board has already heard with regard to technical qualifications,

or that a consideration of that document would change conclusions reached therein. Cf. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, 81-82 (1977), affirmed CLI-78-1, 7 NRC 1 (1978), affirmed sub nom New England Coalition on Nuclear Pollution v. NRC, 582, F2d 87 (1st. Cir. 1978). He has not even attempted, let alone succeeded, in satisfying that burden.

More importantly, however, the instant motion cannot be viewed in a vacuum, but must be considered in light of the extensive record which has already been compiled in this proceeding. A view of that record leads to several ineluctable conclusions which are fatal to Mr. Doherty's requested relief, and which must result in the denial of the motion. First, this Board has made it clear, on the record, that it will not countenance the trial of the South Texas case on the Allens Creek docket. (See, e.g. Tr. 18233) That warning alone should dispose of the request by Mr. Doherty that evidence be taken on the licensability of STP in light of the Quadrex Report.^{2/}

Second, Mr. Doherty's burden of demonstrating the relevance and materiality of the Quadrex Report to the Allens Creek proceeding is especially heavy given the following facts which are discussed at great length in the testimony already addressed in this record:

^{2/} Indeed, the Board in the South Texas proceeding is considering at this very time what impact the Quadrex Report will have on the course of that proceeding. That issues is clearly dealt with properly only on the South Texas docket.

- a) Subsequent to the problems encountered at the South Texas site, there was a major reorganization at HL&P to provide better management control of its nuclear program.^{3/} Pursuant to that reorganization, HL&P's top management is now able to keep very closely apprised of all facets of the company's nuclear activities on a day-to-day basis.^{4/} HL&P management's auditing function with regard to activities of its architect engineer have been improved upon.^{5/}
- b) The testimony emphasized the extensive experience which Ebasco brought to the job at Allens Creek, as opposed to the limited design experience of Brown & Root.^{6/}
- c) The design and engineering function at STP was in the mode of "hand-to mouth activities," as opposed to the Ebasco design work at

^{3/} See "NRC Staff Testimony of Frederick R. Allenspach and John W. Gilray Relative to Technical Qualifications" following Tr. 18417, p.3 (hereafter Allenspach); "Direct Testimony of George W. Oprea, Jr. and Jerome Goldberg on Technical Qualifications and TexPirg Additional Contention 31", following Tr. 18084, p.5; Tr. 18393-18396.

^{4/} See, e.g. Tr. 18088, 18091.

^{5/} See, e.g. Tr. 18090.

^{6/} See, e.g. Tr. 18098, 18103-18105, Tr. 18394.

Allens Creek, which is as complete as any nuclear plant work has ever been prior to the award of a CP.^{7/}

d) The Allens Creek and STP project groups are completely separate.^{8/}

e) The Staff testified that the Applicant has done a fine job of bringing in leading consultants to help them identify problems in their organization. As a result of this very aggressive campaign by HL&P, their QA organization is above average in comparison to other utilities.^{9/}

As both Staff counsel and Staff witnesses regarding this issue have previously pointed out, problems experienced at South Texas are relevant for the purposes of this Board's decision only insofar as they relate the organizational changes which have taken place in the time period since those problems surfaced.^{10/} In light of, inter alia, the major

^{7/} See, e.g. Tr. 18130

^{8/} Allenspach, p.4; Tr. 18459

^{9/} Tr. 18489-18490

^{10/} Tr. 18349, 18351, 18458, 18482

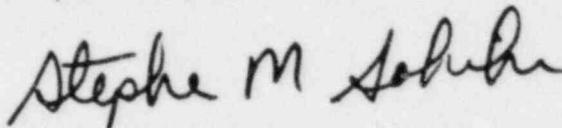
reorganization at HL&P, the vast difference in the respective design experience of Brown & Root and Ebasco, and the significant difference in design completion at the construction permit stage between the two nuclear projects involved, it was especially incumbent upon Mr. Doherty to demonstrate why a report which apparently is totally unconnected with any activities associated with Allens Creek warrants consideration on this docket. Mr. Doherty has completely failed to supply that crucial nexus. Indeed, as the Staff understands the situation, it was the very personnel who came to HL&P as part of the corporate reorganization who were responsible in large part for the commissioning of the Quadrex Report. If anything, this would appear to demonstrate that the restructured HL&P organization is taking steps to discover any possible deficiencies at South Texas and to assure that such deficiencies do not occur at Allens Creek.

In short, so far as appears from this record, the matters discussed in the Quadrex Report are irrelevant to the ability of the restructured corporate management of HL&P to oversee the design and construction of the Allens Creek facility in a manner which is technically competent and one which will assure that the public health and safety is safeguarded. Mr. Doherty's motion gives us no cause to believe otherwise.

CONCLUSION

For all of the above reasons, the Staff urges that the Board deny the instant motion.^{11/}

Respectfully submitted,



Stephen M. Sohinki
Counsel for NRC Staff

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

^{11/} We note that Mr. Doherty also requests that other Intervenors be provided an opportunity to engage in cross-examination during the expanded inquiry which Mr. Doherty seeks. As this Board has made clear on numerous occasions, no party may assert rights on behalf of another. It, therefore, is clear that this portion of the requested relief should not even be considered, let alone granted, by the Board.

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CERTIFICATE OF SERVICE

I hereby certify that copies of NRC STAFF MOTION FOR LEAVE TO FILE OUT OF TIME and NRC STAFF RESPONSE TO INTERVENOR DOHERTY'S MOTION FOR ADDITIONAL EVIDENCE ON EXPIRING ADDITIONAL CONTENTION 31 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 5th day of November, 1981.

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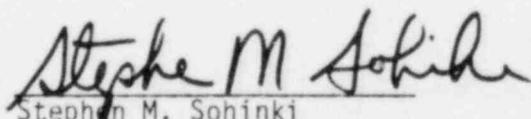
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