UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



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



APPLICANTS' BRIEF IN REPLY TO CEU AND CCANP PLEADINGS REGARDING PROPOSED CONTENTIONS

This brief is filed pursuant to the Board's November 3, 1981, Order (Granting Applicants' Motion for Leave to Reply to Written Responses of CEU and CCANP). It responds to arguments raised by CEU or CCANP regarding CEU's proposed contentions which were not addressed in Applicants' September 30, 1981, brief in opposition to the CEU motion for addition of contentions. As expressed in the September 30 brief, Applicants' position is that the CEU motion should be denied because CEU has not shown good cause for its late filing, nor have Intervenors presented any valid reasons why this matter should nevertheless be further considered in this proceeding. Although now amended in some respects, the proposed contentions remain vague and overly broad. Moreover, it is clear that the matters sought to be raised by CEU are not of significance to the issues in this expedited proceeding and ought not be admitted as part of this early hearing on the operating license.

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This brief does not repeat those arguments; it is confined to responding to specific arguments made by CCANP or CEU since Applicants filed their September 30 brief.

## Argument

1. The CEU motion was not timely filed.

CEU's October 6 brief (hereinafter CEU Rejoinder) makes the novel argument that CEU's motion should be considered timely filed because CEU did not perceive Applicants' February 6, 1981, report as notice of a significant matter. CEU argues, presumably as an excuse for its failure to address the five factors of § 2.714(a)(1), that the time for filing its contentions is in some unspecified way to be calculated from the time it received actual notice of the facts it now deems material. CCANP, in its October 23 brief (hereinafter CCANP Rejoinder), uses CEU's timeliness language, but fails to recognize the distinction of the two § 2.714(a)(1) concepts: lateness and good cause for late filing.

The practical significance of this distinction is that admission into controversy of a late filed contention depends on the Board's weighing the five factors in § 2.714(a)(1). Good cause for late filing is only one of those five factors and, as the Commission has noted, ". . . a showing of good cause for a late filing may nevertheless result in a denial of intervention where assessment of other factors weighs

against the petitioner." Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273, 275 (1976).*/

In this proceeding the time for filing contentions expired in 1978. The time limit was 15 days prior to the special prehearing conference or first prehearing conference (43 Fed. Reg. 33968-70 (Aug. 2, 1978)). That time limit is consistent with the requirements of the Regulations (10 CFR § 2.714(b)). The first prehearing conference was held on January 11, 1979 (Prehearing Conference Order Ruling Upon Intervention Petitions dated April 3, 1979). The time for filing contentions thus expired in December 1978, and contentions filed after that time are late filed contentions which can be admitted only after weighing the five factors enumerated in § 2.714(a).

2. CEU has failed to demonstrate good cause for its late filing.

Receipt of new information may sometimes be the basis for a finding of good cause for lateness, but it would only constitute good cause if the motion for admission of the contention was filed within a reasonable time of the petitioner's receipt of the new information. Here CEU waited an inordinate

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*/ Although West Valley dealt not with late filed contentions but with a late filed petition to intervene, as CEU recognizes (CEU Rejoinder at 1), the same standards apply in both situations. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-5, 13 NRC 361 (1981); 10 CFR § 2.714(b).

length of time before filing its motion and now seeks to excuse that delay by arguing that the reports it received in February and June 1981 were not adequate notice. Not surprisingly, CCANP supports this view. There is no merit to the argument.

A simple reading of HL&P's February 6, 1981, § 50.55(e) report shows that it gave ample notice of the conditions involved here. The report refers to "nonconformances of welds in vendor fabricated Category I structural steel." It states that a reinspection program "resulted in the identification of numerous weld conditions which deviate from design drawings, specifications, and/or code (AWS D1.1)" (emphasis added). It goes on to state that of the 40 NCR's which had been evaluated at that time 31 of the components had been installed, thus clearly indicating that a large portion of the steel had been on-site for a considerable period.

Any doubt CEU may have had about the potential significance of the report should have been completely dispelled by the very fact that the report was filed pursuant to § 50.55(e). Filing a § 50.55(e) report constitutes a statement of belief of the existence of a significant deficiency which, were it to have remained uncorrected, could have affected adversely the safety of operations of the plant. To date we have found no evidence that such a deficiency actually existed, but the report unambiguously treated the conditions as reportable. In the face of the definition of reportable conditions in § 50.55(e) it is baseless to suggest that a

reasonable interpretation could be that "a minor problem" was involved, as argued by CEU and CCANP.

Although the reinspection is still continuing and additional data is being collected, the facts presented in that original written report remain fully representative of the conditions found in subsequent reinspection. Although CEU and CCANP emphasize that the words "8000 beams" and "4 years" are not in the § 50.55(e) reports, those numbers are of no particular significance. The information conveyed in the report and the fact that a report was made pursuant to § 50.55(e) adequately portrayed the nature of the situation. The February and June reports gave CEU actual notice which was more than ample.*/

3. CEU's lateness should not be excused.

Although CEU's original motion utterly failed to address the five factors of § 2.714(a)(1) and the CEU Rejoinder argues that the contentions were not filed late, the CEU and CCANP

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*/ The CCANP Rejoinder made a special claim of good cause for late filing with respect to proposed contention 6, suggesting that there was no earlier notice of the modification of weld acceptance criteria. This suggestion also lacks merit. The June 1, 1981, § 50.55(e) report states that based on expert advice "the project interpretation of AWS Code requirements is being reevaluated in order to better define the scope of acceptance criteria for AWS welds." Thus Intervenors did have notice that a procedure modification was planned.

Rejoinders attempt to respond to the arguments of Applicants and the NRC Staff regarding those factors. We believe Applicants' response in Opposition to the CEU motion adequately addresses those factors and we will not reiterate that response here. However, we do wish to respond to certain arguments of CEU and CCANP.

Under section I.B of the CEU Rejoinder (fourth unnumbered page), the first paragraph seeks to address Applicants' argument regarding the adequacy of the § 50.55(e) process to protect CEU's interest here. The CEU Rejoinder treats Applicants' argument as if it were a general reliance on the § 50.55(e) process to resolve problems that have not already been identified and reported to NRC. Applicants' point was that this particular concern related to American Bridge structural steel is in the process of being investigated and resolved. Thus CEU's rhetoric about the process of identification and correction of welding and concrete problems is completely inapposite.*/ We are beyond that point on the American Bridge welds. Not

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*/ Lest our failure to respond be taken as agreement, it should be clear that we believe that all concrete void problems were initially identified by B&R and HL&P, subsequent investigations have uncovered no significant deficiencies and that there is reason to believe the welding problems discussed in the Show Cause Order would also have been identified by B&R and HL&P if NRC had not raised the matter (cf. Tr. 7612-7615).

only has HL&P already filed 3 interim reports but NRC has conducted two inspections (see I&E Inspection Reports 81-30 and 81-31).

Both the CEU Rejoinder (second paragraph of section I.B) and the CCANP Rejoinder (at 4) concede that the § 50.55(e) process may assure that the steel itself is corrected, but argue that that process will do nothing to investigate the causes of the problem or to improve the QA/QC program. The argument is specious.

Since CEU's motion, there have been dramatic changes in Brown & Root's role on the project which will result in adoption of an entirely new Procurement and Vendor Control Program staffed by Bechtel Power Corporation and performed in accordance with Bechtel procedures. But even if this change had not occurred, the CEU-CCANP position would be at odds with reality.

The initial written report explicitly addressed improvements in surveillance of American Bridge activities. The February 6 report states that vendor surveillance personnel were given additional training and a new requirement was established, that B&R inspectors perform a 100% duplication of the American Bridge weld inspections prior to shipment from the American Bridge facility. Moreover, to the extent CEU and CCANP seek to raise generalized concerns about the Vendor Control Program (which includes vendor surveillance), these generalized concerns are also being resolved through the § 50.55(e) process.

As already addressed extensively in the record, the STP Vendor Control Program has been undergoing a thorough review and evaluation to resolve questions identified in a 1980 § 50.55(e) report. The verbal report was made to the NRC Staff on June 13, 1980, and documented in written reports which were served on the Board and the parties on July 14, 1980, September 12, 1980, October 31, 1980, March 23, 1981, and September 9, 1981, and in the April 17, 1981, NRC I&E Report 81-09.*/ In fact Applicants' witnesses were questioned at some length regarding the vendor surveillance process and the June 13, 1980, report in cross-examination by CEU and the NRC Staff and in Board examination (see Tr. 3018-35, 3163-72, 3218-19, 3226-27, 3259-66). Thus, to the extent that CEU and CCANP seek to litigate generalized concerns about the Vendor Control Program, the proposed contentions are not new contentions at all, but merely request, without merit, additional discovery about matters that already have been addressed in this hearing, and that already are being resolved by HL&P and B&R with NRC Staff review.

4. The Proposed Contentions are not sufficiently specific and Intervenors have failed to adequately state a basis for them.

In addressing the questions of specificity or basis, the CEU did little more than reiterate the same vague contentions.

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*/ The reports dated July 14, 1980; September 12, 1980; October 31, 1980; and March 23, 1981, are in evidence as NRC Staff Exhibits 102 (Tr. 3166), 103 (Tr. 3167), 104 (Tr. 3101), and 105 (Tr. 3213) respectively. I&E Report 81-09 is NRC Staff Exhibit 93 (Tr. 3210). See also NRC Staff prefiled testimony of William A. Crossman, et al. at page 3 of Appendix C, item 32.

The CCANP Rejoinder did not directly address these matters at all. CEU still fails to supply any explanation of the matters it wishes to litigate. CEU and CCANP did agree that Proposed Contentions 1-4 should be narrowed to only deal with American Bridge, but that agreement still does not specify the issues to be litigated. CEU has not offered any explanation of what alleged acts or failures to act are to be at issue. The proposed contentions are simply too vague.

Appendix B is organized into 18 sections, each section having a specified quality assurance objective and specified requirements intended to achieve that objective. The essence of CEU's proposed contentions is that since a quality assurance objective was not achieved, that necessarily suggests noncompliance with one of the requirements. This argument is offered as an excuse for CEU's failure to specify which requirement it contends to have been offended. However, the net result is that CEU's proposed contentions are not sufficiently focused to litigate. As discussed above, to the extent they are read as properly raising broad concerns about vendor surveillance they are not new contentions at all, but a reiteration of matters already addressed in this hearing.

The only specific contention proposed by CEU was that HL&P had violated 10 CFR § 50.55(e) by failure to report the American Bridge weld deficiencies. CEU has now withdrawn that contention on the basis of § 50.55(e) reports which it had apparently overlooked. The CCANP Rejoinder, however,

continues to pursue this frivolous contention, arguing that the reports to NRC were inadequate. The information required in a written § 50.55(e) report is specified by § 50.55(e)(3), which provides for submission of an interim report when there is not sufficient information for a full report. The February 6 and June 1 letters were interim reports and contained the information then available. The purpose of a § 50.55(e) report is to inform the NRC Staff. The NRC Staff has conducted on-site inspections regarding the American Bridge steel and has found no inadequacies with the § 50.55(e) reports. Indeed, the Staff has reported that HL&P's actions between the time of the January 8, 1981, notification of NRC and September 2, 1981, "appear to be consistent with NRC requirements and licensee commitments." I&E Report 81-31, October 5, 1981, at 3.

## Conclusion

As shown by the foregoing discussion and Applicants' Brief in Opposition to the CEU Motion for Additional Contentions dated September 30, 1981, the CEU motion was not timely filed and its lateness should not be excused. The proposed contentions are vague and overly broad and would not be a useful or significant addition to the record on character and competence; the circumstances relating to the American Bridge steel are simply not material to the issues in this proceeding.

Accordingly, the CEU motion should be denied and the proposed contentions should not be admitted into controversy.

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CERTIFICATE OF SERVICE

I hereby certify that copies of Applicants' Brief in Reply to CEU and CCANP Pleadings Regarding Proposed Contentions have been served on the following individuals and entities by deposit in the United States mail, first class, postage prepaid on this 13th day of November, 1981.

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