

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

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Before Administrative Judges:  
Sheldon J. Wolfe, Chairman  
Dr. E. Leonard Cheatum  
Gustave A. Linenberger, Jr.

OFFICE OF SECRETARY  
LICENSING & CERTIFICATION  
BRANCH

SERVED JAN 29 1982

In the Matter of  
HOUSTON LIGHTING AND POWER COMPANY  
(Allens Creek Nuclear Generating  
Station, Unit 1)

Docket No. 50-466-CP

January 28, 1982



MEMORANDUM AND ORDER  
(Granting The Doherty Renewed Motion For Additional  
Evidence On TexPirg Additional Contention 31)

MEMORANDUM

On December 7, 1981, Intervenor Doherty submitted a Renewed Motion For Additional Evidence On TexPirg Additional Contention 31 (Applicant's Technical Qualifications). On December 14, 1981, Applicant and Staff filed opposing responses.

Our Order of November 10, 1981 had denied, without prejudice, a similar motion that had been filed by Mr. Doherty on October 16, 1981. Therein, we directed that Applicant should furnish a copy of the Quadrex Report to Mr. Doherty, that by December 7, 1981, the latter

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could renew his motion, and that, in said motion,

...Mr. Doherty must specify those portions of the Quadrex report which indicate that organizational changes (which were either not previously adverted to or were inadequately addressed in testimony in this case) ought to be made insofar as the Allens Creek facility is concerned and/or indicate that modifications (which were either not previously adverted to or were inadequately addressed in testimony in this case) ought to be made in the supervision of the ACNGS construction. Mr. Doherty must specifically cite the testimony in the transcript which he deems inadequate and explain why he deems such testimony to be inadequate. (Underscoring added).

The instant motion was excepted from the closure of the record on December 9, 1981. (Tr. 21304-06)

In essence, both Applicant and Staff urge (a) that Mr. Doherty has made no showing that the design and engineering practices followed by the Brown and Root Company at the South Texas Project (which are the subjects of the Quadrex Report) bear any relation to the qualifications and engineering practices of HL&P, Ebasco and General Electric with respect to the design and construction at the Allens Creek project; (b) that there has been no showing that the Quadrex Report relates in any way to specific allegations in TexPirg's contention upon technical qualifications; and (c) that Mr. Doherty has failed to meet the burden of showing wherein the Quadrex Report indicates that changes need be made in the Allens Creek organization and/or supervision. We do not agree. HL&P is the lead Applicant for an operating license for the South Texas Project and is the sole applicant for a construction permit at the Allens Creek site. Thus, HL&P bears the ultimate responsibility for the supervision and

safe construction of both projects. If problems due to Brown and Root's actions or inaction were encountered at the South Texas Project despite HL&P's supervision, the Board most certainly wants to know what specific corrective or preventive procedures HL&P will follow to assure that these problems will not recur at Allens Creek. A fortiori, the matters discussed in the Quadrex Report do not exceed the thrust of TexPirg's Contention which questions Applicant's technical qualifications. Further, because we now understand that, on September 28, 1981, Applicant had transmitted copies of the Quadrex Report to the STP Board and parties, <sup>1/</sup> Applicant and Staff immediately should have alerted this Board to the existence of the Quadrex Report or, at least, should have had their witnesses advert to and discuss these specific matters in the course of the October 7 - 9, 1981 hearing session when testimony was presented upon TexPirg Additional Contention 31.<sup>2/</sup> Finally, our review of Mr. Doherty's instant motion leads us to conclude that he has sustained the burden imposed by our Order of November 10, 1981. In passing, most certainly we did not request that he specify what organizational and/or supervisory changes ought to be made in relation to the Allens Creek facility. We merely directed that he specify those portions of the Quadrex Report which

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<sup>1/</sup> See enclosure in Applicant's counsel's letter to the Board dated December 22, 1981.

<sup>2/</sup> See Applicant's witnesses' testimony (Oprea and Goldberg, fol. Tr. 18084) and cross-examination (Tr. 18085 - 18402). See also Staff's witnesses' testimony (Allenspach and Gilray, fol. Tr. 18417) and cross-examination (Tr. 18418 - 18513).

indicated the necessity for making organizational changes and/or supervisory modifications insofar as the Allens Creek facility is concerned. Mr. Doherty did comply with this direction and he did comply with our direction that he should cite the testimony which he deemed to be inadequate, and that he should explain why he deemed such testimony to be inadequate. There were many instances where Mr. Doherty did not cite the transcript for the simple reason that, in Mr. Doherty's view, neither Applicant's nor Staff's witnesses had addressed the specific matters discussed in the Quadrex Report.

ORDER

For the foregoing reasons, it is, this 28th day of January 1982

ORDERED

1. That Mr. Doherty's Renewed Motion For Additional Evidence On TexPirg Additional Contention 31 is granted.
2. That, in lieu of TexPirg, Mr. Doherty shall serve as the lead intervening party who shall present the direct testimony of witnesses, if any, cross-examine, and submit briefs, proposed findings of fact, and conclusions of law upon the supplementary testimony permitted by this Order. (This action, in ordering that Mr. Doherty be the lead party rather than TexPirg, is taken pursuant to §§ 2.715a, 2.718(e) and 2.757. It will not prejudice the rights of TexPirg because Mr. Doherty had demonstrated understanding and ability in pursuing the issues raised in the contention while TexPirg had taken

no part in the proceedings concerning the contention and had shown no interest in it. Unlike Mr. Doherty, who actively participated, TexPirg's counsel was not present for either the direct examination or the cross-examination of Applicant's and Staff's witnesses upon TexPirg Additional Contention 31. See n.2, supra. While, in a submission dated December 7, 1981, setting forth three motions, TexPirg did request that additional testimony be adduced in light of the Quadrex Report, we note that it was Intervenor Doherty who initially and timely brought the Quadrex Report to our attention in his Motion of October 16, 1981. It is clear that TexPirg's motion of December 7, 1981 is merely a belated "climbing aboard the band-wagon". Further, to date, during the course of the eighty-seven day hearing, upon numerous occasions the Board has had to limit or terminate TexPirg's counsel's cross-examination because it lacked purpose and/or was directed to irrelevant and immaterial matters. We will not permit any further unnecessary delays or any prolongation of this very large record. However, the balance of the Intervenors (exclusive of TexPirg) may cross-examine, and submit briefs, proposed findings of fact and conclusions of law upon the supplementary testimony permitted by this Order.)<sup>3/</sup>

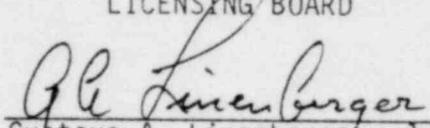
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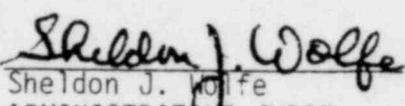
<sup>3/</sup> It should be understood, however, that this Order does not preclude TexPirg's counsel from consulting with Mr. Doherty or from submitting written cross-examination questions to Mr. Doherty. Mr. Doherty is directed to consult with TexPirg's counsel, if requested to do so, and to consider any written cross-examination questions presented to him by TexPirg's counsel.

3. Applicant, Staff, and Mr. Doherty, if he so desires, will file written direct testimonies by no later than March 26, 1982 upon certain of the findings in the Quadrex Report as lettered A through O by Mr. Doherty. In addition, since they did not advert to the Quadrex Report during their testimonies on October 7 - 9, 1981, Applicant's and Staff's witnesses should explain why they did not, at least, identify what was wrong with HL&P's management and supervision at STP that permitted these specific safety-related deficiencies to occur and testify as to what specific actions HL&P would take to prevent their recurrence at Allens Creek. Any discovery shall be immediately initiated, and shall be timely completed in order that the March 26th due date will be met. This additional testimony will be heard between April 12 and April 16, 1982 at a time and place to be noticed in a subsequent Order. (Meantime, pursuant to the Board's oral ruling of November 16, 1981, the transcript pages of which were served on all parties, the parties shall proceed to file by the specified due dates their proposed findings and conclusions of law and briefs upon all contentions in which they are interested, including TexPirg Additional Contention 31. After this additional evidence upon certain findings in the Quadrex Report has been heard, the Board will grant time to the parties within which to file proposed findings which would

amend or change previously filed proposed findings upon TexPirg's Additional Contention 31).

THE ATOMIC SAFETY AND  
LICENSING BOARD

  
Gustave A. Linenberger, Jr.  
ADMINISTRATIVE JUDGE

  
Sheldon J. Wolfe  
ADMINISTRATIVE JUDGE

Dissent by Judge Cheatum:

I respectfully dissent and would deny the instant Motion for the following reasons:

In the first place, the deficiencies cited by Intervenor Doherty from the Quadrex Report apply specifically to Brown and Root as the architect-engineer for the South Texas Project and do not apply to the Applicant as alleged by the Intervenor in several instances.

Second, Mr. Doherty has not specified what organizational changes ought to be made in relation to the Allens Creek facility, or ought to be made in the supervision of its construction, and thus he has not complied with this part of the Board's Order of November 10, 1981.

Third, Mr. Doherty has sparingly cited portions of the transcript which allegedly support his allegations of deficiencies in

the Applicant's QA, QC organization and technical competence, while ignoring the extensive testimony on Applicant's reorganization and strengthened technical competence for managing Allens Creek.

In short, I conclude that further testimony on TexPirg Additional Contention 31 relating to the Quadrex Report on the Brown and Root operations at the South Texas Project would most likely be irrelevant to Allens Creek, and would constitute a needless delay in this proceeding.

Judge Cheatum was unavailable to sign his dissent.