UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION March 25, 1982

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:
HOUSTON LIGHTING & POWER CO.
(Allens Creek Nuclear Generating Station, Unit 1)

Docket No. 50-466 CP 29 P1:03

INTERVENOR DOHERTY'S MOTION TO COMPEL DISCOVERY FROM APPLICANT AND MOTION TO POSTPONE EVIDENTIARY PRESENTATIONS AT THE APRIL 12, 1982 SCHEDULED HEARINGS

On Wednesday, March 23, 1982, this Intervenor received two legal papers: "Houston Lighting & Power Company's Answers and Objections to Doherty's Second Set of Interrogatories" and "Houston Lighting & Power Company's Answers and Objections to Doherty's Third Set of Interrogatories". These are the subject of the instant motion, which is filed under 10 CFR 2.740(f) of the Commission's Rules of Practice. The "Answers and Objections" reply to a total of 176 questions to Applicant by this Intervenor. In them, Applicant has objected to 129 of the questions, and filed various degrees of adequacy answers to 47 of them.

In its two "Answers and Objections" Applicant has failed to heed the Board's Order of January 28, 1982, and has failed to observe the relevant Federal rule of civil procedure, Rule 26(b)(1), applicable to this proceeding. The two failures are significant, deprive this Intervenor of the valuable right of discovery almost completely, and require rectification before any evidence taking on the subject of the discovery, as will be shown below.

Although Applicant states on Page 2 of each of the subject "Answers and Objections", that, " . . . [t]he limited issue to be explored in this reopened proceeding is how the Quadrex Report, and specifically the matters labled (A) through (O) in Doherty's December 7, 1981 reflect upon the technical qualifications of HL&P to oversee the design and construction of the ACNGS", this guidance has not been followed by Applicant. For

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example, in item 29 of the second set, Applicant objected to the question; "Prior to the Quadrex report, was Applicant aware that B&R had a continuing policy of assuming work performed by suppliers such as EDS Nuclear and Westinghouse could be assumed correct? (See: Report p. 3-3)" This objection was filed even though item E of this Intervenor's December 7, 1981, filing directly mentions and contends that a B&R policy of, "assuming that work performed by major subcontractors or suppliers was correct", shows a technical qualification deficiency in HL&P. Therefore, this Intervenor moves the Board order Applicant to answer item 29 of his Interrogatory set 2, and item 29's three subquestions, in a responsive manner, because they are relevant to a contention in this proceeding.

The next example of Applicant's unreasonable avoidance of discovery by relevance of objection is in its reply to item 8 of set 3. This item has three questions on design manuals. Item M of this Intervenor's December 7, 1981 filing specifically mentions a Quadrex finding of failure to require design manuals, yet Applicant in reply implies ("Answers and Objections" to Set 3, p.11) that to know if it (Applicant) knew prior to the start of construction at STNP that B&R would not require manuals at that site, would be irrelevant and no use in determining its technical qualificatons for this licensing, as well as vague; that to know if design manuals would not be required at ACNGS would be irrelevant and is too vague to answer plus too much trouble and expense to find out; and that to know if Applicant ever suggested these manuals to B&R is irrelevant to determining if HL&P had the technical qualifications for constructing ACNGS in addition to too vague to answer. Applicant's refusal on each of these is incomprehensible. With regard to part (a) of item 8, an answer of "yes" would inform the Board and parties how seriously the Applicant took the idea there would be no requirement for design manuals. If (b) were answered "yes" the Board and parties would know that Applicant thought the idea of not requiring design manuals at the ACNGS site was satisfactory even though the Quadrex reviewers reached a

contrary conclusion with another Applicant managed nuclear plant construction site. If (c) were answered the Board and Parties would know if Applicant thought having design manuals was enough of a concern to suggest as a requirement, design manuals for B&R, or it did not. From these a path toward understanding Applicant's technical qualifications with regard to estimating the necessity for design manuals for designers could be started. And doing that is part of discovery and relevant to this Intervenor raised issue. Therefore, this Intervenor moves that the Board order Applicant to answer responsively item 8 of set 3 in its entirety.

The above are two examples where Applicant has denied information on the basis of relevence of questions clearly based on sections of the Quadrex Report which were contentions in this Intervenor's December 7, 1981 filing and are hence prima facie relevant.

However, these above two are, like the Quadrex Report itself, a sample. In addition, the Applicant has objected on the basis of relevance to the following Doherty Interrogatories from the Second and Third Sets. From Set 2, these are: Item 10, subparts (a), (c), (f), (g), and from Set 3, item 3, 6, and 6(c). These Interrogatories were based on sections of the Quadrex Report on which this Intervenor raised contentions on December 7, 1981, and on specific aspects of design problems mentioned in the Quadrex Report sections, and in the Contentions. Therefore, this Intervenor moves that the Board order Applicant to answer responsively from Set 2, item 10(a), (c), (f), (g), and from Set 3, item 3, 6, and 6(c).

Next, Applicant has objected to many Interrogatories based on "Quadrex Questions" (that is in Vol. II and Vol. III of the Report) cited in the sections of the Report referenced in parts (A) through (O) of this Intervenor's December 7, 1981 filing, on the basis of relevance. For example, Applicant objected on the basis of relevance to items 4(a) and 4(b) of Set 3 even though the Quadrex Question E-5 is cited in Section 3-1(g) of the Report, and that is the same section cited in part M of this Intervenor's December 7, 1981 filing. In that filing, this Intervenor pointed out that Quadrex

had stated the STNP design was not based on a "desirable well-thought out and consistent basis for design." To support this, Quadrex noted that Westinghouse apparently had not reviewed B&R revisions of the ESF sequencer, basing that on material in question E-5. But, Applicant believes the issue of its technical competence will not be furthered toward answer if (a) it is known if Applicant knew about this problem prior to Quadrex, and (b) it is known what the current industry practice is. This is not sensible in this Intervenor's view, because if the parties could learn through discovery if the Applicant knew prior to Quadrex about the problem, they would be aided in knowing how alert Applicant was to the problem. Awareness of technical problems is certainly an area of technical competence. Knowledge of industry practice places the Board and parties in a better position to judge if this lack of review is a severe or minor or even insignificant judgement lack on the part of the Applicant. Therefore, this Intervenor maintains these subparts of item 4 of Set 3 should be answered by Applicant and moves the Board order it to do so.

A second example of unreasonable objection to an Interrogatory based on a Quadrex question cited in a section of the main body (vol. I) of the Report, and this Intervenor's December 7, 1982 filing occurs in answer to item 13 of the Second Set of Interrogatories. In that answer, despite the fact that this Intervenor specifically mentioned the Quadrex finding that technical groups at STNP had not consistently reviewed input data for reasonableness prior to use*/, Applicant nevertheless found a question with regard to data use checking sited in section 3-1(b) of the report which mentions in turn question H-27 of the Report, irrelevant. It's impossible to view with magnanimity the position that an Intervenor may question the general finding, but that the specific examples are irrelevant. Yet, Applicant has done that here. Hence, this Intervenor moves the Board order Applicant to responsively reply to this Intervenor's item 13 of Set 2, and to any other items which site questions in the Report which are cited as examples in the

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*/ Part C of this Intervenor's December 7, 1981, filing.

report sections which are part of the Contentions of the Doherty December 7, 1981 filing. These are: 3-1(a), 3-1(b), 3-1(b)(2), 3-1(b)(3), 3-1(c), 3-1(d), 3-1(e), 3-1(f), 3-1(g), 3-1(h), and 3-1(j).*/

The foregoing represents a last minute effort to bring before the Board the position the Applicant has taken with regard to two sets of Interrogatory Questions and is likely to take in the 4 interrogatory sets remaining to be answered plus a single set of Requests for Admissions. As the schedule calls for a hearing on April 12, 1982, and none of these sets are due until March 28, 1982, there will not be time for them to be successfully objected to.

There are numerous other objections by Applicant to the two sets of questions. Any reader here, must realize from the forgoing, that a specific motion to compel against each objection raised would require a virtual Odyssey.

However, before moving to the second part of this Motion, this Intervenor would point out there are important things this Board has said with regard to this contention that require consideration in considering if Applicant has pursued an excessively restricted view of relevance with the Quadrex Report and discovery by this Intervenor.

First, in its Order granting the renewed motion on the Applicant technical qualifications issue, the Board stated (Judge Cheatum, dissenting), "If problems due to B&R'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." (Order, p. 3) These statements by the Board appear to have been

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*/Note: this is the "actual j", not the "j" that should be "i".

ignored by the Applicant in the two "Answers and Objections" we have discussed here, as can be seen by examining items from Doherty Interrogatory Set #2 numbered:10, 10(a), 10(c), 10(e), 10(f), 10(g), 10(h), 10(j), 11 ("first question"),13, 19(a), 19(b), 19(c), 23(a) through 23(i), 24, 24(a) through 24(d), 25(a), 25(b), 26(a), 26(b), 26(c), 26(d), 26(d)(1), 28, 29, 29(a), 29(b), 29(c), 30, 30(f), 30(g), 31(d), 32(e), 32(f), 33, 34, 34(d), 34(e), 34(f), 34(g), 34(h), 35(c), 35(d), 36(a) through 36(i), 38, 38(a), 39(a), 39(b), and from Doherty Interrogatory Set #3 numbered: 1(b), 1(c), 3,4(a), 6, 6(a), 6(c), 8(a), 8(b), 8 (c), 9, 10 , 11, 12(b), 12(c), 13, 14, 15, 15(a), 15(b), 18, 18(a), 18(b), 18(c), 20, 21, and 22.

Second, the Federal Rules of Civil Procedure provide (Rule 26(b)(1)) that information sought will be discoverable if it"..[a]ppears reasonably calculated to lead to the discovery of admissible evidence." The Board's statement, and the Federal Rules, both show that Applicant's relevancy standard is too narrow to permit a fair opportunity for this Intervenor to prepare for cross examination and other aspects of being the lead party on the technical qualifications issue. Therefore, this Intervenor moves the Board order Applicant to reply responsively to the items from Doherty Interrogatory Sets 2 and 3, as listed in the last sentence in the immediate preceeding paragraph.

It is clear that Applicant, unless ordered to the contrary, will follow the same standard with the remaining four sets of interrogatories and single set of requests for admissions (March 23, 1982) which will give this Intervenor meagre discovery for the evidentiary phase. Within, this Intervenor has shown this meagreness is the fault of the Applicant and that Applicant has not followed the Board's guidance on the Quadrex Report. Applicant has shown no justification for its lack of responsiveness, and if no remedy is permitted, this Intervenor will have been and will be prejudiced in one of his rights of participation. This Intervenor maintains the Board Order of January 28, 1982, and the Federal Rule of Civil Procedure, Rule 26, justified his expecting responsive replies to the great majority of his interrogatories, as argued above. And further, that today is the last day in which any motion

to compel discovery may be filed on this probable final issue in the construction license proceeding.

Because Applicant has chosen to object broadly to this Intervenor's interrogatories, this Intervenor moves the Board postpone the evidentiary hearing on the fifteen issues raised by this Intervenor through the May 1981 Quadrex Report submitted on December 7, 1981, until such time as Applicant has answered responsively and in compliance with the Board's Order of January 28, 1982 and the Federal Rules of Civil Procedure, the Doherty Interrogatory Sets Two and Three, and the outstanding four sets of Interrogatories and single set of requests for admissions, which were served on or prior to March 23, 1982.

This Intervenor therefore preys that each of the above motions be granted. This Intervenor has worked diligently at discovery (see the enclosed letter to the Board) but more importantly, the Applicant has been shown here to have interpreted the discovery rules to its great tactical advantage, to wit, it may avoid replying to many questions. This advantage appears to fit the same desire not to reveal the existance of the Quadrex Report itself, a topic the Board raised independently in its January 28, 1982, Order. If Appplicant is permitted not to answer these albeit many questions, and the scheduled April 12, 1982 hearings begin on that date, this Intervenor's right of discovery will be violated, and the Board will reward circumvention of the very administrative process of which it is a part.

Respectfully,

John F. Doherty

John F. Doherty, Intervenor
713-747-1837(H);713-749-1566(W)

CERTIFICATE OF SERVICE

I certify that xerox copies of INTERVENOR DOHERTY'S MOTION TO COMPEL DISCOVERY FROM APPLICANT AND MOTION TO POSTPONE EVIDENTIARY PRESENTATIONS AT THE APRIL 12, 1982, SCHEDULED HEARINGS, were served via U. S. Postal Service (First Class) this 26th of March, 1982 from Houston, Texas, on the parties below.

Sheldon J. Wolfe, Esq. Administrative Judge
Gustave A. Linenberger, Administrative Judge
Dr. E. Leonard Cheatum, Administrative Judge
Richard A. Black, Esq., Staff Counsel
J.Gregory Copeland, Esq. Applicant Counsel*/
Jack R. Newman, Esq. Applicant Counsel
Chase R. Stephens, Docketing & Service, USNRC
Atomic Safety Licensing & Appeal Board (ASLAB)
The Several Intervening Parties

Respectfully,

John F. Doherty

jfd

*/ Counsel Copeland was served by hand delivery, March 26, 1982, at the offices of Baker-Botts, Suite 3000, One Shell Plaza, Houston, Texas, 77002.