

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

April 22, 1982

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

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emp
Docket No. 50-466 CP

INTERVENOR DOHERTY'S CONTENTION 58, APPLICANT'S CONDUCT ON
REPORTING VIOLATIONS AT STNP (MOTION)

Introduction

This contention is in two parts. Doherty 58A is below, Doherty 58B begins at page 5, infra. The conclusion and timeliness sections in this motion apply to both parts of this contention.

Doherty Contention 58A

Intervenor contends Applicant has not demonstrated it is able to comply with NRC regulations, specifically 10 CFR 50.55(e) and hence should not be granted a construction permit for the the proposed ACNGS. This contention is based on Applicant's failure to report under this regulation, deficiencies found by the Quadrex Corporation in its report on design work by the Brown & Root Company at the South Texas Nuclear Project (STNP), of May, 1981. The report was ordered released to this Intervenor, the Board and other parties, by November 20, 1981, in an Order dated November 10, 1981. Failure or inability to comply with this regulation endangers the safety of this Intervenor because 10 CFR 50.55 deals with effects on, "...safety of operations of the nuclear power plant."^{1/} and deficiencies found in design and construction. This regulation applies to holders of construction permits, such as the Applicant. Intervenor asserts below that this inability shows the Applicant lacks the technical competence to construct the ACNGS.

Supporting Material to Contention 58A

The Quadrex Corp. Report on STNP (hereinafter: Quadrex/STNP), basis for this contention, at Page 3-1, ranked its "General

^{1/} 10 CFR 50.55(e)

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Findings", and at Page 4-1, ranked its "Technical Discipline Adequacy Assessments". Both lists of rankings had an identical highest ranking, "Most Serious Findings", defined as "...those that pose a serious threat to plant licenseability because either, (a) the finding would prevent the obtaining of a license, or (b) the finding could produce a significant delay in getting a license, or (c) the finding addresses a matter of serious concern to the NRC at this time." (emphasis added) The report then listed 120 ^{1/} "most serious" items, without indicating which of the subparts (a) through (c) of its definition of most serious finding each item fit into. The Applicant found three of the items reportable under 10 CFR 50.55(e) in May 1981, and a fourth was reported in 1982.

The regulation, 10 CFR 50.55(e)(1) places reliance on Licensees and Applicant's to police themselves. The rule states:

If the permit is for construction of a nuclear power plant, the holder of the permit shall notify the Commission of each deficiency found in design and construction, which were it to have remained uncorrected could have effected adversely the safety of operations of the nuclear power plant at any time throughout the expected life time of the plant...

This Board noted in its Order of January 29, 1982, that the findings listed in Doherty Motion A through O were "specific safety related deficiencies", ^{2/} yet Applicant did not file any of the Quadrex/STNP Report generic findings to the NRC under 10 CFR 50.55(e). All of the Doherty Motion A through O items were from the generic findings of the report. While this Intervenor believes this lack of filing on the Doherty A through O deficiencies shows the Applicant has not demonstrated compliance with a significant Commission regulation, it should be pointed out that Applicant did not report but three of the other Quadrex/STNP "most serious" items. It seems very unlikely there were but three that Quadrex considered to

^{1/} According to, "An Assessment of the Findings in the Quadrex Corporation Report", prepared by Bechtel Power Corp for Applicant, in March 1982, in Table 3-3, at P. 4-8.

^{2/} At p. 6

be "...finding(s) adressing a matter of serious concern to the NRC at this time."

This Intervenor would point out that the threshold for a reportable finding under the regulation is low. The requirement is only that the deficiency "could" affect adversely a nuclear power plant. This certainly means the Commission wants to get the reports even if some prove later deficiency over-estimation. Applicant has done this on at least two occasions as is shown by the enclosed Attachments 1 and 2. These reveal two instances where Applicant had filed 10 CFR 50.55(e) reports but at the 30 day written report deadline (specified in 10 CFR 50.55(e)(2)) advised the NRC they had determined the condition was not reportable. Put simply, the Commission, through the regulation, wants to know what the Licensees are deciding is not worth telling the Commission about, through 10 CFR 50.55.

As late as March 9, 1982, the Commission stated a purpose of the NRC's enforcement program was "obtaining prompt correction of non-ompliance". (47 Fed. Reg., at 9999) "Could" as used in 10 CFR 50.55(e) plainly means a report should be made at the appearance of a deficiency and it is undesirable to have a licensee decide whether in fact the deficiency would have an adverse effect on safety before reporting it to the agency.

This Intervenor urges that these regulations applied more strongly to Applicant at the time of the Quadrex/STNP Report, than to other licensees, because of the history of HL&P's performance at the STNP and resultant special concern that nuclear project has been to the Commission. This concern is shown by Doherty Exhibit 4 & 5 in this proceeding; a Show Cause Order from the Commission to the Applicant for violations which later resulted in the maximum permissible fine (CLI 80-32), and the findings of the Systematic Assessment of Licensee Performance Review Group, which rated the STNP "below average". Of the 42 projects under construction at the time of the review, only seven were "below average".

In addition, the NRC Director of Operations, William Dircks, stated in a Congressional Hearing:

Briefly the Quadrex Report found that Brown & Root apparently failed to properly implement a Quality Assurance program in the design area but also failed to properly implement an overall design process consistent with the needs of a nuclear power plant. ...Though we were aware of Quality Assurance problems at South Texas and had cited the licensee for a breakdown in their Quality Assurance program in April 1980, the magnitude of potential problems was not fully appreciated until we first reviewed the report in August, 1981. (Testimony of William J. Dircks, Executive Director for Operations, NRC, before the Subcommittee on Energy and the Environment of the House Interior Committee, November 19, 1981)

This testimony, while later than May of 1981, shows what Applicant had the opportunity to know in May, namely that there were serious problems.

The order to Show Cause of April, 1980, and the Quadrex/STNP report placed Applicant on notice that the NRC was especially concerned about Quality Assurance at the STNP. But, in May, 1981, when the Quadrex/STNP report was received by the Applicant, and despite the fact its "Generic Findings" listed items that were part of the Quality Assurance effort (Tr. 21,852, 21,861, 21,867, 21,872) and despite the low threshold for 10 CFR 50.55(e) reports as explained above, the Applicant did not report any Quadrex/STNP "Generic Findings" under 10 CFR 50.55(e).

This Intervenor is not saying that he knows as a fact that the Quadrex/STNP report gave problems which would have resulted in an adverse effect on safe operation of the STNP, but rather, that among the many generic and technical discipline adequacy assessments, the Applicant found so little reportable material that its competence to comply with the intent of this important safety related regulation is called into question. In the case of Quality Assurance items, the evidence that items related to it should have been reported is strengthened by the clear previous NRC involvement, and the fact that Mr. Gerald Goldberg of Applicant testified that Quality Assurance was involved in at least four of the Generic Items

from the Quadrex/STNP report which this Intervenor placed in controversy in the "Doherty A through O issues" which were the primary subject of our April 12 - 14, 1982 hearings.

However, this Intervenor maintains it may be inferred that Applicant could not comply with regulations and requirements in 10 CFR 50.55(e) for reasons which will be extant for the ACNGS as well as the STNP, because at both STNP and ACNGS, the licensee will be the same entity with very likely the same policy for both units, and the same executive leadership for both units. (See Applicant's Exhibit 30)

This failure to report is not a matter merely of historical significance at the STNP. Mr. Goldberg, Vice-President for Nuclear Engineering and Construction, (Applicant's Exhibit 32) testified in this proceeding that he was personally involved in making the decision on what to report pursuant to 10 CFR 50.55(e), Tr. 21,570. He further testified that he was involved because the findings were of a technical nature requiring his involvement, Tr. 21,838. Presumably, if a similar situation arose at ACNGS, Mr. Goldberg's involvement would once again be required to decide whether reports should issue to the NRC. If Mr. Goldberg is not technically competent to recognize reportable deficiencies, then his technical qualifications to perform a significant role in the construction of the ACNGS is called into question.

Given the general and specific obligations set forth above, the failure of Applicant to report more than three of the findings promptly demonstrates at a minimum, an inability on the part of Applicant to recognize significant safety-related deficiencies and to comply with obligations to report such deficiencies to the NRC.

Doherty Contention 58B

By reporting but three findings from the Quadrex Report under 10 CFR 50.55(e) by May 12, 1981 ^{1/}, the Applicant deliberately prevented the NRC, and the Board and parties in

^{1/} Staff Response to Intervenor Dorgett's First Set of Interrogatories, Item #5, March 24, 1982, p. 4.

this proceeding from learning the true significance of the Quadrex/STNP Report's findings, and their implications for judging the Applicant's technical competence, and whether the Applicant can be held to an "extraordinary responsibility for safety".^{1/}

Supporting Material to Contention 58B

This part of the contention is based on first, the attached, "Chronology Related to the Quadrex Report on South Texas", dated December 15, 1981, a Memorandum to then Commissioner Bradford, from William J. Dircks, NRC Executive Director for Operations, (Attachment 3), which was Doherty Marked for Exhibit 8 in this proceeding.^{2/} The Attachment 3 was denied admissibility in these proceedings as it was deemed to exceed the scope of the issues then in controversy, Tr. 21,725. When it is compared to the "Chronology" attached to this Intervenor's March 29, 1982, "Intervenor Doherty's Motion for the Board to Call as a Witness, Donald E. Sells (NRC) for TexPIRG Additional Contention 31 and Quadrex Related Matters", differences are insignificant in terms of the question when the NRC first received a copy of the Quadrex /STNP report for full review. In fact, this Intervenor is aware that William Dircks, of the NRC, also sent a memorandum to the Commission on January 11, 1982, in which he concurs with this Intervenor's assertion the two chronologies are insignificantly different. This Intervenor does not have a copy of this memorandum to attach, since it is not yet in the public document room in Washington D. C. However, this Intervenor fully expects the Staff will provide the January 11, 1982 memorandum on discovery if this contention is admitted.

^{1/}In the Matter of Atlantic Research Corporation, CLI 80-7, March 14, 1980; CCH 30,459, at 29,302.

^{2/}Produced by Staff in its March 24, 1982, Reply to Intervenor Doggett's First Set of Interrogatories and Request for Documents.

Next, the contention part is supported by the conclusion of Mr. Dircks in Attachment 3 at mid-page, where he states, "...the potential significance of the findings was not made known in a timely fashion." Mr. Dircks was plainly speaking of the NRC not getting the information in a timely fashion.

From these two Chronologies, the appearance of a deliberate attempt to prevent the NRC, and this Board and parties from learning the true significance of the Quadrex/STNP Report emerges. Whether in fact such an attempt was made can only be determined through discovery, testimony, and cross-examination of witnesses.

Conclusion

Intervenor therefore preys that his Contention 58, consisting of parts A and B be admitted into this proceeding based on the information provided. There is substantive evidence the Applicant cannot comply with 10 CFR 50.55(e) because it lacked the ability to perceive in the Quadrex/STNP Report what it had to do with regard to regulations or, in the alternative Applicant recognized the significance of the report, but failed to inform the NRC in any way, causing it not to investigate or obtain a copy of the report until a much later time. This delay or failure to report Quadrex/STNP Report findings hampered two Licensing Board efforts to judge its competence, and this Intervenor was seriously hampered in exercising his rights with regard to TexPIRG Additional Contention 31, and the most recent issues we've had in hearing, the so called "Doherty A through O issues".

Timeliness Requirement for this Filing after the Record is Closed

A. There is good cause for the lateness in filing this additional contention for Board consideration.

By granting this Intervenor's Renewed Motion for Additional Evidence on TexPIRG Additional Contention 31, (Applicant's Technical Qualifications), the Board recognized that

issues related to the Quadrex/STNP Report were considered legitimately excluded from timeliness bars because the report did not become available until very late in this proceeding.

The Board's Order of January 28, 1982, re-opening this proceeding indicated the Board itself was concerned with whether HL&P informed the Board in a timely fashion of the report, (p. 3,6). The Board Order of April 8, 1982, indicated the issue of disclosure was at least marginally relevant and denied without prejudice this Intervenor's motion to subpoena an NRC witness on this matter.

From the Board's two Orders cited above, this Intervenor expected to be able to explore both issues set forth in this motion during the hearing convened on April 12, 1982. This expectation is demonstrated by interrogatories to Applicant of both the 10 CFR 50.55(e) issue and disclosure in general. These Interrogatories included: in Set #1, items 8, 9, 10, 11, 14, and 17; in Set #2, items 33, 34, and 35; in Set #6, item 2; and in Set #7, item 6, 20, and 32.

The discovery process for the April 12 hearing resulted in Attachment 3 coming into the possession of this Intervenor for the first time on approximately March 27, 1982, as part of the Staff's response to item 7 of Doggett's Interrogatory Set 1.

At the April 12-14, 1982 hearings, the Board restricted questions on these issues to narrow areas of fact, Tr. 21,688 line 7 et seq.; 21,696, line 23, et seq.; and 21, 834 line 19 et seq. The Board specifically denied this Intervenor the opportunity to cross examine regarding Attachment 3, Tr.21,727. Similarly, the Board denied this Intervenor the opportunity to cross examine regarding an apparent NRC investigation on whether Applicant deliberately withheld the Quadrex/STNP Report from the NRC.

Only by actually attempting to cross examine on these issues relevant to Doherty Contention 58 as set forth above, could this Intervenor know whether the Board's Orders of January 28, 1982 and April 8, 1982 would permit such issues to be raised and fully litigated. Now that the Board's position on them is clear, this motion is being filed eight days

from the date of the close of the hearings at a time when this Intervenor is in the midst of findings of fact on that hearing.

For the above reasons, there is good cause for the lateness in filing this additional Contention for Board consideration.

B. Assuming good cause for lateness is established, the balancing of the five factors in 10 CFR 2.714(a) (i-v) determines whether the issues should be admitted for hearing.

According to previous rulings of the Commission, late filed issues are first examined to see if there is good reason for lateness and then a balancing test is conducted of the five factors in 10 CFR 2.714(a)(i-v) to determine if the issues should be admitted, Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI 81-5, 13 NRC 361, 364 (1981).

The five factors are:

- (1) Good cause, if any, for failure to file on time.
- (2) The availability of other means whereby petitioner's interests will be protected.
- (3) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (4) The extent to which the petitioner's interest will be represented by existing parties.
- (5) The extent to which the petitioner's participation will broaden the issues or delay the proceedings.

1. The new issues are filed for consideration on time. The events creating the basis for raising these issues in a separate motion occurred the week of April 12, 1982, in which the Board ruled regarding the scope of the hearing convened that week. This motion is filed as quickly as possible after the close of that hearing.

2. Only admission of the additional contention can protect this Intervenor's interests.

The only available forum for determining whether Applicant should receive a construction permit for the ACONGS is this proceeding. This Intervenor filed for and received permission to intervene in this proceeding in order to contest the granting

of this construction permit. Only by granting the instant motion can the Board assure this Intervenor an opportunity to litigate the contention raised in the context of the ACNGS.

3. Absent the admission of this new contention, the record of this proceeding will be seriously flawed.

Both the failure to report pursuant to 10 CFR 50.55(e) and the possible deliberate failure to disclose raise very serious questions relevant to whether the Applicant should be granted a permit to build the ACNGS. Much of the faith of the NRC in Applicant's improved performance rests on the credentials and expertise of Jerome Goldberg, Tr. 22010, line 12. The central figure in the failure to report pursuant to 10 CFR 50.55(e) and the possible deliberate non-disclosure is the same Mr. Goldberg. As Vice President for Nuclear Engineering and Construction, Mr. Goldberg is obviously a central figure in the Applicant's effort at ACNGS. The fact that the events forming a basis for the new contention took place at another nuclear plant is irrelevant since the same personnel are involved as in this proceeding and the events took place while this proceeding was under way.

Aside from the people involved, Contention 58 raises a question regarding the technical competence of Applicant which is already in issue in this proceeding, TexPIRG Additional Contention 31.

Getting to the facts on this issue would strengthen the record.

4. The issue of this Intervenor's interests being represented by existing parties is moot.

This Intervenor is already recognized as representing an independent viewpoint. Factor four, is uniquely applicable to a petition for leave to intervene. In addition no other party has assumed as much of the burden in the Technical Qualification Issue as this one.

5. The issue of technical qualifications, part of Contention 58 is among issues currently before the Board as within TexPIRG Additional Contention 31. The issue in Contention 58B is of much importance to the ultimate decision which must be reached by this Board on the qualifications of the Applicant. While admission of this contention will lengthen the construction permit proceeding, the primary responsibility for delay rests with the Applicant.

As argued above, a failure to recognize and report a deficiency reportable pursuant to 10 CFR 50.55(e) demonstrates a serious lack of technical competence.

Contention 58B raises a very serious question about Applicant's willingness to conform with both the spirit and the letter of the NRC's self-policing regulatory process. The issue goes even further in suggesting Applicant might deliberately obstruct the NRC in the conduct of a full regulatory review. Issues of such importance are clearly relevant to this Board's determination on whether Applicant has the qualifications to receive a construction permit for the ACNGS.

Obviously to admit these issues would lengthen the construction permit proceedings, but this Intervenor maintains that these issues exist because the Applicant delayed in communicating the significance of the findings in the Quadrex/STNP report to the NRC. The Applicant's delay should not form a basis for denying an Intervenor's motion for a new Contention.

Conclusion on timeliness

While the fourth relevant factor weighs against admission, there are mitigating circumstances. The other three factors support admission of this Contention. A balancing of the four relevant factors in 10 CFR 2.714(a)(i-v) favors the admission of Contention 58 and a reopening of this proceeding to litigate it.

Respectfully,

John F. Doherty
John F. Doherty
Intervenor pro se

CERTIFICATE OF SERVICE

I certify that copies of the attached, "INTERVENOR DOHERTY'S CONTENTION 58, APPLICANT'S CONDUCT ON REPORTING VIOLATIONS AT STNP (MOTION)" were served on the parties below via First Class U. S. Postal Service, this 22ND of April, 1982, from Houston, Texas.

Sheldon J. Wolfe, Esq.	Administrative Judge
Gustave A. Linenberger	Administrative Judge
Dr. E. Leonard Cheatum	Administrative Judge
Richard Black, Esq.	Staff Counsel
J. Gregory Copeland, Esq.	Applicant Counsel
Jack R. Newman, Esq.	Applicant Counsel
Docketing & Service	U.S.N.R.C.
The Intervening Parties	
Atomic Safety Licensing and Appeal Board (ASLAB)	

Respectfully,

John F. Doherty

John F. Doherty

**The Light
Company**

Houston Lighting & Power P.O. Box 1700 Houston, Texas 77001 (713) 228-9211

May 2, 1980
ST-HL-AE-457
SFN: V-0530

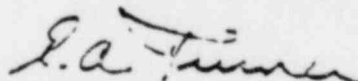
Director, Region IV
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611 Ryan Plaza Drive
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Dear Sir:

South Texas Project
Units 1 & 2
Docket Nos. STN-498, STN-499
Lineal Indication in the #4 Steam
Generator Cold Leg Nozzle - Unit #1

On April 3, 1980, Houston Lighting & Power Company notified your office of a potential deficiency involving a lineal indication on the Unit 1, #4 steam generator cold leg nozzle. The determination has been made that this event does not meet the criteria of 10 CFR 50.55(e) and therefore is not reportable.

Very truly yours,



E. A. Turner
Vice President
Power Plant Construction
& Technical Services

MP/mmz

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CC: G.W. Oprea, Jr.
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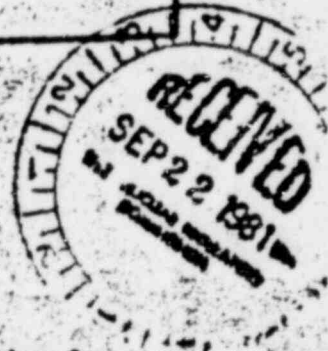
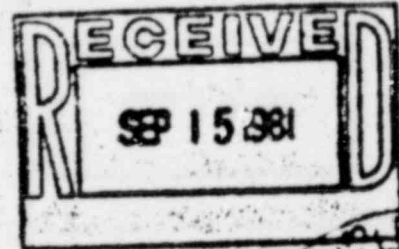
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The Light company

Houston Lighting & Power P.O. Box 1700 Houston, Texas 77001 (713) 228-9211

September 14, 1981
ST-HL-AE-729
SFN: V-0530



Mr. Karl Seyfrit
Director, Region IV
Nuclear Regulatory Commission
611 Ryan Plaza Drive, Suite 1000
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Dear Mr. Seyfrit:

South Texas Project
Units 1 & 2
Docket Nos. STN 50-498, STN 50-499
Final Report Concerning a
Breakdown in Drawing Control

On August 10, 1981, pursuant to 10CFR50.55(e), Houston Lighting & Power Company notified your office of an item concerning an apparent breakdown in the control and issuance of drawings. An evaluation has been performed which shows that this item does not meet the criteria of 10CFR50.55(e), and, therefore is not reportable. Thus, this item is considered closed.

If there are any questions concerning this item, please contact Mr. Michael E. Powell at (713) 676-8592.

Very truly yours,

G. R. Grea, Jr.
G. R. Grea, Jr.
Executive Vice President

MEP/syt

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Houston Lighting & Power Company

cc: J. H. Goldberg
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September 14, 1981
ST-HL-AE-729
SFN: Y-0530
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Revision Date 7-28-81