

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE NUCLEAR REGULATORY COMMISSION

'02 MAY -3 P237

CITIZENS CONCERNED ABOUT NUCLEAR POWER (CCANP)
RESPONSE TO APPLICANTS' MOTION FOR ACTIONS BY THE
COMMISSION IN LIGHT OF APPEAL BOARD'S ORDER OF APRIL 15, 1982

On April 20, 1982, Applicants (Houston Lighting and Power Co., et al) filed their Motion for Actions by the Commission in Light of Appeal Board's Order of April 15, 1982.

In their motion, Applicants discuss the conference call convened by the quorum Board in this proceeding on April 16. In that call, CCANP supported the Board's position that the scheduled April 20 hearings should be cancelled. The reasons for CCANP's support of the Board's position on April 16 are essentially the same reasons CCANP opposes Applicants' motion for actions.

1. The setting of a hearing schedule is within the discretion of a licensing board. CCANP has recently completed a series of arguments and motions for reconsideration trying to convince the South Texas Licensing Board to hear the allegation of deliberate withholding of the Quadrex Report now rather than in the planned Phase II of this proceeding. (See Fourth Prehearing Conference Order, dated December 16, 1981 and Memorandum and Order (Denying CCANP Motion for Reconsideration of Schedule for Hearing Quadrex Matters) dated March 25, 1982) Throughout that debate, the Applicants repeatedly stressed the discretionary authority of the ASLB regarding scheduling. The ASLB endorsed the argument citing Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), ALAB-637, 13 MRC 367, 370-371 (1981) and Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-459, 7 NRC 179, 188 (1978)

Now the Applicants want the Commission to order the quorum Board to proceed when their discretionary judgment is they should not proceed. Having been on the losing end of the rescheduling debate, CCANP respectfully argues that on the basis of consistency alone the Commission should refrain from overriding the discretionary decision of the quorum Board regarding future hearings. As set forth below, CCANP does not believe the Applicants have cited a sufficient ground for the Commission to take away the quorum Board's power to schedule hearings as the Board sees fit.

2. The Applicants argue that the Commission should order quorum Board hearings because questions concerning Applicants' corporate integrity should "not be allowed to remain undecided for protracted periods."

Interestingly, this is the same argument CCANP made for an early hearing on the handling of the Quadrex Report. CCANP urged expeditious consideration of the allegation of deliberate withholding because such an issue was crucial to judging the corporate character of Applicants and should not be delayed. Applicants argued against an early hearing on the handling, asserting that the handling had to await the Bechtel Power Corporation's review of the Quadrex findings. The ASLB agreed with the Applicants argument.

But putting past history aside, the effect of the ASLB's acceptance of Applicants' argument is that all Quadrex-related matters will not be heard in this proceeding until Phase II later in 1982. When those issues are heard, the ASLB has repeatedly ruled that any partial initial

decision made at the conclusion of Phase I will be subject to change in Phase II. (For the latest expression of this ruling see Memorandum and Order (Denying CCANP Motion for Reconsideration of Schedule for Hearing Quadrex Matters), dated March 25, 1982, p. 7) This ruling means that any determination regarding Applicants character and competence made after Phase I is a temporary determination subject to change based on Phase II.

CCANP does not agree that the Applicants' desire for a few months with a possible "clean bill of health" warrants the Commission ordering the quorum Board to hold hearings despite a desire not to do so.

3. In the conference call, CCANP argued that the remaining hearings concern evidence essential to a determination of a key issue in the proceeding (Issue B - adequacy of remedial measures). The topic will be the changeover from Brown and Root to Bechtel and Ebasco. Included will be an examination of the reasons for that changeover and the first appearance in this proceeding of witnesses from the two new companies involved in the South Texas Project. CCANP argued in the conference call that such a significant issue should be heard before a full Board. CCANP reasserts that argument.

4. CCANP also argued in the conference call that the quorum Board might well finish Phase I before a new judge could be appointed (assuming Judge Hill is not reappointed). The result would be a judge whose sole source would be the dead record. CCANP argued that the oral and visual aspects of a hearing are an important part of the judging process. CCANP further argued that a judge should have the opportunity to experience the parties and at least some of the witnesses.

Applicants argued for quorum Board hearings and continue to do so. Ironically, in their petition for review, Applicants urge the Commission to take into account Judge Hill's "personal exposure to the parties and their witnesses" when considering disqualification of Judge Hill. (Petition, p. 8) Applicants thus recognize that such personal exposure is a valuable part of a judge's ability to make a determination. But Applicants would deny this opportunity to a new judge appointed to replace Judge Hill.

CCANP urges the Commission to take into account the value of a judge's personal exposure to the parties and their witnesses and decline to order the quorum Board to proceed prior to the third chair being filled.

5. There comes a time when trying to force expedition of a proceeding adversely affects the quality of the proceeding. To accomodate the hearing schedule, Chairman Bechhoefer of the ASLB immediately forwarded his Order and Judge Hill's statement to the Appeal Board. Again to accomodate the hearing schedule, the Appeal Board made its ruling on Judge Hill's removal within 48 hours of the quorum Board's Order.

The Applicants argue in their petition for review that the Appeal Board should have given time to Judge Hill, the remaining Board, and the parties to respond to concerns raised by Judge Hill's statements. (Petition, p. 3) CCANP could argue that the Appeal Board ruled on the denial of CCANP's motion without permitting CCANP to respond to the quorum Board's Order. CCANP considers the opinion of the Appeal Board to answer dispositively both Applicant

and CCANP objections. There was a risk taken, however, in reaching such a quick decision.

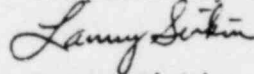
Applicants then rushed to the Commission with a cover letter and two pleadings without benefit of the Appeal Board's opinion.

Applicants would now have the Commission rush out an order to the quorum Board mandating hearings.

CCANP respectfully suggests a more deliberate process is more likely to result in affording all parties an opportunity to enjoy their rights in this proceeding, an opportunity to fully and responsibly state their positions and supporting arguments, and an opportunity to create the best record for purposes of decision. Avoiding undue haste will also assist the Commission in recognizing and avoiding any pitfalls which may lurk in the complexity of the issues raised by the Appeal Board action.

Conclusion: For the above and foregoing reasons, CCANP respectfully urges the Commission to deny Applicants' motion to direct Chairman Bechhoefer and Judge Lamb to proceed under the quorum rule and to review the Appeal Board's Order of April 15, 1982.

Respectfully submitted,



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April 28, 1982

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE NUCLEAR REGULATORY COMMISSION

In the Matter of)
(
Houston Lighting and Power Co.) Docket No. 50-498
(South Texas Project, Units 1 (50-499
and 2))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing CCANP cover letter, Citizens Concerned About Nuclear Power (CCANP) Response to Applicants' Petition for Review of Appeal Board's Order of April 15, 1982, and Citizens Concerned About Nuclear Power (CCANP) Response to Applicants' Motion for Actions by the Commission in Light of Appeal Board's Order of April 15, 1982 were mailed, first class postage paid to the following, this 28th day of April 1982.

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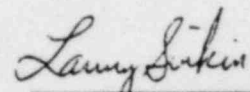
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