

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

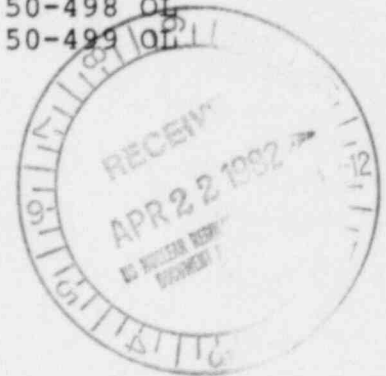
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BEFORE THE NUCLEAR REGULATORY COMMISSION

In the Matter of )  
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HOUSTON LIGHTING AND POWER )  
COMPANY, ET AL. )  
 )  
(South Texas Project, )  
Units 1 and 2) )  
\_\_\_\_\_ )

Dockets Nos. 50-498 OL  
50-499 OL



MOTION FOR ACTIONS BY THE COMMISSION  
IN LIGHT OF APPEAL BOARD'S  
ORDER OF April 15, 1982

Houston Lighting & Power Company, et al. (Applicants) have today filed a Petition for Review of the Appeal Board's Order of April 15, 1982, which directed that "another member of the Licensing Board Panel should be now designated to replace Judge Hill." (Order, p. 2)

The Appeal Board's Order has already had an immediate adverse effect on the conduct of this proceeding. In a conference call on April 16, the remaining two members of the Atomic Safety and Licensing Board announced to the parties that they had decided to cancel the hearing session scheduled for April 20-24. They stated that they preferred not to proceed under the quorum rule because of the "cloud" created by the Appeal Board's disqualification of Judge Hill, i.e., the possibility that the Commission, either of its own volition or upon petition by one of the parties, may choose to review the Appeal Board's Order. Chairman Bechhoefer in-

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licated that the decision not to proceed on April 20 had been made in consultation with the Chairman of the Atomic Safety and Licensing Board Panel. He also informed the parties that he understands that the Appeal Board would issue its opinion during the week of April 19.

The Applicants and the NRC Staff pointed out to the Board that, even if the April 20 session was cancelled, the next hearing session was scheduled for May 4-7 and that the situation was not likely to change significantly by that time, i.e., although the Commission may determine to review the Appeal Board's Order, it may not complete its review by May 4. They reminded the Board that Phase I of this proceeding deals with issues as to HL&P's competence and character which the Commission had directed the Board to consider on an expedited basis in CLI-80-32, 12 NRC 281 (1980), about 18 months ago. Moreover, although matters beyond the Board's control had protracted this proceeding, the Board has had previous difficulties in scheduling hearing sessions in the past because of conflicting commitments of its members. It would therefore be unfortunate if the present phase of the proceeding was not completed in the hearing sessions scheduled for April 20-24, May 4-7, June 2-4 and June 15-18.

Both the NRC Staff and the Applicants strongly urged during the conference call that the Board continue with the

long-scheduled April 20-24 hearings, and the Applicants, with the support of the NRC Staff, formally moved that the Board reconsider its decision to cancel the hearing session. <sup>\*/</sup>

Nevertheless, the Board adhered to its decision not to conduct the April 20 hearing session under the quorum rule. The Board stated it was reaching no decision at this time with respect to the May 4-7 hearing session, but would consider the matter later.

Applicants are appreciative of the fact that the Licensing Board's decision was made in response to a difficult and not yet fully evolved situation which had been so suddenly created by the Appeal Board's Order.

Particularly because of this complicated situation and other special circumstances which we will describe briefly, Applicants believe that it is essential for the Commission to step in at this time to provide the guidance and direction necessary to assure that these matters are resolved promptly and that no further, unnecessary delays occur.

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<sup>\*/</sup> One intervenor, Citizens for Equitable Utilities (CEU) had previously indicated that it had no objection to proceeding with the hearing session on April 20 under the quorum rule and therefore supported Applicants' motion for reconsideration. The other intervenor, Citizens Concerned About Nuclear Power (CCANP), objected to proceeding under the quorum rule and opposed the motion for reconsideration.

First, Applicants urge that, until such time as the Commission either decides not to review the Appeal Board's Order or completes such review, the Commission direct the Licensing Board to continue Phase I of the proceeding under the quorum rule. The principal issues under consideration in Phase I arise from the Commission's previous decision directing the Board to hear on an expedited basis matters relating to whether HL&P has the requisite character and competence to be granted an operating license. CLI-80-32, 12 NRC 281 (1980). Not only did the Commission want such matters to be determined promptly, but, as we are certain the Commission can appreciate, it is vitally important to HL&P that these questions concerning its corporate integrity not be allowed to remain undecided for protracted periods.

Phase I of this proceeding has been ongoing for almost a year of hearings, aggregating over 10,000 transcript pages, and is, we estimate, about 90% complete. Whether Judge Hill is reinstated or a new third member is ultimately appointed, his ability to participate in the overall decision would not be significantly affected by the few hearing days that he would miss prior to the Commission's final decision. On the other hand, to cancel hearing sessions while this matter is under Commission consideration risks a delay measurable in months, which is contrary to the Commission's previous mandate for an expedited decision and grossly unfair to a party whose character and competence are being evaluated.

As important as the need to continue the scheduled hearing sessions is the need to resolve the status of Judge Hill as promptly as possible. For the reasons described in Applicants' Petition for Review, we believe that the Appeal Board's action raises significant questions of law and public policy which should be determined by the Commission. We urge that the Commission decide to review the Appeal Board's Order, either on its own motion pursuant to 10 CFR § 2.786(a) or in response to Applicants' Petition. In either case, an expedited briefing schedule should be established based upon the date of issuance of the Appeal Board's opinion.

Finally, in order to assure against the unlikely possibility that an additional complication might arise from the appointment of a new member to replace Judge Hill while the Commission still has these matters under consideration, Applicants suggest that the Commission provide appropriate guidance on this subject to the Chairman of the Atomic Safety and Licensing Board Panel.

Accordingly, Applicants respectfully move that the Commission take the following actions:

(1) Direct Chairman Bechhoefer and Judge Lamb to proceed under the quorum rule with the hearing sessions scheduled in May and June and any extension or additions thereto as may be appropriate, <sup>\*/</sup> until the Commission

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<sup>\*/</sup> To make up for hearing time lost because of cancellation of the April 20-24 hearing session, Chairman Bechhoefer alluded to the possibility of adding Saturday hearings to the presently scheduled hearing sessions, as well as the possibility of an additional hearing week in June.

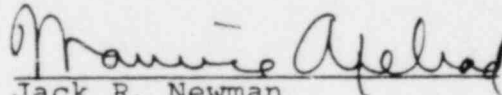
completes its review of the Appeal Board's Order;

(2) Determine to review the Appeal Board's order of April 15, 1982, and direct all parties to file briefs thereon on an expedited basis within 10 days after the date of the Appeal Board's forthcoming opinion (e.g., by May 3 if the Appeal Board's opinion is issued on April 23);

(3) Direct that the Appeal Board serve all parties on an expedited basis when it issues its opinion, and advise the Commission and the parties of the tentative date of issuance if it is not issued on or before April 23; and

(4) Instruct the Chairman of the Atomic Safety and Licensing Board Panel not to appoint a replacement for Judge Hill until the Commission completes its review of the Appeal Board's Order.

Respectfully submitted,



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Dated: April 20, 1982  
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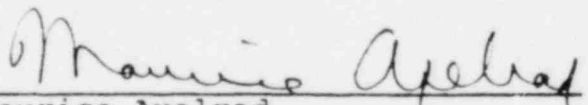
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