

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

DOCKETED
USNRC

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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)
)
HOUSTON LIGHTING & POWER) Docket Nos. 50-498 OL
COMPANY, ET AL.) 50-499 OL
)
South Texas Project,)
Units 1 and 2)

LICENSEES' RESPONSE TO CCANP "PETITION
TO SUSPEND CONSTRUCTION OF THE
SOUTH TEXAS PROJECT"

I. STATEMENT

On August 4, 1982 Citizens Concerned About Nuclear Power (CCANP) petitioned the Nuclear Regulatory Commission (Commission) for an order which, inter alia, would immediately suspend construction of the South Texas Project (STP). CCANP asserts that such an order is appropriate because the "Design Review of Brown and Root Engineering Work for the South Texas Project" prepared by Quadrex Corporation in May 1981 (Quadrex Report) revealed flaws in the Project design.

Houston Lighting & Power Company (HL&P), Project Manager, acting for itself and the other co-owners, opposes the Petition and requests that it be denied summarily by the Commission. CCANP recognized but declined to follow the required procedure of filing a petition with the Director of Nuclear Reactor Regulation pursuant to 10 C.F.R. § 2.206, and CCANP's arguments in favor of Commission review are

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without merit. If, instead, the Commission refers the Petition to the Director, it should be denied because the legal pre-requisites for the requested relief are not present, there is no merit to the substance of CCANP's claims, and CCANP will have a full opportunity to present its position regarding the Quadrex Report before the Licensing Board considering the application for operating licenses.

II. BACKGROUND

The Quadrex Report was the result of one of the first actions taken by HL&P's newly appointed Vice President for Nuclear Engineering and Construction in early 1981. It was not performed as an audit pursuant to the STP QA program. Instead it fulfilled HL&P's separate objective, which was to begin to assess the status of Project engineering by obtaining an independent review of a sample of Brown & Root engineering responses to known unique nuclear industry issues and problem areas.

Upon receipt of the Report, HL&P conducted an immediate review with the assistance of Brown & Root. Two items were found to be potentially reportable to the NRC, and written reports thereon were filed under 10 C.F.R. § 50.55(e) and submitted and served upon the Licensing Board and the parties in the operating license hearing. A third item was

orally reported to the NRC, but, as confirmed in writing, was subsequently determined not to be reportable under 10 C.F.R. § 50.55(e).^{1/}

Since Quadrex performed its review, a number of significant changes have taken place at STP, with the result that the Quadrex Report no longer addresses the design process being utilized at STP and that the design work examined by Quadrex is being carefully reviewed prior to release for construction. Responsibility for architect-engineer functions was reallocated from Brown & Root to Bechtel Power Corporation (Bechtel) in September 1981. Immediately thereafter Bechtel commenced a detailed review of Project design. Review of the Quadrex Report was given a high priority and a special Bechtel task force performed a preliminary assessment of the Quadrex findings. In March, 1982, the report of the Bechtel task force ("An Assessment of the Findings in the Quadrex Corporation Report Dated May 1981") was provided to the NRC Staff, the Licensing Board and the parties. The Bechtel task force found that two-thirds of the Quadrex findings required no further action or would be resolved by

^{1/} In a recent I&E Report the NRC Staff reviewer noted that he is currently reviewing each item in the Quadrex Report for reportability and that no additional potentially reportable items have been identified based on data contained in the Report. I&E Report 82-02 (June 3, 1982) at 14.

completion of previously planned design activities. It also found one additional item potentially reportable under 10 C.F.R. § 50.55(e), but subsequent evaluation determined that the item was not reportable. In addition to its preliminary assessment of the Quadrex findings by this special task force, Bechtel has been proceeding with a comprehensive review of the entire STP design, including the preparation of a detailed report on the Quadrex findings.

The Bechtel design review process is receiving close scrutiny by the NRC Staff. The comprehensive review is part of the process of transfer of architect-engineer responsibilities from Brown & Root to Bechtel which was described to the NRC Staff at a meeting on October 6, 1981. Thereafter the Staff wrote to HL&P on October 20, requiring submission of a written statement regarding Bechtel's qualifications, its QA/QC program and the plans for the transition from Brown & Root to Bechtel. In response there was a second meeting on December 10, 1981, and HL&P submitted a document entitled "Transition Program Description" on December 11. The NRC Staff reviewed the Transition Program Description, and found the program acceptable in a letter dated February 12, 1982.

On February 12, 1982 the NRC Administrator for Region IV sent HL&P a letter pursuant to 10 C.F.R. § 50.54(f),

requesting, inter alia, a description of the proposed program for resuming safety-related work and the corrective actions for issues raised in the Quadrex Report. The letter required that the requested information be submitted at least 60 days prior to the scheduled resumption of safety-related work. HL&P replied in a series of letters describing the STP organization, the program for resolution of Quadrex concerns and the program for resumption of safety-related work. The final letter in this series (ST-HL-AE-833, dated May 14, 1982), provided a description of the program for resuming construction, updated the construction schedule, and stated that prior to release of any design documents for construction, Bechtel will address the "Quadrex issues" associated with such documents. A letter from Region IV dated June 17 stated NRC's concurrence with the resumption of safety-related construction in accordance with the May 14 HL&P program. Pursuant to that program, non-safety-related construction resumed in June, and safety-related construction work was resumed on August 6.

The comprehensive design review, the review of Quadrex concerns and the resumption of construction are the subject of intense NRC Staff scrutiny. The Staff has stationed a resident inspector at the Bechtel design offices in

Houston to perform continuous surveillance of the Bechtel design review process, in addition to the resident inspector previously stationed at the STP site. Region IV is also monitoring the resolution of the Quadrex findings, as part of its continuing oversight of the Bechtel design review. In at least six Inspection Reports this year, the Staff has described aspects of its inspection of the Bechtel engineering review, including the resolution of the Quadrex findings. See I&E Reports 82-01 (March 26, 1982), 82-02 (June 3, 1982), 82-03 (April 22, 1982), 82-04 (June 3, 1982), 82-08 (July 2, 1982), and 82-09 (July 8, 1982).

Thus, resumption of construction at STP is based on designs that have been carefully reviewed by Bechtel, including detailed consideration of the Quadrex findings. The design review process has been reviewed and approved by the NRC Staff and both the design review and resumption of construction are under continuous NRC Staff surveillance.

III. ARGUMENT

A. The Petition Should Be Summarily Denied for Failure to Comply With NRC Procedures.

As the Petition recognizes, the Commission's regulations require that petitions seeking, inter alia, the suspension of licenses be filed with the Director of Nuclear

Reactor Regulation or the Director of Inspection and Enforcement, as appropriate. The regulations provide for sua sponte Commission review of the Director's decisions. Petition at 5; 10 C.F.R. § 2.206. However, CCANP eschews that procedure and instead demands direct consideration of its Petition by the Commission. While the Commission has inherent authority to consider the CCANP Petition, the cases cited by CCANP are not precedents for such review. Moreover, as we describe below, such an unusual step would be especially inappropriate in this case because (1) utilizing NRC Staff expertise and procedures for the initial consideration of the broad and complex technical issues involved would be of particular value to the Commission, and (2) there is no threat to the public health and safety warranting Commission intervention at this point.

The only cases cited by CCANP involving petitions regarding individual licensees are Midland^{2/} and Indian Point^{3/}. In neither case did the Commission directly entertain a petition regarding the subject license, rather both cases concerned Commission review of Director's deci-

^{2/} Consumers Power Co. (Midland Units 1 and 2), CLI-73-38, 6 AEC 1082 (1973).

^{3/} Consolidated Edison Co. (Indian Point Units 1, 2 and 3), CLI-75-8, 2 NRC 173 (1975).

sions. Indeed, subsequently the Commission amended 10 C.F.R. § 2.206 to prohibit petitions for review of Director's decisions, so that under the current regulations even the petitions filed in those cases would no longer be entertained by the Commission. 10 C.F.R. § 2.206(c)(2) (1982). The other cases cited by CCANP are also inapposite. In Petition for Emergency and Remedial Action, CLI-78-6, 7 NRC 400 (1978) virtually all licensees were affected and the Commission employed informal rulemaking (notice and comment) not adjudicatory procedures. The last case cited by CCANP, U.S. Energy Research and Development Administration (Clinch River Breeder Reactor Project), CLI-76-13, 4 NRC 67 (1976), involved Commission review of an Appeal Board decision.

Not only is there no Commission precedent for bypassing the Director, but the Commission has explicitly declined to do so in the past. In Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear -1), CLI-78-7, 7 NRC 429 (1978), petitioners attacked a Director's decision on the grounds that the Staff's prior positions in the licensing proceeding showed it could not be impartial toward the petitioners' positions. Id. at 432. The Commission denied the petitioners' request for de novo review by the Commission and affirmed the Director's decision. The Court of Appeals affirmed the Commission decision. In upholding the

requirement that such petitions be filed with the Director, the Court cited the importance to the Commission of having the benefit of Staff expertise and the value to the Commission of utilizing Staff administration. Porter County Chapter v. NRC, 606 F.2d 1363, 1372 (D. C. Cir. 1979). This Commission policy of reliance on Staff oversight of a licensee was recently manifested in Cincinnati Gas and Electric Co. (W. H. Zimmer Nuclear Power Station, Unit No. 1), CLI-82-20, 15 NRC ____ (July 30, 1982). There the Commission rejected a Licensing Board's exercise of sua sponte authority, noting that the NRC Staff investigation was adequately addressing the relevant issues. Thus, even if CCANP's factual allegations were accurate the Petition still should have been addressed to the Director for decision.

However, CCANP's factual allegations are not accurate. The CCANP Petition is virtually identical to the petition filed with the Commission and subsequently withdrawn by Citizens for Equitable Utilities (CEU) on October 29, 1981.^{4/} The many material changes in circumstances that have occurred over the nine months since CEU filed its petition are ignored by CCANP. One example is CCANP's rationale for

^{4/} CEU later withdrew from the operating license proceeding. Its June 10, 1982 letter cited among the reasons for such withdrawal "constructive steps taken by HL&P affecting the safety and efficiency of the Project." (Letter from Mrs. Buchorn of CEU to Mr. Jordan of HL&P).

seeking Commission (as opposed to Director) consideration of its Petition: that "[t]he Staff has made no effort to secure for itself any special review authority over resumption of safety-related work. . . ." Petition at 5.

As outlined in the background discussion above, contrary to CCANP's assertion, the Staff has exercised special review over the resumption of safety-related work. In addition to the resident inspector at the construction site, the Staff has also stationed a resident inspector at Bechtel's design office in Houston. It is performing a continuing review of the disposition of the Quadrex findings and plans to issue its own report on the disposition of those findings. It required HL&P to submit its program for safety-related construction 60 days in advance of its plans for resumption of construction, specifically requiring that HL&P explain how Quadrex concerns would be taken into account. It was only after the Staff reviewed this information that it concurred in the resumption of safety-related construction. Thus, the Staff's review of resumption of construction at STP has, in fact, been extraordinarily intense.^{5/}

^{5/} Since CCANP is fully aware of all of the actions taken by the Staff, it is curious that it chose to ignore them completely in the Petition filed with the Commission. CCANP also chose to ignore a number of highly relevant documents. See note 8, infra.

The facts in this case highlight the reasons that the Commission requires such petitions to be filed with the Director. At issue are complex and lengthy technical reports. The Staff has detailed knowledge of the underlying facts; has reviewed the Quadrex Report and Bechtel's preliminary assessment; has interviewed HL&P, Bechtel and Quadrex personnel who participated in those reviews; has monitored the Bechtel design review; and has reviewed HL&P's plans for resolution of the individual Quadrex findings prior to resumption of affected construction work. For just such reasons the regulation provides for this special knowledge to be applied in a Director's decision, with the Commission retaining authority for sua sponte review of that decision.

While we recognize that the Commission's practice is generally to refer such petitions to the appropriate Director (see e.g., Consumers Power Company (Big Rock Point Plant), DD-82-05, 15 NRC ___, (June 15, 1982)), in this case we believe the appropriate action is to deny summarily CCANP's Petition without referral to the Director. The Petition makes clear that CCANP does not seek review of its Petition by the Director and, as our discussion above demonstrates, the matters alluded to in the Petition are

already receiving close scrutiny by the NRC Staff. However, should the Commission decline to dismiss the Petition summarily, the appropriate course would be to refer it to the Director for his action pursuant to § 2.206. He should then deny it for the reasons set forth below.

B. There is no Legal or Factual Basis for the Relief Sought by CCANP

CCANP has provided no legal or factual basis for the five elements of relief it has requested (see Petition at 12) and, if the Petition is referred to the Director, it should be denied on such grounds. Three of the five elements entail immediate suspension of construction or prohibition of further construction until certain reviews are completed. Such action would not be lawful.

The Administrative Procedure Act (APA)^{6/} prohibits suspension of a license without written agency notice and opportunity to demonstrate compliance. 5 U.S.C. § 558(c) (1977). The only exceptions to this prohibition are cases of willfulness and those in which the public health, interest, or safety requires immediate action. Id.; 42 U.S.C. 2239 (1973); 10 C.F.R. § 2.202. Neither exception is applicable here. HL&P's actions are in accordance with NRC

^{6/} The APA is applicable to NRC proceedings. 42 U.S.C. § 2231 (1981).

requirements and there is no imminent threat to public health or safety. The issue here is the adequacy of design, and unlike a potential construction deficiency that may be concealed by subsequent construction, the design is fully documented and can be reviewed at any time before or after construction. In fact, 1. Porter County Chapter, supra, 606 F.2d at 1370, petitioners claims included an issue regarding safety-related design and the Court held that such an issue could be left for review in the eventual operating license proceeding. Thus the circumstances which might justify an immediate suspension are not present here.

Neither is there any basis for instituting a proceeding to consider suspension of construction. As the Commission has emphasized:

. . . it has always been recognized that summary administrative action substantially curtailing existing rights -- here, the right to construct a nuclear power plant pursuant to a validly issued construction permit -- is a "drastic procedure". . . .
Such action, unless warranted by compelling safety considerations, can have serious consequences. Unwarranted suspension of construction of a needed generating plant is contrary to the public interest. Moreover, a period of enforced suspension of construction may result in layoffs and consequent hardship for employees at the site. And, obviously, an extended suspension may generate substantial additional costs which the consumer may ultimately bear through increased electricity rates.

Midland, supra, at 1083 (citations omitted).

CCANP has not made the slightest showing that there are violations or potential hazards to the public that would be sufficient grounds for suspension of construction. See 10 C.F.R. § 2.206(a)(1). Certainly there are no "compelling safety considerations" involved here that would warrant the extreme action of suspending construction. At most what is in issue is the adequacy of some aspects of design. Design issues which arise during construction or are left unresolved at the construction permit stage are routinely considered in the subsequent regulatory review. Indeed, as discussed further below, the issues CCANP seeks to raise are already a planned part of the operating license hearing, in which CCANP is a participant.

Furthermore, the fact that Quadrex made some findings in early 1981 would not support the suspension of construction under present circumstances. Since the time that Quadrex performed its review, Bechtel has been engaged as architect-engineer and has been performing a comprehensive design review. The review of the structures, systems or components comprising the entire Plant is considering the applicable Quadrex findings. Construction work is being resumed methodically through a phased process and is proceeding only on the basis of designs reviewed in the

transition program. Thus, even if CCANP's characterization of the Quadrex findings were taken as a true description of the design as it was in spring of 1981, there would be no basis for stopping current construction activities.^{7/}

Moreover the entire process is being closely monitored and inspected by the NPC Staff. The Staff has reviewed the details of HL&P's plans and has concurred in them. The report cited by CCANP, and several additional relevant documents^{8/} known to CCANP but not cited by it, have been

^{7/} A Section 2.206 petition should not be permitted to force consideration of a technical issue in a less appropriate forum. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2) CLI-81-6, 13 NRC 443 (1981); Consolidated Edison Co. (Indian Point, Units 1, 2 and 3), CLI-76-8, 2 NRC 173, 177 (1975). It is the licensee's risk that the operating license hearing will result in a finding that the design is not acceptable in some regard; accordingly, no separate hearing on such issues is required. Porter County Chapter, supra, 606 F.2d at 1370.

^{8/} See An Assessment of the Findings in the Quadrex Corporation Report Dated May 1981, March 1982 (Bechtel's preliminary assessment of the Quadrex Report); Transition Program Description dated December 11, 1981 (describing the design review being performed by Bechtel); I&E Reports 82-01, 82-02, 82-03, 82-04, 82-08 and 82-09 (describing Staff review of the Bechtel design review process, including the Quadrex Report); letter dated March 22, 1982 from G. W. Oprea, Jr. (HL&P) to John T. Collins, Regional Administrator, Region IV (ST-HL-AE-809) (describing the organizational structure and relationships among HL&P, Bechtel and Ebasco Services, Inc. (the constructor) with respect to (Footnote continued on page 16)

reviewed by the NRC Staff as well as Bechtel and HL&P, and each has found it acceptable to proceed with construction in accordance with the plan described in HL&P's letters to the Staff. This further demonstrates the lack of present basis for the suspension of construction sought by CCANP.

A second element of the relief requested by CCANP is "an independent third party review of the Brown & Root design." In addition to lacking regulatory basis, such request obviously chooses not to consider the detailed review being conducted by Bechtel as an "independent third party review." There is, however, no basis for CCANP's position. Bechtel is a highly qualified architect-engineer; the comprehensive review it has undertaken encompasses the design of the entire Plant (not just the portion reviewed by Quadrex); Bechtel's review process has been described in the Transition Program Description, reviewed and found acceptable by the NRC Staff, and considered at the operating license hearing; and the NRC Staff, including an NRC resident

8/ (Footnote continued from page 15)
responsibilities for quality assurance, design review, and design verification); letter dated April 22, 1982 from G. W. Oprea, Jr. to John T. Collins (ST-HL-AE-821) (describing the HL&P program to disposition Quadrex findings); and letter dated May 14, 1982 from G. W. Oprea, Jr. to John T. Collins (ST-HL-AE-833) (describing HL&P's program and schedule for resuming safety related construction work).

inspector at Bechtel's offices, is maintaining continuing surveillance over the conduct of Bechtel's design review. Bechtel had no role in the development of the design it is now reviewing. The fact that Bechtel will assume responsibility for the design upon its completion of the review does not reduce its "independence"; if anything, it provides additional incentive to assure a thorough review. When the foregoing facts are taken into account -- particularly in view of the additional considerations that the NRC Staff is performing its own review of the Quadrex Report and that the Quadrex Report will be considered in the next phase of the operating license hearing^{9/} -- a less suitable candidate for additional review can scarcely be imagined.

The final element of relief sought by CCANP is a hearing on one Quadrex concern (adequacy of classification of systems and components as non-safety related) and the adequacy of the foregoing "independent third party review of the Brown and Root design." As CCANP recognizes at page 13 of its Petition, the existing Licensing Board is planning an early hearing on all aspects of the Quadrex Report. It has already conducted a hearing this year, in which CCANP participated, on Bechtel's qualifications and the adequacy

^{9/} See Fourth Prehearing Conference Order (December 16, 1981) at 5.

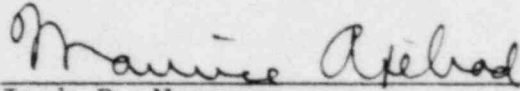
of the transition program, including the Bechtel design review process. Thus, the hearing sought by CCANP is, in substance, already planned or accomplished. CCANP additionally seeks to suspend construction until such hearing is completed, but, as discussed above, has provided no basis for such relief.

Thus, there is neither a legal nor a factual basis for granting CCANP any of the relief it seeks.

IV. CONCLUSION

The Petition should be summarily denied by the Commission because CCANP has explicitly and willfully refused to utilize the procedures for review by NRC officials that are expressly made available under the NRC regulations. If the Petition is referred to the Director of Nuclear Reactor Regulation for consideration pursuant to 10 C.F.R. § 2.206, it should be denied on its merits since, as detailed above, there is no legal or factual basis for any of the relief sought by CCANP.

Respectfully submitted,



Jack R. Newman
Maurice Axelrad
Alvin H. Gutterman
1025 Connecticut Avenue, N.W.
Washington, D. C. 20036

Finis E. Cowan
Thomas B. Hudson, Jr.
3000 One Shell Plaza
Houston, TX 77002

DATED: August 24, 1982

LOWENSTEIN, NEWMAN, REIS
& AXELRAD
1025 Connecticut Ave., NW
Washington, D. C. 20036

BAKER & BOTTS
3000 One Shell Plaza
Houston, TX 77002

Attorneys for HOUSTON LIGHTING
& POWER COMPANY, Project Manager
of the South Texas Project
acting herein on behalf of itself
and the other Applicants, THE
CITY OF SAN ANTONIO, TEXAS
acting by and through the City
Public Service Board of the City
of San Antonio, CENTRAL POWER
AND LIGHT COMPANY and CITY OF
AUSTIN, TEXAS

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensees' Response to CCANP 'Petition to Suspend Construction of the South Texas Project'" have been served on the following individuals and entities by deposit in the United States mail, first class, postage prepaid, or by arranging for delivery as indicated by asterisk, on this 24th day of August, 1982.

Chairman Nunzio J. Palladino*
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Dr. James C. Lamb, III
Administrative Judge
313 Woodhaven Road
Chapel Hill, NC 27514

Commissioner Victor Gilinsky*
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Ernest E. Hill
Administrative Judge
Lawrence Livermore Laboratory
University of California
P.O. Box 808, L-46
Livermore, CA 94550

Commissioner John F. Ahearne*
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Mrs. Peggy Buchorn
Executive Director
Citizens for Equitable
Utilities, Inc.

Commissioner Thomas M. Roberts*
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Route 1, Box 1684
Brazoria, TX 77422

Commissioner James K. Asselstine*
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Brian Berwick, Esq.
Assistant Attorney General
for the State of Texas
Environmental Protection
Division
P.O. Box 12548, Capitol Station
Austin, TX 78711

Charles Bechhoefer, Esq.
Chairman, Administrative Judge
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D. C. 20555

William S. Jordan, III, Esq.
Harmon & Weiss
1725 I Street, NW
Washington, D. C. 20006

Kim Eastman, Co-coordinator
Barbara A. Miller
Pat Coy
Citizens Concerned About
Nuclear Power
5106 Casa Oro
San Antonio, TX 78233

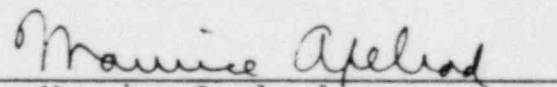
Lanny Sinkin
2207-D Nueces
Austin, TX 78705

Jay M. Gutierrez, Esq.
Office of the Executive
Legal Director
U.S. Nuclear Regulatory
Commission
Washington, D. C. 20555

Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory
Commission
Washington, D. C. 20555

Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory
Commission
Washington, D. C. 20555

Docketing and Service Section*
Office of the Secretary
U.S. Nuclear Regulatory
Commission
Washington, D. C. 20555


Maurice Axelrad